

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
March 19, 2013**

AGENDA

9:30	Done	Presentations
10:30	Done	Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups
10:40	Done	Presentation by the Economic Development Authority
10:55	Accepted report; referred report to staff	Report of the Bi-Partisan Election Process Improvement Commission
11:15	Done	Items Presented by the County Executive

**ADMINISTRATIVE
ITEMS**

1	Approved	Streets into the Secondary System (Dranesville, Mount Vernon and Springfield Districts)
2	Approved	Extension of Review Period for 2232 Review Application (Mount Vernon District)
3	Approved	Authorization to Advertise Proposed Amendments to the Map of Chesapeake Bay Preservation Areas, Chapter 118 (Chesapeake Bay Preservation Ordinance) of The Code of the County of Fairfax, Virginia, Re: Resource Protection Area Boundaries and Board Policy for the Treatment of Approved and Pending Plans of Development (Dranesville District)
4	Approved	Authorization to Conduct a Joint Public Hearing for the Virginia Department of Transportation's Secondary Six-Year Program for Fiscal Years 2014 through 2019, and the Fiscal Year 2014 Budget
5	Approved	Authorization to Advertise a Public Hearing to Consider the Adoption of an Ordinance that Amends Appendix H of the Fairfax County Code to Grant a Non-Exclusive Cable Television Franchise to CoxCom, LLC

ACTION ITEMS

1	Approved	Renewal of a Memorandum of Agreement Between the Fairfax County Police Department and the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives
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**FAIRFAX COUNTY
BOARD OF SUPERVISORS
March 19, 2013**

**ACTION ITEMS
(Continued)**

- | | | |
|---|---------------------------------|---|
| 2 | Approved with amendments | Approval of Comments on the I-66 Tier 1 Draft Environmental Impact Statement (DEIS) |
| 3 | Approved | Authorization to Submit Comments on the Draft Virginia Stormwater Management Program (VSMP) Individual Permit for Stormwater Discharges from the Municipal Separate Storm Sewer System (MS4) Owned and Operated by Arlington County |

**INFORMATION
ITEMS**

- | | | |
|-------|--------------|---|
| 1 | Noted | Contract Award – Nursing and Other Healthcare Services |
| 2 | Noted | Contract Award – Engineering Services |
| 3 | Noted | Consolidated Plan Certification for the Fairfax County Redevelopment and Housing Authority Public Housing and Housing Choice Voucher Annual Plan for Fiscal Year 2013 |
| 11:25 | Done | Matters Presented by Board Members |
| 12:20 | Done | Closed Session |

**PUBLIC
HEARINGS**

- | | | |
|------|-----------------|---|
| 3:30 | Approved | Public Hearing on RZ 2012-SU-010 (Northern Virginia Health Investors, LLC) (Sully District) |
| 3:30 | Approved | Public Hearing on SE 2012-SU-002 (Nadeem P. Malik) (Sully District) |
| 3:30 | Approved | Public Hearing on SE 2012-MA-016 (National Capital Presbytery, Inc.) (Mason District) |

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
March 19, 2013**

**PUBLIC
HEARINGS
(Continued)**

3:30	Approved	Public Hearing on RZ 2012-PR-011 (The Trustees of Emmanuel Lutheran Church) (Providence District)
3:30	Approved	Public Hearing on SE 2012-PR-010 (The Trustees of Emmanuel Lutheran Church) (Providence District)
3:30	Approved	Public Hearing on RZ 2012-BR-003 (Tariq Khan) (Braddock District)
4:00	Approved	Public Hearing on RZ 2012-LE-021 (Clifford F. Lindsay, Trustee) (Lee District)
4:00	Approved	Public Hearing 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
4:00	Public hearing deferred to April 30, 2013 at 4:00 p.m.	Public Hearing on Fairfax Forward Revised Planning Process, Including the Comprehensive Plan Amendment Work Program
4:00	Public hearing held; action scheduled for April 30, 2013	Public Hearing on the Proposed Consolidated Plan One-Year Action Plan for FY 2014
4:00	Approved	Public Hearing to Consider Adopting an Ordinance to Establish the Pine Spring Residential Permit Parking District, District 45 (Providence District)
4:30	Approved Sully District change; Deferred Decision on Braddock District to April 9, 2013	Public Hearing to Consider an Ordinance Amending County Code Chapter 7 Relating to Election Precincts and Polling Places

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Fairfax County, Virginia
BOARD OF SUPERVISORS
AGENDA

Tuesday
March 19, 2013

9:30 a.m.

PRESENTATIONS

Presentation to the Board of Supervisors of the Office of the Sheriff's re-accreditation by the Virginia Law Enforcement Professional Standards Commission.

- CERTIFICATE – To recognize the Office of the Sheriff's Teen Awareness Program. Requested by Supervisor McKay.

Presentation to the Board of Supervisors by Harlan Eugene Cross Jr. of his book, "Letters Home: Three Years Under General Lee in the 6th Alabama." Requested by Supervisor Frey.

- CERTIFICATE – To recognize Ed Wenzel for the map he created showing Fairfax County in relation to the activity that occurred throughout the Civil War. Requested by Supervisor Frey.
- CERTIFICATE – To recognize the participants in the Fairfax County Civil War Sesquicentennial event. Requested by Chairman Bulova and Supervisor Frey.
- RESOLUTION – To recognize Joe Nilson for his years of service to Fairfax County. Requested by Supervisor McKay.
- PROCLAMATION – To designate April 7, 2013, as Holocaust Remembrance Day in Fairfax County. Requested by Chairman Bulova.

— more —

Board Agenda Item
March 19, 2013

- PROCLAMATION – To designate March 2013 as Donate Life Month in Fairfax County. Requested by Chairman Bulova.
- PROCLAMATION – To designate April 2013 as Fair Housing Month in Fairfax County. Requested by Chairman Bulova.
- PROCLAMATION – To designate April 1-7, 2013, as Public Health Week in Fairfax County. Requested by Chairman Bulova.

STAFF:

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

Board Agenda Item
March 19, 2013

10:30 a.m.

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

ENCLOSED DOCUMENTS:

Attachment 1: Appointments to be heard March 19, 2013

(An updated list will be distributed at the Board meeting.)

Attachment 2: Résumé of Nominee to Fairfax-Falls Church Community Services Board

STAFF:

Catherine A. Chianese, Assitant County Executive and Clerk to the Board of Supervisors

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

APPOINTMENTS TO BE HEARD MARCH 19, 2013
(ENCOMPASSING VACANCIES PROJECTED THROUGH MARCH 31, 2013)
(Unless otherwise noted, members are eligible for reappointment)

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 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>
VACANT (Formerly held by Barbara Kreykenbohm; appointed 1/09 by Gross) Term exp. 1/11 <i>Resigned</i>	Mason District Representative		Gross	Mason

ATHLETIC COUNCIL (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Gregory Beckwith (Appointed 7/10-5/11 by Foust) Term exp. 3/13	Dranesville District Alternate Representative		Foust	Dranesville
Michael Champness (Appointed 2/05&3/07 by DuBois; 3/09 by Foust) Term exp. 3/11	Dranesville District Principal Representative		Foust	Dranesville
James R. Elder (Appointed 7/07-3/11 by Hudgins) Term exp. 3/13	Hunter Mill District Alternate Representative		Hudgins	Hunter Mill
Harold Leff (Appointed 3/93-3/11 by Hudgins) Term exp. 3/13	Hunter Mill District Principal Representative		Hudgins	Hunter Mill

Continued on next page

ATHLETIC COUNCIL (2 years)
Continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
B. Jefferson Boggs (Appointed 5/07-3/11 by Hyland) Term exp. 3/13	Mount Vernon District Alternate Representative		Hyland	Mount Vernon
Jonathan Willmott (Appointed 5/07-3/11 by Hyland) Term exp. 3/13	Mount Vernon District Principal Representative		Hyland	Mount Vernon
Ralph Wills (Appointed 10/00-3/11 by Frey) Term exp. 3/13	Sully District Alternate Representative		Frey	Sully
David L. Lacey (Appointed 2/99-3/11 by Frey) Term exp. 3/13	Sully District Principal Representative		Frey	Sully
VACANT (Formerly held by Christy Winters Scott; appointed 6/08-7/10 by Hudgins) Term exp. 6/12 <i>Resigned</i>	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>
Rachel Rifkind (Appointed 5/09-6/09 by Gross) Term exp. 6/11	Mason District Representative		Gross	Mason
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 BUILDING AND FIRE PREVENTION CODE APPEALS
(4 years)**
(No official, technical assistant, inspector or other employee of the DPWES, DPZ, or FR shall serve as a member of the board.)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Paul Kraucunas (Appointed 9/98-2/09 by Bulova) Term exp. 2/13	Design Professional #1 Representative		By Any Supervisor	At-Large
Thomas Schroeder (Appointed 3/09 by Bulova) Term exp. 2/13	Alternate #1 Representative		By Any Supervisor	At-Large

**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>
Patricia Flavin(Rehill) (Appointed 12/10 by Hyland) Term exp. 12/12	Professional #6 Representative		By Any Supervisor	At-Large

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 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>
VACANT (Formerly held by Benjamin Gibson; appointed 4/11 by McKay) Term exp. 1/15 <i>Resigned</i>	Lee District Representative		McKay	Lee
David Hess-Linkous (Appointed 7/11 by Smyth) Term exp. 1/13	Providence District Representative		Smyth	Providence

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
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

ENVIRONMENTAL QUALITY ADVISORY COUNCIL (EQAC) (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
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 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 COMMUNITY LONG TERM CARE COORDINATING COUNCIL
(2 years)**

CONFIRMATIONS NEEDED:

- Ms. Candice S. Rettie as an Advocacy Organizations Representative
- Dr. Heisung Lee as a Long Term Provider Representative

**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	Gary A. Ambrose (Résumé attached) (Bulova) <i>(Nomination announced on February 26, 2013)</i>	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

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

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
Joleane Dutzman (Appointed 1/10-1/11 by Hyland) Term exp. 1/13	Mount Vernon District Representative		Hyland	Mount Vernon

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 Eileen Nelson; appointed 3/04-6/07 by Connolly; 6/10 by Bulova) Term exp. 6/13 <i>Resigned</i>	At-Large Chairman's Representative		Bulova	At-Large Chairman's
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

CONFIRMATIONS NEEDED:

- Mr. John Murray as the Commonwealth Attorney Representative
- Captain John Snyder as the Office of Sheriff Representative
- Lt. Col. Tom Ryan as the Police Department 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

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
C. Denver Lovett (Appointed 1/10-3/11 by Hudgins) Term exp. 3/13	Fairfax County #4 Representative		By Any Supervisor	At-Large
Cleveland Williams (Appointed 12/11 by Hudgins) Term exp. 3/13	Fairfax County #7 Representative		By Any Supervisor	At-Large
Linda Diamond (Appointed 3/07-3/11 by Hudgins) Term exp. 3/13	Fairfax County #8 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 H. Lillian Vogl; appointed 3/10-1/11 by Herrity) Term exp. 1/14 <i>Resigned</i>	Citizen Member #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Michael Kiffney; appointed 5/08-12/12) Term exp. 12/15 <i>Resigned</i>	Citizen Member #3 Representative		By Any Supervisor	At-Large
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 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

Gary A. Ambrose

OBJECTIVE Opportunity to leverage my extensive government and industry experience in support of the Fairfax County Community Services Board.

SUMMARY More than 25 years of leadership in executive positions in operations, logistics, and information technology (IT) in the Department of Defense (DoD) and Industry. Project management success in a 700,000-person organization. Exceptional people skills. Chief executive of five organizations ranging in size from 135 to 11,000 people. Top Secret security clearance eligible. Significant skills include:

- **Delivering Results**
- **Project Management**
- **Team Building**
- **Communication**
- **Human Resource Management**
- **Financial Management**

ACCOMPLISHMENTS

Delivering Results Reorganized IBM's worldwide Department of Defense business in 2000 and led the team to double digit revenue growth in 8 of my 11 years with the firm. Expert in pipeline development, management, execution. Forte is organizational leadership. Led a 7,000-person Intelligence, Surveillance and Reconnaissance unit engaged in worldwide operational commitments to its best operational results in 25 years.

Project Management Organized and directed Air Force-wide Y2K preparations--more than 3000 categories of IT-dependent systems and 2.5 million-plus IT infrastructure items at 198 sites worldwide. Results: no adverse mission impacts enterprise-wide; modernized IT infrastructure, worldwide; best-ever interoperability assessment of all mission critical systems.

Team Building Built effective DoD-focused team in IBM's highly-matrixed organization. Executive sponsor of IBM's DoD small business engagement. Built Air Force Year 2000 team that energized skeptical senior leaders and system and process owners Air Force-wide to focus on IT remediation, certification, and testing.

Communication Crafted IBM's DoD marketing message that leveraged IBM's corporate turnaround experience to establish the company as DoD's industry benchmark for transformation of a global, complex enterprise. Orchestrated a global Air Force outreach program that reached service and U.S. civilian populations worldwide. Articulated the Air Force Y2K readiness message on more than 30 live, local and national TV and radio shows.

Human Resource Management Organized, motivated, and led a high-performance, global Defense team consisting of local and geographically-dispersed direct reports and internationally-assigned IBM sales resources

Financial Management Carried financial results responsibility for IBM's global US Department of Defense business. Developed and executed a \$300.1 million Y2K operating budget--the federal government's fifth largest Y2K budget.

WORK HISTORY

Owner, GAA Consulting LLC – 2011 – Present

Consult for small businesses on projects of importance to US military veterans. Currently partnered with a small business to provide employment and practical work experience for veterans who are college students.

Vice President, Department of Defense, IBM – 2000 - 2011

Responsible for global business development, sales, and execution for IBM’s DoD accounts. Built and led a team that developed, marketed, and delivered IBM and business partner hardware, software, and services solutions for Office of the Secretary of Defense, military service, and Defense agency business challenges.

Assistant Director, Communications and Information, Pentagon -- 2000

Responsible for all aspects of the Air Force’s IT programs, policy, and resources. Initiated assessment of enterprise network architecture alternatives with goal to revolutionize service, enhance information assurance, and control cost of ownership. Worked closely with DoD, Service, and Defense agency CIOs and staffs on DoD-wide IT issues. Interim Air Force Deputy CIO. Retired as a brigadier general.

Director, US Air Force Year 2000 Program, Pentagon -- 1998 - 2000

Selected by the Chief of Staff of the Air Force to organize and bring operational focus to the Air Force’s Y2K preparations. Reorganized the effort on key outcomes: explicit service-wide guidance, system remediation and independent validation and verification via code scanning, interoperability testing, installation readiness, outreach, and consequence management. Focused Air Force leadership attention on IT integration.

Commander, 55th Wing and Offutt Air Force Base -- 1996 - 1998

Chief executive of an 11,000-person base--the second-largest employer in Nebraska--and the largest wing (7,000 people, \$122 million budget) in the Air Force’s largest major command. Directed a global aerial reconnaissance mission--major subordinate operations units permanently based in the United Kingdom, Okinawa, and Crete, permanent presence in Saudi Arabia.

EDUCATION

MA, Management and Supervision, Central Michigan University
BA, Political Science, Duquesne University
Air War College
Kennedy School of Government Program for US and Russian Generals

AFFILIATIONS

Member, National Alliance on Mental Illness; formerly member of USO of Metropolitan Washington Board of Directors; former member of AFCEA Board of Directors; member of the Air Force Association and the Military Officers Association of America; mentor for returning Iraq and Afghanistan veterans via American Corporate Partners; member of Air Force C4 Association; life member of AFCEA

Board Agenda Item
March 19, 2013

10:40 a.m.

Presentation by the Economic Development Authority Titled “Issues for Fairfax County’s Economic Future”

ENCLOSED DOCUMENTS:

Report will be delivered under separate cover.

PRESENTED BY:

Gerald L. Gordon, Ph.D., President and CEO of the Fairfax County Economic Development

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Board Agenda Item
March 19, 2013

10:55 a.m.

Report of the Bi-Partisan Election Process Improvement Commission

ENCLOSED DOCUMENTS:

Report will be delivered under separate cover.

PRESENTED BY:

The Honorable Katherine K. Hanley and the Honorable Stuart Mendelsohn, Co-Chairs of the Bi-Partisan Election Process Improvement Commission

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Board Agenda Item
March 19, 2013

11:15 a.m.

Items Presented by the County Executive

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Board Agenda Item
March 19, 2013

ADMINISTRATIVE – 1

Streets into the Secondary System (Dranesville, Mount Vernon and Springfield 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>
McLean Bible Church	Dranesville	Service Drive for Leesburg Pike (FR 899) (Additional Right-of-Way (ROW) Only)
Laurel Hill Landbay D Section 1	Mt. Vernon	Bitterroot Court Bluebonnet Drive Native Violet Drive
Braddock Road Section 1 Kings Chapel	Springfield	Braddock Road (Route 620) (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.

Board Agenda Item
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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

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Board Agenda Item
March 19, 2013

ADMINISTRATIVE – 2

Extension of Review Period for 2232 Review Application (Mount Vernon District)

ISSUE:

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

RECOMMENDATION:

The County Executive recommends that the Board extend the review period for the following application: Application 2232-V12-10 to June 3, 2013.

TIMING:

Board action is required on March 19, 2013, to extend the review period of the application noted above before it expires.

BACKGROUND:

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

The Board is asked to extend the review period for application 2232-V12-10; which was accepted for review by DPZ on January 3, 2013. This application is for a telecommunications facility and thus is subject to the State Code provision that the Board may extend the time required for the Planning Commission to act on these applications by no more than sixty additional days.

The review periods for the following applications should be extended as follows:

2232-V12-10	Cellco Partnership/Verizon Wireless 7685 Pohick Road Mount Vernon District
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The need for the full time of this extension may not be necessary, and is not intended to set a date for final action.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

None

STAFF:

Robert A. Stalzer, Deputy County Executive

Fred R. Selden, Director, Department of Planning and Zoning, DPZ

Chris B. Caperton, Chief, Facilities Planning Branch, Planning Division, DPZ

Connie A. Maier, Planner, Facilities Planning Branch, Planning Division, DPZ

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ADMINISTRATIVE - 3

Authorization to Advertise Proposed Amendments to the Map of Chesapeake Bay Preservation Areas, Chapter 118 (Chesapeake Bay Preservation Ordinance) of The Code of the County of Fairfax, Virginia, Re: Resource Protection Area Boundaries and Board Policy for the Treatment of Approved and Pending Plans of Development (Dranesville District)

ISSUE:

Board of Supervisors' (Board) authorization to advertise proposed amendments to the map of Chesapeake Bay Preservation Areas, Chapter 118 (Chesapeake Bay Preservation Ordinance) of *The Code of the County of Fairfax, Virginia* (Fairfax County Code) and Board Policy for the Treatment of Approved and Pending Plans of Development. The proposed amendment revises the Resource Protection Area (RPA) boundaries on the adopted Chesapeake Bay Preservation Areas Map, map page no. 30-2. The proposed Board Policy for the Treatment of Approved and Pending Plans of Development (Board Policy) mitigates the impact of the amendments on approved or pending plans of development.

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of the proposed amendment to the Chesapeake Bay Preservation Areas Map as set forth in the Staff Report dated February 27, 2013, and the proposed Board Policy.

TIMING:

Board action is requested on March 19, 2013, to provide sufficient time to advertise public hearings on April 25, 2013, before the Planning Commission and on May 14, 2013 at 4:00 p.m., before the Board.

BACKGROUND:

Section 118-1-9(a) of the Chesapeake Bay Preservation Ordinance requires that the Board adopt a map of Chesapeake Bay Preservation Areas. Chesapeake Bay Preservation Areas include RPAs and Resource Management Areas (RMAs). RPAs are required to be designated around all water bodies with perennial flow. Under Section 118-1-7(b) of the Chesapeake Bay Preservation Ordinance a stream must be perennial and depicted on the map as perennial to be subject to regulation as a water body with perennial flow. Therefore, newly identified perennial streams are subject to

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protection under the Chesapeake Bay Preservation Ordinance only after being added, by amendment, to the Chesapeake Bay Preservation Areas Map.

The Salona property is a historically significant property located at 1235 Dolley Madison Boulevard in McLean (Tax Map No. 30-2((01)) parcels 0065A, 0066A, 0067A, 0068A, and 0069A). Although the property is privately owned, the Fairfax County Park Authority (FCPA) holds a perpetual open space and conservation easement, which allows for a variety of park uses on approximately 41 acres of the site (Salona Park). During the FCPA master planning process, a citizen task force was appointed to identify, evaluate, and recommend potential uses for inclusion in Salona Park. In response to a recommendation from the task force, the Dranesville District Supervisor's Office requested that staff verify the existence and locations of all perennial water bodies on the Salona property.

In 2012, staff from the Department of Public Works and Environmental Services (DPWES) conducted a field investigation of the streams and water features on the property. The study consisted of repeated observations of stream flow conditions and evaluations of the prevailing weather and hydrologic conditions using rainfall data and published U.S. Drought Monitor reports. Staff determined that the conditions during the spring and summer were ideal for the evaluation of the extent of perennial stream flow – well below average rainfall and extended periods of drought. Staff found a very strong presence of groundwater influence on the property and identified streams that are spring-fed. During multiple visits, staff observed water flowing in segments of the streams at times the U.S. Drought Monitor reported the area was experiencing a moderate drought. Sustained stream flow during drought conditions is conclusive evidence that the stream segments are perennial. The field investigation report summarizes the findings and is included as Attachment A of the staff report. This proposed amendment to the Chesapeake Bay Preservation Areas Map is the result of the field investigation, which is included as Attachment B in the staff report.

PROPOSED AMENDMENT:

Chesapeake Bay Preservation Areas Map Page No. 30-2:

Three stream segments on the Salona property are proposed for designation as perennial streams on map page no. 30-2. The longest stream segment proposed for reclassification as a perennial stream is located west of and generally parallel to Buchanan Street, south of Dolley Madison Boulevard, north of the private driveway serving the Salona house. The second stream segment begins as a spring (with a stone spring house over it) located generally in the middle of the property, and flows southeasterly to the endpoint of the perennial stream on the adopted map. The third segment begins as a hillside spring, and flows east a short distance to its confluence

Board Agenda Item
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with the second segment. The Chesapeake Bay Preservation Areas Map is being amended to add these stream segments and their associated RPAs.

REGULATORY IMPACT:

The proposed amendments will facilitate administration of the Chesapeake Bay Preservation Ordinance by providing a more complete depiction of the RPAs in Fairfax County. Properties along a stream that has been reclassified as perennial will be subject to additional regulatory requirements associated with RPA areas that may limit development opportunities. Concurrent with past amendments to the Chesapeake Bay Preservation Areas Map, the Board has adopted policies, to be administered by the Director of DPWES, for the treatment of approved and pending plans of development impacted by such amendments. Similarly, Staff recommends that the Board adopt the Board Policy, which is included as Attachment C in the staff report. The affected properties are zoned residential and are not subject to any approved rezoning, special exception, special permit, or variance, but portions are subject to an open-space and conservation easement held by the FCPA. The proposed Board Policy has been prepared to address the general conditions applicable to the affected properties and will mitigate the impact of the amendments on any by-right plans of development that have been approved or are pending approval. In addition to the standard legal advertisements, a separate notice of the public hearings will be mailed to the owners of property where the herein described RPAs will be designated.

FISCAL IMPACT:

None

ENCLOSED DOCUMENT:

Attachment 1 – Staff Report dated February 27, 2013

STAFF:

James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)

Michelle Brickner, Director, Land Development Services, DPWES

Randolph W. Bartlett, Director, Stormwater Management, DPWES

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DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES

STAFF REPORT

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

Proposed amendments to the map of Chesapeake Bay Preservation Areas, Chapter 118 (Chesapeake Bay Preservation Ordinance) of The Code of the County of Fairfax, Virginia RE: Resource Protection Area Boundaries and Board Policy for the Treatment of Approved and Pending Plans of Development.

Authorization to Advertise	<u>March 19, 2013</u>
Planning Commission Hearing	<u>April 25, 2013</u>
Board of Supervisors Hearing	<u>May 14, 2013</u>
Prepared by:	Site Code Research and Development Division <u>JBS 703-324-1780</u> Stormwater Planning Division SC 703-324-5811

February 27, 2013

STAFF REPORT

A. Issue:

Proposed amendment to the map of Chesapeake Bay Preservation Areas, Chapter 118 (Chesapeake Bay Preservation Ordinance) of *The Code of the County of Fairfax, Virginia* and Board Policy for the Treatment of Approved and Pending Plans of Development. The proposed amendments revise the Resource Protection Area (RPA) boundaries on the adopted Chesapeake Bay Preservation Areas Map on Map Page No. 30-2 (Dranesville District). The proposed Board Policy for the Treatment of Approved and Pending Plans of Development (Board Policy) mitigates the impact of the amendments on approved or pending plans of development. There are no proposed amendments to the text of the Chesapeake Bay Preservation Ordinance.

B. Recommended Action:

Staff recommends that the Board of Supervisors adopt the proposed amendment to the Chesapeake Bay Preservation Areas Map. Staff further recommends that the Board adopt by separate resolution the Board Policy for plans impacted by the amendments.

C. Timing:

Board of Supervisors authorization to advertise – March 19, 2013

Planning Commission Public Hearing – April 25, 2013

Board of Supervisors Public Hearing – May 14, 2013

Effective Date – 12:01 a.m. May 15, 2013

D. Source:

Department of Public Works and Environmental Services

E. Coordination:

The proposed amendments have been prepared by the Department of Public Works and Environmental Services (DPWES) and coordinated with the Office of the County Attorney.

F. Background:

Section 118-1-9(a) of the Chesapeake Bay Preservation Ordinance requires that there be a map of Chesapeake Bay Preservation Areas adopted by the Board.

Chesapeake Bay Preservation Areas include RPAs and Resource Management Areas (RMAs). RPAs are required to be designated around all water bodies with perennial flow. Under Section 118-1-7(b) of the Chesapeake Bay Preservation Ordinance a stream must be perennial and depicted on the map as perennial to be subject to regulation as a water body with perennial flow. Therefore, newly identified perennial streams are subject to protection under the Chesapeake Bay Preservation Ordinance only after being added, by amendment, to the Chesapeake Bay Preservation Areas Map.

The Salona property is a historically significant property located at 1235 Dolley Madison Boulevard in McLean (Tax Map No. 30-2((01)) parcels 0065A, 0066A, 0067A, 0068A and 0069A). Although the property is privately owned, the Fairfax County Park Authority (FCPA) holds a perpetual open space and conservation easement, which allows for a variety of park uses on approximately 41 acres of the site (Salona Park). During the FCPA master planning process, a citizen task force was appointed to identify, evaluate, and recommend potential uses for inclusion in Salona Park. In response to a recommendation from the task force, the Dranesville District Supervisor's Office requested that staff verify the existence and locations of all perennial water bodies on the Salona property.

In 2012, staff from the Department of Public Works and Environmental Services (DPWES) conducted a field investigation of the streams and water features on the property. The study consisted of repeated observations of stream flow conditions and evaluations of the prevailing weather and hydrologic conditions using rainfall data and published U.S. Drought Monitor reports. Staff determined that the conditions during the spring and summer were ideal for the evaluation of the extent of perennial stream flow – well below average rainfall and extended periods of drought. Staff found a very strong presence of groundwater influence on the property and identified streams that are spring-fed. During multiple visits, staff observed water flowing in segments of the streams at times the U.S. Drought Monitor reported the area was experiencing a moderate drought. Sustained stream flow during drought conditions is conclusive evidence that the stream segments are perennial. The field investigation report summarizes the findings and is included herein as Attachment A. This proposed amendment to the Chesapeake Bay Preservation Areas Map is the result of the field investigation, and is included herein as Attachment B.

G. Proposed Amendment:

Chesapeake Bay Preservation Areas Map Page No. 30-2:

Three stream segments on the Salona property are proposed for designation as perennial streams on map page no. 30-2. The longest stream segment proposed for reclassification as a perennial stream is located west of and generally parallel to Buchanan Street, south of Dolley Madison Boulevard, north of the private driveway serving the Salona house. The second stream segment begins as a spring (with a stone spring house over it) located generally in the middle of the property, and flows

southeasterly to the endpoint of the perennial stream on the adopted map. The third segment begins as a hillside spring, and flows east a short distance to its confluence with the second segment. The Chesapeake Bay Preservation Areas Map is being amended to add these stream segments with their associated RPAs.

H. Regulatory Issues:

The proposed amendments will facilitate administration of the Chesapeake Bay Preservation Ordinance by providing a more complete depiction of the RPAs in Fairfax County. Properties along a stream that has been reclassified as perennial will be subject to additional regulatory requirements associated with RPA areas that may limit development opportunities on affected properties. Concurrent with past amendments to the Chesapeake Bay Preservation Areas Map, the Board has adopted policies, to be administered by the Director of DPWES, for the treatment of approved and pending plans of development impacted by such amendments. Similarly, Staff recommends that the Board adopt the Board Policy, which is included herein as Attachment C. The affected properties are zoned residential and are not subject to any approved rezoning, special exception, special permit, or variance, but portions are subject to an open-space and conservation easement held by the FCPA. The proposed Board Policy has been prepared to address the general conditions applicable to the affected properties and will mitigate the impact of the amendments on any by-right plans of development that have been approved or are pending approval. In addition to the standard legal advertisements, a separate notice of the public hearings will be mailed to the owners of property on which the herein described RPAs will be designated.

I. Attached Documents:

Attachment A - Field Investigation Report, dated December 13, 2012
Attachment B - Chesapeake Bay Preservation Areas Map – map no. 30-2
Attachment C - Board Policy for Treatment of Approved and Pending Plans of Development Affected by the May 14, 2013, Revisions to the Map of Chesapeake Bay Preservation Areas.

Field Investigation Report: 2012 perennial stream evaluations on the Salona property and proposed changes to the Fairfax County Chesapeake Bay Preservation Area Map

December 13, 2012

Introduction and Background:

Salona is a historically significant property located at 1235 Dolley Madison Boulevard in McLean within the Dranesville supervisory district. The property consists of multiple parcels; PIN: 0302 01 0065A, 66A, 67A, 68A, 69A. Although the 51 acre property is privately owned, the Fairfax County Park Authority (FCPA) holds a perpetual conservation easement on 41 acres of the property, which allows for a variety of park uses (see Figure 1). A master planning process for the property was established which generated a cultural landscape report and a draft Master Plan. These and other documents, as well as public meeting minutes can be found at the Salona Park Master Plan website at <http://www.fairfaxcounty.gov/parks/plandev/salona.htm>.

As part of the Salona Park master planning process, the FCPA initiated extensive community outreach which culminated in the appointment of a task force in 2011. The Salona Task Force provides recommendations which "...seek to reflect the consensus of the community and be consistent with the conservation easement as well as the financial investment made by the Fairfax County Board of Supervisors and FCPA."¹ In early 2011 task force members requested the Dranesville district supervisor's office to direct a staff re-evaluation of the streams and surface hydrology of the property - specifically with respect to current perennial designations and the locations of Resource Protection Areas (RPAs). It was suspected that there may be some perennial water bodies on the property that are not accurately depicted on the current RPA map.

According to Chapter 118 of the Code of Fairfax County, water bodies with perennial flow and any wetlands that are connected to and contiguous with them are considered "core components" of an RPA and are afforded certain protections from development. Included in these protections is any land within 100 feet of these perennial core components. The County's Chesapeake Bay Preservation Area (CBPA) map depicts all perennial water bodies and associated RPAs countywide. The most recent large-scale revision of this map occurred in 2005, subsequent to the County's 2-year (2002-2003) Perennial Stream Identification and Mapping project². These revisions greatly expanded RPAs throughout the County as a result of new requirements in the Chesapeake Bay Act. The streams and water features on the Salona property were field surveyed and mapped during this effort.

This staff report summarizes the findings of the re-evaluation of these streams in 2012 after multiple observations and recommends CBPA map amendments accordingly.

¹ Salona Park Master Plan website: <http://www.fairfaxcounty.gov/parks/plandev/salona.htm>

² <http://www.fairfaxcounty.gov/dpwes/watersheds/perennial.htm>

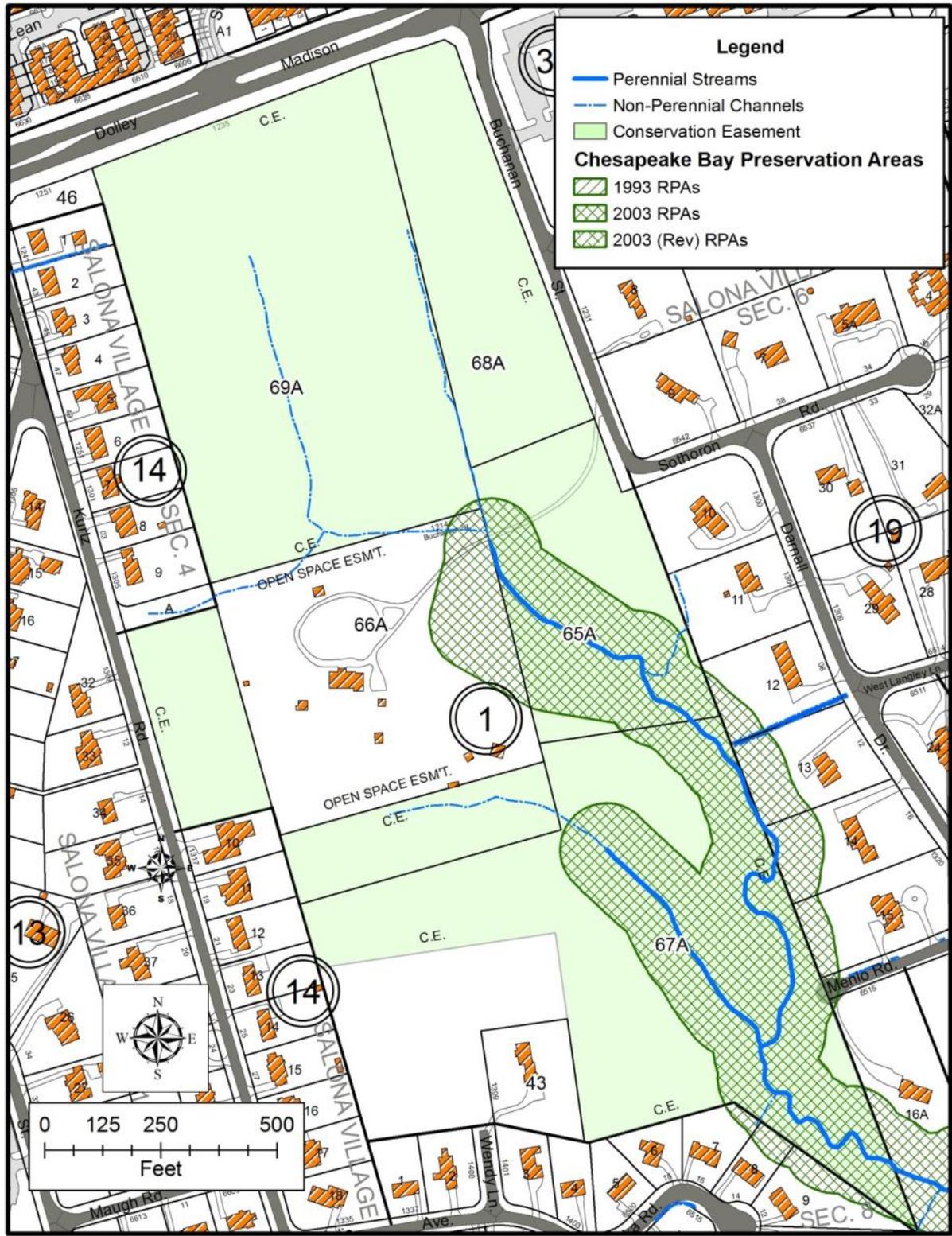


Figure 1: Area map of the Salona property.

Surface Water Evaluations:

As with previous perennial stream assessments, staff from the Department of Public Works and Environmental Services (DPWES) conducted the stream evaluations described in this report. The 2012 field study of the streams and water features on the Salona property consisted of repeated observations of stream flow in concert with evaluations of antecedent weather conditions. It is recognized that perennial streams flow throughout the year except in periods of drought and their channel bottoms generally lie at or below the water table. Intermittent streams flow only during the wetter portions of the year and their channel bottoms are at or above the groundwater table. Ephemeral streams flow only immediately after rainfall and can include drainage swales and ditches. The absence of flow in a stream channel during normal weather conditions generally indicates a non-perennial stream condition. Conversely, observation of sustained stream flow in a channel during a drought period is considered very strong evidence of a perennial stream.^{3,4} The spring and summer of 2012 produced the ideal weather conditions under which to evaluate extents of perennial stream flow – well below average rainfall and extended periods of drought. This allows for confident determinations of the existence and locations of perennial water bodies when they are found to be flowing in these conditions.

A perennial stream field identification protocol was developed by DPWES for use in the countywide mapping effort mentioned previously. This protocol uses a visual evaluation and scoring methodology which incorporates hydrologic, soils, vegetative, and faunal characterizations. The final scores were used to determine the perenniality of stream reaches. Typically a score of 25 or higher indicated a perennial stream, although certain streams may be perennial but not score 25 (typically spring fed systems). For the two-year countywide identification and mapping project, this rapid assessment scoring protocol was used in lieu of repeated flow observations. However, on site specific evaluations where multiple visits can be made, repeated observations should supersede the rapid assessment scoring protocol while providing a much higher level of confidence in the determination. Therefore, use of the rapid assessment protocol was omitted in favor of repeated observations of actual stream flow conditions in the streams on the Salona property.

All sections depicted as perennial on the current CBPA map (Figure 1) were observed to be flowing throughout the entirety of this very dry observation period and thus determined to be mapped properly. Two sections of stream on the Salona property (segments A and B on Figure 2) exhibited obvious flowing water through most of the observation period (March through August 2012), in spite of the fact that they are not depicted as perennial on the CBPA map. These two sections are the only areas that differ from what is shown on the current CBPA map.

³ *Determination of Water Bodies with Perennial Flow:*

http://dcr.cache.vi.virginia.gov/stormwater_management/documents/perflowwatbod2010.pdf

⁴ Fairfax County Perennial Stream Identification Protocol:

http://www.fairfaxcounty.gov/dpwes/watersheds/ps_protocols.pdf

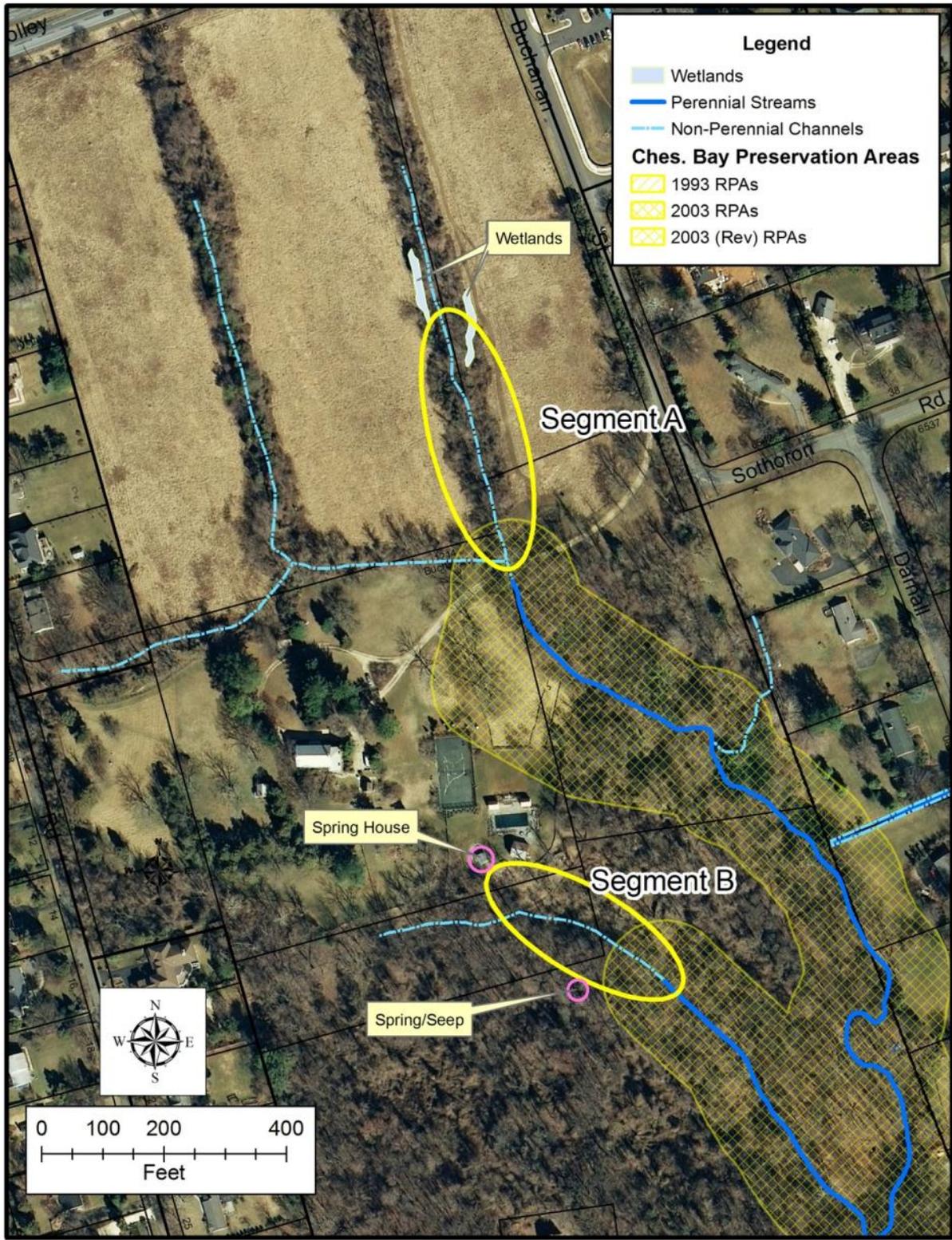


Figure 2: Areas of primary interest in the stream perennality study/observations

There are two basic reasons why these two areas were not originally classified as perennial in the 2003 survey. First, it can be very difficult to quickly field-determine perenniality in small, spring-fed channels. Many times these small channels will not achieve the minimum protocol score of 25, even though they may be carrying water year-round. This is due to the fact that groundwater and spring seeps generate much lower stream velocities which result in much smaller and less-pronounced conveyance channels. The perennial stream field identification protocol recognizes this phenomenon and provides for channels scoring less than 25 to still be considered perennial based on these and other factors. The two sections of stream currently mapped as intermittent but found to be flowing through the 2012 drought both scored less than 25 when evaluated in 2003. To compound this, the evaluations in 2003 were conducted during one of the wettest periods on record. Since all channels were flowing everywhere during this very wet period, strength of stream flow was less dependable of an indicator than other features evaluated by the protocol. Staff took a conservative approach during this period and relied more on the total score to make final determinations. So, although these streams were carrying water at the time of the original evaluations, it was assumed this was due to the abnormally wet weather conditions and since these channels scored below 25, they were determined to be intermittent or transitional. As it turns out, there is a very strong presence of groundwater influence on the streams on this property. These streams are spring-fed and they do, in fact, flow all year. The source of flow on segment A appears to be associated with a small, linear wetland nearby and the source of flow for segment B is an artesian spring that actually has a historic spring house structure situated over it. There is also a hillside spring (and associated wetlands) feeding into this segment from the west that exhibited perennial flow and thus is included in the proposed perennial stream designations and RPA buffer additions. These features are all shown on Figure 2.

Table 1 summarizes the antecedent rainfall data and US Drought Monitor (USDM) conditions for the period of observation during 2012. Rainfall data is from the closest National Weather Service (NWS) weather station to the Salona property, Ronald Reagan National Airport (DCA), which is located 8.6 miles southeast of the property. The USDM is a synthesis of multiple drought indices and impacts that represents a consensus of federal and academic scientists and is the primary index used when making stream flow determinations in Fairfax County. As such, the Fairfax County Public Facilities Manual (PFM Section 6-1704.4B) requires use of the weekly USDM “to determine the general hydrologic conditions at the time of observation(s).” Table 1 also shows when stream flow observations were made at the Salona property streams within the context of the prevailing weather and hydrologic conditions. As you can see, 2012 was a drought year and annual rainfall totals consistently were below average for every week of the year (through August). Dry conditions persisted through the entire spring, and eventually drought conditions prevailed by the mid-summer.

US Drought Monitor Date (week ending)	USDM Value	Drought Severity	Stream Flow Observation	Observation Date	DCA Year to Date Total Rainfall ² (in.)	DCA Year to date Average Total Rainfall ² (in.)	Departure from Average (in.)
1/3/2012	-	No Drought Condition			0.00	0.26	-0.26
1/10/2012	-	No Drought Condition			0.16	0.88	-0.72
1/17/2012	-	No Drought Condition			1.25	1.53	-0.28
1/24/2012	-	No Drought Condition			1.56	2.17	-0.61
1/31/2012	-	No Drought Condition			2.19	2.81	-0.62
2/7/2012	-	No Drought Condition			2.38	3.47	-1.09
2/14/2012	-	No Drought Condition	X	2/14	2.60	4.13	-1.53
2/21/2012	-	No Drought Condition			2.77	4.78	-2.01
2/28/2012	-	No Drought Condition			3.08	5.43	-2.35
3/6/2012	-	No Drought Condition			5.07	6.00	-0.93
3/13/2012	-	No Drought Condition			5.09	6.73	-1.64
3/20/2012	D0	Abnormally Dry	X	3/14	5.23	7.57	-2.34
3/27/2012	D0	Abnormally Dry			5.53	8.42	-2.89
4/3/2012	D0	Abnormally Dry			5.69	9.25	-3.56
4/10/2012	D0	Abnormally Dry			5.69	10.00	-4.31
4/17/2012	D0	Abnormally Dry			5.70	10.67	-4.97
4/24/2012	D0	Abnormally Dry			7.28	11.35	-4.07
5/1/2012	D0	Abnormally Dry			7.61	12.08	-4.47
5/8/2012	D0	Abnormally Dry			7.78	12.93	-5.15
5/15/2012	D0	Abnormally Dry	X	5/11	9.82	13.84	-4.02
5/22/2012	D0	Abnormally Dry			9.87	14.77	-4.90
5/29/2012	D0	Abnormally Dry			10.74	15.70	-4.96
6/5/2012	-	No Drought Condition			11.96	16.59	-4.63
6/12/2012	-	No Drought Condition			12.25	17.47	-5.22
6/19/2012	-	No Drought Condition			12.53	18.36	-5.83
6/26/2012	D0	Abnormally Dry			12.53	19.24	-6.71
7/3/2012	D1	Moderate Drought	X	6/29	13.14	20.12	-6.98
7/10/2012	D1	Moderate Drought			14.69	20.97	-6.28
7/17/2012	D1	Moderate Drought			14.81	21.84	-7.03
7/24/2012	D1	Moderate Drought			15.63	22.66	-7.03
7/31/2012	D1	Moderate Drought	X	7/26	15.93	23.47	-7.54
8/7/2012	D1	Moderate Drought			15.98	24.24	-8.26
8/14/2012	D1	Moderate Drought			16.87	24.87	-8.00
8/21/2012	D1	Moderate Drought			17.99	25.51	-7.52
8/28/2012	D1	Moderate Drought			18.71	26.13	-7.42
9/4/2012	D1	Moderate Drought	X	8/30	20.40	26.84	-6.44

¹ Source: US Drought Monitor - <http://droughtmonitor.unl.edu/monitor.html>

² Source: National Weather Service daily summary - via <http://www.wunderground.com/history/airport/>

Table 1: Rainfall and drought conditions for the observation period.

Additionally, Figure 3 shows the 2012 average monthly rainfall collected at the Fairfax County rain gage network (through September). The Fairfax County Wastewater Collection Division has been operating this countywide, 10-site rain gage network since 1971. The 42-year monthly averages are displayed on the chart for comparison purposes. This additional rainfall dataset fully supports the NWS data in the confirmation of well below average rainfall through September of 2012.

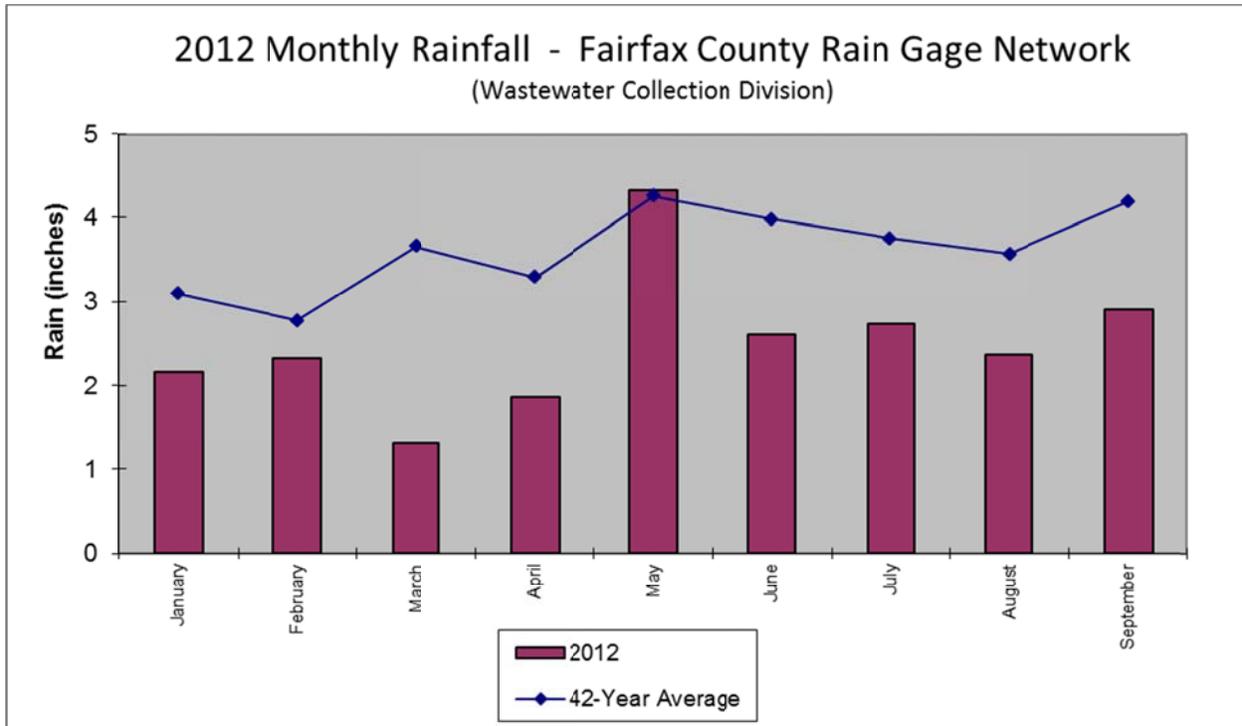


Figure 3: 2012 monthly rainfall averages from the Fairfax County Wastewater Collection Division’s rain gage network

With such a large deficit in annual total rainfall, any streams found to be flowing toward the end of summer 2012 must certainly be perennial in the presence of such prolonged dry conditions. This was found to be the case for the two segments of stream previously identified.

Conclusion:

From this information, the current Fairfax County CPBA Map is proposed to be amended through the addition of these two segments of perennial stream and their accompanying RPAs. The proposed map amendments are depicted in Figure 4. Because site-specific wetland delineations were not part of this stream perenniality study, future onsite wetland delineations may be necessary to further refine the lateral width of the RPA prior to the submission of any plans of development.

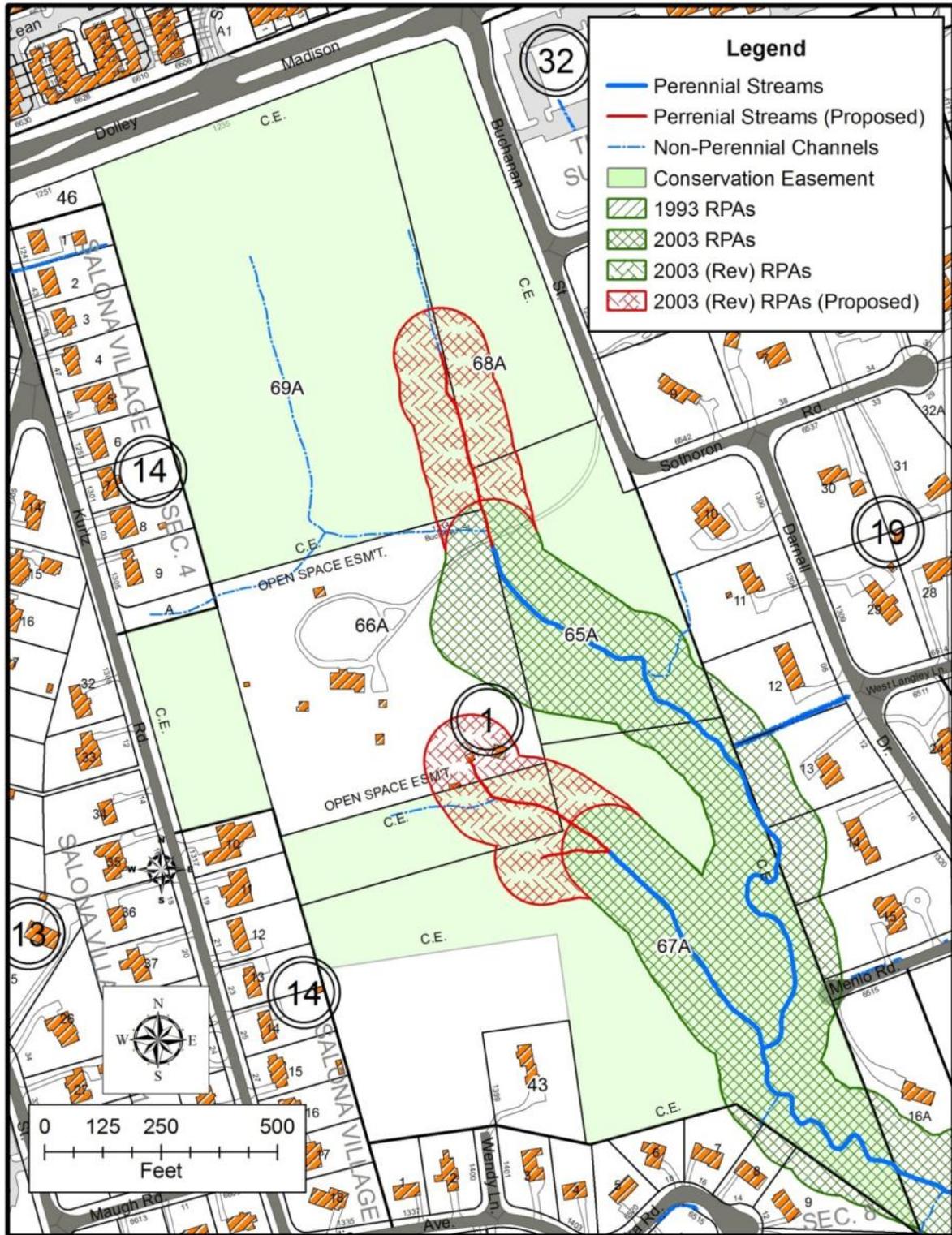


Figure 4: Proposed amendments to the Fairfax County Chesapeake Bay Preservation Area Map. (Note: wetlands depicted in Figure 2 are not buffered with the RPA because they are not “connected and contiguous” to the perennial stream. See 118-1-7-(b)(4))

The following pages provide photographic documentation of the flow conditions at key observation points within the study area.



2/14/2012: Segment A, looking upstream just below (left) and at (right) upper terminus. No drought condition.



3/14/2012: Segment A, looking upstream just below (left) and at (right) upper terminus. Abnormally dry condition.



6/29/2012: Segment A, looking upstream at upper terminus (Left). 7/26/2012: Segment A, looking upstream just below upper terminus (Right). Both in moderate drought condition.



7/26/2012: Segment A, looking upstream just below upper terminus. Channel still wet, but flow has ceased at the very upper end of the reach at the peak of the 2012 drought.



2/14/2012: Segment B, looking upstream at springhouse and groundwater seep at upper terminus. No drought condition.



3/14/2012: Segment B, looking upstream at springhouse and groundwater seep at upper terminus. Abnormally dry condition.



6/29/2012: Segment B, looking upstream at springhouse and stream at upper terminus. Moderate drought condition.



7/26/2012: Segment B, looking upstream at springhouse and wetland vegetation (left) and stream (right) at upper terminus. Moderate drought condition.



8/30/2012: Segment B, looking upstream at springhouse and wetland vegetation (top) and stream (bottom) at upper terminus. Moderate drought condition.



8/30/12: Spring seep with perennial flow located on west bank of Segment B below upper terminus. Peak of 2012 drought condition.



Proposed Amendments
Chesapeake Bay Preservation Areas Fairfax
County, Virginia

February 26, 2013

MAP OF PROPOSED AMENDMENTS TO CHESAPEAKE BAY PRESERVATION AREAS

REVISIONS TO RPAs and RMAs ARE SHOWN IN RED

September 26, 2006

This set of maps provides a delineation of Chesapeake Bay Preservation Areas (Resource Protection Areas and Resource Management areas) as set forth in Section 118-1-7 of Chapter 118 (Chesapeake Bay Preservation Ordinance) of the Code of the County of Fairfax, Virginia adopted by the Board of Supervisors on July 7, 2003 (effective November 18, 2003). Where RPA and RMA boundaries on the adopted map differ from boundaries as determined from the text of the Ordinance, the text shall govern.

