

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
May 14, 2013**

AGENDA

9:30	Done	Presentations
10:30	Done	Presentation of the Volunteer Fire Commission Annual Report
10:50	Done	Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups
11:00	Done	Items Presented by the County Executive

**ADMINISTRATIVE
ITEMS**

1	Approved	Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance Expanding the Northern Virginia Community College Residential Permit Parking District, District 39 (Braddock District)
2	Approved	Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance Expanding the Culmore Residential Permit Parking District, District 9 (Mason District)
3	Approved	Extension of Review Period for 2232 Review Application (Dranesville District)
4	Approved	Authorization to Advertise a Public Hearing to Establish Parking Restrictions on Apple Tree Drive and Streets within the Hilltop Business Park (Lee District)
5	Approved	Designation of Plans Examiner Status under the Expedited Land Development Review Program
6	Approved	Streets into the Secondary System (Providence and Sully Districts)
7	Approved	Authorization for the Department of Transportation to Apply for and Accept Funding Under the National Infrastructure Investment Program (TIGER V); and Endorsement of Projects for the Northern Virginia Transportation Authority Consideration for FY 2014 Regional Funding
8	Approved	Authorization to Advertise a Public Hearing on Proposed FY 2014 Regional Transportation Alternatives Program Grant Applications

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
May 14, 2013**

ACTION ITEMS

- | | | |
|---|-----------------|---|
| 1 | Approved | Endorsement of Application for Safe Routes to School Grant (Providence District) |
| 2 | Approved | Approval of a Project Agreement and Funding for Tysons Metrorail Station Access Management Study (TMSAMS) Projects (Dranesville, Hunter Mill, and Providence Districts) |
| 3 | Approved | Approval of a Project Agreement and Funding for Reston Metrorail Access Group (RMAG) Projects (Hunter Mill District) |
| 4 | Approved | Approval of a Project Agreement and Funding for the Tysons-Wide Roadway Improvement Project, Jones Branch Connector (Providence District) |
| 5 | Approved | Fairfax Connector Virginia Railway Express Transfer Policy and Fare Adjustments |
| 6 | Approved | 2013 School Bond Referendum |
| 7 | Approved | Approval of Fairfax County to Provide the Necessary Documentation to the United States Department of Transportation (USDOT) as Part of the County's Request for a Transportation Infrastructure Finance and Innovation Act (TIFIA) Loan for the Dulles Corridor Metrorail Project |

**INFORMATION
ITEMS**

- | | | |
|-------|--------------|---|
| 1 | Noted | Contract Award-Prenatal Care and Genetic Testing Services |
| 11:10 | Done | Matters Presented by Board Members |
| 12:05 | Done | Closed Session |

**PUBLIC
HEARINGS**

- | | | |
|------|-----------------|---|
| 3:30 | Approved | Public Hearing on SEA 00-H-028, The Most Reverend Paul S. Loverde, Bishop of the Catholic Diocese of Arlington Virginia and his Successors in Office, to Amend SE 00-H-028 (Hunter Mill District) |
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**FAIRFAX COUNTY
BOARD OF SUPERVISORS
May 14, 2013**

**PUBLIC
HEARINGS
(Continued)**

- | | | |
|------|---|--|
| 3:30 | Approved | Public Hearing on SEA 2006-MA-031, The Most Reverend Paul S. Loverde, Bishop of the Catholic Diocese of Arlington, Virginia and his Successors in Office, to Amend SE 2006-MA-031 (Mason District) |
| 3:30 | Approved | Public Hearing on RZ 2012-MA-022 (CG Peace Valley LLC) (Mason District) |
| 4:00 | Approved | Public Hearing on Proposed Comprehensive Plan Amendment S11-CW-3CP, Parks Plan Amendment, Phase 1 – Policy Plan |
| 4:00 | Approved | Public Hearing on a Proposed Zoning Ordinance Amendment Re: Civil Penalties |
| 4:00 | Approved | Public Hearing on 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 on Map Page No. 30-2 and Board Policy for the Treatment of Approved and Pending Plans of Development (Dranesville District) |
| 4:00 | Approved | Public Hearing on Proposed Amendments to Appendix H of the Fairfax County Code to Grant a Non-Exclusive Cable Television Franchise to CoxCom, LLC |
| 4:30 | Approved | Public Hearing on Spot Blight Abatement Ordinance for 9713 Water Oak Drive, Fairfax, VA 22031(Providence District) |
| 4:30 | Withdrawn | Public Hearing on Spot Blight Abatement Ordinance for 4646 Holly Avenue, Fairfax, VA 22030 (Braddock District) |
| 4:30 | Deferred
Decision Only to
6/4/13 at 3:00
p.m. | Public Hearing to Establish the Reflection Community Parking District (Dranesville District) |
| 4:30 | Deferred
Decision Only to
6/18/13 at 4:00
p.m. | Public Hearing on Proposed Zoning Ordinance Amendment Re: Home Child Care Facilities |

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Fairfax County, Virginia
BOARD OF SUPERVISORS
AGENDA

Tuesday
May 14, 2013

9:30 a.m.

PRESENTATIONS

SPORTS/SCHOOLS

- CERTIFICATE – To recognize Lily Dunlap for winning the Lions Club International Peace Poster contest. Requested by Supervisor Hudgins.

RECOGNITIONS

- RESOLUTION – To congratulate Psychiatric Rehabilitation Services for its 50th anniversary. Requested by Supervisor Smyth.
- RESOLUTION – To congratulate the John Marshall Library for its 50th anniversary. Requested by Supervisor McKay.
- CERTIFICATE – To recognize the success of the Stuff the Bus program. Requested by Chairman Bulova.

DESIGNATIONS

- PROCLAMATION – To designate May 2013 as Ovarian Cancer Awareness Month in Fairfax County. Requested by Chairman Bulova.

— more —

Board Agenda Item
May 14, 2013

- PROCLAMATION – To designate May 30-June 2, 2013, as Springfield Days in Fairfax County. Requested by Supervisor McKay.
- PROCLAMATION – To designate May 19-25, 2013, as Emergency Medical Services Week in Fairfax County. Requested by Chairman Bulova.
- PROCLAMATION – To designate May 19-25, 2013, as Public Works 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
May 14, 2013

10:30 a.m.

Presentation of the Volunteer Fire Commission Annual Report

ENCLOSED DOCUMENTS:

None. Report delivered under separate cover.

PRESENTED BY:

Tim Fleming, Chief, Franconia VFD, the Chair of the Volunteer Fire Commission

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Board Agenda Item
May 14, 2013

10:50 a.m.

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

ENCLOSED DOCUMENTS:

Attachment 1: Appointments to be heard May 14, 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, Assistant 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 MAY 14, 2013
(ENCOMPASSING VACANCIES PROJECTED THROUGH MAY 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>
Richard Rose (Appointed 7/97-4/01 by Hanley; 9/05-5/09 by Connolly) Term exp. 5/13	Builder (Multi Family) Representative		By Any Supervisor	At-Large
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

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
James Scanlon (Appointed 6/93-6/09 by Bulova) Term exp. 5/13	Engineer/Architect/ Planner #1 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
VACANT (Formerly held by Thomas T. Coyle; appointed 6/09-2/12 by Hyland) Term exp. 1/15 <i>Resigned</i>	Mount Vernon District Business Representative		Hyland	Mount Vernon

ANIMAL SERVICES ADVISORY COMMISSION (2 years)

[Note: In addition to attendance at Commission meetings, members shall volunteer at least 24 hours per year in some capacity for the Animal Services Division.]

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Michelle Hupp; appointed 1/01-2/12 by Gross) Term exp. 2/14 <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

**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>
VACANT (Formerly held by Paul Kraucunas; appointed 9/98-2/09 by Bulova) Term exp. 2/13 <i>Resigned</i>	Design Professional #1 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 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 AGING (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Tena Bluhm (Appointed 5/09-5/11 by Bulova) Term exp. 5/13	At-Large Chairman's Representative	Tena Bluhm	Bulova	At-Large Chairman's
Kenneth Malmberg (Appointed 6/09-5/11 by Cook) Term exp. 5/13	Braddock District Representative		Cook	Braddock
Kay Larmer (Appointed 1/12 by Foust) Term exp. 5/13	Dranesville District Representative		Foust	Dranesville
Joseph Heastie (Appointed 2/05-5/11 by Smyth) Term exp. 5/13	Providence District Representative		Smyth	Providence
Thomas Bash (Appointed 5/11 by Herrity) Term exp. 5/13	Springfield District Representative		Herrity	Springfield

**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

**COMMUNITY REVITALIZATION AND REINVESTMENT ADVISORY GROUP
(2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Janyce Hedetniemi (Appointed 4/07 by Connolly; 4/09-4/11 by Bulova) Term exp. 4/13	At-Large #1 Chairman's Representative		Bulova	At-Large Chairman's
Robert E. Simon (Appointed 4/09-4/11 by Bulova) Term exp. 4/13	At-Large #2 Chairman's Representative		Bulova	At-Large Chairman's
Jorge E. Reyna (Appointed 9/11 by Cook) Term exp. 4/13	Braddock District Representative		Cook	Braddock
Loren C. Bruce (Appointed 6/11 by Hudgins) Term exp. 4/13	Hunter Mill District Representative		Hudgins	Hunter Mill

CONFIRMATIONS NEEDED:

- Mr. Dan McKinnon as the Fairfax County Chamber of Commerce G-7 Representative
- Mr. Jon Lindgren as the Northern Virginia Building Industry Association Representative
- Mr. Robert Schwaninger as the Redevelopment and Housing Authority Representative

**CONSUMER PROTECTION COMMISSION
(3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Samiah Bahhur; appointed 10/06 by McConnell; 7/09-7/12 by Herrity) Term exp. 7/15 <i>Resigned</i>	Fairfax County Resident #12 Representative		By Any Supervisor	At-Large

CRIMINAL JUSTICE ADVISORY BOARD (CJAB) (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by 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
VACANT (formerly held by Glen Robinson; appointed 11/09 by Smyth) Term exp. 8/12 <i>Resigned</i>	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>
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-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 Lisa Lynne Kania; appointed 10/11 by Frey) Term exp. 6/13 <i>Resigned</i>	Sully District Representative	Dallas “Rob” Sweezy (Résumé attached) (Frey) <i>(Nomination announced on April 30, 2013)</i>	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

HUMAN SERVICES COUNCIL (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Richard Berger; appointed 2/06-8/09 by Frey) Term exp. 7/13 <i>Resigned</i>	Sully District Representative		Frey	Sully

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

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

**REDEVELOPMENT AND HOUSING AUTHORITY
(4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Helen C. Kyle (Appointed 5/00-3/01 by Hanley; 4/04-4/08 by Connolly; 5/12 by Bulova) Term exp. 4/13	At-Large #2 Representative		Bulova	At-Large

ROAD VIEWERS BOARD (1 year)

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

SMALL BUSINESS COMMISSION, FAIRFAX COUNTY (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Margaret Schottler; appointed 9/09-12/12 by Bulova) Term exp. 12/15 <i>Resigned</i>	At-Large #3 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 Sally D. Liff; appointed 8/04-1/11 by Smyth) Term exp. 1/14 <i>Deceased</i>	Condo Owner 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

Dallas "Rob" Sweezy

Seasoned Public Policy Advisor/Government Affairs Strategist

Dallas "Rob" Sweezy is a seasoned advisor and strategist with nearly thirty years of expertise and a proven track record in public affairs, government relations and policy development. Rob advises clients on health care policy, particularly within the complexities of Medicare, Medicaid and health care reform. Today's political environment makes health care policy vague and unpredictable, at best. Within that environment, Rob has a unique ability to help high level corporate and organization officials understand the decision-making process for critical legislative and regulatory issues. He is currently the Senior Vice President for Mercury, LLC in Washington, D.C.

Rob previously served as the Director of Public and Intergovernmental Affairs for the Centers for Medicare & Medicaid Services (CMS) during one of the agency's most unique and historic periods. When he left CMS, the White House asked him to serve as Chairman of the President's Advisory Committee for People with Intellectual Disabilities. He currently serves on a National Advisory Board on Improving Health Care Services for Seniors and People with Disabilities sponsored by a managed care organization.

Rob has long-standing relationships at federal agencies such as the Centers for Medicare & Medicaid Services and enjoys bi-partisan access on Capitol Hill and state capitals. He is a frequent public speaker on health care policy and strategic communications, and testifies before legislative and regulatory bodies. He also is a repeated guest lecturer at American University on health care reform and U. S. fiscal policies. Public interest groups including the National Conference of State Legislatures and the American Legislative Exchange Council have invited Rob to serve on panel discussions on current issues.

Health Care Policy, Government Affairs and Communications

While at CMS, Rob managed a staff of more than seventy professional responsible for the agency's external communications. He directed efforts for the repositioning and re-branding of the agency's image, including the name change from HCFA to CMS. He led successful, nation-wide outreach campaigns promoting some of the department's top priorities. One of his lasting achievements at CMS was setting up channels to manage messaging and communications between Washington, DC; the CMS Regional Offices; the Quality Improvement Organizations; and the provider and advocate communities.

Working with America's Health Insurance Plans and its member companies, Rob was instrumental in bringing attention to disparities of care and disease management issues. He also directed Medicare's first-ever series of \$25 million advertising campaigns including national television, radio and print; featuring beloved comedian, Leslie Nielsen. He also planned and coordinated nation-wide media tours for the leaders of CDC, NIH, FDA and the Surgeon General to promote passage of the Medicare Modernization and Prescription Drug law.

Rob led the public rollouts for both the Nursing Home and Home Healthcare Quality Initiatives and managed the communications efforts for the first ever pay-for-performance, Hospital Quality Incentive Demonstration with Premier Hospitals. As part of CMS's external-partners "Open Door Forums," he was designated senior staff contact and spokesperson for people with disabilities and disability advocacy groups.

Corporate and Litigation Support Communications

Rob's background in electoral politics and government policy helps him develop messages and strategies to position international corporate clients as thought leaders and enhance clients' images with federal and state leaders. He helped the CEO of AMS corporation with media messaging, legislative testimony and local government boards as the company merged with CGI – a Canadian contractor. He also worked with the CEO and other top corporate executives of Tyson Food as they faced a litigation/public relations crisis and damage to their well-established community goodwill in several areas of the country.

State Government Relations and Federal Regulations

Before joining CMS, Rob served as Vice President for a global public relations firm where he led several successful crisis and litigation communications support efforts and provided public policy counsel to clients. He was also Director of State Government Relations for the International Council of Shopping Centers (ICSC) where he managed contract consultants in twelve states, and designed and managed SCAN, the association's grassroots Shopping Center Action Network.

Rob's early interest in health care began while serving as Director of Intergovernmental Affairs at the Occupational Safety and Health Administration (OSHA). There he facilitated provider and stakeholder forums as the agency adopted its first regulations to protect healthcare workers around blood-borne diseases.

When he first came to Washington, D.C., Rob had the privilege to serve under the leadership of Commerce Secretary Malcolm Baldrige where he worked for the Director General of the U. S. and Foreign Commercial Services. There he worked on the Caribbean Basin Initiative and export development issues. He began his public service career in gubernatorial campaign politics and as a field operative and Texas political director for President Reagan's campaigns for president.

A native Texan, Rob has lived in Fairfax County Virginia for most of his life. He received his Bachelor of Arts degree in political science from Baylor University and named Outstanding Senior Man for Leadership by the national college honor society Omicron Delta Kappa. He completed post-graduate studies in public policy and international business at George Washington University. Rob has four children: Dallas, Austin, Carson and Madison.

Rob can often be found with his hands covered in garden loam; his knees covered in gridiron mud; his face covered in stage-grease paint; or his brow covered by his Westfield Bulldog running visor.

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Board Agenda Item
May 14, 2013

11:00 a.m.

Items Presented by the County Executive

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Board Agenda Item
May 14, 2013

ADMINISTRATIVE - 1

Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance
Expanding the Northern Virginia Community College Residential Permit Parking District,
District 39 (Braddock District)

ISSUE:

Board authorization to advertise a public hearing to consider a proposed amendment to Appendix G, of *The Code of the County of Fairfax, Virginia*, to expand the Northern Virginia Community College (NVCC) Residential Permit Parking District (RPPD), District 39.

RECOMMENDATION:

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

TIMING:

The Board should take action on May 14, 2013, to advertise a public hearing for June 4, 2013, at 4:00 p.m.

BACKGROUND:

Section 82-5A-4(a) of *The Code of the County of Fairfax, Virginia*, authorizes the Board to establish RPPD restrictions encompassing an area within 2,000 feet walking distance from the pedestrian entrances and/or 1,000 feet from the property boundaries of an existing or proposed high school, existing or proposed rail station, or existing Virginia college or university campus if: (1) the Board receives a petition requesting the establishment or expansion of such a District, (2) such petition 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 face of the proposed District, and (3) the Board determines that 75 percent of the land abutting each block within the proposed District is developed residential. In addition, an application fee of \$10 per address is required for the establishment or expansion of an RPPD. In the case of an amendment expanding an existing District, the foregoing provisions apply only to the area to be added to the existing District.

Board Agenda Item
May 14, 2013

Staff has verified that the requested portions of Wakefield Chapel Road and Banff Street are within 2,000 feet walking distance to the NVCC pedestrian entrance, the requested portion of Fidelity Court is within 1,000 feet from the property boundaries of NVCC, and all other requirements to expand the RPPD have been met.

FISCAL IMPACT:

The cost of sign installation is estimated at \$1,000 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:

Robert A. Stalzer, Deputy County Executive

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

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

Selby Thannikary, Chief, Traffic Operations Section, FCDOT

Maria Turner, FCDOT

Hamid Majdi, FCDOT

Proposed Amendment

Amend *The Code of the County of Fairfax, Virginia*, by adding the following streets to Appendix G-39, Section (b), (2), Northern Virginia Community College Residential Permit Parking District, in accordance with Article 5A, of Chapter 82:

Wakefield Chapel Road (Route 710)

East side, from Toll House Road to the southern boundary of 4509 Wakefield Chapel Road.

West side, from Toll House Road to Sugarbush Court.

Banff Street (Route 3031)

From Wakefield Chapel Road to Fidelity Court.

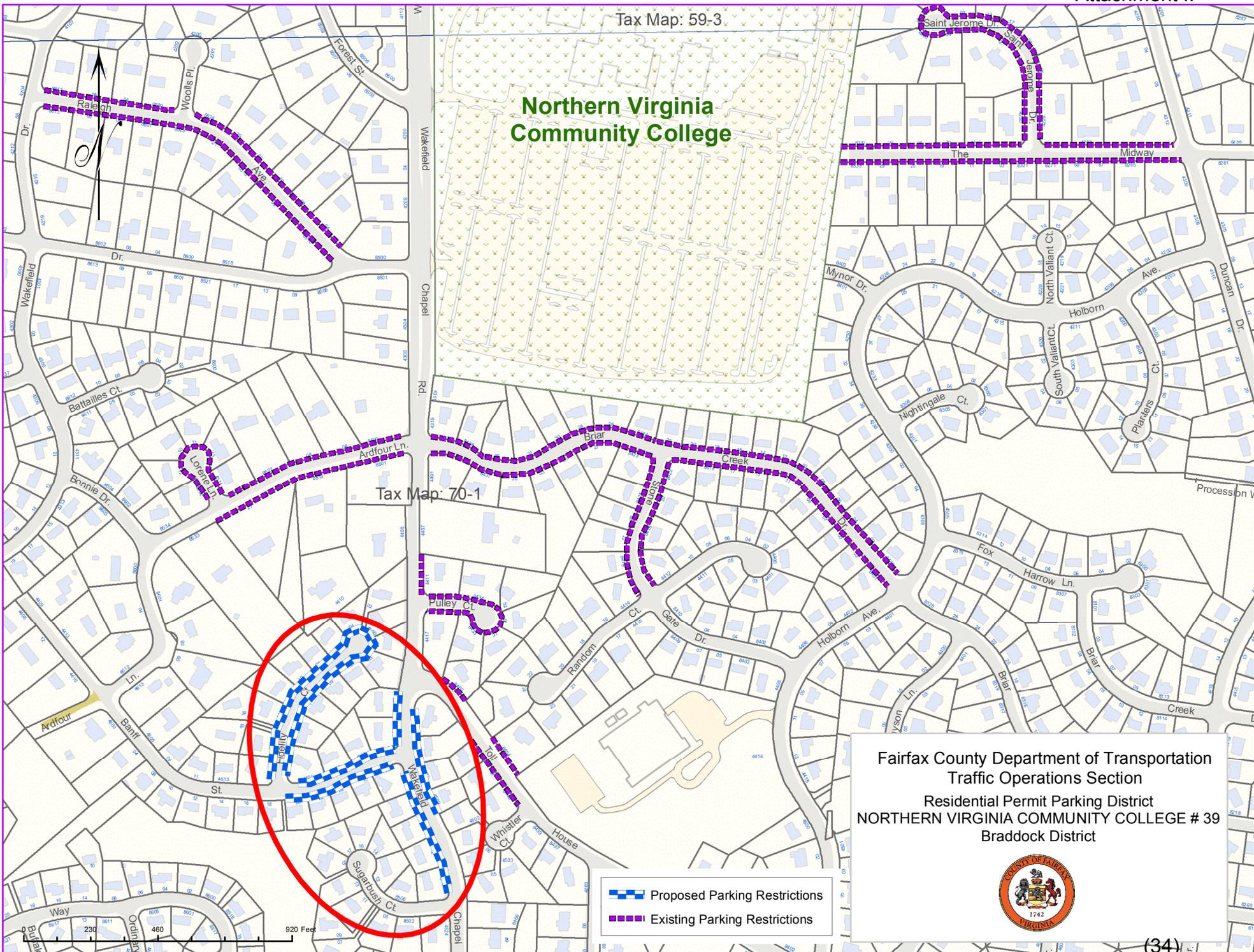
Fidelity Court (Route 4386)

From Banff Street to the cul-de-sac inclusive.

Tax Map: 59-3

Northern Virginia Community College

Tax Map: 70-1



Fairfax County Department of Transportation
 Traffic Operations Section
 Residential Permit Parking District
 NORTHERN VIRGINIA COMMUNITY COLLEGE # 39
 Braddock District



- - - - Proposed Parking Restrictions
- - - - Existing Parking Restrictions

Board Agenda Item
May 14, 2013

ADMINISTRATIVE - 2

Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance
Expanding the Culmore Residential Permit Parking District, District 9 (Mason District)

ISSUE:

Board authorization to advertise a public hearing to consider a proposed amendment to Appendix G, of *The Code of the County of Fairfax, Virginia*, to expand the Culmore Residential Permit Parking District (RPPD), District 9.

RECOMMENDATION:

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

TIMING:

The Board should take action on May 14, 2013, to advertise a public hearing for June 4, 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. In the case of an amendment expanding an existing District, the foregoing provisions apply only to the area to be added to the existing District.

Board Agenda Item
May 14, 2013

A peak parking demand survey was conducted for Magnolia Avenue east side only from the southern property boundary of 3321 Magnolia Avenue to Red Pine Street and Red Pine Street south side only from Magnolia Avenue to Longbranch Drive. 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 \$1,100 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 Expansion

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT
Selby Thannikary, Chief, Traffic Operations Section, FCDOT
Maria Turner, FCDOT
Hamid Majdi, FCDOT

Proposed Amendment

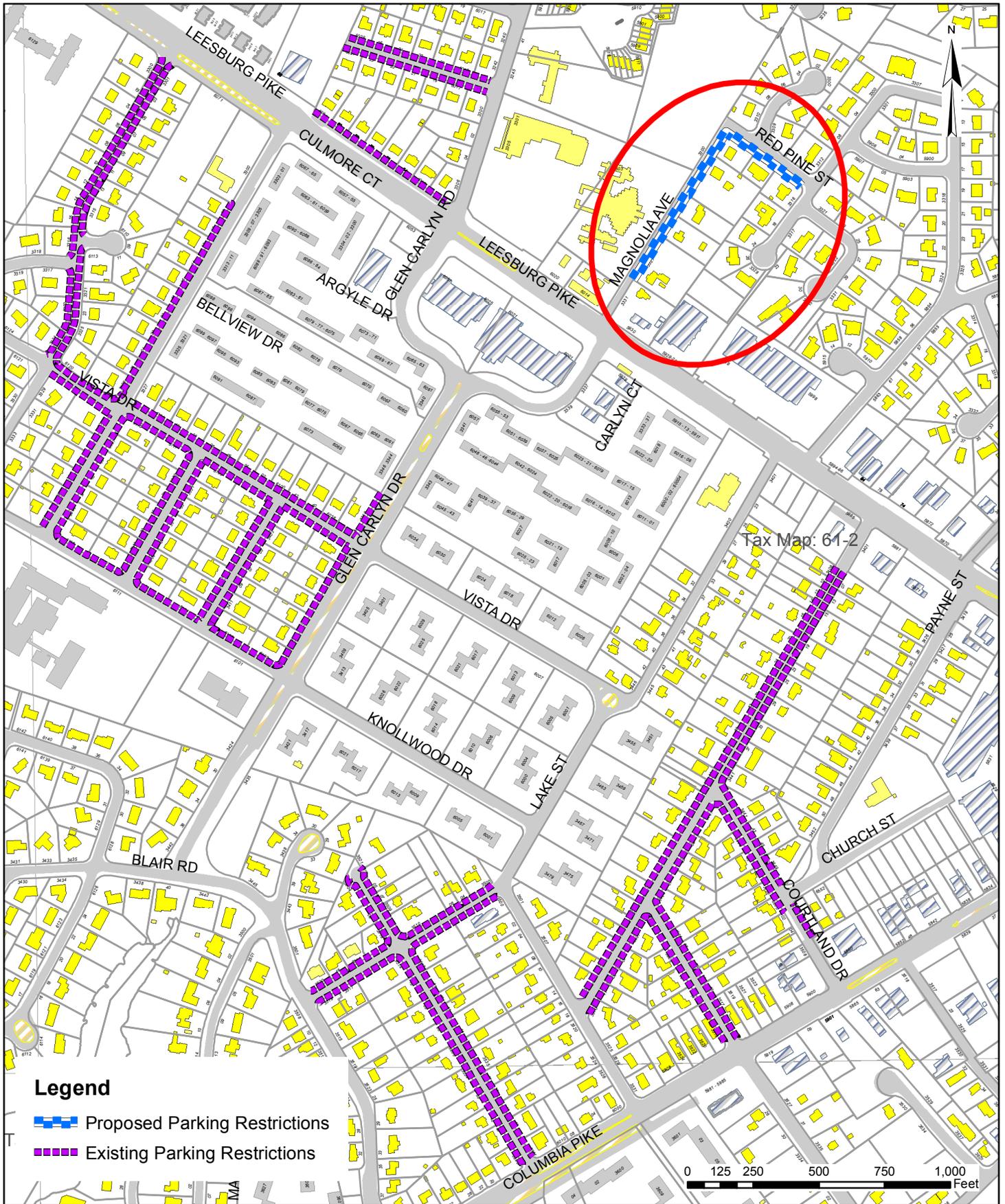
Amend *The Code of the County of Fairfax, Virginia*, by adding the following streets to Appendix G-9, Section (b), (2), Culmore Residential Permit Parking District, in accordance with Article 5A, of Chapter 82:

Magnolia Avenue (Route 3024)

East side, from the southern property boundary of 3321 Magnolia Avenue to Red Pine Street

Red Pine Street (Route 3016)

South side, from Magnolia Avenue to Longbranch Drive



Tax Map: 61-2

Legend

-  Proposed Parking Restrictions
-  Existing Parking Restrictions



April 2, 2013

Fairfax County Department of Transportation
 Traffic Operations Section
RESIDENTIAL PERMIT PARKING DISTRICT (RPPD)
CULMORE #9
 Mason District



Board Agenda Item
May 14, 2013

ADMINISTRATIVE – 3

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

ISSUE:

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

RECOMMENDATION:

The County Executive recommends that the Board extend the review period for the following application: Application FS-D13-1.