LEGEND

Resource Protection Areas (RPAs)

1993 RPAs – RPAs mapped pursuant to the Chesapeake Bay Preservation Ordinance adopted March 22, 1993 (1)

2003 RPAs – Additional RPAs mapped pursuant to the Chesapeake Bay Preservation Ordinance adopted July 7, 2003 (2)

2003 RPAs – Additional RPAs mapped pursuant to the (Revised Chesapeake Bay Preservation Ordinance adopted July 7, 2003, for perennial streams added to the map in 2005 (3) or later (7)

Resource Management Areas (RMAs) (4)

Detailed RPA field delineation approved for this site (6)

Date RPA added to the map after 2005 (7)

Water bodies with perennial flow (5)

Streams, Rivers
Manmade Channels

Lakes, Ponds

Non-perennial water bodies

Streams, Rivers

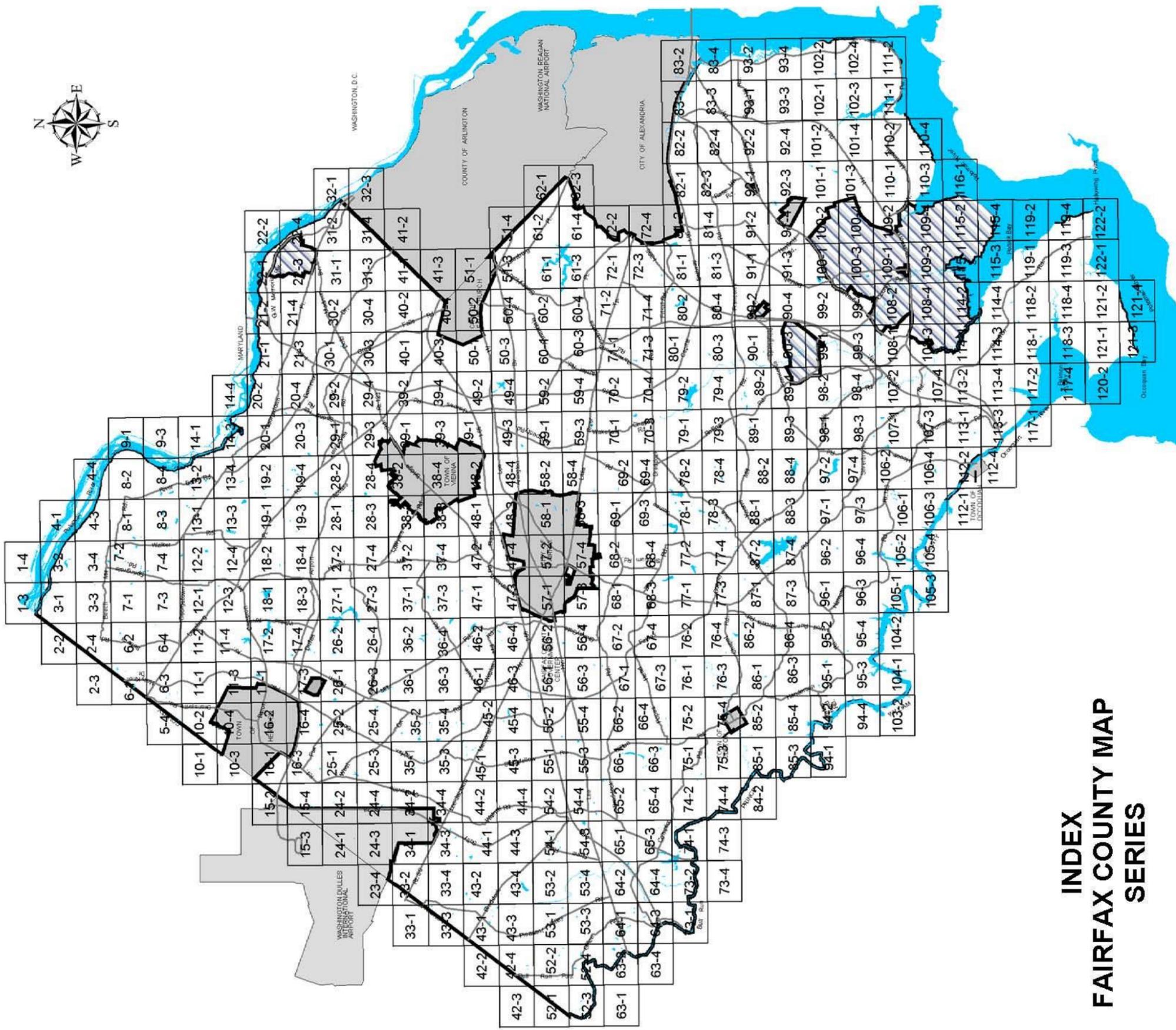
Lakes, Ponds

Stormwater Sewer System

Pipes, Culverts

Notes:

- (1) RPAs originally mapped pursuant to the Chesapeake Bay Preservation Ordinance adopted by the Fairfax County Board of Supervisors on March 22, 1993 (effective July 1, 1993) and revised on March 21, 1994.
- (2) Additional RPAs mapped pursuant to the Chesapeake Bay Preservation Ordinance adopted by the Fairfax County Board of Supervisors on July 7, 2003 (effective November 18, 2003).
- (3) Additional RPAs mapped pursuant to the Chesapeake Bay Preservation Ordinance adopted by the Fairfax County Board of Supervisors on July 7, 2003 (effective November 18, 2003) for perennial streams added to the map on July 11, 2005 (effective July 12, 2005).
- (4) RMAs include any area that is not designated as an RPA.
- (5) Upstream limits of perennial streams were identified during stream mapping field surveys conducted by the Department of Public Works and Environmental Services from 2002 through 2003. Additional field surveys were conducted in 2004 that resulted in revisions to the upstream limits of some streams. Perennial streams added to the map after the last general update of the map in 2005 are notated with the date the streams and their associated RPAs were added to the map (effective date).
- (6) The approved RPA boundary delineation should be consulted for the location of the RPA boundary on these sites. Approved RPA boundary delineations are on file with the Department of Public Works and Environmental Services. They are available for review at the Plan and Document Control Counter located on the 5th floor of the Herrity Building at 12055 Government Center Parkway, Fairfax, Virginia 22035
- (7) RPAs added to the map after the last general update of the map in 2005 are depicted on the map with the symbol for 2003 RPAs (revised) and further notated with the date the RPAs were added to the map (effective date).



**INDEX
FAIRFAX COUNTY MAP
SERIES**



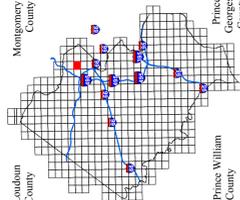
Map file is 57" X 70" based on NAD83 1:24,000 scale
7.12 minute Quad, Virginia Coordinate System
NAD 83/98 High Precision GPS Network adjustment
National Geodetic Vertical Datum 1929

GENERAL NOTES

CHESAPEAKE BAY PRESERVATION AREAS

- Legend**
- Resource Protection Areas (RPAs)
 - 2008 RPAs
 - 2009 (Revised) RPAs
 - Resource Management Areas (RMAs)

The information contained on this page is NOT to be used for any purpose other than to provide a general overview of the Chesapeake Bay Preservation Areas. It is not intended to be used for the design, construction or maintenance of any project. The County does not provide any warranty of accuracy or completeness of the information. The County is not liable for any damages, including consequential, special, or punitive damages, arising from the use of this information. The County is not responsible for any other information that may appear on this page.



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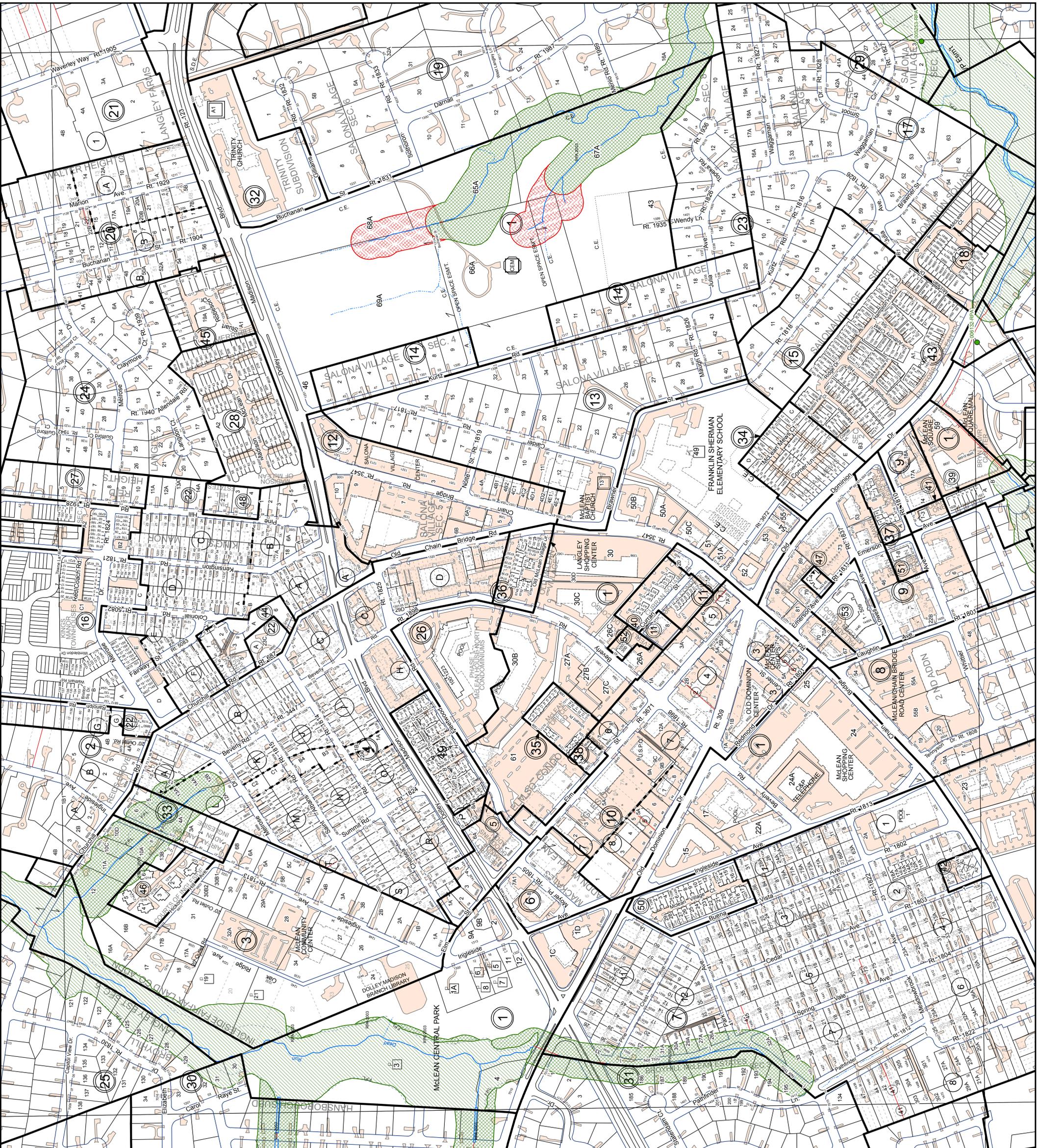
SHEET INDEX

CHESAPEAKE BAY MAP 30-2

Revised to : 01 - 28 - 2013

Prepared by:
DEPARTMENT OF INFORMATION TECHNOLOGY
Enterprise Services Division
Geographic Information Services
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Print Date 28 Jun 2013



**BOARD POLICY
FOR
TREATMENT OF APPROVED AND PENDING PLANS OF DEVELOPMENT
AFFECTED BY THE MAY 14, 2013, REVISIONS TO
THE MAP OF CHESAPEAKE BAY PRESERVATION AREAS**

A revision to the map of Chesapeake Bay Preservation Areas was adopted by the Board of Supervisors on May 14, 2013, with an effective time and date of 12:01 a.m. May 15, 2013. This revision designates a Resource Protection Area (RPA) along a newly identified perennial stream segment on Tax Map No. 30-2. The three newly identified perennial stream segments are south of Dolley Madison Boulevard, west of Buchanan Street, east of Kurtz Road and north of Julia Avenue. The Board separately adopted the following policy for the treatment of approved and pending plans of development with respect to said revision which resulted in the designation of an RPA along the newly identified perennial stream.

Policy for Treatment of Approved and Pending Plans of Development

This policy shall be administered by the Director of the Department of Public Works and Environmental Services (DPWES).

Plans of development which are approved or pending as of the effective date of the revision to the map of Chesapeake Bay Preservation Areas, May 15, 2013, and which do not fully comply with the Chesapeake Bay Preservation Ordinance and associated provisions of the Subdivision Ordinance, Erosion and Sedimentation Control Ordinance, Zoning Ordinance, and Public Facilities Manual (PFM) because of encroachments in the RPA designated along the newly identified perennial stream on Tax Map 30-2 will not be subject to the exceptions review process. In administering the ordinances and PFM (collectively referred to as the "Ordinance"), such plans will be treated as follows:

- Construction may proceed for all work shown on lot grading plans for non-bonded lots (INF plans) approved prior to May 15, 2013, without further action by the permittee provided the associated Building Permit is approved within six (6) months of May 15, 2013. Revisions to such plans may be approved provided they do not aggravate conflicts with the Ordinance.
- Construction may proceed for all structures for which Building Permits have been approved prior to May 15, 2013, without further action by the permittee, provided the structure is constructed under the approved Building Permit. New Building Permits for replacement house types or minor changes to building footprints for previously approved Building Permits may be approved provided they do not aggravate conflicts with the Ordinance.
- To "Aggravate conflicts" shall mean to create any new or additional noncompliance with the Ordinance such as increasing the impervious area or disturbance in the RPA.
- As determined by the Director, all plans that qualify as pending plans of development except for approved construction plans and Building Permits noted above shall comply with the provisions of the Ordinance as follows:

(A) All development shall comply with the provisions of the Ordinance to the extent possible, provided such compliance does not result in the reduction of density, floor area ratio, or the relocation of structures or facilities all as shown on the plan of development submitted or approved prior to May 15, 2013, that resulted in the current plan under review qualifying for pending plan status.

**BOARD POLICY
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AFFECTED BY THE MAY 14, 2013, REVISIONS TO
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(B) Where possible, an area equal to the area encroaching into the RPA buffer area shall be established elsewhere on the lot or parcel in a way to maximize water quality protection.

(C) All plans that are not approved as of the effective date shall show the Resource Protection Area (RPA) boundary in accordance with the requirements of the Ordinance regardless of whether or not an encroachment into the RPA has been authorized by an exception or through application of (A).

(D) All plans that are not approved as of the effective date shall include a statement saying that the plan complies fully with the Ordinance; or, that the plan qualifies as a pending plan of development, stating the basis for that determination, identifying any conflicts with the Ordinance, and stating how the requirements of (A) and (B) have been met.

Pending Plans of Development are designated as follows:

(1) Lot grading plans for non-bonded lots and Building Permit applications, accepted for review as containing all the required information, filed with DPWES prior to close-of-business May 14, 2013, so long as due diligence is maintained. For the purpose of this paragraph due diligence shall mean the following:

(i) If corrections to a properly submitted and accepted lot grading plan or Building Permit application are deemed necessary by the reviewing authority, a plan or application containing the revisions shall be resubmitted within sixty (60) days of its return by DPWES. Resubmission of such filed plans and applications may be approved as long as such resubmission does not result in a net increase in impervious surface.

(ii) The Building Permit must be approved within six (6) months of May 15, 2013.

(2) Subdivision construction plans, rough grading plans, lot grading plans, final subdivision plats, and Building Permits, accepted for review as containing all the required information, filed pursuant to a preliminary or final subdivision plat approved prior to May 15, 2013, so long as due diligence is maintained. For the purpose of this paragraph due diligence shall mean the following:

(i) If corrections to a properly submitted and accepted subdivision construction plan are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within six (6) months of its return by DPWES. Resubmission of such filed plans may be approved as long as such resubmission does not result in a net increase in impervious surface.

(ii) If corrections to a properly submitted rough grading plan, lot grading plan, final subdivision plat, or Building Permit are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within sixty (60) days of its return by DPWES. Resubmission of such filed plans may be approved as long as such resubmission does not result in a net increase in impervious surface.

(iii) If applicable, all required executed agreements and bonds, deposits, easements and fees shall be submitted within twelve (12) months of the date of transmission of the permit package by DPWES, within six (6) months of the date the construction plan is marked recommended for approval, or within twelve (12) months of May 15, 2013, whichever is

**BOARD POLICY
FOR
TREATMENT OF APPROVED AND PENDING PLANS OF DEVELOPMENT
AFFECTED BY THE MAY 14, 2013, REVISIONS TO
THE MAP OF CHESAPEAKE BAY PRESERVATION AREAS**

later.

(iv) Rough grading plans, lot grading plans, and Building Permits filed pursuant to a preliminary or final subdivision plat must be filed within two (2) years of the recordation of the final subdivision plat.

(v) The above limitations may be extended only by the Board of Supervisors and only where the developer can demonstrate that the timeframes contained herein cannot be met due to the acts or omissions of Fairfax County or the Commonwealth of Virginia beyond his control. Such extensions may be considered only when the developer notifies the Director of DPWES in writing of the acts or omissions causing his inability to meet such time limitations before the time limitation expires.

(3) Lot grading plans for non-bonded lots provided the associated Building Permit is approved within one (1) year of May 15, 2013, subdivision construction plans, rough grading plans, lot grading plans, and final subdivision plats approved within one (1) year of May 15, 2013, for a property that has a Resource Protection Area (RPA) boundary delineation plan, approved between November 18, 2003, and close-of-business on May 14, 2013. Plats, plans, and Building Permits shall comply fully with the provisions of the Ordinance for RPA areas shown on the approved RPA boundary delineation plan unless an exception is approved. Plats, plans, and Building Permits shall comply to the extent possible with the provisions of the Ordinance for RPA areas not shown on the approved RPA boundary delineation plan unless the proposed development is otherwise eligible for treatment under the provisions of paragraphs (1) and (2) above.

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Board Agenda Item
March 19, 2013

ADMINISTRATIVE - 4

Authorization to Conduct a Joint Public Hearing for the Virginia Department of Transportation's Secondary Six-Year Program for Fiscal Years 2014 through 2019, and the Fiscal Year 2014 Budget

ISSUE:

Board authorization to conduct a joint public hearing on April 30, 2013, at 4:30 p.m., to solicit comments and input on the proposed Virginia Department of Transportation's (VDOT) Secondary Six-Year Program for Fiscal Years 2014 through 2019, and the Fiscal Year 2014 budget.

RECOMMENDATION:

The County Executive recommends the Board authorize the public hearing. Since this is a joint public hearing, the Virginia Department of Transportation will provide the required advertisements.

TIMING:

The Board should take action on March 19, 2013, to provide adequate time for public notification before the April 30, 2013, public hearing.

BACKGROUND:

The Virginia Department of Transportation (VDOT) and the Board of Supervisors of Fairfax County, in accordance with Section 33.1-70.01 of the Code of Virginia, are required to conduct a joint public hearing for the annual Secondary Six-Year Program (SSYP). The purpose of this public hearing is to receive public comment on the proposed SSYP for Fiscal Years 2014 through 2019 in Fairfax County and on the Secondary System Construction Budget for Fiscal Year 2014. As in previous years the County will provide the venue and VDOT will provide all the required advertisements for this public hearing. All projects in the SSYP that are eligible for federal funds will be included in the Statewide Transportation Improvement Program (STIP) which documents how Virginia will obligate federal transportation funds.

FISCAL IMPACT:

There are no new funds allocated to Fairfax County in the SSYP for Fiscal Years 2014 through 2019. Any funds remaining in the program are being shifted between projects,

Board Agenda Item
March 19, 2013

because of changes in project estimates, project priorities, and/or any remaining balance on completed projects.

ENCLOSED DOCUMENTS:

None.

STAFF:

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT
Karyn Moreland, Chief, Capital Projects Section, FCDOT
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT
Kenneth Kanownik, Transportation Planner II, Coordination and Funding Division,
FCDOT

Board Agenda Item
March 19, 2013

ADMINISTRATIVE - 5

Authorization to Advertise a Public Hearing to Consider the Adoption on an Ordinance that Amends Appendix H of the Fairfax County Code to Grant a Non-Exclusive Cable Television Franchise to CoxCom, LLC

ISSUE:

Board authorization to advertise a public hearing to consider the adoption of an ordinance that amends Section A of Appendix H of the Fairfax County Code to grant a non-exclusive cable television franchise to CoxCom, LLC, d/b/a Cox Communications Northern Virginia ("Cox").

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of a public hearing at 4:00 p.m. on May 14, 2013.

TIMING:

Board authorization to advertise a public hearing on May 14, 2013, will allow time for Board consideration and action before the current Cox cable franchise agreement expires on June 9, 2013.

BACKGROUND:

Cox's predecessor, Media General Cable, was granted a 15-year cable franchise for the North County and South County Franchise Areas effective June 9, 1998. Cox acquired the cable system from Media General in 1999 and the Board transferred the franchise to Cox in September 1999. Cox completed a system upgrade of its home subscriber network in September 2003. The Cox franchise expires on June 9, 2013.

The cable franchise renewal process is governed by federal and state law. Section 626 of the federal Cable Act, as amended, provides two alternative processes by which a franchising authority may renew an existing cable television franchise or deny a request for renewal. The "formal" process requires the parties to follow a specific sequence of events with specific time periods and deadlines until the franchise is ultimately renewed or renewal is denied. The "informal" process allows the parties to negotiate a new franchise without requiring the formal events and deadlines. Typically a cable

Board Agenda Item
March 19, 2013

operator requests the formal process to protect its rights, but a new franchise is almost always arrived at through the informal process.

By letter dated August 23, 2010, Cox invoked the formal renewal process by submitting a request to commence cable franchise renewal proceedings. Therefore, in accordance with the formal renewal provisions of the Cable Act, the Department of Cable and Consumer Services retained experts and carried out a set of studies to determine the residents' needs and assess performance. The studies included an assessment of future cable-related needs and interests; a survey of residents and businesses; a review of past performance and compliance; a technical evaluation of Cox's current plant; and a technical evaluation of the state of the art and likely technological developments over the next fifteen years.

In subsequent negotiations, County staff and Cox were able to arrive at a new draft agreement using the informal process. The proposed franchise agreement is attached to this Board item. In negotiating the agreement, County staff drew on the results of the above studies, particularly the needs assessment.

To renew the franchise, the Board must now hold a public hearing, giving the public adequate notice and opportunity to comment on the proposed agreement. Board authorization to advertise the public hearing will allow staff to make the proposed agreement available to the public for approximately eight weeks. Department of Cable Communications and Consumer Services staff will meet with the Consumer Protection Commission on March 19, 2013, to present the proposed franchise agreement.

Franchise Agreement Summary: The proposed agreement addresses several significant County priorities. The agreement requires Cox to continue paying three percent of its gross revenues from cable service in grants to support public, educational, and governmental access (PEG), which includes channels such as Fairfax County Government Channel 16, FCPS Red Apple 21, and Fairfax Public Access Channel 10, as well as capital funding for the County's fiber-optic institutional network (I-Net). Video service to County and FCPS sites is included.

The proposed agreement secures up to fourteen PEG access channels, allowing room for expansion of the ten channels now in use. It incorporates provisions for upgrading those channels to high-definition (HDTV) and other advanced formats, for "on-demand" access to PEG programming, and for inclusion in packages Cox makes available for other platforms, such as smartphones and tablets. Customer service standards similar to those in the Verizon and Comcast agreements will now also be provided in Cox's agreement. The agreement maintains the authority

Board Agenda Item
March 19, 2013

of County inspectors to enforce construction and safety standards in the County and to respond to homeowner complaints. Like Verizon, Cox will be required to extend service to a density of 30, rather than 35, homes per mile. The proposed franchise term is ten years.

The proposed agreement generally maintains the benefits of the franchise agreement the Board reached with Media General Cable in 1998, while making appropriate changes to reflect advances in technology over the past fifteen years and anticipated developments in the future. The attached staff report summarizes the proposed agreement in detail (Attachment 3).

FISCAL IMPACT:

County revenue from the Cox cable franchise will continue under the proposed agreement. There is no change in the 5% state Communications Sales and Use Tax (which replaced cable franchise fees). The current 3% PEG capital grant revenue continues in the proposed agreement as well. A new payment to Cox for I-Net maintenance (\$220,500 per year, with CPI adjustment) partially offsets the County's savings from the fact that the I-Net is now essentially complete and will not require the level of construction cost incurred over the past fifteen years.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed ordinance amending Appendix H of the Fairfax County Code to grant a non-exclusive cable television franchise to CoxCom, LLC, d/b/a Cox Communications Northern Virginia
Attachment 2: Staff report summarizing the proposed agreement
Attachment 3: Proposed Franchise Agreement

STAFF:

David J. Molchany, Deputy County Executive
David P. Bobzien, County Attorney
Michael S. Liberman, Director, Department of Cable and Consumer Services
Frederick E. Ellrod III, Director, Communications Policy and Regulation Division, DCCS
Erin C. Ward, Assistant County Attorney

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**AN ORDINANCE AMENDING APPENDIX H OF THE
FAIRFAX COUNTY CODE TO GRANT A NON-EXCLUSIVE CABLE
TELEVISION FRANCHISE TO COXCOM, LLC**

Draft of March 1, 2013

AN ORDINANCE amending Appendix H of the Fairfax County Code to amend Section A, granting a non-exclusive cable television franchise for the North County and South County Franchise Areas of Fairfax County, Virginia, pursuant to the provisions of Va. Code § 15.2-2108.20 and Chapter 9.1 of the Fairfax County Code.

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

1. That Section A of Appendix H of the Fairfax County Code is amended as follows:

APPENDIX H.

Cable Television Franchises.

A. North and South Franchise Areas.

~~Paragraph 1. Pursuant to applicable provisions of Virginia law, and subject to the conditions set forth in this Section and the second adoption clause of this ordinance setting forth the effective date and supersession provisions, the Fairfax County Board of Supervisors hereby accepts, approves, grants and awards to Media General Cable of Fairfax County, Inc. ("Media General Cable"), a non-exclusive franchise to provide cable television service within the North and South County Franchise Areas of Fairfax County, Virginia. The terms of the franchise to provide such cable television service shall consist of the document titled "A Cable Television Franchise Agreement Between Fairfax County, Virginia, and Media General Cable of Fairfax County, Inc." that was submitted to the Board of Supervisors by the Chairman of the Board of Media General Cable on February 20, 1998 ("Proposal for a Franchise Agreement") together with: (i) all documents incorporated within that Proposal for a Franchise Agreement; (ii) all Appendices to that Proposal for a Franchise Agreement and documents incorporated therein; (iii) the provisions of Chapter 9 of the Fairfax County Code; (iv) the modifying provisions of Appendix H to the Fairfax County Code; and (v) the satisfaction of the conditions set forth in the second adoption clause of this ordinance.~~

~~Paragraph 2. The Franchise Agreement described in Paragraph 1 of this Section shall be subject to: (i) the payment of \$156,000 to the County of Fairfax for the application fee and franchise area application review fees as required by~~

1 ~~Fairfax County Code Section 9-3-2(b) and (c) and the submission of additional~~
2 ~~facts and information specified by Fairfax County Code Sections 9-3-3, 9-3-4 and~~
3 ~~9-8-13 is hereby waived; (ii) the implementation of the Security Agreement in the~~
4 ~~manner and form set forth in Appendix 6 of the Proposal for a Franchise~~
5 ~~Agreement; (iii) the receipt of a Guarantee of Performance from Media General,~~
6 ~~Inc., in the manner and form set forth in Appendix 7 of the Proposal for a~~
7 ~~Franchise Agreement; and (iv) the receipt of acceptance of the Franchise by~~
8 ~~Media General Cable in the manner and form set forth in Appendix 8 of the~~
9 ~~Proposal for a Franchise Agreement. The franchise granted by Paragraph 1 of~~
10 ~~the Section shall be null and void if the conditions described herein are not~~
11 ~~completed within thirty days from the date of the adoption of this ordinance.~~

12 ~~Paragraph 3. The Franchise Agreement described in Paragraph 1 of this~~
13 ~~Section also shall be subject to acceptance by Media General Cable and by~~
14 ~~Media General, Inc., as the guarantor of the Franchise Agreement, of the~~
15 ~~following changes to the Proposal for a Franchise Agreement:~~

16 ~~A. Section 1(cc) of the Table to Contents of the Proposal for a Franchise~~
17 ~~Agreement is amended to read:~~

18 ~~(cc) — Department of Consumer Affairs.~~

19
20 ~~B. Section 1(r) of the Proposal for a Franchise Agreement is amended to~~
21 ~~read:~~

22 ~~(r) — Franchise Area: The North and South County~~
23 ~~Franchise areas, as defined in Section 9-7-1 of the Cable~~
24 ~~Ordinance, and any area added thereto during the term of~~
25 ~~the Franchise that is served by the Grantee as of the~~
26 ~~Effective Date of this Agreement or which the Grantee~~
27 ~~agrees to serve.~~

28
29 ~~C. Section 1(bb) of the Proposal for a Franchise Agreement is amended~~
30 ~~to read:~~

31 ~~(bb) — Normal Operating Conditions: Those conditions that~~
32 ~~are within the control of the Grantee. Conditions that are not~~
33 ~~within the control of the Grantee include, but are not limited~~
34 ~~to, natural disasters, civil disturbances, power outages,~~
35 ~~telephone network outages, weather or traffic conditions~~
36 ~~impairing construction or normal operation activities,~~
37 ~~vandalism, accidents for which Grantee is not primarily~~
38 ~~responsible, sabotage, and the action or inaction of any~~
39 ~~governmental unit. Consistent with the foregoing, conditions~~

1 that are within the control of Grantee include, but are not
2 limited to, special promotions, pay-per-view events, rate
3 increases, regular or reasonably anticipatable peak or
4 seasonal demand periods, and maintenance or upgrade of
5 Grantee's Cable System.

6
7 ~~D. Section 1(cc) of the Proposal for a Franchise Agreement is amended~~
8 ~~to read:~~

9 ~~(cc) — Department of Consumer Affairs: The Fairfax County~~
10 ~~Department of Telecommunications and Consumer Services~~
11 ~~or any successor agency that is designated by the Board to~~
12 ~~perform the functions of that Department.~~

13
14 ~~E. Section 2(h) of the Proposal for a Franchise Agreement is amended to~~
15 ~~read:~~

16 ~~(h) — Approval and Effective Date.~~
17 ~~Subject to the conditions set forth in Paragraph 2 of Section~~
18 ~~A of Appendix H to the Fairfax County Code, this Franchise~~
19 ~~Agreement shall become effective on June 1, 1998.~~

20
21 ~~F. Section 6(f)(1) of the Proposal for a Franchise Agreement is amended~~
22 ~~to read:~~

23 ~~(1) Subject to the conditions set forth in Section 6(g)(2)~~
24 ~~herein, the Grantee shall begin construction of the HSN~~
25 ~~System Upgrade within one year after the Effective Date~~
26 ~~of the Franchise Agreement, and shall complete~~
27 ~~construction within forty-eight months after the Effective~~
28 ~~Date of the Franchise Agreement, in order to minimize~~
29 ~~disruption of any Public Rights-of-Way or public land. The~~
30 ~~Grantee's construction of the HSN and the I-Net shall~~
31 ~~proceed together as described in Appendix 2, and the~~
32 ~~Grantee and the County shall coordinate planning for~~
33 ~~I-Net construction pursuant to Appendix 2 hereto.~~

34
35 ~~G. Section 7(a) of the Proposal for a Franchise Agreement is amended to~~
36 ~~read:~~

37 ~~(a) — Access Channels~~
38 ~~(1) — Grantee will provide the County with up to~~
39 ~~eighteen PEG channels in the aggregate, though~~
40 ~~Grantee reserves the right to utilize for its own~~

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~~purposes any portion of such channels not utilized for PEG purposes.~~

~~(2) — The Grantee shall make available to all Subscribers residing within Fairfax County in those areas where Grantee has authority to provide service at least the following video Channels for public, educational and governmental use, which Channels shall be in addition to any capacity provided on the Institutional Network pursuant to Section 7(k):~~

- ~~(A) — Public access: 4~~
- ~~(B) — Fairfax County Public Schools: 3~~
- ~~(C) — George Mason University: 1~~
- ~~(D) — Northern Virginia Community College: 1~~
- ~~(E) — University of Virginia and/or Virginia Polytechnic Institute and State University: 1~~
- ~~(F) — Shared channel for institutions of higher education: 1~~
- ~~(G) — County governmental access: 3. County governmental access channels shall be allocated to specific uses or agencies by the County.~~
- ~~(H) — Reserved for educational and/or governmental access use as allocated by County: 4. The County shall not implement its use of three of these four Channels until the County has switched over the Fairfax Training Network to the I-Net as provided in Appendix 2.~~

~~(3) — The Grantee shall have an obligation to provide playback, training, outreach, administrative support and production assistance to public access Users, which obligation shall be discharged so long as (A) a valid and binding contract is maintained for the provision of such services with the Fairfax Cable Access Corporation, (B) a valid and binding contract for the provision of such services with some other public access management corporation, (C) rights over such public access management are undertaken pursuant to the provisions of Section 7(a)(4) and the Grantee provides the Public Access Grant (as hereinafter defined), together with any interest the Grantee may have or obtain in any existing assets of~~

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~~the public access management corporation that were purchased with funds provided by the Public Access Grant, to such management organization or to the County pursuant to Section 7(i)(1) herein, or (D) any other means, in the sole discretion of the County, that fulfills this obligation.~~

~~(4) — If the County, in its sole discretion, finds unsatisfactory a contract for access services entered into pursuant to the preceding subsection (3), or the performance under such a contract, then the County may, in its sole discretion, undertake such management itself and the Grantee's obligations pursuant to Section 7(a)(3) shall be entirely discharged by providing the Public Access Grant, together with any interest the Grantee may have or obtain in any existing assets of the public access management corporation that were purchased with funds provided by the Public Access Grant, directly to the County, which may in turn reassign such Public Access Grant assets, and any other assets that the County may otherwise acquire from any such public access management corporation, to any third-party manager at the County's discretion.~~

~~(5) — Except as provided in Section 7(e)(3), each PEG Channel shall be transmitted on the HSN in standard 6 MHz, unscrambled NTSC format so that every Subscriber can receive and display the PEG signals using the same converters and signal equipment that is used for other Basic Service Channels.~~

~~(6) — If the Grantee makes changes to Grantee's Cable System that require improvements to access facilities and equipment, Grantee shall provide any necessary additional headend and distribution facilities or equipment within thirty days so that PEG facilities and equipment may be used as intended with respect to the up to eighteen PEG channels specified in Section 7(a)(2) and any channels reserved by PEG Users pursuant to Section 7(e)(3), including, among other things, so that live and taped programming can be cablecast efficiently to Subscribers.~~

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H. ~~Section 7(c) of the Proposal for a Franchise Agreement is amended to read:~~

~~(c) Capital Grants for Access Facilities~~

~~(1) The Grantee shall provide capital grants in amounts in the aggregate totaling 3% for each quarter of the amount that results from subtracting from Gross Revenues for that quarter the Franchise Fees paid to the County for that quarter (collectively, the "Total Grants").~~

~~(2) The Total Grants shall be paid to the County on a quarterly basis with such payments being made no later than thirty days following the end of each quarter.~~

~~(3) If the Grantee and the County disagree at any time as to the amounts due under this subsection (c), the Grantee shall continue paying the specified grants in the amounts paid in the last undisputed payment during the period of any such dispute, provided, however, that the County shall return any such amounts paid to the County that are later determined to be in excess of the correct amounts.~~

I. ~~Section 7(i) of the Proposal for a Franchise Agreement is amended to read:~~

~~(i) Payments by Grantee to PEG Users~~

~~(1) The Grantee shall provide payments to PEG Users, that shall be subtracted from the amount otherwise payable to the County by the Grantee in accordance with Section 7(c) and Section 8(a), in amounts in the aggregate totaling 0.96% for each quarter of the amount that results from subtracting from Gross Revenues for that quarter the Franchise Fees paid to the County for that quarter ("Gross Revenues Less Franchise Fees") of which 0.8% shall be provided for public access as set forth in Section 7(a)(3) and (4) (the "Public Access Grant") and 0.16% of which shall be for higher education uses ("Higher Education Grants") The grants provided herein shall be in partial satisfaction of the amounts otherwise~~

1 payable to the County in accordance with Section 7(c)
2 and Section 8(a).

3 (2) — ~~The Public Access Grant and the Higher
4 Education Grants shall be paid on a quarterly basis
5 with such payments being made no later than thirty
6 days following the end of each quarter, as follows:~~

7 (A) — ~~Paid to George Mason University: 0.08
8 percent of Gross Revenues Less Franchise
9 Fees;~~

10 (B) — ~~Paid to Northern Virginia Community
11 College: 0.08 percent of Gross Revenues Less
12 Franchise Fees;~~

13 (C) — ~~Paid as set forth in Section 7(a)(3) and
14 (4): 0.8 percent of Gross Revenues Less
15 Franchise Fees.~~

16
17 J. ~~Section 10(b) of the Proposal for a Franchise Agreement is amended
18 to read:~~

19 (b) — ~~Endorsements. All insurance policies and certificates
20 maintained pursuant to this Agreement shall contain
21 the following endorsement:~~

22 It is hereby understood and agreed that this
23 insurance coverage may not be canceled by the
24 insurance company nor the intention not to renew be
25 stated by the insurance company until at least 30
26 days after receipt by the County Communications
27 Administrator, by registered mail, of a written notice of
28 such intention to cancel or not to renew.

29
30 K. ~~Section 11(e)(6)(B) of the Proposal for a Franchise Agreement is
31 amended to read:~~

32 (B) — ~~A separate violation under subsection (A) shall be
33 deemed to occur whenever the County reasonably
34 determines that one of the above separately enumerated
35 transgressions has occurred on one day. Thus, for example,
36 if the Grantee fails to extend service to one subscriber for
37 two days pursuant to governing law or regulation, there
38 would be two violations; if the Grantee fails to keep an
39 appointment pursuant to governing law or regulation with
40 one subscriber on one day and on that same day,~~

1 independent of the missed appointment, the Grantee fails to
2 disclose price terms to that same subscriber, then there
3 would be two violations. However, the Grantee shall not be
4 charged with multiple violations for a single act or event
5 affecting a single subscriber or for a single act or event
6 affecting multiple subscribers on the same day.
7

8 ~~L. Section 12(c) of the Proposal for a Franchise Agreement is amended~~
9 ~~to read:~~

10 ~~(c) — Preemption. In the event that federal or state laws,~~
11 ~~rules or regulations preempt a provision or limit the~~
12 ~~enforceability of a provision of this Agreement, then the~~
13 ~~provision shall be read to be preempted to the extent and for~~
14 ~~the time, but only to the extent and for the time, required by~~
15 ~~law. In the event that any provision of this Agreement is~~
16 ~~preempted or enforcement limited by any such provision of~~
17 ~~federal or state law, then the parties shall negotiate in good~~
18 ~~faith to reconstitute this Agreement in a form that, to the~~
19 ~~maximum extent possible, is consistent with the original~~
20 ~~intent of the Grantee and the County and preserves the~~
21 ~~benefits bargained for by each party. Finally, in the event~~
22 ~~such federal or state law, rule or regulation is subsequently~~
23 ~~repealed, rescinded, amended or otherwise changed so that~~
24 ~~the provision hereof that had been preempted is no longer~~
25 ~~preempted, such provision shall return to full force and~~
26 ~~effect, and shall thereafter be binding on the parties hereto,~~
27 ~~without the requirement of further action on the part of the~~
28 ~~County.~~

29
30 ~~M. Section 2(a)(5) of Appendix 2 (I-NET Appendix) to the Proposal for a~~
31 ~~Franchise Agreement is amended to read:~~

32 ~~(5) — The Headend I-Net Service Area and the Hub Site I-~~
33 ~~Net Service Areas shall be shared by (i) the County and (ii)~~
34 ~~any other local governments that are within the external~~
35 ~~boundaries of the County and the Cities of Falls Church and~~
36 ~~Fairfax, if so authorized by these municipalities to which the~~
37 ~~Grantee has provided an I-Net. If any such other local~~
38 ~~government's equipment is collocated at a site with the~~
39 ~~County, then the Grantee shall make all reasonable efforts to~~
40 ~~configure the assigned space so that all equipment required~~
41 ~~by such collocated parties can readily be accommodated.~~

1 The County shall identify the power and HVAC requirements
2 for the Headend and Hub Site Service Areas not later than
3 sixty days after the Effective Date of the Franchise
4 Agreement, and the Grantee shall cooperate with the County
5 in satisfying such requirements.
6

7 ~~N. Section 3(a) of Appendix 2 (I-NET Appendix) to the Proposal for a~~
8 ~~Franchise Agreement is amended to read:~~

9 ~~(a) From a special fund composed of Franchise Fees and~~
10 ~~the Total Grants collected by the County from the~~
11 ~~Grantee in accordance with the Franchise Agreement~~
12 ~~and franchise fees collected by the County in accordance~~
13 ~~with any other cable television franchise agreement, the~~
14 ~~County shall pay the Grantee for the Indefeasible Rights~~
15 ~~of Use of all Dark Fiber to I-Net Sites furnished pursuant~~
16 ~~to this Appendix at a price of \$11,200,000.00, based on~~
17 ~~\$28,000 per site for the 400 I-Net Sites (the "Original~~
18 ~~Estimate"), as adjusted by any Excess Amount as~~
19 ~~specified in subsection 3(b) below. The County and the~~
20 ~~Grantee agree that all obligations and liabilities of the~~
21 ~~County pursuant to this Appendix shall be limited to and~~
22 ~~payable solely from the special fund described herein. It~~
23 ~~is understood and agreed by the County and the Grantee~~
24 ~~that nothing in this Appendix or any other provision of the~~
25 ~~Franchise Agreement shall constitute a pledge of the full~~
26 ~~faith and credit of the County or a bond or debt of the~~
27 ~~County in violation of Section 10 of Article VII of the~~
28 ~~Constitution of Virginia.~~

29
30 ~~O. Section 4(c)(1) of Appendix 2 (I-NET Appendix) to the Proposal for a~~
31 ~~Franchise Agreement is amended to read:~~

32 ~~(1) Parties authorized to use the I-Net ("Authorized~~
33 ~~Users") shall include, to the extent approved by the County:~~
34 ~~(A) the County and the Fairfax County Public~~
35 ~~Schools and their agencies and subdivisions;~~
36 ~~(B) all political subdivisions of the State located~~
37 ~~within the external boundaries of the County, and their~~
38 ~~agencies and subdivisions and the Cities of Falls~~
39 ~~Church and Fairfax;~~
40 ~~(C) organizations within the external boundaries of~~
41 ~~the County and the Cities of Falls Church and Fairfax~~

1 that are tax-exempt under Section 501(c)(3) of the
2 Internal Revenue Code.

3
4 ~~P. Section 4 of Appendix 5 (Security Deposit Agreement) to the Proposal~~
5 ~~for a Franchise Agreement is amended by adding a new Section~~
6 ~~numbered 4.3 which reads:~~

7 4.3 ~~Disposition of Escrow Fund. Any funds remaining in the~~
8 ~~Escrow Fund upon termination of the Franchise shall be~~
9 ~~returned to Grantee no later than ninety days after such~~
10 ~~termination, except to the extent that such funds are subject,~~
11 ~~as of the date of termination, to any unresolved Payment~~
12 ~~Demand pursuant to Section 4.1 hereof.~~

13 ~~Paragraph 4. The County Executive and the Communications~~
14 ~~Administrator, as defined by the Franchise Agreement, shall have authority to~~
15 ~~approve minor changes or amendments to the Franchise Agreement with Media~~
16 ~~General Cable. The Communications Administrator shall maintain a record of any~~
17 ~~such changes or amendments.~~

18 ~~Paragraph 5. Media General Cable shall notify the Communications~~
19 ~~Administrator when new or different programming or services are provided or~~
20 ~~offered to subscribers by Media General Cable, and the Communications~~
21 ~~Administrator, upon receipt of such notice, shall maintain a record of such~~
22 ~~information.~~

23 ~~That except as otherwise provided herein, this ordinance and the non-~~
24 ~~exclusive franchise to provide cable television service which is granted by this~~
25 ~~ordinance shall become effective on June 1, 1998; provided, however this~~
26 ~~ordinance shall become null and void if each and every condition set forth in~~
27 ~~Paragraph 2 of Section A are not satisfied within thirty days from the date of the~~
28 ~~adoption of this ordinance by the Board. On and after the effective date of this~~
29 ~~non-exclusive franchise to provide cable television service, this franchise shall~~
30 ~~supersede and replace the franchise extension granted to Media General Cable~~
31 ~~on March 30, 1998.~~

32 ~~Paragraph 6. The nonexclusive franchise granted to Media General Cable~~
33 ~~of Fairfax County, Inc. ("Media General Cable") to erect, construct, operate, and~~
34 ~~maintain a cable television system in the North and South County franchise~~
35 ~~areas in Fairfax County, Virginia ("County"), pursuant to the Franchise~~
36 ~~Agreement, Chapter 9 of the Fairfax County Code, as amended, and Appendix H~~
37 ~~of the Fairfax County Code, as amended (collectively referred to as "Franchise~~
38 ~~Documents"), is hereby transferred or assigned to CoxCom, Inc., d/b/a Cox~~

1 Communications Northern Virginia ("Cox Communications Northern Virginia").
2 This transfer is made to reflect (i) the sale of the stock of Media General Cable,
3 previously held by Media General, Inc., to Cox Communications, Inc., and (ii) the
4 transfer of the franchise from Media General Cable to Cox Communications
5 Northern Virginia. Except as otherwise provided herein, by this transfer or
6 assignment all privileges and obligations previously conferred on Media General
7 Cable are transferred to Cox Communications Northern Virginia. No other
8 amendment or change to the franchise is made by this transfer or assignment. All
9 provisions of the franchise granted previously to Media General Cable, as well as
10 any cause of action arising from the previous operation of a cable television
11 system by Media General Cable in the North and South County Franchise Areas,
12 remain unchanged. All provisions of the Franchise Agreement in the franchise
13 previously granted to Media General Cable remain otherwise unchanged, and
14 those provisions shall be enforceable by the County and by Cox Communications
15 Northern Virginia as they would have been by the County and by Media General
16 Cable. By its acceptance of this Franchise Agreement, Cox Communications
17 Northern Virginia assumes all privileges and obligations of Media General Cable
18 under the Franchise Documents.

19
20 Paragraph 7. Va. Code § 15.2-2108.20 authorizes localities to grant
21 negotiated cable franchises in accordance with Title VI of the Communications
22 Act of 1934, as amended, 47 U.S.C. § 521 et seq., and Chapter 21 of Title 15.2
23 of the Code of Virginia. Pursuant to that authority and other applicable
24 provisions of Virginia law, and subject to the conditions set forth in paragraph 8
25 of this Section A, the Fairfax County Board of Supervisors hereby accepts,
26 approves, grants and awards to CoxCom, LLC, d/b/a Cox Communications
27 Northern Virginia ("Cox") a non-exclusive franchise to provide cable service in
28 the North County and South County Franchise Areas of Fairfax County, Virginia.
29 The terms and conditions of the franchise shall be as set forth in the Cable
30 Franchise Agreement Between Fairfax County, Virginia, and CoxCom, LLC,
31 d/b/a Cox Communications Northern Virginia ("Franchise Agreement"), which is
32 hereby incorporated into this ordinance, and the provisions of Chapter 9.1 and
33 Appendix H, Section A, of the Fairfax County Code.

34
35 Paragraph 8. The grant of the franchise to Cox is subject to the
36 Communications Administrator's receipt, no later than June 7, 2013, and in a
37 form acceptable to the County, of (i) the Guarantee of Performance, as set forth
38 in Appendix 4 to the Franchise Agreement, signed by an authorized
39 representative of Cox Communications, Inc.; (ii) certificates of insurance for
40 each insurance policy required by Section 11 of the Franchise Agreement; (iii)
41 the performance bond required by Section 12(a) of the Franchise Agreement;
42 (iv) the letter of credit required by Section 12(b) of the Franchise Agreement;
43 and (v) the Acceptance of Franchise, as set forth in Appendix 7 to the Franchise

STAFF REPORT

Renewal of Cox Communications Cable Franchise
March 19, 2013

The Proposed Agreement

The Proposed Agreement generally preserves the benefits of the 1998 franchise agreement under which Cox has been operating, while bringing the agreement up to date to reflect changes in technology over the past fifteen years and anticipated developments in the future.

The following features are maintained from Cox's current franchise:

5% Communications Sales and Use Tax

Payment to the County of 5% of gross subscriber revenues from cable service via the state Communications Sales and Use Tax. Under state law, this tax has taken the place of the franchise fee specified in the current agreement.

3% PEG Grants

Payment to the County of 3% of gross revenues from cable service as grants for Public, Educational and Governmental (PEG) Access, including capital funding for the I-Net. The County has the right to audit these payments periodically.

Institutional Network

Institutional Network (I-Net): Fiber-optic network connecting County and school sites, built by Cox to County's specifications and paid for from 3% PEG grants.

Inspection and Complaints

Ability for County inspectors to monitor construction for compliance with safety and other standards, and respond to homeowner complaints.

Service to County and School Sites

Television feed to County and school sites via the I-Net, at no charge.

Security Instruments

Security for amounts due the County, including a \$100,000 performance bond and a \$50,000 letter of credit.

A number of new and revised provisions adapt the benefits of the franchise agreement to current technology and practices:

Customer Service Standards

Customer service standards are incorporated in the franchise agreement. This change parallels the 2005 Verizon and Comcast franchises.

Improved Density Requirement

Under the current agreement, Cox must extend service at no charge wherever residential density is at least 35 homes per mile. The Proposed Agreement raises this standard to 30 homes per mile.

Improved Video Service

The Proposed Agreement will enable the Department of Information Technology to simplify and customize the provision of video service to County and FCPS sites over the I-Net, reducing complication and expense.

PEG Channels – HDTV Format

PEG channels will be able to upgrade to today’s standards for high-definition video (HDTV). Three PEG channels can be upgraded on 120 days’ notice after the renewed franchise takes effect; the remainder can be upgraded after five years. If other advanced formats become the norm during the franchise term, up to three PEG channels will also be able to transition to such new formats.

PEG Channels – On Demand

Cable subscribers will be able to access PEG programming through Cox’s video-on-demand system: 30 hours of programming to begin with, increasing by five hours each year.

PEG Channels – Mobile Devices

If Cox makes local commercial video programming available to its subscribers on other platforms or devices, such as smartphones or tablets, the PEG channels will be included in such packages.

Remedies for Noncompliance

The County can assess liquidated damages if Cox does not comply with customer service standards or other provisions of the Proposed Agreement, in addition to the right to revoke or shorten the franchise for material violations.

Additional provisions adjust Cox’s franchise obligations in light of the technological developments, changes in the market, and altered legal environment of the last fifteen years:

I-Net Maintenance Costs

Since the I-Net is now essentially complete, the County will not incur the level of construction costs it did in the previous franchise term. New construction will be limited to serving new County facilities and relocations. In the next ten years, maintenance of the I-Net will be the primary concern. Under the Proposed Agreement, the County will pay Cox a fixed fee for end-to-end maintenance of the I-Net fiber. The annual cost will be \$220,500 per year, with a CPI adjustment every three years.

PEG Channels – Number of Channels

To accommodate the shift in consumers’ viewing habits from traditional “linear” channels to on-demand programming, the number of standard-definition PEG channels will be reduced from 18 to 14. This will allow room for expansion, as needed, from the 10 channels now in use.

Midterm Review

Given the current state of competition in the County, and the ten-year period for which this franchise will run, the tenth-year anniversary review of Cox’s cable system technology in the current agreement is omitted in the Proposed Agreement.

Emergency Override of Cable System

Cox has informed the County that the emergency override of all channels provided in the current agreement is not technically feasible in its system today. In view of the numerous channels the County now has available for emergency alerts, including the federal Emergency Alert System, the County’s Emergency Alert Network, and Fairfax County Government Channel 16’s Emergency Message System, the override provision is omitted in the Proposed Agreement.

Term

The Proposed Agreement covers a ten-year period, and would expire on June 9, 2023.

Staff Recommendation

The Proposed Agreement reflects negotiations between Cox and the County's staff, taking into account the needs and interests of the community as identified in the needs assessment. Staff believes that the Proposed Agreement is the best result obtainable for renewal of the cable franchise and will serve the County well over the next ten years. Staff therefore recommends that the matter be advertised for public hearing on May 14, 2013.

CABLE FRANCHISE AGREEMENT
BETWEEN FAIRFAX COUNTY, VIRGINIA
AND COXCOM, LLC, d/b/a COX COMMUNICATIONS NORTHERN VIRGINIA

Approved by the Fairfax County Board of Supervisors on _____

CABLE FRANCHISE AGREEMENT
FAIRFAX COUNTY, VIRGINIA

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**CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN FAIRFAX COUNTY, VIRGINIA
AND COXCOM, LLC, d/b/a COX COMMUNICATIONS NORTHERN VIRGINIA**

THIS CABLE FRANCHISE AGREEMENT (the "Franchise Agreement") is entered into by and between Fairfax County, Virginia ("County"), and CoxCom, LLC, d/b/a Cox Communications Northern Virginia ("Cox").

WHEREAS, Cox has asked the County to renew Cox's nonexclusive Franchise (the "Prior Franchise") to own, install, construct, reconstruct, operate, maintain, dismantle, test, upgrade, repair, use, and remove a Cable System (as hereinafter defined) in the County; and

WHEREAS, the installation, construction, reconstruction, operation, maintenance, dismantling, testing, upgrade, repair, use, and removal of such a system involves the occupation of and placement of private commercial facilities along, under, over, above, through, or across the Public Rights-of-Way or Public Land within the County; and

WHEREAS, the County has reviewed Cox's performance under the Prior Franchise and the quality of service during the term of the Prior Franchise, has identified the future cable-related needs and interests of the County and its residents, has considered Cox's financial, technical and legal qualifications, has determined that Cox's plans for constructing, operating and maintaining its Cable System are adequate, and has determined that the foregoing meet the requirements of 47 U.S.C. § 546 in a full public proceeding affording due process to all parties; and

WHEREAS, the County has relied on Cox's representations contained in this Franchise Agreement and has considered the information that Cox has presented to it; and

WHEREAS, based on Cox's representations in this Franchise Agreement, the Board has determined that, subject to the terms and conditions set forth herein and the provisions of Chapter 9.1 of the Code of the County of Fairfax, known as the Fairfax County Cable Communications Ordinance (the "Cable Ordinance" or "Ordinance"), the grant of a new nonexclusive Franchise to Cox, to supersede the Prior Franchise, is consistent with the public interest; and

WHEREAS, the County and Cox have reached agreement on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the County's grant of a new Franchise to Cox; Cox's promise to provide Cable Service to residents of the County pursuant to and consistent with the Cable Ordinance; the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged;

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1 DEFINITIONS

When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words “shall” and “will” are mandatory, and “may” is permissive. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in the Cable Ordinance, and words not defined in the Cable Ordinance shall be given the meaning set forth in Va. Code § 15.2-2108.19 or, if not in conflict, Title 47 of the United States Code, as amended, and if not defined therein, their common and ordinary meaning.

(a) *Affiliate:* Any Person who owns or controls, is owned or controlled by, or is under common ownership or control with Cox.

(b) *Basic Cable Service:* The HSN service tier which includes the following: at least (i) all domestic television broadcast signals carried in fulfillment of the requirements of 47 U.S.C. §§ 534 and 535 (except any signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by Cox’s Cable System); (ii) any public, educational, and governmental access programming required by the Franchise Agreement to be provided to Subscribers as basic cable service; and (iii) any additional video programming signals or service added to basic cable service by Cox.

(c) *Board:* The Board of Supervisors of the County of Fairfax, Virginia.

(d) *Cable Act*: Title VI of the Communications Act of 1934 (47 U.S.C. § 521, et seq.) and any amendments thereto.

(e) *Cable Ordinance*: Chapter 9.1 of the Code of the County of Fairfax, and any successor legislation.

(f) *Cable Service*: (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(g) *Cable System*: A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with 47 U.S.C. § 573; or (E) any facilities of any electric utility used solely for operating its electric utility system.

(h) *Communications Administrator*: The present or succeeding employee of Fairfax County designated as the Cable Television Administrator or as the Communications

Administrator who shall have the duties prescribed in the Cable Ordinance and as otherwise prescribed by the Board.

(i) *Channel:* A portion of the electromagnetic frequency spectrum that is used in Cox's Cable System and that is capable of delivering a video signal as that term is defined by the FCC as of the Effective Date of this Agreement.

(j) *County:* The County of Fairfax, Virginia.

(k) *Cox:* CoxCom, LLC, d/b/a Cox Communications Northern Virginia, a Delaware corporation, and its lawful and authorized successors, assigns, and transferees.

(l) *Cox's Cable System:* Cox's Cable System in the County, which shall be subject to either the Prior Franchise or the Franchise, as the context requires.

(m) *Demarcation Point:* For purposes of the HSN, a Demarcation Point for cable drops shall be a point agreed upon by Cox and the County up to twelve inches inside the building wall and consistent with Cox's direction of approach to the building, consistent with the FCC's rules as of the Effective Date of this Agreement or as later amended. For purposes of the I-Net, a Demarcation Point shall have the meaning given that term in Appendix 1. For purposes of PEG upstream feeds, a Demarcation Point shall be the point at which the equipment owned by the PEG origination site operator interconnects with Cox's wiring and electronics.

(n) *Department of Cable and Consumer Services:* The Fairfax County Department of Cable and Consumer Services or any successor agency that is designated by the Board to perform the functions of that Department.

1(o): Educational Access Channel or Educational Channel

(o) *Educational Access Channel or Educational Channel:* Any Channel required by this Franchise Agreement to be provided by Cox to the County on the HSN and set aside for educational use.

(p) *Effective Date:* June 9, 2013.

(q) *Equitable Price:* Fair Market Value adjusted downward for the harm to the County or Subscribers, if any, resulting from Cox's breach of this Agreement or violation of the Cable Ordinance which resulted in the revocation of the Franchise, and as further adjusted to account for any other equitable factors that may be considered consistent with 47 U.S.C. § 547.

(r) *Fair Market Value:* The price which property will bring when it is offered for sale by one who desires, but is not obligated, to sell it, and is bought by one who is under no necessity of having it.

(s) *Federal Communications Commission or FCC:* That Federal agency as presently constituted by the Communications Act of 1934, as amended, its designee, or any successor agency.

(t) *Force Majeure:* an event or events reasonably beyond the ability of Cox to control, including, but not limited to, severe or unusual weather conditions, strike, labor disturbance, lockout, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, action or inaction of any government instrumentality or public utility including condemnation, accidents for which Cox is not primarily responsible, fire, flood or other act of God, sabotage, work delays because utility providers denied or delayed Cox access to utility poles to which Cox's Cable System is attached, and unavailability of materials

and/or qualified labor to perform the work necessary if such acquisition of qualified labor would be commercially impracticable as defined in 47 U.S.C. § 545(f).

(u) *Franchise*: The franchise granted pursuant to this Agreement.

(v) *Franchise Agreement or Agreement*: This contract and any amendments, exhibits or appendices hereto.

(w) *Franchise Area*: The County of Fairfax, except for the Reston Franchise Area, as defined in the Cable Ordinance, and any area added thereto during the Term of the Franchise (i) that is served by Cox as of the Effective Date of this Agreement or (ii) which Cox agrees to serve.

(x) *Franchise Fee*: This term shall have the meaning given to it in Section 8(a) herein.

(y) *Governmental Access Channel or Governmental Channel*: Any Channel required by this Franchise Agreement to be provided by Cox to County on the HSN and set aside for government use.

(z) *Gross Revenues*: Any and all cash, credits, property or consideration of any kind or nature that constitute revenue in accordance with Generally Accepted Accounting Principles derived directly or indirectly from the operation of the Cable System to provide Cable Services in the Franchise Area.

(1) Consistent with the foregoing, the following, without limitation, shall be included in Gross Revenues to the extent derived from the operation of the Cable System to provide Cable Services in the Franchise Area: monthly fees collected from Subscribers for any

basic, optional, premium, per-channel, per-program service, or cable programming service; installation, disconnection, reconnection, and change-in-service fees; revenues from rentals or sales of converters or other equipment used to provide Cable Service over the Cable System; studio rental, production equipment rental, and personnel fees; fees from third-party unaffiliated programmers for leased access programming; advertising revenues after deducting agency commissions; revenues from the sale or carriage of other Cable Services over the Cable System in the Franchise Area; and revenues that Cox receives from home shopping channels for the use of the Cable System to sell merchandise.

(2) However, Gross Revenue shall not include:

(A) Revenues received by any Affiliate or other Person from Cox in exchange for supplying goods or services used by Cox to provide Cable Service over the Cable System;

(B) Bad debts written off by Cox in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

(C) Revenues later refunded or rebated to Subscribers or other third parties;

(D) Revenues wholly generated by services that do not constitute Cable Service as defined herein over the Cable System in the Franchise Area, including, but not limited to, telecommunications services as defined in 47 U.S.C. § 153(46) and information

services as defined in 47 U.S.C. § 153(20) (which includes, but is not limited to, dial-up or broadband access service that enables Subscribers to access the Internet).

(E) Third-party revenues derived from the sale of merchandise over home shopping channels carried on the Cable System, regardless of whether the revenues are collected by the third party or collected by Cox on behalf of, and remitted back to, the third party; and revenue of Cox from its sale of merchandise over home shopping channels carried on the Cable System if the merchandise is unrelated to the operation of Cox's Cable System to provide Cable Service in the Franchise Area;

(3) Revenues from the sale of Cable Services on the Cable System to a reseller, when the reseller is required to pay Communications Sales and Use Tax on the resale of the Cable Services;

(A) Any tax of general applicability imposed upon Cox or upon Subscribers by a city, state, federal, or any other governmental entity and that Cox is required to collect and remit to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes, and franchise fees for non-cable services);

(B) Any revenue foregone because Cox provides free or reduced cost cable or other communications services to any Person, including without limitation, employees of Cox; provided, however, that if Cox receives trades, barter, services, or other items of value instead of cash revenue, such items shall be included in Gross Revenue;

(C) Any revenue foregone as a result of Cox's provision of Cable Service or other services as required by this Agreement including, but not limited to, Cable Service to public institutions or other institutions as designated in the Franchise;

(D) Revenues from sales of capital assets or sales of surplus equipment;

(E) Program launch fees not paid directly to Cox;

(F) Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing; and

(G) Any fees or charges collected from Subscribers or other third parties for PEG Grants and remitted to the PEG entities in accordance with this Agreement.

(4) Where Cox bundles, integrates, ties, or combines Cable Service with other services in a bundled package for which Subscribers pay a single fee, Gross Revenues for such bundled, integrated, or tied combination of services shall be determined based on the pricing for individual components billed or advertised to Subscribers by Cox or, if such pricing for individual components is not provided by Cox, based on a pro rata allocation among the services offered. Cox shall not use bundled package offerings as a means of evading the payment of PEG Grants or other financial obligations that are based on Cable Service revenue.

(aa) *Home Subscriber Network or HSN:* Cox's Cable System serving Subscribers in the Franchise Area. The HSN shall include all facilities and equipment provided by Cox that are designed to provide Cable Service to Subscribers, including, but not limited to, converters and other terminal equipment.

(bb) *Homeowner*: The owner of a residential property where Cox is to provide service.

(cc) *Institutional Network or I-Net*: An institutional network constructed for the County's use which is not generally available to Subscribers and which is more specifically described in Section 7 and Appendix 1 herein.

(dd) *Leased Access Channel or Commercial Access Channel*: Any Channel on Cox's Cable System designated or dedicated for use by a Person unaffiliated with Cox pursuant to 47 U.S.C. § 532.

(ee) *Normal Business Hours*: Those hours during which most similar businesses in the County are open to serve their customers. "Normal business hours" shall include some evening hours at least one night per week and/or some weekend hours.

(ff) *Normal Operating Conditions*: The service conditions that are within the control of Cox, *i.e.*, not Force Majeure conditions. Conditions that are ordinarily within the control of Cox include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of Cox's Cable System.

(gg) *PEG*: Public, educational, and governmental.

(hh) *Person*: An individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but such term does not include the County.

(ii) *Public Access Channel*: Any Channel required by this Franchise Agreement to be provided by Cox to County on the HSN and set aside for use by the general public who are

residents of the Franchise Area, including groups and individuals, and which is available for such use on a non-discriminatory basis.

(jj) *Prior Franchise:* The cable television franchise approved by the Fairfax County Board of Supervisors on May 11, 1998 for the North and South County areas as defined in the Cable Ordinance.

(kk) *Public Land:* Real property owned by the County (1) to the extent it is in use by Cox as of the Effective Date for its Cable System and to reach I-Net sites; or (2) to the extent after the Effective Date it must be used by Cox to reach the Demarcation Point to provide service to a County facility or other public building, subject to the reasonable agreement of Cox and the County regarding the placement of facilities; or (3) that is used by any other franchised cable provider in the County; or (4) to the extent the County and Cox mutually agree in writing after the Effective Date to treat a County property as Public Land, for example, by grant of an easement or other authority to use County property.

(ll) *Public Rights-of-Way:* The surface, the air space above the surface, and area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, concourse, bridge, tunnel, parkway, waterway, dock, bulkhead, wharf, pier, easements dedicated for public use, or other public way within the County, which consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System.

(mm) *Service Interruption:* Loss of picture or sound on one or more cable Channels.

(nn) Service Tier: A category of Cable Service or other services provided by Cox's Cable System consisting of one or more Video Programming services that are offered as a package and for which a separate rate is charged by Cox.

(oo) Subscriber: A Person who contracts with Cox to receive or otherwise lawfully receives (except for resale) within the Franchise Area Cox's Basic Service and/or any one or more of such other Cable Services as may be provided on the HSN.

(pp) Term: The term of this Agreement as specified in Section 2(c).

(qq) User: A Person or organization using a PEG Channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a Subscriber.

(rr) Video Programming: Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

2 GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

(a) *Grant of Authority.* Subject to the terms and conditions of this Agreement and the Cable Ordinance, the County hereby grants Cox the right to own, install, construct, reconstruct, operate, maintain, dismantle, test, upgrade, repair, use, and remove a Cable System along, under, over, above, through, or across or in any manner connected with the Public Rights-of-Way or Public Land within the Franchise Area, for the sole purpose of providing Cable Service. This Franchise shall grant no authority for Cox to use the County's Public Rights-of-Way or Public Land for any purposes other than the provision of Cable Service, except to the extent other services may be provided pursuant to Section 7 herein or as hereinafter expressly provided. The consideration provided by Cox under this Agreement shall be the only consideration due or required from Cox to the County for the right to use and occupy the Public Rights-of-Way and Public Land. No reference herein to a Public Right-of-Way shall be deemed to be a representation or guarantee by the County that its interest or other right to control the use of such property is sufficient to permit Cox's use for specific purposes, and Cox shall be deemed to gain only those rights to use that are within the County's power to convey. No privilege or power of eminent domain is bestowed by this grant or by this Agreement. This Agreement does not confer any rights other than as expressly provided herein or as implied under federal, state, or local law.

(b) *Area Served*

(1) The Franchise is granted for the Franchise Area defined herein.

(2) Cox shall build and maintain Cox's Cable System so that it is able to provide service to all Subscribers and potential Subscribers passed by Cox's Cable System as of the Effective Date of this Agreement and to other Subscribers and potential Subscribers in accordance with Section 4.

(c) *Term.* The Franchise and this Franchise Agreement shall become effective at 12:01 a.m. on the Effective Date and shall expire at 12:01 a.m. on June 9, 2023, unless the Franchise is earlier revoked or its Term shortened as provided herein or in the Cable Ordinance, or unless the Franchise is renewed or extended by mutual agreement.

(d) *Grant Not Exclusive.* The Franchise and the right it grants to use and occupy the Public Rights-of-Way and Public Land shall not be exclusive. The County reserves the right to grant other franchises, as consistent with state and federal law, for other uses of the Public Rights-of-Way and Public Land, or any portions thereof, to any Person, or to make any such use itself, at any time during the Term, with or without a franchise, but in no event inconsistent with the rights granted herein.

(e) *Franchise Agreement Subject to Other Laws.* This Franchise Agreement is subject to and shall be governed by all applicable provisions of federal, state, and local law.

(f) *Franchise Agreement Subject to Exercise of Police Powers.* All rights and privileges granted herein are subject to the exercise of the police powers of the County and its rights under applicable laws and regulations to reasonably exercise its police powers to their full extent and to regulate Cox and the construction, operation, and maintenance of Cox's Cable System, including, but not limited to, the right to adopt and enforce additional ordinances and

regulations as the County shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting, and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations containing Public Rights-of-Way, telecommunications, and utility and cable television consumer protection and customer service standards.

(g) *Material Alteration.* Notwithstanding Section 2(i)(1) or 12(g)(2) herein, if Cox's rights, benefits, obligations, or duties expressly specified in this Agreement are materially altered as the result of changes in County ordinances that are incorporated by reference or otherwise, then this Agreement shall be promptly amended so that the rights, benefits, obligations, and duties of Cox set forth in this Agreement as of the Effective Date are preserved or restored to the maximum extent possible, with such amendment to be effective as of the date of the material alteration. In the event that the parties are unable to agree upon an amendment, the scope of any amendment shall be determined by a court of competent jurisdiction.

(h) *Approval and Effective Date.* Subject to the conditions set forth in Paragraph 8 of Section A of Appendix H to the Fairfax County Code, this Franchise Agreement shall become effective on the Effective Date as defined in Section 1(p).

(i) *Effect of Acceptance.* By accepting the Franchise and executing this Franchise Agreement, Cox:

(1) accepts and agrees to comply with the Fairfax County Code, including each provision of the Cable Ordinance and this Agreement, except to the extent otherwise

2: GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

2(j): Claims Related to Prior Franchise

expressly provided herein, and waives its claim or right to claim as is required by Fairfax County Code § 9.1-9-8;

(2) acknowledges and accepts the County's legal right to grant the Franchise, to enter into this Franchise Agreement, and to enact and enforce ordinances and regulations related to the Franchise; and

(3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law.

(j) Claims Related to Prior Franchise

(1) Cox shall remain liable for payments of all amounts owed to the County and to PEG Users under the Prior Franchise that are accrued but unpaid prior to the Effective Date. The audit provisions and review periods of the Prior Franchise shall continue to apply to any amounts owed pursuant to this section 2(j)(1). The grant of the Franchise shall have no effect on Cox's duty under the Prior Franchise to indemnify or insure the County against acts and omissions that occurred during the period that the Prior Franchise was in effect; and to correct any construction violations for which (i) written notice identifying the nature and location of the violation with sufficient specificity to allow Cox to correct the violation has been given to Cox prior to the Effective Date of this Agreement and (ii) the violation has not been cured by the Effective Date of this Agreement.

(2) Except as provided in paragraph (1) above or in Section 5 of Appendix 1, as of the Effective Date of this Franchise Agreement, the Prior Franchise is superseded and is of

no further force and effect, and the County and Cox mutually release each other from any claims each had, has or may have against the other under the Prior Franchise.

(k) No Waiver

(1) The failure of the County on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the County, nor to excuse Cox from complying or performing, unless such right or such compliance or performance has been specifically waived in writing by the Communications Administrator or designee.

(2) The failure of Cox on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by Cox, nor to excuse the County from complying or performing, unless such right or such compliance or performance has been specifically waived in writing by Cox.

(3) No waiver by the County of any breach or violation of any provision of this Franchise Agreement or the Cable Ordinance shall be deemed to be a waiver or a continuing waiver by the County of any subsequent breach or violation of the same or any other provision. Neither the granting of the Franchise, nor any provision herein, nor any action by the County hereunder shall constitute a waiver of or a bar to the exercise of any police right or power of the County, including without limitation, the right of eminent domain.

2: GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

2(l): Amendment of Franchise Agreement

(4) No waiver by Cox of any breach or violation of any provision of this Franchise shall be deemed to be a waiver or a continuing waiver by Cox of any subsequent breach or violation of the same or any other provision. By its execution of this Franchise Agreement, Cox does not waive any rights it may have under federal or state law, in the event that the County grants a franchise or other authorization to any other multichannel video programming provider after the Effective Date, as the result of a grant of such franchise or other authorization.

(l) *Amendment of Franchise Agreement.* This Agreement may only be amended by mutual written consent of the County and Cox, including but not limited to such consent and/or court order pursuant to Section 2(g) hereof.

3 TRANSFERS

(a) County Approval Required

(1) A Franchise shall be a privilege that is held in the public trust, and personal to Cox. Cox's obligations under this Agreement involve personal services whose performance involves personal credit, trust, and confidence in Cox.

(2) Subject to the provisions of this Section 3, Cox shall apply to the County for approval of any transaction in which any change is proposed with respect to ten percent (10%) or more for voting interests or twenty-five percent (25%) or more for non-voting interests of the ownership of Cox, the Cable System, the Cable System assets, or the Franchise (a "Transfer") by submitting FCC Form 394 or such other form as the FCC may prescribe for that purpose. The application shall be made at least 120 calendar days prior to the contemplated effective date of the transaction. Such application shall contain complete information on the proposed transaction, including details of the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application:

- (A) all information and forms required under federal law;
- (B) any shareholder reports or filings with the Securities and Exchange Commission that pertain to the transaction;
- (C) a report detailing any changes in ownership of voting or non-voting interests of over five percent;

(D) other information necessary to provide a complete and accurate understanding of the financial position of the Cable System before and after the proposed transaction;

(E) complete information regarding any potential impact of the transaction on Subscriber rates and service; and

(F) any contracts that relate to the proposed transaction as it affects the County and, upon request by the County, all documents and information that are related or referred to therein and which are necessary to understand the proposed transaction; provided, however, that if Cox believes that the requested information is confidential and proprietary, then Cox must provide the following documentation to the County: (i) specific identification of the information; (ii) statement attesting to the reason(s) Cox believes the information is confidential; and (iii) statement that the documents are available at Cox's designated offices for inspection by the County.

(3) To the extent not prohibited by federal law, the Board may: (i) grant; (ii) grant subject to conditions directly related to concerns relevant to the transactions; (iii) deny any such transactions; or (iv) not take action, in which case the transactions shall be subject to applicable law, including 47 U.S.C. § 537.

(A) For any transaction that the County determines constitutes an assignment of the franchise, Board action shall be expressed by ordinance.

(B) For any transaction that the County determines constitutes a significant transfer of control of the franchise, Board action shall be expressed by resolution.

3(b): Waiver of Transfer Application Requirements

Significant transfer of control means any change in the ownership of: (i) twenty percent (20%) or more of the voting interests or (ii) fifty percent (50%) or more of the non-voting interests.

(C) For any other transaction for which Cox has filed an application pursuant to Section 3(a), the Communications Administrator shall inform the Board not less than 30 days before such application would be deemed approved pursuant to Section 617 of the Communications Act, 47 U.S.C. § 537.

(b) *Waiver of Transfer Application Requirements.* To the extent consistent with federal law, the County may waive in writing any requirement that information be submitted as part of the transfer application, without thereby waiving any rights the County may have to request such information after the application is filed.

(c) *Transfers Securing Indebtedness.* Cox shall not be required to file an application or obtain the consent or approval of the County for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Cox in the Franchise or Cable System in order to secure indebtedness. However, Cox will notify the County within 10 days if at any time there is a mortgage or security interest granted on substantially all of the assets of the Cable System. The submission of Cox's audited financial statements prepared for Cox's bondholders shall constitute such notice.

(d) *Affiliate Transfers.* Cox shall not be required to pay an acceptance fee or file an application or obtain the consent or approval of the County for any transfer of an ownership or other interest in Cox, the Cable System, or the Cable System assets to the parent of Cox or to another Affiliate of Cox; or any transfer of an interest in the Franchise or the rights held by Cox

under the Franchise to the parent of Cox or to another Affiliate of Cox. However, Cox will notify the County within 30 days if at any time a Transfer occurs. Within a reasonable time after receiving notice of such transaction, the County shall be responsible for furnishing Cox with an acknowledgement of the transaction and whether the County is satisfied with the legal, financial, and technical qualifications of the transferee. Cox will guarantee all of obligations that this Agreement imposes on the holder of the Franchise until the County provides Cox with the acknowledgement of the transaction and confirming that the County has found the legal, financial, and technical qualifications of the transferee to be satisfactory.

(e) *Subsequent Approvals.* The approval of a Transfer in one instance shall not render unnecessary approval of any subsequent Transfer.

(f) *Approval Does Not Constitute Waiver.* Approval by the County of a Transfer does not constitute a waiver or release of the rights of either Cox or the County under this Agreement or the Cable Ordinance, whether arising before or after the date of the Transfer, nor does such approval constitute a waiver or release of the rights of the County and the public in and to the Public Rights-of-Way or Public Land, or a release of any police powers.

4 PROVISION OF CABLE SERVICE

(a) *Availability of Cable Service.* Cox shall make Cable Service available on the HSN in accordance with the terms of this Franchise Agreement to all residences, businesses, and other structures within the Franchise Area, including multiple dwelling unit buildings, whose owners or occupants request Cable Service, except as provided in Section 4(b)(4). Cox shall not discriminate between or among any individuals in the availability of Cable Service.

(b) *Line Extension Requirements*

(1) Cox shall make Cable Service available to residential and business units in all areas of the Franchise Area where the average density is equal to or greater than 30 occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active HSN trunk or feeder line. Should an area within the Franchise Area meet the density requirements described herein through new construction, Cox shall provide Cable Service to such area within six months of receiving notice that the density requirements have been met.

(2) Cox shall bear the costs of connecting residential dwelling units that are within 200 feet of the serving terminal or the edge of the property, whichever is less, if not otherwise already served by the HSN. When a connection exceeds such length, Cox may recover from that Subscriber any actual costs in connection attributable to the excess length.

(3) The costs of connecting commercial properties shall be based on published commercial rates for construction and installation costs.

4: PROVISION OF CABLE SERVICE

4(c): Continuity of Service

(4) Cox may refuse to provide Cable Service: (A) in areas where developments or buildings are subject to exclusive arrangements with other providers; (B) when it is unable pursuant to normal industry practice to obtain necessary programming, real property or other access rights; (C) in developments or buildings to which Cox is unable to provide Cable Service for technical reasons or which require non-standard facilities that are not available on a commercially reasonable basis; (D) when its prior service, payment, or theft of service history with a Person has been unfavorable; and (E) in areas where the occupied residential household density does not meet the density requirement set forth in Section 4(b)(1).

(5) The Communications Administrator or designee may waive in writing the requirements of this Section 4 with respect to a particular Subscriber or potential Subscriber, or a particular set of Subscribers or potential Subscribers, for good cause shown.

(c) Continuity of Service

(1) Cox shall operate Cox's Cable System pursuant to this Franchise without interruption, except as otherwise provided in this Franchise Agreement. If Cox ceases to operate Cox's Cable System, it shall ensure an orderly transfer of cable service to another franchise holder, without interruption of service to Subscribers.

(2) The County may seek legal and/or equitable relief to enforce the provisions of this Section.

(3) This Section 4(c) shall apply in place of Section 9.1-5-7 of the Cable Ordinance.

5 CONSTRUCTION AND MAINTENANCE*(a) Construction Standards*

(1) The construction, operation, maintenance, and repair of Cox's Cable System shall be in accordance with the requirements of the Fairfax County Code and the specifications contained in this Agreement, shall conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and shall be substantially in accordance in all material respects with any other technical performance standards lawfully established by the County and all applicable sections of the following standards and regulations, to the extent that such standards and regulations remain in effect and are applicable to Cox's Cable System or to the construction, operation, maintenance, and repair of a Cable System:

- (A) the Occupational Safety and Health Act of 1970, as amended;
- (B) Occupational Safety and Health Administration (OSHA) Safety and Health Standards;
- (C) the most current edition of the National Electrical Safety Code and National Electrical Code;
- (D) Obstruction Marking and Lighting, AC 70/7460, *i.e.*, Federal Aviation Administration;
- (E) Construction, Marking, and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17;
- (F) Bellcore Blue Book Manual of Construction Procedures;

- (G) AT&T Blue Book Manual of Construction Procedures
- (H) SCTE Recommended Practices for Coaxial Cable Construction and Testing;
- (I) SCTE Recommended Practices for Optical Fiber Construction and Testing;
- (J) SCTE Measurement Recommended Practices for Cable System;
- (K) the Virginia Uniform Statewide Building Code;
- (L) Virginia Department of Transportation rules and regulations;
- (M) conditions embodied in Virginia Department of Transportation permits;
- (N) Department of Public Works and Environmental Services permits and procedures;
- (O) the National Cable Television Association Standards of Good Engineering Practices;
- (P) Cox's Construction Procedures Manual;
- (Q) any common shared easement or joint trenching arrangements to which Cox is a party;
- (R) and other applicable federal, state, or local laws and regulations that may apply to the operation, construction, maintenance, or repair of a Cable System, including, without limitation, local zoning and construction codes and laws and accepted industry practices, all as hereafter may be amended or adopted.

(2) In the event of a conflict among codes and standards, the most stringent applicable code or standard shall apply (except insofar as such practices, if followed, would result in a Cable System that could not meet express requirements of federal, state, or local law, or in instances in which such practices are expressly preempted by other standards). Consistent with the foregoing, the County may ensure that work continues to be performed in an orderly and workmanlike manner, reflecting any changes that may occur over the Franchise term.

(3) In the event any standard specified in section 5(a)(1) is repealed or eliminated, such standards or regulations shall no longer apply. To the extent permitted by applicable law, the County reserves the right to adopt and impose such standards as it may deem necessary or appropriate, after notice to Cox and opportunity for Cox to participate.

(4) All wires, cable lines, and other transmission lines, equipment, and structures shall be installed and located consistent with cable industry practices, and where feasible without additional cost to Cox, in such a manner as to cause minimum interference with the rights and convenience of property owners (including the County) and users of the Public Rights-of-Way and other public property. The County may from time to time issue reasonable rules and regulations, after notice to Cox and opportunity for Cox to participate, concerning the construction, operation, and repair of Cox's Cable System as appropriate to ensure compliance with this Section.

(5) Without limiting the foregoing, antennae and their supporting structures (towers) shall be designed in accordance with the Virginia Uniform Statewide Building Code as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable

rules and regulations of the Federal Aviation Administration and all other applicable state or local laws, codes, and regulations, all as hereafter may be amended or adopted.

(6) Without limiting the foregoing, all of Cox's plant and equipment, including, but not limited to, the antennae site, headend and distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber optic cable, fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel.

(7) Cox shall maintain all wires, conduits, cables, and other real and personal property and facilities comprising Cox's Cable System in good condition, order, and repair. Consistent with Section 5(a)(1) above, all safety practices required by law shall be used during construction, maintenance, and repair of Cox's Cable System. Cox shall at all times employ at least ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents.

(8) No construction, upgrade, rebuild, reconstruction, maintenance, or relocation of Cox's Cable System, or any part thereof, within any Public Rights-of-Way or Public Land shall be commenced unless permits have been obtained from proper officials, except that in case of emergency, Cox may carry out such work to the extent necessary pending the issuance of such permits, as long as Cox acts to secure such permits as soon as possible.

(9) Prior to commencing any (i) significant alteration of the cable plant, (ii) other work that would require a construction permit, or (iii) any work on public property, Cox

shall provide the County with 24 hours' prior notice of such work, when possible, so that the County may perform appropriate inspections to ascertain compliance with applicable construction codes and standards. If 24 hours' prior notice cannot be furnished, Cox shall provide the County with the maximum amount of notice feasible under the circumstances. If prior notice cannot be provided before commencing such work in the Public Rights-of-Way or other public property, Cox shall notify the County as soon as possible thereafter. For purposes of this provision, notice shall where appropriate include the tax map location of the work proposed or performed, and the date such work will begin.

(10) Except in emergency situations, neither Cox nor any other Person acting as agent for Cox shall open or otherwise disturb or damage any street, sidewalk, driveway, Public Rights-of-Way or Public Land, public property, or private property for any purpose whatsoever without obtaining required authorization to do so, and shall, at its own cost and expense, restore, repair, and replace any property disturbed, damaged, or in any way injured by or on account of its activities substantially to its condition immediately prior to the disturbance, damage, or injury (including appropriate landscape restoration); provided, however, that with respect to landscape restoration efforts, Cox shall not be responsible for the maintenance and watering thereof, and Cox shall not be required to resod lawns where reseeding would, within a reasonable period of time, restore the lawn substantially to its condition immediately prior to the disturbance. Cox shall not be required to repave all or a substantial portion of a driveway if patching would be consistent with normal road repair requirements. Under Normal Operating Conditions, such repair or restoration shall be completed at the later of 30 days from the date the

damage is incurred or 30 days from when the work causing such damage is completed, weather permitting. Any restoration of private property by Cox shall be done in accordance with Cox's contractual obligation to affected landowners. Cox shall guarantee such restoration (other than landscaping restoration) for at least one year against defective materials and workmanship. In the event of a failure by Cox to complete any work required for the protection or restoration of the Public Rights-of-Way, Public Land, or any other property as required by this subsection 5(a)(10), within the time specified in this Franchise Agreement, the County, following adequate written notice and a reasonable opportunity to cure, may cause such work to be done, and the County shall submit an itemized list of such costs to Cox as well as any materials reasonably requested by Cox to verify such costs. Following Cox's receipt of such itemized list and supporting materials, Cox shall reimburse the County the cost thereof within 30 days, or the County may recover such costs through the performance bond or the letter of credit provided by Cox.

(11) Cox shall cooperate with all gas, electric, telephone, water, sewer, and other utilities in the placement of facilities, equipment, or fixtures, to minimize the costs and disruption caused by any construction activities.

(12) Cox shall seek to shore up, sling, support, protect, and make good, as directed, all water pipes, gas pipes, service pipes, sewers and sewer connections, conduits, ducts, manholes, drains, vaults, buildings, tracks or other structures, or sub-structures of public utility companies, and all service lines and structures, including sub-structures of private abutting owners, that are located within the lines of Cox's Cable System construction that may be liable

to disturbance or injury during the progress of the construction. All necessary supports and all labor and material necessary to reconnect and restore all such structures that become disturbed or damaged to substantially their original condition shall be provided by Cox at its own cost and expense.

(13) If the County becomes aware of any relocation projects that may require Cox to protect, support, temporarily disconnect, relocate, or remove any of Cox's property, then the County shall promptly notify Cox of the extent and likelihood of any such projects. Upon reasonable notice in accordance with the preceding sentence (except in the case of emergency repairs), Cox shall, by a time specified by the County, protect, support, temporarily disconnect, relocate, or remove any of its property when reasonably required by the County by reason of traffic conditions; public safety; Public Right-of-Way or Public Land construction; Public Right-of-Way or Public Land maintenance or repair (including resurfacing or widening); change of Public Right-of-Way or Public Land grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility. Cox shall be entitled to reimbursement of its costs and expenses for such relocation.

(14) If Cox abandons any portion of Cox's Cable System located in Public Rights-of-Way or on Public Land (i.e., permanently deactivates and leaves it in place), the County may require that such plant be removed at Cox's expense, at any time (i) if necessary, to make room for other facilities or (ii) if required by sound engineering practices, or (iii) to remove potential safety hazards. If Cox requests to leave such an underground portion of Cox's Cable

System in place, the County shall grant such request upon a showing by Cox that its existing arrangements are safe and consistent with accepted underground utility practices as well as any other obligations it may have (such as pole attachment agreements).

(15) If any Person that is authorized to place facilities in the Public Rights-of-Way or on Public Land requests Cox to remove, relocate, protect, support, or temporarily disconnect its facilities to accommodate the construction, operation, or repair of the facilities of such other Person at any time during the Term, then Cox shall, upon request and reasonable notice from such party and consistent with applicable law, remove, relocate, protect, or alter Cox's Cable System, or any part thereof, and such Person shall reimburse Cox for Cox's costs and expenses; provided, however, that Cox may require such payment in advance when its prior payment history with the requesting Person has been unfavorable.

(16) In the event of an emergency, or where Cox's Cable System creates or is contributing to an imminent danger to health, safety, or property, or an unauthorized use of property, Cox shall remove or relocate any or all parts of Cox's Cable System at the request of the County. If Cox fails to comply with the County's request, the County may remove or relocate any or all parts of Cox's Cable System upon reasonable notice to Cox. If Cox's compliance with the County's request pursuant to this subsection results in the breach of any of Cox's obligations under this Agreement, and Cox has so notified the County before complying with the County's request, Cox shall not be liable for its failure to satisfy such obligations.

(17) Cox shall, on the request of any Person holding a valid building moving permit issued by the County, or on request of the County, temporarily raise or lower its wires to

permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Cox shall have the authority to require such payment in advance, except in the case where the requesting person is the County, in which case Cox will invoice the County, and the County will pay, following completion of work. Cox shall be given reasonable advance notice in writing to arrange for such temporary wire changes.

(18) Cox shall have the authority to trim trees and shrubs, at its own expense, so as reasonably to prevent the branches of such trees or shrubs from coming in contact with the facilities, wires, and cables of Cox.

(19) Cox shall use, with the owner's permission, existing poles, conduits, and other facilities whenever feasible and consistent with the design of Cox's Cable System. Cox may not erect or emplace poles, conduits, or other facilities in Public Rights-of-Way or on Public Land without obtaining appropriate permits. Any such permits from the County shall not be unreasonably withheld and shall be free of charge to Cox.

(20) Cox's Cable System cable and facilities may be constructed overhead where poles now exist and electric or telephone lines or both are now overhead, but where no overhead poles exist all cables and facilities, excluding passive or active electronics of Cox's Cable System that may be housed in low-profile, above-ground pedestals, shall be constructed underground. Whenever and wherever a property owner causes or requests electric lines and telephone lines to be moved from overhead to underground placement, all of Cox's Cable System cables shall likewise be moved underground and the cost of movement of its cable shall

be paid for by the requesting party. Whenever and wherever the County causes or requests electric lines and telephone lines to be moved from overhead to underground placement, all of Cox's Cable System cables shall likewise be moved underground, and the County shall pay for the cost of movement of such cable. Except as federal law may otherwise require, in any area where Cox would be entitled to install a drop above-ground, Cox shall provide a homeowner with the option of having the drop installed underground, and may charge the homeowner the difference between the actual cost of the above-ground installation and the actual cost of the underground installation, which cost shall be disclosed to the homeowner in advance if requested by the homeowner. Notwithstanding the foregoing, all underground new or replacement wiring installed after the Effective Date of this Agreement on Public Land not part of the Public Rights-of-Way shall be located in conduit composed of concrete or in PVC pipe or polyethylene pipe, or may be directly buried if enclosed in armored cable. New buried cable and facilities shall be capable of location using locating devices commonly available at the time of installation.

(21) Cox shall make available to other users of the Public Rights-of-Way and Public Land at a reasonable, non-discriminatory rental rate any of its excess conduits, so long as such conduits are in excess of any current or any future projected needs of operation of Cox or its affiliates.

(22) Cox shall be a member of the regional notification center for subsurface installations, which shall field mark the locations of its underground facilities upon request.

(23) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of Cox's Cable System equipment shall be

properly licensed under the laws of the Commonwealth of Virginia and all local ordinances, where applicable, and each contractor or subcontractor shall have the same obligations with respect to its work as Cox would have if the work were performed by Cox. Cox shall seek to employ contractors, subcontractors and employees to perform work for it who are trained and experienced. Cox shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the Franchise and applicable laws, regulations, policies, and procedures, shall be fully responsible for all acts or omissions of contractors or subcontractors and shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor.

(24) The County does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures.

(25) Cox shall provide the County with a current electronic copy of its Construction Procedures Manual (the "Manual") at execution of this Agreement and shall provide the County with copies of any updates as such updates are added to the Manual.

(26) Except for emergency maintenance or repairs, Cox shall provide reasonable notice to residents in any construction area prior to first entering onto their property to perform any work in conjunction with Cable System construction or rebuild, and shall provide reasonable notice to affected residents in advance of any work which will involve excavation, or replacement of poles. Cox shall provide affected residents with an individual's name and phone number they can call to discuss Cox's actions.

(27) Pursuant to Section 9.1-7-7(r) of the Cable Ordinance, the County shall not require descriptions, drawings, or maps for placement of towers, poles, or conduits, except in accordance with the conditions specified in this Agreement.

(b) *System Tests and Inspections*

(1) Cox shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise, and to ensure that the HSN system components are operating as expected. All tests shall be conducted in accordance with federal rules, standards of the Society of Cable Television Engineers (SCTE), and the most recent edition of the *SCTE Measurement Recommended Practices for Cable System*, or if no relevant edition exists, such other appropriate manual as Cox may propose and the County approve. In the event that the FCC's technical performance standards are repealed or are no longer applicable to Cox's Cable System, such standards shall remain in force and effect until the Communications Administrator and Cox agree to new standards.

(2) Cox shall conduct tests as follows:

(A) proof of performance tests on Cox's Cable System at least once every six months or as required by FCC rules, whichever is more often, except as federal law otherwise limits Cox's obligation; and

(B) special tests of Cox's Cable System or a segment thereof when Subscriber or User complaints indicate tests are warranted.

(3) The County shall have the right to witness and/or review tests of Cox's Cable System conducted pursuant to Section 5(b)(2), and any tests that affect the I-Net or service

to sites connected pursuant to 7(g). Cox shall provide the County with reasonable advance notice of tests the County has the right to witness pursuant to this paragraph.

(4) A written report of test results under Section 5(b)(2) shall be filed with the County within seven days of each test. Such reports shall, at a minimum, contain the information specified in the Fairfax County Code.

(5) If any test under Section 5(b)(2) indicates that any part or component of Cox's Cable System distribution network fails to meet applicable requirements, Cox, without requirement of additional notice or request from County, shall take corrective action, retest, advise the County of the action taken and results achieved, and supply the County with copies of the results within 30 days from the date corrective action was completed.

(6) The County may make independent performance tests of Cox's Cable System, but shall not alter the operation of Cox's Cable System without Cox's approval. Cox shall cooperate with the County in conducting such tests. Such independent tests shall be at the County's expense.

(7) The County shall not require payment from Cox for independent tests of Cox's Cable System pursuant to Section 9.1-7-5(c) of the Cable Ordinance.

(8) Tests shall be supervised by Cox's engineer, who shall sign all records of tests provided to the County.

(9) The County may conduct inspections of construction areas and Subscriber installations, including but not limited to inspections to assess compliance with Cox's construction and installation requirements. The County shall notify Cox of any violations found

during the course of inspections, identifying the locations with particularity and stating the specific nature of the violation. Cox shall bring violations specified in the notice that are within Cox's control into compliance as follows: (i) safety violations shall be made safe within 48 hours of receiving notice of the violation; (ii) Virginia Department of Transportation violations shall be brought into compliance within five days of receiving notice of the violation; and (iii) all other violations shall be brought into compliance within 30 days of receiving notice of the violation. If requested by the County, Cox shall submit a written response, which may be via e-mail, to the County describing the steps it has taken to bring itself into compliance. Inspection does not relieve Cox of its obligation to build in compliance with all provisions of the Franchise.

(c) *Publicizing Proposed Construction Work*

(1) Cox shall notify affected parties prior to commencing any proposed construction or general preventive maintenance that will significantly disturb or disrupt private property, public property, Public Rights-of-Way, or Public Land, or have the potential to present a danger or affect the safety of the public generally. Where possible, Cox shall publicize proposed construction or general preventive maintenance work at least five calendar days prior to commencement of that work by notifying those residents and others in the immediate vicinity of where work is to be done and most likely to be affected by the work in at least one of the following ways: by telephone, in person, by mail, by distribution of door hangers or flyers to residences, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice. Notice to affected Persons shall include the name of the department

and a local telephone number for a Cox representative who is qualified to answer questions concerning proposed construction or general preventive maintenance.

(2) If requested by a homeowner and to the extent practicable, above-ground pedestals placed on private property shall be placed at a reasonable location selected by the homeowner within the applicable easement or Public Right of Way.

(3) If Cox must enter a residence, it shall schedule an appointment at the reasonable convenience of the owner or resident.

(4) This Section 5(c) shall apply in place of Section 9.1-7-7(t) of the Cable Ordinance.

(d) *System Maintenance.* Cox shall, when practicable, schedule and conduct maintenance on Cox's Cable System so that interruption of service is minimized and occurs during periods of minimum Subscriber use of Cox's Cable System. Cox shall provide reasonable prior notice to Subscribers and the County before interrupting service for planned maintenance or construction, except where such interruption is expected to be one hour or less in duration. Such notice shall be provided by methods reasonably calculated to give Subscribers actual notice of the planned interruption.

6 SYSTEM FACILITIES, EQUIPMENT, AND SERVICES

(a) *System Characteristics.* The HSN generally shall have at least the following characteristics:

(1) modern design as of the Effective Date, using an architecture that will permit additional improvements necessary for high-quality and reliable service throughout the Franchise Term, including but not limited to a usable bandwidth of at least 860 MHz;

(2) protection against outages due to power failures, so that back-up power is available at a minimum for at least 24 hours at each headend, four hours at each hub, and conforming to industry standards, but in no event rated for less than two hours, at each power supply site;

(3) facilities and equipment of good and durable quality, generally used in high-quality, reliable systems of similar design;

(4) facilities and equipment sufficient to cure violations of FCC technical standards and to ensure that Cox's Cable System remains in compliance with the standards specified in Section 5(a)(1);

(5) such facilities and equipment as necessary to maintain, operate, and evaluate Cox's Cable System to comply with FCC technical standards, as such standards may be amended from time to time;

6: SYSTEM FACILITIES, EQUIPMENT, AND SERVICES

6(a): System Characteristics

(6) status monitoring capability to monitor the Cable System's performance, including signal level and distortion parameters, and, among other things, alert Cox when and where back-up power supplies are being used;

(7) all facilities and equipment designed to be capable of continuous 24-hour daily operation in accordance with FCC standards except as caused by a Force Majeure condition;

(8) all facilities and equipment designed, built, and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of off-the-air signals by a Subscriber;

(9) all facilities and equipment designed, built, and operated in such a manner as to protect the safety of Cox's Cable System workers and the public;

(10) sufficient trucks, tools, testing equipment, monitoring devices, and other equipment and facilities and trained and skilled personnel required to enable Cox to substantially comply with applicable law, including applicable customer service requirements and including requirements for responding to Cable System outages;

(11) all facilities and equipment required to properly test the Cable System and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to Subscriber complaints and resolve Cable System problems;

(12) design capable of interconnecting with other broadband communications networks (including but not limited to wireless systems) as set forth in Section 6(f) of this Agreement;

6: SYSTEM FACILITIES, EQUIPMENT, AND SERVICES

6(b): Hearing-Impaired Subscribers

(13) antenna supporting structures (towers) designed in accordance with the Virginia Uniform Statewide Building Code, as amended, painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the Federal Communications Commission, and all other applicable codes and regulations;

(14) facilities and equipment at the headend allowing Cox to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks;

(15) Cox shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Cox's Cable Service. Such a system will at a minimum offer as an option that a Person ordering programming must provide a personal identification number provided by Cox only to a Subscriber; provided, however, that Cox shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls;

(16) Cox shall comply with all FCC regulations regarding closed captioning and other regulations applicable to providing services to disabled Subscribers.

(b) *Hearing-Impaired Subscribers.* Cox shall comply with all requirements of federal, state, or local law regarding persons with disabilities, including but not limited to 47

6: SYSTEM FACILITIES, EQUIPMENT, AND SERVICES

6(c): Integration of Advancements in Technology

U.S.C. § 255. Cox shall publish a TTY contact number and cooperate with any service used by hearing-impaired Subscribers to assist them in contacting Cox by telephone.

(c) *Integration of Advancements in Technology.* During the Franchise Term, Cox shall maintain and improve its existing facilities in accordance with accepted cable industry practices.

(d) *No Redlining*

(1) Access to Cox's Cable Service shall not be denied to any group of potential residential cable subscribers because of the income level of any portions of the Franchise Area.

(e) *Leased Access Channels.* Cox shall provide leased access channels as required by federal law.

(f) *Interconnection.*

(1) Cox shall design Cox's Cable System so that it is capable of interconnecting with other broadband communications networks (including but not limited to wireless systems) at suitable locations as determined by Cox. Interconnection capabilities shall be provided for the exchange of all PEG signals designated in Section 7 herein carried on the HSN. Interconnection of systems may be made by direct fiber connection or other appropriate methods. Such interconnection shall preserve the quality of the PEG signals so that there is no significant degradation between the signals as received by Cox and the signals as transmitted to the interconnecting system.

(2) At the request of the Communications Administrator, Cox shall, to the extent permitted by applicable law and its contractual obligations to third parties, use every

6: SYSTEM FACILITIES, EQUIPMENT, AND SERVICES

6(g): Emergency Alert System

reasonable effort to negotiate an interconnection agreement with any other franchised Cable System in Fairfax County for the PEG channels on the HSN. Cox will continue to interconnect with any other franchised cable operator that is operating in the County as of the Effective Date. Nothing in this Agreement shall determine the extent to which Cox or the interconnecting system shall bear the costs of interconnection.

(3) Cox will continue to interconnect the I-Net with the institutional network of the franchised Cable System in the Reston Franchise Area as long as there is such a Reston institutional network. Any County I-Net connections to other broadband networks will be the County's sole responsibility and made at the County's expense, but Cox will assist in any such effort as reasonably requested.

(4) Cox shall in good faith cooperate with the County in implementing interconnection of PEG Cable Service with communications systems beyond the boundaries of the County.

(g) *Emergency Alert System*

(1) Cox shall comply with the federal Emergency Alert System ("EAS") regulations, 47 C.F.R. Part 11.

(2) This Section 6(g) shall apply in place of Section 9.1-7-4(f) of the Cable Ordinance.

(h) *Home Wiring.* Cox shall comply with all applicable FCC requirements, including any notice requirements, with respect to home wiring. Prior to a Subscriber's termination of Cable Service, Cox will not restrict the ability of a Subscriber to remove, replace, rearrange, or

6: SYSTEM FACILITIES, EQUIPMENT, AND SERVICES

6(i): Antenna Towers

maintain any cable wiring located within the interior space of the Subscriber's dwelling unit, so long as such actions are consistent with FCC standards. Cox may require a reasonable indemnity and release of liability in favor of Cox from a Subscriber for wiring that is installed by such Subscriber.

(i) *Antenna Towers*

(1) Cox may continue to maintain, repair, and use antennas and antenna towers at certain sites belonging to the County that Cox is using as of the Effective Date, pursuant to the terms of the agreements under which Cox leases such sites from the County, including any payments to the County and any extensions of the lease term specified in such agreements, as long as Cox continues to use such sites for delivery of Cable Service. Such existing leases for such towers shall be extended through the term of this Agreement.

Compensation received by the County for such antenna leases shall not be considered a franchise fee.

(2) To the extent that Cox uses such antenna towers on County sites for commercial purposes not directly related to Cox's Cable System or the provision of Cable Service, such towers and Cox's use and occupancy of such towers shall be subject to all County policies, laws, and regulations in effect from time to time relating to such towers, including any compensation and collocation requirements; provided, however, that the County shall not be due any compensation with respect to existing tenants of Cox's on antenna towers on County sites as of the Effective Date, and provided further that any collocation requirements shall not interfere with the rights of such existing tenants.

6: SYSTEM FACILITIES, EQUIPMENT, AND SERVICES

6(j): Periodic Performance Evaluation

(3) In the event the County demolishes or otherwise decommissions an antenna tower site, the County shall not be liable to Cox for any damages or costs to remove or relocate Cox's facilities, and Cox shall cooperate with the County to facilitate such demolition or decommissioning.

(j) *Periodic Performance Evaluation.* The County may schedule periodic review sessions to evaluate the performance of Cox. Cox shall cooperate with the County in any such evaluation to the maximum extent feasible.

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

7(a): Access Channels

7 **CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE**

(a) *Access Channels*

(1) Cox will provide the County with up to fourteen PEG Channels on the HSN, though Cox reserves the right to use for its own purposes any such Channels not used for PEG purposes.

(2) Cox shall make these PEG Channels available to all Subscribers, which Channels shall be in addition to any capacity provided on the Institutional Network pursuant to Section 7(l). Unless otherwise specified by the County, the PEG Channels shall be allocated as follows (the format in which each set of Channels is carried as of the Effective Date is indicated in parentheses):

- (A) County governmental access: 1 (analog and standard definition digital simulcast)
- (B) Fairfax County Public Schools: 3 (analog and standard definition digital simulcast)
- (C) George Mason University: 1 (standard definition digital)
- (D) Northern Virginia Community College: 1 (standard definition digital)
- (E) Public access: 4 (standard definition digital)
- (F) Reserved: 4

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

7(a): Access Channels

(3) Cox shall carry the Public Access Channels produced by, and provide the PEG Grant (as hereinafter defined) to, the Fairfax Cable Access Corporation or such other entity as may be specified by the County pursuant to the following subsection 7(a)(4).

(4) If the County, in its sole discretion, finds unsatisfactory the provision of public access services by a given entity pursuant to the preceding subsection 7(a)(3), then the County may, in its sole discretion, specify a different third-party manager for the Public Access Channels, and Cox shall carry that entity's programming on the Public Access Channels and provide the Public Access portion of the PEG Grant to that entity in the same manner as specified in the preceding subsection 7(a)(3). However, should the County decide to relocate the current PEG Channel origination points specified herein or request additional PEG Channel origination points, the County shall be solely responsible for all costs of such relocation or additional origination points.

(5) Each PEG Channel may be carried in analog or digital form, at Cox's discretion, except as otherwise provided in this Agreement.

(A) At any time during the Term, upon 120 days' advance notice to Cox, the County may at its sole discretion require Cox to carry up to three of the PEG Channels in high-definition ("HD") format. For purposes of this Agreement, HD format shall mean a display resolution of at least 720 lines (progressive) that is supported by Cox on the Cable System, including the Cox terminal device(s) provided to Subscribers for HDTV use. If Cox supports more than one such resolution, the County shall specify which of those supported by Cox shall be used for PEG Channels. While the County requires one or more Channels to be

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

7(a): Access Channels

carried in HD format, it shall not have the right to activate the four reserved Channels specified in section 7(a)(2)(F).

(B) Cox shall ensure that any PEG Channels carried in HD format pursuant to subsection (A) can also be viewed in standard definition (non-HD) format by Subscribers who do not receive HD service or do not have HD equipment, with the same quality and functionality as commercial channels of the same format, whether through simulcasting the programming in standard- and high-definition, or by means of another technical solution.

(C) The County may at its sole discretion require Cox to carry additional PEG Channels in high-definition format, subject to the same advance notice as in subsection (A), at any time beginning five years after the Effective Date. Cox shall, without cost to the County or PEG Users, provide, install, and maintain the equipment necessary to transmit the signals specified in this Section 7(a)(5) from the PEG Users' origination points to Subscribers.

(D) If during the Franchise Term Cox introduces any advanced video format other than HD on its Cable System ("Advanced Format"), then whenever at least half of the primary video feeds of the commercial programmers carried by Cox are made available by Cox to Subscribers in such Advanced Format, the County shall have the option in its sole discretion, upon 120 days' advance written notice, to require Cox to carry up to three PEG Channels, selected by the County, in such Advanced Format. Multiple video feeds from a single commercial programmer that substantially replicate the same programming but are transmitted in different formats (for example, programming transmitted in analog, digital SD, HD, and an

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

7(a): Access Channels

Advanced Format) shall be counted only once for purposes of calculating the share of Advanced Format programming feeds in this section 7(a)(5)(D). A PEG Channel transmitted in an Advanced Format shall count toward the total PEG Channels specified in Section 7(a). Nothing in this Agreement shall require Cox to provide Subscribers with any equipment needed to view such Advanced Formats without charge or at reduced rates.

(E) If Cox begins carrying exclusively in digital form any PEG Channel that is being provided in analog form as of the Effective Date, Cox shall take the following steps to mitigate any resulting disadvantage to Subscribers who are impacted by that change:

- (i) Each PEG Channel shall be transmitted in unencrypted form, so that it can be viewed using a QAM tuner without need of a set-top box or CableCARD.
- (ii) Cox shall offer to its existing Subscribers who subscribe only to Basic Cable Service without use of a set-top box at the time of such change up to two set-top boxes enabling the Subscriber to view such PEG Channels without charge or service fee for one year from the date of such change (“Digital PEG Offer”).
- (iii) Cox shall notify its existing Subscribers of the availability of the Digital PEG Offer at least 30 days prior to the date of

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

7(b): Access Channel Assignment

such change, and shall make the offers available for at least 30 days prior to and 180 days after the date of such change.

- (iv) In the event that Cox initiates a set-top box program that is consistent with FCC Report and Order 12-126, adopted October 10, 2012, the existing Digital PEG Offer Subscribers will be enrolled in such program in lieu of the Digital PEG Offer.

(6) If Cox makes changes to Cox's Cable System that require improvements to access facilities and equipment, Cox shall provide any necessary additional headend and distribution facilities or equipment within 30 days so that PEG facilities and equipment may be used as intended with respect to the PEG channels specified in Section 7(a)(2), including, among other things, so that live and recorded programming can be cablecast efficiently to Subscribers. Cox shall provide the County and all affected PEG Users with at least 90 days' prior notice of any such changes that would require the County or such Users to incur significant costs. This provision may be waived by the County by written notice after receiving the required notice of the change.

(b) Access Channel Assignment

(1) Each PEG Channel shall be processed and delivered over the HSN with transmission quality equal to the processing and transmission quality of any similar commercial Channel of the same format (for example, analog, digital, HD). Cox shall not be responsible for the quality of the original programming provided by a PEG User.

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND
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7(b): Access Channel Assignment

(2) Cox shall not arbitrarily or capriciously change PEG Channel assignments, and Cox shall take reasonable steps to minimize the number of such changes. Cox may change PEG Channel assignments as it deems appropriate so long as (i) Cox gives the PEG Channel User 90 days' notice of such change, and (ii) Cox provides the PEG Channel User with advertising time, free of charge, to make 30-second public service announcements of such changes. Such advertising time shall be provided for two minutes per day in prime time for the 30 days prior to such change.

(3) If and when Cox converts PEG Channels from analog to a digital-only format, Cox shall ensure that such PEG Channel assignments are displayed on set-top boxes at the same Channel assignments as when they were transmitted in analog format (except to the extent provided in the following subsection 7(b)(4)).

(4) If Channels of certain formats (such as HD) are grouped together in certain ranges of Channel assignments or other similar sets, Cox shall make reasonable efforts to include the PEG Channel assignments in such groupings, so that, for example, a Subscriber who is traversing the series of HD Channels will find any HD PEG Channels within that series.

(5) Each PEG HD Channel shall be displayed on HD set-top boxes with an HD Channel assignment corresponding to the original digital set-top Channel assignment (for example, if HD Channels are shown with four-digit numbers and the last two digits are generally the same as the digital Channel number, the HD form of Channel 16 shall be assigned to 1016). If, however, the PEG Channel is reassigned pursuant to Section 7(b)(2) and the corresponding HD Channel number for a PEG Channel is already assigned to a different Channel, Cox and the

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND
GOVERNMENTAL USE
7(c): PEG On Demand

County shall cooperate to determine an appropriate HD assignment for the PEG Channel. In that case, if the corresponding HD Channel number should become available, the County may require Cox to reassign that location to the corresponding PEG Channel. Cox shall notify Subscribers of such relocations as required by FCC regulations.

(c) *PEG On Demand*

(1) Cox shall provide the County with capacity to air PEG programming on Cox's "on-demand" system ("PEG On Demand"). Such programming may be accessed by Subscribers through the interface used for Cox's on-demand programming on Cox's Cable System.

(2) Cox shall provide storage capacity for PEG On Demand as follows:

- (A) 120 days after the Effective Date, 30 hours in the aggregate for all PEG programmers;
- (B) An additional five hours in the aggregate each year on each anniversary of the Effective Date, up to a maximum of 100 hours.

The County and Cox may by mutual agreement arrange for additional capacity on terms to be determined at the time of agreement.

(3) New PEG On Demand programming may be delivered by the PEG User no more often than once every two weeks, or otherwise as mutually agreed. Such programming shall be delivered to an encoding firm approved by Cox; such approval shall not be unreasonably withheld. The PEG User shall be responsible for all costs associated with the encoding and

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND
GOVERNMENTAL USE
7(c): PEG On Demand

delivery of the programming to Cox. Cox shall not be required to encode PEG On Demand programming. The encoding party shall be responsible for the quality of the encoded product.

(4) The County shall determine the amounts of PEG On Demand capacity available to each PEG User.

(5) Cox shall make the PEG On Demand available to all Subscribers that are capable of ordering on-demand programming, free of charge and without advertising.

(6) Cox shall not restrict PEG On Demand availability to on-demand Subscribers.

(7) Cox shall store and transmit the PEG On Demand programming with quality equal to the storage and transmission quality of any similar commercial channel of the same format (for example, analog, standard-definition digital, or HD). Cox shall not be responsible for the quality of the original programming provided by the PEG User to Cox.

(8) Cox shall make the PEG On Demand available with the same menu, selection, search, and recording capabilities for Subscribers as it provides for commercial on-demand programming, and the process of selecting PEG On Demand shall be the same as that for commercial on-demand programming, except to the extent otherwise agreed by the County and Cox.

(9) Cox shall use its best efforts to ensure that PEG On Demand shall be available for viewing on Cox's Cable System as soon as possible, but at least by five business days after the programming is submitted to Cox.

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

7(d): Grants for PEG Access

(10) Upon request, Cox shall provide aggregate data regarding Subscriber use of the PEG On Demand, including but not limited to the number and time of viewings for each program. No Subscriber's personally identifiable information shall be included in such reports.

(d) Grants for PEG Access

(1) Cox shall provide grants in amounts in the aggregate totaling 3% for each quarter of Cox's Gross Revenues for that quarter ("PEG Grants"). The PEG Grants may be used for any purpose permitted under federal and state law.

(2) The PEG Grants shall be paid to the County on a quarterly basis with such payments being made no later than 30 days following the end of each quarter.

(3) Cox shall provide payments to PEG Users that shall be subtracted from the amount otherwise payable to the County by Cox in accordance with Section 7(d)(2), in amounts in the aggregate totaling 0.96% of Cox's Gross Revenues for each quarter, with such payments being made no later than 30 days following the end of each quarter and divided and distributed as follows:

(A) Paid to George Mason University: 0.08 percent of Gross Revenues;

(B) Paid to Northern Virginia Community College: 0.08% of Gross Revenues;

(C) Paid as set forth in Sections 7(a)(3) and 7(a)(4): 0.8 percent of Gross Revenues.

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND
GOVERNMENTAL USE

7(e): Return Feed from Facilities

(4) If Cox and the County disagree at any time as to the amounts due under this subsection (d), Cox shall continue paying the specified grants in the amounts paid in the last undisputed payment during the period of any such dispute, provided, however, that the County shall return any such amounts paid to the County that are later determined to be in excess of the correct amounts.

(5) Cox shall not make any reduction in the PEG Grants based on non-cash benefits provided pursuant to the Franchise.

(6) The Communications Administrator shall provide Cox with an annual written statement, no later than January 31 of each year, confirming that all funds received by the County from the PEG Grants used during the preceding calendar year have been used in a manner consistent with federal and state law.

(e) Return Feed from Facilities

(1) Cox shall provide without charge signal transport by means of dedicated, fully fiber optic links between the headend and the PEG access origination sites specified in Appendix 2 (the "PEG Origination Site Appendix") so that signals can be generated at these sites and routed onto an appropriate access channel. Such signal transport shall be in addition to any required capacity on the HSN and shall not be part of the I-Net specified in Section 7(1), although the fiber links may at Cox's option be emplaced together with those carrying the I-Net. Such signal transport provided by Cox shall include all equipment necessary for amplification, optical conversion, receiving, transmitting, switching, and headend processing of upstream PEG signals from the studio at each PEG origination site in the formats specified in Section 7(a)(5). Should

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

7(f): Use of PEG Channels, Facilities and Equipment

the PEG User request signal transport equipment that is of greater cost than Cox's proposed equipment meeting the requirements specified herein, Cox shall credit its proposed equipment cost to the PEG User and the PEG User shall assume any additional cost of such requested equipment, including but not limited to equipment spares, service plans, and increased cost of maintenance and repair. Notwithstanding the foregoing, all such equipment, including but not limited to the fiber electronics at the PEG studio, shall be installed, repaired, and maintained in good working order by Cox on Cox's side of the Demarcation Point, provided, however, that Cox shall not be responsible for the cost of repairing any damage caused by the operator of the PEG studio or its agents or invitees. Cox's obligation with respect to such signal transport shall be dependent on the operator of the PEG origination site's providing Cox, without charge, with such space, electrical power supply, access, and other facilities and cooperation as shall be necessary to allow Cox to fulfill its duties under this Agreement with respect to such signal transport. The dedicated channels may be multiplexed into backbone fiber rings at the hub or node nearest to the origination site for return to the headend.

(2) Cox shall transmit the PEG Access feeds from the Demarcation Point to the headend in such a manner as to comply with FCC technical standards and with no significant deterioration in the quality of PEG Access signals, using dedicated capacity sufficient for high-quality transmission of the format used by the PEG User.

(f) Use of PEG Channels, Facilities and Equipment

(1) The County, or the entity that manages a PEG Channel, shall be able to establish and enforce rules and procedures for use of the PEG Channels pursuant to Section

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

7(g): Connections to Government Facilities

611(d) of the Cable Act, 47 U.S.C. § 531(d). The County shall decide any disputes among PEG users regarding allocation of PEG Channels.

(2) Cox will provide headend and distribution facilities for downstream transmission of the PEG Channels on the HSN, with respect to the PEG channels specified in Section 7(a), at no charge to the County or other PEG access programmers.

(3) The County or its licensees, assigns, or agents shall not transmit on PEG Channels commercial programming or commercial advertisements to the extent that they would constitute competition with Cox for such commercial programming or commercial advertisements, subject to the following:

(A) For purposes of this subsection, "commercial programming or commercial advertisements" shall mean programming or advertisements for which the County receives payment from a third party (a party other than the County or Cox), but shall not include announcements indicating that programming is underwritten by a commercial entity, such as the underwriting announcements typically displayed by the Public Broadcasting System.

(B) For purposes of this Section 7(f)(3), "the County" shall be deemed to include the Fairfax County Public Schools.