TIMING:

Board action is required on May 14, 2013, to extend the review period of the application noted above before it expires on May 28, 2013.

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 this 2232/FS application; which was accepted for review by DPZ on February 27, 2013. This application is for a telecommunications public 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 this application by no more than sixty additional days. The review period for the following application should be extended as follows:

FS-D13-1	Comprehensive Wireless LLC/Existing Lattice Tower 9916 Georgetown Pike, Great Falls
----------	--

Board Agenda Item
May 14, 2013

Dranesville District
Extend to July 27, 2013

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

Board Agenda Item
May 14, 2013

ADMINISTRATIVE - 4

Authorization to Advertise a Public Hearing to Establish Parking Restrictions on Apple Tree Drive and Streets within the Hilltop Business Park (Lee District)

ISSUE:

Board authorization to advertise a public hearing to consider a proposed amendment to Appendix R of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to establish parking restrictions on all public streets within the Hilltop Business Park and on the south side of Apple Tree Drive in the Lee District.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for June 4, 2013, at 4:00 p.m. to consider adoption of a Fairfax County Code amendment to Appendix R, to prohibit commercial vehicles, as defined in Section 82-5-7 of the Fairfax County Code, recreational vehicles and all trailers from parking on Angleton Court, Conell Court, Hill Park Court, Hill Park Drive, and Kincannon Place, from 9:00 p.m. to 6:00 a.m., seven days per week; and to prohibit all vehicles from parking along the south side of Apple Tree Drive from Rose Hill Drive to Willowood Lane, 24 hours per day, seven days per week.

TIMING:

The Board of Supervisors should take action on May 14, 2013, to provide sufficient time for advertisement of the public hearing on June 4, 2013, at 4:00 p.m.

BACKGROUND:

Fairfax County Code Section 82-5-37(5) authorizes the Board of Supervisors to designate restricted parking in non-residential areas where long term parking of vehicles diminish the capacity of on-street parking for other uses.

The Lee District office has forwarded a petition and request from nearly all of the business owners in the Hilltop Business Park to prohibit commercial vehicles as defined in Section 82-5-7 of the Fairfax County Code, recreational vehicles, and all trailers from parking on Angleton Court, Conell Court, Hill Park Court, Hill Park Drive, and Kincannon Place, from 9:00 p.m. to 6:00 a.m., seven days per week. Business park owners related that inoperable and unattended vehicles are parked for long periods of time resulting in scarce parking for employees and business customers.

Board Agenda Item
May 14, 2013

Based on staff observations of the aforementioned streets, long term parking of out of area vehicles is diminishing the capacity of on-street parking for use by the business community.

Fairfax County Code Section 82-5-37(3) authorizes the Board of Supervisors to restrict parking along secondary roads where it creates a safety hazard for pedestrian, cyclists, or motorists entering or exiting the roadway from driveways or for pedestrians, cyclists, or motorists traveling along that road.

The Lee District office has forwarded a request and petition from the Rose Hill Civic Association to prohibit all parking along the south side of Apple Tree Drive from Rose Hill Drive to Willowood Lane, 24 hours per day, seven days per week.

Staff reviewed the requested portion of Apple Tree Drive and the surrounding area and found the street to be narrow making it difficult to traverse if vehicles are parked on both sides. Narrow streets are not unusual for the area. However, the close proximity of the street to Rose Hill Elementary School which hosts frequent activities and events at the facility, results in a significant number of parked vehicles on both sides of this block that can create a safety hazard for pedestrians and motorists alike. Lee District representatives and personnel from the Fairfax County Police Department, each with knowledge of past parking congestion in this area met at the location and agreed that restricting parking on the south side of Apple Tree Drive from Rose Hill Drive to Willowood Lane, 24 hours per day, seven days per week would mitigate the situation.

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: Amendment to the Fairfax County Code, Appendix R (General Parking Restrictions)

Attachment II: Area Map of Proposed Parking Restriction (Hilltop Business Park)

Attachment III: Area Map of Proposed Parking Restriction (Apple Tree Drive)

STAFF:

Robert A. Stalzer, Deputy County Executive

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

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

Selby Thannikary, Chief, Traffic Operations Section, FCDOT

Maria Turner, Sr. Transportation Planner, FCDOT

PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA
APPENDIX R

Amend *The Code of the County of Fairfax, Virginia*, by adding the following to Appendix R, in accordance with Section 82-5-37:

Angleton Court (Route 7557).

Commercial vehicles, recreational vehicles, and trailers as defined in Fairfax County Code Sections 82-5-7(b) and 82-5B-1 shall be restricted from parking on the entire length of Angleton Court from 9:00 p.m. to 6:00 a.m., seven days per week.

Apple Tree Drive (Route 1636) from Rose Hill Drive to Willowood Lane.

No parking along the south side of Apple Tree Drive from Rose Hill Drive to Willowood Lane, seven days per week.

Conell Court (Route 7558).

Commercial vehicles, recreational vehicles, and trailers as defined in Fairfax County Code Sections 82-5-7(b) and 82-5B-1 shall be restricted from parking on the entire length of Conell Court from 9:00 p.m. to 6:00 a.m., seven days per week.

Hill Park Court (Route 6773).

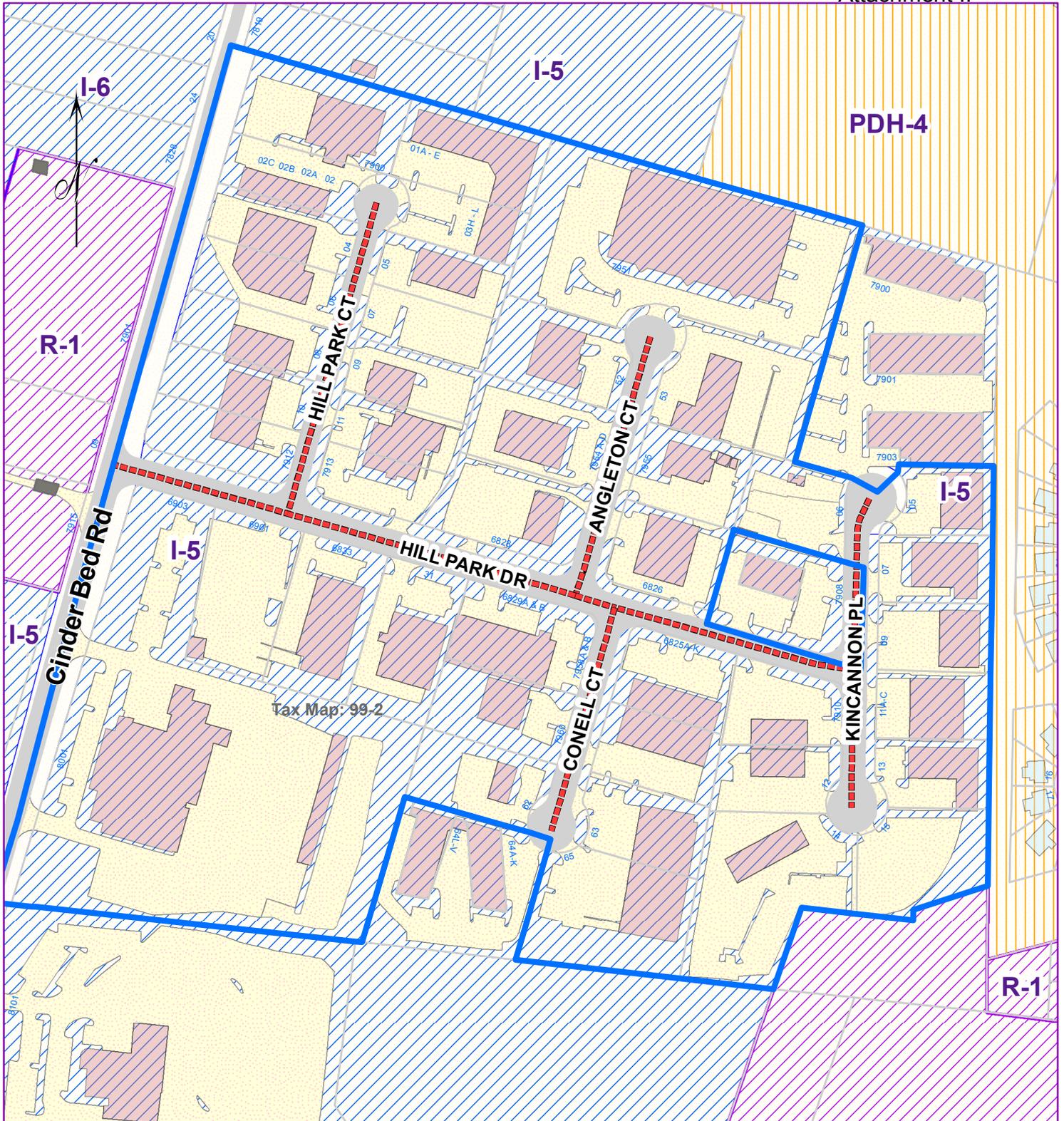
Commercial vehicles, recreational vehicles, and trailers as defined in Fairfax County Code Sections 82-5-7(b) and 82-5B-1 shall be restricted from parking on the entire length of Hill Park Court from 9:00 p.m. to 6:00 a.m., seven days per week.

Hill Park Drive (Route 6772).

Commercial vehicles, recreational vehicles, and trailers as defined in Fairfax County Code Sections 82-5-7(b) and 82-5B-1 shall be restricted from parking on the entire length of Hill Park Drive from 9:00 p.m. to 6:00 a.m., seven days per week.

Kincannon Place (Route 7569).

Commercial vehicles, recreational vehicles, and trailers as defined in Fairfax County Code Sections 82-5-7(b) and 82-5B-1 shall be restricted from parking on the entire length of Kincannon Place, from 9:00 p.m. to 6:00 a.m., seven days per week.



 Proposed Parking Restriction
 No Parking Commercial, Recreational, All Trailers
 9:00pm to 6:00am, 7 days per week

Fairfax County Department of Transportation
 Traffic Operations Section
 Proposed Parking Restriction
 Lee District





Tax Map: 82-3

ROSE HILL ES

----- Proposed Parking Restriction (south side only)
No Parking 24 hours per day, 7 days per week

Fairfax County Department of Transportation
Traffic Operations Section
Proposed Parking Restriction
Lee District



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ADMINISTRATIVE - 5

Designation of Plans Examiner Status under the Expedited Land Development Review Program

ISSUE:

Board of Supervisors' action to place eleven individuals who have elected not to pursue their continuing education requirements into inactive status; to reinstate three individuals into active status who have completed their continuing education requirements pursuant to the adopted criteria and recommendation of the Advisory Plans Examiner Board (APEB); and, to designate three individuals as Plans Examiners to participate in the Expedited Land Development Review Program.

RECOMMENDATION:

The County Executive recommends that the Board take the following actions:

- Designates the following eleven individuals, identified with their registration numbers, as inactive Plans Examiners:

Fred D. Ameen	95 (requested to be inactive)
Obaid Bactazh	93 (deceased)
James R. Beall	187
Travis D'Amico	293 (moved out of area)
Daniel R. Hines	258
William E. Nell	15 (requested to be inactive)
Eddie W. Nutter	220
Yong K. Paek	69 (retired)
William C. Putman	169 (retired)
Ajay Sharma	286
Gursharan S. Sidhu	50 (retired)

- Reinstates the following three individuals, identified with their registration numbers, as Plans Examiners:

Ryan G. David	234 (on 3/10/03 - Inactive on 6/18/2007)
Matthew T. Marshall	188 (on 3/13/00 - Inactive on 6/1/2009)
Rashid Siraj	44 (on 6/3/91 – Inactive on 11/18/1996)

Board Agenda Item
May 14, 2013

- Designates the following three individuals, identified with their registration numbers, as a Plans Examiners:

Bi Feng Wu	301
Christian Hampson	302
Shannon Bell	303

TIMING:
Routine.

BACKGROUND:

On August 7, 1989, the Board adopted Chapter 117 (Expedited Land Development Review) of *The Code of the County of Fairfax, Virginia*, (The Code) establishing a Plans Examiner Program under the auspices of an APEB. The purpose of the Plans Examiner Program is to expedite the review of site and subdivision plans submitted by certain specially qualified applicants, i.e., Plans Examiners, to the Land Development Services, Department of Public Works and Environmental Services.

The Code requires that the Board designate an individual's status under the Expedited Land Development Review Program.

Inactive Status: Chapter 117 requires Plans Examiners to participate in the Board adopted Continuing Education Program. Consonant with the requirements of Section 117-1-3(a), and subject to Board approval, the APEB will recommend designation of inactive status for individuals electing not to pursue the continuing education program. This status designation continues until and if they wish to reactivate their Designated Plans Examiner (DPE) status by completing the continuing education requirements. An inactive status makes these individuals ineligible to participate in the expedited plan process procedure. At the time they are placed in inactive status, individuals are provided with information concerning requirements for reinstatement as an active DPE.

In a letter dated April 11, 2013, from the Chairman of the APEB, James H. Scanlon, P.E., L.S., to Chairman Sharon Bulova, eleven individuals were identified that have elected not to pursue the continuing education requirements. The APEB recommends that their status become inactive until and if they wish to reactivate their status as a DPE by completing their continuing education requirements.

Reinstatement of Plans Examiner Status: Individuals are provided with information concerning requirements for reinstatement as an active DPE at the time they are placed on inactive status. Also detailed in a letter from the chairman of the APEB, dated April 11, 2013, three individuals have applied for reinstatement as active DPEs. Upon review

Board Agenda Item
May 14, 2013

of these applications and finding that their continuing education requirements have been satisfied, the APEB recommends these reinstatements to active DPE status.

Plans Examiner Status: Candidates for status as Plans Examiners must meet the education and experience requirements contained in Chapter 117. After the review of these applications and credentials, the APEB has found that the three candidates listed below satisfy these requirements. These findings were also documented in a letter dated April 11, 2013, from the Chairman of the APEB.

Staff concurs with these recommendations as being in accordance with Chapter 117 and the Board-adopted criteria.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:

Attachment I – Three letters dated April 11, 2013, from the Chairman of the APEB to the Chairman of the Board of Supervisors.

STAFF:

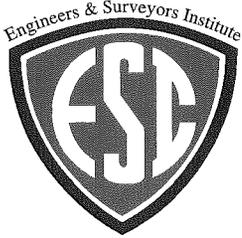
Robert A. Stalzer, Deputy County Executive
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)
Michelle Brickner, Director, Land Development Services, DPWES

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Transportation

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R.C. Fields & Associates, P.C

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Independent

EXECUTIVE DIRECTOR
Terrance C. Ryan PhD, P.E.

April 11, 2013

Hon. Sharon Bulova, Chairman
Fairfax County Board of Supervisors
12000 Government Center Parkway
Fairfax, VA 22035

Dear Chairman Bulova:

The Board of Supervisors approved the following individuals as Designated Plans Examiners:

<u>Name</u>	<u>Reg. Number</u>
Fred D. Ameen	#95 (requested to be inactive)
Obaid Bactazh	#93 (Died)
James R. Beall	#187
Travis D'Amico	#293 (moved out of area)
Daniel R. Hines	#258
William E. Nell	#15 (requested to be inactive)
Eddie W. Nutter	#220
Yong K. Paek	#69 (Retired)
William C. Putman	#169 (Retired)
Ajay Sharma	#286
Gursharan S. Sidhu	#50 (Retired)

However, they have elected not to pursue the continuing education requirements at this time. It is recommended that their status become inactive until and if they wish to reactivate their status by completing their continuing education requirements. As such, they would no longer be eligible to participate in the expedited plan process procedure.

Following the Board of Supervisors' approval of this recommendation, each will be notified of his/her status change, as well as the procedure to be followed for reinstatement.

Sincerely,

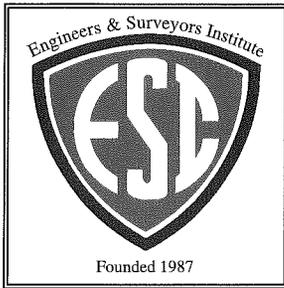
James H. Scanlon, PE., LS
Chairman

Fairfax County Advisory Plans Examiner Board

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Eric S. Siegel, P.E.
Martin E. Crahan, AICP
John S. Groupe, IV, P.E.
Gary P. Bowman, P.E.
William R. Zink, P.E.
Theodore D. Britt, P.E.
Timothy S. Doody, P.E., L.S.
Edward B. Snider, Jr. P.E.
Adam J. Volanth, P.E.
Phillip DeLeon, P.E.
Blake A. Smith, P.E.
Susan S. Wolford, CLA, AICP

Current Past Chairman
John S. Matusik, P.E.
Independent

EXECUTIVE DIRECTOR
Terrance C. Ryan PhD, P.E.

April 11, 2013

Hon. Sharon Bulova, Chairman
Fairfax County Board of Supervisors
12000 Government Center Parkway
Fairfax, VA 22035

Dear Chairman Bulova:

The Board of Supervisors approved the following individuals as Designated Plans Examiner but their status was changed to inactive. They wish to reactivate their status and have met the requirements set out by the reinstatement panel. They have been found to meet the qualifications outlined in Chapter 117-1-2 of the Code of Fairfax County and to be in accordance with the criteria adopted by the Fairfax County Board of Supervisors.

Ryan G. David - DPE #234 on 3/10/03 --- Inactive on 6/18/2007
Matthew T. Marshall - DPE #188 on 3/13/00 --- Inactive on 6/1/2009
Rashid Siraj - DPE #44 on 6/3/91 --- Inactive on 11/18/1996

It is recommended by the Fairfax County Advisory Plans Examiner Board that they be granted active status.

Following the Board of Supervisors' approval of this recommendation, they will be notified of this change.

Sincerely,

James H. Scanlon, P.E., LS.

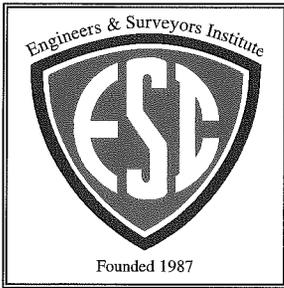
Chairman

Fairfax County Advisory Plans Examiner Board

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Land Development Services
Directors Office



Engineers & Surveyors Institute

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Current Past Chairman
 John S. Matusik, P.E.
 Independent

EXECUTIVE DIRECTOR
 Terrance C. Ryan PhD, P.E.

April 11, 2013

Hon. Sharon Bulova, Chairman
 Fairfax County Board of Supervisors
 12000 Government Center Parkway
 Fairfax, VA 22035

Dear Chairman Bulova:

The following named individuals, were approved by the Advisory Plans Examiner Board for recommendation as Designated Plans Examiners:

Name	Reg. No.
Bi Feng Wu	#301
Christian Hampson	#302
Shannon Bell	#303

They have been found to meet the qualifications outlined in Chapter 117-1-2 of the Code of Fairfax County and are in accordance with the criteria adopted by the Fairfax County Board of Supervisors on February 11, 1991.

Sincerely,

James H. Scanlon, P.E., L.S.
 Chairman

Fairfax County Advisory Plans Examiner Board

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Land Development Services
 Directors Office

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Board Agenda Item
May 14, 2013

ADMINISTRATIVE – 6

Streets into the Secondary System (Providence and Sully Districts)

ISSUE:

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

RECOMMENDATION:

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

<u>Subdivision</u>	<u>District</u>	<u>Street</u>
Fairfax Farms Lots 26 & 27	Providence	Tharper Way
Dulles Business Park Phase III Parcel 3	Sully	Thunderbolt Place (Route 7678)
Dulles Business Park Phase III Parcel D	Sully	Thunderbolt Place Centerview Drive (Route 7680) (Additional Right-of-Way 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.

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May 14, 2013

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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ADMINISTRATIVE - 7

Authorization for the Department of Transportation to Apply for and Accept Funding Under the National Infrastructure Investment Program (TIGER V); and Endorsement of Projects for the Northern Virginia Transportation Authority Consideration for FY 2014 Regional Funding

ISSUE:

Board authorization is requested for the Department of Transportation to apply for TIGER V (Transportation Investments Generating Economic Recover) Program grant funds made available under the National Infrastructure Investment Program within the FY 2013 Federal Appropriations Act. The total County request for funding is \$20 million for design and construction of the Dulles Rail Phase II Innovation Center Metrorail Station. There is a 20 percent local cash match required for these grants, should they be received. If Fairfax County is awarded funds from the TIGER V program, staff will return to the Board for concurrence with a grant agreement for the project.

Also, Board endorsement is requested for regional project submissions (Attachment 1) to the Northern Virginia Transportation Authority (NVTA) for consideration for FY 2014 regional transportation funding using revenues from HB 2313.

RECOMMENDATION:

The County Executive recommends that the Board:

- Authorize the Department of Transportation to apply for \$20 million in TIGER V program grant funds, and
- Endorse the County's FY 2014 projects requests for regional NVTA funding.

TIMING:

Board of Supervisors' authorization is requested on May 14, 2013, to meet the U. S. Department of Transportation's June 3, 2013, submission deadline. Board endorsement of the project list for NVTA is also requested on May 14, 2013, as NVTA will be discussing FY 2014 project requests on May 23, 2013.

BACKGROUND:

On April 22, 2013, the United States Department of Transportation (USDOT) solicited applications for the TIGER V program. The deadline for applications is June 3, 2013. At this time, USDOT anticipates announcing award recipients late summer to early fall

Board Agenda Item
May 14, 2013

2013. Individual awards for implementation projects can be from \$10 million to \$200 million, with up to 80 percent of costs eligible for federal funding and a required 20 percent match.

The applications for program funding will be evaluated based on the ability to address the same issues for which the original TIGER program was established such as state of good repair, economic competitiveness, environmental sustainability, safety, and livability. The TIGER program emphasizes those projects that are “shovel ready.” Eligible projects include major capital infrastructure investments for highways, transit, aviation, and ports.

Given that the evaluation criteria are nearly identical to the criteria for the original TIGER program, staff is focusing on the same project applied for as part of the TIGER 3 and 4 programs. Previous TIGER applications for the Innovation Center Metrorail Station were unsuccessful largely due to project readiness. The Metropolitan Washington Airports Authority (MWAA) will select a design-build contractor to undertake the project in May 2013. Staff is confident that TIGER V funds can be obligated at the required time of September 2014 (FY 2015).

Fairfax County has previously committed to use its best efforts to secure funding for the Innovation Center Metrorail Station outside the project. Based on the average of previous TIGER program awards, staff recommends requesting \$20 million in TIGER V funding for this Dulles Rail Phase II project. If the County is successful in securing TIGER funding for the Innovation Center Metrorail Station, there will be a reduction in the amount of Dulles Toll Road funds needed for the station.

Due to the emphasis in projects being “shovel ready,” the need to obligate funding by September of 2014, and the \$10 million minimum threshold, there are no other federalized projects that could meet these criteria.

Unless otherwise directed by the Board of Supervisors, staff will assume Board endorsement of this project and will pursue funding under the TIGER V program.

On April 26, 2013, the Jurisdiction and Agency Coordinating Committee (JACC) presented to the NVTA a list of regional projects from member jurisdictions and transit agencies as candidates for FY 2014 HB 2313 funding. The list included many roadway and transit projects from across the region. Due to the structure of HB 2313, NVTA is only focusing on projects for FY 2014 at this time. NVTA will be undertaking a more comprehensive six-year review of projects later this year. The main criteria NVTA is using for FY 2014 projects is whether the projects are “shovel ready.”

Board Agenda Item
 May 14, 2013

Department of Transportation staff submitted the following projects for NVTA consideration based on NVTA criteria. Staff included several projects for design as a way to prepare projects for funding in future years. Staff will provide a comprehensive briefing on transportation funding at the June 25, 2013, Board Transportation Committee meeting.

Roadway Projects (cost in millions)	
Route 28 Widening 6 to 8 lanes (Southbound from the Dulles Toll Road to Route 50) Construction	\$20.0
Route 28 Widening 6 to 8 lanes (Northbound from McLearen Road to Dulles Toll Road) Construction	\$11.1
Route 29 Widening (Fairfax City to Legato Road) Right-of-Way, Utility Relocation, and Construction	\$ 7.5
Braddock Road HOV Widening; 4 to 6 Lanes (Burke Lake Road to I-495) Preliminary Engineering and Environmental Study	\$10.0
Route 28 Widening; 4 to 6 lanes (Prince William County Line to Route 29) Preliminary Engineering, Environmental Study, and Design	\$10.0
Franconia/South Van Dorn Interchange Design	\$20.0
Total Roadway Projects	\$78.8

Transit Projects (cost in millions)	
West Ox Phase II Bus Facility Construction	\$ 17.0
Innovation Center Metrorail Station Parking Garage Design	\$ 10.0
Herndon Metrorail Station Parking Garage Design	\$ 10.0
Innovation Center Metrorail Station Design and Construction	\$ 89.0
Fairfax County Parkway Bus Service (Herndon to Fort Belvoir) Capital Purchase (12 buses)	\$ 6.0
Lorton Virginia Railway Express (VRE) Second Platform Extension Design and Construction	\$ 7.9
Total Transit Projects	\$139.9

Other projects submitted by regional transit operators that benefit Fairfax County include:

- VRE Rolling Stock Purchase (nine additional coaches)
- Traction Power Upgrades on the Orange Line in Virginia associated with the Eight Car Train Project
- Ten New Buses on Virginia Metrobus Routes
- VRE Crystal City Platform Extension

Board Agenda Item
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Unless otherwise directed by the Board of Supervisors, staff will assume Board endorsement of these Fairfax County projects, and will pursue NVTA FY 2014 regional funding.

FISCAL IMPACT:

Grant funding of \$20 million is being requested from the TIGER V program, and 20 percent local cash match is required. The local cash match for the Innovation Center Metrorail Station will be funded by the Dulles Rail Phase II Project budget according to each funding partner's percentage contribution. The TIGER grant program does not allow the recovery of indirect costs.

There is no local cash match associated with the NVTA regional funds. Neither the TIGER V grant program, nor the NVTA regional projects, impacts the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1: Fairfax County Projects for NVTA Consideration for Regional FY 2014 Funding.