(g) *Connections to Government Facilities*

(1) Cox will provide the following, at no charge, at each fire station, public school, police station, public library, and such buildings used for public purposes as may be designated by the County; provided, however, that if it is necessary to extend Cox's trunk or feeder lines more than 300 feet solely to provide service to any such school or public building,

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND
GOVERNMENTAL USE

7(g): Connections to Government Facilities

the County shall have the option of paying the lower of any contract Cox may have with the County for such services or Cox's costs for such extension in excess of 300 feet itself, or of releasing Cox from or postponing Cox's obligation to provide service to such building:

- (A) one service drop of the HSN;
- (B) one HSN Subscriber converter per site; and
- (C) Basic Cable Service and the most highly subscribed tier of non-

basic service (not including any video programming offered on a per channel or per program basis).

(2) Cox shall deliver all HSN signals to each such HSN drop at 15 dBmV or better, measured at the Demarcation Point.

(3) The County shall be responsible for the cost of converters that are in addition to those required in 7(g)(1)(B) and any "terminal equipment," including TV monitors, VCRs, and/or computers.

(4) The cost of inside wiring, additional drops or outlets, and additional converters requested by the County within these specified facilities, including those drops or outlets in excess of those currently installed, are the responsibility of the County. Cox shall not be responsible for any violations of FCC technical standards on the County's side of the Demarcation Point. After reasonable notice under the circumstances, Cox may temporarily disconnect its service to a County site that does not correct such violations of FCC technical standards until such time as such violations are corrected.

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND
GOVERNMENTAL USE

7(g): Connections to Government Facilities

(5) Subject to the limitations set forth in this subsection 7(g), whenever required by changes in Cox's technology, Cox shall upgrade all equipment provided at Cox's expense pursuant to this subsection 7(g), in order to ensure that the County can continue to receive the services offered by Cox to the County pursuant to this Franchise Agreement.

(6) Notwithstanding the preceding subsections of this subsection 7(g), in any location where the County has an I-Net connection to a site, the services specified in section 7(g)(1)(C) shall be provided by the County via the I-Net, and Cox shall not be required to provide an HSN connection pursuant to this Agreement. Cox shall provide the services specified in 7(g)(1)(C), as specified by the County pursuant to Section 7(g)(6)(D), at the County's I-Net headend located on the property of Cox's Master Telecommunications Center for the purpose of County distribution over the I-Net.

(A) Cox shall provide the signals specified in section 7(g)(6) at the I-Net headend with transmission quality equal to the transmission quality of any similar commercial channel of the same format (for example, analog, standard-definition digital, HD) distributed on the HSN.

(B) Cox shall provide the services specified in section 7(g)(6) at the I-Net headend unscrambled and unencrypted, so that they can be received at the I-Net sites without a need for converters or other Cox equipment. Cox shall not be required to provide converters pursuant to Section 7(g)(1)(B) upon the successful conclusion of the acceptance procedure set forth in subsection 7(g)(6)(H).

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GOVERNMENTAL USE

7(g): Connections to Government Facilities

(C) The County shall not retransmit Cox's video programming received at the I-Net headend to any location other than buildings served by the I-Net, or to any party other than parties authorized to use the I-Net; provided, however, that normal use of County public sites such as libraries and schools by members of the public shall be considered consistent with this Agreement.

(D) Cox shall provide the services specified in section 7(g)(1)(C), or such subset of those services as the County shall specify, in the Channel lineup requested by the County. The County may request changes to the Channel lineup not more than once in any six-month period. Changes in Cox's HSN Channel lineup shall not affect the I-Net Channel lineup.

(E) Messages from the Emergency Alert System, or successor system, shall be inserted by Cox at the I-Net headend, or prior to that point, so that such messages will be received as part of the signal at all I-Net sites.

(F) The County shall bear the capital cost of the equipment needed to receive, decode, and arrange the signals so that they can be retransmitted over the I-Net. Cox's good-faith estimate of the necessary equipment and installation costs is \$364,391. The equipment and installation costs shall be established pursuant to County contract XX12-225033-42A as part of the Transition Plan defined in Section 7(g)(6)(H).

(G) If Cox or the County obtains the right for the County to receive programming unencrypted in advanced formats, including but not limited to high definition or IP (Internet Protocol), then the County may require Cox to provide the signals at the I-Net headend

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

7(g): Connections to Government Facilities

in such advanced format. Cox shall cooperate with the County in good faith to assist the County in obtaining such permission.

(H) Within six months after the Effective Date, Cox and the County shall agree upon a transition plan stating the steps that must be completed by both parties to implement this subsection 7(g)(6) (“Transition Plan”). The Transition Plan shall specify a schedule to complete the implementation of this subsection 7(g)(6) within two years after the Effective Date, subject to Force Majeure conditions as defined herein. The Transition Plan shall include a mutually agreed-upon acceptance procedure to confirm that the County is receiving the services specified in subsection 7(g)(6)(D) at the County’s I-Net headend pursuant to this Section 7(g)(6), and that the services are able to be distributed on the I-Net, to the reasonable satisfaction of both parties. The I-Net connectivity specified in subsection 7(g)(6) shall not supersede the obligations of subsections 7(g)(1)-(5) until the unencrypted solution specified in subsection 7(g)(6) has been implemented, tested, and accepted pursuant to such procedure.

(I) At any site where subsection 7(g)(6) applies, nothing shall prevent that site from making arrangements with Cox, independent of this Agreement, for HSN Subscriber service, at the Subscriber’s cost and pursuant to Cox’s normal business practices.

(7) Notwithstanding the provisions of section 7(g)(6), Cox shall provide the HSN connection and services specified in section 7(g)(1) and 7(g)(2) at the following addresses:

- (A) County Government Center, 12000 Government Center Parkway,
Fairfax, VA 22035;

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND
GOVERNMENTAL USE

7(h): Backup Facilities and Equipment

- (B) the McConnell Public Safety and Transportation Operations Center at 4890 Alliance Drive, Fairfax, VA 22030;
- (C) the Sprague Technology Center at 4414 Holborn Avenue, Annandale, VA 22003;
- (D) Gatehouse Administration Center I, 8115 Gatehouse Road, Falls Church, VA 22042;
- (E) Wilton Woods Administrative Center, 3701 Franconia Road, Alexandria, VA 22310;
- (F) George Mason University, 4400 University Drive, Fairfax, VA 22030;
- (G) Northern Virginia Community College, 8333 Little River Turnpike, Annandale, VA 22003.
- (H) Fairfax Public Access, 2929 Eskridge Road, Suite S, Fairfax, VA 22031;

(h) *Backup Facilities and Equipment.* Cox shall design, build, and maintain PEG signal transport links so that such feeds function as reliably as Cox's Cable System as a whole, and are no more likely to fail than is Cox's Cable System to fail as a whole.

(i) *Editorial Control.* Except as expressly permitted by federal law, Cox shall not exercise any editorial control over the content of programming on the Public, Educational and Governmental Access Channels (except for such programming as Cox may cablecast on such Channels).

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND
GOVERNMENTAL USE

7(j): Carriage of PEG Programming

(j) Carriage of PEG Programming

(1) Except as otherwise provided herein, or by agreement between Cox and the County, Cox shall provide any PEG Channels as part of Basic Cable Service throughout the life of the Franchise. If there is no Basic Cable Service, Cox shall provide the PEG Channels as part of the service provided to every Subscriber, at no additional charge to Subscribers or the County. If Channels are selected through a menu system, the PEG Channels shall be displayed as prominently as commercial programming choices offered by Cox. Cox shall provide the PEG Channels with the same functionality that it provides for commercial Channels, except for viewership tracking capabilities.

(2) To the extent Cox makes local commercial video programming available to its Subscribers through a viewing device other than a television as a part of or conditioned on a subscription to Basic Cable Service in the County, Cox shall include PEG Channels on the same terms and conditions as it provides local commercial broadcast programming at no additional charge to Subscribers, the County, or PEG Users. The PEG User shall be responsible for providing Cox with the PEG Channel programming in a format used by Cox to display broadcast programming on such alternative devices, at the PEG User's cost. Cox shall not be required to include PEG Access programming in limited trials or experimental offerings on such platforms.

(k) Program Guides. The parties acknowledge that Cox contracts with a third party or parties to provide on-screen and on-line program listings. Cox shall provide the County with information about the service provider(s) so that detailed program information for each PEG

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND
GOVERNMENTAL USE

7(1): Institutional Network

Channel can be included in the on-screen and online listings. It shall be the responsibility of each PEG User to provide such detailed program information to the third-party entity or entities that produce such listings for Cox in accordance with each such entity's normal format and scheduling requirements. Cox shall not be liable for any errors or omissions caused by such third party. Within 60 days after the Effective Date, Cox shall provide the County with a payment of \$9,453.60, representing the cost of providing the County's Channel listings during the Term. Cox and the County stipulate that such payment constitutes capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities. Cox shall cooperate in good faith with the County to include PEG Channel listings, at Cox's cost, in any printed programming guide it provides to Subscribers that contains Channel listings of commercial Channels. PEG Channels and programming shall be listed in a substantially similar manner and placement to that of commercial Channels, including individual program descriptions, in a nondiscriminatory manner.

(1) *Institutional Network*

(1) Cox shall construct and maintain the institutional network, an integral part of Cox's Cable System, which shall be paid for by the County, linking public, educational, and governmental facilities in the County (the "Network" or "I-Net"), in accordance with the conditions set forth in Appendix 1 and this Franchise Agreement.

(2) The parties stipulate that the Recurring Maintenance Charge defined in Appendix 1 is a capital cost required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities for purposes of 47 U.S.C. § 542(g)(2)(C).

7: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND
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7(m): Costs and Payments Not Franchise Fees

(m) *Costs and Payments Not Franchise Fees.* Cox waives any claims that any costs to Cox associated with the provision of support for PEG access (including the I-Net) pursuant to this Franchise Agreement, including but not limited to the PEG Grants and the Recurring Maintenance Charge defined in Appendix 1, constitute franchise fee payments within the meaning of 47 U.S.C. § 542.

8 PAYMENTS BY COX

(a) Payment to County

(1) The parties acknowledge that as of the Effective Date of this Agreement, the County is prohibited by state law from imposing a Franchise Fee, as described in 47 U.S.C. § 542, as long as cable services are subject to the Virginia Communications Sales and Use Tax (§ 58.1-645 et seq.) (the “Communications Sales and Use Tax”).

(2) Cox shall comply with the provisions of the Communications Sales and Use Tax in its current form and as it may be amended.

(3) If at any time during the Term state law allows the imposition of a Franchise Fee on cable operators in Virginia, the County may, to the extent allowable under applicable law, upon 60 days’ written notice, or as otherwise provided by law, require Cox to pay to the County, on a quarterly basis, a Franchise Fee of five percent of Gross Revenues, or such other sum as permitted under law. Such payments shall be made no later than 30 days following the end of each quarter. Cox shall not be required to pay such Franchise Fee unless the obligation is imposed on all franchised cable operators in the County to the extent permitted under law.

(b) Supporting Information. Each PEG Grant or Franchise Fee payment to the County or PEG Grant payment pursuant to Section 7(d)(3) shall be submitted with supporting detail and a statement certified by Cox reflecting the total amount of monthly Gross Revenues for the payment period and a breakdown by major revenue categories (such as basic service,

cable programming service, and premium service). An example of such detail is shown in Appendix 5. The County shall have the right to reasonably require further supporting information.

(c) *Late Payments.* In the event any payment by Cox due and owing to the County is not made on or before the required date, Cox shall pay any applicable penalties and interest charges computed from such due date, as provided for in the Cable Ordinance.

(d) *Audit*

(1) The County shall have the right to inspect books and records and to audit and recompute any amounts determined to be payable under this Agreement, whether the records are held by Cox, an Affiliate, or any other agent of Cox.

(2) Cox shall be responsible for making available to the County all records necessary to confirm the accurate payment of the PEG Grant or Franchise Fees, as applicable, without regard to by whom they are held. Such records shall be made available pursuant to the requirements of Sections 9(a) and 9(g) herein.

(3) The County's audit expenses shall be borne by the County unless the audit discloses an underpayment of more than three percent of any quarterly payment, in which case the County's reasonable out-of-pocket costs of the audit shall be borne by Cox as a cost incidental to the enforcement of the Franchise. Any additional undisputed amounts due to the County as a result of the audit shall be paid within 30 days following written notice to Cox by the County of the underpayment, which notice shall include a copy of the audit report. If

recomputation results in additional amounts to be paid to the County, interest will be due pursuant to Section 8(c).

(4) The County shall have three years from the time the County receives a PEG Grant or Franchise Fee payment to question that payment, and if the County fails to question the payment within that time period, the County shall be barred from questioning it after that time period. If the County gives written notice to Cox within that three-year period, the three-year period shall be tolled for one year to allow the County to conduct an audit. Any legal action by either party relating to a PEG Grant or Franchise Fee payment will toll the remaining term, if any, of the three-year time period and the one-year audit period with respect to that payment.

(e) No Limitation on Taxing Authority

(1) Nothing in this Agreement shall be construed to limit any authority of the County to impose any tax, fee, or assessment of general applicability.

(2) Any Franchise Fee payments imposed pursuant to Section 8(a)(3) shall be in addition to any and all taxes of a general nature or other fees or charges which Cox shall be required to pay to the County or to any state or federal agency or authority, as required herein or by law, all of which shall be separate and distinct obligations of Cox. Cox shall not have or make any claim for any deduction or other credit of all or any part of the amount of any such Franchise Fee payments from or against any of said County taxes or other fees or charges which Cox is required to pay to the County, except as required by law or provided for in this Franchise Agreement. Cox shall not apply nor seek to apply all or any part of the amount of any such

Franchise Fee payments as a deduction or other credit from or against any of said County taxes or other fees or charges, each of which shall be deemed to be separate and distinct obligations of Cox. Nor shall Cox apply or seek to apply all or any part of the amount of any of said taxes or other fees or charges as a deduction or other credit from or against any of its Franchise obligations, each of which shall be deemed to be separate and distinct obligations of Cox. Cox may designate any Franchise Fee as a separate item in any bill to a Subscriber of Cox's Cable System, but shall not designate or characterize it as a tax. If applicable federal or state law requires any such Franchise Fee to be treated otherwise than as specified in this paragraph, then such applicable law shall control.

(f) *No Accord and Satisfaction.* The acceptance of any payment by the County pursuant to this Agreement shall not be construed as an acknowledgment or an accord and satisfaction that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release or waiver of any claim which the County may have for additional sums due and payable. However, the County's acceptance of full payment of the amount determined to be due by the County through an audit shall be construed as an accord and satisfaction.

(g) *Notice of Changes in Methodology.* If Cox proposes to change its methodology for calculating or paying the PEG Grants, or any Franchise Fee, or its methodology for itemizing the fee or passing any amounts through to Subscribers (where applicable), Cox shall first provide written notice to the Communications Administrator explaining the nature of the change, the reason for the change, and the effect of the change on the amounts paid to the County.

9 REPORTS AND RECORDS

(a) *Books and Records*

(1) Subject to applicable law, and upon written notice, which shall include a reasonable time to respond, Cox shall expeditiously provide the County with information contained in any books, maps, records, or other documents, in whatever form maintained, including electronic media (“books and records”) held by Cox or an Affiliate, to the extent such books and records relate to Cox’s Cable System or to Cox’s provision of Cable Service to Subscribers in the County. Such a request shall specify the purpose of the request. Cox shall not be required to process information to create a report, summary, or digest of information contained in its books and records, other than those required by Section 9(c) through 9(e). “Reasonable time to respond” may be up to 30 days depending on the complexity of the response.

(2) The County may require Cox to provide copies of documents containing the requested information. If the County’s request involves voluminous copies, Cox may instead provide the County access to review the documents at Cox’s local business office in the County.

(3) The County shall take reasonable steps to protect proprietary and confidential information or books and records provided by Cox to the extent Cox designates such information or books and records as such. To the extent that such books and records are proprietary and/or confidential pursuant to the Virginia Uniform Trade Secrets Act or other

applicable law, the County shall have the right to inspect them, and Cox shall provide them, at a mutually agreed location within the County.

(4) Cox shall keep complete and accurate books of account and records of its business and operations under and in connection with this Franchise Agreement.

(5) Unless otherwise provided in this Agreement, all materials and information specified in this Section shall be maintained for a period of five years.

(6) Notwithstanding the foregoing, nothing in this Section 9 shall require Cox to violate federal or state laws protecting subscriber privacy.

(7) To the extent Section 9.1-4-1(b)(6) of the Cable Ordinance refers to the Communications Administrator's power to require the preparation and filing of information, such power shall extend only to the extent provided in Section 9 of this Agreement.

(8) The County's right of access to information pursuant to Section 9.1-6-2(a) of the Cable Ordinance shall be exercised pursuant to the conditions specified in Section 9 of this Agreement.

(b) Communication with Regulatory Agencies

(1) Within 15 days, Cox shall file with the County a copy of any document filed by Cox with a regulatory agency (other than publicly available information) that materially and expressly pertains to the County with respect to the provision of Cable Service. In addition, Cox must provide the County (upon request) any document Cox files or receives from any regulatory agencies.

(2) Section 9(b)(1) shall apply in place of Section 9.1-6-3(a) of the Cable Ordinance.

(c) *Annual Report.* Unless this requirement is waived in whole or in part by the Communications Administrator, no later than April 30th of each year during the Term, Cox shall submit a written report to the County, in a form reasonably satisfactory to the County, which shall include the following information for the year just ended:

(1) a summary of complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions, as such records are kept by Cox. Where Cox has identified recurring Cable System problems, the nature of any such problems and the corrective measures taken or to be taken shall be identified;

(2) A copy of Cox's then-current rules, regulations, and policies that are (A) available to Cox's Subscribers or (B) considered by Cox to be legally binding on Subscribers, including but not limited to (i) all Subscriber rates, fees, and charges; (ii) a copy of Cox's service agreement, or the equivalent, for Cable Services; and (iii) a copy of, or a detailed summary of, Cox's policies concerning (a) the processing of Subscriber complaints; (b) delinquent Subscriber disconnect and reconnect procedures; and (c) Subscriber privacy;

(3) the number of Subscribers receiving Cox's Basic Cable Service as of the end of each calendar quarter;

(4) If applicable, a list of Persons, including all entities controlling such Persons, holding five percent or more of the voting stock or interests of Cox, or its parents, or Cox's subsidiaries, if any;

(5) A list of officers and members of the Board of Directors of Cox, or similar officers if Cox is not a corporation;

(6) A copy of Cox's annual report, if there is such a report, and those of Cox's parents and subsidiaries, if any; and

(7) To the extent that such information is publicly available on Cox's website or has been previously provided to the County, Cox may satisfy the requirement by including in the report hyperlinks or other references identifying where that information may be found.

(d) *Quarterly Report.* Unless this requirement is waived in whole or in part by the Communications Administrator, no later than 30 days after the end of each calendar quarter during the Term, Cox shall submit a written report to the County, in a form reasonably satisfactory to the County, which shall include:

(1) A report showing the number of service calls received by type during that quarter, including any property damage to the extent such information is available to Cox, and any line extension requests received during that quarter, as such records are kept by Cox.

(2) A report showing the number of outages for that quarter, and identifying separately each planned outage of one or more nodes for more than one hour at a time, the time it occurred, its duration, and the tax map area and, when available to Cox, number of homes affected; and, when Cox can reasonably determine that at least 500 homes were affected, each unplanned outage affecting more than 500 homes for more than one hour, the time it occurred, the reason for the disruption and its causes, its estimated duration and the tax map area and, when available to Cox, the number of homes affected.

(3) A report showing Cox's performance with respect to all applicable customer service standards. Cox shall keep such records as are reasonably required to enable the County to determine whether Cox is substantially complying with all such customer service standards, and shall maintain adequate procedures to demonstrate such substantial compliance.

(4) To the extent that such information is publicly available on Cox's website or has been previously provided to the County, Cox may satisfy the requirement by including in the Report hyperlinks or other references identifying where that specific information may be found.

(e) *Special Reports.* Unless this requirement is waived in whole or in part by the County, Cox shall deliver the following special reports to the County not more than 10 business days after the occurrence of the event:

(1) A copy and full explanation of any notice of deficiency, forfeiture, or other document relating to Cox issued by any state or federal agency if such notice or other document would require Securities and Exchange Commission Form 8(k) disclosure or would require footnote disclosure in the annual financial statements of Cox or a parent.

(2) A copy and brief explanation of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by Cox or by any partnership or corporation that owns or controls Cox directly or indirectly.

(f) *I-Net Maps*

(1) Cox shall provide the County with full GIS data regarding the I-Net, in a format that can readily be translated for use in the County's GIS system, and shall update such

information upon completion of an I-Net construction project if it results in changes to the IRU Fibers (as defined in Appendix 1). The GIS data should include fiber count, splice enclosures and any other cabinets or fixtures to the extent they are identified in the Cox GIS records for the I-Net, and identify the I-Net site. To the extent available in the Cox GIS records for the I-Net, Cox shall provide the GIS data with sufficient precision that it is clear where the fiber is located in the rights-of-way and other property (for example, which side of the street, aerial or underground), and shall identify the coordinate system used.

(2) The GIS data required in Section 9(f)(1) constitute engineering records that reveal the location of telecommunications or utility equipment and systems; information relating to the design of a local and regional communications system similar to the Statewide Agencies Radio System (STARS); and engineering and construction drawings that reveal critical structural components, interconnectivity, and other utility equipment related to a local and regional communications system similar to STARS, the disclosure of which would jeopardize the security of governmental facilities and structures. The County and Cox shall accordingly take reasonable steps to protect the GIS data from disclosure to other parties or to unauthorized County employees.

(3) The updated map requirements in this Section 9(f) shall apply in place of those in Section 9.1-6-2(g) of the Cable Ordinance.

(g) *Records Required*

(1) Cox shall maintain, in accordance with its normal record retention policies, those records required to support the reports required by Sections 9(c) through 9(e) hereof, including but not limited to:

(A) Records of all complaints. The term "complaints" as used herein and throughout this Agreement refers to complaints recorded through Cox's normal procedures about any aspect of Cox's Cable System or Cox's operations, including, without limitation, complaints about employee courtesy. Complaints recorded may not be limited to complaints requiring an employee service call.

(B) A full and complete set of plans, records, and "as built" maps showing an accurate location for all equipment of Cox's Cable System installed or in use in the County, exclusive of Subscriber service drops.

(C) Records of outages, indicating date, duration, tax map area, and the estimated number of homes affected, type of outage, and cause.

(D) Records of service calls for repair and maintenance indicating the date and time service was required, the date and time service was scheduled (if it was scheduled), and the date and time service was provided.

(E) Records of installation/reconnection and requests for service extension, indicating date of request, and the date and time service was extended.

(F) Records sufficient to enable County review of all allocation of Gross Revenues among bundled services, for the time period specified in Section 9(a)(5).

(2) Upon expiration of the Prior Franchise, the record retention provisions in this Agreement shall apply in place of those specified in Section 9.1-6-2(c) of the Cable Ordinance.

(h) Waiver of Reporting Requirements

(1) The Communications Administrator or his designee may, at the sole discretion of the Administrator or the Administrator's designee, waive in writing the requirement of any particular report specified in this Section 9.

(2) Pursuant to Section 9.1-6-3(c), (d), and (e) of the Cable Ordinance, the County hereby waives the requirements of those sections in favor of the requirements of Sections 9(b)(2), 9(d), and 9(e) of this Agreement.

10 CUSTOMER SERVICE STANDARDS AND CONSUMER PROTECTION*(a) Generally*

(1) This Section 10 sets forth minimum customer service standards that Cox must satisfy. In addition, Cox shall at all times satisfy any additional or stricter requirements established by FCC regulations, or other applicable federal, state, or local law or regulation, as the same may be adopted or amended from time to time.

(2) Nothing in this Agreement may be construed to prevent or prohibit:

- (A) the County and Cox from agreeing to customer service requirements that exceed the standards set forth in this Agreement;
- (B) the County from enacting or enforcing any customer service or consumer protection laws;
- (C) the establishment or enforcement of any County law concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in this Agreement or federal, state, or local law; or
- (D) the County from waiving, for good cause, requirements established in this Section 10.

(3) Cox acknowledges the County may enact and enforce customer service or consumer protection laws pursuant to the Cable Act.

(b) Definitions

10: CUSTOMER SERVICE STANDARDS AND CONSUMER PROTECTION
10(c): Compliance with Federal Law

(1) *Next Billing Cycle*: As used in 47 C.F.R. § 76.309(c)(3)(i)-(ii) and in this Agreement, means the Subscriber's next available billing cycle.

(2) *Resolution of the Request*: As used in 47 C.F.R. § 76.309(c)(3)(i)(A), means determination by Cox of the Subscriber's right to a refund.

(3) *Return of the Equipment*: As used in 47 C.F.R. § 76.309(c)(3)(i)(B), a Subscriber's equipment is considered returned when Cox has accepted the condition of the equipment and billed for any outstanding charges, all of which shall be completed no later than the Subscriber's Next Billing Cycle.

(4) *Standard Installation*: Installations where the Subscriber's premises are within 200 feet of the serving terminal, or the edge of the property, whichever is less.

(c) *Compliance with Federal Law*

(1) Cox shall comply with the customer service standards set forth in 47 C.F.R. §§ 76.309(c), 76.1602, 76.1603, and 76.1619, as such standards may be amended from time to time.

(2) Measurement of the standard in 47 C.F.R. § 76.309(c)(1)(ii) may include all calls received by Cox at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting.

(3) For purposes of 47 C.F.R. § 76.309(c)(1)(ii), if a call is answered by an automated attendant, the call transfer time standard shall be satisfied for a given call if the automated attendant system includes an option to speak to a service representative, that option is

presented to the caller within the first 90 seconds from the time the call is answered by the automated attendant, and the caller is not required to wait more than 30 seconds to be connected to a service representative after exercising the option to speak to a service representative.

(d) Additional Requirements

(1) No increase in rates or charges shall be implemented unless each Subscriber subject to the increase in rates and charges has been notified of the change at least 60 days in advance of the change. In lieu of providing 60 days written or electronic notice to each Subscriber subject to the increase, notification may be cablecast to Subscribers by Cox in a manner approved by the Communications Administrator, which approval shall not unduly be delayed or withheld; but in the event a cablecast notice is provided to Subscribers, Cox also shall give each Subscriber subject to the increase written notice of the increase no less than 30 days before the increase is implemented. In addition, Cox shall provide oral or written notification of any pending increases to rates and charges to any Person who requests Cable Service or becomes a Subscriber after any approval of increases to rates and charges but before the rate increase becomes effective.

(2) Cox shall employ an operator or maintain a telephone answering device twenty-four hours per day, each day of the year, to receive Subscriber complaints and answer inquiries during Normal Business Hours.

(3) Cox shall maintain a location within the Franchise Area that shall be open and accessible to the public to make payments, to pick up or drop off equipment, and to make inquiries during Normal Business Hours. In order to allow Cox to efficiently pick up equipment

10: CUSTOMER SERVICE STANDARDS AND CONSUMER PROTECTION

10(d): Additional Requirements

and for Subscribers to easily drop off Cox's equipment, Cox may satisfy the foregoing pick-up and drop-off requirement by having a Cox representative go to the Subscriber's residence, by using a pre-paid mailer, or by establishing a local business office in the County.

(4) Cox shall establish maintenance service capable of promptly locating and correcting a system malfunction that would require the report of an unplanned outage pursuant to Section 9(d)(2).

(5) Cox shall maintain a publicly-listed, local toll-free telephone number that shall be available to Subscribers to request service calls, twenty-four hours per day, each day of the year. Under Normal Operating Conditions, Cox shall respond not later than the next business day after a service call is received, and corrective action shall be completed as promptly as practicable. Appropriate records shall be made of service calls, showing when and what corrective action was completed.

(6) If requested by a mobility-limited Subscriber, Cox shall arrange for pickup and/or replacement of converters or other Cox equipment at the Subscriber's address or by a satisfactory equivalent.

(7) In the event that Cox fails to provide service to Subscribers for more than twenty-four hours, Cox shall provide the affected Subscribers with a pro rata credit or rebate of the Subscriber's fees paid or payable, upon request by a Subscriber.

(8) Cox shall maintain a public file containing all notices provided to Subscribers under these customer service standards. The notices shall be placed promptly in the public file and maintained for at least one year from the date of the notice.

10: CUSTOMER SERVICE STANDARDS AND CONSUMER PROTECTION

10(d): Additional Requirements

(9) Cox shall establish a clear procedure for resolving complaints filed by Subscribers. Complaints may be made orally or in writing, at the complainant's option.

(10) Cox shall provide an initial response to a complaint within five days of its receipt and a final response within 30 days after a written complaint is received. At the time of installation, upon request, and annually, Cox shall provide all Subscribers the Communications Administrator's contact information.

(11) Cox shall, when practicable, schedule and conduct maintenance on the Cable System so that interruption of service is minimized and occurs during periods of minimum Subscriber use of the Cable System. Cox shall provide reasonable prior notice to Subscribers and the County before interrupting service for planned maintenance or construction, except where such interruption is expected to be two hours or less in duration. Such notice shall be provided by methods reasonably calculated to give Subscribers actual notice of the planned interruption.

(12) If a Subscriber or other County resident submits a dispute or disagreement with Cox to the County's Department of Cable and Consumer Services, Cox will cooperate in good faith with nonbinding mediation by the County. If Cox and the Subscriber or resident agree to request the County to arrange for binding arbitration, the County may assist in such arrangements.

(13) If the County or a Subscriber requests a cost estimate for a line extension or drop installation, Cox shall provide such estimate within 30 business days, without charge to the Subscriber or the County. Such an estimate shall include the calculation of density, a design,

and a breakdown of the cost, including but not limited to materials and labor, as worked out by Cox.

(e) *Virginia Consumer Protection Act.* The customer service standards set forth herein shall be in addition to the rights and remedies provided by the Virginia Consumer Protection Act of 1977, as amended.

11 INSURANCE, SURETY, AND INDEMNIFICATION*(a) Insurance Required*

(1) Cox shall maintain, and by its acceptance of the Franchise specifically agrees that it will maintain, throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the County and Cox: (i) commercial general liability insurance with respect to the construction, operation, and maintenance of Cox's Cable System, and the conduct of Cox's business in the County, in the minimum amounts of \$2,000,000 per occurrence; \$2,000,000 aggregate for each occurrence; and (ii) copyright infringement insurance in the minimum amount of \$2,000,000 for copyright infringement occasioned by the operation of Cox's Cable System.

(2) Such commercial general liability insurance shall include coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

(3) The County may review these amounts and shall have the right to require reasonable adjustments to them consistent with the public interest.

(4) Cox shall be solely responsible for the payment of premiums due for each policy of insurance required pursuant to this Agreement and the Cable Ordinance.

(b) Endorsements. All insurance policies and certificates maintained pursuant to this Agreement shall contain the following endorsement:

It is hereby understood and agreed that this insurance coverage may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until at least 30 days after receipt by the County Communications Administrator, by registered mail, of a written notice of such intention to cancel or not to renew.

(c) *Qualifications of Insurers.* All insurance policies shall be with insurers qualified to do business in the Commonwealth of Virginia, with an A-1 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition.

(d) *Policies Available for Review.* Cox shall submit to the County certificates of insurance for each policy required herein.

(e) *Additional Insureds.* All commercial general liability insurance policies shall name the County, its elected and appointed officials, officers, boards, authorities, commissions, committees, commissioners, agents, and employees as additional insureds.

(f) *Indemnification*

(1) Cox shall, at its sole cost and expense, indemnify, hold harmless, and defend the County, its elected and appointed officials, officers, boards, authorities, commissions, committees, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of Cox's Cable System (to the extent that Cox has operation or maintenance responsibilities pursuant to this Agreement or applicable law); copyright infringements or a failure by Cox to secure consents from the owners, authorized distributors, or franchisees of programs to be delivered by Cox's Cable System (other than PEG content or I-Net content); the conduct of Cox's business in the County; or in any way arising out

of Cox's enjoyment or exercise of the Franchise, unless such specific act or omission has been authorized by the County or is the result of any act or omission by the County or its elected and appointed officers, boards, authorities, commissions, committees, commissioners, agents, or employees which results in personal injury or property damage. A general statement of authorization pursuant to the Cable Ordinance or this Agreement shall not be construed to be such an authorization.

(2) Specifically, Cox shall fully indemnify, defend, and hold harmless the County, and in its capacity as such, the elected and appointed officials, officers, agents, boards, authorities, commissions, committees, commissioners, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments, whether for damages or otherwise, subject to 47 U.S.C. § 558, arising out of or alleged to arise out of the installation, construction, operation, or maintenance of Cox's Cable System, including but not limited to any claim against Cox for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any Person, firm, or corporation. This indemnity does not apply to PEG programming, or programming carried on Channels leased pursuant to 47 U.S.C. § 532, or any content on the I-Net, or to PEG or I-Net operations to the extent such operations are carried out by a person other than Cox or its agents.

(3) In the event that Cox fails, after notice, to undertake the County's defense of any claims brought pursuant to subsections (1) and (2) above, Cox's indemnification shall include, but is not limited to, the County's reasonable attorneys' fees incurred in defending

against any such action, claim, suit, or proceeding, any interest charges arising from any action, claim, suit, or proceeding arising under this Agreement or the Cable Ordinance, the County's out-of-pocket expenses, and the reasonable value of any services rendered by the County Attorney, or County staff or employees.

(g) *No Limit of Liability.* Neither the provisions of this Section nor any damages recovered by the County shall be construed to limit the liability of Cox or its subcontractors for damages under the Franchise Agreement or the Cable Ordinance or to excuse the faithful performance of obligations required by this Franchise Agreement, except to the extent that any monetary damages suffered by the County have been satisfied by a financial recovery under this section or other provisions of this Franchise Agreement or the Cable Ordinance.

(h) *County to Assume No Liability.* The County shall at no time be liable for any injury or damage occurring to any Person or property from any acts or omissions of Cox in the construction, maintenance, use, operation, or condition of Cox's Cable System, to the extent that Cox has responsibilities for such maintenance, use, operation, or condition pursuant to this Agreement or applicable law. It is a condition of this Agreement that the County shall not and does not by reason of this Agreement assume any liability whatsoever of Cox for injury to Persons or damage to property.

12 PERFORMANCE GUARANTEES AND REMEDIES

(a) Performance Bond

(1) Cox shall obtain and maintain during the entire Term of the Franchise, and any renewal or extensions thereof, a performance bond in the County's favor in the amount of \$100,000, to ensure Cox's faithful performance of its obligations.

(A) The form and content of the performance bond shall be approved by the County.

(B) Pursuant to Section 9.1-5-9(p) of the Cable Ordinance, the County hereby reduces Cox's performance bond under the terms specified in this Section 12(a)(1), which shall apply in place of the terms in subsections (r) and (s) of Section 9.1-5-9 of the Cable Ordinance.

(2) The performance bond shall provide the following conditions:

(A) There shall be recoverable by the County from the principal and surety, any and all fines and penalties due to the County and any and all damages, losses, costs, and expenses suffered or incurred by the County resulting from the failure of Cox to faithfully comply with the material provisions of this Agreement, the Cable Ordinance, and other applicable law, to comply with all orders, permits, and directives of any County agency or body having jurisdiction over its acts or defaults, to pay fees, penalties, or liquidated damages due to the County, or to pay any claims, taxes, or liens due the County. Such losses, costs, and

expenses shall include but not be limited to reasonable attorney's fees and other associated expenses.

(B) The total amount of the performance bond required by this Agreement shall be payable to the County in the event:

- (i) Cox abandons Cox's Cable System at any time during the Term of its Franchise or any extension thereto; or
- (ii) Cox carries out a Transfer without the express written consent of the County as provided in Section 3 of this Agreement.

(C) The bond may not be cancelled by the surety due solely to bankruptcy of Cox or any Affiliate.

(3) The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be in a form satisfactory to the County Attorney; shall be subject to the approval of the County:

(4) The bond shall provide for 30 days' prior written notice to the County of any intention on the part of Cox to cancel, fail to renew, or otherwise materially alter its terms.

(5) Cox shall file with the County a complete copy of the bond (including all terms and conditions applying to the bond or to draws upon it) prior to its effective date, and keep such copy current with respect to any changes over the life of the franchise.

(6) Right to Require Additional or Other Bonds. The County shall have the right, at any time that it reasonably deems itself insecure, to require that any bond be replaced by

such other bond as the County may reasonably require, and that the amount be increased to a total not to exceed \$500,000, notwithstanding the fact that the County may have indicated its acceptance or approval of any bond(s) submitted with this Agreement.

(b) Letter of Credit

(1) In addition to the performance bond, Cox shall file and maintain with the County an irrevocable letter of credit (“LOC”) from a financial institution licensed to do business in Virginia, to serve the same purposes set forth in Section 12(a) in the amount of \$50,000. The form and content of the LOC shall be approved by the County.

(2) Cox and its surety shall be jointly and severally liable under the terms of the LOC.

(3) The LOC shall provide for 30 days' prior written notice to the County of any intention on the part of Cox to fail to renew.

(4) Cox shall file and keep current with the County the original of the LOC in the same way as is indicated in Section 12(a)(5) with respect to the bond.

(c) Draw Procedures. The following procedures shall apply to drawing on the bond or the letter of credit:

(1) If the County notifies Cox of any amounts due to the County pursuant to this Agreement or applicable law, and Cox does not make such payment within 30 business days, the County may draw the amount in question, with any applicable interest and penalties, from the bond or LOC after providing written notice to Cox and the issuing financial institution, specifying the amount and purpose of such draw; provided, however, that if Cox files a legal

action disputing the County's claim, the ten-business-day notice period shall be tolled as to that claim until the claim is resolved by order of the trial court.

(2) Within three days of a draw on the bond or LOC, the County shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such draw to Cox.

(3) If at the time of a draw on the bond or LOC by the County, the amount available is insufficient to provide the total payment of the claim asserted in the County's draw notice, the balance of such claim shall not be discharged or waived, but the County may continue to assert the same as an obligation of Cox to the County.

(4) No later than 30 days after mailing of notification to Cox by certified mail, return receipt requested, of a draw on the bond or LOC, Cox shall restore the amount of the bond or LOC to its original amount as specified in this Agreement.

(5) Upon termination of the Franchise and satisfaction of all outstanding obligations of Cox under the Franchise, the bond may be canceled by Cox and the County shall release the issuing bank of its obligations under the LOC, provided that there is then no outstanding default on the part of Cox. Upon renewal of the Franchise, the bond and LOC may be canceled and replaced, as applicable, by any similar instrument that may be required upon such renewal.

(d) *Rights Cumulative.* The rights reserved to the County in this Section 12 are in addition to all other rights of the County, whether reserved herein or authorized by applicable law, and no action, proceeding or exercise of a right with respect to a performance bond or the

LOC shall affect any other right the County may have. Neither the making of the performance bond or LOC, nor the receipt of any damages recovered by the County thereunder, shall be construed to excuse the faithful performance by Cox or limit the liability of Cox under the terms of its Franchise for damages, either to the full amount of the performance bond and LOC or otherwise; provided, however, that the amount of any damages recovered by the County through these instruments shall be offset against any damages otherwise recoverable by the County.

(e) *Remedies.* In addition to any other remedies available at law or equity, the County may revoke the Franchise for a material violation as set forth in Section 13(1)(2) of this Agreement pursuant to the procedures specified in this Agreement.

(f) *Liquidated Damages.* Because Cox's failure to comply with provisions of the Franchise and this Franchise Agreement will result in injury to the County, and because it will be difficult to estimate the extent of such injury, the County and Cox agree to the following liquidated damages to be effective during the Term for the following violations of the Franchise and of this Agreement, which represent both parties' best estimate of the damages resulting from the specified violation. The Communications Administrator, or designee, shall have the authority to waive or reduce the liquidated damage amounts herein for good cause. Cure periods listed below shall begin to run at the time Cox is notified in writing of a violation by the County, unless otherwise specified below. Such damages shall not be a substitute for actual performance by Cox of a financial payment, but shall be in addition to any such actual performance. The County's election of liquidated damages in a given case shall take the place of any right to obtain

12: PERFORMANCE GUARANTEES AND REMEDIES

12(f): Liquidated Damages

actual damages or penalties in that case over and above the payment of any amounts otherwise due. Liquidated damages shall be assessed in the following manner:

(1) For a Transfer without approval as specified in Section 3: \$2,000/day for each violation for each day the violation continues;

(2) For failure to substantially comply with requirements for public, educational and governmental use of the System pursuant to Sections 7(a), 7(b), 7(c), 7(e), 7(f), 7(g) other than subsection 7(g)(6)(H), 7(g)(7)(H), 7(j), 7(k), and 7(l): \$1,000/day for each violation for each day the violation continues after a 14-day cure period, if Cox has not undertaken substantial corrective action to cure the violation within that 14-day period;

(3) For failure to provide to the County information, reports, or filings lawfully required under the Franchise Agreement or applicable law or by the County: \$200/day for each violation for each day the violation continues after a 30-day cure period. The cure period shall begin to run on the due date of any regularly scheduled report, and on the date of a deadline reasonably set by the County for any report or information request not regularly scheduled, unless Cox shows that it was not in fact aware of the requirement in question, in which case the 30-day cure period shall begin to run upon written notice of such requirement by the County to Cox;

(4) Customer Service Standards:

(A) For each day during which the County determines that Cox has violated each of the customer service obligations pursuant to Section 10 of this Agreement or applicable law or regulation, except for those obligations for which compliance is measured on a

12: PERFORMANCE GUARANTEES AND REMEDIES

12(f): Liquidated Damages

quarterly basis, and following a 10-day cure period except that such cure period does not apply to customer service standards that themselves provide a specific cure period: \$200 per violation:

(B) A separate violation under subsection (A) shall be deemed to occur whenever the County reasonably determines that one of the above separate customer service violations has occurred on one day. Thus, for example, if Cox fails to extend service to one Subscriber for two days pursuant to governing law or regulation, there would be two violations; if Cox fails to keep an appointment pursuant to governing law or regulation with one Subscriber on one day and on that same day, independent of the missed appointment, Cox fails to disclose price terms to that same Subscriber, then there would be two violations. However, Cox shall not be charged with multiple violations for a single act or event affecting a single Subscriber or for a single act or event affecting multiple Subscribers on the same day. For example, Cox's failure to send out its annual notice to multiple Subscribers for one day would constitute a single violation.

(5) Cox shall be deemed to cure such a violation if it provides appropriate compensation, as agreed to by the County and Cox, to all affected subscribers as to which the County has given such notice.

(6) For failure to comply with customer service obligations pursuant to Section 10 of this Agreement, when compliance is measured on a quarterly basis: \$500 for each quarter in which such standards were not met if the failure was by less than 5%; \$1,000 for each quarter in which such standards were not met if the failure was by 5% or more but less than 15%; and \$2,000 for each quarter in which such standards were not met if the failure was by 15% or more;

12: PERFORMANCE GUARANTEES AND REMEDIES

12(g): Shortening, Revocation, or Termination of Franchise

(7) For failure to file, obtain or maintain the required performance bond or letter of credit pursuant to Section 12(a) or 12(b) in a timely fashion: \$200 per day following a 14-day cure period;

(8) For failure to bring into compliance any violation of construction standards within the appropriate time periods as specified in Section 5(b) of this Agreement: \$200 per violation; and

(9) For violation of technical standards established by the FCC or other lawful authority: \$100 per day for each day the violation continues after a 30-day cure period after the County gives Cox notice of such violation;

(g) *Shortening, Revocation, or Termination of Franchise*

(1) Upon completion of the Term of any Franchise granted under this Agreement, if a new, extended, or renewed Franchise is not granted to Cox by the County, Cox's right to occupy the Public Rights-of-Way and Public Land shall terminate, subject to applicable federal law.

(2) The County shall have the right to revoke the Franchise, or to shorten the Term of the Franchise to a Term not less than 36 months from the date Cox receives written notice from the County of the County's decision to act pursuant to Section 12(g)(3) herein concerning the County's shortening action, for Cox's material violation of this Agreement pursuant to Section 13(1)(2), or Section 9.1-5-4 of the Cable Ordinance.

(3) To invoke the remedies of Section 12(g)(2), the County shall give Cox written notice of the default in its performance. If within 60 calendar days following such

12: PERFORMANCE GUARANTEES AND REMEDIES
12(g): Shortening, Revocation, or Termination of Franchise

written notice from the County to Cox, or such other period as this Franchise Agreement shall require or Cox and the County shall agree, Cox has not taken corrective action to the reasonable satisfaction of the County, the County may give written notice to Cox of its intent to revoke or shorten the Term of the Franchise, stating its reasons; provided that no opportunity to cure shall be provided where Cox is shown to have defrauded or attempted to defraud the County or its Subscribers in connection with this Agreement or Cable Service in any way that has a material adverse effect on Cox's provision of Cable Services pursuant to this Agreement.

(4) Prior to shortening the Term of or revoking the Franchise, the County shall hold a public hearing, after providing 30 days' written notice to Cox, specifying its reasons for shortening or revoking the Franchise, at which time Cox and the public shall be given an opportunity to be heard. Following the public hearing, the County may determine whether to shorten the Franchise Term or to revoke the Franchise based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time to Cox to effect any cure. If the County determines to shorten the Term of or revoke the Franchise, it shall adopt an ordinance that shortens the Term of or revokes the Franchise and sets forth the reasons for its decision. A copy of such ordinance shall be transmitted to Cox.

(5) If the County revokes the Franchise, or if for any other reason Cox terminates the Franchise, the following procedures and rights are effective:

(A) The County may require Cox to remove its facilities and equipment located in the Public Rights-of-Way or on Public Land at Cox's expense and to restore such affected sites as required in Section 5(a)(10) or permit Cox to abandon such

facilities in place, subject to the provisions of Section 5(a)(14). If Cox fails to remove its facilities within a reasonable period of time after the County orders it to do so, and such removal is necessary to make room for other facilities or to remove potential safety hazards as required by sound engineering practices, then the County may have the removal performed at Cox's and/or surety's expense.

(B) The County may require Cox to continue operating Cox's Cable System and ensure an orderly transfer of cable service as specified in Section 4(c).

(C) In the event of revocation, the County, in accordance with state law, may acquire ownership of or effect a transfer of Cox's Cable System at an Equitable Price.

(h) *Condemnation.* This Franchise Agreement shall not limit any authority of the County in accordance with state law to condemn, in whole or in part, the Franchise and/or any other property of Cox, provided that Cox shall receive whatever condemnation award Cox would normally be entitled to recover as a matter of state law. Partial condemnation of Cox's Franchise or property shall not terminate this Agreement except in accordance with the terms of this Agreement.

(i) *Guarantee of Performance.* Cox shall provide, and maintain in force throughout the Franchise term, a performance guarantee substantially in the form of Appendix 4.

13 **MISCELLANEOUS PROVISIONS**

(a) *Binding Acceptance.* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors, and assigns.

(b) *Severability.* If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. If the terms of this Agreement are materially altered due to changes in governing law, then the parties shall negotiate in good faith to reconstitute this Agreement in a form that, to the maximum extent possible, is consistent with the original intent of Cox and the County and preserves the benefits bargained for by each party.

(c) *Preemption.* In the event that federal or state laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event that any provision of this Agreement is preempted or enforcement limited by any such provision of federal or state law, then the parties shall negotiate in good faith to reconstitute this Agreement in a form that, to the maximum extent possible, is consistent with the original intent of Cox and the County and preserves the benefits bargained for by each party. Finally, in the event such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision hereof that had been preempted

is no longer preempted, such provision shall return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the County.

(d) *Equal Treatment.* The County shall comply with all state and federal laws regarding equal treatment of Cox and other entities.

(e) *Compliance with Applicable Laws.* Cox shall, at all times during the Term, including any extensions thereof, substantially comply with all applicable federal, state, and local laws and regulations.

(f) *Force Majeure.* Notwithstanding any other provision of this Agreement, Cox shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due, directly or indirectly, to Force Majeure conditions. In the event that any such delay in performance or failure to perform affects only part of Cox's capacity to perform, Cox shall perform to the maximum extent it is able to perform and shall take all reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible.

(g) *Governing Law.* This Franchise Agreement shall be governed in all respects by the law of the Commonwealth of Virginia.

(h) *Notices.* Unless otherwise provided by applicable law or this Agreement, all notices or other written communications required to be given to the County under any provision of this Agreement or the Fairfax County Code shall be deemed served when regularly mailed, postage prepaid, or delivered by hand in writing to the Communications Administrator. All notices or written communications required to be given to Cox under any provision of this

Agreement or the Fairfax County Code shall be deemed served when regularly mailed, postage prepaid, or delivered by hand in writing to Cox at Cox's last known address, to the attention of the following, or to such other Persons or addresses as Cox may subsequently specify by notice:

Cox Communications – Virginia
ATTN: Vice President/General Manager
1341 Crossways Rd.
Chesapeake, VA 23320

With copies to:

Cox Communications – Northern Virginia
ATTN: Government Affairs
3080 Centreville Rd.
Herndon, VA 20171

Cox Communications, Inc.
ATTN: Law & Policy
1400 Lake Hearn Dr.
Atlanta, GA 30319

(i) *Time of Essence.* In determining whether a party has substantially complied with this Franchise Agreement, the parties agree that time is of the essence.

(j) *Captions and Headings.* The captions and headings of sections set forth herein are intended solely to facilitate reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

(k) *No Oral Modifications.* This Franchise Agreement shall not be changed, modified, or amended, in whole or in part, unless an appropriate written instrument is executed by the County and Cox.

(l) *Rights and Remedies*

(1) The rights and remedies reserved to both parties herein are cumulative and shall be in addition to all other rights and remedies which either party may have with respect to the subject matter of this Agreement, whether reserved herein or authorized by applicable law.

(2) The following violations by Cox of this Agreement are material for purposes of Section 12(g)(2):

(A) Transfer without approval pursuant to Section 3, or failure to notify pursuant to Section 3(c);

(B) repeated or flagrant failure to satisfy line extension requirements pursuant to Section 4(b);

(C) repeated or flagrant failure to satisfy construction standards pursuant to Section 5;

(D) repeated or flagrant failure to meet FCC technical standards;

(E) failure to maintain the Emergency Alert System pursuant to Section 6(g) in the event of an emergency;

(F) substantial failure to provide PEG Grants pursuant to Section 7(d);

(G) substantial failure to provide PEG facilities or equipment pursuant to Section 7(a);

(H) substantial failure to provide PEG facilities or equipment pursuant to Section 7(e);

(I) substantial failure to provide PEG facilities or equipment pursuant to Section 7(g);

(J) substantial failure to provide I-Net facilities or equipment pursuant to Section 7(l);

(K) substantial failure to pay Franchise Fees pursuant to Section 8, if applicable;

(L) repeated or flagrant failure to meet reports and records requirements in a timely manner pursuant to Section 9;

(M) substantial failure to satisfy insurance requirements pursuant to Section 11(a);

(N) substantial failure to maintain a bond or letter of credit pursuant to Section 12;

(O) repeated or flagrant violation of consumer protection requirements pursuant to applicable law;

(P) repeated or flagrant violation of Subscriber privacy requirements pursuant to 47 U.S.C. § 551 or other applicable law;

(Q) repeated or flagrant discrimination among Subscribers in violation of applicable law.

(m) Obligations to Continue Throughout Term. Unless specifically designated otherwise, all of Cox's obligations under this Agreement and the Franchise shall continue throughout the entire Term specified in Section 2(c) or any extension hereof.

(n) *Cooperation in Obtaining and Implementing Grants.* Cox and the County agree to cooperate fully with each other in applying for or implementing any federal or state grants or other funds to be applied to Cox's Cable System.

(o) *Prohibition Against Discrimination.* Cox shall adhere to the Equal Employment Opportunity regulations of the FCC and to all federal, state, and local laws, and executive orders pertaining to discrimination, equal employment opportunity, and affirmative action, that are applicable to Cox.

(p) *Connections to the Cable System*

(1) Cox shall comply with FCC regulations and applicable law governing the ability of Subscribers to attach any lawful equipment to Cox's Cable System.

(2) Cox shall not, as a condition of providing Cable Service, require a Subscriber to remove any existing antenna or disconnect an antenna, or prohibit or discourage a Subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable codes and technically able to shield Cox's Cable System from any interference.

(q) *Police Powers of the County.* Nothing in this Agreement shall preclude the County from exercising its police powers to enact, amend, or supplement any law governing cable communications within the County of Fairfax.

(r) *Cox Bears Its Own Costs.* Unless otherwise expressly provided in this Agreement, all acts that Cox is required to perform shall be performed at Cox's own expense.

(s) *County Bears Its Own Costs.* Unless otherwise expressly provided in this Agreement, all acts that the County is required to perform shall be performed at the County's own expense.

(t) *Rights of Third Parties.* Nothing herein shall be construed to give any Person other than Cox or the County a right to assert any claim or cause of action against Cox or the County, its employees, elected or appointed officials, officers, boards, authorities, commissions, committees, commissioners, or agents, except as to parties enumerated in Section 7(d)(3).

(u) *Appendices.* The appendices to this Agreement (the "Appendices"), attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in such Appendices, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any subsequent amendment or modification to said Appendices shall be the same as those applicable to any amendment or modification hereof, except as specified in such Appendices or elsewhere in this Agreement.

(v) *Entire Agreement.* This Agreement embodies the entire understanding and agreement of the County and Cox with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the County and Cox with respect to the subject matter hereof, including, without limitation, any and all written or oral statement or representations by any official, employee, agent, attorney, consultant, or independent contractor of the County or Cox.

(w) *Authority.* Each person executing this Agreement on behalf of a corporation or other legal entity warrants and represents that he or she holds the position indicated beneath his

or her signature and that he or she has been duly authorized by said corporation or other legal entity to execute this Agreement on its behalf. Each party warrants and represents that this Agreement is a valid, binding and enforceable obligation of that party and does not violate any law, rule, regulation, contract, or agreement applying to that party.

IN WITNESS WHEREOF, the parties have set their hands and seals on the date below.

THE BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

BY: _____
Chairman, Board of Supervisors

DATE: _____

BY: _____
County Executive

DATE: _____

COXCOM, LLC, d/b/a
COX COMMUNICATIONS NORTHERN VIRGINIA

BY: _____

DATE: _____

Title: _____

APPENDIX 1: I-NET APPENDIX

I-NET APPENDIX

13: MISCELLANEOUS PROVISIONS

13(w): Authority

I-NET APPENDIX

1 THE APPENDIX AND THE FRANCHISE AGREEMENT

(a) *The I-Net Appendix.* This Appendix ("Appendix") is an integral part of a Franchise Agreement effective June 9, 2013, between Fairfax County, Virginia ("County"), and CoxCom, LLC, d/b/a Cox Communications Northern Virginia ("Cox").

(b) *Integral Whole.* The Appendix is intended to be an integral whole and shall be interpreted as internally consistent.

(c) *Definitions.* When a word, term or phrase is used in this Appendix, it shall be interpreted or construed as follows: First, as defined in this Appendix or in the body of the Franchise Agreement; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage. As used in this Appendix, the terms set forth below shall have the following meanings:

(1) "Demarcation Point": a demarcation point to be agreed upon by Cox and the County consistent with Cox's direction of approach to the building and consistent with the FCC's rules as of the effective date of this Appendix or as later amended.

(2) "Institutional Network" or "I-Net" means the PEG facility consisting of a network of IRU Fibers, constructed by Cox and paid for by the County, related to and, to the extent deemed feasible by Cox, collocated with Cox's Cable System, and not generally available to Subscribers of Cox's Cable System. As used in this Appendix, the term "I-Net" shall not include any electronics or other equipment needed to activate IRU Fibers.

(3) "I-Net Headend" means the County's origination point for its I-Net, which as of the Effective Date is located on Cox's property at 2917 Eskridge Rd, Fairfax, Virginia.

(4) "IRU Fibers" means the fiber optic strands constituting the I-Net, in which the County has an IRU as defined in Section 5.

(5) "Maintenance" means any action required to preserve or restore physical fiber optic connectivity on Cox's side of the Demarcation Point to the performance standards specified in Section 2.

(6) "Master Telecommunications Center" or "MTC" means Cox's facilities located as of the Effective Date at 2917 Eskridge Rd, Fairfax, Virginia, which serves as the signal origination point for Cox's Cable System.

(7) "Prime Rate" means, as of any relevant date, the interest rate most recently published in the Money Rates Section of The Wall Street Journal as the prime rate. If such rate shall cease to be published, Cox and the County shall designate a successor rate to be used in place of the Prime Rate.

(8) "Secondary Telecommunications Center" or "STC" means any one of the six facilities that serve as major distribution points between Cox's MTC and the Cable System fiber nodes.

2 I-NET FACILITIES AND EQUIPMENT

(a) *I-Net Characteristics.* Cox shall keep in operation the I-Net constructed under the Prior Franchise and in operation as of the Effective Date, together with any additional I-Net facilities subsequently constructed, so that it has the following minimum characteristics:

(1) The I-Net shall be a bidirectional, fully fiber-optic network designed and constructed with single-mode fiber, in a design so that each of the designated service locations can originate and receive fully interactive video, data, and voice signals. The fiber optic backbone ring shall interconnect approximately six STCs and the MTC with the I-Net Headend. Such backbone ring shall include 16 designated single-mode fibers that will be dedicated for the I-Net.

(2) Cox shall collocate I-Net fiber with HSN fiber whenever reasonably feasible based on cable industry practices. The I-Net fibers shall be separate from any fibers used for the HSN, and the County shall have only such property rights in the I-Net fibers as are set forth in Section 5.

(3) Cox's construction of the I-Net shall be in conformance with the County's "I-Net Construction Requirements Manual" ("I-Net Manual"), that is incorporated herein by reference. The I-Net Manual shall be published by the County and take effect on the Effective Date as the I-Net Construction Requirements Manual, Revision 1.0.

(A) The County may revise the I-Net Manual from time to time during the term of the Franchise Agreement. Any proposed I-Net Manual revisions ("I-Net Manual Revision") shall be provided in writing to

Cox at least 30 days in advance of the effective date of a proposed I-Net Manual Revision.

- (B) During the 30-day term prior to the effective date of a proposed I-Net Manual Revision, Cox may request an amendment to the proposed I-Net Manual Revision.
- (C) If Cox does not request such an amendment during the 30-day term prior to the effective date of an I-Net Manual Revision, then it shall be deemed accepted by Cox.
- (D) If Cox does request such an amendment during the 30-day term prior to the effective date of an I-Net Manual Revision, the County shall then take one of the following actions regarding the proposed I-Net Manual Revision:
 - (i) Implement Cox-accepted I-Net Manual Revision;
 - (ii) Accept Cox-requested amendment to the I-Net Manual Revision, and implement the I-Net Manual Revision;
 - (iii) Cancel the proposed I-Net Manual Revision; or,
 - (iv) Waive *in toto* the application of the I-Net Manual Revision to Cox for the remaining term of the Franchise Agreement.

(4) At the headend, I-Net fibers shall be terminated in accordance with the I-Net Manual within a separate locked area segregated from the non-I-Net equipment on Cox's MTC property (the "I-Net Headend Service Area"). The I-Net Headend Service Area shall have a minimum area of 200 square feet and have building security and sufficient heating and air

conditioning. 48 V DC and 120 V AC power shall be available for the I-Net Headend Service Area, including backup power. Backup power shall include both an uninterruptible power supply (UPS) and a generator with fueling arrangements sufficient to support the equipment in the I-Net Headend Service Area for as long as Cox's MTC remains in operation. Cox shall also provide fire suppression and snow removal, and maintain the building in good repair. County personnel shall have access 24 hours a day, seven days a week, to the I-Net Headend Service Area, and the County shall be able to restrict access to the I-Net Headend Service Area to specifically authorized personnel, except that Cox shall have access to the I-Net Headend Service Area as required to ensure safety and security.

(5) At each STC, I-Net fibers shall be terminated within a separate locked area within the STC (the "STC I-Net Service Area") segregated from the non-I-Net equipment at that site. The STC I-Net Service Area at each STC shall have a minimum area of 100 square feet and have building security and sufficient heating and air conditioning. 48 V DC and 120 V AC power shall be available, including backup power. Backup power shall include both an uninterruptible power supply (UPS) and a generator with fueling arrangements sufficient to support the equipment in the STC I-Net Service Area for as long as Cox's STC remains in operation. Cox shall also provide fire suppression and snow removal, and maintain the building in good repair. County personnel shall have access 24 hours a day, seven days a week, to the STC I-Net Service Area at each STC. The County shall be able to restrict access to the area to specifically authorized personnel, except that Cox shall have access to the STC I-Net Service Areas as required to ensure safety and security. Cox shall cooperate with the County in satisfying power and HVAC requirements.

(6) The I-Net Headend Service Area and the STC I-Net Service Areas shall be shared by (i) the County and (ii) the Cities of Falls Church and Fairfax and the Towns of Clifton, Herndon and Vienna, if so authorized by these municipalities to which Cox has provided an I-Net. If any such other local government's equipment is collocated at a site with the County's, then Cox shall make all reasonable efforts to configure the assigned space so that all equipment required by such collocated parties can readily be accommodated.

(7) At least one set of at least six single-mode fibers each shall run to each I-Net site designated by the County as specified in this Section, in addition to any fibers provided for return feeds from PEG Origination Sites under the Franchise Agreement. At each I-Net site, fibers shall be constructed in accordance with the I-Net Manual.

(b) *I-Net Construction.* When Cox constructs new HSN facilities consisting of four or more miles as measured in strand footage from the nearest technically feasible point on the active HSN trunk, it shall provide reasonable notice to the County so that the County can coordinate design and construction of new I-Net sites to be served by such extended fiber routings and thus reduce the cost of design and construction under the I-Net Construction Agreement.

(c) *Additional Construction.* The County may enter into a contract with Cox for Extensions and Modifications to the I-Net, Contract XX12-225033-42A ("I-Net Construction Agreement"). The purpose of the I-Net Construction Agreement is to allow the County to order, and Cox to build, extensions and modifications to the I-Net, including but not limited to connecting additional I-Net sites.

(d) *Warranty.* The IRU Fibers installed by Cox pursuant to this Appendix and the I-Net Construction Agreement shall be warranted against defects in materials and workmanship for 12 months after acceptance. Cox's warranty excludes any remedy for change or defect caused by abuse, modifications not executed by Cox, improper maintenance not performed by Cox, improper operation, or normal wear and tear under normal usage. This warranty is in addition to, and does not relieve Cox from, its maintenance responsibilities pursuant to this Appendix.

(1) If any of the IRU Fibers do not operate within the specifications herein and in the I-Net Manual, and Cox has determined in its reasonable business judgment that it is technically or economically infeasible to restore one or more of the affected IRU Fibers to proper operation, Cox may in its discretion elect to provide for the County to use equivalent substitute fibers along the same route (or a mutually agreed-upon substitute route) with the same or greater useful life ("Replacement Fibers"). To the extent Cox elects to provide the County Replacement Fibers, the County shall have an IRU in such Replacement Fibers, and they shall be deemed IRU Fibers hereunder, and shall become subject to the terms and conditions of this Appendix applicable to the IRU Fibers and the County's IRU herein.

(2) If within 30 days from the date that the IRU Fibers first ceased operating within such specifications, Cox is unable to provide Replacement Fibers that will permit the uses by the County contemplated by this Agreement, the County may procure substitute assets at Cox's expense payable within 30 days of receipt of notice from the County with the pre-approval by Cox of the County's expenses, where such approval shall not be unreasonably withheld, and this Appendix shall continue in full force and effect as to the remaining IRU Fibers.

3 RELOCATION, ABANDONMENT, AND PLANT CHANGES

(a) *Relocation.* In the event that any portion of Cox's Cable System that includes the IRU Fibers needs to be relocated, replaced, or rebuilt for any reason, Cox shall notify the County as soon as possible of the anticipated schedule, the reason(s) for the relocation, replacement or rebuilding, and the impact said relocation, replacement, or rebuilding is expected to have on the IRU Fibers and the I-Net.

(1) The precise location of Cox's Cable System and the IRU Fibers may change from time to time. However:

(A) Any changes must provide the County with substantially the same quality of fiber and approximately the same route as existed before the IRU Fibers were moved. In no event may the number of fibers that the County is authorized to use pursuant to this Appendix be reduced, nor may any change prevent the County from exercising its rights pursuant to this Appendix.

(B) The costs of any changes to or relocations of the IRU Fibers for any cause other than those specified in Section 3(a)(1)(C) below, including any costs incurred by the County in moving its equipment or the IRU Fibers or in extending its network to the extent made necessary by such change or relocation, shall be borne by Cox, unless the change is required by a change to facilities or property of an Authorized User, in which case the Authorized User shall bear the cost.

(C) Cox and the County will work together in good faith to effectuate any changes required to be made at the direction of any regulator, governmental agency, or

condemnor with legal authority to issue such direction; to settle or avoid a bona fide threatened or filed condemnation action; to reduce the likelihood of physical damage to Cox's Cable System; or as a result of a Force Majeure event. The County shall pay a portion of the costs of any such changes to the IRU Fibers that are not reimbursed by a third party, with the County paying the portion that equals the ratio of the IRU Fibers to the total number of fibers maintained by Cox along the affected route.

(2) In the event of a relocation, Cox shall use all commercially reasonable efforts to minimize any disruption of the functionality of the IRU Fibers. If a proposed relocation would result in a material adverse effect on the County's rights, Cox shall use commercially reasonable efforts to provide substitute assets at Cox's expense pursuant to Section 2(d), so as to ensure the County's uninterrupted use of the rights granted under this Appendix.

(3) Should any portion of the IRU Fibers be acquired by eminent domain, nationalization, or expropriation by any authority or entity possessing such power, or sold to such authority or entity under threat of eminent domain, nationalization, or expropriation (either of which will constitute a "Taking"), any awards resulting from the proceeding or otherwise provided shall be fairly apportioned between the parties in accordance with such interests. As between Cox and the County, the provisions of Section 3(a)(1)(C) shall apply to any relocation resulting from a Taking.

(b) *Title and Ownership.* Legal title to the IRU Fibers shall remain with Cox at all times, unless transferred to the County as provided in Section 3(c) herein. In the event of Cox's bankruptcy or insolvency, any action to terminate this Appendix shall not affect the prior, indefeasible transfer to the County of its beneficial ownership interest in the IRU Fibers. The

parties acknowledge that the IRU constitutes an indefeasible grant to the County of an exclusive beneficial ownership interest in the IRU Fibers and that the grant of the IRU is intended to be non-executory in nature. Moreover, in the event of Cox's bankruptcy or insolvency, any action to terminate or reject this Appendix shall give the County the right to access the IRU Fibers at their connection points for the limited purpose of using the IRU Fibers as contemplated in this Appendix, including the placement and maintenance of the County's equipment in the I-Net Headend Service Area and STC I-Net Service Areas. The Parties agree and acknowledge that denying the County access to the IRU Fibers at the connection points under such circumstances would render the County's IRU in the IRU Fibers nugatory.

(c) *Abandonment.* In the event that Cox decides or acts to abandon any portion of its Cable System that includes IRU Fibers, the County's right to use such IRU Fibers shall not be affected. Prior to any such abandonment, Cox shall transfer to the County legal title to the cable in which the IRU Fibers are located or, to the extent fibers other than those subject to this IRU are in the cable, legal title to the IRU Fibers.

(d) *Permanence of IRU*

(1) Notwithstanding any default by the County, or any other legal duty or obligation imposed by any other contract, by the law of torts, or by federal or state laws, rules, regulations, orders, or standards, Cox shall have no right to revoke or restrict in any manner or to any degree whatsoever, through injunctive relief or otherwise, the IRU granted to the County pursuant to this Appendix.

3: RELOCATION, ABANDONMENT, AND PLANT CHANGES

3(d): Permanence of IRU

(2) In the event that Cox acts to sell or otherwise transfer the IRU Fibers or the cables containing the IRU Fibers or any interest in any of the foregoing, Cox shall ensure that any such sale shall explicitly be made subject to the IRU and the County's rights hereunder.

(3) In all circumstances addressed in this Section 3, Cox agrees to reasonably cooperate with the County to take such action as is required to maintain and preserve the County's use and enjoyment of the IRU Fibers.

4 FEES AND ELIGIBILITY FOR FUNDING

(a) *Universal Service.* Cox shall reasonably cooperate with the County in taking the steps necessary so that the I-Net is, to the maximum extent consistent with applicable law, eligible for funding pursuant to the universal service provisions of the Telecommunications Act of 1996, 47 U.S.C. § 254, and the implementing regulations of the Federal Communications Commission, 47 C.F.R. Part 54, provided, however, that neither party shall be required to take any such steps that would adversely affect its rights under this Appendix, materially alter the cost or time for performance under this Appendix, or prevent it from obtaining the benefits of this Appendix.

(b) *Pole Attachment Fees.* The County shall cooperate with Cox in obtaining any necessary pole attachment arrangements for the I-Net. Where I-Net and HSN fiber optic sheaths are bundled together, Cox shall be responsible for any pole attachment costs attributable to the I-Net. The County shall use its best efforts, upon Cox's request, to support Cox in taking the position that, as part of public, educational, and governmental access provided pursuant to a cable franchise, the I-Net would not result in any incremental pole attachment fees pursuant to applicable law, provided, however, that neither party shall be required to take any such steps that would adversely affect its rights under this Appendix, materially alter the cost or time for performance under this Appendix, or prevent it from obtaining the benefits of this Appendix.

5 INDEFEASIBLE RIGHT OF USE

(a) Perpetual IRU

(1) Cox hereby acknowledges the County's exclusive indefeasible right of use of, for the purposes and subject to the limitations described herein, the I-Net (the "IRU"). The County's IRU shall be perpetual, unless terminated by mutual consent, and shall survive the termination of this Appendix or the Franchise Agreement.

(2) The County's IRU shall apply to all the IRU Fibers, as specified in the maps provided pursuant to Section 9(f) of the Franchise Agreement ("I-Net Description"), including additional I-Net fibers constructed pursuant to the I-Net Construction Agreement.

(A) By executing the Franchise Agreement, Cox certifies that the I-Net Description is complete and accurate as of the Effective Date.

(B) If Cox discovers any error in the I-Net Description, Cox shall notify the County as soon as possible and take the necessary steps to rectify the error. Cox shall rectify any error in the I-Net Description at its own sole cost.

(b) Fees, Costs, and Charges. Except for the Recurring Maintenance Charges described in Section 6(b), there shall be no other fees, costs, or charges imposed by Cox upon the County under this Appendix 1 during the term of the Franchise Agreement. Any charges imposed by Cox pursuant to the I-Net Construction Agreement shall be governed by that agreement.

(c) Required Rights. Cox agrees to obtain and maintain in full force and effect all rights, licenses, franchises, permits, authorizations, rights-of-way, easements, pole attachment

agreements, and other agreements which are necessary in order to permit Cox to construct, install and keep installed, and maintain the I-Net in accordance with this Appendix 1 and to provide the County with the IRU (collectively, the “Required Rights”).

(d) *Quiet Enjoyment.* Cox shall provide the County with quiet enjoyment of the IRU granted hereunder, free and clear of any liens or encumbrances.

(e) *Exclusive Right.* Cox grants the County an exclusive right to use a portion of Cox’s Cable System associated with the IRU that is necessary to give effect to the grant of the IRU to the County.

(f) *I-Net Equipment*

(1) The County shall not adversely affect the use by any other Person of the Cox Cable System and/or any electronic or optronic equipment used by such Person in connection therewith. Cox shall not allow any other authorized users of the Cox Cable System and/or electronic or optronic equipment used by such Person in connection with the Cable System to adversely affect the use of the I-Net by the County.

(2) Neither Cox nor the County shall have any limitations on the types of electronics or technologies employed to use its fibers, subject to Cox’s safety procedures and so long as such electronics or technologies do not interfere with the use of or present a risk of damage to any portion of the other party’s system.

(3) The County acknowledges and agrees that Cox is not supplying nor is Cox obligated to supply to the County any optronics or electronics or optical or electrical equipment for the IRU Fibers, all of which are the sole responsibility of the County.

(g) *Substitution of Fibers by Cox.* Upon not less than 120 days' written notice from Cox to the County, Cox may at its option, subject to County's prior written approval (which approval shall not be unreasonably delayed or withheld), substitute for the IRU Fibers an equal number of alternative fibers within the Cable System or portion thereof, provided that in such event, such substitution (i) shall be in accordance with County's applicable specifications set forth in the I-Net Manual and for Replacement Fibers in this Appendix; (ii) shall be effected at the sole cost of Cox, including, without limitation, all disconnect and reconnect costs, fees and expenses; (iii) shall be tested in accordance with and shall satisfy the acceptance testing procedures set forth in the I-Net Manual; and (iv) shall be coordinated with the County and accomplished with the least possible interruption of operation or the County's I-Net use, at a time and for a period reasonably agreed to by Cox and the County.

6 **MAINTENANCE**

(a) *Maintenance of I-Net.* Cox shall maintain the I-Net in accordance with maintenance requirements and procedures that ensure that the I-Net meets the specifications set forth in the I-Net Manual, and such maintenance shall be performed in a first-class workmanlike manner consistent with industry standards. Such maintenance shall include all routine and preventive maintenance and all repairs to damage, whether I-Net fibers run separately or in a common sheath with Cox's HSN fibers.

(b) *Recurring Maintenance Charge.* Subject to the adjustment described in Section 6(c)(2) herein, the County shall pay Cox quarterly. Cox shall invoice the County pursuant to Section 6(d) commencing on July 1, 2013, for the calendar quarter ending September 30, 2013, together with any pro-rated amount from the Effective Date through June 30, 2013. and continuing until the expiration of the Term, for the recurring maintenance charges set forth on Exhibit A (the "Recurring Maintenance Charge"). The obligation of the County to pay the Recurring Maintenance Charge is subject to appropriations by the Board to satisfy payment of such obligations. If the Board should fail to appropriate funds, then the County will provide Cox with written notice of non-appropriation of funds within 30 calendar days after action is completed by the Board, but the County's failure to provide such notice shall not extend the County's obligation to pay the Recurring Maintenance Charge.

(c) *Adjustment of Recurring Maintenance Charge.* The Recurring Maintenance Charge shall be reviewed and adjusted no earlier than 45 days from the third anniversary of the Acceptance Date, and thereafter not sooner than every three years, by the adjustment, if any, of:

6(d): Payment of Recurring Maintenance Charge

(1) the total I-Net miles of individual IRU Fiber strands; and,

(2) the charge-per-fiber-mile adjusted by the Consumer Price Index, All Urban Consumers (CPI-U), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (1982-84 = 100), for the preceding 12-month period. If such index shall cease to be computed or published, Cox and the County shall designate a successor index to be used in determining any adjustment to the Recurring Maintenance Charge. In no event shall the adjustment to the Recurring Maintenance Charge for any applicable year(s) be reduced from the prior year or shall the adjustment in 6(c)(2) for any applicable year(s) exceed 4%.

(d) Payment of Recurring Maintenance Charge

(1) Cox shall send the County invoices for payments of the Recurring Maintenance Charges, and the County shall pay such invoiced amounts within 30 days after the date of such invoice by Cox. Notwithstanding anything in this Franchise Agreement to the contrary, no payment due hereunder is subject to reduction, set-off, offset or adjustment of any nature by the County. Disputes shall not be cause for the County to delay payment of the undisputed balance to Cox according to the terms outlined in this Appendix. Any sums not paid by the County when due shall bear interest at the Prime Rate.

(2) Cox shall invoice the County for the quarterly Recurring Maintenance Charge for each upcoming quarter no later than the first day of each quarter during the Term. With respect to the first month of the Term, the quarterly Recurring Maintenance Charge shall be pro-rated based on the number of days in such month that this Appendix was in effect, and such pro-rated invoice shall be provided to County as soon as reasonably practicable.

(e) *Right of Access.* If at any time Cox fails to provide maintenance services for the IRU Fibers in connection with this Appendix, the County shall have a right of access to the IRU Fibers, itself or by its qualified contractors, for the purpose of performing such services on its own behalf. Such right of access by the County is conditioned upon the County's giving written notice of its intention to exercise such right no less than 10 days prior to such event, except in cases of emergency, in which case the written notice shall be given in the maximum amount of time that is reasonable under the circumstances. Cox shall reimburse the County for the provision of such maintenance services at commercially reasonable market-based costs.

7 I-NET SERVICE LEVEL AGREEMENT

(a) *Service Outages; Outage Categories*

(1) For purposes of this Appendix, the term "Service Outage" shall mean any condition or damage affecting the I-Net plant that precludes or substantially impairs the transmission of information on the I-Net or a portion thereof.

(2) Response and restoration times are determined by the category of Service Outage as follows:

(A) Major Outage: Total loss of service to an I-Net Site.

(B) Minor Outage: Loss of service on a single fiber to any I-Net Site.

(C) Service Interruption: Reduction in signal throughput to the point where the signal on a circuit falls below acceptable standards.

(3) Notwithstanding the foregoing classifications, the County may, in its discretion, reclassify any specific service outage affecting I-Net plant upon notice to Cox, and such reclassification shall govern response and restoration times.

(b) *Response to Outages and Interruptions.* The response time (the point at which Cox is engaged in restoration of service) for all Service Outages, whether reported to Cox by the County or independently identified by Cox, shall be as specified in Section 7(d). Upon identification of a Service Outage, Cox shall, within such response time, have qualified personnel on site to investigate the outage, assess the cause and commence necessary repairs. To the extent that necessary repairs resulting in restoration of connectivity on the I-Net can be immediately accomplished, Cox shall effect such repairs in connection with its investigation of

the cause of the Service Outage. To the extent that repairs cannot be immediately effected, Cox shall, within the response time, inform the County of the apparent cause of the Service Outage, and the anticipated time to restore connectivity.

(c) *Restoration of Service*

(1) Cox shall, to the maximum extent practicable, restore connectivity of any category of service alarm involving I-Net plant that is bundled together with HSN plant at the same time as restoration of co-located HSN plant.

(2) Cox shall restore connectivity of I-Net plant that is not bundled together with HSN plant as promptly as practicable within the estimated restoration times reported to the County pursuant to Section 7(d) and shall use its best efforts to effect such restoration within the service objectives set forth in Section 7(d); provided, however, that in the case of any Service Outage affecting I-Net plant that is not bundled together with HSN plant, the County may, pursuant to a work order issued to Cox ("Work Order"), require Cox to engage the services of one or more subcontractors to effect such restoration.

(3) In the case of a Service Outage involving more than one category of Service Outage or multiple service outages involving more than one category of Service Outage, Cox shall restore connectivity in the order specified in Section 7(a)(2), or such other order of priority as the County reasonably requires. In all cases involving Service Outages resulting from I-Net plant that is bundled together with HSN plant, Cox shall give priority to restoration of the I-Net plant.

(d) *Response and Restoration Times.* The standards for response and restoration of service as specified in Sections 7(b) and 7(c) are:

(1) **Major Outage:** Response within two hours during normal business hours, two hours otherwise; temporary repair completed within four hours, permanent repair within two business days.

(2) **Minor Outage:** Response within two hours during normal business hours, next business day otherwise; temporary repair completed within four hours, permanent repair within three business days.

(3) **Service Interruption:** Response within two hours during normal business hours, next business day otherwise; temporary repair completed within 24 hours, permanent repair within five business days.

(4) Where, for reasons beyond Cox's control, restoration of service cannot be completed in the above time periods even with the exercise of all due diligence, Cox shall complete the restoration of service in the shortest time possible.

(e) *Third-Party Damage.* If any IRU Fiber should be cut or damaged, and the responsible party is identified, then the County shall support Cox's claims for damages against the responsible party.

(f) *County's Costs.* Notwithstanding the foregoing provisions, all I-Net wiring on the County's side of the Demarcation Point and all I-Net Headend electronics, STC electronics, and I-Net Site electronics are the sole responsibility of the County, except to the extent that Cox's negligence or willful action may adversely affect such equipment or facilities. All costs associated with locating or repairing any failure which is reported to Cox but which subsequently is determined to have occurred on the County's side of the Demarcation Point shall be paid for by the County.

8 USE OF THE I-NET

(a) Authorized Users

(1) Parties authorized to use the I-Net (“Authorized Users”) shall include, to the extent approved by the County:

- (A) the County and the Fairfax County Public Schools and their agencies and subdivisions;
- (B) Fairfax County Boards, Authorities, Commissions, and Committees;
- (C) at the County’s sole discretion, Federal, State, or local governments and any governmental instrumentality, including but not limited to the governmental participants in NCRnet and FirstNet;
- (D) at the County’s sole discretion, organizations within the County and the Cities of Falls Church and Fairfax or the Towns of Clifton, Herndon, and Vienna that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

(b) Third-Party Traffic

(1) The County shall not use or permit any third party to use the I-Net for resale or for the transmission of third-party traffic.

(2) For purposes of this subsection 8(b), “third-party traffic” shall mean communications not involving at least one Authorized User, except that, to the extent the I-Net is

connected to the Internet and communications not involving at least one Authorized User pass through but do not terminate at I-Net sites or components in accordance with the normal processes by which communications are propagated on the Internet, such communications shall not be considered third-party traffic.

(3) Use by the public of facilities having I-Net connections at libraries, community centers, and similar public buildings shall not be considered third-party traffic.

(c) *Liability.* Cox shall have no control, responsibility, or liability for the signals distributed over the fiber optic components of the I-Net by the County or other Authorized Users or for their benefit.

9 **THE GRANTEE**

(a) *Damages.* In no event shall Cox be liable for special, consequential, exemplary, or punitive damages as a result of its performance or non-performance in design, construction, installation, repair, or maintenance of the I-Net or in the transmission of any service, information, data, voice, or any other transmission provided under this Appendix.

(b) *Known Errors.* If Cox performs any work under this Appendix knowing it involves a recognized and material error, inconsistency or omission in this Appendix without notice to and approval of the County, Cox shall bear the cost of correction. If the County permits Cox to perform any such work knowing it involves a recognized and material error, inconsistency, or omission in this Appendix without notice to and approval of Cox, the County shall bear the cost of correction. Cox's provision of its plans to the County shall not be construed to render the County responsible for Cox's planning or execution or for detecting any errors, inconsistencies, or omissions therein, except to the extent specifically set forth herein.

(c) *Supervision.* Cox shall supervise and direct all work under this Appendix, using Cox's skill and attention in accordance with accepted industry practices. Cox shall be solely responsible for and have control over maintenance means, methods, techniques, sequences, and procedures and for coordinating all portions of the work under this Appendix, unless this Appendix provides for other specific instructions concerning these matters.

(d) *Contacts.* Cox shall provide to the County, and update as necessary, a list of contact persons to ensure that the County can reach the necessary Cox staff regarding I-Net matters.

(e) *Taxes.* To the extent to which any taxes apply to any aspect of the I-Net or the IRU Fibers, Cox shall be solely responsible for such taxes.

10 REPRESENTATIONS AND WARRANTIES

(a) *Authorizations and Consents.* Cox represents, warrants, and covenants that it has all authorizations and consents, including but not limited to the Required Rights, necessary to enable it to construct, install, and maintain the IRU Fibers and to grant the County the IRU in the IRU Fibers.

(b) *Good Title.* Cox represents, warrants, and covenants that it holds and will continue to hold good record and marketable legal title to the Cable System and the IRU Fibers, without any encumbrances or liens thereon.

(c) *Compliance with Specifications.* Cox represents, warrants, and covenants that as of the Effective Date, the IRU Fibers complied with the specifications set forth herein and in the I-Net Manual.

11 **MISCELLANEOUS**

(a) *Assignment and Sublease.* This Appendix is binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.

Notwithstanding anything to the contrary contained in this Franchise Agreement, the County covenants and agrees that as long as Cox lawfully operates a cable system in the County, the County shall not, and Cox may enjoin the County from, any attempt to assign, sell, lease, sublease, transfer, grant an indefeasible right of use or other similar right or interest in the IRU or the I-Net to anyone.

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EXHIBIT A
Recurring Maintenance Charge

The Recurring Maintenance Charge is as follows:

Recurring Maintenance Charge Per Fiber Mile	\$70.00
Fiber Miles	3150 Miles
Annual Net Recurring Maintenance Charge ⁱ	\$220,500.00
Quarterly Recurring Maintenance Charge ⁱ	\$55,125.00

ⁱ In accordance with Section 6(c) herein, the Recurring Maintenance Charge will be adjusted periodically to account for changes in the I-Net mileage and the CPI.

APPENDIX 2: PEG ORIGINATION SITE APPENDIX

Account name	Address
Government Center	12000 Government Center Parkway
Chapel Square Media Center	4414 Holborn Avenue
Luther Jackson Intermediate	3020 Gallows Road
George Mason University	4400 University Drive
Northern Virginia Community College	8333 Little River Turnpike
Fairfax Cable Access	2929 Eskridge Road

PEG origination sites for the Cities of Fairfax and Falls Church and the Towns of Herndon, Vienna, and Clifton shall be identified in the individual Cities' and Towns' franchise documents.

APPENDIX 3: I-NET SITE APPENDIX

	NAME	TYPE	LID	CODE
	KRC			
1	Government Center - x2	KRC	39	CGC00
2	Massey Building - x2	KRC	129	CMS11
3	911 Center - Police EOC - (x2 - EOC02)	KRC	119	EOC01
4	McConnell Public Safety and Trans Op Ctr (PSTOC)	KRC	149	PSTOC
5	Wilton Woods Administrative Center	KRC	352	SA1195
6	Sprague Center (PEG)	KRC	305	SA2134
7	Fairfax Ridge FCPS Admin	KRC	361	SAFR01
	HUB			
8	Dranesville Hub	HUB	34	HUBDR00
9	Fair Lakes Hub	HUB	52	HUBFLO0
10	Fairfax Station Hub	HUB	269	HUBFS00
11	Gunston Corner Hub	HUB	240	HUBGC00
12	Merrifield Hub - x2	HUB	92	HUBMF00
13	Rose Hill Hub	HUB	183	HUBRH00
14	Tysons Corner Hub	HUB	76	HUBTC00
	EDGE			
15	Economic Development Authority	EDGE	244	AED01
16	CenterPointe Tower	EDGE	127	CCP00
17	Herrity Building	EDGE	41	CGC02
18	Pennino Building	EDGE	40	CGC03
19	McLean Government Center	EDGE	60	CGM00
20	Retirement Agency	EDGE	24	CMS06
21	Juvenile Detention Center	EDGE	23	CMS09a
22	Police Administration Headquarters (Old Police Annex)	EDGE	18	CMS10
23	Judicial Center/Jennings	EDGE	130	CMS14
24	Juvenile and Domestic Court	EDGE	121	CMS15a
25	City Square Building - ASAP	EDGE	22	CMS16
26	Sheriff Administrative Services Division	EDGE	16	CMS18
27	Burkeholder Center	EDGE	26	CMS19
28	South County Building	EDGE	246	CSC01
29	DPWES I-66 Landfill	EDGE	142	D6601
30	DPW Landfill - I-95	EDGE	273	D9501a

	NAME	TYPE	LID	CODE
31	Maintenance and Stormwater Management Division	EDGE	21	DBB01
32	Facilities Management Division	EDGE	124	DFM01
33	Herndon Bus Garage	EDGE	286	DHB01
34	Huntington Bus Garage	EDGE	236	DHU01
35	Noman M Cole, Jr Pollution Control Plant	EDGE	266	DPC01
36	Solid Waste Division, DPW Newington	EDGE	199	DSW01
37	Wastewater Collection Division/Line Maintenance	EDGE	165	DWW01
38	Fire and Rescue #27 - W. Springfield (BOS Police 7)	EDGE	172	E2700
39	Animal Control	EDGE	134	ESA01
	<i>Police</i>			
40	Police-Heliport	EDGE	141	ESH01
41	Police Driving Track	EDGE	116	ESJ01
42	Police Lee District - Franconia GC (BOS P6)	EDGE	170	ESL00
43	Police-Div II-Mason District (BOS P4)	EDGE	188	ESM00
44	Fire and Rescue #30 - Providence District (BOS)	EDGE	258	ESP00
45	Police (Criminal Justice) Academy	EDGE	63	ESP01
46	Police Firearms Range	EDGE	115	ESR01
47	Police Sully District (BOS P1)	EDGE	150	ESS00a
48	Police Mount Vernon District (BOS)	EDGE	82	ESV00
	<i>Fire and Rescue</i>			
49	Fire and Rescue #08 - Annandale Volunteer	EDGE	205	FAN08
50	Fire and Rescue #23 - Annandale Volunteer	EDGE	261	FAN23
51	Fire and Rescue #10 - Bailey's Crossroads Volunteer	EDGE	109	FBC10
52	Fire and Rescue #14 - Burke Volunteer	EDGE	267	FBU14
53	Fire and Rescue #17 - Centreville Volunteer	EDGE	162	FCE17
54	Fire and Rescue #15 - Chantilly	EDGE	55	FCH15
55	Fire and Rescue #16 - Clifton	EDGE	50	FCL16
56	Fire and Rescue #41 - Lorton	EDGE	271	FCP41
57	Fire and Rescue #13 - Dunn Loring Volunteer	EDGE	77	FDL13
58	Fire and Rescue #26 - Edsal Road	EDGE	157	FER26
59	Fire and Rescue #32 - Fairview	EDGE	158	FFA32
60	Fire and Rescue #40 - Fairfax Center	EDGE	144	FFC00
61	Fire and Rescue #03 - Fairfax City	EDGE	128	FFC03
62	Fire and Rescue #33 - Fairfax City	EDGE	4	FFC33
63	Fire and Rescue #31 - Fox Mill	EDGE	85	FFM31
64	Fire and Rescue #21 - Fair Oaks Volunteer (Police 8)	EDGE	46	FFO21
65	Fire and Rescue #36 - Frying Pan	EDGE	86	FFP36
66	Fire and Rescue #05 - Franconia Volunteer	EDGE	180	FFR05

	NAME	TYPE	LID	CODE
67	Fire and Rescue #12 - Great Falls Volunteer	EDGE	274	FGF12
68	Fire and Rescue #20 - Gunston	EDGE	15	FGU20
69	Fire and Rescue #04 - Herndon	EDGE	196	FHE04
70	Fire and Rescue #18 - Jefferson	EDGE	96	FJE18
71	Fire and Rescue #37 - Kingstowne	EDGE	230	FKI37
72	Fire and Rescue #19 - Lorton Volunteer	EDGE	221	FLO19
73	Fire and Rescue #01 - McLean Volunteer	EDGE	62	FMC01
74	Fire and Rescue #09 - Mount Vernon	EDGE	83	FMV09
75	Fire and Rescue #39 - North Point	EDGE	31	FNP39
76	Fire and Rescue #34 - Oakton	EDGE	17	FOA34
77	Fire and Rescue #11 - Penn Daw	EDGE	192	FPD11
78	Fire and Rescue #35 - Pohick	EDGE	226	FPO35
79	Fire and Rescue #28 - 7 Corners	EDGE	93	FSC28
80	Fire and Rescue #22 - Springfield Volunteer	EDGE	203	FSP22
81	Fire Training Academy	EDGE	138	FTA01
82	Fire and Rescue #29 - Tysons Corner	EDGE	68	FTC29
83	Fire and Rescue #02 - Vienna Volunteer	EDGE	120	FVI02
84	Fire and Rescue #38 - West Centerville	EDGE	166	FWC38
85	Fire and Rescue #24 - Woodlawn	EDGE	255	FWO24
	<i>County Centers</i>			
86	New Beginnings	EDGE	132	HAB01
87	ADS Fairfax Outpatient	EDGE	13	HAF01
88	Annandale Senior Center	EDGE	208	HAS01
89	ADS Falls Church Youth	EDGE	25	HAY01
90	Beacon Hill Group Home	EDGE	84	HBH01
91	SoJorner House Group Home	EDGE	154	HBK01a
92	Bailey's Senior Center	EDGE	163	HBS01
93	Parkeast Circle (CSB)	EDGE	57	HCM01
94	Crossroads	EDGE	201	HCR01a
95	Health Department Lab	EDGE	9	HDL01
96	David R. Pinn Community Center	EDGE	7	HDP01
97	Devonshire - School	EDGE	287	HDS01a
98	Fairfax House	EDGE	102	HFH01
99	CSB Administration - Fairfax Mental Health	EDGE	118	HFM01
100	REDD Program (Formally Gregory Road Crisis)	EDGE	242	HGR01
101	Gum Springs HSIT	EDGE	235	HGS01
102	Health Department Cary Building	EDGE	238	HHH01
103	Hollin Hall Senior Center	EDGE	67	HHH01

	NAME	TYPE	LID	CODE
104	Herndon Neighborhood Resource Center (HSIT WIC)	EDGE	29	HHN01
105	Huntington Community Center	EDGE	161	HHU01
106	Joseph Willard Health Center	EDGE	117	HJW01
107	Katherine K. Hanley Family Shelter	EDGE	53	HKHS01
108	Kelly Square – Health Department	EDGE	28	HKS01
109	Lincolnia Ctr (HSIT)	EDGE	146	HLC01
110	Little River Glen Senior Center	EDGE	123	HLR01
111	Lewinsville Senior Center	EDGE	284	HLS01
112	McLean Community Center	EDGE	47	HMC01
113	Gartlan Center (Formerly Mt Vernon Mental Health)	EDGE	237	HMM01
114	Mott Community Center	EDGE	43	HMT01
115	New Generations	EDGE	248	HNG01
116	Housing/Circuit Court Records	EDGE	1	HOUS01
117	Housing and Community Development	EDGE	113	HOUS02
118	Patrick Street Group Home	EDGE	81	HPS01
119	Women's Recovery Center	EDGE	12	HRW01
120	Springfield Outpatient	EDGE	245	HSO01
121	McLean Community Teen Center (Old Firehouse)	EDGE	61	HTC01
122	Sully Senior Center	EDGE	160	HTS01
123	Woodburn Community Mental Health Center	EDGE	104	HWC01
124	Willston Multicultural Center	EDGE	171	HWM01
125	Recovery House HIDTA	EDGE	89	HWR01
126	Boys Probation House	EDGE	133	JBP01a
127	Girls Probation House	EDGE	51	JGP01a
	<i>Libraries</i>			
128	Burke Center Community Library	EDGE	164	LBU01
129	Chantilly Regional Library	EDGE	122	LCH01
130	Centreville Regional Library	EDGE	58	LCR01
131	Dolley Madison Community Library	EDGE	49	LDM01
132	Fairfax City Regional Library	EDGE	10	LFC01
133	Great Falls Community Library	EDGE	272	LGF01
134	George Mason Regional Library	EDGE	202	LGM01
135	Herndon Fortnightly Community Library	EDGE	220	LHF01
136	John Marshall Community Library	EDGE	177	LJM01
137	Kingstowne Community Library	EDGE	187	LKI01
138	Kings Park Community Library	EDGE	262	LKP01
139	Lorton Community Library	EDGE	268	LLO01
140	Martha Washington Community Library	EDGE	191	LMW01

	NAME	TYPE	LID	CODE
141	Oakton Community Library	EDGE	8	LOAK01
142	Patrick Henry Community Library	EDGE	3	LPH01
143	Pohick Regional Library	EDGE	184	LPO01
144	Richard Byrd Community Library	EDGE	211	LRB01
145	Sherwood Hall Regional Library	EDGE	80	LSH01
146	Thomas Jefferson Community Library	EDGE	213	LTJ01
147	Tysons-Pimmit Regional Library	EDGE	219	LTP01
148	Woodrow Wilson Community Library	EDGE	169	LWW01
	<i>Maintenance and Recreation Centers</i>			
149	Area 1 Maintenance Shop	EDGE	74	PA101
150	Area 3 Maintenance Shop	EDGE	200	PA301
151	Area 4 Maintenance Shop	EDGE	14	PA401
152	Hunter House - Nottoway Park (Area 7)	EDGE	270	PA701
153	Burke Lake Golf Course	EDGE	300	PBG01
154	Burke Lake Park - Administration/ Park Office	EDGE	212	PBL01b
155	Clark House	EDGE	182	PCH01
156	Colvin Run Mill Historic Site	EDGE	2	PCR01
157	Ellanor C. Lawrence / Walney Visitors Center	EDGE	153	PEC01
158	Annandale Community Park Facility Maintenance	EDGE	126	PFM01
159	Frying Pan Park Activity and Equestrian Center	EDGE	87	PFP01
160	Frying Pan Park Elmore Barn	EDGE	88	PFP01b
161	Flatlick Shop (Area 5)	EDGE	135	PFS01
162	Greendale Golf Course	EDGE	194	PGG01
163	Green Spring Gardens Park	EDGE	140	PGS01
164	George Washington Rec Center	EDGE	249	PGW01
165	Huntley Meadows Park	EDGE	114	PHM01
166	Hidden Oaks Nature Center	EDGE	222	PHO01
167	Hidden Pond Nature Center	EDGE	250	PHP01
168	Jefferson District Golf Course	EDGE	228	PJG01
169	James Lee Community and Senior Center	EDGE	91	PJL01a
170	Lake Accotink Park Main Office	EDGE	215	PLA01a
171	Lake Accotink Park Marina	EDGE	159	PLA01b
172	Lee District Rec Center	EDGE	190	PLD01
173	Lewinsville Park	EDGE	71	PLE01
174	Laurel Hill Golf Clubhouse	EDGE	275	PLH01
175	Laurel Hill Golf Maintenance	EDGE	264	PLM01
176	Mount Vernon Rec Center	EDGE	75	PMV01
177	Oak Marr Rec Center	EDGE	99	POM01

	NAME	TYPE	LID	CODE
178	Oak Marr Golf Course Club House	EDGE	98	POM01b
179	Pinecrest Golf Course	EDGE	189	PPG01
180	Providence Rec Center	EDGE	217	PPR01
181	Riverbend Nature Center Visitor Center	EDGE	254	PRN01
182	Spring Hill Rec Center	EDGE	48	PSH01
183	Sully Plantation Historic Site	EDGE	110	PSP01
184	South Run Rec Center	EDGE	218	PSR01
185	Twin Lakes Golf Clubhouse	EDGE	176	PTG01
186	Cub Run Rec Center	EDGE	145	PWC01
187	Audrey Moore Rec Center (Wakefield)	EDGE	234	PWF01a
188	Wakefield Turf Shop	EDGE	301	PWF01b
189	Forte Support Center	EDGE	349	SA001
190	Springfield Warehouse	EDGE	197	SA002
191	Dunn Loring Center	EDGE	351	SA0072
192	Virginia Hills Center	EDGE	353	SA1196
193	Lorton Center - OTS	EDGE	354	SA1358
194	Mason Crest ES	EDGE	356	SA2453
195	Leis Center	EDGE	357	SA3094
196	Gatehouse Administration Center I	EDGE	358	SA8X52
197	Plum Center Adult and Community Education (ACE)	EDGE	360	SAEP01
198	Energy Zone	EDGE	362	SAFW01
199	Sideburn Support Center - Administrative	EDGE	363	SASS01
	<i>Elementary Schools</i>			
200	Franconia Elementary	EDGE	364	SE1122
201	Bush Hill Elementary	EDGE	365	SE1123
202	Lane Elementary	EDGE	366	SE1127
203	West Springfield Elementary	EDGE	367	SE1152
204	Cardinal Forest Elementary	EDGE	368	SE1154
205	Rolling Valley Elementary	EDGE	369	SE1156
206	Keene Mill Elementary	EDGE	370	SE1157
207	Garfield Elementary	EDGE	371	SE1162
208	Springfield Estates Elementary	EDGE	372	SE1163a
209	Lynbrook Elementary	EDGE	373	SE1164
210	Forestdale Elementary	EDGE	374	SE1165
211	Crestwood Elementary	EDGE	375	SE1166
212	Hayfield Elementary	EDGE	376	SE1184
213	Cameron Elementary	EDGE	377	SE1192
214	Clermont Elementary	EDGE	378	SE1193

	NAME	TYPE	LID	CODE
215	Rose Hill Elementary	EDGE	379	SE1194
216	Fort Belvoir Elementary	EDGE	380	SE1197
217	Belle View Elementary	EDGE	381	SE1202
218	Mount Eagle Elementary	EDGE	382	SE1203
219	Groveton Elementary	EDGE	383	SE1205
220	Hybla Valley Elementary	EDGE	384	SE1206
221	Bucknell Elementary	EDGE	385	SE1207
222	Stratford Landing Elementary	EDGE	386	SE1212
223	Waynewood Elementary	EDGE	387	SE1213
224	Hollin Meadows Elementary	EDGE	388	SE1214
225	Fort Hunt Elementary	EDGE	389	SE1217
226	Washington Mill Elementary	EDGE	390	SE1222
227	Mount Vernon Woods Elementary	EDGE	391	SE1223
228	Riverside Elementary	EDGE	392	SE1226
229	Woodlawn Elementary	EDGE	393	SE1227
230	Woodley Hills Elementary	EDGE	394	SE1229
231	Lorton Station Elementary	EDGE	395	SE1343
232	Gunston Elementary	EDGE	396	SE1348
233	Newington Forest Elementary	EDGE	397	SE1352
234	Saratoga Elementary	EDGE	398	SE1354
235	Halley Elementary	EDGE	399	SE1356
236	Cherry Run Elementary	EDGE	400	SE1372
237	Orange Hunt Elementary	EDGE	401	SE1374
238	Silverbrook Elementary	EDGE	402	SE1375
239	Sangster Elementary	EDGE	403	SE1377
240	Hunt Valley Elementary	EDGE	404	SE1378
241	White Oaks Elementary	EDGE	405	SE1387
242	Laurel Hill Elementary	EDGE	406	SE1403
243	Kings Glen Elementary	EDGE	407	SE1406
244	Kings Park Elementary	EDGE	408	SE1407
245	Lemon Road Elementary	EDGE	409	SE2074
246	Beech Tree Elementary	EDGE	410	SE2096
247	Parklawn Elementary	EDGE	411	SE2102
248	Bailey's Elementary School for the Arts and Sciences	EDGE	412	SE2103
249	Glen Forest Elementary	EDGE	413	SE2104
250	Sleepy Hollow Elementary	EDGE	414	SE2106
251	Weyanoke Elementary	EDGE	415	SE2112
252	Bren Mar Park Elementary	EDGE	416	SE2114

	NAME	TYPE	LID	CODE
253	Wakefield Forest Elementary	EDGE	417	SE2132
254	Little Run Elementary	EDGE	418	SE2133
255	Olde Creek Elementary	EDGE	419	SE2135
256	Mantua Elementary	EDGE	420	SE2138
257	North Springfield Elementary	EDGE	421	SE2142
258	Ravensworth Elementary	EDGE	422	SE2143
259	Annandale Terrace Elementary	EDGE	423	SE2144
260	Braddock Elementary	EDGE	424	SE2147
261	Union Mill Elementary	EDGE	425	SE2154
262	Fairfax Villa Elementary	EDGE	426	SE2173
263	Virginia Run Elementary	EDGE	427	SE2232
264	Deer Park Elementary	EDGE	428	SE2242
265	Cub Run Elementary	EDGE	429	SE2244
266	Londontowne Elementary	EDGE	430	SE2245
267	Lee's Corner Elementary	EDGE	431	SE2252
268	Greenbriar East Elementary	EDGE	432	SE2254
269	Greenbriar West Elementary	EDGE	433	SE2255
270	Brookfield Elementary	EDGE	434	SE2263
271	Poplar Tree Elementary	EDGE	435	SE2264
272	Oak Hill Elementary	EDGE	436	SE2333
273	Fairview Elementary	EDGE	437	SE2362
274	Terra Centre Elementary	EDGE	438	SE2383
275	Oak View Elementary	EDGE	439	SE2392
276	Laurel Ridge Elementary	EDGE	440	SE2394
277	Bonnie Brae Elementary	EDGE	441	SE2395
278	Canterbury Woods Elementary	EDGE	442	SE2402
279	Willow Springs Elementary	EDGE	444	SE2424
280	Centreville Elementary	EDGE	445	SE2433
281	Centre Ridge Elementary	EDGE	446	SE2436
282	Bull Run Elementary	EDGE	447	SE2437
283	Columbia Elementary	EDGE	448	SE2455
284	Belvedere Elementary	EDGE	449	SE2456
285	Colvin Run Elementary	EDGE	450	SE3017
286	Spring Hill Elementary	EDGE	451	SE3018
287	Franklin Sherman Elementary	EDGE	452	SE3025
288	Churchill Road Elementary	EDGE	453	SE3026
289	Haycock Elementary	EDGE	454	SE3033
290	Chesterbrook Elementary	EDGE	455	SE3035

	NAME	TYPE	LID	CODE
291	Kent Gardens Elementary	EDGE	456	SE3036
292	Wolftrap Elementary	EDGE	457	SE3042
293	Westbriar Elementary	EDGE	458	SE3048
294	Oakton Elementary	EDGE	459	SE3052
295	Mosby Woods Elementary	EDGE	460	SE3053
296	Marshall Road Elementary	EDGE	461	SE3054
297	Vienna Elementary	EDGE	462	SE3062
298	Flint Hill Elementary	EDGE	463	SE3063
299	Stenwood Elementary	EDGE	464	SE3065
300	Cunningham Park Elementary	EDGE	465	SE3066
301	Louise Archer Elementary	EDGE	466	SE3067
302	Westgate Elementary	EDGE	467	SE3075
303	Freedom Hill Elementary	EDGE	468	SE3077
304	Timber Lane Elementary	EDGE	469	SE3082
305	Shreviewood Elementary	EDGE	470	SE3083
306	Pine Spring Elementary	EDGE	471	SE3084
307	Camelot Elementary	EDGE	472	SE3086
308	Fairhill Elementary	EDGE	473	SE3087
309	Graham Road Elementary	EDGE	474	SE3093
310	Westlawn Elementary	EDGE	475	SE3095
311	Dranesville Elementary	EDGE	476	SE3273
312	Herndon Elementary	EDGE	477	SE3276
313	Clearview Elementary	EDGE	478	SE3282
314	Floris Elementary	EDGE	479	SE3286
315	Hutchison Elementary	EDGE	480	SE3287
316	Forestville Elementary	EDGE	481	SE3295
317	Great Falls Elementary	EDGE	482	SE3297
318	Navy Elementary	EDGE	490	SE3332
319	Fox Mill Elementary	EDGE	491	SE3334
320	McNair Farm Elementary	EDGE	492	SE3335
321	Waples Mill Elementary	EDGE	495	SE3445
322	Woodburn Elementary	EDGE	496	SE3452
323	Eagle View Elementary	EDGE	497	SE8136
324	Coates Elementary	EDGE	498	SE8285
325	Providence Elementary	EDGE	499	SE8396
326	Daniels Run Elementary	EDGE	500	SE8397
327	Island Creek Elementary	EDGE	501	SE8429
328	Collin Powell Elementary	EDGE	502	SE8431

	NAME	TYPE	LID	CODE
	<i>High Schools</i>			
329	Edison High	EDGE	503	SH1120
330	West Springfield High	EDGE	504	SH1150
331	Lee High	EDGE	505	SH1160
332	Hayfield Secondary	EDGE	506	SH1180
333	West Potomac High	EDGE	507	SH1200
334	Mount Vernon High	EDGE	508	SH1220
335	South County High School (New)/Pohick Secondary	EDGE	509	SH1370
336	Lake Braddock Secondary	EDGE	510	SH1400
337	Stuart High	EDGE	511	SH2100
338	Woodson High	EDGE	512	SH2130
339	Annandale High	EDGE	513	SH2140
340	Westfield High	EDGE	514	SH2240
341	Chantilly High	EDGE	515	SH2250
342	Centreville High	EDGE	516	SH2410
343	Fairfax High	EDGE	517	SH2500
344	Thomas Jefferson High (Science and Technology)	EDGE	518	SH2800
345	Langley High	EDGE	519	SH3020
346	McLean High	EDGE	520	SH3030
347	Oakton High	EDGE	521	SH3050
348	Madison High	EDGE	522	SH3060
349	Marshall High	EDGE	523	SH3070
350	Pimmit Hills Alt. HS / Senior Center	EDGE	216	SH3073a
351	Falls Church High	EDGE	525	SH3090
352	Herndon High	EDGE	526	SH3270
	<i>Middle Schools</i>			
353	Irving Middle	EDGE	528	SM1151
354	Key Middle	EDGE	529	SM1161
355	Twain Middle	EDGE	531	SM1191
356	Whitman Middle	EDGE	532	SM1221
357	Carl Sandburg Middle	EDGE	533	SM1231
358	South County Middle	EDGE	530	SM1422
359	Glasgow Middle	EDGE	534	SM2101
360	Holmes Middle	EDGE	535	SM2111
361	Frost Middle	EDGE	536	SM2131
362	Poe Middle	EDGE	537	SM2141
363	Stone Middle	EDGE	538	SM2241
364	Rocky Run Middle	EDGE	539	SM2251

	NAME	TYPE	LID	CODE
365	Franklin Middle	EDGE	540	SM2331
366	Robinson Secondary	EDGE	541	SM2390
367	Lanier Middle	EDGE	542	SM2501
368	Cooper Middle	EDGE	543	SM3021
369	Longfellow Middle	EDGE	544	SM3031
370	Thoreau Middle	EDGE	545	SM3061
371	Kilmer Middle	EDGE	546	SM3071
372	Luther Jackson Middle	EDGE	547	SM3081
373	Rachel Carson Middle	EDGE	548	SM3171
374	Herndon Middle	EDGE	549	SM3181
375	Liberty Middle	EDGE	551	SM8411
	<i>Other</i>			
376	Bryant Alternative High	EDGE	552	SS0201
377	Quander Road Center	EDGE	553	SS1204
378	Burke Center School and Administration	EDGE	554	SS1389
379	Mt View Adult School	EDGE	555	SS2432
380	Cedar Lane Center	EDGE	556	SS3064
381	Woodson CEF	EDGE	558	SWG01
382	Field Information Services Admin (Woodson)	EDGE	559	SWIT01
383	DVS, Alban Facility	EDGE	210	VAL01
384	DVS, Jermantown Facility	EDGE	111	VJE01
385	Radio Repair Shop - Network Services	EDGE	112	VJE02
386	DVS, Newington Facility	EDGE	198	VNE01
387	DVS, West Ox Facility	EDGE	143	VWO01
388	FCWA Newington Maintenance Facility	EDGE	294	WCR01
389	Corbalis Treatment Plant	EDGE	280	WDW01
390	Griffith Treatment Plant	EDGE	298	WGT01
391	FCWA Chantilly Property Yard	EDGE	292	WHC01
392	Water Authority	EDGE	297	WWA01
393	Heritage Building	EDGE	342	
394	PSTOC Bus Garage	EDGE	151	
395	Fire and Rescue #42	EDGE	580	

APPENDIX 4: GUARANTEE OF PERFORMANCE

GUARANTEE OF PERFORMANCE

WHEREAS, Fairfax County, Virginia ("County") granted a franchise ("Franchise") to CoxCom, LLC, d/b/a Cox Communications Northern Virginia ("Cox"), to erect, construct, operate, and maintain a cable system in the County pursuant to Ordinance No. _____, and the Fairfax County Cable Communications Ordinance, Chapter 9.1 of the Code of the County of Fairfax (collectively, the "Franchise Documents"); and

WHEREAS, Cox Communications, Inc. ("Guarantor"), is a principal shareholder in and the parent of Cox and will have a substantial interest in the Franchise, in the conduct of Cox, and in the Franchise Agreement and Franchise Documents, which are incorporated herein by reference;

WHEREAS, Guarantor desires to provide the fullest assurance to the County that Cox will be able to fully discharge its duties and obligations under the Franchise Agreement and Franchise Documents;

NOW, THEREFORE, the Guarantor hereby unconditionally guarantees the due and punctual performance of any and all obligations of Cox required by the Franchise Agreement and Franchise Documents. The Guarantor irrevocably appoints Cox, its successors and assigns, as its agent for the purpose of consenting to all changes in the terms and conditions of the Franchise Agreement and Franchise Documents. The Guarantor hereby ratifies and confirms

such changes as may be made from time to time, and waives any notice of acceptance, non-payment, default, and non-performance required by the Franchise Agreement and Franchise Documents.

This Guarantee, unless terminated, substituted, or canceled as hereinafter provided, shall remain in full force and effect for the term of the Franchise, as it may be renewed or extended and as provided by the Franchise Agreement and Franchise Documents; provided, however, that upon the County's prior written approval of a substitute guarantor, which approval shall not be unreasonably withheld, this Guarantee may be terminated, substituted or canceled upon written notice from the Guarantor to the County and Cox. Any such substitution of the Guarantor will be implemented in a manner that ensures that the substitute guarantee is in place and effective prior to or contemporaneously with the termination, substitution, or cancellation of this Guarantee so that there is no breach in coverage.

Any such notice to be given hereunder shall be addressed to:

County: County Executive
c/o Fairfax County Department of Cable and Consumer Services
12000 Government Center Parkway, Suite 433
Fairfax, Virginia 22035-0064
Telephone: (703) 324-5949
Facsimile: (703) 803-0489

With a copy (which shall not constitute notice) to:

Fairfax County Attorney
Office of the County Attorney
12000 Government Center Parkway, Suite 549
Telephone: (703) 342-2421
Facsimile: (703) 324-2665

Cox: Cox Communications, Inc.
ATTN: SVP Law & Policy Department
1400 Lake Hearn Dr.
Atlanta, GA 30319

With a copy (which shall not constitute notice) to:

Cox Communications – Virginia
ATTN: SVP/GM
1341 Crossways Blvd
Chesapeake, VA 23320

Such termination shall not affect liability incurred or accrued under this Guarantee prior to the effective date of such termination or cancellation.

The Guarantor consents to the release of any security held to assure Cox's performance of its obligations.

Cox Communications, Inc. Guarantor

By: _____

Title: _____

Date: _____, 2013

SAMPLE PEG GRANT PAYMENT DETAIL

APPENDIX 5: SAMPLE PEG GRANT PAYMENT DETAIL

Example of supporting detail for PEG grant or franchise fee payments, pursuant to Section 8(b):

	January	February	March	Quarter Total
Monthly recurring cable service charges (<i>e.g.</i> , basic, expanded basic, premium, equipment rental)				
Usage-based charges (<i>e.g.</i> , pay-per-view, installation)				
Advertising, gross				
Less agency commissions				
Advertising, net				
Home shopping				
Miscellaneous				
Less bad debt				
Total Gross Revenues				
PEG Grant percentage	3%	3%	3%	3%
PEG Grants paid				
Fraction paid to County	2.04%	2.04%	2.04%	2.04%
Payment to County				

APPENDIX 6: SAMPLE LINE EXTENSION ESTIMATE

Example of supporting detail for line extension estimate, pursuant to Section 10(d)(13):

	Cost
Engineering	\$
Construction Labor (__ ft. x \$ __ per foot)	\$
Materials	\$
Total cost:	\$
Cox Communications contribution (first 200 feet)	\$
Amount due from homeowner	\$

APPENDIX 7: ACCEPTANCE OF FRANCHISE

ACCEPTANCE OF FRANCHISE

CoxCom, LLC, d/b/a Cox Communications Northern Virginia ("Cox") hereby accepts the franchise to erect, construct, maintain, and operate a cable system offered by Ordinance No. _____ of Fairfax County, Virginia ("County") (the "Granting Ordinance"). By this acceptance, Cox agrees that, as set forth in the franchise and the Franchise Agreement, it shall be bound by the terms and conditions of the Franchise Agreement, any amendments thereto, the Granting Ordinance, and the Fairfax County Cable Communications Ordinance, Chapter 9.1 of the Code of the County of Fairfax, and any amendments thereto (collectively, the "Franchise Documents").

By accepting the franchise, Cox further: (1) acknowledges and accepts the County's legal right to issue and enforce the franchise; (2) agrees that it will not oppose the County's intervention in any proceeding affecting Cox's Cable System; (3) accepts and agrees to comply with each and every provision of the Franchise Documents; (4) agrees that the franchise shall not be effective until and unless all conditions precedent are satisfied; and (5) agrees that the franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

Cox declares that it has carefully read all of the terms and conditions of the Franchise Documents, and accepts and agrees to abide by the same.

Upon the franchise's becoming effective, Cox shall be immediately bound to maintain and operate the Cable System under the terms, conditions, and limitations set forth in the

Franchise Documents and other applicable law, as of the time and date it files this written acceptance with the County.

AGREED TO THIS _____ DAY OF _____, 2013.

CoxCom, LLC

By: _____

Its: _____

COMMONWEALTH OF VIRGINIA:

I HEREBY CERTIFY, that on this ___ day of _____, 2013, before me, the subscriber, a Notary Public of the Commonwealth of Virginia, in and for Fairfax County, Virginia, aforesaid personally appeared _____ of _____ and acknowledged the foregoing Acceptance of Franchise by Cox in Fairfax County, Virginia, to be the act and deed of said company.

Fairfax County, Virginia

AS WITNESS my hand and Notary Seal

Notary Public

My Commission Expires: _____

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Board Agenda Item
March 19, 2013

ACTION - 1

Renewal of a Memorandum of Agreement Between the Fairfax County Police Department and the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives

ISSUE:

Board of Supervisors' approval of a Memorandum of Agreement (MOA) between the Fairfax County Police Department and the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), authorizing the ATF to compensate the County for all incurred overtime and other costs related to the assignment of Fairfax County police officers to the ATF Task Force under the 2010 Memorandum of Understanding (MOU) between the ATF and the Fairfax County Police Department.

RECOMMENDATION:

The County Executive recommends that the Board authorize the Chief of Police to sign the MOA between the Police Department and the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

TIMING:

Board action is requested on March 19, 2013.

BACKGROUND:

On February 23, 2010, the Board approved an MOU between the ATF and the Police Department to combat organized criminal activity, illegal firearms, untaxed liquor, and tobacco (Attachment 2). This MOU is still in effect today, and the Police Department continues to work closely with the ATF and neighboring jurisdictions to address organized and gang-related criminal enterprises operating within Fairfax County. A renewed MOA (Attachment 1) is required to authorize the ATF to compensate the County for all incurred overtime and other costs related to the assignment of Fairfax County police officers to the 2010 MOU.