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT
Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT
Todd Minnix, Chief, Transportation Design Division, FCDOT
Dwayne Pelfrey, Chief, Transit Services Division, FCDOT
Mark Canale, Dulles Rail Project Manager, FCDOT
Charlie Strunk, Senior Transportation Planner, FCDOT
Noelle Dominguez, Senior Transportation Planner, Coordination and Funding FCDOT
Ray Johnson, Senior Transportation Planner, Coordination and Funding FCDOT

Fairfax County Projects for Northern Virginia Transportation Authority (NVTA)
Consideration for Regional FY 2014 Funding

Roadway Projects (cost in millions)	
Route 28 Widening 6 to 8 lanes (Southbound from the Dulles Toll Road to Route 50) Construction – Virginia Department of Transportation (VDOT) has already prepared 30% design plans, positioning this project for design/build project delivery.	\$20.0
Route 28 Widening 6 to 8 lanes (Northbound from McLearen Road to Dulles Toll Road) Construction - VDOT has already prepared 30% design plans, positioning this project for design/build project delivery.	\$11.1
Route 29 Widening (Fairfax City to Legato Road) Right-of-Way, Utility Relocation, and Construction - Add third lane NB from Legato Road to Shirley Gate Road. Additional funding is needed to complete right-of-way acquisition, utility relocation and construction. Right-of-way acquisition to commence by June 2013.	\$ 7.5
Braddock Road HOV Widening; 4 to 6 Lanes (Burke Lake Road to I-495) Preliminary Engineering and Environmental Study - In accordance with the Fairfax County Comprehensive Plan, widen Braddock Road from four general purpose (GP) lanes to four GP lanes with one HOV lane in each direction.	\$10.0
Route 28 Widening; 4 to 6 lanes (Prince William County Line to Route 29) Preliminary Engineering, Environmental Study, and Design - Widen Route 28 (northbound and southbound) from four to six lanes from the Prince William County Line to Machen Road/Old Centreville Road and Route 28/Route 29 Interchange.	\$10.0
Franconia/South Van Dorn Interchange Design - Construct Interchange at South Van Dorn Street/Franconia Road. Initial preliminary engineering and environmental complete. Design needs to be updated/revised since completion of I-495/Route 1 and I-495/Telegraph Road Interchanges.	\$20.0
Total Roadway Projects	\$78.8

Transit Projects (cost in millions)	
West Ox Phase II Bus Facility Construction - Construct nine maintenance bays, and expand facilities for bus drivers and security at the existing bus garage facility. This expansion is needed to support fleet and service expansion in the Fairfax Connector. The design is currently underway and scheduled to be complete in late FY 2014.	\$ 17.0
Innovation Center Metrorail Station Parking Garage Design - Design of the Silver Line Phase 2 Parking garage which will provide 2,037 parking spaces in accordance with the approved project plans and environmental approvals. In the current funding agreement, Fairfax County has committed to use best efforts to fund this project outside the Dulles Rail Phase II project.	\$ 10.0

<p>Herndon Metrorail Station Parking Garage Design - Design of the Silver Line Phase 2 Parking garage which will provide 1,975 parking spaces in accordance with the approved project plans and environmental approvals. In the current funding agreement, Fairfax County has committed to use best efforts to fund this project outside the Dulles Rail Phase II project.</p>	\$ 10.0
<p>Innovation Center Metrorail Station Design and Construction - MWA will select a design-build contractor to undertake the project in May 2013. Securing this funding will reduce the need for future toll increases. In the current funding agreement, Fairfax County has committed to use best efforts to fund this project outside the Dulles Rail Phase II project.</p>	\$ 89.0
<p>Fairfax County Parkway Bus Service (Herndon to Fort Belvoir) Capital Purchase (12 buses) - The Fairfax Connector's Transit Development Plan includes a new high-quality, limited-stop bus service between Herndon and Fort Belvoir. There is no existing Connector service linking these activity centers. Additional buses will be needed to operate the service. \$6 million is needed for 12 buses.</p>	\$ 6.0
<p>Lorton Virginia Railway Express (VRE) Second Platform Extension Design and Construction - This project includes final design and construction of a 650 foot second platform at the VRE Lorton Station in Fairfax County to accommodate trains up to eight cars in length. This project expands VRE station capacity and enhances operational flexibility and improves on-time performance. NEPA and preliminary engineering for the project are complete. Final design and permitting could be completed and construction initiated within 12 months of receipt of funding. This project will reduce running times and improve VRE's efficiency.</p>	\$ 7.9
<p>Total Transit Projects</p>	\$139.9

ADMINISTRATIVE - 8

Authorization to Advertise a Public Hearing on Proposed FY 2014 Regional Transportation Alternatives Program Grant Applications

ISSUE:

The Transportation Alternatives Program (TAP), included in the newly enacted Federal Surface Transportation Act, Moving Ahead for Progress in the 21st Century (MAP-21), replaces Transportation Enhancements Program (TEP), Recreational Trails, Safe Routes to School, and several other discretionary programs, combining them into a single funding source, starting in FY 2014. TAP also provides two opportunities for applications, one through the Virginia Department of Transportation and the other through the Metropolitan Washington Council of Governments (MWCOC). A public hearing is a requirement of the TAP application process, regardless of the sponsoring agency.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement and posting of a notice of intent to conduct a public hearing that is in substantial conformance with Attachment 1 scheduled for June 18, 2013, at 4:00 PM.

TIMING:

The Board should take action on May 14, 2013, to advertise a public hearing for June 18, 2013, at 4:00 p.m.

DISCUSSION:

The TAP program is similar in nature to TEP. Applicants are required to make the same 20 percent match, with grant awards covering the 80 percent remaining. Some of the major differences are outlined as follows:

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

Board Agenda Item
May 14, 2013

The regional applications will compete against other jurisdictions in Virginia that are members of MWCOG. There is roughly \$2,820,000 available for funding in the FY2014 round of regional applications. The following Fairfax County projects are recommended for applications in the FY 2014 Regional TAP:

Project	Project Description	Project Estimate	Amount Requested
Cross County Trail in Lorton	Shared Use Path that is an integral part of the Cross County Trail. This section traverses through the Lorton Arts Foundation Workhouse.	\$2,328,841	\$400,000
Reston Bike Share	Infrastructure component of the Reston Bike Share Program. Includes Bike Lockers, Bike Racks, and other facilities throughout Reston.	\$1,000,000	\$400,000

The due date for applications is May 15, 2013. FCDOT staff discussed the timing and the requirement for scheduling a public hearing with MWCOG, and reached an agreement to apply on May 15, 2013, and have the public hearing on June 18, 2013. After the June 18, 2013, public hearing, the Board can approve or withdraw applications.

FISCAL IMPACT:

If any project is awarded a grant allocation, DOT staff will return to the Board at such time to appropriate funding. TAP projects require a minimum 20 percent local match. Any project endorsed by the Board must have an identified source of funding for the 20 percent match. Additionally, the sponsor must ensure that the budget accurately reflects project cost and accept responsibility for future maintenance and operating cost of the completed project.

CREATION OF POSITIONS:

No positions will be created through this action.

ENCLOSED DOCUMENTS:

Attachment 1 – Notice of Public Hearing

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT
Ken Kanownik, Transportation Planner, Coordination and Funding Division, FCDOT

NOTICE OF PUBLIC HEARING ON PROPOSED
TRANSPORTATION ALTERNATIVES PROJECTS

The Fairfax County Board of Supervisors has scheduled a public hearing for Tuesday, June 18, 2013, at 4:00 p.m., to solicit comments on proposed FY 2014 Transportation Alternative Program projects. The Board will also be requested to endorse a list of projects presented at the public hearing. Those projects approved by the Board will be eligible for submission to the Metropolitan Washington Council of Governments for funding under the Moving Ahead for Progress in the 21st Century (MAP-21).

The program provides 80 percent of the funds for each project. A 20 percent match is required. Any project presented to the Board for endorsement must have an identified source of funding for this match. MWCOG has implemented new requirements for jurisdictional sponsors to provide technical guidance, and oversight throughout project development. Additionally, the sponsor must ensure that the budget accurately reflects project cost and accept responsibility for future maintenance and operating cost of the completed project.

The Federal Highway Administration (FHWA) has established criteria for activities or improvements eligible under the MAP-21 Transportation Alternatives provision. The alternatives are activities or improvements that increase the value of a transportation project or make it more aesthetically pleasing. Eligible activities are:

Eligible Activities: Under 23 U.S.C. 213(b) eligible activities under the TAP program consist of:

1. Transportation Alternatives as defined in 23 U.S.C. 101(a)(29) (MAP-21 1103):
 - A. Construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990.
 - B. Construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs.
 - C. Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users.
 - D. Construction of turnouts, overlooks, and viewing areas.
 - E. Community improvement activities, including-
 - i. inventory, control, or removal of outdoor advertising;

- ii. historic preservation and rehabilitation of historic transportation facilities;
 - iii. vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; and
 - iv. archaeological activities relating to impacts from implementation of a transportation project eligible under title 23.
- F. Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to-
 - i. address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in sections 133(b)(11), 328(a), and 329 of title 23; or
 - ii. reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.
- 2. The recreational trails program under section 206 of title 23.
- 3. The safe routes to school program under section 1404 of the SAFETEA-LU.
 - A. Infrastructure-related projects.-planning, design, and construction of infrastructure-related projects on any public road or any bicycle or pedestrian pathway or trail in the vicinity of schools that will substantially improve the ability of students to walk and bicycle to school, including sidewalk improvements, traffic calming and speed reduction improvements, pedestrian and bicycle crossing improvements, on-street bicycle facilities, off-street bicycle and pedestrian facilities, secure bicycle parking facilities, and traffic diversion improvements in the vicinity of schools.
 - B. Noninfrastructure-related activities to encourage walking and bicycling to school, including public awareness campaigns and outreach to press and community leaders, traffic education and enforcement in the vicinity of schools, student sessions on bicycle and pedestrian safety, health, and environment, and funding for training, volunteers, and managers of safe routes to school programs.
 - C. Safe Routes to School coordinator.
- 4. Planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

MWCOG has announced that it will be accepting both new project applications and applications requesting additional funding for existing Transportation Alternative Projects under the FY 2014 program.

The public hearing will be held in the Board Auditorium, at the Government Center, 12000 Government Center Parkway, in Fairfax. To sign up to speak at the public hearing, citizens should call the Clerk to the Board at (703) 324-3151, TDD (703) 324-3903. For more information on the Transportation Alternatives proposals, call the Fairfax County Department of Transportation at (703) 877-5600.

Board Agenda Item
May 14, 2013

ACTION – 1

Endorsement of Application for Safe Routes to School Grant (Providence District)

ISSUE:

Board endorsement of proposed Virginia Department of Transportation (VDOT) Safe Routes to School (SRTS) project application submitted to the Commonwealth Transportation Board (CTB) for funding consideration in FY 2013.

RECOMMENDATION:

The County Executive recommends the Board take the following actions:

1. Endorse the SRTS projects for which the applicant has submitted School Travel Plans and qualifies for SRTS Infrastructure Grant funding.
2. Approve a Project Endorsement Resolution for each project application endorsed by the Board (Attachments I and II).

The Board should be aware that any approved funds will be distributed by VDOT through the jurisdiction endorsing the project and that jurisdictions endorsing SRTS projects will be responsible for any cost overruns. The Board should also be aware that VDOT's SRTS program regulations require the sponsoring jurisdiction to accept responsibility for future maintenance and operating cost of any projects that are funded.

TIMING:

Action should be taken on this item on May 14, 2013. The applicant completed their application by VDOT's deadline of January 25, 2013, and VDOT indicated that subsequent application endorsement by the Board was acceptable.

BACKGROUND:

Safe Routes to School is a program to encourage community involvement in increasing the number of children that walk or bike to school. Each SRTS application must be generated from a School Travel Plan that is coordinated with the schools and the surrounding community. SRTS program Infrastructure Grant applications can be submitted by a group or school system, but are subject to public involvement and endorsement by the local jurisdiction.

Board Agenda Item
May 14, 2013

The VDOT SRTS funding available in FY 2013 is a special round of awards using previously unobligated funds. The funding available in FY 2013 for SRTS is separate from the FY 2014 Transportation Alternatives Program. Two FCPS schools have met the VDOT requirements for School Travel Plan submission, and were required to obtain Board endorsement of the Infrastructure Grant.

On February 26, 2013, the Board endorsed the SRTS Infrastructure Grant request of Flint Hill Elementary School, but the Board deferred action on the Graham Road Elementary School SRTS application pending additional community outreach and opportunity for input.

The Graham Road Elementary School SRTS applicant has completed additional community outreach/input and is requesting Board endorsement of their SRTS Infrastructure Grant request for potentially funding up to two projects:

- \$165,000 to improve the pedestrian infrastructure at the crosswalk in front of Graham Road Elementary School at the Graham Road and Oakland Avenue intersection with a raised median and RRFBS;
- \$165,000 to improve the pedestrian infrastructure at the crosswalk at the Graham Road and Rosemary Lane intersection with a raised median and RRFBS.

FISCAL IMPACT:
None at this time.

ENCLOSED DOCUMENTS:

Attachment I: Graham Road Elementary School Project Endorsement Resolution
Attachment II: Graham Road Elementary School Project Endorsement Resolution

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT
Karyn Moreland, Chief, Capital Projects Section, FCDOT
Kenneth Kanownik, Transportation Planner, Coordination and Funding Division, FCDOT
Chris Wells, Pedestrian Program Manager, Capital Projects Section, FCDOT

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, May 14, 2013, at which meeting a quorum was present and voting, the following resolution was adopted.

PROJECT ENDORSEMENT RESOLUTION

WHEREAS, in accordance with Safe Routes to School guidelines, it is necessary that a request by resolution be received from the local governing body in support of a proposed Safe Routes to School infrastructure project.

NOW, THEREFORE, BE IT RESOLVED that the County of Fairfax Board of Supervisors supports Graham Road Elementary School's Safe Routes to School Infrastructure Grant Application, in the amount of \$165,000, for the proposed project at the crosswalk in front of Graham Road Elementary School at the intersection of Graham Road and Oakland Avenue.

BE IT FURTHER RESOLVED, that the Board acknowledges this is a locally-administered, reimbursement project. And that Fairfax County will enter into an agreement with the Virginia Department of Transportation.

Adopted this ____ day of _____, 2013, Fairfax, Virginia

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, May 14, 2013, at which meeting a quorum was present and voting, the following resolution was adopted.

PROJECT ENDORSEMENT RESOLUTION

WHEREAS, in accordance with Safe Routes to School guidelines, it is necessary that a request by resolution be received from the local governing body in support of a proposed Safe Routes to School infrastructure project.

NOW, THEREFORE, BE IT RESOLVED that the County of Fairfax Board of Supervisors supports Graham Road Elementary School's Safe Routes to School Infrastructure Grant Application, in the amount of \$165,000, for the proposed project at the crosswalk at the intersection of Graham Road and Rosemary Lane.

BE IT FURTHER RESOLVED, that the Board acknowledges this is a locally-administered, reimbursement project. And that Fairfax County will enter into an agreement with the Virginia Department of Transportation.

Adopted this ____ day of _____, 2013, Fairfax, Virginia

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

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May 14, 2013

ACTION - 2

Approval of a Project Agreement and Funding for Tysons Metrorail Station Access Management Study (TMSAMS) Projects (Dranesville, Hunter Mill, and Providence Districts)

ISSUE:

Board approval to execute a project agreement with the Virginia Department of Transportation (VDOT) and spend up to \$22.4 million consisting of federal Regional Surface Transportation Program (RSTP) and Congestion Mitigation and Air Quality (CMAQ) funds for preliminary engineering, right-of-way and utilities, and construction expenses for the Tysons Metrorail Station Access Management Study (TMSAMS) transportation improvements.

RECOMMENDATION:

The County Executive recommends that the Board approve the project agreement in substantial form, including the provision of using up to \$22.4 million consisting of RSTP and CMAQ funds, subject to annual budget appropriation, for preliminary engineering, right-of-way and utilities, and construction expenses for the TMSAMS projects; and the Agreement Execution Resolution.

TIMING:

Board approval is requested on May 14, 2013, so that the project can move forward as expeditiously as possible.

DISCUSSION:

The Board is being requested to approve a “Programmatic” or “Master” project agreement for the TMSAMS projects which will result in subprojects. Staff is requesting the Board’s approval of funding for this program through FY18, subject to annual budget appropriation. The Commonwealth Transportation Board has approved allocations for this program through FY18.

The Board approved funding for the Tysons Metrorail Station Access Management Study (TMSAMS) project on June 1, 2009. The study looked at necessary transportation improvements to enhance multimodal access to and from the future Tysons Metrorail Stations – McLean, Tysons Corner, Greensboro, and Spring Hill Stations.

A TMSAMS advisory group was formed to guide the study through its completion, determine information to present to the public, and to collect public input. It consisted of representatives from Board of Supervisors district offices that encompass Tysons, residents from these districts, bicycle advocates, business representatives, the

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development community, as well as staff from various Fairfax County agencies. The Advisory Group selected a one-mile radius from each of the four Metrorail Stations in Tysons to evaluate planned sidewalk, trail, crosswalk, and internal bus service improvements in Tysons. A three-mile radius from the rail stations was used to evaluate planned bicycle facility improvements and planned neighborhood bus service. Planned regional bus service was considered for areas beyond the three-mile radius of the Metrorail Stations in Tysons, but typically within the boundaries of Fairfax County.

From the study, staff also developed the "FCDOT Staff Recommended List of TMSAMS Projects and Associated Cost Estimates" document included as Attachment 4. The Board approved this document of recommended TMSAMS improvements and associated costs on July 10, 2012, as part of the Board's third Four-Year Plan for Transportation (FY13-FY16). The attached list of projects totals \$14.7 million and the funding agreement totals \$22.4 million. This discrepancy is due to the fact that the attached project list addresses projects through FY16, and the funding agreement is through FY18.

FISCAL IMPACT:

Funding in the amount of \$22.4 million, through FY18 and subject to annual budget appropriation, is provided in this agreement for preliminary engineering, right-of-way and utilities, and construction expenses for the TMSAMS projects. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1: Standard Project Administration Agreement and Appendix A
Attachment 2: Memorandum of Agreement between Fairfax County and the Virginia Department of Transportation for Design Standards and Related Responsibilities for Maintenance of Streets in the Tysons Corner Urban Center
Attachment 3: Agreement Execution Resolution
Attachment 4: FCDOT Staff Recommended List of TMSAMS Projects and Associated Costs

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT
Todd Minnix, Chief, Transportation Design Division, FCDOT
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT
Erin C. Ward, Senior Assistant County Attorney
Ray Johnson, Senior Transportation Planner, Coordination and Funding Division, FCDOT
Janet Nguyen, Transportation Planner, Coordination and Funding Division, FCDOT

STANDARD PROJECT ADMINISTRATION AGREEMENT
Federal-aid Projects

Project Number	UPC	Local Government
9999-029-949	100469	Fairfax County

THIS AGREEMENT, made and executed in triplicate this ____ day of _____, 2013, by and between the County of Fairfax, Virginia, hereinafter referred to as the LOCALITY and the Commonwealth of Virginia, Department of Transportation, hereinafter referred to as the DEPARTMENT.

WHEREAS, the LOCALITY has expressed its desire to administer the work described in Appendix A, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds shown in Appendix A have been allocated to finance each Project; and

WHEREAS, the LOCALITY is committed to the development and delivery of each Project described in Appendix A in an expeditious manner; and;

WHEREAS, both parties have concurred in the LOCALITY's administration of the phase(s) of work for the respective Project(s) listed in Appendix A in accordance with applicable federal, state, and local law and regulations.

NOW THEREFORE, in consideration of the mutual premises contained herein, the parties hereto agree as follows:

1. The LOCALITY shall:
 - a. Be responsible for all activities necessary to complete the noted phase(s) of each Project shown in Appendix A, except for activities, decisions, and approvals which are the responsibility of the DEPARTMENT, as required by federal or state laws and regulations or as otherwise agreed to, in writing, between the parties. Each Project will be designed and constructed to meet or exceed current American Association of State Highway and Transportation Officials standards or supplementary standards approved by the DEPARTMENT
 - b. Meet all funding obligation and expenditure timeline requirements in accordance with all applicable federal and state laws and regulations, and Commonwealth Transportation Board and DEPARTMENT policies and as identified in Appendix A to this Agreement. Noncompliance with this requirement can result in deallocation of the funding, rescinding of state funding match, termination of this Agreement, or DEPARTMENT denial of future requests to administer projects by the LOCALITY.

- c. Receive prior written authorization from the DEPARTMENT to proceed with preliminary engineering, right-of-way acquisition and utility relocation, and construction phases of each Project.
- d. Administer the project(s) in accordance with guidelines applicable to Locally Administered Projects as published by the DEPARTMENT.
- e. Maintain accurate and complete records of each Project's development and documentation of all expenditures and make such information available for inspection or auditing by the DEPARTMENT. Records and documentation for items for which reimbursement will be requested shall be maintained for no less than three (3) years following acceptance of the final voucher on each Project.
- f. No more frequently than monthly, submit invoices with supporting documentation to the DEPARTMENT in the form prescribed by the DEPARTMENT. The supporting documentation shall include copies of related vendor invoices paid by the LOCALITY and an up-to-date project summary and schedule tracking payment requests and adjustments. A request for reimbursement shall be made within 90 days after any eligible project expenses are incurred by the Locality. For federally funded projects and pursuant to the Code of Federal Regulations, Title 49, Section 18.43, violations of the provision may result in the imposition of sanctions including but not limited to possible denial or delay of payment of all or a part of the costs associated with the activity or action not in compliance.
- g. Reimburse the DEPARTMENT all Project expenses incurred by the DEPARTMENT if, due to action or inaction solely by the LOCALITY, federally funded Project expenditures incurred are not reimbursed by the Federal Highway Administration (FHWA), or reimbursements are required to be returned to the FHWA, or in the event the reimbursement provisions of Section 33.1-44 or Section 33.1-70.01 of the Code of Virginia, 1950, as amended, or other applicable provisions of federal, state, or local law or regulations require such reimbursement.
- h. On Projects that the LOCALITY is providing the required match to state or federal funds, pay the DEPARTMENT the LOCALITY's match for eligible Project expenses incurred by the DEPARTMENT in the performance of activities set forth in paragraph 2.a.
- i. Administer the Project in accordance with all applicable federal, state, or local laws and regulations. Failure to fulfill legal obligations associated with the project may result in forfeiture of federal or state-aid reimbursements
- j. Provide certification by a LOCALITY official that all LOCALITY administered Project activities have been performed in accordance with all federal, state, and local laws and regulations. If the locality expends over

\$500,000 annually in federal funding, such certification shall include a copy of the LOCALITY's single program audit in accordance with Office of Management and Budget Circular A-133.

- k. If legal services other than that provided by staff counsel are required in connection with condemnation proceedings associated with the acquisition of Right-of-Way, the LOCALITY will consult with DEPARTMENT to obtain an attorney from the list of outside counsel approved by the Office of the Attorney General. Costs associated with outside counsel services shall be reimbursable expenses of the project.
 - l. For Projects on facilities not maintained by the DEPARTMENT, provide, or have others provide, maintenance of the Project upon completion, unless otherwise agreed to by the DEPARTMENT.
 - m. Ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964, regulations of the United States Department of Transportation (USDOT), Presidential Executive Orders and the Code of Virginia relative to nondiscrimination.
2. The DEPARTMENT shall:
- a. Perform any actions and provide any decisions and approvals which are the responsibility of the DEPARTMENT, as required by federal and state laws and regulations or as otherwise agreed to, in writing, between the parties and provide necessary coordination with the FHWA as determined to be necessary by the DEPARTMENT.
 - b. Upon receipt of the LOCALITY's invoices pursuant to paragraph 1.f., reimburse the LOCALITY the cost of eligible Project expenses, as described in Appendix A. Such reimbursements shall be payable by the DEPARTMENT within 30 days of an acceptable submission by the LOCALITY.
 - c. If appropriate, submit invoices to the LOCALITY for the LOCALITY's share of eligible project expenses incurred by the DEPARTMENT in the performance of activities pursuant to paragraph 2.a.
 - d. Audit the LOCALITY's Project records and documentation as may be required to verify LOCALITY compliance with federal and state laws and regulations.
 - e. Make available to the LOCALITY guidelines to assist the parties in carrying out responsibilities under this Agreement.
3. Appendix A identifies the funding sources for the project, phases of work to be administered by the LOCALITY, and additional project-specific requirements

agreed to by the parties. There may be additional elements that, once identified, shall be addressed by the parties hereto in writing, which may require an amendment to this Agreement.

4. If designated by the DEPARTMENT, the LOCALITY is authorized to act as the DEPARTMENT's agent for the purpose of conducting survey work pursuant to Section 33.1-94 of the Code of Virginia, 1950, as amended.
5. Nothing in this Agreement shall obligate the parties hereto to expend or provide any funds in excess of funds agreed upon in this Agreement or as shall have been included in an annual or other lawful appropriation. In the event the cost of a Project is anticipated to exceed the allocation shown for such respective Project on Appendix A, both parties agree to cooperate in providing additional funding for the Project or to terminate the Project before its costs exceed the allocated amount, however the DEPARTMENT and the LOCALITY shall not be obligated to provide additional funds beyond those appropriated pursuant to an annual or other lawful appropriation.
6. Nothing in this Agreement shall be construed as a waiver of the LOCALITY's or the Commonwealth of Virginia's sovereign immunity.
7. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
8. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the LOCALITY or the DEPARTMENT shall not be bound by any agreements between either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the LOCALITY or the DEPARTMENT has, in writing, receive a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.
9. This Agreement may be terminated by either party upon 30 days advance written notice. Eligible Project expenses incurred through the date of termination shall be

reimbursed in accordance with paragraphs 1.f, 1.g., and 2.b, subject to the limitations established in this Agreement and Appendix A. Upon termination, the DEPARTMENT shall retain ownership of plans, specifications, and right of way, unless all state and federal funds provided for the Project have been reimbursed to the DEPARTMENT by the LOCALITY, in which case the LOCALITY will have ownership of the plans, specifications, and right of way, unless otherwise mutually agreed upon in writing.

10. Prior to any action pursuant to paragraphs 1.b or 1.g of this Agreement, the DEPARTMENT shall provide notice to the LOCALITY with a specific description of the breach of agreement provisions. Upon receipt of a notice of breach, the LOCALITY will be provided the opportunity to cure such breach or to provide a plan to cure to the satisfaction to the DEPARTMENT. If, within sixty (60) days after receipt of the written notice of breach, the LOCALITY has neither cured the breach, nor is diligently pursuing a cure of the breach to the satisfaction of the DEPARTMENT, then upon receipt by the LOCALITY of a written notice from the DEPARTMENT stating that the breach has neither been cured, nor is the LOCALITY diligently pursuing a cure, the DEPARTMENT may exercise any remedies it may have under this Agreement.

THE LOCALITY and DEPARTMENT acknowledge and agree that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors, and assigns.

THIS AGREEMENT may be modified in writing by mutual agreement of both parties.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

COUNTY OF FAIRFAX, VIRGINIA:

Typed or printed name of signatory

Date

Title

Signature of Witness

Date

NOTE: The official signing for the LOCALITY must attach a certified copy of his or her authority to execute this Agreement.

COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION:

Commissioner of Highways
Commonwealth of Virginia
Department of Transportation

Date

Signature of Witness

Date

Attachments

Appendix A, UPC 100469

Project Number: 9999-029-949 UPC: 100469 Locality: Fairfax County

Project Location ZIP+4: 22031-6023	Locality DUNS# 074873626	Locality Address (incl ZIP+4): 4050 Legato Road, Suite 400, Fairfax, VA 22033-2867
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Project Narrative

Scope: Tysons Corner Metrorail Access Improvements Program

From: Throughout Rail Corridor

To: Throughout Rail Corridor

Locality Project Manager Contact info: Todd Minnix, 703-877-5749 wesley.minnix@fairfaxcounty.gov

Department Project Coordinator Contact Info: Jeffrey Daily, 703-259-2993 jeffrey.daily@vdot.virginia.gov

Project Estimates				
	Preliminary Engineering	Right of Way and Utilities	Construction	Total Estimated Cost
Estimated Locality Project Expenses				
Estimated VDOT Project Expenses				
Estimated Total Project Costs				

Project Cost and Reimbursement						
Phase	Estimated Project Costs	Funds type <i>(Choose from drop down box)</i>	Local % Participation for Funds Type	Local Share Amount	Maximum Reimbursement (Estimated Cost - Local Share)	Estimated Reimbursement to Locality (Max. Reimbursement - Est. VDOT Expenses)
Preliminary Engineering						
Total PE						
Right of Way & Utilities						
Total RW						
Construction						
Total CN						
Total Estimated Cost						

Total Maximum Reimbursement by VDOT to Locality (Less Local Share)	\$0
Estimated Total Reimbursement by VDOT to Locality (Less Local Share and VDOT Expenses)	\$0

Project Financing								
Previous RSTP	Previous RSTP State Match	FY14-FY18 RSTP	FY13-FY18 RSTP State Match	FY14 Federal STP	FY14 Federal STP Match	FY18 CMAQ	FY18 CMAQ Match	Aggregate Allocations (A+B+C+D+E+F)
\$2,400,000	\$600,000	\$13,059,286	\$3,264,821	\$1,354,832	\$338,708	\$1,155,155	\$288,789	\$22,461,591

Program and project Specific Funding Requirements

- This project shall be administered in accordance with VDOT's [Locally Administered Projects Manual](#)
- This is a "Programmatic" UPC; subsequent projects will be broken out from this project resulting in funding transfers and additional Appendix A's for this UPC.
 - This project will not be opened to charges.
 - VDOT will continue to seek additional funding opportunities to support the work to be accomplished under this program for Tyson's Improvements.
- The terms of the "Memorandum of Agreement between the Board of Supervisors of Fairfax County, Virginia and the Commonwealth of Virginia, Department of Transportation for Design Standards and Related Responsibilities for Maintenance of Streets in the Tysons Corner Urban Center" dated September 13, 2011 remain in effect for this project.
- This is a limited funds project. The Locality shall be responsible for any additional funding in excess of \$22,461,591 (if applicable)
- This project is funded with federal-aid Regional Surface Transportation Program (RSTP) funds. These funds must be obligated within 12 months of allocation and expended within 36 months of the obligation.
 - FY13 \$3,000,000 Allocation by the CTB 6/30/2012, Obligation deadline 6/30/2013, Expenditure deadline 6/30/2016
 - FY14 \$2,000,000 Allocation by the CTB 6/30/2013, Obligation deadline 6/30/2014, Expenditure deadline 6/30/2017
 - FY15 \$3,000,000 Allocation by the CTB 6/30/2014, Obligation deadline 6/30/2015, Expenditure deadline 6/30/2018
 - FY16 \$4,000,000 Allocation by the CTB 6/30/2015, Obligation deadline 6/30/2016, Expenditure deadline 6/30/2019
 - FY17 \$5,000,000 Allocation by the CTB 6/30/2016, Obligation deadline 6/30/2017, Expenditure deadline 6/30/2020
 - FY18 \$2,324,107 Allocation by the CTB 6/30/2017, Obligation deadline 6/30/2018, Expenditure deadline 6/30/2021
- This project is funded with federal-aid Congestion Mitigation and Air Quality Program (CMAQ) funds. These funds must be obligated within 24 months of allocation and expended within 48 months of the obligation.
 - FY18 \$1,443,944 Allocation by the CTB 6/30/2017, Obligation deadline 6/30/2019, Expenditure deadline 6/30/2023
- Total program allocations: \$22,461,591**

Authorized Locality Official and date

Typed or printed name of person signing

Authorized VDOT Official
Recommendation and Date

Typed or printed name of person signing

MEMORANDUM OF AGREEMENT
Between
BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA
And
COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION
For
DESIGN STANDARDS AND RELATED RESPONSIBILITIES FOR
MAINTENANCE OF STREETS IN THE TYSONS CORNER URBAN CENTER

THIS MEMORANDUM OF AGREEMENT ("**Agreement**") made and executed this 13th day of September, 2011, by and between the BOARD OF SUPERVISORS, FAIRFAX COUNTY, VIRGINIA, hereinafter referred to as the "**COUNTY**," and the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "**DEPARTMENT**," acting by its Commissioner. The COUNTY and the DEPARTMENT are sometimes hereinafter jointly referred to as "**Parties**". Such Parties are sometimes hereinafter referred to individually as "**Party**".

WITNESSETH

WHEREAS, the DEPARTMENT is responsible for the operation and maintenance of all State maintained streets in the COUNTY which have been accepted to the Secondary System of State Highways, hereinafter referred to as "**System**," pursuant to the Code of Virginia, and

WHEREAS, the COUNTY has adopted an amendment to the Fairfax County Comprehensive Plan for the Tysons Corner Urban Center, as identified in Attachment C and hereinafter referred to as "**Area**," that provides for a highly urban environment, and

WHEREAS, the COUNTY desires that streets lying within the Area have a distinctly urban character that creates a pedestrian friendly environment, and actively promotes multi-modal and non-motorized travel modes, and

WHEREAS, a critical component of the Comprehensive Plan for this Area is the creation of an urban street grid that is characterized by small grid blocks and high street connectivity in all directions, and

WHEREAS, the implementation of such a grid will occur in stages as new development and redevelopment occurs, and

WHEREAS, special procedures governing the acceptance of new streets into the System have been incorporated into the Virginia Administrative Code through the Secondary Street Acceptance Requirements, hereinafter referred to as "**SSAR**," and

WHEREAS, the SSAR procedures explicitly recognize the desirability of providing an interconnected roadway network and the frequent necessity of constructing this network in stages as new development and redevelopment occurs, and

WHEREAS, the SSAR procedures establish public benefit criteria for acceptance of secondary streets, including phased and stubbed streets into the System, and

WHEREAS, the creation of a grid of streets that will be phased in as new development and redevelopment occurs establishes a public benefit and necessity of acceptance of phased and stubbed streets into the System for maintenance; and

WHEREAS, the COUNTY desires that the streets within the Area, including phased and stubbed streets be maintained by the DEPARTMENT, and have ownership and usage rights comparable to other State maintained streets in the COUNTY, and

WHEREAS, VDOT's existing geometric Design Standards, hereinafter referred to as "VDOT Standards," currently in use by the DEPARTMENT do not sufficiently accommodate many of the urban features associated with the adopted Comprehensive Plan, and

WHEREAS, both the COUNTY and the DEPARTMENT agree that waivers of VDOT Standards, as explicitly permitted by that document, are necessary to accomplish the objectives of the adopted Comprehensive Plan, and

WHEREAS, §33.1-69.001 of the Code of Virginia directs the DEPARTMENT to work in conjunction with COUNTY and the Department of Rail and Public Transport to review new design standards for secondary streets in urban areas, and

WHEREAS, the COUNTY in partnership with the DEPARTMENT has developed Transportation Design Standards for the Tysons Corner Urban Center, dated September 13, 2011, attached herewith as Attachment D, hereinafter referred to as "Tysons Standards," and

WHEREAS, the Tysons Standards will supplement, as applicable, existing VDOT Standards, or, as applicable, the provisions of VDOT Standards shall be waived and the Tysons Standards shall control; and

WHEREAS, the Tysons Standards will facilitate implementation of the Comprehensive Plan for the Tysons Corner Urban Center; and.

WHEREAS, the Tysons Standards have been reviewed by staff of the COUNTY and the DEPARTMENT and are found to be acceptable, and

WHEREAS, the DEPARTMENT can agree to special non-VDOT construction that complies with all applicable safety standards, and as long as they are not maintained by DEPARTMENT.

NOW, THEREFORE, in consideration of the mutual premises contained herein, the Parties agree as follows:

SECTION 1

The DEPARTMENT shall:

- (a) Adopt the Tysons Standards for all non-limited access streets lying within the Area that are accepted into the System and maintained by the DEPARTMENT, including those existing at the date of this agreement, and those that may hereafter be submitted for acceptance into the System. The Tysons Standards may be updated periodically consistent with §33.1-69.001 of the Code of Virginia.
- (b) Review plans for new streets, and modifications to existing streets within the Area that may be maintained by the DEPARTMENT, for conformance with the Tysons Standards.
- (c) Approve plans for new streets, and modifications to existing streets within the Area that conform to the Tysons Standards, are in accordance with the established procedures for the DEPARTMENT's maintained streets, and that are consistent with the standards of other Departments of the Commonwealth. Pursuant to this paragraph, the Tysons Standards, Attachment D, are recognized as the adopted standards for streets within the Tysons Area, Attachment C, and shall supplement as applicable, the existing Road and Bridge Standards, or, as applicable, the provisions of the Road and Bridge Standards shall be waived and the Tysons Standards shall control.
- (d) Accept new streets into the System within the Area that conform to existing VDOT Road and Bridge Standards and the Tysons Standards, including phased and stubbed streets that conform to the SSAR, provided that temporary vehicle turnarounds for maintenance and public safety vehicles are accommodated in accordance with the SSAR, and provided that any maintenance of new streets not performed by the DEPARTMENT is assured through separate Permits or other agreements in accordance with SECTION 3 of this Agreement. For purposes of this Agreement, pursuant to the discretionary authority provided in 24VAC30-92-60 and 24VAC30-92-100, the criteria definitions within the SSAR used to bring streets into the secondary system for maintenance are expanded to recognize that creation of a grid of streets within the Tysons Corner Urban Center is an acceptable criterion to establish public benefit and necessity for acceptance of the phased and stubbed streets.
- (e) If Permit conditions and requirements of DEPARTMENT are met, DEPARTMENT shall not withhold, and agrees to issue Permits to the COUNTY and/or private parties, hereinafter referred to as "**Permitees**," for work to be performed on existing or future streets in the Area if such is in conformance with existing VDOT Road and Bridge Standards, the Tysons Standards, and the provisions of this Agreement.
- (f) Maintain existing streets in the Area that have been accepted into the Primary and Secondary System as of the date of this Agreement in accordance with the DEPARTMENT's established guidelines for these streets, subject to the special provisions enumerated in SECTION 3 of this Agreement, and agreed to by both parties.
- (g) Maintain future streets in the Area, including phased and stubbed streets that have been accepted into the Primary and Secondary system in accordance with the SSAR, and in

accordance with the DEPARTMENT's established guidelines for these streets, subject to the special provisions enumerated in SECTION 3 of this Agreement.

- (h) Ensure that its employees and contractors exercise all reasonable care and diligence in protecting specialized and architectural ancillary features and appurtenances within the right-of-way, consistent with standard practice.
- (i) On Secondary Local Streets where the right-of-way has been dedicated in fee simple to the COUNTY, review permit applications for, and give consideration to, placement of subsurface and overhead structures that are not listed in Attachments A and B, such as parking garages, pedestrian or vehicular tunnels, stairway access portals, utility and ventilation shafts, building awnings, and pedestrian bridges and their supporting structures, when such structures are permitted pursuant to development plans approved by the County. Such consideration shall be subject to review and approval by DEPARTMENT, will require issuance of a separate agreement or permit, and is subject to special conditions, waivers of liability, and indemnification. The DEPARTMENT is not obligated to construct, install, operate, maintain, or replace any such feature.

SECTION 2

The COUNTY shall:

- (a) Adopt the Tysons Standards for all non-limited access streets lying within the Area that are accepted into the System and maintained by the DEPARTMENT, including those existing at the date of this agreement, and those that may hereafter be submitted for acceptance into the System.
- (b) Ensure through its development review and approval processes that development that occurs within the Area is in conformance with the Tysons Standards.
- (c) Ensure through its development review and approval process that sufficient provisions and access rights are provided on any new street constructed as a phased or stubbed street, to allow for maintenance and public safety vehicles on such streets to safely turn around at the terminus of the street.
- (d) Ensure that on-street parking is restricted on emergency snow routes in inclement weather such that snow and other material that is removed from roadway surfaces during such periods can be stored in a fashion that does not obstruct travel lanes.

SECTION 3

The PARTIES respectively further agree as follows:

- (a) This Agreement does not place any additional obligation on the COUNTY or the DEPARTMENT to maintain, repair or replace any structure or facility, or any portion thereof, not already existing within the State maintained street right-of-way which has been accepted into the state system of highways.
- (b) This Agreement does not commit the COUNTY or the DEPARTMENT to removal of snow from sidewalks and parking bays, or from travel lanes where plowing is blocked by vehicles.
- (c) The placement of assets including pavement, curb-and-gutter, drainage, signs, signals and signal control systems, structures, and other ancillary features within the State right-of-way shall conform to the Tysons Standards, and the DEPARTMENT's standards for maintenance in effect at the time of site plan review, except as otherwise set forth in paragraph (d).
- (d) The placement of certain ancillary features and appurtenances within the street right-of-way that are not conventionally part of the current standards of the DEPARTMENT as described in paragraph (c) of this section are subject to review and approval by the DEPARTMENT to ensure that such features do not adversely affect the safety of the users of this right-of-way. The DEPARTMENT's review of ancillary features and appurtenances shall be restricted to safety and operational issues, as well as control of outdoor advertising for architectural and aesthetic appearance, except for conformance with Chapter 7 of Title 33.1 of the Code of Virginia. Bus shelters and other structures placed within the right-of-way may require review and/or approval by the State Architecture Review Board, Department of General Services. Facilities and materials included in this paragraph may consist of, but are not exclusively limited to those identified on Attachments A and B of this Agreement. Such facilities when approved by the Department shall be subject to the following:
 - 1. Any feature described in this paragraph shall be allowed only through the issuance of appropriate permits by the DEPARTMENT and submittal by Permittee of required maintenance bond or other financial security. DEPARTMENT shall establish a reasonable amount for the bond or financial security to cover the replacement or removal of certain ancillary features and appurtenances within the street right-of-way that are not conventionally part of the current standards of the DEPARTMENT.
 - 2. The DEPARTMENT is not obligated to construct, install, operate, maintain, or replace any such feature.
 - 3. That all such features will be operated and maintained by the holder of the DEPARTMENT permit for such feature, in a fashion that does not adversely affect the safety of the users of the State maintained street right-of-way.

- (e) The DEPARTMENT will operate and maintain all features meeting the DEPARTMENT's standards as described in paragraph (c) of this section, or as may be permitted pursuant to paragraph (d) of this section, in a fashion consistent with the maintenance and operations practices and procedures followed by the DEPARTMENT throughout Fairfax County.
- (f) In the case where any such feature is altered, damaged, or otherwise rendered unsafe or poses a potential hazard to users of the State maintained street right-of-way such that emergency repair or replacement is necessary, or in the case where in the judgment sole discretion of the DEPARTMENT the operation and maintenance of the feature by others poses a potential hazard, the DEPARTMENT will remedy, at the Permittee cost, the immediate safety hazard through provision of its standard materials, procedures and practices. Such remedial measures shall be non-destructive to surrounding infrastructure, temporary in nature, and will remain in place until suitable replacements are provided and installed by the Permittee under the applicable Permit issued by the DEPARTMENT. Materials provided by the DEPARTMENT installed on an emergency basis that can be re-used will be returned to the DEPARTMENT.
- (g) The DEPARTMENT shall not restrict, prohibit or otherwise hinder the COUNTY's ability to enter into separate agreements with private parties or contractors to maintain, replace, or reconstruct those facilities and materials included in Attachments A and B, in as much as the DEPARTMENT is ultimately not responsible for these activities pursuant to the terms of this agreement, and that such separate agreements shall require compliance with the provisions of paragraph (d).
- (h) All notices shall be in writing, addressed as provided below. All notices shall be made, and be deemed effective, when personally delivered, given by prepaid United States registered or certified mail, return receipt requested, addressee only, or given by overnight mail service, accepted by the addressee or by an employee at the addressee's office. Notices may also be given to such other address or contact person as either Party may direct in writing.

If to COUNTY:
County Executive

Fairfax County, Virginia
12000 Government Center Pkwy
Fairfax, Virginia 22035

With a copy to:
Director, Fairfax County
Department of Transportation
4050 Legato Road, Suite 400
Fairfax, Virginia 222033

If to DEPARTMENT:

District Administrator
Northern Virginia District
Virginia Department of Transportation
4975 Alliance Drive
Fairfax, Virginia 22030

- (i) The COUNTY or private parties shall not restrict, prohibit or otherwise hinder the DEPARTMENT's ability to construct facilities included in Attachments A and B.
- (j) All of the obligations of the Parties, as the case may be, under this Agreement are subject to the annual appropriation of funds by the General Assembly of Virginia and the Fairfax County Board of Supervisors, as applicable, for the purpose of satisfying the payment and performance of such obligations.
- (k) No provision of this Agreement shall be construed as either Party, explicitly or implicitly, agreeing to indemnify or hold harmless the other Party or any third persons or entities for liability of any nature, except to the extent permitted by Virginia law and required by the laws and regulations of the Commonwealth.
- (l) The failure or delay by one Party to enforce its rights pursuant to this Agreement against the other Party shall not constitute a waiver of such rights.
- (m) The Parties mutually agree and acknowledge that in entering this Agreement that the individuals acting on behalf of the Parties are acting within the scope of their official authority and no breach or violation of the terms of this Agreement shall subject any official, officer, employee or agent of either Party to any personal liability or consequence and no suit to enforce the terms and conditions of this agreement shall be brought against any such individual in his personal capacity by either Party. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
- (n) Unless otherwise provided herein, the Recitals and Attachments are hereby incorporated into this Agreement.
- (o) This Agreement contains the entire agreement of the Parties. No representations, inducements or agreements, oral or otherwise, between the Parties not contained in this Agreement shall be of any force or effect.
- (p) This Agreement shall be construed, interpreted and applied according to the laws of the Commonwealth of Virginia.
- (q) Each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. If any provision of this Agreement or the application thereof shall be held invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions shall not be affected thereby.

- (r) The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise.

SECTION IV

- (a) This Agreement shall be effective on the date when it is executed by the Commissioner hereto ("**Effective Date**").
- (b) Nothing in this Agreement shall be construed as a waiver of the COUNTY's or the Commonwealth of Virginia's sovereign immunity.
- (c) The COUNTY and DEPARTMENT acknowledge and agree that this Agreement has been agreed to by the Parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any Party.
- (d) This Agreement, when properly executed, shall be binding upon Parties, their successors, and assigns.
- (e) This Agreement may be modified in writing by mutual agreement of both Parties when such modification is executed by duly authorized individuals on behalf of such Parties.

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

Attest:

BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

Nancy Velus
As to BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

By: Sharon A. Bulova
Sharon A. Bulova, Chairman

Attest:

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF
TRANSPORTATION

Brenda P. Crouch
As to the Commonwealth

By: Gregory A. Whirley
Gregory A. Whirley, Commissioner of Highways

Attachment A

Facilities not included in the standards employed by the DEPARTMENT

1. Decorative and ornamental area and spot lighting features;
2. Decorative and ornamental traffic signals, or other decorative and ornamental traffic appurtenances;
3. Special landscaping materials, planting beds, raised planters, street trees, root cell structures, tree cages, and other decorative landscaping materials (See Attachment B for conceptual graphic examples);
4. Special and decorative roadway or sidewalk paving materials such as stamped concrete or stone pavers, and porous paving;
5. Special drainage features, underground storage and mechanical vault structures, and innovative drainage features such as rain gardens (See Attachment B for conceptual graphic examples);
6. Special signage, such as way finding signs;
7. Street furniture such as benches, trash receptacles, kiosks, outside seating areas, and other similar items;
8. Bus shelters and other transit-related facilities;
9. Parking meters; and
10. Decorative, not standard retaining walls.

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, May 14, 2013, at which meeting a quorum was present and voting, the following resolution was adopted.

AGREEMENT EXECUTION RESOLUTION

WHEREAS, in accordance with Virginia Department of Transportation project agreement procedures, it is necessary that a resolution be received from the local government authorizing execution of an agreement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, authorizes County staff to execute on behalf of the County of Fairfax a Project Administration Agreement with the Virginia Department of Transportation for Tysons Metrorail Station Access Management Study Projects by the County of Fairfax.

Adopted this _____ day of _____, 2013, Fairfax, Virginia

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

**FCDOT Staff Recommended List of TMSAMS Projects and Associated Cost Estimates
Approved - Four-Year Program (FY13-FY16) - TMSAMS Projects**

Next Four-Year Program - Proposed Projects (RMAG)					
Route #	TMSAMS ID	Project Name	District	Allocated (\$mil)	
xxxx	SW #12	Scotts Run Walkway	PR	\$2.500	RSTP
123	SW #8	Chain Bridge Road Walkway	PR	\$0.750	RSTP
650	SW #16	Gallows Road Walkway	PR	\$0.250	RSTP
3402	SW #15	Aline Avenue Walkway	PR	\$0.250	RSTP
839	SW #14	Madrillon Road Walkway	PR	\$0.250	RSTP
5062	SW #7	Jones Branch Drive Walkway	PR	\$0.400	RSTP
7	CW #9	Leesburg Pike/Gosnell/Westpark	HM	\$0.250	RSTP
7	CW #8	Leesburg Pike/Spring Hill Road	HM	\$0.250	RSTP
7	CW #1	Leesburg Pike/Tyco/Westwood Ctr	HM	\$0.250	RSTP
6054	CW #29	Solutions Dr/Greensboro Blvd	PR	\$0.050	RSTP
650	CW #17	Gallows Rd/Gallows Branch Rd	PR	\$0.250	RSTP
677	CW #15	Old Courthouse Rd/Woodford Rd	PR	\$0.200	RSTP
650	CW #19	Gallows Rd/Boone Blvd	PR	\$0.150	RSTP
786	CW #18	Boone Blvd/Aline Ave	PR	\$0.050	RSTP
6034	CW #31	International Dr/Jones Br/Spring Hill	PR	\$0.150	RSTP
6034	CW #30	International Dr/Tysons Blvd	PR	\$0.150	RSTP
5061	CW #34	Westpark Dr/Jones Branch Dr	PR	\$0.150	RSTP
5457	CW #33	Westbranch Dr/Westpark Dr	PR	\$0.100	RSTP
5457	CW #32	Westbranch Dr/Jones Branch Dr	PR	\$0.100	RSTP
3543	CW #35	Old Meadow Rd/Old Meadow La	PR	\$0.050	RSTP
1074	CW #42	Colonial La/Chain Bridge Rd	PR	\$0.050	RSTP
1549	CW #43	Seneca Ave/Chain Bridge Rd	PR	\$0.050	RSTP
4018	CW #10	Tyspring St/Gosnell Rd	HM	\$0.050	RSTP
8733	CW #11	Raglan Rd/Gosnell Rd	HM	\$0.050	RSTP
2736	CW #12	Wall St/Gosnell Rd	HM	\$0.050	RSTP
xxxx	TR #D	Vesper Court Trail	HM	\$1.000	RSTP
xxxx	TR #A	Ashgrove Lane Trail	HM	\$0.500	RSTP
677		Old Courthouse Rd Bike Shoulders	HM	\$0.115	RSTP
936		Sandburg St Trail	PR	\$0.150	RSTP
695		Idylwood Road Bike Lanes	PR	\$1.050	RSTP
xxxx		Pavement Marking Plans	PR	\$0.100	RSTP
xxxx		Tysons Wayfinding Signage	PR	\$0.100	RSTP
xxxx		Tysons Pavement Markings	PR	\$0.015	RSTP
7		Route 7 Shared Use Paths	DR	\$4.500	RSTP
xxxx		Construction Reserve	CW	\$0.354	RSTP
				\$14.684	

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May 14, 2013

ACTION - 3

Approval of a Project Agreement and Funding for Reston Metrorail Access Group (RMAG) Projects (Hunter Mill District)

ISSUE:

Board approval to execute a project agreement with the Virginia Department of Transportation (VDOT) and spend up to \$24.5 million in federal Regional Surface Transportation Program (RSTP) funds for preliminary engineering, right-of-way and utilities, and construction expenses for the Reston Metrorail Access Group (RMAG) transportation improvements.

RECOMMENDATION:

The County Executive recommends that the Board approve the project agreement in substantial form, including the provision of using up to \$24.5 million in RSTP funds, subject to annual budget appropriation, for the preliminary engineering, right-of-way and utilities, and construction expenses of the RMAG transportation program improvements; and, the Agreement Execution Resolution.

TIMING:

Board approval is requested on May 14, 2013, so that the project can move forward as expeditiously as possible.

DISCUSSION:

The Board is being requested to approve a “Programmatic” or “Master” project agreement for the RMAG projects which will result in subprojects. Staff is requesting the Board’s approval of funding for this program through FY18, subject to annual budget appropriation. The Commonwealth Transportation Board has approved allocations for this program through FY18.

In Spring 2006, the County initiated the Wiehle Avenue/Reston Parkway Station Access Management Plans study to consider the current status and future needs in the vicinity of the two stations to provide pedestrian and bicycle access, to provide effective bus feeder service, and to deal with traffic projected in the area of the stations. A project team headed by Vanasse Hangen Brustlin, working closely with County staff and the Reston Metrorail Access Group (RMAG), a citizens group appointed by Supervisor Cathy Hudgins, conducted inventories of existing facilities, examined forecasts of the

Board Agenda Item
May 14, 2013

projected modal demands for 2030, identified current and projected deficiencies of the existing roadways, transit services, pedestrian facilities and bike facilities, developed principles for the priority to be given to each mode in developing solutions, and developed a prioritized program of recommended actions.

The Wiehle Avenue/Reston Parkway Station Access Management Plan was completed in April 2008. It identified traffic improvements with an emphasis on feeder bus services, pedestrian movements, and bicycle access.

The Board approved a list of staff recommended RMAG improvements and associated costs on July 10, 2012. The list, "Approved Four Year Program (FY13-FY16) – RMAG Projects", is included as Attachment 3. The attached list of projects totals \$16 million and the funding agreement totals \$24.5 million. This discrepancy is due to the fact that the attached project list addresses projects through FY16, and the funding agreement is through FY18.

FISCAL IMPACT:

Funding in the amount of \$24.5 million, through FY18 and subject to annual budget appropriation, is provided in this agreement for preliminary engineering, right-of-way and utilities, and construction expenses for the RMAG improvements. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1: Standard Project Administration Agreement and Appendix A
Attachment 2: Agreement Execution Resolution
Attachment 3: Approved Four Year Program (FY13-FY16) – RMAG Projects

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT
Todd Minnix, Chief, Transportation Design Division, FCDOT
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT
Erin C. Ward, Senior Assistant County Attorney
Ray Johnson, Senior Transportation Planner, Coordination and Funding Division, FCDOT
Janet Nguyen, Transportation Planner, Coordination and Funding Division, FCDOT

STANDARD PROJECT ADMINISTRATION AGREEMENT
Federal-aid Projects

Project Number	UPC	Local Government
9999-029-950	100470	Fairfax County

THIS AGREEMENT, made and executed in triplicate this ____ day of _____, 2013, by and between the County of Fairfax, Virginia, hereinafter referred to as the LOCALITY and the Commonwealth of Virginia, Department of Transportation, hereinafter referred to as the DEPARTMENT.

WHEREAS, the LOCALITY has expressed its desire to administer the work described in Appendix A, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds shown in Appendix A have been allocated to finance each Project; and

WHEREAS, the LOCALITY is committed to the development and delivery of each Project described in Appendix A in an expeditious manner; and;

WHEREAS, both parties have concurred in the LOCALITY's administration of the phase(s) of work for the respective Project(s) listed in Appendix A in accordance with applicable federal, state, and local law and regulations.

NOW THEREFORE, in consideration of the mutual premises contained herein, the parties hereto agree as follows:

1. The LOCALITY shall:
 - a. Be responsible for all activities necessary to complete the noted phase(s) of each Project shown in Appendix A, except for activities, decisions, and approvals which are the responsibility of the DEPARTMENT, as required by federal or state laws and regulations or as otherwise agreed to, in writing, between the parties. Each Project will be designed and constructed to meet or exceed current American Association of State Highway and Transportation Officials standards or supplementary standards approved by the DEPARTMENT
 - b. Meet all funding obligation and expenditure timeline requirements in accordance with all applicable federal and state laws and regulations, and Commonwealth Transportation Board and DEPARTMENT policies and as identified in Appendix A to this Agreement. Noncompliance with this requirement can result in deallocation of the funding, rescinding of state funding match, termination of this Agreement, or DEPARTMENT denial of future requests to administer projects by the LOCALITY.

- c. Receive prior written authorization from the DEPARTMENT to proceed with preliminary engineering, right-of-way acquisition and utility relocation, and construction phases of each Project.
- d. Administer the project(s) in accordance with guidelines applicable to Locally Administered Projects as published by the DEPARTMENT.
- e. Maintain accurate and complete records of each Project's development and documentation of all expenditures and make such information available for inspection or auditing by the DEPARTMENT. Records and documentation for items for which reimbursement will be requested shall be maintained for no less than three (3) years following acceptance of the final voucher on each Project.
- f. No more frequently than monthly, submit invoices with supporting documentation to the DEPARTMENT in the form prescribed by the DEPARTMENT. The supporting documentation shall include copies of related vendor invoices paid by the LOCALITY and an up-to-date project summary and schedule tracking payment requests and adjustments. A request for reimbursement shall be made within 90 days after any eligible project expenses are incurred by the Locality. For federally funded projects and pursuant to the Code of Federal Regulations, Title 49, Section 18.43, violations of the provision may result in the imposition of sanctions including but not limited to possible denial or delay of payment of all or a part of the costs associated with the activity or action not in compliance.
- g. Reimburse the DEPARTMENT all Project expenses incurred by the DEPARTMENT if, due to action or inaction solely by the LOCALITY, federally funded Project expenditures incurred are not reimbursed by the Federal Highway Administration (FHWA), or reimbursements are required to be returned to the FHWA, or in the event the reimbursement provisions of Section 33.1-44 or Section 33.1-70.01 of the Code of Virginia, 1950, as amended, or other applicable provisions of federal, state, or local law or regulations require such reimbursement.
- h. On Projects that the LOCALITY is providing the required match to state or federal funds, pay the DEPARTMENT the LOCALITY's match for eligible Project expenses incurred by the DEPARTMENT in the performance of activities set forth in paragraph 2.a.
- i. Administer the Project in accordance with all applicable federal, state, or local laws and regulations. Failure to fulfill legal obligations associated with the project may result in forfeiture of federal or state-aid reimbursements
- j. Provide certification by a LOCALITY official that all LOCALITY administered Project activities have been performed in accordance with all federal, state, and local laws and regulations. If the locality expends over

\$500,000 annually in federal funding, such certification shall include a copy of the LOCALITY's single program audit in accordance with Office of Management and Budget Circular A-133.

- k. If legal services other than that provided by staff counsel are required in connection with condemnation proceedings associated with the acquisition of Right-of-Way, the LOCALITY will consult with DEPARTMENT to obtain an attorney from the list of outside counsel approved by the Office of the Attorney General. Costs associated with outside counsel services shall be reimbursable expenses of the project.
 - l. For Projects on facilities not maintained by the DEPARTMENT, provide, or have others provide, maintenance of the Project upon completion, unless otherwise agreed to by the DEPARTMENT.
 - m. Ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964, regulations of the United States Department of Transportation (USDOT), Presidential Executive Orders and the Code of Virginia relative to nondiscrimination.
2. The DEPARTMENT shall:
- a. Perform any actions and provide any decisions and approvals which are the responsibility of the DEPARTMENT, as required by federal and state laws and regulations or as otherwise agreed to, in writing, between the parties and provide necessary coordination with the FHWA as determined to be necessary by the DEPARTMENT.
 - b. Upon receipt of the LOCALITY's invoices pursuant to paragraph 1.f., reimburse the LOCALITY the cost of eligible Project expenses, as described in Appendix A. Such reimbursements shall be payable by the DEPARTMENT within 30 days of an acceptable submission by the LOCALITY.
 - c. If appropriate, submit invoices to the LOCALITY for the LOCALITY's share of eligible project expenses incurred by the DEPARTMENT in the performance of activities pursuant to paragraph 2.a.
 - d. Audit the LOCALITY's Project records and documentation as may be required to verify LOCALITY compliance with federal and state laws and regulations.
 - e. Make available to the LOCALITY guidelines to assist the parties in carrying out responsibilities under this Agreement.
3. Appendix A identifies the funding sources for the project, phases of work to be administered by the LOCALITY, and additional project-specific requirements

agreed to by the parties. There may be additional elements that, once identified, shall be addressed by the parties hereto in writing, which may require an amendment to this Agreement.

4. If designated by the DEPARTMENT, the LOCALITY is authorized to act as the DEPARTMENT's agent for the purpose of conducting survey work pursuant to Section 33.1-94 of the Code of Virginia, 1950, as amended.
5. Nothing in this Agreement shall obligate the parties hereto to expend or provide any funds in excess of funds agreed upon in this Agreement or as shall have been included in an annual or other lawful appropriation. In the event the cost of a Project is anticipated to exceed the allocation shown for such respective Project on Appendix A, both parties agree to cooperate in providing additional funding for the Project or to terminate the Project before its costs exceed the allocated amount, however the DEPARTMENT and the LOCALITY shall not be obligated to provide additional funds beyond those appropriated pursuant to an annual or other lawful appropriation.
6. Nothing in this Agreement shall be construed as a waiver of the LOCALITY's or the Commonwealth of Virginia's sovereign immunity.
7. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
8. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the LOCALITY or the DEPARTMENT shall not be bound by any agreements between either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the LOCALITY or the DEPARTMENT has, in writing, receive a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.
9. This Agreement may be terminated by either party upon 30 days advance written notice. Eligible Project expenses incurred through the date of termination shall be

reimbursed in accordance with paragraphs 1.f, 1.g., and 2.b, subject to the limitations established in this Agreement and Appendix A. Upon termination, the DEPARTMENT shall retain ownership of plans, specifications, and right of way, unless all state and federal funds provided for the Project have been reimbursed to the DEPARTMENT by the LOCALITY, in which case the LOCALITY will have ownership of the plans, specifications, and right of way, unless otherwise mutually agreed upon in writing.

10. Prior to any action pursuant to paragraphs 1.b or 1.g of this Agreement, the DEPARTMENT shall provide notice to the LOCALITY with a specific description of the breach of agreement provisions. Upon receipt of a notice of breach, the LOCALITY will be provided the opportunity to cure such breach or to provide a plan to cure to the satisfaction to the DEPARTMENT. If, within sixty (60) days after receipt of the written notice of breach, the LOCALITY has neither cured the breach, nor is diligently pursuing a cure of the breach to the satisfaction of the DEPARTMENT, then upon receipt by the LOCALITY of a written notice from the DEPARTMENT stating that the breach has neither been cured, nor is the LOCALITY diligently pursuing a cure, the DEPARTMENT may exercise any remedies it may have under this Agreement.

THE LOCALITY and DEPARTMENT acknowledge and agree that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors, and assigns.

THIS AGREEMENT may be modified in writing by mutual agreement of both parties.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

COUNTY OF FAIRFAX, VIRGINIA:

Typed or printed name of signatory

Date

Title

Signature of Witness

Date

NOTE: The official signing for the LOCALITY must attach a certified copy of his or her authority to execute this Agreement.

COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION:

Commissioner of Highways
Commonwealth of Virginia
Department of Transportation

Date

Signature of Witness

Date

Attachments

Appendix A, UPC 100470

Project Number: 9999-029-950	UPC: 100470	Locality: Fairfax County
Project Location ZIP+4: 22031-6023	Locality DUNS# 074873626	Locality Address (incl ZIP+4): 4050 Legato Road, Suite 400, Fairfax, VA 22033-2867

Project Narrative	
Scope:	Reston Metrorail Access Improvements Program
From:	Reston Metro Station
To:	Sunset Hills Road
Locality Project Manager Contact info:	Todd Minnix, 703-877-5749 wesley.minnix@fairfaxcounty.gov
Department Project Coordinator Contact Info:	Jeffrey Daily, 703-259-2993 jeffrey.daily@vdot.virginia.gov

Project Estimates				
	Preliminary Engineering	Right of Way and Utilities	Construction	Total Estimated Cost
Estimated Locality Project Expenses				
Estimated VDOT Project Expenses				
Estimated Total Project Costs				

Project Cost and Reimbursement						
Phase	Estimated Project Costs	Funds type <i>(Choose from drop down box)</i>	Local % Participation for Funds Type	Local Share Amount	Maximum Reimbursement (Estimated Cost - Local Share)	Estimated Reimbursement to Locality (Max. Reimbursement - Est. VDOT Expenses)
Preliminary Engineering						
Total PE						
Right of Way & Utilities						
Total RW						
Construction						
Total CN						
Total Estimated Cost						

Total Maximum Reimbursement by VDOT to Locality (Less Local Share)	\$0
Estimated Total Reimbursement by VDOT to Locality (Less Local Share and VDOT Expenses)	\$0

Project Financing								
Previous RSTP	Previous RSTP State Match	FY13-FY18 RSTP	FY13-FY18 RSTP State Match	FY14 Federal STP	FY14 Federal STP Match	FY16 Federal STP	FY18 fed STP Match	Aggregate Allocations (A+B+C+D+E+F)
\$2,400,000	\$600,000	\$14,000,000	\$3,500,000	\$387,150	\$96,788	\$2,812,850	\$703,212	\$24,500,000

Program and project Specific Funding Requirements	
<ul style="list-style-type: none"> This project shall be administered in accordance with VDOT's <u>Locally Administered Projects Manual</u> This is a "Programmatic" UPC; subsequent projects will be broken out from this project resulting in funding transfers and additional Appendix A's for this UPC. This project is funded with federal-aid Regional Surface Transportation Program (RSTP) funds. These funds must be obligated within 12 months of allocation and expended within 36 months of the obligation. <ul style="list-style-type: none"> FY13 \$3,000,000 Allocation by the CTB 6/30/2012, Obligation deadline 6/30/2013, Expenditure deadline 6/30/2016 FY14 \$2,000,000 Allocation by the CTB 6/30/2013, Obligation deadline 6/30/2014, Expenditure deadline 6/30/2017 FY15 \$3,000,000 Allocation by the CTB 6/30/2014, Obligation deadline 6/30/2015, Expenditure deadline 6/30/2018 FY16 \$4,000,000 Allocation by the CTB 6/30/2015, Obligation deadline 6/30/2016, Expenditure deadline 6/30/2019 FY17 \$5,000,000 Allocation by the CTB 6/30/2016, Obligation deadline 6/30/2017, Expenditure deadline 6/30/2020 FY18 \$3,500,000 Allocation by the CTB 6/30/2017, Obligation deadline 6/30/2018, Expenditure deadline 6/30/2021 	<ul style="list-style-type: none"> This project will not be opened to charges. The Locality and VDOT will continue to seek additional funding opportunities to support the work to be accomplished under this program for Tyson's Improvements. This is a limited funds project. The Locality shall be responsible for any additional funding in excess of \$24,500,000 (if applicable)
<ul style="list-style-type: none"> Total program allocations: <u>\$24,500,000</u> 	

Authorized Locality Official and date

Typed or printed name of person signing

Authorized VDOT Official
Recommendation and Date

Typed or printed name of person signing

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, May 14, 2013, at which meeting a quorum was present and voting, the following resolution was adopted.

AGREEMENT EXECUTION RESOLUTION

WHEREAS, in accordance with Virginia Department of Transportation project agreement procedures, it is necessary that a resolution be received from the local government authorizing execution of an agreement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, authorizes County staff to execute on behalf of the County of Fairfax a Project Administration Agreement with the Virginia Department of Transportation for the Reston Metrorail Access Group Projects by the County of Fairfax.

Adopted this ____ day of _____, 2013, Fairfax, Virginia

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

Approved - Four-Year Program (FY13-FY16) - RMAG Projects

Next Four-Year Program - Proposed Projects (RMAG)					
Route #	RMAG ID	Project Name	District	Allocated (\$mil)	Funding Source
xxxx	K	Isaac Newton Sq W	HM	\$2.234	RSTP
5320	I24	Sunrise Valley Dr/Commerce Pk Dr	HM	\$0.054	RSTP
5320	I27	Sunrise Valley Dr/Great Meadow/Centennial	HM	\$0.097	RSTP
828	I32	Wiehle Ave/ DTR Ramps	HM	\$0.019	RSTP
828	X1	Wiehle Ave @ W&OD Trail (Ph I)	HM	\$0.046	RSTP
675	I3	Sunset Hills Rd/Town Center Parkway	HM	\$0.200	RSTP
5320	I12	Sunrise Valley Dr/Mercator Dr-USGS	HM	\$0.200	RSTP
5320	S9	Sunrise Valley Dr-South Side from Glade Dr to Reston Pkwy	HM	\$3.882	RSTP
xxxx	S11	Isaac Newton Sq W Walkway	HM	\$0.283	RSTP
828	S15, B10	Wiehle Ave Station Walkway/Bikeway	HM	\$0.500	RSTP
828	B14	Wiehle Ave @ W&OD Trail (Ph II)	HM	\$2.337	RSTP
7414		Town Center Pkwy	HM	\$6.148	RSTP
				\$16.000	

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Board Agenda Item
May 14, 2013

ACTION - 4

Approval of a Project Agreement and Funding for the Tysons-Wide Roadway Improvement Project, Jones Branch Connector (Providence District)

ISSUE:

Board approval to execute a project agreement with the Virginia Department of Transportation (VDOT) and use \$2.4 million in federal Regional Surface Transportation Program (RSTP) funds for the preliminary engineering and associated expenses for the Jones Branch Connector project.

RECOMMENDATION:

The County Executive recommends that the Board approve the project agreement in substantial form, including the provision of using \$2.4 million in RSTP funds for the preliminary engineering and associated expenses of the Jones Branch Connector; and the Agreement Execution Resolution.

TIMING:

Board approval is requested on May 14, 2013, so that the project can move forward as expeditiously as possible.

DISCUSSION:

This project was originally part of the VDOT project UPC 100478 (Tysons Roadway Improvements), a larger project to address all Table 7 Tysons-wide roadway improvements in the Tysons Comprehensive Plan. The project will now be identified in VDOT's Six-Year Improvement Program with UPC 103907. The Jones Branch Connector project is fully funded under the Board's third Four-Year Transportation Plan (FY13-FY16) through a variety of local, federal, and private sources.

The Jones Branch Connector Project is located in the Tysons area and involves the reconstruction and extension of what is now Scotts Crossing Road across I-495 to tie into existing Jones Branch Drive. The project begins along Jones Branch Drive approximately 1,700 feet north of its intersection with Westpark Drive and extends across I-495 and the I-495 Express Lanes and generally follows the existing alignment of Scotts Crossing Road to its intersection with Dolley Madison Boulevard (Rte. 123) at Colshire Drive. Total project length is approximately 0.55 miles. The project will require widening of the existing I-495 Express Lane bridge(s) over the

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I-495 outer loop (southbound) and design of new bridges and structures spanning the I-495 inner loop (northbound) and Express Lanes.

FCDOT will have overall project oversight responsibility during the final design phase of the project. Upon completion of final design; plans, specifications and estimates (PS&E) documents will be provided to the Virginia Department of Transportation (VDOT) which will then advertise, award and have overall oversight responsibility of the construction phase of the project. FCDOT's current total project estimate (TPE) for this project is approximately \$40 million. Early estimates for preliminary engineering costs are \$2.4 million. Total right-of-way and utility costs are estimated to be \$7 million, and these costs will be funded/proffered from local and private sources.

FISCAL IMPACT:

Funding in the amount of \$9.4 million is provided in this agreement for preliminary engineering and associated expenses, and right-of-way and utilities for the Jones Branch Connector project. County funds are available for this project from the County's Commercial and Industrial Tax Fund 40010 for all locally funded expenses. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1: Standard Project Administration Agreement and Appendix A
Attachment 2: Memorandum of Agreement between Fairfax County and the Virginia Department of Transportation for Design Standards and Related Responsibilities for Maintenance of Streets in the Tysons Corner Urban Center
Attachment 3: Agreement Execution Resolution

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT
Todd Minnix, Chief, Transportation Design Division, FCDOT
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT
Erin C. Ward, Senior Assistant County Attorney
Ray Johnson, Senior Transportation Planner, Coordination and Funding Division, FCDOT
Janet Nguyen, Transportation Planner, Coordination and Funding Division, FCDOT

**STANDARD PROJECT ADMINISTRATION AGREEMENT
Federal-aid Projects**

Project Number	UPC	Local Government
8102-029-065	103907	Fairfax County

THIS AGREEMENT, made and executed in triplicate this ____ day of _____, 2013, by and between the County of Fairfax, Virginia, hereinafter referred to as the LOCALITY and the Commonwealth of Virginia, Department of Transportation, hereinafter referred to as the DEPARTMENT.

WHEREAS, the LOCALITY has expressed its desire to administer the work described in Appendix A, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds shown in Appendix A have been allocated to finance each Project; and

WHEREAS, the LOCALITY is committed to the development and delivery of each Project described in Appendix A in an expeditious manner; and;

WHEREAS, both parties have concurred in the LOCALITY's administration of the phase(s) of work for the respective Project(s) listed in Appendix A in accordance with applicable federal, state, and local law and regulations.

NOW THEREFORE, in consideration of the mutual premises contained herein, the parties hereto agree as follows:

1. The LOCALITY shall:
 - a. Be responsible for all activities necessary to complete the noted phase(s) of each Project shown in Appendix A, except for activities, decisions, and approvals which are the responsibility of the DEPARTMENT, as required by federal or state laws and regulations or as otherwise agreed to, in writing, between the parties. Each Project will be designed and constructed to meet or exceed current American Association of State Highway and Transportation Officials standards or supplementary standards approved by the DEPARTMENT
 - b. Meet all funding obligation and expenditure timeline requirements in accordance with all applicable federal and state laws and regulations, and Commonwealth Transportation Board and DEPARTMENT policies and as identified in Appendix A to this Agreement. Noncompliance with this requirement can result in deallocation of the funding, rescinding of state funding match, termination of this Agreement, or DEPARTMENT denial of future requests to administer projects by the LOCALITY.

- c. Receive prior written authorization from the DEPARTMENT to proceed with preliminary engineering, right-of-way acquisition and utility relocation, and construction phases of each Project.
- d. Administer the project(s) in accordance with guidelines applicable to Locally Administered Projects as published by the DEPARTMENT.
- e. Maintain accurate and complete records of each Project's development and documentation of all expenditures and make such information available for inspection or auditing by the DEPARTMENT. Records and documentation for items for which reimbursement will be requested shall be maintained for no less than three (3) years following acceptance of the final voucher on each Project.
- f. No more frequently than monthly, submit invoices with supporting documentation to the DEPARTMENT in the form prescribed by the DEPARTMENT. The supporting documentation shall include copies of related vendor invoices paid by the LOCALITY and an up-to-date project summary and schedule tracking payment requests and adjustments. A request for reimbursement shall be made within 90 days after any eligible project expenses are incurred by the Locality. For federally funded projects and pursuant to the Code of Federal Regulations, Title 49, Section 18.43, violations of the provision may result in the imposition of sanctions including but not limited to possible denial or delay of payment of all or a part of the costs associated with the activity or action not in compliance.
- g. Reimburse the DEPARTMENT all Project expenses incurred by the DEPARTMENT if, due to action or inaction solely by the LOCALITY, federally funded Project expenditures incurred are not reimbursed by the Federal Highway Administration (FHWA), or reimbursements are required to be returned to the FHWA, or in the event the reimbursement provisions of Section 33.1-44 or Section 33.1-70.01 of the Code of Virginia, 1950, as amended, or other applicable provisions of federal, state, or local law or regulations require such reimbursement.
- h. On Projects that the LOCALITY is providing the required match to state or federal funds, pay the DEPARTMENT the LOCALITY's match for eligible Project expenses incurred by the DEPARTMENT in the performance of activities set forth in paragraph 2.a.
- i. Administer the Project in accordance with all applicable federal, state, or local laws and regulations. Failure to fulfill legal obligations associated with the project may result in forfeiture of federal or state-aid reimbursements
- j. Provide certification by a LOCALITY official that all LOCALITY administered Project activities have been performed in accordance with all federal, state, and local laws and regulations. If the locality expends over

\$500,000 annually in federal funding, such certification shall include a copy of the LOCALITY's single program audit in accordance with Office of Management and Budget Circular A-133.

- k. If legal services other than that provided by staff counsel are required in connection with condemnation proceedings associated with the acquisition of Right-of-Way, the LOCALITY will consult with DEPARTMENT to obtain an attorney from the list of outside counsel approved by the Office of the Attorney General. Costs associated with outside counsel services shall be reimbursable expenses of the project.
 - l. For Projects on facilities not maintained by the DEPARTMENT, provide, or have others provide, maintenance of the Project upon completion, unless otherwise agreed to by the DEPARTMENT.
 - m. Ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964, regulations of the United States Department of Transportation (USDOT), Presidential Executive Orders and the Code of Virginia relative to nondiscrimination.
2. The DEPARTMENT shall:
- a. Perform any actions and provide any decisions and approvals which are the responsibility of the DEPARTMENT, as required by federal and state laws and regulations or as otherwise agreed to, in writing, between the parties and provide necessary coordination with the FHWA as determined to be necessary by the DEPARTMENT.
 - b. Upon receipt of the LOCALITY's invoices pursuant to paragraph 1.f., reimburse the LOCALITY the cost of eligible Project expenses, as described in Appendix A. Such reimbursements shall be payable by the DEPARTMENT within 30 days of an acceptable submission by the LOCALITY.
 - c. If appropriate, submit invoices to the LOCALITY for the LOCALITY's share of eligible project expenses incurred by the DEPARTMENT in the performance of activities pursuant to paragraph 2.a.
 - d. Audit the LOCALITY's Project records and documentation as may be required to verify LOCALITY compliance with federal and state laws and regulations.
 - e. Make available to the LOCALITY guidelines to assist the parties in carrying out responsibilities under this Agreement.
3. Appendix A identifies the funding sources for the project, phases of work to be administered by the LOCALITY, and additional project-specific requirements

agreed to by the parties. There may be additional elements that, once identified, shall be addressed by the parties hereto in writing, which may require an amendment to this Agreement.

4. If designated by the DEPARTMENT, the LOCALITY is authorized to act as the DEPARTMENT's agent for the purpose of conducting survey work pursuant to Section 33.1-94 of the Code of Virginia, 1950, as amended.
5. Nothing in this Agreement shall obligate the parties hereto to expend or provide any funds in excess of funds agreed upon in this Agreement or as shall have been included in an annual or other lawful appropriation. In the event the cost of a Project is anticipated to exceed the allocation shown for such respective Project on Appendix A, both parties agree to cooperate in providing additional funding for the Project or to terminate the Project before its costs exceed the allocated amount, however the DEPARTMENT and the LOCALITY shall not be obligated to provide additional funds beyond those appropriated pursuant to an annual or other lawful appropriation.
6. Nothing in this Agreement shall be construed as a waiver of the LOCALITY's or the Commonwealth of Virginia's sovereign immunity.
7. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
8. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the LOCALITY or the DEPARTMENT shall not be bound by any agreements between either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the LOCALITY or the DEPARTMENT has, in writing, receive a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.
9. This Agreement may be terminated by either party upon 30 days advance written notice. Eligible Project expenses incurred through the date of termination shall be

reimbursed in accordance with paragraphs 1.f, 1.g., and 2.b, subject to the limitations established in this Agreement and Appendix A. Upon termination, the DEPARTMENT shall retain ownership of plans, specifications, and right of way, unless all state and federal funds provided for the Project have been reimbursed to the DEPARTMENT by the LOCALITY, in which case the LOCALITY will have ownership of the plans, specifications, and right of way, unless otherwise mutually agreed upon in writing.

10. Prior to any action pursuant to paragraphs 1.b or 1.g of this Agreement, the DEPARTMENT shall provide notice to the LOCALITY with a specific description of the breach of agreement provisions. Upon receipt of a notice of breach, the LOCALITY will be provided the opportunity to cure such breach or to provide a plan to cure to the satisfaction to the DEPARTMENT. If, within sixty (60) days after receipt of the written notice of breach, the LOCALITY has neither cured the breach, nor is diligently pursuing a cure of the breach to the satisfaction of the DEPARTMENT, then upon receipt by the LOCALITY of a written notice from the DEPARTMENT stating that the breach has neither been cured, nor is the LOCALITY diligently pursuing a cure, the DEPARTMENT may exercise any remedies it may have under this Agreement.

THE LOCALITY and DEPARTMENT acknowledge and agree that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors, and assigns.

THIS AGREEMENT may be modified in writing by mutual agreement of both parties.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

COUNTY OF FAIRFAX, VIRGINIA:

Typed or printed name of signatory

Date

Title

Signature of Witness

Date

NOTE: The official signing for the LOCALITY must attach a certified copy of his or her authority to execute this Agreement.