The benefit of a joint task force includes the use of certain technical investigative support and surveillance systems, the sharing of investigative information, and leveraging state and federal law to combat emerging criminal enterprises operating regionally and within Fairfax County. This task force generates the revenue to sustain the operation under a federal statute. Overtime costs are reimbursed by the ATF.

Board Agenda Item
March 19, 2013

Since at least 2008, the ATF has accepted amended language in the MOA as proposed by the Police Department allowing discretion on whether to assign an officer to the ATF Task Force and how such officer would be assigned. However, when the ATF was presented with the most recent renewal MOA as amended by the Police Department, and approved by the Board on October 30, 2012, it indicated that it would no longer accept the amended language, and that an officer or detective was to be assigned on a dedicated, not rotational, basis. Upon further review and consideration, the Police Department affirms that participation on this task force provides appropriate benefit to the Department and the County and is requesting Board approval of the MOA without any amended language. If in the future the Police Department believes that this MOA is no longer in the best interest of Fairfax County the MOA can be terminated upon 60 days written notice to the AFT pursuant to Section VII of the MOA.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1 - Memorandum of Agreement between the Bureau of Alcohol, Tobacco, Firearms and Explosives and Fairfax County Police Department for Reimbursement of Overtime Salary Costs Associated with ATF Task Force.

Attachment 2 – Memorandum of Understanding between the Bureau of Alcohol, Tobacco, Firearms and Explosives and Fairfax County Police Department.

STAFF:

David M. Rohrer, Deputy County Executive
Lt. Colonel James A. Morris, Acting Police Chief
Karen L. Gibbons, Senior Assistant County Attorney



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington, DC 20226

www.atf.gov

MEMORANDUM OF AGREEMENT

**Between the
Bureau of Alcohol, Tobacco, Firearms and Explosives
and
Fairfax County Police Department
for
Reimbursement of Overtime Salary Costs
associated with
ATF TASK FORCE**

This Memorandum of Agreement (MOA) is entered into by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Fairfax County Police Department for the purpose of reimbursement of overtime salary costs and other costs, with prior ATF approval, including but not limited to travel, fuel, training, and equipment, incurred by the Fairfax County Police Department in providing resources to assist ATF.

Payments may be made to the extent they are included in ATF's Fiscal Year Plan and the monies are available to satisfy the request(s) for reimbursable overtime expenses.

I. DURATION OF THIS MEMORANDUM OF AGREEMENT

This MOA is effective with the signatures of all parties and terminates at the close of business on September 30, 2017, subject to Section VII of the MOA.

II. AUTHORITY

This MOA is established pursuant to the following provisions:

1. Title 28, U.S.C., Section 524(c), the Department of Justice, Asset Forfeiture Fund, which provides for the reimbursement of certain expenses of local, county, or State law enforcement agencies incurred as participants in joint operations/task forces with a Department of the Justice law enforcement agency.

2. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, which provides for the reimbursement of overtime salary costs of local, county, or State law enforcement agencies incurred while assisting ATF in joint law enforcement operations.
3. Title 31, U.S.C., Section 9703, the Treasury Forfeiture Fund Act of 1992, which provides for the reimbursement of certain expenses of local, county, or State law enforcement agencies incurred as participants in joint operations/task forces with a Federal law enforcement agency.

If available, the funding for fiscal years 2013, 2014, 2015, 2016 and 2017 is contingent upon annual appropriation laws, Title 28, U.S.C., Section 524(c), annual appropriations, and Title 31, U.S.C., Section 332.

If available, funding allocations for reimbursement of expenses will be transmitted through a separate document.

This Memorandum of Agreement (MOA) is not a funding allocation document.

III. PURPOSE OF THIS MEMORANDUM OF AGREEMENT

This MOA establishes the procedures and responsibilities of both the Fairfax County Police Department and ATF for the reimbursement of certain overtime and other pre-approved expenses incurred pursuant to the authority in Section II.

IV. NAME OF JOINT OPERATION/TASK FORCE (if applicable)

The name of this joint operation/task force: ATF TASK FORCE

V. CONDITIONS AND PROCEDURES

- A. The Fairfax County Police Department shall assign officer(s) to assist ATF in investigations of Federal, state, and local laws. To the maximum extent possible, the officer(s) will be assigned on a dedicated, rather than rotational basis. The Fairfax County Police Department shall provide ATF with the name(s), title(s), and employee identification number(s) of the officer(s) assigned to the investigation.
- B. The Fairfax County Police Department shall provide ATF, within ten (10) calendar days of the signing of this MOA, with a contact name, title, telephone number and address. The Fairfax County Police Department shall also provide the name of the official responsible for providing audit information under paragraph VI of this MOA, and the name of the official authorized to submit an invoice to ATF under paragraph V, subparagraph E.

- C. The Fairfax County Police Department shall provide ATF, within ten (10) calendar days of the signing of this agreement, with the financial institution where the law enforcement agency wants the Electronic Funds Transfer (EFT) payment deposited for reimbursement. The mechanism for this is the Unified Financial Management System (UFMS) Vendor Request Form. Within the UFMS Vendor Request form, the DUNS Number should be provided (DUNS – Data Universal Numbering System, identifies business entities on a location-specific basis) under section 12. When completed, forward this form to the appropriate ATF field office address:

ATF, ATTN: John J. Durastanti, 7799 Leesburg Pike, North Tower, Suite 1050,
Falls Church, VA 22043.

- D. The Fairfax County Police Department may request reimbursement for payment of overtime expenses and other costs with prior ATF approval, including but not limited to travel, fuel, training, and equipment, directly related to work performed by its officer(s) assigned as members of a joint operation/task force with ATF for the purpose of conducting an official investigation.
- E. Invoices submitted to ATF for the payment of expenses must be submitted on the appropriate forms as provided by ATF. The invoice shall be signed by an authorized representative of the Fairfax County Police Department and submitted to ATF field office for signature and verification of the invoice.
- F. The Fairfax County Police Department will submit all requests for reimbursable payments, together with the appropriate documentation to ATF by the 10th day of each subsequent month that the agency is seeking reimbursement.

- (1) If the reimbursement request is not received by the ATF field office by the 10th of the subsequent month, the ATF field office will advise the agency, in writing, that the reimbursement request is late, and if the reimbursement request is not received within the next 10 working days, the overtime costs will not be reimbursed.
- (2) No waivers or extensions will be granted or honored. The Fairfax County Police Department will submit the request for reimbursement via fax, email or mail to the following address:

ATF, ATTN: John J. Durastanti, 7799 Leesburg Pike, North Tower, Suite
1050, Falls Church, VA 22043.

- G. The ATF Supervisor shall be responsible for certifying that the request is for overtime expenses incurred by the Fairfax County Police Department for participation with ATF during the joint operation/task force. The responsible State or local official shall also certify that requests for reimbursement of expenses have not been made to other Federal law enforcement agencies.

- H. The Fairfax County Police Department acknowledges that they remain fully responsible for their obligations as the employer of the officer(s) assigned to the joint operation/task force and are responsible for the payment of the overtime earnings, withholdings, insurance coverage, and all other requirements by law, regulations, ordinance or contract regardless of the reimbursable overtime charges incurred.
- I. All reimbursable hours of overtime work covered under this MOA must be approved in advance by the ATF supervisor.
- J. The ATF supervisor will forward all approved reimbursement requests to the Division Chief, Asset Forfeiture & Seized Property Division for payment.
- K. **This document (MOA) does not obligate funds.** Funding authority, with maximum reimbursement costs to any one law enforcement officer during the fiscal year (October 1 – September 30); will be provided through other documents. The agency will receive an allocation confirmation from the field division.

VI. PROGRAM AUDIT

This MOA and its procedures are subject to audit by ATF, the Department of Justice, Office of Inspector General, the Government Accountability Office, and other auditors authorized by the Federal government. The Fairfax County Police Department agrees to permit such audits and agrees to maintain all records relating to these transactions for a period of not less than three years; and in the event of an on-going audit, until such time as the audit is completed.

These audits include reviews of any and all records, documents, reports, accounts, invoices, receipts, or expenditures relating to this agreement; as well as, the interview of any and all personnel involved in these transactions.

VII. REVISIONS

The terms of this MOA may be amended upon written approval by the original parties, or their designated representatives. Any amendment to this MOA becomes effective upon the date of approval as stated in the amendment. Either party can cancel this MOA upon 60-calendar day's written notice to the other party. The ATF will only process request for overtime for overtime incurred before the date of cancellation, absent a specific written agreement to the contrary.

VIII. NO PRIVATE RIGHT CREATED

This is an internal Government agreement between ATF and the Fairfax County Police Department and is not intended to confer any right or benefit to any private person or party.

James A. Morris
Lieutenant Colonel
(Acting) Chief of Police
Fairfax County Police Department

Date: _____

Richard Marianos
Special Agent in Charge
Washington Field Division
ATF

Date: _____



David C. Horn
Deputy Chief Financial Officer
Office of Management
ATF

Date: 11/27/12



Andy Anderson
Deputy Assistant Director (Eastern)
Field Operations
ATF

Date: 11-28-2012

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
AND THE FAIRFAX COUNTY, VIRGINIA POLICE DEPARTMENT**

This memorandum of understanding (MOU) delineates a cooperative law enforcement effort between the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the Fairfax County, Virginia Police Department (FCPD), known collectively as “the agencies” or “the participating agencies.” This MOU is not intended as a formal contract between the agencies but rather is an expression of understanding to facilitate cooperation on investigations as detailed below.

I. AUTHORITY

This MOU is established pursuant to the participating agencies’ authority to investigate criminal activities. Offenses investigated and enforced pursuant to this MOU are those falling within ATF’s jurisdiction 28 U.S.C. sec. 559A; 27 C.F.R. sec. 0.130. Specifically, the Gun Control Act of 1968, 18 U.S.C. sec. 921 *et. seq.* and the National Firearms Act, 26 U.S.C. sec. 5861 *et. seq.* FCPD’s authority includes Virginia Code § 15.2-1726. The MOU is in furtherance of a federal task force known as the **Northern Virginia Violent Crimes Task Force**. The task force will have representatives from ATF, Alexandria Police Department, Arlington County Police Department, Fairfax County Police Department, Fairfax County Sheriff’s Office, Prince William County Police Department and the Stafford County Sheriff’s Office.

II. PURPOSE OF THIS MOU

This MOU serves to formalize the relationship between the participating agencies with regard to policy, guidance, planning, training, and media relations in order to foster an efficient and cohesive unit capable of addressing violent crime and to maximize interagency cooperation.

The goal of this MOU is to develop a cooperative effort among the participating agencies charged with the investigation and prosecution of violent and/or firearms-related criminal offenses. The criminal offenses investigated under this MOU will be referred to the courts of the United States and/or the courts of the State for prosecution.

The mission of the participating agencies is to conduct in-depth investigations of violent and firearms-related crimes; to identify and target for prosecution the perpetrators of such crimes (i.e., street gangs, armed career criminals); and to achieve maximum coordination and cooperation among the participating agencies.

III. MEASUREMENT OF SUCCESS

The success of the task force will be measured by its impact on violent firearms crime and armed robberies of commercial store businesses, in Fairfax County, Virginia and

surrounding communities, where the agencies will primarily focus investigative efforts. The agencies will conduct regular reviews of violent crime statistics within the identified area to measure success.

IV. CONDITIONS AND PROCEDURES

A. Administration

Because this MOU outlines a cooperative endeavor on the part of the participating agencies, the supervisors of the agencies shall be jointly responsible for the policy, program involvement, and direction of each participating agency. Therefore, cases will be jointly investigated and no particular agency will prevail over another or act unilaterally. Participating agency supervisors shall meet on a regular basis to discuss, review, and prioritize investigations undertaken as a result of this agreement.

B. Operational Guidelines

The agencies will follow the guidelines below regarding policy, planning, training, supervision, and media relations. The participating agencies agree that these guidelines will serve as a basis to mediate any disputes that arise during the operation of this agreement.

- (1) Chain of Command:** The day to day supervision and administrative control of task force officers (TFOs) will be the mutual responsibility of the participants, with the ATF Special Agent in Charge or his/her designee having operational control over all operations related to this task force. Supervision of the covert facility in Northern Virginia has been delegated to the ATF Resident Agent in Charge (RAC) and the TFO Lieutenant and TFO Sergeant from the FCPD Criminal Intelligence Unit (CIU). ATF agrees to designate the RAC of Falls Church Group II as ATF's coordinator of this agreement. FCPD agrees to designate the Lieutenant of the Criminal Intelligence Unit as the department coordinator. The coordinators have overall responsibility for the policies and guidelines affecting this MOU. Operational problems encountered between ATF and FCPD will be mutually addressed and resolved by the coordinators. FCPD robbery detectives assigned to the task force will continue to report to their FCPD chain of command on a daily basis. Detectives assigned to the task force, located at a covert facility in Northern Virginia, will report to the ATF RAC and the Lieutenant and Sergeant from the Fairfax County Police Department's Criminal Intelligence Unit on a daily basis.
- (2) Operations:** The coordinators shall be primarily responsible for opening, assigning, directing, monitoring, and closing investigations subject to guidance from the participating agencies. Each participating

agency agrees that it will take no unilateral action with respect to any operation under this MOU.

ATF, as the sponsoring Federal law enforcement agency, shall request that FCPD detectives or officers be deputized by the U.S. Marshals Service to extend their jurisdiction, to include applying for and executing Federal search and arrest warrants, and requesting and executing Federal grand jury subpoenas for records and evidence involving violations of Federal laws. FCPD officers shall be federally deputized before undertaking any task force responsibilities or duties. FCPD will dedicate full-time robbery detective(s) and one full-time detective(s) to the task force for a period no less than two years. Participating agencies reserve the right to add or remove personnel based on agency staffing levels.

The participating agencies agree that any Federal authority that may be conferred by the above requests will terminate when this MOU is terminated or when the deputized detectives or officers leave the task force.

- (3) **Resources:** ATF agrees to supply supervisors and special agents as needed to fulfill the obligations of this MOU. FCPD agrees to supply detectives or officers on a full-time basis, dependent on its manpower constraints. Additional personnel will be added or removed from this MOU on an as-needed basis at the discretion of the respective participating agencies, with notice to the other participating agencies.

Continued assignment of specific personnel will be based upon performance and will be at the discretion of the respective participating agency. Each participating agency, upon request, will be provided with an update of the accomplishments of participating members.

During the period of the MOU, each participating agency will provide for the salary and employment benefits of its respective employees. All participating agencies will retain control over employees' work hours, including the approval of overtime. FCPD robbery detectives will continue to work hours scheduled and approved by their chain of command. FCPD detectives assigned to the covert facility will be required to work a 40 hour work week specifically Tuesday, Wednesday, Thursday and Friday from 13:00 hours to 23:00 hours each day. Scheduled days off will be Saturday, Sunday and Monday.

ATF may have funds available to pay overtime to state and local task force members subject to the guidelines of the Department of Justice Asset Forfeiture Fund. This funding would be available under the terms of a memorandum of agreement (MOA) established pursuant to the provisions of 28 U.S.C. section 524. The participating agencies

agree to abide by the terms of the applicable Federal statutes and Department of Justice guidelines and policies related to the payment of overtime from the Department of Justice Asset Forfeiture Fund. The Fairfax County Police Department is recognized under State law as a law enforcement agency and its investigators as sworn law enforcement officers. If required or requested, FCPD shall be responsible for demonstrating to the Department of Justice that its personnel are law enforcement officers for the purpose of overtime payment from the Department of Justice Asset Forfeiture Fund. This MOU is not a funding document.

In accordance with these provisions and the MOA on overtime reimbursement, the ATF Special Agent in Charge or designee shall be responsible for certifying requests for overtime expenses incurred as a result of this agreement. Proceeds of any legal forfeiture arising out of an investigation generated by the participating agencies will be divided equally among the participants in accordance with applicable Federal law and the policies and guidelines of the Department of Justice Asset Forfeiture Fund. This MOU does not allocate or ensure that ATF has funds available or will make any payments with regard to overtime to state and local task force members.

(4) General Guidelines: While all personnel assigned under this MOU will give primary consideration to the regulations and guidelines imposed by their own agencies, they will be mindful of those imposed by the other participants' agencies. When acting under U.S. Marshals Service authority requested under this MOU, the participants agree that Federal policies and procedures are controlling. Accordingly, deputized personnel will take the following measures:

- Comply with ATF enforcement policy regarding the use of firearms, financial and property controls, investigative techniques, and supervisory controls.
- Qualify with their respective firearms.
- Comply with the Department of Justice use of force policy. Officers must be briefed on this policy by the task force supervisor upon assignment to the task force.
- Comply with ATF policies concerning the use and care of Federal Government-owned vehicles and abide by ATF's pursuit driving policy (when driving ATF vehicles), in addition to the policies of their respective agencies. Such vehicles are for official use only.

- Comply with the Department of Justice's and ATF's standards of conduct, particularly as they relate to sexual harassment and equal opportunity issues.
- Comply with the provisions of the Privacy Act, 5 USC Section 552a, and the applicable disclosure provision contained in 26 USC Section 6103, and further agree not to discuss any target, investigative technique or impending investigative action of the task force with any individual or agency outside the task force without the prior approval of the task force Coordinator or the ATF.
- Failure to comply with these guidelines could result in a TFO's dismissal from the Task Force.

(5) Media Relations: Media relations will be handled by ATF and the U.S. Attorney's Office's public information officers in coordination with each participating agency. Information for press releases will be reviewed and mutually agreed upon by all participating agencies, who will take part in press conferences. Assigned personnel will be informed not to give statements to the media concerning any ongoing investigation or prosecution under this MOU without the concurrence of the other participants and, when appropriate, the relevant prosecutor's office.

All personnel from the participating agencies shall strictly adhere to the requirements of Title 26, United States Code, § 6103. Disclosure of tax return information and tax information acquired during the course of investigations involving National Firearms Act (NFA) firearms as defined in 26 U.S.C., Chapter 53 shall not be made except as provided by law.

- (6) Physical Location:** Agents and detectives assigned to robbery investigations will remain at their current office location. Agents and detectives assigned to undercover operations will report to a covert facility located in Northern Virginia.
- (7) Equipment:** Assigned personnel working robbery investigations will utilize equipment and vehicles assigned by their respective agencies. Assigned personnel working undercover operations will utilize equipment assigned by their respective agencies. ATF will supply vehicles to undercover detectives.
- (8) Asset Forfeiture:** All assets seized for administrative forfeiture will be

seized and forfeited in compliance with the rules and regulations set forth by the U.S. Department of Justice Asset Forfeiture guidelines. When the size or composition of the item(s) seized make it impossible for ATF to store it, any of the participating agencies having the storage facilities to handle the seized property agree to store the property at no charge and to maintain the property in the same condition as when it was first taken into custody. The agency storing said seized property agrees not to dispose of the property until authorized to do so by ATF.

The MOU provides that proceeds from forfeitures will be shared, with sharing percentages based upon the U.S. Department of Justice Asset Forfeiture policies on equitable sharing of assets, such as determining the level of involvement by each participating agency. Task Force assets seized through administrative forfeiture will be distributed in equitable amounts based upon the number of full-time persons committed by each participating agency. Should it become impossible to separate the assets into equal shares, it will be the responsibility of all the participating agencies to come to an equitable decision. If this process fails and an impasse results, ATF will become the final arbitrator of the distributive shares for the participating agencies.

(9) SECURITY CLEARANCES

All TFOs will undergo a security clearance and background investigation, and ATF shall bear the costs associated with those investigations. TFOs must not be the subject of any ongoing investigation by their department or any other law enforcement agency, and past behavior or punishment, disciplinary, punitive or otherwise, may disqualify one from eligibility to join the Task Force. ATF has final authority as to the suitability of TFOs for inclusion on the Task Force.

(10) ASSIGNMENTS, REPORTS AND INFORMATION SHARING

An ATF supervisor and FCPD TFO Lieutenant and TFO Sergeant will be empowered with designated oversight for investigative and personnel matters related to the Task Force and will be responsible for opening, monitoring, directing and closing Task Force investigations in accordance with ATF policy and the applicable United States Attorney General's Guidelines.

Assignments will be based on, but not limited to, experience, training and performance, in addition to the discretion of the supervisors.

All investigative reports prepared for federal prosecution will be prepared utilizing ATF's investigative case management system, (N-Force) utilizing

ATF case report numbers. The participating agency will share investigative reports, findings, intelligence, etc., in furtherance of the mission of this agreement, to the fullest extent allowed by law. For the purposes of uniformity, there will be no duplication of reports, but rather a single report prepared by a designated individual which can be duplicated as necessary. Every effort should be made to document investigative activity on ATF Reports of Investigation (ROI), unless otherwise agreed to by ATF and the participating agencies. This section does not preclude the necessity of individual TFOs to complete forms required by their employing agency.

Information will be freely shared among the TFOs and ATF personnel with the understanding that all investigative information will be kept strictly confidential and will only be used in furtherance of criminal investigations. No information gathered during the course of the Task Force, to include informal communications between TFOs and ATF personnel, may be disseminated to any third party, non-task force member by any task force member without the express permission of the ATF Special Agent in Charge or his/her designee.

Any public requests for access to the records or any disclosures of information obtained by task force members during Task Force investigations will be handled in accordance with applicable statutes, regulations, and policies pursuant to the Freedom of Information Act and the Privacy Act and other applicable federal and/or state statutes and regulations.

(11) INVESTIGATIVE METHODS

The parties agree to utilize Federal standards pertaining to evidence handling and electronic surveillance activities to the greatest extent possible. However, in situations where state or local laws are more restrictive than comparable Federal law, investigative methods employed by state and local law enforcement agencies shall conform to those requirements, pending a decision as to a venue for prosecution.

The use of other investigative methods (search warrants, interceptions of oral communications, etc.) and reporting procedures in connection therewith will be consistent with the policy and procedures of ATF. All Task Force operations will be conducted and reviewed in accordance with applicable ATF and Department of Justice policy and guidelines.

None of the parties to this MOU will knowingly seek investigations under this MOU that would cause a conflict with any ongoing investigation of an agency not party to this MOU. It is incumbent upon each participating agency to notify its personnel regarding the Task Force's areas of concern and jurisdiction. All law enforcement actions will be coordinated and cooperatively carried out by all parties to this MOU.

(12) INFORMANTS

ATF guidelines and policy regarding the operation of informants and cooperating witnesses will apply to all informants and cooperating witnesses directed by TFOs.

Informants developed by TFOs may be registered as informants of their respective agencies for administrative purposes and handling. The policies and procedures of the participating agency with regard to handling informants will apply to all informants that the participating agency registers. In addition, it will be incumbent upon the registering participating agency to maintain a file with respect to the performance of all informants or witnesses it registers. All information obtained from an informant and relevant to matters within the jurisdiction of this MOU will be shared with all parties to this MOU. The registering agency will pay all reasonable and necessary informant expenses for each informant that a participating agency registers.

(13) DECONFLICTION

Each participating agency agrees that the deconfliction process requires the sharing of certain operational information with the Task Force, which, if disclosed to unauthorized persons, could endanger law enforcement personnel and the public. As a result of this concern, each participating agency agrees to adopt security measures set forth herein:

- a. Each participating agency will assign primary and secondary points of contact.
- b. Each participating agency agrees to keep its points of contact list updated.

The points of contact for this Task Force are:

ATF: RAC Ashan M. Benedict

FCPD: 2nd Lt. David R. Smith

(14) EVIDENCE

Evidence maintained by the lead agency having jurisdiction in the court system intended for prosecution. Evidence generated from investigations initiated by a TFO or ATF special agent intended for Federal prosecution will be placed in the ATF designated vault, using the procedures found in ATF orders.

All firearms seized by a TFO must be submitted for fingerprint analysis and for a National Integrated Ballistics Information Network (NIBIN) examination. Once all analyses are completed, all firearms seized under

Federal law shall be placed into the ATF designated vault for proper storage. All firearms information/descriptions taken into ATF custody must be submitted to ATF's National Tracing Center.

(15) USE OF FORCE

All full-time TFOs will comply with ATF and the Department of Justice's (DOJ's) use of force policies, unless a TFO's agency's Use of Force policy is more restrictive, in which case the TFO may use their respective agency's use of force policy. TFOs must be briefed on ATF's and DOJ's use of force policy by an ATF official, and will be provided with a copy of such policy.

(16) DISPUTE RESOLUTION

In cases of overlapping jurisdiction, the participating agencies agree to work in concert to achieve the Task Force's goals and objectives. The parties to this MOU agree to attempt to resolve any disputes regarding jurisdiction, case assignments and workload at the lowest level possible.

C. JURISDICTION

The assigned coordinators will determine whether cases will be referred for prosecution to the U.S. Attorney's Office for the Eastern District of Virginia or the Commonwealth of Virginia. The supervisors will base their determination upon which level of prosecution will best serve the interests of justice and the greatest overall benefit to the public. Any question that arises pertaining to prosecution will be resolved through discussion among the investigative agencies and prosecuting entities having an interest in the matter.

V. PROGRAM AUDIT

Operations under this MOU are subject to audit by ATF, the Department of Justice's Office of the Inspector General, the Government Accountability Office, and other Government-designated auditors. FCPD agrees to permit such audits and to maintain all records relating to Department of Justice Asset Forfeiture Fund payments for overtime expenses either incurred during the course of this task force for a period of not less than 3 years and, if an audit is being conducted, until such time that the audit is officially completed, whichever is greater.

VI. LIABILITY

ATF acknowledges that the United States is liable for the wrongful or negligent acts or omissions of its officers and employees, including TFOs, while on duty and acting within the scope of their federal employment, to the extent permitted by the Federal Tort Claims

Act.

Claims against the United States for injury or loss of property, personal injury, or death arising or resulting from the negligent or wrongful act or omission of any Federal employee while acting within the scope of his or her office or employment are governed by the Federal Tort Claims Act, 28 U.S.C. sections 1346(b), 2672-2680 (unless the claim arises from a violation of the Constitution of the United States, or a violation of a statute of the United States under which other recovery is authorized).

Except as otherwise provided, the parties agree to be solely responsible for the negligent or wrongful acts or omissions of their respective employees and will not seek financial contributions from the other for such acts or omissions. Legal representation by the United States is determined by the United States Department of Justice on a case-by-case basis. ATF cannot guarantee the United States will provide legal representation to any State or local law enforcement officer.

Liability for any negligent or willful acts of any agent or officer undertaken outside the terms of this MOU will be the sole responsibility of the respective agent or officer and agency involved.

VII. DURATION OF MOU

This MOU shall remain in effect until it is terminated in writing (to include electronic mail and facsimile). All participating agencies agree that no agency shall withdraw from the Task Force without providing ninety (90) days written notice to other participating agencies. If any participating agency withdraws from the Task Force prior to its termination, the remaining participating agencies shall determine the distributive share of assets for the withdrawing agency, in accordance with Department of Justice guidelines and directives.

The MOU shall be deemed terminated at the time all participating agencies withdraw and ATF elects not to replace such members, or in the event ATF unilaterally terminates the MOU upon 90 days written notice to all the remaining participating agencies.

VIII. MODIFICATIONS

This agreement may be modified at any time by written consent of all participating agencies. Modifications shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.

By: R. Mawames Date: 3-15-10

Special Agent in Charge
Washington Field Division
Bureau of Alcohol, Tobacco, Firearms and Explosives

By: M. M. Rohrer Date: 2-25-10

David M. Rohrer, Colonel
Chief of Police
Fairfax County Police Department

Board Agenda Item
March 19, 2013

ACTION - 2

Approval of Comments on the I-66 Tier 1 Draft Environmental Impact Statement (DEIS)

ISSUE:

The Virginia Department of Transportation (VDOT), the Virginia Department of Rail and Public Transportation (DRPT) and the Federal Highway Administration (FHWA) have issued a Tier 1 Draft Environmental Impact Statement for the I-66 corridor between I-495 (Capital Beltway) in Fairfax County and Route 15 in Prince William County. A public hearing was held in Fairfax County on March 14, 2013; and the public comment period ends on April 8, 2013.

RECOMMENDATION:

The County Executive recommends that the Board approve the letter containing Fairfax County's comments on the I-66 Tier 1 DEIS.

TIMING:

Board approval is requested on March 19, 2013, so that the letter can be sent prior to the comment deadline of April 8, 2013.

BACKGROUND:

In May 2011, VDOT, in cooperation with DRPT and FHWA, initiated a study of the I-66 Corridor from the Capital Beltway (I-495) in Fairfax County to State Route 15 in Prince William County. This Tier 1 DEIS defines existing and future transportation conditions and needs within the 25 mile corridor. Tiering is a staged approach to preparing documents in compliance with the National Environmental Policy Act (NEPA). Tier 1 analyses examine potential impacts at a broad conceptual level. Subsequent Tier 2 analyses will focus on site-specific details, including the development of alternatives, specific project impacts, and environmental mitigation.

Six Capacity Increasing Build Improvement Concepts were identified and considered in the Tier 1 DEIS:

- General Purpose Lanes (additional highway lanes open to all traffic)

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March 19, 2013

- Managed Lanes (conversion of existing High Occupancy Vehicle (HOV) lane into a 1 or 2 lane High Occupancy Toll (HOT) facility)
- Metrorail Extension
- Light Rail Transit
- Bus Rapid Transit
- Virginia Railway Express (VRE) Extension

A key finding of the study is that none of the above capacity improvement concepts, as stand-alone concepts, can meet the capacity needs of the corridor. Therefore, combinations of these six improvement concepts were assembled into 47 Capacity Improvement Scenarios (ICSs). These were evaluated based on the following criteria:

- Ability to accommodate demand
- Ability to enhance modal choices
- Generalized physical width
- Space efficiency
- Generalized planning-level cost
- Cost per incremental person trip accommodated.

The purpose of this analysis was not to identify one or more of the improvement concepts as being the best, but to illustrate the effects of combining the improvement concepts into various ICSs. One key finding of this analysis is that for several of the improvement concept scenarios, over 80 percent of trips would be made either by transit or multi-occupant vehicles.

Based on the June 2011 Memorandum of Agreement between VDOT, FHWA, DRPT, and FTA, these decisions will be made upon the completion of Tier 1:

- Concepts to be advanced for the I-66 corridor, including transit, TDM strategies, and/or roadway improvements. Within these concepts, consideration will be given to managed lanes and tolling;
- General location for studying future highway and transit improvements in Tier 2 NEPA document(s);
- Identification of projects with independent utility to be evaluated in Tier 2 NEPA document(s) and evaluated pursuant to other environmental laws; and
- Advancing tolling for subsequent study in Tier 2 NEPA document(s).

Staff has reviewed the DEIS and has prepared a letter and comments for transmittal to VDOT. These comments reflect the collective efforts of staff from the Department of Transportation, Department of Planning and Zoning, Department of Public Works and Environmental Services and the Fairfax County Park Authority.

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Key points made in the letter are:

- I-66 is of critical importance to Fairfax County.
- The extent of right-of-way impacts is an extremely important factor, and those concepts with the most significant right-of-way impacts would likely not be supported by the community. More detailed information on how the right-of-way impacts were calculated in the Tier 1 DEIS is needed.
- Advancing short term projects that alleviate current congestion while pursuing longer term solutions is desirable.
- Extension of Metrorail Orange Line should be advanced to a Tier 2 EIS.
- More information is needed on how the results in this Tier 1 EIS were derived. From what has been documented, there are a number of fundamental questions about the assumptions and inputs in the analysis.
- Any improvements to I-66 must be sensitive to existing residential development on both sides of the corridor.
- Fairfax County would appreciate the opportunity to comment on the alternatives selected for a Tier 2 EIS.
- Greater local staff participation in future Tier 2 studies is essential.

The attachment to the letter contains more detailed comments.

FISCAL IMPACT:

There is no fiscal impact resulting from this action. Subsequent projects to improve I-66 could result in fiscal impacts for the County.

ENCLOSED DOCUMENTS:

Attachment 1: Comment Letter to VDOT on Tier 1 DEIS for I-66

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Daniel B. Rathbone, Chief, Transportation Planning Division, FCDOT
Leonard Wolfenstein, Chief, Transportation Planning Section, FCDOT
Noel Kaplan, Senior Environmental Planner, Department of Planning and Zoning
LeAnne Austin, Ecologist II, Department of Public Works and Environmental Services
Andrew Galusha, Landscape Architect/Planner, Fairfax County Park Authority

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SHARON BULOVA
CHAIRMAN

COMMONWEALTH OF VIRGINIA
County of Fairfax
BOARD OF SUPERVISORS

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chairman@fairfaxcounty.gov

March 19, 2013

Ms. Angel Deem
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

Reference: Fairfax County Comments on I-66 Tier DEIS

Dear Ms. Deem:

On behalf of the Fairfax County Board of Supervisors, I am transmitting Fairfax County's comments regarding the I-66 Tier 1 Draft Environmental Impact Statement (DEIS). These comments were endorsed by the Fairfax County Board of Supervisors on March 19, 2013.

I-66 is critically important to Fairfax County. As the Tier 1 DEIS demonstrates, most of the congested segments of the I-66 study corridor now and in the future, as well as most of the safety deficiencies identified, are in Fairfax County. Choices resulting from this EIS and the choices from subsequent Tier 2 EIS's will have an enormous impact on the daily lives of Fairfax County citizens and others who work and visit Fairfax County. The Tier 1 DEIS contains a substantial amount of information; however, it also raises numerous questions, especially with regard to how some of the ratings in the results section were derived. It is important to the County that these questions which are contained in the attachment to this letter be answered for all to be confident that the resulting decisions reflect the best choices for our citizens. We recognize that this is a Tier 1 EIS and that there are many questions that cannot be answered until projects advance to a Tier 2 EIS; however, there are a number of comments and questions that we believe should still be addressed at the Tier 1 study stage.

One matter of utmost importance to the Board and to our residents is the extent of right-of-way impacts to residences, businesses, parks and natural resources. While we recognize that a mobility solution for the corridor will have impacts, we want to make sure that the mobility benefits of selected solutions warrant the resultant community and environmental impacts. We caution that the community is unlikely to support significant right-of-way expansion, particularly into established residential neighborhoods. In that regard, we would like to obtain more information on how the potential impacts in Table 5-2 were calculated, and, in particular, how the number of residential relocations was calculated. It is clear from this Tier 1 Study and articulated in the key findings section that a General Purpose Lanes only solution which equates to the "outside maximum" template in Table 5.1 is not acceptable.

Section 3.3 of the DEIS identifies four primary "chokepoints" where daily congestion occurs: US 50 (Lee Jackson Highway); VA 123 (Chain Bridge Road); VA 243 (Nutley Street); and I-495 (Capital Beltway). All of these chokepoints are in Fairfax County. The DEIS states, "Improvements to address these deficiencies in conjunction with overall multi-capacity enhancements would improve the flow of traffic by removing major chokepoints within the study corridor." We would support advancing projects of independent utility that would address these choke points in the near term while longer term solutions are pursued.

Similarly, Section 2.4.4, which describes safety deficiencies in the corridor, identifies the three eastern interchanges (Chain Bridge Road, Nutley Street, and the Capital Beltway) as having the highest crash rates in the corridor. Section 3.5 provides some examples of spot safety improvements, such as improving the merge/diverge areas at the Nutley Street interchange, that could help reduce the crash rate. We would also support advancing these safety improvements in the near term while longer term solutions are pursued.

One of the key findings of this study noted in Section 3.9 is that multimodal solutions are the most effective in addressing the transportation needs in the corridor. For many years, the Board of Supervisors has supported an extension of rail in the I-66 corridor. The results of this Tier 1 DEIS certainly support advancing an extension of the Metrorail Orange Line to a Tier 2 level analysis.

As noted above, the future of the I-66 corridor is of the greatest importance to Fairfax County; therefore, it is very important that the County be involved in a meaningful way in decisions affecting the corridor. At the Tier 2 EIS stage, the County (at both the Board and staff level) must be integrally involved in the process. The manner in which VDOT has conducted the Tier 1 EIS to date has allowed only nominal involvement by County staff, and this is not acceptable as projects advance to Tier 2.

Attachment A contains a more comprehensive set of comments on the DEIS. As the NEPA process requires, we expect that the project team will respond to the comments for the record. In addition, County staff may follow up with some supplemental comments, particularly with regard to the technical report that provides supporting detail to this report.

Fairfax County appreciates the work that has been undertaken to date in this study and the opportunity to provide comments. We would appreciate the opportunity to comment on the alternatives selected to advance to a Tier 2 EIS. We look forward to working with you to advance the Tier 2 studies and to implement improvements as soon as possible in the corridor that will improve mobility and improve the daily lives of those who use the corridor. To that end, we strongly recommend that a Technical Committee be established for Tier 2 EIS's.

If you have any questions or need additional information, please contact Leonard Wolfenstein the Department of Transportation at leonard.wolfenstein@faifaxcounty.gov or 703-877-5600.

Sincerely,

Sharon Bulova
Chairman

Attachments: As Stated

cc: Members, Fairfax County Board of Supervisors
Edward L. Long Jr., County Executive
Robert A. Stalzer, Deputy County Executive
Catherine A. Chianese, Assistant County Executive
Tom Biesiadny, Director, Department of Transportation
Fred Selden, Director, Department of Planning and Zoning
James Patteson, Director, Department of Public Works and Environmental Services
John Dargle Jr., Director, Fairfax County Park Authority

Fairfax County Comments on Draft I-66 Tier 1 EIS**March 19, 2013****▪ Transportation - General:**

- Page ES-3: Under “Limited Travel Mode Choices,” The second sentence states that alternatives to single occupant vehicle travel are limited due to lack of connecting facilities and largely lack of service and facilities. Since daily boardings at the Vienna Metrorail Station are over 13,000 per day and the station has over 5,000 park-and-ride spaces, this is a major connection and not limited. Peak hour Metrorail ridership is estimated to be close to 20% of the peak hour traffic on I-66. This is significant and it is one of the most successful transit lines in the U.S.
- Page ES-3: Under “Limited Travel Mode Choices,” While the statement “Transit services for the reverse of the peak direction, and during off-peak times, is much less robust” is true, since the initiation of Fairfax Connector service in this corridor in 2009 both reverse direction and off-peak service were dramatically increased and eight of the nine Fairfax Connector routes in the corridor offer reverse direction service.
- Page ES-4: Last sentence on page, “The concepts were developed with public and participating agency input.” Input from participating agencies was very limited. It would be valuable to list the public and participating agencies’ input in an appendix and how the comments were incorporated into the study.
- Page 2-17: This section should mention the comprehensive TDM strategies Fairfax County is implementing as part of its proffer process.
- Page 2-18 and ES 3: In the “Safety Deficiencies” section no mention is made of the peak period shoulder use along the eastern section of the study area. The lack of signing and enforcement contributes to vehicles moving in and out of the shoulder section which contributes to the accident rate.
- Page 3-4: Limiting solutions to I-66 only and not including parallel facilities or the comparable congestion that appears on those facilities assumes that problems are independent. Also, considering full TDM with walking and biking without considering the parallel facilities seems inconsistent. Presumably, those are the facilities that would be upgraded to include those features not directly on I-66.
- Page 3-6: For Figure 3-2, the calculation of total demand is based on unconstrained capacity on I-66 itself, while the capacity on roads connecting to I-66 was constrained. Is this a realistic manner in which to calculate the demand for I-66? Is it not possible

that this approach has overestimated the projected demand for I-66? If it has had that effect, then the capacity improvement concepts may need to be reexamined.

- Page 3-14: For Table 3-3, “Evaluation of Improvement Concepts Against Purpose and Need Elements” there are a number of questions:
 - How does the spot location/chokepoint improvement concept fully meet the purpose and need for unpredictable travel time, but the general purpose, managed lanes, Metrorail, light rail, and BRT concepts are all only partial?
 - How does the safety improvement concept fully meet the purpose and need for unpredictable travel time?
 - For the transit alternatives (Metrorail, LRT, BRT, VRE) it would make more sense in this Table to indicate “Not Applicable” for two of the criteria, “Improve Spot Locations/Chokepoints,” and “Safety Deficiencies.”
 - The table as presented is unusual. Spot improvements and safety deficiency mitigations are typically items that are applied to a highway corridor as a matter of routine. “Penalizing” the transit options because they do not address these criteria is questionable.
- More explanation is needed on how the evaluations shown in Table 3-4 were derived. For example, assumptions of capacity and acceptable level of congestion will have a direct influence on the attractiveness of public transportation modes. Also, the level of supporting services (e.g. feeder bus routes, park-and-ride spaces) assumed for transit will have a significant influence on transit ridership. What supporting facilities (TOD development at stations, feeder bus routes, park-and-ride spaces) were assumed when estimating the ridership for the public transportation alternatives? It would be helpful to include more information about this since the Tier 1 results will be used to narrow the options to be advanced to Tier 2.
- Page 3-15: Table 3-4, the lowest figures for the following criteria should be considered best:
 - Generalized physical width (feet)
 - Generalized planning level Cost (\$millions)
- Page 3-15: Table 3-4, For concept scenario 4 (Metrorail), why is “Ability to enhance modal choices” low (0.23) while concept scenario 18 (two Managed lane plus Metrorail) indicates significant increase (0.69) in “Ability to enhance modal choices” by addition of the managed lanes? Can a detailed worksheet that shows how these values were derived be provided?
- Page 3-15, Table 3-4: Between concept scenario 18 (two Managed lanes plus Metrorail) and concept scenario 29 (two general purpose lanes, two Managed lanes plus

Metrorail), why would the generalized physical width be only four feet different accounting for the fact that two general purpose lanes will be added?

- Clarification is needed regarding the General Purpose Lanes improvement concept. Table 3-4 indicates that various combinations of two to twelve new general purpose lanes were evaluated. Page 5-15 indicates that the build improvement concept for general purpose lanes includes construction of up to nine **additional** highway lanes in each direction. However, the footnote in Table 3-3 states that a total of 18 lanes would be needed to fully meet the purpose and need, in regard to existing and future capacity deficiencies. Table 5-1 indicates that the “Outside Maximum” template is based on an assumption of the addition of five general purpose lanes in each direction, recognizing that this is an estimated maximum upper limit. Clarification is needed.
- Clarification is also needed regarding the estimated footprint widths of the various improvement concept templates. The widths identified in Table 5-1 are substantially greater than the widths identified in Table 3-4. For example, the estimated footprint width for the addition of five general purpose lanes in each direction is identified as 355 feet in Table 5-1, while Table 3-4 indicates that the “generalized physical width” of the addition of 12 general purpose lanes would be 175 feet. Table 5-1 indicates that the widths identified would include the entirety of the footprint, inclusive of the existing I-66. Do the width figures in Table 3-4 reflect only the additions in width rather than the total footprint widths?
- **Traffic Operations:**
 - Considerable congestion occurs in off peak directions as well, particularly around Nutley Street and Route 50. The close proximity of Route 123 to both of these interchanges results in traffic merging onto I-66 with traffic attempting to exit, and an unusable shoulder lane (off-peak) that contributes to this weaving pattern. Frequently, vehicles have been observed accessing I-66 at one interchange only to exit at the next one. This further indicates a need to evaluate the parallel facilities to encourage this short distance traffic to remain on the secondary roadway network instead of accessing I-66.
 - With regards to transportation predictability, information needs to be provided to a driver at a time and place where they have options available to them, for example, before they leave home, or at a location on I-66 where they can still exit and chose another mode of travel (e.g. park and ride lot, bus rapid transit hub, etc.) or choose another route (e.g. Route 29, Route 50). Providing travel time information to drivers when they are unable to make a choice does not improve congestion and generally leads to frustration.

- **Transit:**
 - While mainline improvements are evaluated along I-66, it does not appear that impacts of potential stations (associated with Metrorail, light rail or BRT) are factored. Stations would have a larger footprint, with potentially larger impacts. Although this would certainly be evaluated in a Tier 2 analysis, it should at a minimum be noted in the Tier 1 document.
 - Page 3-4: Metrorail core capacity improvements were eliminated from further study in this evaluation. The rationale for this should be explained as core capacity improvements would logically have an influence on the evaluation results for an extension of Metrorail.
 - Page 3-6: For the rail extension concept, the evaluation result can vary depending on whether the terminus is assumed at Centreville or Haymarket. It does not appear that the analysis accounted for this. Presumably different assumptions can impact the findings.
 - Page 3-7: Table 3-1 summarizes the assumed carrying capacity for the six capacity improvement concepts for the peak three hours. Metrorail’s capacity is listed as 18,300. Previous calculations of Metrorail carrying capacity documented earlier in this study had the Metrorail carrying capacity at approximately 29,000. Why has the DEIS reduced the assumed carrying capacity of Metrorail by 36%? This has a significant implication for the evaluation numbers shown in Table 3-4 and for the key finding that none of the improvement concepts, as stand-alone concepts, fully satisfy the purpose and need.
 - Consideration of BRT should include consideration of where central “hubs” will be located that are served by BRT. Providing a viable option to access these future facilities may also relieve congestion on parallel facilities.

- **Treatment of Bicycle and Pedestrian Facilities:**
 - General: While the report does periodically reference both bicycle and pedestrian facilities, few specific recommendations are made outlining how these non-motorized modes can be accommodated and improved.
 - Any I-66 build scenario should consider including a fully integrated and connected trail network including: a parallel shared use path adjacent to I-66 or on parallel roadways, an improved neighborhood connectivity network interfacing with this new I-66 trail, new exclusive bicycle/pedestrian grade-separated crossings eliminating or reducing the barrier effect that the corridor has had on neighborhoods, and bicycle parking/storage improvements at park and ride lots and transit transfer stations within the I-66 corridor.

- Fairfax County Department of Transportation’s Bicycle Program in cooperation with the County’s Historic Resources staff and public schools will be launching a program that is currently named “Bike the Sites.” Sites of historic, cultural, and architectural importance will be highlighted on a map that connects these resources with a marked, family friendly bike route. This concept could be expanded as part of the I-66 corridor improvement project with bicycle access to sites such as the Manassas National Battlefield and the US Route 15 corridor (Journey on Hallowed Ground).
 - Chapter 2, Purpose and Need, Section 2.1 (Study Corridor): The last bullet, Bicycle and Pedestrian Facilities, page 2-4 states, “...there are no bicycle and/or pedestrian trails located within the I-66 right-of-way outside the Capital Beltway in the study corridor.” It should be noted that the Bobann Drive Bikeway, a one mile shared use path adjacent to I-66 and within right-of-way, extending from Wharton Lane to Stringfellow Road will be under construction this summer.
 - Chapter 3, Improvement Concepts, Section 3.4 (Intermodal Connectivity): The introductory paragraph does reference that additional improvements, including the provision of a bicycle trail adjacent to or near I-66 could further improve travel choices and interconnectivity. This narrative can be strengthened by referencing the pending Fairfax County Bicycle Master Plan and the inclusion of a shared use path in or near the I-66 right-of-way extending from where the W&OD Trail diverges from the corridor (near the Capital Beltway) to the western county line.
 - We concur with the statement at the bottom of page 3-10 that “provision of a bicycle trail that serves the I-66 corridor outside the Beltway would provide bicycle accessibility to large portions of Fairfax County and beyond..;” however, we believe this statement should be strengthened. References should be drawn to the extension of the I-66 trail, interconnectivity, and opportunities to cross I-66 with new exclusive bike/pedestrian bridges or underpasses.
 - Chapter 4, Affected Environment, Section 4.1.1 (Land Use Objectives-Fairfax County): While the narrative does reference the County’s Comprehensive Plan and its desire to achieve a balanced transportation system, the section should be expanded to include recommendations contained in the pending Bicycle Master Plan, specifically those recommendations for improvements in or near to the I-66 corridor.
- **Environmental Issues:**
 - **Information and Clarification:**
 - There are several pieces of information about environmental impacts that are appropriate for this Tier 1 EIS but that are missing. Without this information, the document does not present a complete assessment of the general impacts that

would be associated with each of the improvement concept templates, and it is more difficult to fully understand the environmental implications of the various concepts. Specifically, the following information is needed in order to better inform the screening exercise that will identify the alternatives that will be considered during Tier 2:

- Total acreage of tree canopy/woodlands that would be cleared as a result of each of the improvement concept templates. This does not need to be precise, but the EIS should at least provide a general idea of the tree canopy that would be removed.
 - Total acreage of additional impervious cover that would be associated with each of the templates. Again, this does not need to be precise, but the EIS should provide at least a general sense of how much additional impervious cover would be created.
 - Loss of wooded buffer areas between the highway corridor and adjacent dwelling units. Section 5.1.6.2 notes that the removal of trees would be necessitated by the widening of I-66 for the capacity improvement concepts and that this tree removal would alter the visual environment. Would there be differences among improvement concept templates regarding the magnitude of this change as it would affect the visual environment? For each template, how many residences that currently have trees between the houses and the highway would have this visual buffer removed entirely (whether or not noise barriers may also be provided)?
 - Existing acreage of Resource Protection Areas in the study area and acres of RPA that would be disturbed in conjunction with each of the improvement concept templates. Both Prince William County and Fairfax County have designated Resource Protection Areas pursuant to Virginia's Chesapeake Bay Preservation Act, yet these areas are not addressed in the Draft EIS (beyond inclusion in the list of abbreviations and the glossary).
- Each of these parameters should be summarized in Table 5-2 and discussed within section 5 of the report.
 - Page 4-39 notes that "three natural heritage General Location Areas were also identified within the study area" and that these areas "represent the approximate locations of documented natural heritage resource occurrences that were not incorporated into Conservation Sites, either because they are poor quality, their location was not precisely identified, or they have not been reverified in over 20 years." It is not clear how extensive these "General Location Areas" are, where they are located (at least in a general sense), or what their significance is. Table 5-28 identifies over 150 acres of impacts to "General Locations" for each of the templates

along I-66 but does not provide any explanation about what this means or its significance in evaluating the ecological implications of the various templates. The acreage figures identified as impacts are substantial, but no information is provided to put these figures into any context. Clarification is needed.

- Page 5-40: In the discussion of stream impacts, the EIS notes that estimated stream impacts “are based on an assumption that each stream crossing would be a permanent impact rather than spanned by a bridge.” Are potential impacts to streams that run parallel to I-66 included in the identification of linear feet of impact even if they would not be crossed? Big Rocky Run and Cub Run west of the Lee Highway interchange are of particular concern.

- **Noise and Vibration:**

- Section 5.1.5.2 identifies screening-level noise impacts along I-66 and VRE extension-related noise and vibration screening-level impacts, but does not address vibration impacts along I-66. Vibration may be an issue for rail extensions, yet this potential impact is not addressed.

- **Wetlands:**

- Table 4-29 identifies wetlands in the study area based on National Wetlands Inventory (NWI) maps, and Table 5-25 identifies impacts to these resources. It should be recognized that NWI maps do not comprehensively identify all wetlands that may be present in an area—field delineations would be needed in order to do this. While NWI-identified wetlands may be sufficient as a Tier 1 screening tool, Tier 2 assessments should apply a more rigorous wetlands identification process.

- **Floodplain Impacts:**

- Page 5-41 states: “. . . the Tier 2 projects would not be expected to have substantial effects on natural and beneficial floodplain values.” If floodplain areas would be altered to provide for transportation improvements, it is not clear how this could occur in a manner that would not have such adverse effects. While this is, perhaps, a Tier 2 issue, clarification will be needed at some point.

- **Water Quality:**

- The I-66 Study Area crosses four Fairfax County watersheds (Cub & Bull Run, Little Rocky Run/Johnny Moore Creek, Difficult Run, and Accotink Creek), all of which have watershed management plans in place. Two of these watersheds (Cub/Bull Run and Little Rocky/Johnny Moore) are tributaries of Bull Run and are, therefore, source waters for the Occoquan Reservoir.
- Much of the Study Area (including the entirety of the Study Area in Prince William County and roughly the western half of the portion of the Study Area in Fairfax

County) is located within the watershed of the Occoquan Reservoir; the reservoir is one of Fairfax County's major sources of drinking water. Therefore, water quality protection is of considerable importance. Roughly two-thirds of this watershed in Fairfax County was rezoned in 1982 to the R-C District (one dwelling unit per five acres) for water quality protection; the Water Supply Protection Overlay District was established at the same time in order to establish stringent water quality control requirements for development and redevelopment throughout the county's portion of the watershed. Tier 2 plans should incorporate substantial stormwater management controls to address both stormwater runoff volumes and water quality.

- The EIS states, "To minimize water quality impacts, appropriate erosion and sediment control practices would be implemented for the individual Tier 2 projects, if a build improvement concept is advanced, in accordance with the Virginia Erosion and Sediment Control Regulations, the Virginia Stormwater Management Law and regulations, and VDOT's Road and Bridge Specifications." The Coastal Zone Management Act is also mentioned. However, there is no mention of the Chesapeake Bay Preservation Ordinance (see earlier comment regarding the need for information regarding Resource Protection Areas). Fairfax County will have a new Stormwater Management Ordinance in effect as of 7/1/2014 as a requirement of state's stormwater legislation adopted in September 2011. It is highly recommended that any proposed stormwater management design follow the new state stormwater regulations.
- Table 4-30 lists streams that may be impacted (100 year floodplain). Hatmark Branch of the Accotink watershed should be added, since it flows through East Blake Lane Park which is listed as impacted.

▪ **Parks:**

- In addition to the four Fairfax County Park Authority parks identified in the EIS, Briarwood, Center Ridge North, Cub Run Stream Valley, and Rocky Run Stream Valley, there are four other parks within the study area that could possibly be impacted: Arrowhead, East Blake Lane, Ellanor C. Lawrence, and Lanes Mill, all of which contain sensitive environmental and cultural features.
- Depending on the actual project extent, there may also be potential impacts on Idylwood, Random Hills, Merilee, and Dunn Loring Parks, if the project area were expanded to accommodate engineering, staging stormwater, and/or expanded construction requirements.
- Any or all of the parks identified above could experience direct impacts of lost land, recreation facilities, vegetation, and habitat; increased stormwater discharge, invasive

species, as well as wildlife impacts. Therefore, the Fairfax County Park Authority would like to review all future documents and plans at the earliest opportunity as projects progress.

- While this EIS has considered impacts to park and recreation resources in accordance with Section 4(f) of the federal Transportation Act, further detail is warranted in Tier 2. In particular, there is a high potential for impacts to numerous undiscovered Native American, Historical, and Civil War Sites within the I-66 corridor that should be incorporated into the scope of work for the Tier 2 EIS.
 - As noted in the Tier 1 EIS, more detailed study is needed once engineering plans have been created, including pedestrian and park trails. The Park Authority looks forward to working with the project sponsors on these plans. Of particular concern are the Sully Woodlands Trails, Cross County Trail (CCT), Cub Run Stream Valley Trail, as well as the overpasses at Route 123, Jermantown Road, Route 28, Route 29, and Compton Road.
 - Though land acquisition would occur later in the improvement process, the Fairfax County Park Authority wishes to place in the comment record, that requests for land rights on Park Authority owned property are necessary to perform any surveying, clearing, or grading, even within an easement of any sort. Before performing, any activity on parkland, a Right of Entry License, Easement, and / or Construction Permit is required and can be requested from the Easement Coordinator, Fairfax County Park Authority, Planning and Development Division, 12055 Government Center Parkway, Suite 406, Fairfax, Virginia 22035. The main telephone number is (703) 324-8741. This includes surveying, test boring, wetland flagging, utility relocations, construction, or any other related activities. Please advise any contractors and subcontractors of this requirement.
- **Editorial and Minor Comments:**
- Page iii: Page number for section 4.2.1.1 need to be corrected
 - It would be advisable in the table of contents to include Appendix section and list all of the supporting document such as Transportation Technical Report and Historic Properties Technical Report
 - Page ES-4: Need to include the year assumed for the existing year
 - Page ES-4: In the existing condition summary in first bullet, if the findings are summarized according to the results from the basic freeway section operations, “Over half” needs to be changed as “Nearly half” for the AM peak hour condition and indicate that the results are for peak hour condition.
 - Page xviii: In definition for Diurnal, “ion” should be changed to “in”
 - Page 2-3: Figure 2-2: “Peak Hours” should be changed to “Period”
 - Page 2-9: Table 2-2: I-66/I-495 Express lane status should be changed as “complete”

- Page 2-9: section 2.3.1 should state that Table 2-3 through 2-5 are based on the MWCOG model and clarify whether this pattern is based on Daily or peak period conditions
- Page 2-12: section 2.4.1 should state that HCM 2010 method is used. Also LOS threshold in the footnote need to be revised, so that there are no overlap between upper and lower limits.
- Page 2-14: Table 2-6, What is the reason for 2040 condition operations along westbound segment between US 50 and VA 243 to be improved when compared to 2011 conditions?
- Page 2-16: second to last bullet should include route number for the Fairfax County Parkway Interchange.
- Page 3-10: Figure 3-3, In the legend, define the threshold used in defining the congestion level.
- Page 3-13: section 3-8, In fifth line, change “improved” congestion to “reduced” congestion.
- Page 3-14: first and second bullet: It is stated that the ability to accommodate demand was analyzed for peak period. Would this be for AM or PM peak period conditions and two way combined? Would there be a need to separate the directional peak?
- Page 3-15: Table 3-4, shading for “generalized physical width” and “generalized planning-level cost” need to be changed since the smaller the value is, the better.
- Page 3-17: section 3.9, in third bullet: Provide specific details as to what TDM features have been incorporated into the analysis.
- Page 4-9: Table 4-3, 4-4, For population and employment growth projections, how would this relate to the projection estimated for 2040 condition per information included in Figure 2-5? Would the findings be consistent in terms of growth projection using two different sources?
- Footnote 4 on page 4-20 references the VDOT Highway Traffic Noise Impact Analysis Guidance Manual rather than the FTA Transit Noise and Vibration Impact Assessment guidance manual.
- Page 4-25: Section 4.1.7.1, “Table 4-21 below” to be changed as “Table 4-21 above”
- Page 4-29: Section 4.1.8.1 references the Historic Properties Technical Report; however, this has yet to be provided.
- Page 4-34 states that the locations of impaired streams are shown in Figure 4-7. While these streams, along with all other large streams, are shown in Figure 4-7, the impaired segments are not highlighted. Is the entirety of each stream, as shown in Figure 4-7 impaired? If not, would it be appropriate to either change the reference on page 4-34 or add something to Figure 4-7 that would differentiate the impaired segments from the non-impaired segments?
- The references to “Table 5-1” on the bottom of page 5-1 and the beginning of the last paragraph on page 5-2 should be “Figure 5-1.”
- For Tables ES-3 and 5-2, there is a need to identify the units applied to the figures for “potential impacts to Section 4(f) Properties.” Is this acreage of impacts?