**COMMONWEALTH OF VIRGINIA, DEPARTMENT OF
TRANSPORTATION:**

Commissioner of Highways
Commonwealth of Virginia
Department of Transportation

Date

Signature of Witness

Date

Attachments

Appendix A, UPC 103907

Project Number: 8102-029-065	UPC: 103907	Locality: Fairfax County
Project Location ZIP+4: 22031-6023	Locality DUNS# 074873626	Locality Address (incl ZIP+4): 4050 Legato Road, Suite 400, Fairfax, VA 22033-2867

Project Narrative	
Scope:	Connect Jones Branch Drive and Scotts Crossing Rd and construct a new four lane bridge over I495
From:	Dolley Madison Blvd (Route 123)
To:	Jones Branch Drive (Route 5062)
Locality Project Manager Contact Info:	Wesley Minnix, 703-877-5749 wesley.minnix@fairfaxcounty.gov
Department Project Coordinator Contact Info:	Jeffrey Daily, 703-259-2993 jeffrey.daily@vdot.virginia.gov

Project Estimates				
	Preliminary Engineering	Right of Way and Utilities	Construction	Total Estimated Cost
Estimated Locality Project Expenses	\$2,139,127	\$7,043,652		\$9,182,779
Estimated VDOT Project Expenses	\$260,873			\$260,873
Estimated Total Project Costs	\$2,400,000	\$7,043,652		\$9,443,652

Project Cost and Reimbursement						
Phase	Estimated Project Costs	Funds type <i>(Choose from drop down box)</i>	Local % Participation for Funds Type	Local Share Amount	Maximum Reimbursement (Estimated Cost - Local Share)	Estimated Reimbursement to Locality (Max. Reimbursement - Est. VDOT Expenses)
Preliminary Engineering	\$2,400,000	RSTP	0%	\$0	\$2,400,000	
				\$0	\$0	
				\$0	\$0	
				\$0	\$0	
Total PE	\$2,400,000			\$0	\$2,400,000	\$2,139,127
Right of Way & Utilities	\$7,043,652	Local Funds	100%	\$7,043,652	\$0	
				\$0	\$0	
Total RW	\$7,043,652			\$7,043,652	\$0	\$0
Construction				\$0	\$0	
				\$0	\$0	
Total CN				\$0	\$0	\$0
Total Estimated Cost	\$9,443,652			\$7,043,652	\$2,400,000	\$2,139,127

Total Maximum Reimbursement by VDOT to Locality (Less Local Share)	\$2,400,000
Estimated Total Reimbursement by VDOT to Locality (Less Local Share and VDOT Expenses)	\$2,139,127

Project Financing				
RSTP	RSTP State Match	Local Funds		Aggregate Allocations (A+B+C+D+E+F)
\$1,920,000	\$480,000	\$7,043,652		\$9,443,652

Program and project Specific Funding Requirements	
<ul style="list-style-type: none"> This project shall be administered in accordance with VDOT's <u>Locally Administered Projects Manual</u> The terms of the "Memorandum of Agreement between the Board of Supervisors of Fairfax County, Virginia and the Commonwealth of Virginia, Department of Transportation for Design Standards and Related Responsibilities for Maintenance of Streets in the Tysons Corner Urban Center" dated September 13, 2011 remain in effect for this project. In accordance with Chapter 12.1.3 (Scoping Process Requirements) of the LAP Manual, project scoping was completed in July, 2011. This project is funded with federal-aid Regional Surface Transportation Program (RSTP) funds. These funds must be obligated within 12 months of allocation and expended within 36 months of the obligation. <ul style="list-style-type: none"> FY13 \$1,610,027 Allocation by the CTB 6/30/2012, Obligation Deadline 6/30/2013; Expenditure deadline 6/30/2016 FY14 \$ 309,973 Allocation by the CTB 6/30/2013, Obligation Deadline 6/30/2014; Expenditure deadline 6/30/2017 This is a limited funds project. The Locality shall be responsible for any additional funding in excess of \$2,400,000 (if applicable) PE and RW will be administered by the Locality. Construction will be administered by VDOT. This Appendix A is for PE and RW only. All applicable VDOT standards and procedures for value engineering, plan development and review, and constructability review will be followed by the Locality. Total project allocations: <u>\$9,443,652</u> 	

Authorized Locality Official and date

Authorized VDOT Official
Recommendation and Date

Typed or printed name of person signing

Typed or printed name of person signing

MEMORANDUM OF AGREEMENT
Between
BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA
And
COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION
For
DESIGN STANDARDS AND RELATED RESPONSIBILITIES FOR
MAINTENANCE OF STREETS IN THE TYSONS CORNER URBAN CENTER

THIS MEMORANDUM OF AGREEMENT ("**Agreement**") made and executed this 13th day of September, 2011, by and between the BOARD OF SUPERVISORS, FAIRFAX COUNTY, VIRGINIA, hereinafter referred to as the "**COUNTY**," and the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "**DEPARTMENT**," acting by its Commissioner. The COUNTY and the DEPARTMENT are sometimes hereinafter jointly referred to as "**Parties**". Such Parties are sometimes hereinafter referred to individually as "**Party**".

WITNESSETH

WHEREAS, the DEPARTMENT is responsible for the operation and maintenance of all State maintained streets in the COUNTY which have been accepted to the Secondary System of State Highways, hereinafter referred to as "**System**," pursuant to the Code of Virginia, and

WHEREAS, the COUNTY has adopted an amendment to the Fairfax County Comprehensive Plan for the Tysons Corner Urban Center, as identified in Attachment C and hereinafter referred to as "**Area**," that provides for a highly urban environment, and

WHEREAS, the COUNTY desires that streets lying within the Area have a distinctly urban character that creates a pedestrian friendly environment, and actively promotes multi-modal and non-motorized travel modes, and

WHEREAS, a critical component of the Comprehensive Plan for this Area is the creation of an urban street grid that is characterized by small grid blocks and high street connectivity in all directions, and

WHEREAS, the implementation of such a grid will occur in stages as new development and redevelopment occurs, and

WHEREAS, special procedures governing the acceptance of new streets into the System have been incorporated into the Virginia Administrative Code through the Secondary Street Acceptance Requirements, hereinafter referred to as "**SSAR**," and

WHEREAS, the SSAR procedures explicitly recognize the desirability of providing an interconnected roadway network and the frequent necessity of constructing this network in stages as new development and redevelopment occurs, and

WHEREAS, the SSAR procedures establish public benefit criteria for acceptance of secondary streets, including phased and stubbed streets into the System, and

WHEREAS, the creation of a grid of streets that will be phased in as new development and redevelopment occurs establishes a public benefit and necessity of acceptance of phased and stubbed streets into the System for maintenance; and

WHEREAS, the COUNTY desires that the streets within the Area, including phased and stubbed streets be maintained by the DEPARTMENT, and have ownership and usage rights comparable to other State maintained streets in the COUNTY, and

WHEREAS, VDOT's existing geometric Design Standards, hereinafter referred to as "VDOT Standards," currently in use by the DEPARTMENT do not sufficiently accommodate many of the urban features associated with the adopted Comprehensive Plan, and

WHEREAS, both the COUNTY and the DEPARTMENT agree that waivers of VDOT Standards, as explicitly permitted by that document, are necessary to accomplish the objectives of the adopted Comprehensive Plan, and

WHEREAS, §33.1-69.001 of the Code of Virginia directs the DEPARTMENT to work in conjunction with COUNTY and the Department of Rail and Public Transport to review new design standards for secondary streets in urban areas, and

WHEREAS, the COUNTY in partnership with the DEPARTMENT has developed Transportation Design Standards for the Tysons Corner Urban Center, dated September 13, 2011, attached herewith as Attachment D, hereinafter referred to as "Tysons Standards," and

WHEREAS, the Tysons Standards will supplement, as applicable, existing VDOT Standards, or, as applicable, the provisions of VDOT Standards shall be waived and the Tysons Standards shall control; and

WHEREAS, the Tysons Standards will facilitate implementation of the Comprehensive Plan for the Tysons Corner Urban Center; and

WHEREAS, the Tysons Standards have been reviewed by staff of the COUNTY and the DEPARTMENT and are found to be acceptable, and

WHEREAS, the DEPARTMENT can agree to special non-VDOT construction that complies with all applicable safety standards, and as long as they are not maintained by DEPARTMENT.

NOW, THEREFORE, in consideration of the mutual premises contained herein, the Parties agree as follows:

SECTION 1

The DEPARTMENT shall:

- (a) Adopt the Tysons Standards for all non-limited access streets lying within the Area that are accepted into the System and maintained by the DEPARTMENT, including those existing at the date of this agreement, and those that may hereafter be submitted for acceptance into the System. The Tysons Standards may be updated periodically consistent with §33.1-69.001 of the Code of Virginia.
- (b) Review plans for new streets, and modifications to existing streets within the Area that may be maintained by the DEPARTMENT, for conformance with the Tysons Standards.
- (c) Approve plans for new streets, and modifications to existing streets within the Area that conform to the Tysons Standards, are in accordance with the established procedures for the DEPARTMENT's maintained streets, and that are consistent with the standards of other Departments of the Commonwealth. Pursuant to this paragraph, the Tysons Standards, Attachment D, are recognized as the adopted standards for streets within the Tysons Area, Attachment C, and shall supplement as applicable, the existing Road and Bridge Standards, or, as applicable, the provisions of the Road and Bridge Standards shall be waived and the Tysons Standards shall control.
- (d) Accept new streets into the System within the Area that conform to existing VDOT Road and Bridge Standards and the Tysons Standards, including phased and stubbed streets that conform to the SSAR, provided that temporary vehicle turnarounds for maintenance and public safety vehicles are accommodated in accordance with the SSAR, and provided that any maintenance of new streets not performed by the DEPARTMENT is assured through separate Permits or other agreements in accordance with SECTION 3 of this Agreement. For purposes of this Agreement, pursuant to the discretionary authority provided in 24VAC30-92-60 and 24VAC30-92-100, the criteria definitions within the SSAR used to bring streets into the secondary system for maintenance are expanded to recognize that creation of a grid of streets within the Tysons Corner Urban Center is an acceptable criterion to establish public benefit and necessity for acceptance of the phased and stubbed streets.
- (e) If Permit conditions and requirements of DEPARTMENT are met, DEPARTMENT shall not withhold, and agrees to issue Permits to the COUNTY and/or private parties, hereinafter referred to as "**Permitees**," for work to be performed on existing or future streets in the Area if such is in conformance with existing VDOT Road and Bridge Standards, the Tysons Standards, and the provisions of this Agreement.
- (f) Maintain existing streets in the Area that have been accepted into the Primary and Secondary System as of the date of this Agreement in accordance with the DEPARTMENT's established guidelines for these streets, subject to the special provisions enumerated in SECTION 3 of this Agreement, and agreed to by both parties.
- (g) Maintain future streets in the Area, including phased and stubbed streets that have been accepted into the Primary and Secondary system in accordance with the SSAR, and in

accordance with the DEPARTMENT's established guidelines for these streets, subject to the special provisions enumerated in SECTION 3 of this Agreement.

- (h) Ensure that its employees and contractors exercise all reasonable care and diligence in protecting specialized and architectural ancillary features and appurtenances within the right-of-way, consistent with standard practice.
- (i) On Secondary Local Streets where the right-of-way has been dedicated in fee simple to the COUNTY, review permit applications for, and give consideration to, placement of subsurface and overhead structures that are not listed in Attachments A and B, such as parking garages, pedestrian or vehicular tunnels, stairway access portals, utility and ventilation shafts, building awnings, and pedestrian bridges and their supporting structures, when such structures are permitted pursuant to development plans approved by the County. Such consideration shall be subject to review and approval by DEPARTMENT, will require issuance of a separate agreement or permit, and is subject to special conditions, waivers of liability, and indemnification. The DEPARTMENT is not obligated to construct, install, operate, maintain, or replace any such feature.

SECTION 2

The COUNTY shall:

- (a) Adopt the Tysons Standards for all non-limited access streets lying within the Area that are accepted into the System and maintained by the DEPARTMENT, including those existing at the date of this agreement, and those that may hereafter be submitted for acceptance into the System.
- (b) Ensure through its development review and approval processes that development that occurs within the Area is in conformance with the Tysons Standards.
- (c) Ensure through its development review and approval process that sufficient provisions and access rights are provided on any new street constructed as a phased or stubbed street, to allow for maintenance and public safety vehicles on such streets to safely turn around at the terminus of the street.
- (d) Ensure that on-street parking is restricted on emergency snow routes in inclement weather such that snow and other material that is removed from roadway surfaces during such periods can be stored in a fashion that does not obstruct travel lanes.

SECTION 3

The PARTIES respectively further agree as follows:

- (a) This Agreement does not place any additional obligation on the COUNTY or the DEPARTMENT to maintain, repair or replace any structure or facility, or any portion thereof, not already existing within the State maintained street right-of-way which has been accepted into the state system of highways.
- (b) This Agreement does not commit the COUNTY or the DEPARTMENT to removal of snow from sidewalks and parking bays, or from travel lanes where plowing is blocked by vehicles.
- (c) The placement of assets including pavement, curb-and-gutter, drainage, signs, signals and signal control systems, structures, and other ancillary features within the State right-of-way shall conform to the Tysons Standards, and the DEPARTMENT's standards for maintenance in effect at the time of site plan review, except as otherwise set forth in paragraph (d).
- (d) The placement of certain ancillary features and appurtenances within the street right-of-way that are not conventionally part of the current standards of the DEPARTMENT as described in paragraph (c) of this section are subject to review and approval by the DEPARTMENT to ensure that such features do not adversely affect the safety of the users of this right-of-way. The DEPARTMENT's review of ancillary features and appurtenances shall be restricted to safety and operational issues, as well as control of outdoor advertising for architectural and aesthetic appearance, except for conformance with Chapter 7 of Title 33.1 of the Code of Virginia. Bus shelters and other structures placed within the right-of-way may require review and/or approval by the State Architecture Review Board, Department of General Services. Facilities and materials included in this paragraph may consist of, but are not exclusively limited to those identified on Attachments A and B of this Agreement. Such facilities when approved by the Department shall be subject to the following:
 - 1. Any feature described in this paragraph shall be allowed only through the issuance of appropriate permits by the DEPARTMENT and submittal by Permittee of required maintenance bond or other financial security. DEPARTMENT shall establish a reasonable amount for the bond or financial security to cover the replacement or removal of certain ancillary features and appurtenances within the street right-of-way that are not conventionally part of the current standards of the DEPARTMENT.
 - 2. The DEPARTMENT is not obligated to construct, install, operate, maintain, or replace any such feature.
 - 3. That all such features will be operated and maintained by the holder of the DEPARTMENT permit for such feature, in a fashion that does not adversely affect the safety of the users of the State maintained street right-of-way.

- (e) The DEPARTMENT will operate and maintain all features meeting the DEPARTMENT's standards as described in paragraph (c) of this section, or as may be permitted pursuant to paragraph (d) of this section, in a fashion consistent with the maintenance and operations practices and procedures followed by the DEPARTMENT throughout Fairfax County.
- (f) In the case where any such feature is altered, damaged, or otherwise rendered unsafe or poses a potential hazard to users of the State maintained street right-of-way such that emergency repair or replacement is necessary, or in the case where in the judgment sole discretion of the DEPARTMENT the operation and maintenance of the feature by others poses a potential hazard, the DEPARTMENT will remedy, at the Permittee cost, the immediate safety hazard through provision of its standard materials, procedures and practices. Such remedial measures shall be non-destructive to surrounding infrastructure, temporary in nature, and will remain in place until suitable replacements are provided and installed by the Permittee under the applicable Permit issued by the DEPARTMENT. Materials provided by the DEPARTMENT installed on an emergency basis that can be re-used will be returned to the DEPARTMENT.
- (g) The DEPARTMENT shall not restrict, prohibit or otherwise hinder the COUNTY's ability to enter into separate agreements with private parties or contractors to maintain, replace, or reconstruct those facilities and materials included in Attachments A and B, in as much as the DEPARTMENT is ultimately not responsible for these activities pursuant to the terms of this agreement, and that such separate agreements shall require compliance with the provisions of paragraph (d).
- (h) All notices shall be in writing, addressed as provided below. All notices shall be made, and be deemed effective, when personally delivered, given by prepaid United States registered or certified mail, return receipt requested, addressee only, or given by overnight mail service, accepted by the addressee or by an employee at the addressee's office. Notices may also be given to such other address or contact person as either Party may direct in writing.

If to COUNTY:
County Executive

Fairfax County, Virginia
12000 Government Center Pkwy
Fairfax, Virginia 22035

With a copy to:
Director, Fairfax County
Department of Transportation
4050 Legato Road, Suite 400
Fairfax, Virginia 222033

If to DEPARTMENT:

District Administrator
Northern Virginia District
Virginia Department of Transportation
4975 Alliance Drive
Fairfax, Virginia 22030

- (i) The COUNTY or private parties shall not restrict, prohibit or otherwise hinder the DEPARTMENT's ability to construct facilities included in Attachments A and B.
- (j) All of the obligations of the Parties, as the case may be, under this Agreement are subject to the annual appropriation of funds by the General Assembly of Virginia and the Fairfax County Board of Supervisors, as applicable, for the purpose of satisfying the payment and performance of such obligations.
- (k) No provision of this Agreement shall be construed as either Party, explicitly or implicitly, agreeing to indemnify or hold harmless the other Party or any third persons or entities for liability of any nature, except to the extent permitted by Virginia law and required by the laws and regulations of the Commonwealth.
- (l) The failure or delay by one Party to enforce its rights pursuant to this Agreement against the other Party shall not constitute a waiver of such rights.
- (m) The Parties mutually agree and acknowledge that in entering this Agreement that the individuals acting on behalf of the Parties are acting within the scope of their official authority and no breach or violation of the terms of this Agreement shall subject any official, officer, employee or agent of either Party to any personal liability or consequence and no suit to enforce the terms and conditions of this agreement shall be brought against any such individual in his personal capacity by either Party. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
- (n) Unless otherwise provided herein, the Recitals and Attachments are hereby incorporated into this Agreement.
- (o) This Agreement contains the entire agreement of the Parties. No representations, inducements or agreements, oral or otherwise, between the Parties not contained in this Agreement shall be of any force or effect.
- (p) This Agreement shall be construed, interpreted and applied according to the laws of the Commonwealth of Virginia.
- (q) Each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. If any provision of this Agreement or the application thereof shall be held invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions shall not be affected thereby.

- (r) The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise.

SECTION IV

- (a) This Agreement shall be effective on the date when it is executed by the Commissioner hereto ("**Effective Date**").
- (b) Nothing in this Agreement shall be construed as a waiver of the COUNTY's or the Commonwealth of Virginia's sovereign immunity.
- (c) The COUNTY and DEPARTMENT acknowledge and agree that this Agreement has been agreed to by the Parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any Party.
- (d) This Agreement, when properly executed, shall be binding upon Parties, their successors, and assigns.
- (e) This Agreement may be modified in writing by mutual agreement of both Parties when such modification is executed by duly authorized individuals on behalf of such Parties.

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

Attest:

BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

Nancy Velms
As to BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

By: Sharon A. Bulova
Sharon A. Bulova, Chairman

Attest:

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF
TRANSPORTATION

Brenda P. Crouch
As to the Commonwealth

By: Gregory A. Whirley
Gregory A. Whirley, Commissioner of Highways

Attachment A

Facilities not included in the standards employed by the DEPARTMENT

1. Decorative and ornamental area and spot lighting features;
2. Decorative and ornamental traffic signals, or other decorative and ornamental traffic appurtenances;
3. Special landscaping materials, planting beds, raised planters, street trees, root cell structures, tree cages, and other decorative landscaping materials (See Attachment B for conceptual graphic examples);
4. Special and decorative roadway or sidewalk paving materials such as stamped concrete or stone pavers, and porous paving;
5. Special drainage features, underground storage and mechanical vault structures, and innovative drainage features such as rain gardens (See Attachment B for conceptual graphic examples);
6. Special signage, such as way finding signs;
7. Street furniture such as benches, trash receptacles, kiosks, outside seating areas, and other similar items;
8. Bus shelters and other transit-related facilities;
9. Parking meters; and
10. Decorative, not standard retaining walls.

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, May 14, 2013, at which meeting a quorum was present and voting, the following resolution was adopted.

AGREEMENT EXECUTION RESOLUTION

WHEREAS, in accordance with Virginia Department of Transportation project agreement procedures, it is necessary that a resolution be received from the local government authorizing execution of an agreement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, authorizes County staff to execute on behalf of the County of Fairfax a Project Administration Agreement with the Virginia Department of Transportation for the Jones Branch Connector Bridge Project by the County of Fairfax.

Adopted this ____ day of _____, 2013, Fairfax, Virginia

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

ACTION - 5

Fairfax Connector Virginia Railway Express Transfer Policy and Fare Adjustments

ISSUE:

Board approval of an adjustment to the current Fairfax Connector transfer agreement with Virginia Railway Express (VRE), and adjust the fare on three express routes.

RECOMMENDATION:

The County Executive recommends the Board modify the Fairfax Connector's VRE Transfer agreement, and reduce three of the express route fares as described below:

A. Modification of VRE Transfer Agreement

Currently, VRE tickets and passes are accepted as valid fare media for use at any location in the Fairfax Connector service area. Staff recommends modifying the Fairfax Connector VRE transfer policy to mirror the Potomac and Rappahannock Transportation Commission (PRTC) transfer model, where valid VRE fare media (passes, tickets) are accepted as a free one-way transfer onto the bus system. VRE fare media will only be accepted at VRE stations or at a bus stop close to a VRE station, and applicable only for one free transfer onto the Fairfax Connector bus system.

B. Proposed Fare (Rate) Adjustments

1. Adjust the express fares on routes 394 and 395 (currently \$5.35), which travel between greater Springfield and the Pentagon, to mirror the Washington Metropolitan Area Transit Authority regional express fare of \$3.65 Smartrip ® and \$4.00 cash, with a 50 percent discount provided to senior or disabled passengers.
2. Adjust the fare on Route 981 between Tysons and the Washington Dulles International Airport (currently \$5.35) to \$1.60 Smartrip ®, \$1.80 cash, with a 50 percent discount provided to senior or disabled passengers.
3. Temporarily adjust the fare on Tysons Express routes 493, 494 and 495 (currently \$3.65 Smartrip ®, \$4.00 cash), which travel between Lorton, Springfield, Burke Centre and Tysons, respectively, to \$1.60 Smartrip ®, \$1.80 cash, with a 50 percent discount provided to senior or disabled passengers.

Board Agenda Item
May 14, 2013

TIMING:

The Board is requested to take action on this item on May 14, 2013, to allow the fare structure changes to take place on July 1, 2013.

BACKGROUND:

VRE Transfer Agreement: Over the past year while planning for the implementation of the Fairfax Connector Express Routes to operate from several VRE stations via the 495 Express Lanes to Tysons, substantial staff discussion took place on the existing VRE transfer agreement. Currently, any person boarding a Fairfax Connector bus at any place in Fairfax County can present a VRE ticket or pass, and ride for free. The current policy applies to the new Express Lanes routes, which began operating in January and March 2013, which enabled passengers to ride to-and-from Tysons for free with a valid VRE ticket, resulting in no farebox revenue for the County from these VRE passengers. Due to the potential of lost farebox revenue, County staff approached VRE staff to discuss the possibility of a VRE reimbursement for some of the costs of these trips. However, it was determined that the more optimal solution was for the Fairfax Connector to follow the PRTC model and only offer a free one-way transfer on routes/trips that are originating from or nearby a VRE station. This modification in the policy will result in slightly more farebox revenue in the Fairfax Connector system.

Adjustment of Fares: In December 2008, the Board approved a plan to substantially mirror the WMATA fares on the Fairfax Connector bus system. Over the past few years, as WMATA has raised their base fare, the base fare has also been raised on the Fairfax Connector system. Express route fares on the Connector system have somewhat deviated from this model, beginning in Fiscal Year 2010. Staff recommends adjusting the Express fares on Connector routes 394 and 395, which provide service between Springfield and the Pentagon, so that the fares on these routes are in-line with the WMATA regional express fare, as well as in-line with the new express fares on the Tysons routes. This will allow the County to meet the goal of providing regional transit customers with a simple, uniform fare structure with minimal deviations. The change should result in additional riders on the route.

Route 981, which travels from Tysons to the Dulles International Airport for a fare of \$5.35 each way, is recommended to be reduced to the regional base fare of \$1.60 Smartrip ® and \$1.80 cash. When the Silver Line opens, this route will travel on an increased number of local roads and will provide a local connection between the Wiehle-Reston East Metrorail Station and Reston Town Center. In advance of the opening of the Silver Line, a reduction in the fare on Route 981 is requested to increase ridership on the route.

Board Agenda Item
May 14, 2013

Express Connector routes 493, 494 and 495 began operating in January and March of this year, providing service to Tysons via the 495 Express Lanes. The current fare for these routes is \$3.65 Smartrip ®, \$4.00 cash. Due to the fact that the 495 Express Lanes tolls are not as high as originally projected, staff requests a temporary reduction of the fare on these routes to the base fare of \$1.60 Smartrip ®, \$1.80 cash, to boost ridership and improve efficiency. Staff will continue to closely monitor the performance of these routes, as well as continue ongoing outreach and marketing efforts to increase ridership. In the future, as toll rates rise, staff will return to the Board with a recommendation for ending this temporary fare reduction.

FISCAL IMPACT:

It is estimated that the Fairfax Connector farebox revenue will remain as projected in FY2014. With the reduction of fares on the 394, 395, 493, 494, 495 and 981, while there may be a short-term drop in farebox revenue, over time FCDOT staff expects to see a ridership increase that will result in the same amount of farebox revenue currently collected on those routes or more. With the modification to the VRE transfer agreement, FCDOT staff expects to see a very slight increase in farebox revenue from those trips.

ENCLOSED DOCUMENTS:

None

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Dwayne Pelfrey, Chief, Transit Services Division, FCDOT
Christin A. Wegener, Transportation Planner IV, FCDOT
Mike Lake, Transportation Planner III, FCDOT

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Board Agenda Item
May 14, 2013

ACTION - 6

2013 School Bond Referendum

ISSUE:

The Board of Supervisors approval of the Fairfax County Public Schools Referendum totaling \$250,000,000 as requested by the School Board and adoption of the enclosed resolutions requesting the Circuit Court to order a special election on the issuance of such bonds on November 5, 2013. A schedule of events is included as Attachment 1.

RECOMMENDATION:

The County Executive recommends that the Board adopt the enclosed School Bond Referendum Resolution.

TIMING:

Adoption of the resolution is required prior to the filing of a petition with the Circuit Court to request the election. After the petition is filed and the order for a special election is entered, this special election will be submitted for pre-clearance in accordance with Section 5 of the federal Voting Rights Act of 1965, as amended. Board action on May 14, 2013 will allow staff adequate time to complete the necessary procedures.

BACKGROUND:

On May 9, 2013, the School Board is expected to approve a resolution for a School Referendum in the amount of \$250,000,000. Details of the projects expected to be funded are included in Attachment 4. The School Board sizes the referendum to include the full cost of new construction and renovation projects although spending for the projects is anticipated to occur over the course of a multi-year period. The referendum amount can be accommodated within the FY 2014 - FY 2018 Adopted Capital Improvement Program (With Future Years to FY 2023) (CIP) as approved by the Board of Supervisors on April 23, 2013.

FISCAL IMPACT:

Sales of the bonds approved in the 2013 School Referendum will occur as needed to meet projected cash flow requirements as approved in the CIP. Specifically, the County will maintain annual bond sales in the amount of \$155 million as noted in the FY 2014 - FY 2018 Adopted Capital Improvement Program (With Future Years to FY 2023) (CIP).

Board Agenda Item
May 14, 2013

ENCLOSED DOCUMENTS:

Attachment 1 - Schedule of Events

Attachment 2 - Board of Supervisors Resolution Requesting an Order for Election on the Issuance of Bonds in the amount of \$250,000,000 for Schools

Attachment 3 - Resolution Adopted by School Board on May 9, 2013 Requesting Bond Referendum

Attachment 4 - 2013 School Bond Referendum Project List

STAFF:

Edward L. Long, Jr., County Executive

Susan Datta, Chief Financial Officer

Joseph LaHait, Debt Coordinator, Department of Management and Budget

Erin C. Ward, Senior Assistant County Attorney, Office of the County Attorney

Dr. Jack D. Dale, Superintendent, Fairfax County Public Schools (FCPS)

Jeffrey Platenberg, Assistant Superintendent for Facilities and Transportation Services, FCPS

Kevin Sneed, Director, Design and Construction, FCPS

Lee Ann Pender, Director, Office of Administrative Services Facilities and Transportation Services, FCPS

2013 FALL BOND REFERENDUM SCHEDULE

Date	Item
April 18, 2013	Proposal that School Board adopts a resolution requesting the BOS approve a referendum on November 5, 2013.
April 29, 2013	School Board Public Hearing on School Referendum.
May 9, 2013	School Board approves Referendum proposal.
May 14, 2013	Board of Supervisors approves School Bond Referendum.
May 20, 2013	Petition filed with Fairfax County Circuit Court for School Bond Referendum.
May 31, 2013 (estimate)	Court orders referendum on November 5, 2013.
June 7, 2013 (estimate)	Submit School Bond Referendum to Department of Justice for review.
August 8, 2013 (estimate)	Preclearance procedure complete.
September 10, 2013	Board Consideration Item on Explanatory Bond Referendum Statement (Plain Language Text).
September 20, 2013	Absentee ballots available (required 45 days prior to election).
October 1, 2013	Notice of Election published in local newspaper.
November 5, 2013	Election Day; referendum held.
November 12, 2013	Election certified.
December 12, 2013 (estimate)	Court issues final order authorizing the sale of the bonds.

Resolution to Request the Fairfax County Circuit Court to Order an Election on the Question of Whether Fairfax County, Virginia, Should be Authorized to Contract a Debt, Borrow Money, and Issue Bonds in the Maximum Aggregate Principal Amount of \$250,000,000 to Finance the Cost of School Improvements

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board auditorium in the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on May 14, 2013, at which meeting a quorum was present and voting, the following resolution was adopted by roll call:

WHEREAS, Virginia Code § 15.2-2640 provides that prior to seeking approval from the voters for contracting debt and issuing bonds for school purposes, the local school board of a county must first, by resolution, request the governing body of the county to take such action; and

WHEREAS, on May 9, 2013, the Fairfax County School Board (the “School Board”) adopted a resolution requesting the Board of Supervisors of Fairfax County, Virginia, to adopt a resolution asking the Fairfax County Circuit Court to order an election on the question of contracting a debt, borrowing money, and issuing capital improvement bonds of Fairfax County, Virginia, in the maximum aggregate principal amount of \$250,000,000 for the purposes of providing funds, in addition to funds from school bonds previously authorized, to finance, including reimbursement to the County for temporary financing for, the costs of school improvements, including acquiring, building, expanding and renovating properties, including new sites, new buildings or additions, renovations and improvements to existing buildings, and furnishings and equipment, for the Fairfax County public school system; and

WHEREAS, the School Board has provided a certified copy of that resolution to the Clerk of the Board of Supervisors; and

WHEREAS, the Board of Supervisors concurs in the determinations and the request of the School Board as set forth in its resolution; and

WHEREAS, Virginia Code §§ 15.2-2610, 15.2-2611, and 24.2-684 provide the Fairfax County Circuit Court with the authority to issue an order for the conduct of an election; now, therefore,

BE IT RESOLVED by the Board of Supervisors of Fairfax County, Virginia:

Section 1. That the Circuit Court of Fairfax County, Virginia, is hereby requested to order an election on November 5, 2013, on the question of whether Fairfax County, Virginia, should contract a debt, borrow money, and issue capital improvement bonds in the maximum aggregate principal amount of \$250,000,000 for the purposes of providing funds, in addition to funds from school bonds previously authorized, to finance, including reimbursement to the County for temporary financing for, the costs of school improvements, including acquiring, building, expanding and renovating properties, including new sites, new buildings or additions, renovations and improvements to existing buildings, and furnishings and equipment, for the Fairfax County public school system.

Section 2. The County Attorney is hereby requested to provide the Fairfax County Circuit Court with certified copies of this resolution and the resolution of the School Board, which was adopted on May 9, 2013, and to petition the Fairfax County Circuit Court for an order to conduct such a referendum as a special election in conjunction with the general election on November 5, 2013.

Section 3. The members, officers, legal counsel, agents and employees of the Board, and the County are hereby authorized and directed to do all acts and things required of them

under Virginia law to ensure that the referendum will be held as a special election in conjunction with the general election on November 5, 2013.

Given under my hand on this _____ day of ____ 2013.

Catherine A. Chianese
Clerk to the Board of Supervisors
County of Fairfax, Virginia

**FAIRFAX COUNTY SCHOOL BOARD
BOND REFERENDUM RESOLUTION**

_____, 2013

RESOLUTION REQUESTING THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, TO ASK THE CIRCUIT COURT FOR THE COUNTY TO ORDER AN ELECTION ON THE QUESTION OF CONTRACTING A DEBT, BORROWING MONEY AND ISSUING CAPITAL IMPROVEMENT BONDS OF THE COUNTY IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$250,000,000 FOR THE PURPOSES OF PROVIDING FUNDS, WITH ANY OTHER AVAILABLE FUNDS, TO FINANCE THE COSTS OF IMPROVEMENTS FOR THE SCHOOL SYSTEM.

WHEREAS, the Fairfax County School Board of Fairfax County, Virginia, has determined that certain school improvements should be financed including acquiring, building, expanding and renovating properties, including new sites, new buildings or additions, renovations and improvements to existing buildings, and furnishings and equipment, for the Fairfax County public school system; and

WHEREAS, the School Board has determined that, for the purpose of providing funds to pay the cost of such public school improvements and the cost of such public school property, Fairfax County should contract a debt, borrow money and issue bonds in the aggregate principal amount of \$250,000,000; and

BE IT RESOLVED by the School Board that:

Section 1. The Board of Supervisors of Fairfax County, Virginia, is hereby requested to ask the Circuit Court of Fairfax County, Virginia, to order an election on the question of contracting a debt, borrowing money, and issuing capital improvement bonds of Fairfax County, Virginia, in the maximum aggregate principal amount of \$250,000,000 for the purposes of providing funds, in addition to funds from school bonds previously authorized and any other available funds, to finance, including reimbursement to the County for temporary financing for, the costs of school improvements, including acquiring, building, expanding and renovating properties, including new sites, new buildings or additions, renovations and improvements to existing buildings, and furnishings and equipment, for the Fairfax County public school system.

Section 2. The Board of Supervisors is hereby advised that it is the desire of the School Board that the proposed referendum be scheduled for November 5, 2013.

Section 3. The Clerk of the School Board is hereby authorized and directed to file two certified copies of this resolution with the Board of Supervisors of Fairfax County, Virginia.

Given under my hand this ___ day of ___, 2013.

Pamela Goddard
Clerk, Fairfax County School Board

(SEAL)

2013 Bond Projects		Total Bond Fund
		\$ 250,000,000
Project	Original Budget	
New Schools		
Eastern Fairfax ES	\$	20,877,062
Route 1 Area ES	\$	21,169,348
Capacity Enhancement		
Westbriar ES Addition	\$	7,195,000
South Lakes HS Addition	\$	1,048,800
Elementary Renovations		
Haycock	\$	16,534,618
Terraset	\$	20,096,695
Ravensworth	\$	15,485,169
Woodlawn	\$	19,252,107
Forestville ES	\$	14,944,600
North Springfield ES	\$	17,278,345
Springfield Estates ES	\$	14,900,197
Keene Mill ES	\$	16,947,180
Bucknell ES	\$	14,537,345
Middle School Renovations		
Thoreau MS	\$	35,244,029
High School Renovations		
Langely HS	\$	67,744,613
ES Renovation Planning		
	\$	-
Cherry Run ES	\$	657,628
Waynewood ES	\$	691,475
Stratford Landing ES	\$	736,929
Newington Forest ES	\$	613,643
Hollin Meadows ES	\$	714,896
White Oaks ES	\$	930,271
Mt. Vernon Woods ES	\$	930,610
Belle View Es	\$	963,854
MS Renovation Planning		
Rocky Run MS	\$	3,368,766
HS Renovation Planning		
Herndon HS	\$	4,546,144
Oakton HS	\$	4,573,431
Site Acquisition	\$	10,000,000
Infrastructure Management		
	\$	-
Technology Upgrades	\$	4,000,000
ADA Upgrades	\$	2,500,000
Roof Replacement	\$	6,000,000
Athletic Infrastructure	\$	2,500,000
HVAC Replacement	\$	7,250,000
Security Enhancements	\$	1,000,000
Asphalt Paving	\$	1,375,000
Bond Cost		
	\$	2,500,000
Preliminary Fall 2013 Bond Referendum Request		
	\$	359,107,756
Prior Bond Spending Authorization		
	\$	(109,107,756)
Net Fall 2013 Bond Referendum Request		
	\$	250,000,000

INFORMATION - 1

Contract Award - Prenatal Care and Genetic Testing Services

The Fairfax County Health Department has a requirement for prenatal care and genetic testing services to ensure that pregnant women served through the safety net receive continuity of care throughout the entire term of their pregnancy. The Department of Purchasing and Supply Management, the Department of Administration for Human Services and the Health Department negotiated a non-competitive contract award with Inova Healthcare Services through their InovaCares Clinics for Women for the provision of these services.

The Health Department has had a long standing partnership with the InovaCares Clinic for Women to provide prenatal care as part of the County's safety net services to women whose incomes are at or below 200% of the Federal Poverty Level (FPL) and have no other resources for accessing care. Under this contract, InovaCares Clinic will provide the full scope of obstetric care as outlined in the American Congress of Obstetricians and Gynecologists (ACOG) standards from the clients' entry into prenatal care through delivery for all qualifying clients residing in Fairfax County, Fairfax City, and the City of Falls Church.

The Fairfax County Department of Tax Administration has verified that Inova Healthcare Services is not required to obtain a current Fairfax County Business, Professional & Occupational License (BPOL). The business classification category of Inova Healthcare Systems is a large, non-minority owned business.

FISCAL IMPACT:

Funding for this contract shall come from existing Health Department appropriations and no additional funding is needed. Maximum anticipated costs for the life of the contract would be \$950,000, assuming the County exercises all possible renewal options.

Unless otherwise directed by the Board of Supervisors, the Department of Purchasing and Supply Management will award a fee for service non-competitive contract to Inova Healthcare Services for a period of three (3) years ending June 30, 2016, with two (2) one-year renewal options.

ENLCOSED DOCUMENTS:

None

STAFF:

Cathy A. Muse, CPPO, Director, Department of Purchasing & Supply Management

Gloria Addo-Ayensu M.D., Director, Health Department

M. Gail Ledford, Director, Department of Administration for Human Services

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ACTION – 7

Approval of Fairfax County to Provide the Necessary Documentation to the United States Department of Transportation (USDOT) as Part of the County's Request for a Transportation Infrastructure Finance and Innovation Act (TIFIA) Loan for the Dulles Corridor Metrorail Project

ISSUE:

Board approval to provide the necessary documentation to the USDOT as part of the County's request for a TIFIA Loan for the Dulles Corridor Metrorail Project.

RECOMMENDATION:

The County Executive recommends approval of the following:

1. Approve the preliminary TIFIA allocation of \$1.9 billion amongst the Funding Partners. If the full amount of a TIFIA loan were approved, Fairfax County would receive \$475 million of the preliminary TIFIA allocation.
2. Approve the County's credit pledge for the Commercial & Industrial (C & I) Tax Revenue and the Dulles Rail Phase 2 Transportation Improvement District to USDOT as part of the credit review process requesting a TIFIA loan. The County will use these two funds to provide the repayment of the debt service for the TIFIA loan. USDOT requires the County achieve the AA Category Rating for credits pledged.
 - a. The C & I Fund is currently projected to meet the "AA" Category Rating. If the C & I Fund is unable to attain the AA Category Rating, staff recommends approval of credit enhancement in the form of a Moral Obligation from the County's General Fund.
 - b. The Phase 2 Tax Improvement District is currently projected to be in the "A" Category Rating, and thus does not meet the USDOT mandate to be in the "AA" Category Rating. To achieve the AA Category Rating, staff requests the following. Approval of the use of the C & I Fund to provide the required credit enhancement to the Phase 2 Tax District. If the Phase 2 Tax District is still unable to attain the AA Category Rating with the backing of the C & I Fund, staff recommends approval of credit enhancement in the form of a Moral Obligation from the County's General Fund. In the event the Phase 2 Tax District did require revenue assistance from either the C & I Fund or the General Fund, these funds would ultimately be repaid from the Phase 2 Tax District.

Board Agenda Item
May 14, 2013

3. Approve the request to pursue credit ratings from the bond rating agencies to comply with the USDOT credit review (\$90,000).
4. Approve the \$100,000 down payment required from the County to USDOT to move forward in the TIFIA Letter of Interest (LOI) review process.

TIMING:

Board action is requested on May 14, 2013, to meet USDOT's requirements.

BACKGROUND:

In October 2012, the Metropolitan Washington Airports Authority (MWAA), Fairfax County, and Loudoun County ("the Funding Partners"), submitted a joint Letter of Interest (LOI) to USDOT requesting a \$2.9 billion TIFIA loan for the Dulles Corridor Metrorail Project ("the Project"). The Funding Partners request was based on USDOT's updated criteria for a maximum 49% loan as a percent of the total project estimate of \$5.9 billion for Phase 1, Phase 2, and the respective Counties "best efforts" to fund the Innovation Center Station and the five parking garages. The TIFIA loan would provide a financial advantage to the Counties who already have a very aggressive Capital Improvement Program, and allow MWAA to more effectively leverage the Dulles Toll Road revenues to enable a reduction in projected out year toll rates. TIFIA loans provide credit assistance to projects that are deemed of national and regional significance, and are highly competitive. A TIFIA loan for this project has been strongly supported by departing USDOT Secretary LaHood. TIFIA loans also provide for a debt service repayment deferral option of up to five years after project completion, competitive interest rates, and flexible prepayment provisions of outstanding principal.

In December 2012, USDOT notified the Funding Partners that a preliminary review of the LOI had been conducted and the request for \$2.9 billion of credit assistance. They noted that the project would remain eligible for funding, but instead at a maximum potential TIFIA loan amount not to exceed 33% of the total project estimate which equates to \$1.9 billion. This update led to a series of discussions amongst the Funding Partners' staff on how to best allocate the revised \$1.9 billion preliminary TIFIA allocation. The goal was to provide the proper balance of funds that allows MWAA the ability to reduce the tolls on the Toll Road, but also acknowledge the significant required contributions of the Counties. The resulting staff consensus was that MWAA would receive \$1.3 billion (66%), Fairfax County \$475 million (24%), and Loudoun County \$200 million (10%). MWAA had been targeting a figure in the \$1.2-\$1.4 billion range as based on their remaining financing plans. While the Counties received a far less overall percent of the \$1.9 billion allocation, the amounts translate to 45% of their respective total project costs which were a guiding principle in the group consensus. The goals of all parties have been met by the proposed allocation of funds. USDOT has reiterated

that the \$1.9 billion preliminary TIFIA allocation is the working number they have been using for internal planning purposes. However, that figure is subject to change based on USDOT review and changes to the projected overall estimates as bids are received on the project. There will be no formal amount awarded until the Project is requested to move from the LOI process and submit for a TIFIA application later this year.

USDOT Request for Information – Spring 2013

In March 2013, USDOT followed up with additional requests for information as part of the LOI review process which involves an analysis of whether the project meets the TIFIA program's credit worthiness requirements. The turnaround time on these items has been accelerated with the pending departure of USDOT Secretary LaHood who has been instrumental ensuring the project receive TIFIA financing. Specifically, USDOT is asking for the following detailed pieces of information from the Funding Partners.

First, USDOT requests a complete plan of finance and a Microsoft excel based financial model. The County, in consultation with its financial advisor, can provide these documents as done with previous bond sales.

Second, USDOT requests an indicative credit rating from the bond rating agencies on the TIFIA loan demonstrating the debt described as part of the plan of finance and the credit strengths of the revenues pledged. Again, the County in consultation with its financial advisor, can obtain the ratings as done with previous bond sales with a projected cost of \$90,000 for a rating review from two rating agencies. USDOT has made it very clear that it expects the AA Category Rating from the Counties. Staff recommends that two County sources be pledged as part of the request for the TIFIA loan: the Commercial and Industrial Tax Fund ("C & I Fund") and the Dulles Rail Phase 2 Transportation Improvement District. These two funds will be used to repay the debt service on the TIFIA loans.

C & I Fund Credit Assessment

The C & I Fund generates approximately \$51 million annually based on the tax rate of 12.5 cents per \$100 of assessed value levied on commercial and industrial properties in the County. Staff recommends this fund to cover the County's required \$185 million contribution (Phase 1 \$68 million + Phase 2 \$117 million) to the project outside from the \$400 million from the Phase 1 Tax District and the \$330 million from the Phase 2 Tax District. Staff has utilized internal policy guidelines for this fund whereby no more than 50% of annual expenses are directed for Tysons and the Silver Line. The projected annual debt service costs of \$185 million is approximately \$14 million and has been included in this 50% Tysons and Silver Line policy guideline. The balance of 50% of annual expenses will be directed for other Countywide projects. TIFIA's loan repayment deferral option provides the ability to repay debt service up to five years after substantial

project completion, which is currently projected at 2018. Staff had previously assumed that debt service would be required beginning in as early as FY 2014 for project costs. The deferral option allows the payments to begin in 2023 and frees up previously allocated monies from 2014-2023 that total approximately \$70 million to fund other Countywide projects. If the C & I Fund is not able to achieve the AA Category Rating on its own, the County, in consultation with its financial advisor recommends, a credit enhancement in the form of a Moral Obligation from the County's General Fund.

Phase 2 Transportation Improvement District Credit Assessment

The Phase 2 Transportation Improvement District will provide \$330 million toward the County's contribution for Phase 2. The tax rate for this district per the landowners' petition was modeled on a ladder approach that was initially set at 5 cents per \$100 of Assessed Value in FY 2011. The rate then increased by 5 cents per \$100 of Assessed Value per fiscal year until reaching 20 cents per \$100 of Assessed Value effective FY 2014. The tax rate will remain at 20 cents until rail revenue service begins in 2018. The rate can then increase to 25 cents per \$100 of Assessed Value also per the petition after rail revenue service begins. The TIFIA loan repayment deferral option as with the C & I fund can provide significant advantages for this district. The Phase 2 Tax District is currently projected in the Single A Category Rating when reviewing its current credit factors such as its brief history of assessed value and tax collections. At this state in development, the Phase 2 Tax District is considered a weaker credit than its Phase 1 counterpart. For example, the current comparative assessed value for the Phase 1 Tax District is \$11.4 billion whereas the assessed value for the Phase 2 Tax District is \$7.5 billion. The Phase 1 Tax District has carried a consistent tax rate of 22 cents per \$100 of Assessed Value since inception, and effective FY 2014 the tax rate was reduced to 21 cents per \$100 of Assessed Value. The higher initial and consistent tax rate allowed the Phase 1 Tax District to accumulate significant cash collections that were a strong factor leading to the AA rating from the bond rating agencies. Comparatively, the Phase 2 Tax District rate began at 5 cents and increased by the same amount per fiscal year and is currently holding at 20 cents until rail revenue service begins. Thus, a smaller amount of cash accumulation is accruing. TIFIA's debt service deferral payment option allows the Phase 2 Tax District to accumulate growth in assessed value, tax collections, and ultimately a stronger credit rating. This approach mirrors that of the planning efforts for the Phase 1 Tax District which successfully led to obtaining the AA Rating for both series of bonds sold, and contributed over \$100 million in cash contributions for Phase 1.

To achieve the AA Category Rating from the bond rating agencies for the Phase 2 Tax District, the County, in consultation with its financial advisor, recommends the approval of the use of the C & I Fund to provide the required credit enhancement to the Phase 2 Tax District. If the Phase 2 Tax District's assessed values did not increase at the growth projected or suffered a decline whereby leading to a smaller amount of overall

Board Agenda Item
May 14, 2013

tax revenues, the C & I Fund would serve as the backup revenue source for the repayment of debt service. It should be noted, however, that assuming a growth rate as low as 1.5 percent, no C & I funds are expected to be needed to support the district.

If the Phase 2 Tax District is still unable to attain the AA Category Rating with the backing of the C & I Fund, the County, again in consultation with its financial advisor recommends a third tier back stop in the form of a Moral Obligation from the County's General Fund. The County has selectively used this approach before with bonds sold as part of the Route 28 Tax District and the Vienna Metrorail Parking Garage II, and ultimately led to the AA Rating.

In the event the Phase 2 Tax District did require revenue assistance from either the C & I Fund or the General Fund, these funds would ultimately be repaid from and extend the life the Phase 2 Tax District.

Third, USDOT requests a feasibility study for each sources of credit pledged. Staff can again provide this standard information as used in previous bond sales in reference to tax assessment history and collections along with economic and demographic information.

Fourth and lastly, USDOT requests a nonrefundable credit processing down payment of \$100,000 from each of the Funding Partners. This will be used toward the USDOT costs of hiring external financial and legal advisors. Funding is available within current appropriation levels in the Consolidated Debt Service Fund.

USDOT requests these items be provided at the earliest convenience from the Funding Partners to allow the project to proceed through the TIFIA process. Based on the current Funding Partners timeline, closing on the TIFIA loan is projected to be at the end of the calendar year.

FISCAL IMPACT:

The credit rating letter requested by USDOT from the two credit rating agencies is projected to be \$90,000. The USDOT Credit Processing Down Payment is \$100,000. These costs will be paid out of the Cost of Issuance account in the Consolidated Debt Service Fund (Fund 20000) which is used for bond sale related expenses on an annual basis.

ENCLOSED DOCUMENTS:

None

Board Agenda Item
May 14, 2013

STAFF:

Edward L. Long Jr., County Executive

Susan W. Datta, Chief Financial Officer

Tom Biesiadny, Director, Department of Transportation

Mark Canale, Dulles Rail Project Manager, Department of Transportation

Joseph LaHait, Debt Coordinator, Department of Management and Budget

Leonard Wales, County Financing Advisor, Department of Management and Budget

Board Agenda Item
May 14, 2013

11:10 a.m.

Matters Presented by Board Members

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12:05 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. Application of Virginia Electric and Power Company, PUE-2013-00020 (Va. State Corp. Comm'n) (County-wide)
 - 2. *U.S. Bank, National Association, as Trustee for the Holders of the First Franklin Mortgage Loan Trust 2006-FF10 Mortgage Pass-Through Certificates, Series 2006-FF10 v. Cyd R. Nichols; Ardon E. Nichols; PNC Bank, National Association, f/k/a National City Bank; Board of Supervisors of Fairfax County; Fairfax County Redevelopment and Housing Authority; Equity Trustees, LLC; and TSS LLC*, Case No. CL-2012-0007613 (Fx. Co. Cir. Ct.) (Hunter Mill District)
 - 3. *ELCON Enterprises, Inc. v. County of Fairfax, Virginia, Fairfax County Department of Purchasing and Supply Management, Cathy Muse, and Quality Elevator Co., Inc.*, Case No. CL-2012-0018243 (Fx. Co. Cir. Ct.)
 - 4. *Carla Thomas v. Fairfax County, Fairfax County Department of Tax Administration, Howard Goodie, and Bruce Schuette*, Case No. CL-2013-0004770 (Fx. Co. Cir. Ct.)
 - 5. *Ana Cecilia Mongrut-Avanzini v. Commonwealth of Virginia*, Case No. 1:12cv152 (E.D. Va.)
 - 6. *Eileen M. McLane, Fairfax County Zoning Administrator v. Penn Daw Properties, L.L.P.*, Case No. CL- 2010-0006498 (Fx. Co. Cir. Ct.) (Mount Vernon District)
 - 7. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Robert R. McKim*, Case No. CL-2009-0013286 (Fx. Co. Cir. Ct.) (Springfield District)

8. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Oliver I. Mogan*, Case No. CL-2012-0015053 (Fx. Co. Cir. Ct.) (Mason District)
9. *James W. Patteson, Director, Fairfax County Department of Public Works and Environmental Services v. R. Joun Enterprises, LLC, Roland G. Joun, Trustee, Maria Joun, Trustee, Roland G. Joun Revocable Living Trust, and Maria Joun Revocable Living Trust*, Case No. CL-2012-0011286, and *Leslie B. Johnson, Fairfax County Zoning Administrator v. R. Joun Enterprises, LLC, Roland G. Joun, Trustee, Maria Joun, Trustee, Roland G. Joun Revocable Living Trust, and Maria Joun Revocable Living Trust*, Case No. CL-2012-0015804 (Fx. Co. Cir. Ct.) (Lee District)
10. *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)
11. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Zahir Ahmed*, Case No. CL-2012-0019602 (Fx. Co. Cir. Ct.) (Mount Vernon District)
12. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Donald E. Pless*, Case No. CL-2013-0005408 (Fx. Co. Cir. Ct.) (Braddock District)
13. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Song Bok Lee, Jae Hwa Lee, and Aeree Lee*, Case No. CL-2013-0007058 (Fx. Co. Cir. Ct.) (Mason District)
14. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Stephen R. Himelfarb and Anne S. Himelfarb*, Case No. CL-2013-0007124 (Fx. Co. Cir. Ct.) (Dranesville District)
15. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Federal National Mortgage Association*, Case No. CL-2013-0007122 (Fx. Co. Cir. Ct.) (Lee District)
16. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Richard Chiu*, Case No. CL-2013-0007284 (Fx. Co. Cir. Ct.) (Mason District)
17. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Robert N. Jacobi*, Civil Case No. GV13-004016 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
18. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Hui S. Choi*, Case No. GV13-004917 (Fx. Co. Gen. Dist. Ct.) (Providence District)

19. *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)
20. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Jose N. Del Cid and Vilma Del Cid*, Case No. GV13-007340 (Fx. Co. Gen. Dist. Ct.) (Providence District)
21. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Blaine D. Porter*, Case No. GV13-003198 (Fx. Co. Gen. Dist. Ct.) (Providence District)
22. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Edgar Molina and Hilda Crespo De Molina*, Case No. GV13-007302 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
23. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Christopher Bao Le*, Case No. GV13-006989 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
24. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Peggy Shannon Bryant Starke Trust, and Peggy Shannon Bryant Starke, Trustee of the Peggy Shannon Bryant Starke Trust*, Case Nos. GV13-006880, GV13-006881 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
25. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Rosa Castillo*, Case No. GV13-008364 (Fx. Co. Gen. Dist. Ct.) (Mason District)
26. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Lloyd R. Staggs, III, and Shari L. Staggs*, Case No. GV13-008363 (Fx. Co. Gen. Dist. Ct.) (Lee District)
27. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Jeffrey E. Burns*, Case No. GV13-008361 (Fx. Co. Gen. Dist. Ct.) (Mason District)
28. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Jeffrey E. Burns*, Case No. GV13-008362 (Fx. Co. Gen. Dist. Ct.) (Mason District)
29. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Road Runner, LLC*, Case No. GV13-009187 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
30. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Luis M. Crespo*, Case No. GV13-009466 (Fx. Co. Gen. Dist. Ct.) (Springfield District)

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31. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Stephan Franco and Michael Franco*, Case No. GV13-009464 (Fx. Co. Gen. Dist. Ct.) (Sully District)

32. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Stephan Franco and Michael Franco*, Case No. GV13-009465 (Fx. Co. Gen. Dist. Ct.) (Sully District)

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Board Agenda Item
May 14, 2013

3:30 p.m.