- Page 5-5: Table 5-2, The impact of the Interchange concept to streams is identified as 5,635 linear feet in Table 5-2 but is identified as 5,634 linear feet in Table 5-26.
- Page 5-16: For managed lane, it is not clear whether it will be an addition or conversion, since conversion of existing HOV lane would not provide enough capacity. Regarding impact of tolling, refer to the comments provided for the Transportation Technical Report.
- Page 5-24: Table 5-15, The report states that there is no vibration Category 1 land use within Manassas City, but the table show otherwise.
- Page 5-42: Table 5-28, The report states that there are five natural heritage locations within the study area, but the table shows otherwise. It is recognized that there may be natural heritage resource areas in or near the study area that would not be impacted by the project. More than five natural heritage resource sites are evident on Figures 4-7 and 4-8, but it is not clear if all of these sites would be considered to be within the study area. Clarification should be provided.
- Page 5-43: Table 5-29, What is the reason that BTU/passenger mile for Bus is so high?
- On page 5-45, references to “acres” in the second line of the section on streams should be “linear feet.”
- Page 6-3: Section 6.5, It is stated that dependent upon the improvement concept, anticipated changes in traffic due to tolling would result in changes of plus or minus 12 percent or less on I-66 with potential diversion resulting in a shift of traffic from tolled lanes to general purpose lanes. However, if there is to be extra capacity available along the general purpose lanes, it is anticipated that the traffic from parallel arterials would divert to the general purpose lanes which potentially would result in further increase in volume along I-66.

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Board Agenda Item
March 19, 2013

ACTION – 3

Authorization to Submit Comments on the Draft Virginia Stormwater Management Program (VSMP) Individual Permit for Stormwater Discharges from the Municipal Separate Storm Sewer System (MS4) Owned and Operated by Arlington County

ISSUE:

On February 8, 2013, the Virginia Department of Conservation and Recreation (DCR) released for public comment a draft VSMP Individual MS4 Permit for Arlington County. A public hearing to receive comments on the draft permit will be held on Friday, March 22, 2013, at 10 a.m. at the Arlington County Council Building. The deadline for written comments is March 29, 2013.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to submit the letter containing Fairfax County's comments on the draft permit.

TIMING:

Board approval is requested on March 19, 2013, so that the letter can be sent prior to the comment deadline of March 29, 2013.

BACKGROUND:

The Environmental Protection Agency (EPA) conducted a review of Virginia's urban stormwater programs in September 2011. The review resulted in a Memorandum of Understanding between DCR and the EPA, outlining specific commitments to be met by DCR. One of those commitments was to develop a strategy and schedule for the re-issuance of permits for all eleven administratively continued Phase I MS4s in Virginia. DCR plans to use the Arlington draft permit as a template for all of the Phase I permits, so the draft permit is important to Fairfax County.

The draft permit contains a number of specific, quantifiable commitments over the course of the 5-year permit cycle. Arlington's commitments include:

- Implementation of seven retrofit projects (in the right-of-way or on county property)
- Planting of 2,000 trees on county property
- Distribution of 2,000 trees to private property owners and tracking of planting

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- Sweeping 25,000 lane miles (Arlington maintains their own roads)
- Inspection of 300,000 linear feet of sanitary sewer
- Inspection of 5,000 catch basins
- Inspection of 425,000 linear feet of storm sewer
- Implementation of StormwaterWise cost-sharing program and funding to accommodate 200 participants

Arlington County is one-sixteenth the geographical size of Fairfax County and one-fourth the size in population. Fairfax County will need to identify similar quantitative commitments that make sense for our permit program. Staff is working closely with the Virginia Municipal Stormwater Association and other Phase I localities to review and comment on the draft permit which can be accessed at:

http://www.dcr.virginia.gov/laws_and_regulations/lr3c.shtml

Staff has reviewed the draft permit and prepared the attached cover letter and detailed comments for submission to DCR.

FISCAL IMPACT:

There is no fiscal impact resulting from this action.

ENCLOSED DOCUMENTS:

Attachment 1: Comment Letter to DCR on the draft VSMP Individual MS4 Permit for Arlington County.

STAFF:

Robert A. Stalzer, Deputy County Executive

James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)

Randolph W. Bartlett, Deputy Director, Stormwater and Wastewater Programs, DPWES

Craig Carinci, Director, Stormwater Planning Division, DPWES



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Date

The Regulatory Coordinator
Director, Department of Conservation and Recreation
203 Governor Street
Richmond, Virginia 23219

Reference: Fairfax County's Comments on the Draft Virginia Stormwater Management Program (VSMP) Individual Permit for Stormwater Discharges from the Municipal Separate Storm Sewer System (MS4) Owned and Operated by Arlington County

To Whom It May Concern:

Fairfax County (herein after referred to as the "County") appreciates the opportunity to provide comments on the February 7, 2013 Draft Virginia Stormwater Management Program (VSMP) Individual Permit for Stormwater Discharges from the Municipal Separate Storm Sewer System (MS4) Owned and Operated by Arlington County (herein after referred to as the "draft permit.") The County recognizes the challenges that Virginia has faced in reissuing Individual MS4 Permits and would like to commend the Commonwealth in general and the Department of Conservation and Recreation (DCR) in particular on this achievement.

A substantially increased level of effort will be required of MS4 permit holders under this new generation of permits, and the County believes that the requirements of the draft permit will result in significant progress in urban stormwater management in Virginia. As the holders of a Phase I MS4 permit that has been administratively continued since 2007, one of the biggest challenges that we have perceived in reissuing Individual MS4 Permits in Virginia has been identifying and targeting those practices that will have the most benefit while striking a balance between increased reporting requirements, that are largely used for enforcement, and the implementation of stormwater practices that provide tangible water quality benefits. The draft permit represents significant progress towards that goal, and we offer the following comments in an effort to further support that progress.

- It is our understanding that the Commonwealth intends to use the Arlington MS4 Permit as a template for the other ten Phase I MS4 localities in Virginia. While the County agrees that some level of consistency across permits is desirable, the nature of an individual permit, such as a Phase I MS4 permit, is that it is written specifically for each permittee. As such, each permit must be tailored to the specific MS4 operator by taking into consideration factors such as geographic setting, infrastructure inventory, form of local government, departmental organization, stage of development (greenfield v. redevelopment), land use patterns, and distinct needs of each locality. This is especially important in the following sections of the draft permit:

Department of Public Works and Environmental Services
Stormwater Management
12000 Government Center Parkway, Suite 449
Fairfax, VA 22035-0052
Phone: 703-324-5500, TTY: 711, FAX: 703-802-5955
www.fairfaxcounty.gov/dpwes



- Part I.B.1. Planning: Existing planning efforts vary across localities. The most effective MS4 management approach will build on each locality's specific efforts.
- Part I.B.2.c. Retrofitting: The inventory of stormwater facilities and conveyance systems is different in each locality. Retrofitting requirements must target the most effective retrofit types and goals for each local inventory.
- Part I.B.2.d. Roadways: Responsibility for roadway maintenance is not the same for all localities. For example, Arlington maintains all of the roadways in the county, with the exception of major highways, which are maintained by the Virginia Department of Transportation (VDOT). By contrast, virtually all of the roadways in Fairfax County are maintained by VDOT. As such, the permit requirements related to roadways must be flexible enough to reflect the variations in roadway maintenance responsibilities across local jurisdictions.
- Part I.B.2.i. Storm Sewer Infrastructure Management: The age, extent and original purpose and design of existing storm sewer infrastructure are different in each locality. The approach taken for each system of infrastructure must target the most effective maintenance practices and rehabilitation goals for that system.
- Parts I.B.2.m. Water Quality Screening Programs and I.C. Monitoring Requirements: Water quality monitoring efforts vary across localities due in part to differences in geographic setting, jurisdictional boundaries and infrastructure inventory. The most effective monitoring approach will build on each locality's existing water quality monitoring efforts.
- Part I.C.4. Structural and Source Controls Compliance Monitoring and Tracking: The inventory of stormwater controls and maintenance approaches are different in each locality, and the permit requirements related to inspecting, maintaining and tracking these controls must take these differences into account. For example, the vast majority of stormwater management (SWM) facilities in Arlington County are privately owned and operated, while in Fairfax County there is a significant inventory of publicly maintained SWM facilities. The inspection and maintenance approach for private facilities is focused primarily on ensuring that maintenance is performed by the facility owner, while the maintenance of public facilities represents a significant county workload in Fairfax.
- The draft permit contains a number of specific, quantifiable commitments including implementation of retrofit projects, tree planting goals, and lane miles of street sweeping. The inclusion of quantifiable commitments as permit requirements is new to MS4 permitting in Virginia and is of some concern in terms of exposure to enforcement actions should an MS4 Operator be unable to meet these commitments. However, on the whole the County believes that this approach will improve urban stormwater management by focusing implementation efforts on the most effective practices in each locality, clarifying permit compliance expectations, and facilitating program planning for the new generation of MS4 permits. As with the template approach to permit structure, the identification of quantifiable implementation commitments must reflect the most beneficial stormwater management practices specific to each MS4.

- The draft permit includes a strong emphasis on good housekeeping, pollution prevention and pollutant reduction associated with municipal operations. This new emphasis will improve urban stormwater management by helping localities to lead by example in their communities. By its very nature, urban stormwater is impacted by each individual resident's and business's actions, and significant improvements in stormwater management cannot be achieved through government efforts alone. In leading by example, MS4 localities can raise their communities' awareness of and support for stormwater management, both of which are important steps in changing individual and corporate behavior. Continued progress will require a cultural change which will take time to achieve.
- Reissuance of Individual MS4 Permits in Virginia will mark the first time that compliance with total maximum daily load (TMDL) wasteload allocations (WLAs) will be included in Phase I MS4 Permit language. The County is committed to improving and protecting local water quality, and has been making progress toward these goals since our first permit was issued in 1997. The draft permit contains specific requirements related to the development of TMDL Action Plans that will help guide MS4 operators' planning and implementation efforts related to TMDL WLAs. However, the County cannot emphasize enough that the water quality impairments that have triggered TMDL development reflect the impacts of many years of human activity on our watersheds and streams. Just as it took time for these impacts to occur, it will take time for them to be reversed, and some may in fact be irreversible. Because TMDLs are pollutant- and waterbody-specific, the development of TMDL Action Plans will represent a significant new workload and cost for MS4 operators. While the exact level of effort required to implement these plans is not yet known, it has the potential to dwarf the workload associated with all of the other MS4 permit requirements combined. The County believes that the adaptive, iterative approach to TMDL Action Plan development and implementation taken in the draft permit is absolutely vital to MS4 operators' ability to effectively target and sustainably manage their efforts to address their systems' contributions toward achieving the water quality improvements identified in each TMDL.
- Finally, we are very concerned about potential implications of the draft permit language in Part I.A.2 (Permittee Responsibilities) and Part I.D (TMDL Action Plan and Implementation), especially in light of both the time needed to achieve and sustain cultural change, and the unknowns surrounding compliance of diffuse sources with a legally binding TMDL WLA. The language of most concern is as follows (emphasis added in italics):
 - "Compliance with the requirements of this permit shall also constitute adequate progress for this permit term towards complying with the assumptions and requirements of the applicable TMDL wasteload allocations, *and such that the discharge does not cause or contribute to violation of the water quality standards.*"

The compliance standard for MS4 permits is the implementation of best management practices (BMPs) to the maximum extent practicable (MEP). The above language represents a significant shift away from that MEP standard toward a more water quality based standard that may not be achievable for the episodic events and diffuse sources that are captured by and discharged through stormwater infrastructure. The cost of complying with a water quality based standard in an urban setting would be astronomical, and the failure to achieve compliance, especially following a considerable financial investment, would severely erode community support for local

stormwater programs. The best approach to improving urban stormwater management is to implement and continually refine an MS4 program that targets the most environmentally and economically effective practices, and to build on successes as they are achieved. This is the essence of the MEP standard. A water quality standard will almost certainly set MS4 operators up for failure, both in terms of regulatory compliance and community support.

Finally, there are a number of instances in which the draft permit language is unclear, or we have specific concerns about individual requirements. Enclosed please find the County's detailed comments on the draft permit which includes these specific concerns.

Fairfax County remains fully committed to implementing a comprehensive MS4 Program that will control pollutant sources, maintain and improve our stormwater infrastructure, and protect our receiving streams. The County appreciates the opportunity to comment on the draft permit and its proposed use as a template for the new generation of stormwater permits. We look forward to continuing to work with the Commonwealth to help shape urban stormwater management in Virginia.

Sincerely,

Randolph W. Bartlett, P.E.
Deputy Director
Department of Public Works and Environmental Services

Enclosure as Stated

Cc: David K. Paylor, Director, Virginia Department of Environmental Quality
Fairfax County Board of Supervisors
Edward L. Long Jr., County Executive
Robert A. Stalzer, Deputy County Executive
James W. Patteson, Director, Department of Public Works and Environmental Services

Fairfax County's Detailed Comments on the February 7, 2013 Draft MS4 Permit for Arlington County

Line	Draft Permit Language	Comment
46 to 48	The following non-stormwater discharges [are authorized] unless the State Water Control Board or the Virginia Soil and Water Conservation Board (Board) determines the discharge to be a significant source of pollutants to surface waters:	The permittee must be included as a party that can determine a discharge to be a significant source of pollutants.
106 to 107	The Department has determined that this program reduces the discharge of pollutants to the 106 maximum extent practicable.	"This program" should be clarified as "the MS4 Program defined in this permit."
109 to 112	Compliance with the requirements of this permit shall also constitute adequate progress for this permit term towards complying with the assumptions and requirements of the applicable TMDL wasteload allocations, and such that the discharge does not cause or contribute to violation of the water quality standards.	If a TMDL wasteload allocation has been assigned to the MS4, then it has already been established that the MS4 discharge causes or contributes to violation of the water quality standards. The clause related to water quality standards is in direct contradiction with the preceding language and should be deleted.
138	Each annual report shall include a list of those episodes of non-compliance.	The annual report should be part of the Department's basis for determining compliance with permit requirements. If the Department finds what they believe is noncompliance that was not listed in this section, would the permittee be cited for both the instance of noncompliance and the failure to report it?
175	A copy of the fiscal analysis shall be submitted with each annual report.	"Fiscal analysis" should be replaced with "fiscal year's budget" to be consistent with the permit requirement on line 168.
190	The permittee shall maintain, implement and enforce an MS4 Program Plan	Aspects of MS4 Program Plan can be enforced (such as the prohibition of certain discharges), but program plan itself is not enforceable. The word "enforce" should be deleted.
198	[...] the Chesapeake Bay Preservation Act (§ 10.2100 et. seq.)	The correct citation is § 10.1-2100 et. seq.
301 to 314	Part I.B.1. Planning	The permit and reporting requirements in this section are specific to Arlington County. This section should be tailored to each locality as the remaining individual permits are developed.

Line	Draft Permit Language	Comment
385 to 388	4) The permittee shall maintain and update as necessary a list of all stormwater management controls in the MS4 program plan that are more stringent than those required under 4VAC 50-30-10 et seq. that have been adopted by ordinance in accordance with § 10.1-570 of the Code of Virginia.	The code cited in this section is related to the Virginia Erosion and Sediment Control Program. It is not clear why it would be included under Post Construction Runoff, and it is already included under Construction Site Runoff (see lines 332-335). The section should be deleted.
402	Stormwater management facilities shall be tracked in accordance with Part I.B.2.i)7)	Tracking of stormwater management facilities is specified in Part 1.C.4.a (not I.B.2.i.7, which specifies tracking of MS4 outfalls.)
411 to 413	By July 1, 2014, the permittee shall submit to the Department a list of all land disturbing projects that qualify under the 'Grandfathering' provision of the VSMP regulations found at 4VAC50-60-48.	This reporting requirement does not appear to relate to the preceding Post Construction Runoff permit requirements.
419 to 468	Part I.B.2.c) Retrofitting on Prior Developed Lands	The permit and reporting requirements in this section are specific to Arlington County. This section should be tailored to each locality as the remaining individual permits are developed.
435 to 437	The permittee shall track the number of retrofit projects, type of land use being retrofitted, total acreage retrofitted and retrofit type by the watershed identified in the retrofit study and location by latitude and longitude in hours, minutes and seconds.	The list of retrofit tracking requirements should include impervious and pervious acres retrofitted, in addition to total acres. Line 449 requires reporting of this information.
474 to 475	The permittee shall continue to implement its street sweeping program and shall sweep a minimum of 25,000 lane miles during this permit cycle.	This permit requirement is specific to Arlington County. Almost all roadways in Fairfax County are maintained by VDOT.
486 to 490	The permittee shall include a description of the permittee's street sweeping program including the number of lane miles swept each year and the total swept cumulatively since permit issuance in each annual report. The permittee shall report the associated total tonnage of debris collected annually and cumulatively for the lane miles swept.	This reporting requirement is specific to Arlington County. Almost all roadways in Fairfax County are maintained by VDOT.
555 to 556	Each annual report shall include the number of acres managed under Integrated Pest Management Plans.	This reporting requirement does not appear to relate to the preceding Pesticide, Herbicide, and Fertilizer Application permit requirements.

Line	Draft Permit Language	Comment
558 to 559	NOTE: Where an item is not required as part of the annual report, its inclusion in the annual report is unnecessary.	Does this note only apply to Pesticide, Herbicide, and Fertilizer Application reporting requirements, or does it apply to all permit reporting requirements? Recommend either moving to first instance of Specific Reporting Requirements at line 135 or to the Annual Reporting section at line 1469.
567 to 570	The permittee shall prohibit, on a case-by-case basis, any individual non-stormwater discharge (or class of non-stormwater discharges) otherwise allowed under [Part I.A.1.b)] that is determined to be contributing significant amounts of pollutants to the MS4.	In order for the permittee to make the determination that an individual non-stormwater discharge is contributing significant amounts of pollutants to the MS4, the permittee must be included in Part I.A.1.b.3). See comment on lines 46 to 48.
574 to 575	The permittee shall inspect a minimum of 300,000 linear feet of sanitary sewer during this permit cycle.	This permit requirement is specific to Arlington County.
611 to 613	The permittee shall continue to implement the Trades Center Integrated Spill Prevention, Control, and Countermeasures / Hazardous Material Management Plan.	This permit requirement is specific to Arlington County.
617 to 618	Each annual report shall include a list of spills, the source, a description of follow-up activities taken and whether the illicit discharge has been eliminated.	This Spill Prevention and Response reporting requirement refers to illicit discharge elimination.
620 to 694	Part I.B.2.h) Industrial & High Risk Runoff	It is not clear what the distinction is between "significant" and "substantial" in this section. The applicable VPDES permit should be specified (VPDES General Permit for Stormwater Discharge Associated with Industrial Activity.)
645 to 646	The permittee shall coordinate with DEQ on any non-VPDES-permitted industrial facility for which it has evidence that a substantial pollutant load is entering the MS4 system.	The requirement to coordinate with DEQ on inspections of non-VPDES permitted facilities should be modified by "when appropriate." If the discharge does not require a permit from DEQ, then coordination would not be necessary.
647 to 649	Facility inspections may be carried out in conjunction with other county programs (e.g., pretreatment inspections of industrial users, health inspections, fire inspections, etc.), but must include random inspections for facilities not normally visited by the permittee.	In Fairfax County, routine inspections of industrial and high risk facilities will be most effective in achieving the goals of this section. Random inspections would provide little added benefit. This section should be tailored to each locality as the remaining individual permits are developed.

Line	Draft Permit Language	Comment
635 to 636	The permittee shall inspect all industrial outfalls connected to its MS4 a minimum of once every five years.	This section deals with VPDES-permitted facilities and facilities granted "no-exposure" certification. The inspection requirement should apply to industrial outfalls from these two types of facilities rather than to all industrial outfalls.
704 to 709	<p>2) The permittee shall continue its catch basin cleaning program and shall inspect 5,000 catch basins over the life of this permit. The permittee shall conduct maintenance, as necessary, based upon the inspection's findings.</p> <p>3) The permittee shall continue its storm sewer inspection program and shall inspect 425,000 linear feet of system during the term of this permit as described in Part I.B.2.m).</p>	These permit requirements are specific to Arlington County.
711 to 712	The permittee shall collect contaminated flush water associated with storm sewer maintenance and shall dispose of it in accordance with appropriate law and regulations.	The layout of the storm sewer system and access to a downstream manhole are critical to capturing flush water. Fairfax County does not maintain roadways, and as a result our storm sewers and inlets are out of the right-of-way and most often located on private property. The stormwater entering the County system also does not typically contain the many pollutants that are present in runoff from road surfaces. Discharge of flush water to sanitary sewer would be possible when there is nearby access to a manhole, but this is most often not the case and would significantly complicate maintenance operations while providing minimal water quality benefits. This section should be tailored to each locality as the remaining individual permits are developed.
714 to 729	5) A total of thirty-five outfalls scored a 4 or 5 on a severity scale during the County-wide stream assessment. No later than 60 months after the effective date of this permit, the permittee shall complete a pilot project designed to explore how to overcome access issues and to conduct maintenance on three of these identified outfalls associated with the Windy Run and Donaldson Run stream restoration projects. The pilot will explore aspects of	These permit requirements are specific to Arlington County.

Line	Draft Permit Language	Comment
	<p>maintenance where barriers are encountered, such as physical and legal constraints to obtain access. As part of the pilot project, the permittee will document where efforts to overcome such barriers are successful or unsuccessful. The County shall submit the results of the pilot project with the applicable annual report. The results of this pilot study should be incorporated into future stream restoration efforts.</p> <p>6) No later than 60 months after the effective date of this permit, the permittee shall summarize the private property and physical access constraints for the remaining outfalls and strategies to perform such maintenance, including possibly in conjunction with the permittee's voluntary long-term stream restoration program. This report shall be submitted with the applicable annual report.</p>	
762 to 766	<p>Each annual report shall include a progress report on efforts to repair failed storm sewer outfalls.</p> <p>Each annual report shall include the number of catch basins inspected and maintained and the linear feet of storm sewers inspected.</p>	These reporting requirements are specific to Arlington County.
768 to 769	The second annual report submitted under this permit shall include the information included in Part I. B.2.i)5).	This reporting requirement should refer to the information included in Part I. B.2.i)7).
772 to 773	Each following annual report shall include an updated list in excel or Department provided format of all information requested in Part I. B.2. i) 5).	This reporting requirement should refer to the information included in Part I. B.2.i)8).
798 to 799	The permittee shall continue to implement the stormwater pollution prevention plan for the Arlington County Trades Center.	This permit requirement is specific to Arlington County.
801 to 803	The permittee shall identify all additional high priority municipal facilities that do not require a separate VPDES permit no later than 12-months after the effective date of this permit;	The applicable VPDES permit should be specified (VPDES General Permit for Stormwater Discharge Associated with Industrial Activity.)

Line	Draft Permit Language	Comment
839 to 840	Each annual report shall provide a summary of the County facility retrofit evaluation including a list of potential opportunities and schedule for their installation.	This reporting requirement does not appear to relate to the preceding County Facilities permit requirements.
924 to 925	Virginia Pesticide Control Act (§3.1-249.27 et seq. of the Code of Virginia).	The correct citation is § 3.2-3900.
955 to 956	The initial report shall include documentation of employee emergency response spill response training/certification.	It is not clear why employee emergency this training is called out separately from all other types of required employee training.
958 to 1087	Parts I.B.2.m) Water Quality Screening Programs, I.C.1. Bacteriological Monitoring, and I.C.2. Biological Stream Monitoring	The permit and reporting requirements in these sections are specific to Arlington County. These section should be tailored to each locality as the remaining individual permits are developed..
1113 to 1197	Part I.C.4. Structural and Source Controls Compliance Monitoring and Tracking	It is not clear why this section, which relates to the tracking, inspection and maintenance of stormwater management facilities, is located in the Monitoring Requirements section of the draft permit.
1182 to 1184	Facilities that provide peak flow control as required under Chapter 60 of the Arlington County Code are excluded from the requirements of this section. Inspection and maintenance requirements for these facilities shall be governed by Chapter 60.	This permit requirement is specific to Arlington County.
1199 to 1467	Part I.D. TMDL Action Plan and Implementation	The water quality impairments that have triggered TMDL development reflect the impacts that many years of human activity have had on our watersheds and streams. Just as it took time for these impacts to occur, it will take time for them to be reversed, and some may not be able to be reversed at all. Because TMDLs are pollutant- and waterbody-specific, the development of TMDL Action Plans will represent a significant new workload for MS4 operators, and while the exact level of effort that will be required to implement those plans is not yet known, it has the potential to dwarf the workload associated with all of the other MS4 permit requirements combined. The adaptive, iterative approach to TMDL Action Plan development and implementation taken in the draft permit is absolutely vital to MS4 operators' ability to effectively target and

Line	Draft Permit Language	Comment
		sustainably manage their efforts to address their systems' contributions toward achieving the water quality improvements identified in each TMDL.
1218 to 1219	"Transitional Sources" means regulated land disturbing activities which are temporary in nature and discharge through the MS4.	The applicable regulatory permit should be specified (VSMP General Permit for Discharges of Stormwater from Construction Activities.)
1239 to 1240	An estimate of the annual POC loads discharged from the existing sources as of June 30, 2008 based on the 2009 progress run.	It is not clear how the June 30, 2008 date is relevant. Should it be June 30, 2009?
1252	[...] reductions identified in Part I.D.1.b (e)	This should be I.D.1.b.1(e)
1256 to 1262	The means and methods to offset the increased loads from new sources initiating construction between July 1, 2009 and June 30, 2014 that disturb greater than one acre as a result of the utilization of an average land cover condition greater than 16% impervious cover for the design of post development stormwater management facilities. The permittee shall utilize Table 4 to develop the equivalent pollutant load for nitrogen and total suspended solids. The permittee shall offset 5% of the calculated increased load from these new sources during the permit cycle.	New sources initiating construction between July 1, 2009 and June 30, 2014 are authorized by the VSMP General Permit for Discharges of Stormwater from Construction Activities issued by DCR. This requirement holds localities responsible for offsetting increased loads that were allowed by the state. The ratios of phosphorus loading rate to nitrogen and total suspended solids loading rates are specified in Table 5. Table 4 contains the calculation sheet for determining total POC reductions.
1264 to 1268	The means and methods to offset the increase loads from grandfathered projects that disturb greater than one acre that being constructed after July 1, 2014 where the project utilized an average land cover condition greater than 16% impervious cover in the design of post development stormwater management facilities. The permittee shall utilize Table 5 to develop the equivalent pollutant load for nitrogen and total suspended solids.	Grandfathering criteria were set by DCR in the new VSMP regulations. This requirement holds localities responsible for offsetting increased loads that were allowed by the state. Is the intention of this section to require the permittee to offset 5% of the calculated increased load from grandfathered projects during the permit cycle?
1274 to 1275	An estimate of the expected cost to implement the necessary reductions during the permit cycle;	The necessary reductions need to be clarified. Are they the reductions defined in Part I.D.1.b.1(e)? Or do they also include the offsets for increased loads from new sources defined in Part I.D.1.b.1(g) and from grandfathered projects defined in Part I.D.1.b.1(h)?
1283 to 1284	Chesapeake Bay TMDL Action Program Plan	This should be "Chesapeake Bay TMDL Action Plan"

Line	Draft Permit Language	Comment
1290 to 1292	Implementation of BMPs on unregulated urban lands provided the baseline reduction is subtracted from the total reduction prior to application of the reduction towards meeting the required reductions.	This permit requirement is very difficult to understand and needs to be clarified.
1294 to 1296	Utilization of stream restoration projects provided the credit applied to the required POC load reduction is prorated based on the ratio of regulated urban acres to total drainage acres upstream of the restored area.	A better approach to prorating stream restoration credit might be to use the ratio of regulated impervious acres to the total impervious acres upstream of the restored area.
1328 to 1330	Increases in the POC load from grandfathered projects initiating construction after July 1, 2014 must be offset prior to completion of the project;	This requirement could be difficult to implement depending on how much must be offset and when the grandfathered projects are completed. Temporary credits and offsets may be available in the short term, but they do nothing to address the required sediment reductions.
1333 to 1334	Implementation of means and methods sufficient to meet required reductions of POC loads from existing sources defined in this permit in accordance with the Chesapeake Bay TMDL Action Plan.	The POC loads from existing sources are defined in Part I.D.1.b.1(e). This should be specified in the permit requirement, as opposed to a general reference to the Chesapeake Bay TMDL Action Plan.
1391 to 1400	<p>1) No later than 24 months after the effective date of this permit, the permittee shall update the MS4 Program Plans to address any new or modified requirements established under this Special Condition for pollutants identified in TMDL wasteload allocations approved prior to July 8, 2008.</p> <p>2) No later than 24 months after the effective date of this permit, the permittee shall update the MS4 Program Plan to incorporate Action Plans that identify the best management practices and other implementation steps that will be implemented during the remaining term of this permit for pollutants identified in TMDL wasteload allocations approved either on or after July 8, 2008 and prior to issuance of this permit.</p>	It is not clear how the July 8, 2008 date is relevant, especially since the same timeframe (24 months after permit issuance) is given for the MS4 Program Plan updates to address TMDL wasteload allocations approved prior to July 8, 2008 and TMDL wasteload allocations approved either on or after July 8, 2008 and prior to issuance of this permit.

Line	Draft Permit Language	Comment
1426 to 1428	Assess all facilities of concern owned or operated by the permittee that are not covered under a separate VPDES permit and identify all municipal facilities that may be a significant source of the identified pollutant.	Should this be high priority municipal facilities instead of facilities of concern? The applicable VPDES permit should be specified (VPDES General Permit for Stormwater Discharge Associated with Industrial Activity.)
1440	Facilities identified in d above.	This should be Part I.D.2.b.4.
1452 to 1454	[...] the efficiency provided that the rational for any substituted BMP is provided an the substituted BMP is consistent with the assumptions and requirements of the TMDL WLA.	Should this read: "the efficiency of the substituted BMP is consistent with the assumptions and requirements of the TMDL WLA?"
1458	The permittee shall submit the required TMDL Action Plans for its review and acceptance	Should this be for Department review and acceptance?

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INFORMATION - 1

Contract Award – Nursing and Other Healthcare Services

The Department of Purchasing and Supply Management issued a Request for Proposal (RFP2000000126) soliciting qualified sources to provide Temporary Health Care Professional Services (Registered Nurses, Licensed Practical Nurses, Certified Nursing Assistants, X-Ray Technicians, Pharmacists, Pharmacy Technicians, Dental Assistants and Nutritionists), Continuous Duty Nursing, and Continuous Duty Float Nursing to replace expiring contracts.

The solicitation notice was sent to registered vendors and 11 firms responded with a proposal by the closing date. The Selection Advisory Committee (SAC), appointed by the County Purchasing Agent, evaluated the proposals in accordance with the criteria established in the RFP. Upon completion of the final evaluation of the proposals, the SAC negotiated with the top ranked offerors and unanimously recommended to award the contract to Continuum Pediatric Services/MPS Healthcare, Pediatric Services of America, Maxim Healthcare Service, Inc., and Staffing, Etc. Multiple awards are recommended to ensure contract services for all required professions and specialties.

The Department of Tax Administration (DTA) has verified that Continuum Pediatric Services/MPS Healthcare and Pediatric Services of America possess the appropriate Fairfax County Business, Professional and Occupational License (BPOL), and that, Maxim Healthcare Services, Inc. and Staffing, Etc., are not required to have a Fairfax County Business, Professional and Occupational License (BPOL).

Unless otherwise directed by the Board of Supervisors, the Department of Purchasing and Supply Management will award this contract to Continuum Pediatric Services/MPS Healthcare, Pediatric Services of America, Maxim Healthcare Service, Inc., and Staffing, Etc in the estimated amount of \$2,381,481.

FISCAL IMPACT:

The contract will begin on the date of award and terminate on June 30, 2015 with no renewal options. The annual fiscal impact to the Health Department is approximately \$1,058,436. No additional County funds are required or are being requested at this time. Future year requirements over the life of the contract will be evaluated as part of the County's future budget review process.

Board Agenda Item
March 19, 2013

ENCLOSED DOCUMENTS:

Attachment 1: List of Offerors for RFP2000000126

STAFF:

Cathy A. Muse, Director, Department of Purchasing and Supply Management
M. Gail Ledford, Director of Department of Administration for Human Services
Dr. Gloria Addo-Ayensu, Director of Health, Health Department

List of Offerors

RFP2000000126

Nursing and Other Healthcare Services

1. MPS Healthcare d.b.a. Continuum Pediatric Services
2. Pediatric Services of America
3. Maxim Healthcare Service, Inc.
4. Staffing, Etc.

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INFORMATION - 2

Contract Award – Engineering Services

On September 14, 2012, the Department of Purchasing and Supply Management issued a Request for Proposal (RFP) soliciting qualified sources to provide mechanical, electrical, and plumbing engineering services on an as needed basis for various County agencies. The scope of work includes, but is not limited to consulting, drafting specifications, evaluation of Americans with Disabilities Act (ADA) compliance, drawings, construction administration, commissioning, cost estimating, and LEED design.

RFP200000414 was publicly advertised in accordance with the requirements of the Fairfax County Purchasing Resolution. Twenty offerors responded with a proposal by the closing date of October 9, 2012. The Selection Advisory Committee (SAC), approved by the County Purchasing Agent, evaluated the proposals in accordance with the criteria established in the RFP. Upon completion of the evaluation of the proposals, the SAC negotiated with the offerors and recommended contract awards to AJ Engineers; Gauthier, Alvarado & Associates; Johnson, Mirmiran, & Thompson; Sebesta Blomberg & Associates; Setty & Associates; Shaffer, Wilson, Sarver & Gray; Syska Hennessy Group; and Whitman, Requardt & Associates. Multiple awards are required due to the varying project types and sizes and the design expertise required for each. The SAC recommends contract award to these firms based on their demonstrated ability to meet County requirements and standards for engineering services.

The Department of Tax Administration has verified that the selected firms do not have and are not required to have a Fairfax County Business, Professional, and Occupational License (BPOL).

Unless otherwise directed by the Board of Supervisors, the Purchasing Agent will proceed to award this contract to AJ Engineers; Gauthier, Alvarado & Associates; Johnson, Mirmiran, & Thompson; Sebesta Blomberg & Associates; Setty & Associates; Shaffer, Wilson, Sarver & Gray; Syska Hennessy Group; and Whitman, Requardt & Associates. These contracts will commence on the date of award and terminate on January 31, 2014 with four renewal options available. The total estimated amount of these contracts is approximately \$1,750,000.00 annually.

FISCAL IMPACT:

Services rendered through these contracts will be charged to approved projects.

ENCLOSED DOCUMENTS:

Attachment 1: List of Offerors for RFP200000414

STAFF:

Cathy A. Muse, Department of Purchasing and Supply Management
Jose A. Comayagua, Facilities Management Department

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List of Offerors

RFP2000000414

Engineering Services

1. AJ Engineers, Inc.
2. Becht Engineering BT, INC
3. BKM Engineering
4. Brinjac Engineering, Inc.
5. Burns and McDonnell
6. Setty and Associates
7. Gauthier, Alvarado & Associates
8. GHT Limited Consulting Engineers
9. Johnson, Mirmiran & Thompson, Inc.
10. JVP Engineers, P.C.
11. Moseley Architects
12. Presti & Company, Inc.
13. S3E Klingemann
14. SAI Engineering
15. Sebesta Blomberg
16. Shafer, Wilson, Sarver, and Gray
17. Simmons, Rochecharlie & Prince Inc.
18. Syska Hennessy Group
19. WB Engineers / Consultants
20. Whitman, Requardt & Associates

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Board Agenda Item
March 19, 2013

INFORMATION - 3

Consolidated Plan Certification for the Fairfax County Redevelopment and Housing Authority Public Housing and Housing Choice Voucher Annual Plan for Fiscal Year 2013

On March 7, 2013, the Fairfax County Redevelopment and Housing Authority (FCRHA) approved the submission of its Public Housing and Housing Choice Voucher Annual Plan for Fiscal Year 2013 (FCHRA Fiscal Year 2014) to the U.S. Department of Housing and Urban Development (HUD). This plan update is required by the Quality Housing and Work Responsibility Act (QHWRA) of 1998, and submission to HUD is a requirement for receipt of federal Public Housing and Housing Choice Voucher funds. Certification that the plan is consistent with the Fairfax County Consolidated Plan is part of the required submission due to HUD by April 17, 2013. County policy requires that the Board be informed of Consolidated Plan certifications.

The Public Housing and Housing Choice Voucher Annual Plan articulates the FCRHA's mission for serving the housing needs of low-income and very low-income households, and the FCRHA's strategy for addressing those needs. The plan is presented in a HUD-mandated format, and has had extensive review by the FCRHA, the public, and the FCRHA's Resident Advisory Council (RAC), which represents Public Housing residents and Housing Choice Voucher participants. The Fairfax County Department of Housing and Community Development (HCD) received comments from the RAC on December 11, 2012; the RAC's comments and HCD's responses have been included in the Plan. The FCRHA made the plan available for public comment from December 7, 2012 through January 22, 2013 and held the required public hearing on January 31, 2013. HCD received comments from the Fairfax County Office to Prevent and End Homelessness; HCD's responses to these comments have been included in the Plan. Copies of the Plan are available through HCD upon request.

Unless directed otherwise by the Board, the County Executive will sign the Consolidated Plan certification and provide it to the FCRHA for inclusion in the Public Housing and Housing Choice Voucher Annual Plan for Fiscal Year 2013 to be submitted to HUD.

ENCLOSED DOCUMENTS:

Attachment 1: Certification by State or Local Official of PHA Plans Consistency with the Consolidated Plan (HUD Form)

STAFF:

Patricia Harrison, Deputy County Executive
Paula C. Sampson, Director, Department of Housing and Community Development (HCD)
Robert Easley, Acting Interim Director, HCD
Carol Erhard, Director, Rental Services Division, HCD
Vincent Rogers, Senior Program Manager, Rental Services Division, HCD

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**Certification by State or Local
Official of PHA Plans Consistency
with the Consolidated Plan**

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB# 2577-0226
Expires 08/30/2011

**Certification by State or Local Official of PHA Plans Consistency with the
Consolidated Plan**

I, Edward L. Long Jr., the County Executive certify that the Five Year and Annual PHA Plan of the Fairfax County Redevelopment and Housing Authority is consistent with the Consolidated Plan of Fairfax County prepared pursuant to 24 CFR Part 91.

Signed / Dated by Appropriate State or Local Official

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Board Agenda Item
March 19, 2013

11:25 a.m.

Matters Presented by Board Members

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Board Agenda Item
March 19, 2013

12:20 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. Joint Petition of Aqua Virginia, Inc., and Reston RELAC LLC for Approval of a Change in Control and Transfer of Assets Pursuant to § 56-88.1 of the Utility Transfers Act, Case No. PUE-2012-00131 (Va. State Corp. Comm'n) (Hunter Mill District)
 - 2. *Krista Pinto v. Fairfax County Department of Family Services*, Record No. 1581-12-4 (Va. Ct. App.)
 - 3. *Yazan Rousan v. P.F.C. D. N. Custer, Deputy D. Carty, Nurse Bornell, and Nurse Practitioner Wang*, Civil Action No. 1:12-CV-595 (E.D. Va.)
 - 4. *Angela Achu v. D.G. Head*, Case No. GV13-003636 (Fx. Co. Gen. Dist. Ct.)
 - 5. *Gerald Lowe, by GEICO, subrogee v. Carl Newcomb*, Case No. GV12-012852 (Fx. Co. Gen. Dist. Ct.)
 - 6. *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)
 - 7. *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)

8. *Eileen M. McLane, Fairfax County Zoning Administrator v. Esther Schwartz, Morris Goldberg, Rose Goldberg, Alvin Peck, Stella Peck, Melvin Zweig, Kathryn Zweig, M. A. M. Enterprises, and the Heirs of Alvin Peck, Case No. CL-2012-0004129 (Fx. Co. Cir. Ct.) (Providence District)*
9. *Eileen M. McLane, Fairfax County Zoning Administrator v. Otis Perry and Elcetia L. Perry, Case No. CL-2008-0005923 (Fx. Co. Cir. Ct.) (Providence District)*
10. *Eileen M. McLane, Fairfax County Zoning Administrator v. George L. Karsadi and Trisha D. Karsadi, Case No. CL-2012-0010272 (Fx. Co. Cir. Ct.) (Mount Vernon District)*
11. *Leslie B. Johnson, Fairfax County Zoning Administrator v. David Whedon and Calvin Williams, Case No. CL-2012-0017070 (Fx. Co. Cir. Ct.) (Mount Vernon District)*
12. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Richard Albin Cauthers, Jr., Case No. CL-2012-0014798 (Fx. Co. Cir. Ct.) (Mount Vernon District)*
13. *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)*
14. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Daniel Marshall Whedon, Case No. CL-2012-0014879 (Fx. Co. Cir. Ct.) (Mount Vernon District)*
15. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Airlie Real Estate Trust #95-04530 and Jeffrey Sedgwick, Trustee, Case No. CL-2012-0017559 (Fx. Co. Cir. Ct.) (Mason District)*
16. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Houy Team Tang and Bun Hout Tang, Case No. CL-2012-0018123 (Fx. Co. Cir. Ct.) (Mount Vernon District)*
17. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Michael E. Bacha, Case No. CL-2012-0013717 (Fx. Co. Cir. Ct.) (Dranesville District)*

18. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. The Atakalet Asres Custodial Trust and Abeje Yeshineh, Trustee, Case No. CL-2012-0016491 (Fx. Co. Cir. Ct.) (Mount Vernon District)*
19. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Groveton Office, LLC, and SPUSO5 Wood Groveton, LLC, Case No. CL-2013-0003609 (Fx. Co. Cir. Ct.) (Lee District)*
20. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Nina Selvaggi, Case No. CL-2013-0003608 (Fx. Co. Cir. Ct.) (Dranesville District)*
21. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Loan Phuong, Case No. CL-2013-0003688 (Fx. Co. Cir. Ct.) (Braddock District)*
22. *Leslie B. Johnson, Fairfax County Zoning Administrator v. David J. Soltis and Barbara J. Soltis, Case No. CL-2013-0003833 (Fx. Co. Cir. Ct.) (Sully District)*
23. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Francis A. Headley, Grace F. Headley, and Jerome E. Headley, Case No. CL-2013-0003839 (Fx. Co. Cir. Ct.) (Mason District)*
24. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Donald M. Douglas and Louise L. Douglas, Case No. CL-2013-0003838 (Fx. Co. Cir. Ct.) (Springfield District)*
25. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Deutsche Bank National Trust Company, Case No. CL-2013-0003836 (Fx. Co. Cir. Ct.) (Mount Vernon District)*
26. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Lawrence J. Quinn, Jr., and Cynthia M. Quinn, Case Nos. GV13-003515 and GV13-003542 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)*
27. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Consuelo R. Perez and Juan Jose Mariscal Alvarez, Case No. GV13-004756 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)*
28. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Douglas Lane Lacey and Marilyn M. Lacey, Case No. GV13-004758 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)*

29. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Douglas Lane Lacey and Marilyn M. Lacey, Case No. GV13-004757 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)*
30. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Hui S. Choi, Case No. GV13-004917 (Fx. Co. Gen. Dist. Ct.) (Providence District)*
31. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Hui S. Choi, Case No. GV13-004916 (Fx. Co. Gen. Dist. Ct.) (Providence District)*

Board Agenda Item
March 19, 2013

3:30 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)

This property is located on the West Side of Centreville Road approximately 150 Feet North of its intersection with McLearen Road. Tax Map 24-4 ((1)) 11B.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, February 28, 2013, the Planning Commission voted unanimously to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2012-SU-010 subject to the execution of proffers dated February 17, 2013, with the following three changes:
 - In Proffer 3C, the last sentence of the paragraph, delete “Fairfax County” and substitute: “the Sully District Trail Fund”;
 - In Proffer 15A, first sentence, strike the word “residential” before “building”; and,
 - In Proffer 15C, first sentence, after “buildings” insert “businesses” prior to “or swimming pools.”.
- Waiver of Paragraph 6 of Section 6-406 of the Zoning Ordinance to allow a secondary permitted use to comprise more than 50 percent of the total gross floor area of a proposed PRM district where the maximum allowed is 50 percent,
- Modification of the PFM requirements at the time of site plan approval to locate underground stormwater management facilities in a residential area, subject to the waiver conditions contained in Attachment A of the development conditions (Waiver # 9329-WPFM-001-1),
- Modification of the PFM requirements for a tree preservation target area at the time of site plan approval to allow 25,125 square feet in lieu of the 27,824 square feet required, subject to the CDP/FDP and as conditioned.

In a related action, the Planning Commission voted unanimously to approve FDP 2012-SU-010, subject to the development conditions dated February 26, 2013, and approval by the Board of RZ 2012-SU-010.

Board Agenda Item
March 19, 2013

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim excerpt

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4403239.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning
(DPZ)

Brent Krasner, Zoning Evaluation Division, DPZ

Planning Commission Meeting
February 28, 2013
Verbatim Excerpt

RZ/FDP 2012-SU-010 – NORTHERN VIRGINIA HEALTH INVESTORS, LLC
Decisions Only During Commission Matters
(Public Hearing held on December 5, 2012)

Commissioner Litzenberger: This decision only involves a proposed elder care facility in the Sully District.

Commissioner Hall: Who's ringing?

Chairman Murphy: Please put all your devices that make all kinds of noises on stun. Thank you.

Commissioner Litzenberger: And this was deferred four times and finally the staff and the applicant and - two of our staff - have come together. I'd like Mr. Krasner and the applicant to please go over the points of contention and how the agreement was reached.

Brent Krasner, Department of Planning and Zoning: Sure. Thank you, Commissioner Litzenberger. Just to summarize where we've come from where we were since this case was last before you. As you're aware, on February 14th, staff published a staff report addendum where we have reversed our previous recommendation for denial to a recommendation for approval. And this change of position was the result both of revisions to the development plan and because of significant changes to the proffer commitments. The applicant's revised Final Development Plan now includes numerous changes, the most significant of which includes shifting the skilled nursing facility five feet closer to the independent living facility. Several parking spaces were relocated from surface parking to parking in the sub-surface garage. An entrance feature along Centreville Road has been added. The design of the landscaped berm along Centreville Road has been revised to provide additional trees, shrubs, and ground cover, arranged in a more naturalistic manner. The height of the retaining wall along the western and southern edges of the site has been reduced. Additional shrub planting has also been added. Finally, the design of the outdoor courtyards was also revised to add significant additional plantings that will better provide adequate shade as well as areas to dine, to walk, and to participate in passive recreation activities. Equally as important as these plan changes, the applicant submitted a revised proffer package that eliminated uncertainties about the final design of certain site elements. It also provided assurances that the proposal would be constructed as depicted on the plans. Proffer 16, which is related to the Health Care Advisory Board's concerns, was revised to extend the time that it would be in effect to five years. The Health Care Advisory Board reviewed this change and they provided an updated review memorandum that was distributed to the Commission last week stating that they are satisfied with this commitment. And then finally, I'll paraphrase a little bit from our staff report, and just say that from the very outset staff was of the opinion that these uses were appropriate for this site because we recognize they fill a need for this type of use in western Fairfax County and because they generate very low levels of traffic. The challenges, from staff's point of view, have always revolved around adapting the applicant's facilities to fit

the particular characteristics of this site. After numerous revisions, we feel the applicant's plan has arrived at a point where sufficient high-quality outdoor space has been provided. Moreover, the revised details for these outdoor areas, along with the proffer commitments, address our previous concerns about the functionality of these spaces. It's obviously been a very long process, but we believe that the improvements in the plan from when it was first submitted are tangible. So in consideration of those revisions that I've just described, staff now finds that the proposal is consistent with the Zoning Ordinance and the Comprehensive Plan and we are now recommending approval as proffered and conditioned. Thank you, Commissioner Litzenberger.

Commissioner Litzenberger: Thank you, Mr. Krasner. Supervisor Frey's office contacted me late yesterday and this morning I worked out three more changes to the proffers. They're all minor, but I'd like to go over them with the applicant and the staff at this time. Proffer 3C - the very last sentence, it states that a trail - an "asphalt trail, 245 feet in length and five feet wide, with Fairfax County for future installation across the Rachel Carson Middle School property by others." I'd like to strike the "Fairfax County..." to the end of the sentence and replace it with "the Sully District Trail Fund"; the reason being is that the Schools staff was late in turning in their homework and they decided they did not want the trail on the Carson Middle School property. By moving it to the Sully District Trail Fund, Supervisor Frey's going to try and relocate the trail to a common area owned by the homeowners association immediately to the north. Does the applicant agree to that?

Chairman Murphy: Please come up and identify yourself for the record and we want all your valuable words on tape.

Jonathan Puvak, Esquire, Walsh, Colucci, Lubeley, Emrich & Walsh, PC: Jon Puvak, on behalf of the applicant, and we concur with that change.

Commissioner Litzenberger: Might as well stay up there. Does staff concur with that change?

Mr. Krasner: We concur with that change. Yes.

Commissioner Litzenberger: The next one involves Proffer 15A. There it states, "Retain a professional consultant to perform a pre-blast survey of each structure or residential building." We want to strike "residential" and just have it say "building"; the reason being is the building next door is a gas station; it's not a residential building. Does the applicant concur with that change?

Mr. Puvak: Yes, we concur with that change.

Commissioner Litzenberger: Staff?

Mr. Krasner: Staff concurs.

Commissioner Litzenberger: Lastly on 15C, it reads, "Require the blasting consultant to request access to any houses, wells, buildings..." Insert the term "businesses" before "or swimming pools." Does the applicant concur with that change?

Mr. Puvak: Yes, the applicant concurs with that change.

Commissioner Litzenberger: Staff?

Mr. Krasner: Staff concurs.

Commissioner Litzenberger: Okay. Thank you, Mr. Krasner. And Mr. Chairman, I think I'm ready to move now.

Chairman Murphy: All right. Mr. Litzenberger, please.

Commissioner Litzenberger: Mr. Chairman, I would like to thank the staff, Brent Krasner and Kris Abrahamson, and the applicant, and their legal counsel headed by Lynne Strobel and Jon Puvak for their work, working so diligently on this difficult case. After four deferrals we have finally come to an agreement and can move forward on this elder care facility so desperately needed in the western end of Fairfax County. Both the Sully District Council and the Western Fairfax County Citizens Association support this application. I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF RZ 2012-SU-010, SUBJECT TO THE EXECUTION OF THE PROFFERS, CONSISTENT WITH THOSE DATED FEBRUARY 27TH, 2013, WITH THE FOLLOWING THREE MINOR CHANGES which I just covered. Should I cover them a second time?

Chairman Murphy: Were you on the record before? Go ahead.

Commissioner Litzenberger: Okay, the three minor changes involve:

- First, PARAGRAPH [*sic*] 3C, STRIKE THE LAST SENTENCE OF THE PARAGRAPH WHERE IT BEGINS WITH "FAIRFAX COUNTY FOR FUTURE...", AND REPLACE IT WITH "THE SULLY DISTRICT TRAIL FUND";
- The second change is PROFFER 15A, IN THE SECOND SENTENCE, STRIKE THE WORD "RESIDENTIAL"; AND
- PROFFER 15C, AFTER "BUILDINGS", INSERT THE TERM "BUSINESSES".

Commissioner Litzenberger: Second?

Commissioners de la Fe and Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan and Mr. de la Fe. Is there a discussion of the motion? All those - - all those in favor of the - - yes, Ms. - - Go ahead.

Commissioner Hurley: This is the time I should make my -

Chairman Murphy: Sure.

Commissioner Hurley: I support the motion but I would like to, for the record, note my concern for another possible slippery slope in the - Proffer 15 - that we're not getting - - the Planning Commission doing land use; it's not getting too much into the business of operating and inspections and other totally non-land use matters five years from now. We're not talking about transportation or stormwater or anything else; we're talking about something that happens inside the building. But I support the motion. Thank you.

Chairman Murphy: Further discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2012-SU-010, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Litzenberger.

Commissioner Litzenberger: I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2012-SU-010, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED FEBRUARY 26TH, 2013.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Is there a discussion of that motion? All those in favor of the motion to approve FDP 2012-SU-010, subject to the Board's approval of the Rezoning, 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 6-406 OF THE ZONING ORDINANCE TO ALLOW A SECONDARY PERMITTED USE TO COMPRISE 50.305 PERCENT OF THE TOTAL GROSS FLOOR AREA OF A PROPOSED PRM DISTRICT WHERE THE MAXIMUM ALLOWED IS 50 PERCENT.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: I MOVE THAT THE PLANNING COMMISSION RECOMMEND A WAIVER OF SECTION 6-0303.8 OF THE PUBLIC FACILITIES MANUAL TO LOCATE UNDERGROUND STORMWATER MANAGEMENT FACILITIES IN A RESIDENTIAL AREA, SUBJECT TO WAIVER NUMBER 009329-WPFM-001-1, AND CONDITIONS DATED NOVEMBER 20TH, 2012.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: Lastly, I MOVE THAT THE PLANNING COMMISSION RECOMMEND A MODIFICATION OF SECTION 12-0508 OF THE PUBLIC FACILITIES MANUAL TO PERMIT A TREE PRESERVATION TARGET AREA OF 25,125 SQUARE FEET IN LIEU OF THE 27,824 SQUARE FEET REQUIRED.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The motions carried unanimously.)

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Board Agenda Item
March 19, 2013

3:30 p.m.

Public Hearing on SE 2012-SU-002 (Nadeem P. Malik) for a Waiver of Minimum Lot Width to Permit the Subdivision of One Lot into Two Lots, Located on Approximately 2.3 Acres of Land Zoned R-1 (Sully District)

This property is located at 3027 Ashburton Avenue, Herndon, 20171. Tax Map 35-2 ((1)) 4.

PLANNING COMMISSION RECOMMENDATION:

On Wednesday, January 30, 2013, the Planning Commission voted 6-0-2 (Commissioner Hart recusing himself; Commissioners de la Fe and Migliaccio abstaining; Commissioner Hedetniemi not present for the vote; Commissioners Hall and Sargeant absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of SE 2012-SU-002, subject to the development conditions dated January 30, 2013; amended as follows:
 - Change Development Condition 27 to read: "In lieu of constructing a trail along Ashburton Avenue, the applicant shall make a contribution in an amount equivalent to the cost of constructing this trail segment, as determined by DPWES, to the Sully District Trail/Sidewalk Fund."

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim excerpt

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4406207.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)

Rebecca Horner, Zoning Evaluation Division, DPZ

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Planning Commission Meeting
January 30, 2013
Verbatim Excerpt

SE 2012-SU-002 – NADEEM P. MALIK

Decision Only During Commission Matters
(Public Hearing held on January 24, 2013)

Commissioner Litzenberger: Thank you, Mr. Chairman. I have a decision only tonight from last week. First of all, I'd like to have Mr. Martin come up to the podium, please. I want to first commend the applicant and the staff for getting a lot of administrative things cleared up on this so we can move on it tonight. First of all, we had a speaker named Mr. Lotocki. He asked that we not approve this because of the way it looked. But after checking with staff, sure enough the Zoning Ordinance and the property regs out of Richmond don't allow us to vote on something like that. So, then Mr. Orem, he came up and spoke. He was concerned about sediment from the site flowing into Horsepen Run Creek. And sure enough, Supervisor Frey also had that concern. I just want to hear from Mr. Martin that your applicant's confident that he will retain all of the stormwater on-site and deal with it that way.

Keith Martin, Esquire, Tramonte, Yeonas & Roberts, PLLC: Absolutely. We've looked at it backward and forward, and it is - with County staff - and it is solid.

Commissioner Litzenberger: And Ms. Horner, could you please confirm that you checked with DPWES that that's true.

Rebecca Horner, Zoning Evaluation Division, Department of Planning and Zoning: That's true. I talked to the stormwater engineer, who's been reviewing this case.

Commissioner Litzenberger: Okay, thank you. Then lastly, Ms. Prosser expressed concern about the lack of trees along the back property line. I want to thank Commissioner Lawrence for his insight into this and his constructive recommendations. And Ms. Horner, could you just - could you just please describe the change to that development condition?

Ms. Horner: Yes. Thank you. We've added a development condition that would require trees to be planted - evergreen trees - to be planted on a 10-foot staggered row along the driveway - the proposed driveway - on Lot 2 of the proposed subdivision adjacent to the existing dwelling on Lot 2 next door; and then also a row of trees on the southern property line to the rear to provide screening from the existing residential to the south.

Commissioner Litzenberger: What's the total number of trees?

Ms. Horner: We don't specify the number of trees. We specify a number of feet along the southern lot line and then we specify along the driveway. But realistically they're probably looking at about 15 additional trees.

Commissioner Litzenberger: Okay, then that's to go with the ten that's already in the proffers (*sic*) - - or in the development conditions?

Ms. Horner: Yes.

Commissioner Litzenberger: Okay. And your applicant concurs with that?

Mr. Martin: We agree to do that.

Commissioner Litzenberger: Okay, thank you. One last thing came up late this afternoon. Supervisor Frey's office contacted us and was requesting that the contribution be equivalent to the - for the trails segment - be put into the Sully District Trail and Sidewalk Fund. Are you - does your applicant concur with that, Mr. Martin?

Mr. Martin: We do.

Commissioner Litzenberger: Ms. Horner, does staff concur with that?

Ms. Horner: Yes.

Commissioner Litzenberger: Okay, thank you. I'll be ready to move, Mr. Chairman.

Chairman Murphy: Okay.

Commissioner Litzenberger: - if there aren't any more questions.

Chairman Murphy: Just, Mr. Martin, just for the sake of the record, would you come back and identify yourself. I know, it seems a little [*inaudible*].

Mr. Martin: Keith Martin, attorney for the applicant.

Chairman Murphy: Okay, thank you very much. Mr. Litzenberger.

Commissioner Litzenberger: Thank you, Mr. Chairman. I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF SE 2012-SU-002, SUBJECT TO THE DEVELOPMENT CONDITIONS CONSISTENT WITH THOSE DATED JANUARY 30TH, 2013.

Commissioners Flanagan and Lawrence: Second.

Chairman Murphy: Seconded by Mr. Flanagan and Mr. - yes - Mr. Lawrence. 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-SU-002, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioners de la Fe and Migliaccio: Abstain.

Chairman Murphy: Mr. de la Fe abstains, not present for the public hearing, and Mr. Migliaccio abstains for the same reason.

Commissioners de la Fe and Migliaccio: Thank you.

Commissioner Litzenberger: One more. At the request of the Supervisor's office and with the support of DPZ staff, I MOVE THAT DEVELOPMENT CONDITION NUMBER 27 BE AMENDED AS FOLLOWS: –

Chairman Murphy: Just a minute. Hold on, we have a –

Commissioner Hart: Yes, Mr. Chairman just, if I could be recorded as not voting on that motion.

Chairman Murphy: Okay, we got it. All right. Sorry, Mr. Litzenberger.

Commissioner Litzenberger: That's okay. "IN LIEU OF CONSTRUCTING A TRAIL ALONG ASHBURTON AVENUE, THE APPLICANT SHALL MAKE A CONTRIBUTION IN AN AMOUNT EQUIVALENT TO THE COST OF CONSTRUCTING THIS TRAIL SEGMENT, AS DETERMINED BY DPWES, TO THE SULLY DISTRICT TRAIL/SIDEWALK FUND."

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; same abstentions and one non-vote.

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(Each motion carried by a vote of 6-0-2 with Commissioner Hart having recused himself; Commissioners de la Fe and Migliaccio abstaining; Commissioner Hedetniemi not present for the vote; Commissioners Hall and Sargeant absent from the meeting.)

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Board Agenda Item
March 19, 2013

3:30 p.m.

Public Hearing on SE 2012-MA-016 (National Capital Presbytery, Inc.) to Permit a Place of Worship with a Nursery School and Child Care Center with a Total Enrollment of 99 Students, Located on Approximately 4.68 Acres of Land Zoned R-2 and HC (Mason District)

This property is located at 6531 Columbia Pike, Annandale, 22003. Tax Map 60-4 ((1)) 35A and 35B.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, February 7, 2013, the Planning Commission voted unanimously (Commissioner Flanagan recusing himself) to recommend the following actions to the Board of Supervisors:

- Approval of SE 2012-MA-016, subject to the development conditions dated February 6, 2013, with the following change to Condition Number 15:
 - Delete Condition Number 15 as written and substitute the following text: “In the transitional screening areas depicted as Phase I and Phase II landscape areas on Sheet 6 of the plans, the applicant shall provide supplemental medium evergreen shrubs to meet the intent of the transitional screening requirements along the western property lines, as reviewed and approved by the Urban Forest Management.”
- Waiver of the frontage improvements, including a service road along Columbia Pike, and sidewalk construction along Columbia Pike and Whispering Lane, in lieu of a trail easement commitment as conditioned;
- Waiver of the barrier requirements;
- Modification of transitional screening requirements to accept existing vegetation and plantings, as shown on the SE Plat and as conditioned;
- Waiver of the interior parking lot landscaping requirements, in lieu of existing vegetation; and
- Waiver of the peripheral parking lot landscaping requirements, due to the grade change on the site.

Board Agenda Item
March 19, 2013

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim excerpt

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4407374.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning
(DPZ)

Michael Lynskey, Zoning Evaluation Division, DPZ

Planning Commission Meeting
February 7, 2013
Verbatim Excerpt

SE 2012-MA-016 – NATIONAL CAPITAL PRESBYTERY, INC.

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed; recognize Ms. Hall.

Commissioner Hall: Thank you, Mr. Chairman. As the applicant representative noted, this application has received the approval of the Mason District Land Use Committee. And so, therefore, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF SE 2012-MA-016, SUBJECT TO THE DEVELOPMENT CONDITIONS CONSISTENT WITH THOSE DATED FEBRUARY 6, 2013, WITH THE FOLLOWING CHANGE TO DEVELOPMENT CONDITION NUMBER 15: I RECOMMEND THAT NUMBER 15 BE DELETED COMPLETELY AND THE FOLLOWING TEXT INSERTED: "IN THE TRANSITIONAL SCREENING AREAS DEPICTED AS PHASE I AND PHASE II LANDSCAPE AREAS ON SHEET 6 OF THE PLANS, THE APPLICANT SHALL PROVIDE SUPPLEMENTAL MEDIUM EVERGREEN SHRUBS TO MEET THE INTENT OF THE TRANSITIONAL SCREENING REQUIREMENTS ALONG THE WESTERN PROPERTY LINES, AS REVIEWED AND APPROVED BY THE URBAN FOREST MANAGEMENT."

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-MA-016, with the development conditions as amended by Ms. Hall, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hall: I'm just going to read all these waivers together and consolidate it. I MOVE THAT THE PLANNING COMMISSION RECOMMEND:

- A WAIVER OF THE FRONTAGE IMPROVEMENTS, INCLUDING A SERVICE ROAD ALONG COLUMBIA PIKE, AND SIDEWALK CONSTRUCTION ALONG COLUMBIA PIKE AND WHISPERING LANE, IN LIEU OF A TRAIL EASEMENT COMMITMENT AS CONDITIONED;
- A WAIVER OF THE BARRIER REQUIREMENTS;
- A MODIFICATION OF TRANSITIONAL SCREENING REQUIREMENTS TO ACCEPT EXISTING VEGETATION AND PLANTINGS, AS SHOWN ON THE SE PLAT AND AS CONDITIONED;

- A WAIVER OF THE INTERIOR PARKING LOT LANDSCAPING REQUIREMENTS, IN LIEU OF EXISTING VEGETATION; AND
- A WAIVER OF THE PERIPHERAL PARKING LOT LANDSCAPING REQUIREMENTS, DUE TO THE GRADE CHANGE ON THE SITE.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion? All those in favor of the motion on all those waivers, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hall: Thank you, Mr. Chairman. Thank you, Ms. Strobel. Thank you, staff.

//

(The motions carried unanimously with Commissioner Flanagan having recused himself.)

JLC

Board Agenda Item
March 19, 2013

3:30 p.m.

Public Hearing on RZ 2012-PR-011 (The Trustees of Emmanuel Lutheran Church) to Rezone from R-1 to R-3 to Permit a Church, Child Care Center and Private School of General Education with an Overall Floor Area Ratio of 0.25, Located on Approximately 5.06 Acres of Land (Providence District)

and

Public Hearing on SE 2012-PR-010 (The Trustees of Emmanuel Lutheran Church) to Permit a Church, Child Care Center with a Maximum Daily Enrollment of 220 Children and Private School of General Education with a Maximum Daily Enrollment of 40 Students, Located on Approximately 5.06 Acres of Land Zoned R-3 (Providence District)

This property is located on the South East side of Chain Bridge Road, Approximately 400 Feet South of its intersection with James Madison Drive. Tax Map 38-3 ((1)) 34, 35 and 38A.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, February 7, 2013, the Planning Commission voted unanimously (Commissioner Hart recusing himself and Commissioner Hall not present for the vote) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2012-PR-011, subject to the proffers dated January 25, 2013, amended as follows:
 - Add an additional role for the Child Care Center and School Carpool Coordinator/Transportation Coordinator to monitor the use of vehicle horns;
- Approval of SE 2012-PR-010, subject to the development conditions dated February 7, 2013, and modified as follows;
 - install signage at the entrance to the site to reduce vehicular speed, and
 - in the event of a noise violation for the air conditioner at the southeast property line, the applicant will provide measures to reduce the noise level, such as enclosing the air conditioning unit or providing an acoustical buffer.
- Modification of the transitional screening requirement along the eastern portion of the southern property line, as shown on the GDP/SE Plat;
- Waiver of the service drive requirement along Chain Bridge Road; and

Board Agenda Item
March 19, 2013

- Waiver of the barrier requirement along the northern property line.

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim excerpt

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4407250.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)

Mary Ann Tsai, Zoning Evaluation Division, DPZ

Planning Commission Meeting
February 7, 2013
Verbatim Excerpt

RZ 2012-PR-011 AND SE 2012-PR-010 – TRUSTEES OF EMMANUEL LUTHERAN CHURCH

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed. Mr. Lawrence, please.

Commissioner Lawrence: Thank you, Mr. Chairman. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2012-PR-011, SUBJECT TO THE PROFFERS CONSISTENT WITH THOSE DATED JANUARY 25, 2013, AS AMENDED BY AGREEMENT THIS EVENING.

Commissioner Hedetniemi: Second.

Commissioner de la Fe: To be – a friendly amendment, to be developed prior to the Board date?

Commissioner Lawrence: TO BE DEVELOPED PRIOR TO ANY BOARD DATE ACCEPTED.

William O'Donnell, Zoning Evaluation Division, Department of Planning and Zoning: That would be the more appropriate way of making your motion.

Commissioner Lawrence: Okay.

Chairman Murphy: Okay. Seconded by Ms. Hedetniemi. 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 2012-PR-011, with the development conditions and proffers amended as indicated this evening, 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 SE 2012-PR-010, SUBJECT TO THE DEVELOPMENT CONDITIONS CONSISTENT WITH THOSE DATED FEBRUARY 7, 2013, TO BE AMENDED AS ARTICULATED THIS EVENING BEFORE A BOARD DATE.

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 recommend to the Board of Supervisors that it approve SE 2012-PR-010, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Lawrence: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION OF THE TRANSITIONAL SCREENING REQUIREMENT ALONG THE EASTERN PORTION OF THE SOUTHERN PROPERTY LINE, AS SHOWN ON THE GDP/SE PLAT.

Commissioner de la Fe: Second.

Chairman Murphy: Seconded by Mr. de la Fe. Discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Lawrence: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A WAIVER OF THE SERVICE DRIVE REQUIREMENT ALONG CHAIN BRIDGE ROAD.

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.

Commissioner Lawrence: Finally, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A WAIVER OF THE BARRIER REQUIREMENT ALONG THE NORTHERN PROPERTY LINE.

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.

Commissioner: Thank you very much, Mr. Chairman. Many thanks to staff and the applicant. Thank you to those who came out and testified this evening. I hope we have addressed the major essence of your concerns.

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(The motions carried unanimously with Commissioner Hart having recused himself; Commissioner Hall not present for the vote.)

JLC

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Board Agenda Item
March 19, 2013

3:30 p.m.

Public Hearing on RZ 2012-BR-003 (Tariq Khan) to Rezone from R-1 and WS to PDH-2 and WS to Permit Residential Development with a Density of 1.58 du/ac, a Waiver of Minimum District Size and Approval of the Conceptual Development Plan, Located on Approximately 1.9 Ares of Land (Braddock District)

This property is located on the East side of Shirley Gate Road, approximately 500 Feet North of its intersection with Park Drive. Tax Map 56-4 ((6)) 1.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, February 7, 2013, the Planning Commission voted 9-0-3 (Commissioners de la Fe, Hedetniemi, and Migliaccio abstaining) to recommend the following actions to the Board of Supervisors pertinent to the subject application:

- Approval of RZ 2012-BR-003, subject to the proffers dated January 31, 2013;
- Waiver of Paragraph 2, Section 6-107 of the Zoning Ordinance, to allow a minimum district size of less than two acres in the PDH District;
- Modification of Paragraph 2, Section 6-110 of the Zoning Ordinance, to allow the required P-District recreation contribution to be provided off-site; and
- Waiver of Section 6-1307.2A of the PFM to allow bio-retention facilities to be located on the individual single-family detached residential lots.

In a related action, the Commission also voted 9-0-3 (Commissioners de la Fe, Hedetniemi and Migliaccio abstaining) to approve FDP 2012-BR-003, subject to the development conditions dated February 4, 2013, and the Board approval of RZ 2012-BR-003.

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim excerpt

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4406201.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
February 7, 2013
Verbatim Excerpt

RZ/FDP 2012-BR-003 – TARIQ H. KHAN

Decision Only During Commission Matters
(Public Hearing held on December 5, 2012 and continued on January 24, 2013)

Chairman Murphy: Ms. Hurley.

Commissioner Hurley: Thank you, Mr. Chairman. Mr. Krasner, could you go over the changes that have been implemented in the last week – the last couple weeks since we last met?

Brent Krasner, Zoning Evaluation Division, Department of Planning and Zoning: Sure – yes. This is on the – on the Khan rezoning and since the last public hearing, the applicant has submitted a revised Final Development Plan and proffers. The new plan has increased the side setback to the southerly property line. So this is to the neighbor to the south – he has increased it from 10 to now 20 feet. The width of the home on that lot – on the southern lot – has been reduced. The 67 feet, the attached garage on that lot – which was a four-story structure with a bonus room – has been reduced to a three-story – sorry, three-car garage with no bonus room above. In addition, additional plantings are now shown along that southern property line. Staff has also distributed a new set of development conditions, which require that the existing stone wall on the property would remain intact, except for any necessary maintenance. We've also added a condition that would require the precise type and arrangement of the planting on the southern property line to ensure that it does, in fact, provide an effective screen. Lastly, we added a condition that will stipulate that no formal entry signage would be necessary considering this is a Planned District with only two units. We don't feel that formal entry signage is appropriate here, even though there is a detail on the plan set. We've added a condition that says that that will not be installed along Shirley Gate Road.

Commissioner Hurley: Thank you. Mr. Chairman?

Chairman Murphy: Ms. Hurley.

Commissioner Hurley: Mr. Chairman, this is in respects – in many respects, a classic infill development. From a pure planning perspective, it probably should have been included in the 1999 rezoning when Landmark Homes redeveloped the 12-acre Cloisters subdivision immediately to the north. However, the owner of the property declined to consolidate at that time and staff supported the rezoning of the smaller Cloisters assemblage to a PDH-4 District without requiring future potential access for this Khan property. Thus, we currently have a roughly triangular 2.9 acres with a narrow road access and one existing single-family, single-story home constructed in 1956. The land is barely outside of the RC District of the Occoquan Basin Watershed, which has its headwaters immediately to the south. This is the last piece of undeveloped property along the Shirley Gate Road that is part of the Fairfax Center transitional area and so it must also meet the Fairfax Center Guidelines. The Comprehensive Plan would allow up to three homes to the acre, which would result in five houses on the property. The

applicant previously asked for a rezoning to a PDH-2 District to construct three homes on the 1.9 acres. Staff did not support three homes on this site, preferring the layout that more closely resembles the homes in the Occoquan watershed. After the first part of the public hearing on December 5, the applicant agreed to redesign the site for two homes at a density of 1.5 – 1.05 dwelling units per acre. The result is the proposed alignment of two large houses. The Braddock District Land Use and Environment Committee has, in concept, endorsed two houses on this site. And the adjacent Cloisters HOA has previously submitted a letter in support of three houses, but has not commented on this particular configuration. As reflected in a letter that the Planning Commission received from several of the neighbors, they have questioned the total square footage of these houses. Infill development does often result in larger houses. The footprints represent the maximum outline that will be allowed and it is entirely possible that the houses will be reduced further in size during site plan review. At my request, after hearing from the neighbors, the applicant has provided a full 20-foot R-1 side yard buffer on the south side and additional tree plantings that will improve the buffer. The house and garage on Lot 2 have both decreased in size. The garages on both houses are now only one-story tall with no bonus rooms over them. The sign facing Shirley Gate Road has been removed and now the rock wall on the south will remain and the developer will continue to consider potentially smaller houses. A question for the Planning Commission is whether this small parcel meets the standards for a P-District. I believe this unique parcel deserves special consideration. This application is in a Water Supply Overlay District and the environmental features provided in the application indicate a commitment to superior design. The applicant has retained and even increased the open space provided on the site to over 52 percent, most of which will be in conservation areas. The applicant has proffered to provide an actual buffer between the homes and the conservation areas. On-site environmental commitments, including rain baskets, pervious pavers, and ENERGY STAR homes, also help this property to meet P-District standards. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF RZ 2012-BR-003, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED JANUARY 31, 2013.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. 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 2012-BR-003, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner de la Fe: Abstain.

Commissioner Migliaccio: Mr. Chairman? I abstain.

Commissioner Hedetniemi: Abstain. I have to abstain.

Chairman Murphy: Mr. Migliaccio abstains.

Commissioner Migliaccio: Not present for the public hearing.

Chairman Murphy: Mr. de la Fe abstains.

Commissioner Hedetniemi: I have to abstain.

Chairman Murphy: And Ms. Hedetniemi abstains, not present for the public hearing.

Commissioner de la Fe: I was here for the first part of the public hearing, but not the second.

Chairman Murphy: Okay, at least not here for part of the public hearing.

Commissioner Hurley: I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2012-BR-003, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED FEBRUARY 4, 2013.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Discussion? All those in favor of the motion to approve FDP 2012-BR-003, subject to the Board's approval of the Rezoning and the Conceptual Development Plan, say aye.

Commissioners: Aye.

Commissioners de la Fe, Hedetniemi, and Migliaccio: Abstain.

Chairman Murphy: Opposed? Motion carries. Same abstentions.

Commissioner Hurley: I MOVE THAT THE PLANNING COMMISSION RECOMMEND A WAIVER OF PARAGRAPH 2 [sic] OF SECTION 6-107 OF THE ZONING ORDINANCE, TO ALLOW A MINIMUM DISTRICT SIZE OF LESS THAN TWO ACRES IN THE PDH DISTRICT.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Discussion? All those in favor, say aye.

Commissioners: Aye.

Commissioners de la Fe, Hedetniemi, and Migliaccio: Abstain.

Chairman Murphy: Opposed? Motion carries. Same abstentions.

Commissioner Hurley: I MOVE THAT THE PLANNING COMMISSION RECOMMEND A MODIFICATION OF PARAGRAPH 2 OF SECTION 6-110 OF THE ZONING ORDINANCE, TO ALLOW THE REQUIRED P-DISTRICT RECREATION CONTRIBUTION TO BE PROVIDED OFF-SITE.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion? All those in favor, say aye.

Commissioners: Aye.

Commissioners de la Fe, Hedetniemi, and Migliaccio: Abstain.

Chairman Murphy: Opposed? Motion carries. Same abstentions.

Commissioner Hurley: And finally, I MOVE THAT THE PLANNING COMMISSION RECOMMEND A WAIVER OF SECTION 6-1307.2A OF THE PUBLIC FACILITIES MANUAL TO ALLOW BIO-RETENTION FACILITIES TO BE LOCATED ON THE INDIVIDUAL SINGLE-FAMILY DETACHED RESIDENTIAL LOTS.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Commissioners de la Fe, Hedetniemi, and Migliaccio: Abstain.

Chairman Murphy: Opposed? Motion carries. Same abstentions.

Commissioner Hurley: Thank you, Mr. Chairman, and I especially want to acknowledge the contributions of staff. Mr. Krasner has worked very hard to pull together a lot of disparate needs and I think we've ended up with the best possible project.

Chairman Murphy: Thank you. I agree.

//

(Each motion carried by a vote of 9-0-3 with Commissioners de la Fe, Hedetniemi, and Migliaccio abstaining.)

JLC

Board Agenda Item
March 19, 2013

4:00 p.m.

Public Hearing on RZ 2012-LE-021 (Clifford F. Lindsay, Trustee) to Rezone from PDH-2 to R-1 to Permit Residential Development with an Overall Density of 0.73, Located on Approximately 4.13 Acres of Land (Lee District)

This property is located at 7201, 7209 and 7215 Lackawanna Drive, Springfield, 22150. Tax Map 90-3 ((3)) 6, 7 and 8.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, February 21, 2013, the Planning Commission voted unanimously (Commissioners Lawrence, Migliaccio, and Murphy absent) to recommend to the Board of Supervisors approval of RZ 2012-LE-021.

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim excerpt

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4408140.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)

Megan Brady, Zoning Evaluation Division, DPZ

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Planning Commission Meeting
February 21, 2013
Verbatim Excerpt

RZ 2012-LE-021 – CLIFFORD F. LINDSAY, TRUSTEE

After Close of the Public Hearing

Vice Chairman de la Fe: I will close the public hearing and move directly to the motion.

Commissioner Hart: Thank you Mr. Chairman. I'm pinch hitting tonight for Commissioner Migliaccio. Let me first thank Megan Brady for her fine staff work on this case. This is a straightforward application to undo a rezoning where the proposed development fell through, and the developer did not go forward. This will allow the homeowners once again to make use of their property without the constraints of the proffers. It has staff's favorable recommendation, with which I concur, as well as the support of the Lee District Land Use Committee. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2012-LE-021.

Commissioners Hall and Sargeant: Second.

Vice Chairman de la Fe: Seconded by Mrs. Hall and Mr. Sargeant. Is there any discussion? Hearing and seeing none, all those in favor, please signify by saying aye.

Commissioners: Aye.

Chairman Murphy: Opposed? The motion carries.

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(The motion carried unanimously with Commissioners Lawrence, Migliaccio, and Murphy absent from the meeting.)

JN

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Board Agenda Item
March 19, 2013

4:00 p.m.

Public Hearing 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:

Public Hearing 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.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, February 19, 2013, the Planning Commission voted 9-0-0 (Commissioners Lawrence, Migliaccio and Murphy being absent) to recommend to the Board of Supervisors approval of the proposed amendments.

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 March 19, 2013. On January 29, 2013, the Board authorized the advertising of public hearings. A public hearing in front of the Planning Commission public hearing was held on February 21, 2013. If approved, these amendments will become effective at 12:01 a.m. the day following adoption.

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

Board Agenda Item
March 19, 2013

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:

Board Agenda Item
March 19, 2013

- 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.

Board Agenda Item
March 19, 2013

- 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, previously furnished and available online at:

http://www.fairfaxcounty.gov/dpwes/publications/pfm/staffpfm247testing_procedures.pdf

Attachment II – Verbatim excerpt from the Planning Commission public hearing

STAFF:

James Patteson, Director, Department of Public Works and Environmental Services (DPWES)

Michelle Brickner, Deputy Director, DPWES, Land Development Services

Paul Shirey, Director, Code Development & Compliance Division, DPWES

Planning Commission Meeting
February 21, 2013
Verbatim Excerpt

PUBLIC FACILITIES MANUAL (PFM) AMENDMENTS (TESTING PROCEDURES FOR INFILTRATION FACILITIES AND MINOR EDITORIAL CORRECTIONS)

After Close of the Public Hearing

Vice Chairman de la Fe: I will close the public hearing and turn the item over to Commissioner Sargeant.

Commissioner Sargeant: Thank you, Mr. Chairman. First, I'd like to thank both Beth Forbes and Tom Williamson with DPWES for their – their, actually, splendid and ongoing work on this process as it continues to become part of our - - a greater part of our construction and development process. And with that, sir, I would like to MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS ADOPTION OF PROPOSED AMENDMENTS TO THE PUBLIC FACILITIES MANUAL AS SET FORTH IN THE STAFF REPORT DATED JANUARY 29TH, 2013, AND THAT THE AMENDMENTS SHALL BECOME EFFECTIVE AT 12:01 A.M. ON MARCH 20TH, 2013.

Vice Chairman de la Fe: Been moved and - - is there a second?

Commissioners Hedetniemi and Litzenberger: Second.

Vice Chairman de la Fe: Seconded by a number of folks. Commissioner - - Commissioners Hedetniemi and Litzenberger. Is there any further discussion? Hearing and seeing none, all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries.

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(The motion carried unanimously with Commissioners Lawrence, Migliaccio, and Murphy absent from the meeting.)

JN

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Board Agenda Item
March 19, 2019

4:00 p.m.

Public Hearing on Fairfax Forward Revised Planning Process, Including the
Comprehensive Plan Amendment Work Program

This public hearing will be deferred to April 30, 2013 at 4:00 p.m. The Planning Commission meeting was changed to March 27, 2013.

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Board Agenda Item
March 19, 2013

4:00 p.m.

Public Hearing on the Proposed Consolidated Plan One-Year Action Plan for FY 2014

ISSUE:

Public hearing before the Fairfax County Board of Supervisors (Board) on the Proposed Consolidated Plan One-Year Action Plan for FY 2014, as issued by the Consolidated Community Funding Advisory Committee (CCFAC).

RECOMMENDATION:

The County Executive recommends that, following the public hearing, the Board forward comments received on the Proposed Consolidated Plan One-Year Action Plan for FY 2014 to the CCFAC for its consideration and recommendation to the Board, for final Board Action on April 30, 2013.

TIMING:

Board action on the Proposed One-Year Action Plan for FY 2014 is scheduled for April 30, 2013.

BACKGROUND:

A Proposed Consolidated Plan One-Year Action Plan for FY 2014 (One-Year Action Plan for FY 2014) has been issued by the CCFAC for public review and comment. In accordance with the Fairfax County Citizen Participation Plan for the Consolidated Plan, a public hearing is required to be held before the Board to allow citizens the opportunity to comment on the One-Year Action Plan for FY 2014. On February 26, 2013, the Board authorized advertisement of a public hearing on the proposed document to be held on March 19, 2013. Citizens may express their views on housing and community development needs, fair housing, and the county's community development programs. The document was released February 13, 2013 to meet the federal requirement for a 30-day public comment period.

The U.S. Department of Housing and Urban Development (HUD) requires the submission of this document as part of the planning and application aspects of four federal programs from which Fairfax County receives annual funding allocations. The four programs are the Community Development Block Grant (CDBG) Program, HOME Investment Partnerships Program (HOME), Emergency Solutions Grant (ESG), and Housing Opportunities for Persons with AIDS (HOPWA). In addition, the document

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describes the Continuum of Care for homeless services and programs in the Fairfax community, and the Consolidated Community Funding Pool (CCFP). The Proposed Consolidated Plan One-Year Action Plan for FY 2014 includes the second year of the two-year funding cycle for the CCFP. The CCFP was established by the Board and provides funding for community-based programs by nonprofit organizations through a competitive solicitation process. The FY 2014 CCFP funding awards will be made by the Board in April, subject to annual appropriations.

The One-Year Action Plan for FY 2014 also includes the public and private resources available for housing and community development activities, and the CCFP funding priorities adopted by the Board. In accordance with federal requirements, the One-Year Action Plan for FY 2014 contains several certifications, including drug-free workplace, affirmatively furthering fair housing, prohibition of excessive force, and lobbying requirements, which will be signed by the County Executive following Board action in April 2013.

The funding levels used for CDBG, HOME, and ESG are based on the current FY 2013 funding levels as formal notification from HUD for FY 2014 funding has not been received. The county's FY 2013 CDBG entitlement grant is currently \$4,414,224. The HOME entitlement grant is currently \$1,418,376 (corrected by HUD subsequent to the preparation of the HCD/FCRHA FY 2014 Budget). The Emergency Solutions Grant (ESG) is currently \$469,222. With the approval of this item, anticipated FY 2013 balances that total \$2,330,356 from CDBG (\$1,619,194) and HOME (\$711,162) funds will be carried forward. A description for each activity is provided in the Proposed One-Year Action Plan for FY 2014.

This is the fifteenth year that the CCFP has been included in the Consolidated Plan One-Year Action Plan. Beginning with FY 2000, the former Community Funding Pool and the CDBG Affordable Housing funds and Targeted Public Services funds were merged into a single Consolidated Community Funding Pool. The CCFP consolidates the solicitation and award processes by establishing a single application process with a common set of funding priorities and proposal evaluation criteria for programs of community-based nonprofit organizations.

The funding available through the CCFP is allocated bi-annually through a competitive Request for Proposals process. The County Executive appoints a Selection Advisory Committee of citizens to review and rank applications received and make funding recommendations to the Board, which makes the final project funding awards. The One-Year Action Plan for FY 2014 will cover the second year of projects for the two-year funding cycle (FY 2013 – 2014). The Board will make final awards for FY 2014 in April 2013 with action on the annual County budget.

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The following are estimated amounts that will be available for the CCFP for FY 2014:

*CDBG Affordable Housing Funds	\$ 1,113,446
*CDBG Targeted Public Services Funds	\$ 662,133
**Federal and State Community Services and Block Grant (CSBG) Funds	\$ 390,157
**County General Funds	<u>\$ 9,477,598</u>
Total Proposed CCFP Funding:	\$11,643,334

*CDBG Affordable Housing Funds and CDBG Targeted Public Services Funds totaling \$1,775,579 estimated to be available for the CCFP are a part of the total \$4,414,224 in FY 2013 CDBG funds incorporated in the One-Year Action Plan for FY 2014.

**These amounts are based on the FY 2013 County budget and will be revised subject to the final federal entitlement amounts for the CSBG program and the appropriation of local General Funds by the Board for FY 2014.

Funding allocations under the *Proposed Consolidated Plan One-Year Action Plan for FY 2014* have been reviewed by the Fairfax County Redevelopment and Housing Authority (FCRHA) and the CCFAC-FCRHA Working Advisory Group (WAG). The WAG is a group established to strengthen coordination between the FCRHA and the CCFAC in the proposed use of funds and is composed of seven members: three appointed by the FCRHA Chairman, three appointed by the CCFAC Chairman, and one who serves on both the FCRHA and the CCFAC. Recommendations from the WAG were forwarded to the CCFAC and the FCRHA. The final recommendations contained in the *Proposed Consolidated Plan One-Year Action Plan for FY 2014* are consistent with the WAG, the FCRHA and the CCFAC recommendations.

It should be noted that the anticipated HOME and CDBG allocations may be subject to reductions depending on the continuing negotiations regarding the federal budget. In January 2013, Congress enacted the American Taxpayer Relief Act of 2012 to mitigate the effects of the "fiscal cliff" created by the Budget Control Act of 2011. As a part of this action, the cuts to discretionary funding in Federal Fiscal Year 2013 provided for in the Budget Control Act – "sequestration" – were delayed. Based on available information, it is anticipated that Fairfax County's federally-funded affordable housing programs - including CDBG and HOME - would experience significant reductions should sequestration take place. The sequestration is scheduled to occur on March 1, 2013. An update on the impact of sequestration will be provided to the Board as soon as it becomes available. Such reductions would be in addition to the deep cuts enacted in recent years. Last year, the WAG recommended that the Board consider funding the gap for federal reductions in future fiscal years to the greatest extent possible. Alternatively, benefits provided by the funds in the county would have to be reduced. If federal reductions to these programs result in cuts over ten percent of the current funding levels, the WAG agreed that revised allocations will need to be reviewed, and

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approved by both the FCRHA and the CCFAC.

The One-Year Action Plan for FY 2014 is being circulated for review and comment by citizens, service providers and other interested parties during the formal public comment period which ends with the closing of the public hearing on March 19, 2013. Following the March 19, 2013 public hearing and public comment period, the CCFAC will consider all comments received on the One-Year Action Plan for FY 2014, and will forward its recommendation to the Board for final action on April 30, 2013.

FISCAL IMPACT:

Total entitlement funding anticipated of \$6,740,208 has been recommended in this item: for CDBG (\$4,414,224), HOME (\$1,418,376), ESG (\$469,222), and HOPWA (\$438,386). In addition, a total of \$2,330,356 in CDBG and HOME funds is recommended to be carried forward at this time (\$1,619,194 CDBG and \$711,162 HOME). Total estimated CDBG program income of \$350,000 and HOME program income of \$281,456 will also be programmed through this item.

Funding for the HOPWA Program is estimated and actual funding will depend on the final allocation made available to Northern Virginia jurisdictions through the Northern Virginia Regional Commission and the District of Columbia, which is the recipient of the funds. The CSBG and County General Funds for the CCFP are based on the FY 2013 County budget and will be revised subject to the final federal entitlement amounts for the CSBG program and the appropriation of local General Funds by the Board for FY 2014.

ENCLOSED DOCUMENTS:

None. The Proposed One-Year Action Plan for FY 2014 is the same document that was enclosed with the February 26, 2013 Board Item for authorization to advertise the public hearing. The document is also available on line at <http://www.fairfaxcounty.gov/rha>.

STAFF:

Paula C. Sampson, Director, Department of Housing and Community Development (HCD)
John Payne, Deputy Director, Real Estate and Development, HCD
Aseem K. Nigam, Director, Real Estate Finance and Grants Management Division, HCD
Robert C. Fields, Interim Associate Director, Grants Management, HCD
David P. Jones, Senior Program Manager, Grants Management, HCD

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March 19, 2013

4:00 p.m.

Public Hearing to Consider Adopting an Ordinance to Establish the Pine Spring Residential Permit Parking District, District 45 (Providence District)

ISSUE:

Public Hearing on a proposed amendment to Appendix G, of *The Code of the County of Fairfax, Virginia*, to establish the Pine Spring Residential Permit Parking District (RPPD), District 45.

RECOMMENDATION:

The County Executive recommends that the Board adopt an amendment (Attachment I) to Appendix G, of *The Code of the County of Fairfax, Virginia*, to establish the Pine Spring Residential Permit Parking District (RPPD), District 45.

TIMING:

On February 26, 2013, the Board authorized a Public Hearing to consider the proposed amendment to Appendix G, of *The Code of the County of Fairfax, Virginia*, to take place on March 19, 2013, at 4:00 p.m.

BACKGROUND:

Section 82-5A-4(b) of *The Code of the County of Fairfax, Virginia*, authorizes the Board to establish or expand an RPPD in any residential area of the County if: (1) the Board receives a petition requesting establishment or expansion of an RPPD that contains signatures representing at least 60 percent of the eligible addresses of the proposed District and representing more than 50 percent of the eligible addresses on each block of the proposed District, (2) the proposed District contains a minimum of 100 contiguous or nearly contiguous on-street parking spaces 20 linear feet in length per space, unless the subject area is to be added to an existing district, (3) 75 percent of the land abutting each block within the proposed District is developed residential, and (4) 75 percent of the total number of on-street parking spaces of the petitioning blocks are occupied, and at least 50 percent of those occupied spaces are occupied by nonresidents of the petitioning blocks, as authenticated by a peak-demand survey. In addition, an application fee of \$10 per petitioning address is required for the establishment or expansion of an RPPD.

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Fairfax County Code Section 82-5A-4(b)(1), requires that a proposed RPPD have a minimum number of on-street parking spaces available when establishing a district. Section 82-5A-4(c) allows for the Board of Supervisors to waive this requirement if the proposed district meets the purpose and intent of the program. On September 25, 2012, the Board waived this requirement for the Pine Spring community.

A peak parking demand survey was conducted for the proposed district and this survey verified that more than 75 percent of the total number of on-street parking spaces of the petitioning blocks were occupied by parked vehicles, and more than 50 percent of those occupied spaces were occupied by nonresidents of the petitioning blocks. All other requirements to expand the RPPD have been met.

FISCAL IMPACT:

The cost of sign installation is estimated at \$2,000 to be paid out of Fairfax County Department of Transportation (FCDOT) funds.

ENCLOSED DOCUMENTS:

Attachment I: Proposed Amendment to *The Code of the County of Fairfax, Virginia*
Attachment II: Map Depicting Proposed Limits of RPPD Establishment

STAFF:

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

Appendix G

G-45 Pine Spring Residential Permit Parking District.

(a) *Purpose and Intent.* The Pine Spring Residential Permit Parking District is established to protect this residential area from polluted air, excessive noise, and other adverse impacts of automobile commuting; to protect the residents of these areas from unreasonable burdens in gaining access to their property; and to preserve the residential character of the area and the property values therein.

(b) *District Designation.*

(1) The Pine Spring Residential Permit Parking District is designated as Residential Permit Parking District 45, for the purposes of signing and vehicle decal identification.

(2) Blocks included in the Pine Spring Residential Permit Parking District are shown on the Official Residential Permit Parking District map and are described below:

Arlington Boulevard (service road):

From Fairmont Street to Cedar Hill Road, north side only.

Cedar Hill Road (Route 2921):

East side, from Arlington Boulevard service road to the eastern intersection with Woodberry Lane.

West side, from Arlington Boulevard service road to the western intersection with Woodberry Lane.

(c) *District Provisions.*

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

(2) Within the Pine Spring Residential Permit Parking District, parking is prohibited from 8:00 a.m. to 5:00 p.m., Monday through Friday, except as permitted by the provisions of Article 5A, of Chapter 82.

(3) One (1) free transferable visitor pass per address shall be issued in the name of a bona fide resident of said address. However, visitor passes shall not be issued to multifamily or townhouse addresses, which have off-street parking lots provided.

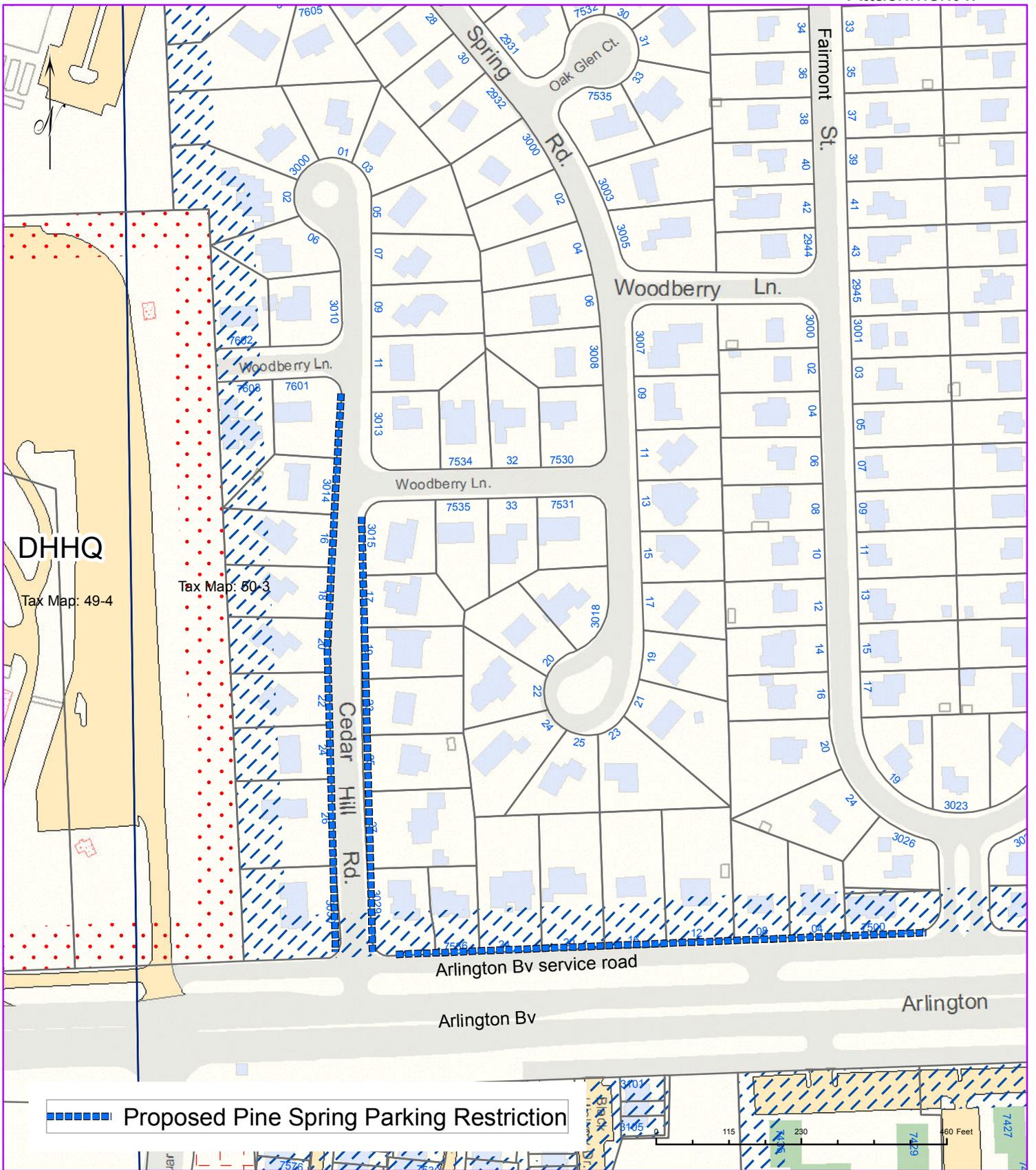
(4) Owners of property in the District who are not bona fide residents of said District may obtain a temporary visitor parking pass for a period not to exceed two (2) weeks.

(5) All permits and visitor passes for the Pine Spring Residential

Permit Parking District shall expire on November 30, 2013. Thereafter, all permits and visitor passes may be renewed in accordance with Article 5A, of Chapter 82 and the renewal procedures established by Fairfax County Department of Transportation.

(d) *Signs.* Signs delineating Pine Spring Residential Permit Parking District shall indicate the following:

NO PARKING
8:00 a.m. - 5:00 p.m.
Except by Permit
District 45



Fairfax County Department of Transportation
 Traffic Operations Section
 RESIDENTIAL PERMIT PARKING DISTRICT (RPPD)
PINE SPRING #45
8:00AM - 5:00PM MON - FRI



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Board Agenda Item
March 19, 2013

4:30 p.m.

Public Hearing to Consider an Ordinance Amending County Code Chapter 7 Relating to Election Precincts and Polling Places

ISSUE:

Public Hearing on an ordinance that proposes to amend Chapter 7 of the Fairfax County Code to (1) move the polling place for University precinct in Braddock District and (2) move the polling place for Dulles precinct in Sully District and rename the precinct.

RECOMMENDATION:

The County Executive recommends adoption of the proposed ordinance.

TIMING:

The Board authorized this public hearing on February 26, 2013. Board action on March 19, 2013, is necessary to provide sufficient time to complete the federal preclearance process in advance of the 2013 primary and general elections.

BACKGROUND:

Virginia Code permits the governing body of each county and city to establish by ordinance as many precincts as it deems necessary with one polling place for each precinct. The Board of Supervisors is authorized to change polling place locations subject to the requirements of Virginia Code Sections 24.2-310 and 24.2-310.1. All registered voters who are affected by a change in their polling place will be mailed a new Virginia Voter Information Card following federal preclearance of the proposed changes.

(1) In Braddock District, staff recommends moving the polling place for University precinct from University Hall, located at 4441 George Mason Boulevard, Fairfax, to Mason Hall, located at 4379 Mason Pond Drive, Fairfax. Mason Hall will provide a larger accessible room for voters in this precinct. This change was requested by George Mason University.

(2) In Sully District, staff recommends moving the polling place for Dulles precinct from the Meadows of Chantilly Clubhouse, located at 4200 Airline Parkway, Chantilly to the Cub Run Recreation Center, located at 4630 Stonecroft Boulevard, Chantilly. The Recreation Center will provide a larger public facility with additional parking for voters. Staff also recommends changing the name of the precinct to "Stonecroft."

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FISCAL IMPACT:

Insignificant. Funding for polling place change notifications is provided in the agency's FY 2013 Adopted Budget.

ENCLOSED DOCUMENTS:

Attachment 1 – Virginia Code Pertaining to Election Precincts and Polling Places

Attachment 2 – Descriptions and Maps of Proposed Changes

Attachment 3 – Proposed Ordinance

STAFF:

Cameron Quinn, General Registrar

Erin C. Ward, Assistant County Attorney

§ 24.2-310. Requirements for polling places.

A. The polling place for each precinct shall be located within the county or city and either within the precinct or within one mile of the precinct boundary. The polling place for a county precinct may be located within a city (i) if the city is wholly contained within the county election district served by the precinct or (ii) if the city is wholly contained within the county and the polling place is located on property owned by the county. The polling place for a town precinct may be located within one mile of the precinct and town boundary. For town elections held in November, the town shall use the polling places established by the county for its elections.

B. The governing body of each county, city, and town shall provide funds to enable the electoral board to provide adequate facilities at each polling place for the conduct of elections. Each polling place shall be located in a public building whenever practicable. If more than one polling place is located in the same building, each polling place shall be located in a separate room or separate and defined space.

C. Polling places shall be accessible to qualified voters as required by the provisions of the Virginians with Disabilities Act (§ [51.5-1](#) et seq.), the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. § 1973ee et seq.), and the Americans with Disabilities Act relating to public services (42 U.S.C. § 12131 et seq.). The State Board shall provide instructions to the local electoral boards and general registrars to assist the localities in complying with the requirements of the Acts.

D. If an emergency makes a polling place unusable or inaccessible, the electoral board shall provide an alternative polling place and give notice of the change in polling place, including to all candidates, or such candidate's campaign, appearing on the ballot to be voted at the alternative polling place, subject to the prior approval of the State Board. The electoral board shall provide notice to the voters appropriate to the circumstances of the emergency. For the purposes of this subsection, an "emergency" means a rare and unforeseen combination of circumstances, or the resulting state, that calls for immediate action.

E. It shall be permissible to distribute campaign materials on the election day on the property on which a polling place is located and outside of the building containing the room where the election is conducted except as specifically prohibited by law including, without limitation, the prohibitions of § [24.2-604](#) and the establishment of the "Prohibited Area" within 40 feet of any entrance to the polling place. However, and notwithstanding the provisions of clause (i) of subsection A of § [24.2-604](#), and upon the approval of the local electoral board, campaign materials may be distributed outside the polling place and inside the structure where the election is conducted, provided that the "Prohibited Area" (i) includes the area within the structure that is beyond 40 feet of any entrance to the polling place and the area within the structure that is within 40 feet of any entrance to the room where the election is conducted and (ii) is maintained and enforced as provided in § [24.2-604](#). The local electoral board may approve campaigning activities inside the building where the election is conducted when an entrance to the building is from an adjoining building, or if establishing the 40-foot prohibited area outside the polling place would hinder or delay a qualified voter from entering or leaving the building.

F. Any local government, local electoral board, or the State Board may make monetary grants to any non-governmental entity furnishing facilities under the provisions of § [24.2-307](#) or [24.2-308](#) for use as a polling place. Such grants shall be made for the sole purpose of meeting the accessibility requirements of this section. Nothing in this subsection shall be construed to obligate any local government, local electoral board, or the State Board to appropriate funds to any non-governmental entity.

§ 24.2-310.1. Polling places; additional requirement.

The requirement stated in this section shall be in addition to requirements stated in §§ [24.2-307](#), [24.2-308](#), and [24.2-310](#), including the requirement that polling places be located in public buildings whenever practical. No polling place shall be located in a building which serves primarily as the headquarters, office, or assembly building for any private organization, other than an organization of a civic, educational, religious, charitable, historical, patriotic, cultural, or similar nature, unless the State Board has approved the use of the building because no other building meeting the accessibility requirements of this title is available.

Commonwealth of Virginia
COUNTY OF FAIRFAX
Braddock District

PRECINCT 134: UNIVERSITY

CONGRESSIONAL DISTRICT: ELEVENTH
VIRGINIA SENATORIAL DISTRICT: THIRTY-FOURTH
HOUSE OF DELEGATES DISTRICT: THIRTY-SEVENTH

DESCRIPTION:

Beginning at the intersection of Ox Road (Route 123) and the south corporate boundary of the City of Fairfax, thence with the corporate boundary of the City of Fairfax in a generally northeasterly direction to its intersection with Roberts Road, thence with Roberts Road in a southwesterly direction to its intersection with Braddock Road, thence with Braddock Road in a generally westerly direction to its intersection with Ox Road, thence with Ox Road in a northeasterly direction to its intersection with the south corporate boundary of the City of Fairfax, point of beginning.

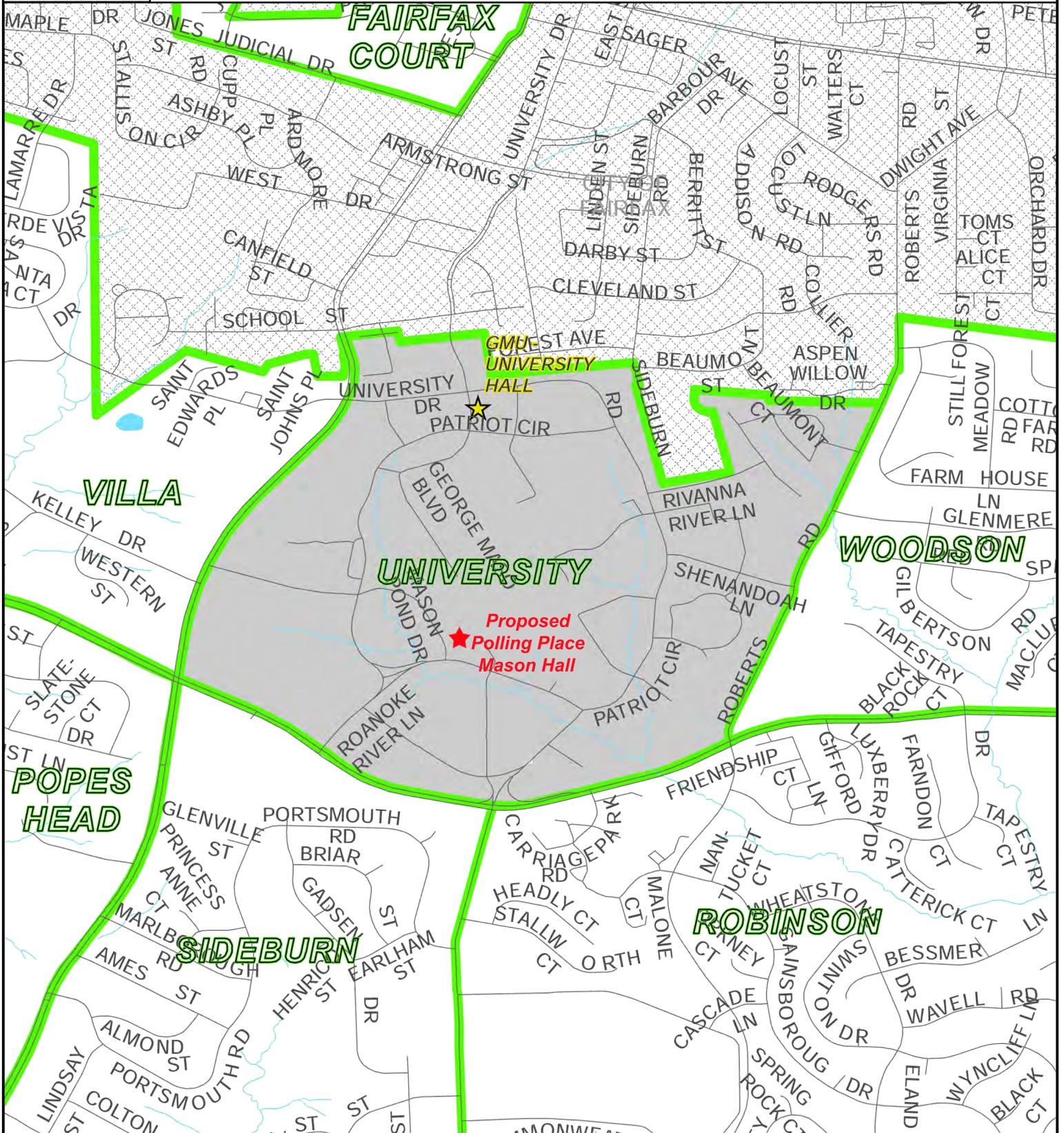
POLLING PLACE: ~~GMU – University Hall~~ GMU – Mason Hall
~~4441 George Mason Boulevard, Fairfax~~
4379 Mason Pond Drive, Fairfax

MAP GRIDS: 57-3, 57-4, 68-1, 68-2

NOTES: Established July 2011
Polling place moved – March 2013

Commonwealth of Virginia County of Fairfax

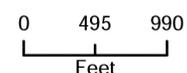
Braddock District



Precinct: 134 UNIVERSITY

Polling Place: GMU - University Hall

- Fairfax County Voting Precincts
- Other Jurisdictions
- Featured Precinct Polling Place
- Proposed Polling Place



(387)
September, 2011

Commonwealth of Virginia
COUNTY OF FAIRFAX
Sully District

PRECINCT 904: DULLES STONECROFT

CONGRESSIONAL DISTRICT: TENTH
VIRGINIA SENATORIAL DISTRICT: THIRTY-SEVENTH
HOUSE OF DELEGATES DISTRICT: SIXTY-SEVENTH

DESCRIPTION:

Beginning at the intersection of the Loudoun County/Fairfax County Line and the Lee Jackson Memorial Highway (Route 50), thence with the Lee Jackson Memorial Highway in a southeasterly direction to its intersection with Sully Road (Route 28), thence with Sully Road in a southwesterly direction to its intersection with Flatlick Branch (stream), thence with the meanders of Flatlick Branch in a southwesterly direction to its intersection with Braddock Road, thence with Braddock Road in a northwesterly direction to its intersection with the Loudoun County/Fairfax County Line, thence with the Loudoun County/Fairfax County Line in a northeasterly direction to its intersection with the Lee Jackson Memorial Highway, point of beginning.

POLLING PLACE: ~~Meadows of Chantilly Clubhouse~~ Cub Run Recreation Center
~~4200 Airline Parkway~~ 4630 Stonecroft Boulevard, Chantilly

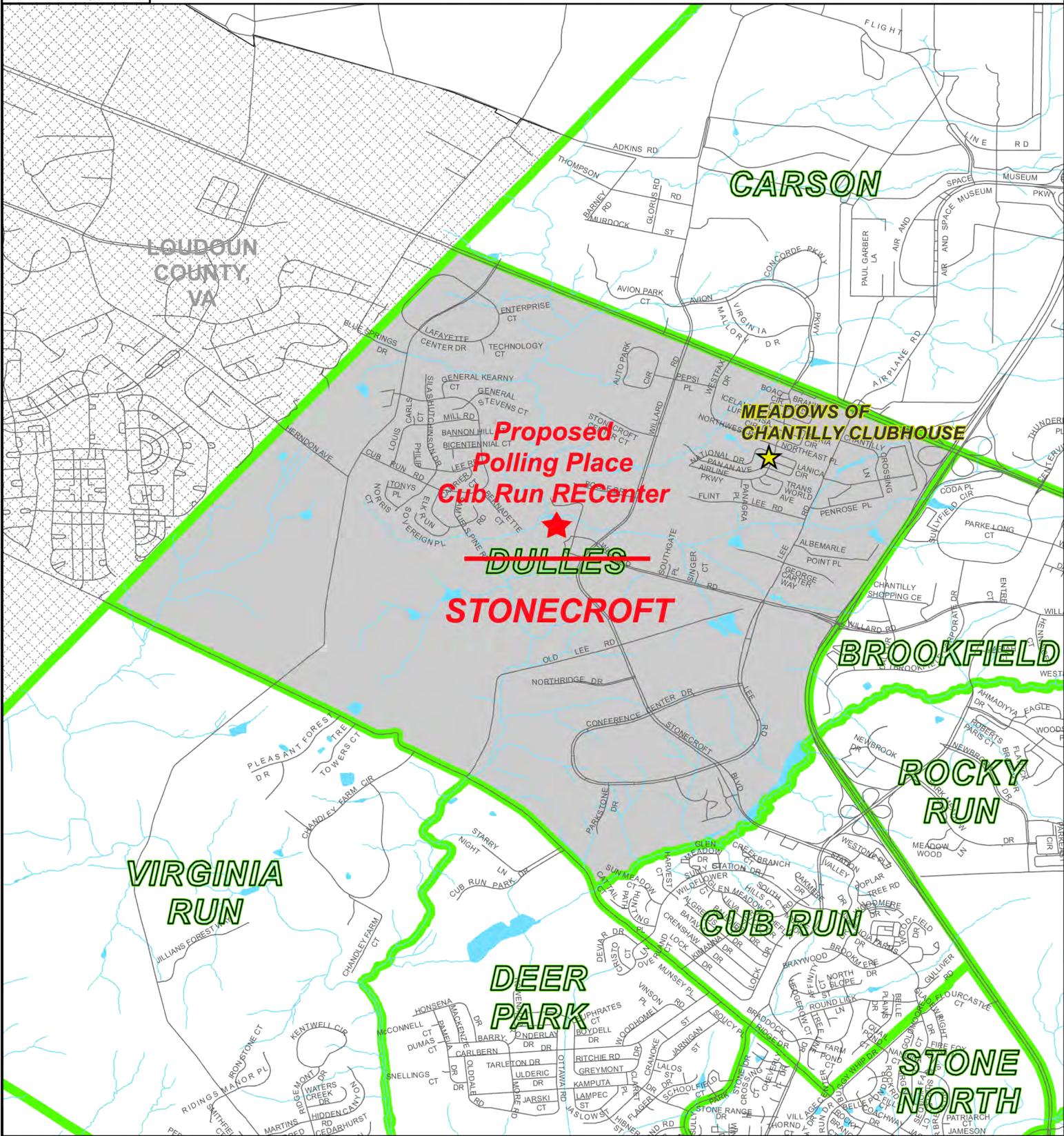
MAP GRIDS: 33-1, 33-2, 33-3, 33-4, 34-1, 34-3, 43-1, 43-2, 43-4, 44-1, 44-3

NOTES: Established June 1991
Precinct description revised and readopted – March 2003
Polling place moved and precinct renamed – March 2013



Commonwealth of Virginia County of Fairfax

Sully District



Precinct: 904 DULLES
Polling Place: Meadows of Chantilly Clubhouse

- █ Fairfax County Voting Precincts
- ★ Featured Precinct Polling Place
- Roadway Centerlines
- Water Features
- Other Jurisdictions
- ★ Proposed Polling Place

N
↑

0 1,250 2,500
Feet

(389)
September, 2011

**AN ORDINANCE TO AMEND CHAPTER 7 OF THE FAIRFAX COUNTY CODE
TO RENAME ONE ELECTION PRECINCT IN
THE SULLY ELECTION DISTRICT AND RELOCATE POLLING PLACES FOR
ELECTION PRECINCTS IN THE SULLY ELECTION DISTRICT AND
THE BRADDOCK ELECTION DISTRICT**

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Draft of February 13, 2013

AN ORDINANCE to amend and readopt Sections 7-2-12, and 7-2-13, relating to the renaming of certain election precincts and the relocation of polling places for certain election precincts.

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

1. That Sections 7-2-12, and 7-2-13 are amended and readopted as follows:

Section 7-2-12. - Sully District.

The Sully District shall consist of these election precincts: Brookfield, Bull Run, Carson, Centre Ridge, Centreville, Chantilly, Compton, Cub Run, Deer Park, Difficult Run, Dulles, Franklin, Green Trails, Kinross East, Kinross West, Lees Corner No. 1, Lees Corner No. 2, London Towne No. 1, London Towne No. 2, Navy, Old Mill, Poplar Tree, Powell, Rocky Run, Stone North, Stone South, Stonecroft, Vale, Virginia Run, and Waples Mill.

Section 7-2-13. - General Provisions.

All references to election precincts shall refer to those precincts, together with the descriptions and maps of the boundaries and polling places for each of those precincts, which were adopted by the Board of Supervisors on March 24, 2003, as amended on March 8, 2004, March 21, 2005, March 27, 2006, March 26, 2007, September 10, 2007, March 10, 2008, January 12, 2009, March 9, 2010, July 27, 2010, April 26, 2011, July 26, 2011, January 10, 2012, ~~and~~ July 10, 2012, and March 19, 2013, and kept on file with the Clerk to the Board of Supervisors. Whenever a road, a stream, or other physical feature describes the boundary of a precinct, the center of such road, stream, or physical feature shall be the dividing line between that precinct and any adjoining precinct.

1 **2. That the election polling places of the following existing precincts**
2 **are relocated:**

3
4 Supervisor

5 District

Precinct

Polling Place

6
7 Braddock

University

From:

GMU–University Hall
4441 George Mason Blvd.
Fairfax, VA 22030

To:

GMU–Mason Hall
4379 Mason Pond Drive
Fairfax, VA 22030

17
18 Sully

Stonecroft
(Dulles renamed)

From:

Meadows of Chantilly Clubhouse
4200 Airline Parkway
Chantilly, VA 20151

To:

Cub Run Recreation Center
4630 Stonecroft Boulevard
Chantilly, VA 20151

29 **3. That this ordinance shall become effective upon adoption, and it**
30 **shall be enforced after satisfactory completion of the federal preclearance**
31 **procedure provided by Section 5 of the Voting Rights Act of 1965, as**
32 **amended, 42 U.S.C. § 1973c.**

33
GIVEN under my hand this ____ day of March 2013.

Catherine A. Chianese
Clerk to the Board of Supervisors

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