Public Hearing on SEA 00-H-028, The Most Reverent Paul S. Loverde, Bishop of the Catholic Diocese of Arlington Virginia and his Successors in Office, to Amend SE 00-H-028 Previously Approved for a Place of Worship with Nursery School, Child Care Center and Private School of General Education to Permit Modifications to Development Conditions and Site Design with no Change in Enrollment, Located on Approximately 19.22 Acres of Land Zoned R-1 (Hunter Mill District)

This property is located at 9970 Vale Road, Vienna, 22181. Tax Map 37-4 ((1)) 42.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, May 9, 2013, the Planning Commission unanimously voted (Commissioners Murphy and Hurley absent from the meeting) to recommend that the Board of Supervisors approve SEA 00-H-028, subject to the Development Conditions consistent with those dated April 29, 2013.

ENCLOSED DOCUMENTS:

Attachment 1: PC Verbatim

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4415177.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)

Mary Ann Tsai, Planner, DPZ

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Planning Commission Meeting
May 9, 2013
Verbatim Excerpt

SEA 00-H-028 – THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE
CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE
(ST. MARK’S CATHOLIC CHURCH)

After Close of the Public Hearing

Secretary Hall: I close the public hearing. Now I can do it?

Commissioner de la Fe: Yes.

Secretary Hall: This is our routine. We practice this. Anyway, I recognize Commissioner Frank de la Fe of the Hunter Mill District for the motion.

Commissioner de la Fe: Thank you, Madam Chairman. For once, a simple case is a simple case. Madam Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SEA 00-H-028, SUBJECT TO THE DEVELOPMENT CONDITIONS CONSISTENT WITH THOSE DATED APRIL 29, 2013.

Secretary Hall: Do I have a second?

Commissioners Hedetniemi and Sargeant: Second.

Secretary: We have two seconds – Sargeant – Commissioner Sargeant and Commissioner Janyce (sic). Okay, all in favor of the motion?

Commissioners: Aye.

Secretary Hall: Opposed?

Commissioner Hart: Ask if there is a discussion.

Secretary Hall: Does anybody want to discuss this? No. Okay, no? Now, all right. So now we’re voting. All in favor?

Commissioners: Aye.

Secretary Hall: Anyone opposed? That was very good. Thank you very much. Thank you. And that’s how we do it at the Planning Commission.

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Planning Commission Meeting
May 9, 2013
SEA 00-H-028

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(The motion carried unanimously with Commissioners Hurley and Murphy absent from the meeting.)

JLC

Board Agenda Item
May 14, 2013

3:30 p.m.

Public Hearing on SEA 2006-MA-031, The Most Reverend Paul S. Loverde, Bishop of the Catholic Diocese of Arlington, Virginia and his Successors in Office, to Amend SE 2006-MA-031 Previously Approved for a Place of Worship, Private School of General Education and Congregate Living Facility to Permit a Nursery School, Child Care Associated with the Private School and Nursery School, and Associated Modifications to Site Design and Development Conditions, the Private School of General Education and Nursery School to have a Combined Maximum Daily Enrollment of 370 Children, Located on Approximately on Approximately 45.24 Acres of Land Zoned R-4 (Mason District)

This property is located at 4601 Ravensworth Road, Annandale, 22003. Tax Map 71-1 ((9)) 7A.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, April 4, 2013, The Planning Commission voted unanimously (Commissioners Hall and Hedetniemi absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of SEA 2006-MA-031, subject to development conditions consistent with those dated March 20, 2013; and
- Reaffirmation of the previous modification to the transitional screening requirement along the north, east, and south property lines in favor of the existing vegetation as shown on the Special Exception Amendment plat.

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim Excerpt

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4412551.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Joe Gorney, Planner, DPZ

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Planning Commission Meeting
April 4, 2013
Verbatim Excerpt

SEA 2006-MA-031 – THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE (ST. MICHAEL’S CATHOLIC SCHOOL AND CHURCH)

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed; recognize Mr. Hart.

Commissioner Hart: Thank you Mr. Chairman.

Commissioner Sargeant: I’ll be in the back.

Commissioner Hart: I am pinch hitting tonight for Commissioner Hall. Let me first thank staff, Joe Gorney, for his fine work on this case. Let me also thank the applicant and its agent, Lynne Strobel, for their cooperation. This is a straightforward application to add a nursery school and child care to an existing place of worship and priests’ retirement home on a site with many previous approvals. This application proposes no exterior changes to the facility and no increase in intensity over the current approvals. It has the support of the Mason District Land Use Committee and staff’s favorable recommendation, with which I concur. Therefore, Mr. Chairman, I first MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF SEA 2006-MA-031, SUBJECT TO DEVELOPMENT CONDITIONS CONSISTENT WITH THOSE DATED MARCH 20, 2013.

Commissioner de la Fe: Second.

Chairman Murphy: Seconded by Mr. de la Fe.

Commissioner Sargeant: I would have seconded had it not been for that affidavit remark.

Chairman Murphy: Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SEA 2006-MA-031, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Hart.

Commissioner Hart: Secondly, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND REAFFIRMATION OF THE PREVIOUS MODIFICATION TO THE TRANSITIONAL SCREENING REQUIREMENT ALONG THE NORTH, EAST, AND SOUTH PROPERTY LINES IN FAVOR OF THE EXISTING VEGETATION AS SHOWN ON THE SPECIAL EXCEPTION AMENDMENT PLAT.

Planning Commission Meeting
April 4, 2013
SEA 2006-MA-031

Page 2

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

//

(The motions carried unanimously with Commissioners Hall and Hedetniemi absent from the meeting.)

JN

Board Agenda Item
May 14, 2013

3:30 p.m.

Public Hearing on RZ 2012-MA-022 (CG Peace Valley LLC) to Rezone from R-3 and HC to PDH-4 and HC to Permit Residential Development with an Overall Density of 3.71 Dwelling Units Per Acre and Approval of the Conceptual Development Plan, Located on Approximately 1.89 Acres of Land (Mason District)

This property is located at 3236 Peace Valley Lane, Falls Church, 22044, on the West side of Peace Valley Lane, approximately 500 feet South of its intersection with Leesburg Pike. Tax Map 61-1 ((1)) 7.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, May 2, 2013, the Planning Commission unanimously voted (Commissioner Hurley absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2012-MA-022, subject to the execution of proffers consistent with those dated April 30, 2013;
- Approval of a waiver of the two acre minimum district size for the PDH district, to allow a district of 1.89 acres; and
- Direct the Director of DPWES to approve a modification of the PFM to allow the construction of sidewalks shown on the CDP/FDP to be located on one side of the private street.

In a related action, the Planning Commission voted unanimously (Commissioner Hurley absent from the meeting) to approve FDP 2012-MA-022, subject to the Board's approval of RZ 2012-MA-022.

ENCLOSED DOCUMENTS:

Attachment 1 – Planning Commission Verbatim
Staff Report previously furnished and available online at:
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4414718.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
William O'Donnell, Planner, DPZ

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Planning Commission Meeting
May 2, 2013
Verbatim Excerpt

RZ/FDP 2012-MA-022 – CG PEACE VALLEY, LLC

Decision Only During Commission Matters
(Public Hearing held on April 25, 2013)

Commissioner Hall: Thank you, Mr. Chairman. Tonight, I have a motion for the Rezoning and Final Development Plan for RZ 2012-MA-022, CG Peace Valley, LLC. I would like to thank Commissioner Hart. I would also like to thank Pat Hoar and Will Collins. We did meet back on Peace Valley. If you recall, there was the discussion about connecting the trail to the sideway – to the sidewalk and how all of that would work. I'm very happy to report we came up with a really good solution. It addresses the concerns that were raised about the sidewalk and the trail. And I would like to thank staff for issuing an addendum, which covers all of the necessary things that were discussed. I was also happy that – when the questions were raised about stormwater management, they were addressed at that hearing. So with all of the answers to the questions that have been provided, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF RZ 2012-MA-022, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED APRIL 30, 2013.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2012-MA-022, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Ms. Hall.

Commissioner Hall: And I was remiss. I should have also thanked Commissioner Lawrence for the new language that he had developed on his case that evening. That has been incorporated into the addendum about making sure that the information about the road, and so forth, carries on beyond the initial owner. With that, I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2012-MA-022, SUBJECT TO THE BOARD'S APPROVAL OF THE CONCURRENT REZONING APPLICATION.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion? All those in favor of the motion to approve FDP 2012-MA-022, subject to the Board's approval of the Rezoning, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Planning Commission Meeting
May 2, 2013
RZ/FDP 2012-MA-022

Page 2

Commissioner Hall: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS TO DIRECT THE DIRECTOR OF DPWES TO APPROVE A MODIFICATION OF THE PFM TO ALLOW THE CONSTRUCTION OF SIDEWALKS SHOWN ON THE CDP/FDP TO BE LOCATED ON ONE SIDE OF THE PRIVATE STREET.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hall: And last, but certainly not least, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE A WAIVER OF THE TWO-ACRE MINIMUM DISTRICT SIZE FOR THE PDH DISTRICT, TO ALLOW A DISTRICT OF 1.89 ACRES.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hall: Thank you, Mr. Chairman. And I would like to thank staff for all their help and for the applicant. And I'm glad that one is out of here.

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(The motions carried unanimously with Commissioner Hurley absent from the meeting.)

JLC

Board Agenda Item
May 14, 2013

4:00 p.m.

Public Hearing on Proposed Comprehensive Plan Amendment S11-CW-3CP, Parks Plan Amendment, Phase 1 – Policy Plan

ISSUE:

The purpose of this Plan Amendment is to update the Parks and Recreation section of the Policy Plan to incorporate the Urban Parks Framework and better reflect current park planning practices.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, May 2, 2013, the Planning Commission voted 10-0-1 (Commissioner Hall abstaining; Commissioner Hurley absent from the meeting) to recommend that the Board of Supervisors approve S11-CW-3CP, as set forth in the staff report dated March 21, 2013, subject to the revisions to the published draft text described in the handouts dated May 2, 2013.

RECOMMENDATION:

The County Executive recommends that the Board approve the staff recommendation as shown in the Staff Report dated March 21, 2013 with revisions as identified in the Handout in Attachment 1. The recommendation would update the Comprehensive Plan to incorporate the Urban Parks Framework and better reflect current park planning practices.

TIMING:

Planning Commission public hearing – April 18, 2013

Planning Commission decision only – May 2, 2013

Board of Supervisors public hearing – May 14, 2013

BACKGROUND:

The Parks and Recreation section of the Policy Plan was last updated in 2005. These proposed changes are the first part of a multi-part Plan Amendment (S11-CW-3CP) authorized by the Board of Supervisors on December 6, 2011 to update the Parks and Recreation text, tables, and maps as appropriate in the Policy Plan and Area Plan volumes. Revisions would include adding the Urban Parks Framework to and updating park classification definitions in the Policy Plan, updating Area Plan planning district and sector text, tables and guidelines with information gathered during the Great Parks,

Board Agenda Item
May 14, 2013

Great Communities Park Comprehensive Plan process, and removing text and guidelines that have been completed or are no longer relevant.

Modifications and additions proposed in this Phase 1 Plan Amendment will bring the Parks and Recreation Policy Plan language in line with current practice and adopted Plan guidance in the Area Plan volumes.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1 – Handout from the Planning Commission May 2, 2013 meeting

Attachment 2 – Planning Commission Verbatim

Staff Report previously furnished and available online at:

<http://www.fairfaxcounty.gov/dpz/comprehensiveplan/amendments/s11-cw-3cp.pdf>

STAFF:

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

Marianne Gardner, Director, Planning Division (PD), DPZ

Sterling R. Wheeler, Chief, Policy and Plan Development Branch, PD, DPZ

Cindy Messinger, Acting Director, Fairfax County Park Authority (FCPA)

David Bowden, Director, Planning and Development Division (PDD), FCPA

Sandy Stallman, Manager, Park Planning Branch, FCPA

Anna Bentley, Park Planner, FCPA

**RECOMMENDED REVISIONS TO THE PUBLISHED STAFF REPORT
FOR PROPOSED PLAN AMENDMENT**

S11-CW-3CP

MAY 2, 2013

The following changes to the Staff Report dated March 21, 2013 are proposed.

- Page 8, under Local Parks, Location and Access: Edit last sentence to define walking distance as 1/4 to 1/2 mile. Revised sentence would read, “In urban contexts, Local Parks should be located within walking distance (1/4 to 1/2 mile) from every residence.”
- Page 10, under District Parks, Character and Extent of Development: Hyphenate ‘off-leash’ to be consistent with other references. Revised sentence would read, “...camps, child play, off-leash dog exercising...”
- Page 14, in the introduction: Add a sentence clarifying the flexibility built into the Framework. New sentence would read, “In defining and describing design elements and types, this Framework focuses on characteristics and features, allowing room for flexibility as urban and park forms evolve over time. This flexibility also allows the Framework to be creatively applied within the varying contexts of the County's mixed uses areas; each area is unique, the corresponding urban park systems will also be.”
- Page 14, under Urban Park Design Elements: Add a new sentence to the end of the introductory paragraph to acknowledge importance of non-park green and open spaces. New sentence would read, “Urban design guidelines and specific Area Plan guidance will also address elements of the urban fabric such as open space and green areas that, while not parks as defined here in the Framework, remain important to the success of an urban environment.”
- Page 15, in Table 1, Design Elements, under Ownership, Management, and Operation: Add a new sentence to the end of the description referring to the need for the cooperative programming of urban park spaces. New sentence would read, “Regardless of ownership, urban parks should be publicly-accessible (as described above) and cooperatively programmed.”
- Page 18, under Recreation-Focused Park: Edit third sentence to hyphenate ‘off-leash’ to be consistent with prior references. Revised sentence would read, “...such as athletic fields, multi-use courts, off-leash dog areas...”
- Page 19, under Park Facility Service Level Standards: Edit last sentence to include reference to use patterns in addition to demographics. Revised sentence would read, “... the development form and **the demographics and use patterns** associated with more urban communities.”

Planning Commission Meeting
May 2, 2013
Verbatim Excerpt

S11-CW-3CP – COMPREHENSIVE PLAN AMENDMENT (PHASE ONE: PARKS AND RECREATION SECTION OF THE POLICY PLAN)

Decision Only During Commission Matters
(Public Hearing held on April 18, 2013)

Commissioner Migliaccio: Thank you, Mr. Chairman. I have one decision only tonight from a public hearing on April 18th regarding the Park's new Plan Amendment. Before I begin, I would like to thank the staff, Anna Bentley, Sandy Stallman, and Sterling Wheeler for their efforts on this Amendment – and also the citizens who provided input, either at the public hearing or throughout the process via email and correspondence to the staff. In December 2011, the Board authorized this Amendment to update the Parks and Recreation text, tables, and maps in the Policy Plan and Area Volumes. Tonight, we have before us Phase One of the process that deals with the Policy Plan, which was last amended in 2005. Based on staff analysis and input from various stakeholders, including the public and members of this Commission, this Plan Amendment includes the following revisions: one, it incorporates Urban Parks Guidance throughout the Parks and Recreation section and appends the Urban Parks Framework; two, it describes certain aspects of park natural resources more accurately; three, it clarifies specific elements of the Park Classification System; and four, it updates both Fairfax County Park Authority's and Northern Virginia Regional Park Authority's acquisition criteria to reflect current policies. The modifications and additions proposed in this Plan Amendment will bring Parks and Recreation policy language in line with current practice in adopted Plan guidance in the Area Plan Volumes. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE ADOPTION OF THE STAFF RECOMMENDATION FOR PLAN AMENDMENT S11-CW-3CP, AS SET FORTH IN THE STAFF REPORT DATED MARCH 21, 2013, SUBJECT TO THE REVISIONS TO THE PUBLISHED DRAFT TEXT DESCRIBED IN THE HANDOUTS BEFORE YOU DATED MAY 2, 2013.

Commissioners Flanagan, Hedetniemi, and Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant and Mr. Flanagan and 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 adopt S11-CW-3CP, Comprehensive Plan Amendment regarding the Recreation Section of the Policy Plan, as articulated by Commissioner Migliaccio, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hall: Abstain, not present for the public hearing.

Chairman Murphy: Ms. Hall abstains, not present for the public hearing.

Planning Commission Meeting
May 2, 2013
S11-CW-3CP

Page 2

Commissioner Migliaccio: Thank you, Mr. Chairman.

Chairman Murphy: Yes?

Commissioner Hedetniemi: I just wanted to thank staff –

Chairman Murphy: Put your mic –

Commissioner Hedetniemi: I'm sorry.

Chairman Murphy: Mic.

Commissioner Hedetniemi: Thank you, Mr. Chairman. I want to thank staff for responding to many of the concerns that I had raised. And working with Commissioner Migliaccio, I think that we got a lot accomplished in terms of interpretation and certainly some additional language that clarifies my concerns about linear parks and linear open space. Thank you very much.

//

(The motion carried by a vote of 10-0-1 with Commissioner Hall abstaining; Commissioner Hurley absent from the meeting.)

JLC

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Board Agenda Item
May 14, 2013

4:00 p.m.

Public Hearing on a Proposed Zoning Ordinance Amendment Re: Civil Penalties

ISSUE:

The proposed Zoning Ordinance amendment would expand the use of civil penalties as an enforcement tool for zoning violations and would grant the Zoning Administrator the authority to seek issuance of an inspection warrant related to enforcement of the Zoning Ordinance.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, April 4, 2013, the Planning Commission unanimously voted (Commissioners Hall and Hedetniemi absent from the meeting) to recommend to the Board of Supervisors approval of the proposed Zoning Ordinance amendment regarding civil penalties, as set forth in the staff report dated February 26, 2013.

RECOMMENDATION:

The County Executive concurs with the recommendation of the Planning Commission.

TIMING:

Board of Supervisors' authorization to advertise – February 26, 2013; Planning Commission public hearing – April 4, 2013; Board of Supervisors' public hearing – May 14, 2013 at 4:00 p.m.

BACKGROUND:

Pursuant to Va. Code Ann. § 15.2-2209 (2012) and Article 18 of the Zoning Ordinance, the County is authorized to enforce certain provisions of the Zoning Ordinance through a civil penalty process in the General District Court, in addition to obtaining injunctions in Circuit Court. The civil penalty process allows violators to prepay fines and admit liability and is typically a more expeditious method of obtaining compliance with the Zoning Ordinance than is available in the Circuit Court. At present, however, only certain violations can be prosecuted via the civil penalty process. This amendment seeks to maximize the enabling authority that has been delegated to the County by the General Assembly.

The Department of Code Compliance (DCC) has recently increased its use of the civil penalty process for prosecuting minor offenses of the Zoning Ordinance and the Virginia Maintenance Code. The civil penalty process is effective in addressing minor, one-time offenses. Typical violations which are being prosecuted under the civil penalty process include sheds and other accessory structures located too close to the property line, illegal commercial vehicles, outdoor storage and fences that are too tall. Given the

Board Agenda Item
May 14, 2013

apparent promise of the more streamlined civil penalty approach for litigating minor Zoning Ordinance violations, staff, in coordination with the County Attorney's Office, recommends that the Board amend Article 18 of the Zoning Ordinance to maximize the zoning violations that can be prosecuted via this civil penalty process. Pursuant to Va. Code Ann. § 15.2-2209, violations relating to the posting of signs on public property or public rights-of-way are excluded from the civil penalty process. It is noted that this amendment will not preclude the County from obtaining injunctive relief in Circuit Court for any violation if necessary. In addition, the proposed amendment would also specifically authorize the Zoning Administrator to seek issuance of an inspection warrant related to enforcement of the Zoning Ordinance, as provided by Par. 15 of Va. Code Ann. § 15.2-2286 (2012). While this statute clearly provides for this authority, the Zoning Ordinance contains no specific language acknowledging this enabling authority.

A more detailed discussion of the proposed amendment is set forth in the attached Staff Report.

REGULATORY IMPACT:

Currently the preparation and filing of a civil action in the Circuit Court through resolution typically takes between four to twelve months. Based on DCC's experiences with the civil penalty process for minor zoning violations, this method of enforcement can typically be accomplished within two to three months.

FISCAL IMPACT:

If adopted, it is anticipated that the proposed amendment establishing a schedule of civil penalties will yield additional revenue of approximately \$5,000 annually starting in Fiscal Year 2013. The projected additional revenue will be collected by the Department of Finance and will be added to the general fund.

ENCLOSED DOCUMENTS:

Attachment 1 – Staff Report, also available at
<http://www.fairfaxcounty.gov/dpz/zoningordinance/proposed/civilpenalties.pdf>
Attachment 2 – Planning Commission Verbatim Excerpt

STAFF:

Fred Selden, Director, Department of Planning and Zoning (DPZ)
Leslie B. Johnson, Zoning Administrator
Jeffrey Blackford, Director, Department of Code Compliance (DCC)
Cynthia A. Bailey, Senior Assistant County Attorney
Michael Congleton, DCC



**FAIRFAX
COUNTY**

STAFF REPORT

V I R G I N I A

PROPOSED ZONING ORDINANCE AMENDMENT

Civil Penalties

PUBLIC HEARING DATES

Planning Commission April 4, 2013 at 8:15 p.m.

Board of Supervisors May 14, 2013 at 4:00 p.m.

**PREPARED BY
DEPARTMENT OF CODE COMPLIANCE
703-324-1300
ZONING ADMINISTRATION DIVISION
DEPARTMENT OF PLANNING AND ZONING
703-324-1314**

February 26, 2013

MRC



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

STAFF COMMENT

The proposed Zoning Ordinance amendment would expand the use of civil penalties as an enforcement tool for zoning violations and would grant the Zoning Administrator the authority to seek an inspection warrant to enforce the Zoning Ordinance. The current Zoning Ordinance only permits specifically identified zoning violations to be pursued by civil penalty. This amendment would provide county staff with greater choice and flexibility in remedying zoning violations by instituting a uniform schedule of civil penalties and allowing most violations of the Zoning Ordinance to be remedied in this manner.

Pursuant to Va. Code Ann. § 15.2-2209 (2012) and Part 9 of Article 18 of the Zoning Ordinance, the County is authorized to enforce certain provisions of the Zoning Ordinance by obtaining an injunction in the Circuit Court, as criminal misdemeanors in the General District Court, or through civil penalties, also in the General District Court.¹

The Department of Code Compliance (DCC) has increasingly relied upon the civil penalty process for successfully prosecuting minor offenses of the Zoning Ordinance and the Virginia Maintenance Code, as it is another option in achieving compliance with the Zoning Ordinance provisions. The civil penalty process allows violators to prepay fines and admit liability, and it is typically more expeditious than obtaining injunctive relief through Circuit Court. Currently, however, only violations enumerated in Par. 1 of Sect. 18-903 of the Zoning Ordinance can be pursued via the civil penalty process. Such violations include sheds and other accessory structures located too close to a property line, illegal commercial vehicles, outdoor storage and fences that are too tall. The current list, however, excludes related violations, which means that these violations cannot be prosecuted using the same method. For example, although a violation for multiple occupancy can be prosecuted via civil penalties, a violation for establishing more than one dwelling unit in a single-family structure can only be prosecuted in the Circuit Court, in accordance with Par. 4 of Sect. 18-901 of the Zoning Ordinance.

DCC staff, in coordination with the County Attorney's Office, recommends that the Board amend Article 18 of the Zoning Ordinance to establish a uniform schedule of civil penalties for all zoning violations, except for violations relating to the posting of signs on public property or public rights-of-way.² Enacting such civil penalty provisions will enhance enforcement efforts and provide a streamlined approach for litigating these violations.

This amendment will not preclude the County from obtaining injunctive relief in Circuit Court for any zoning violation if necessary, but it maximizes the existing authority delegated to counties from the General Assembly. If adopted, it is anticipated that the proposed amendment establishing a schedule of civil penalties for all zoning violations, except those sign related violations expressly excluded from Va. Code Ann. § 15.2-2209, will yield additional revenue of approximately \$5,000 annually starting in FY 2013. The projected additional revenue will be collected by the Department of Finance and added to the general fund.

1 It should be noted that the County has not sought prosecution of a violation of the Zoning Ordinance as a misdemeanor since the mid 1980s.

2 These sign-related violation are expressly excluded from Va. Code Ann. § 15.2-2209.

The proposed amendment would also specifically authorize the Zoning Administrator to seek issuance of an inspection warrant related to enforcement of the Zoning Ordinance, as provided by Par. 15 of Va. Code Ann. § 15.2-2286 (2012). Although this statute clearly provides for this authority, the Zoning Ordinance has no specific language acknowledging this enabling authority. The use of inspection warrants on a limited basis has shown to be an effective tool in the administration and enforcement of the Virginia Maintenance Code and the Building Code.

Staff believes that allowing for the expanded use of civil penalties and the use of inspection warrants is appropriate and recommends approval of the proposed amendment with an effective date of 12:01 a.m. on the day following the adoption.

PROPOSED AMENDMENT

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of February 26, 2013 and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, which other amendments may be adopted prior to action on this amendment. In such event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

1 **Amend Article 18, Administration, Amendments, Violations and Penalties, Part 9, Violations,**
 2 **Infractions, and Penalties, as follows:**

3
 4 - **Amend Sect. 18-901, General Provisions, by revising Par. 4 to read as follows:**

- 5
 6 4. In addition to the remedies provided in Par. 3 above, the Zoning Administrator may seek
 7 the issuance of an inspection warrant, initiate injunction, mandamus, or any other
 8 appropriate action to prevent, enjoin, abate or remove such erection or use in violation of
 9 any provision of this Ordinance. Such action may also be instituted by any citizen who
 10 may be aggrieved or particularly damaged by any violation of any provisions of this
 11 Ordinance.

12
 13 - **Amend Sect. 18-902, Criminal Violations and Penalties, by revising Par. 1 to read as**
 14 **follows:**

- 15
 16 1. Except as otherwise provided by law, Any violation of the provisions of this Ordinance,
 17 ~~other than those set forth in Sect. 903 below,~~ shall be deemed a misdemeanor and, upon
 18 conviction thereof, shall be punishable by a fine of not less than \$10 and not more than
 19 \$1000. Failure to remove or abate a zoning violation within the time period established
 20 by the Court shall constitute a separate misdemeanor offense punishable by a fine of not
 21 less than \$10 nor more than \$1000, and any such failure during any succeeding ten day
 22 period shall constitute a separate misdemeanor offense for each ten day period punishable
 23 by a fine of not less than \$100 nor more than \$1500.

24
 25 - **Amend of Sect. 18-903, Infractions and Civil Penalties, by revising Paragraphs 1, 2 and**
 26 **4 to read as follows:**

- 27
 28 1. A violation of the ~~following~~ provisions of this Ordinance, except for the posting of signs
 29 on public property or public rights-of-way, shall be deemed an infraction and shall be
 30 punishable by a civil penalty of \$200 for the first violation; and subsequent violations
 31 arising from the same set of operative facts shall be punishable by a civil penalty of \$500
 32 for each separate offense;
 33

1 ~~A. Conduct of a use, accessory use, and/or home occupation in violation of Paragraphs 5,~~
 2 ~~6, or 8 of Sect. 2-302.~~

3 ~~B. Occupancy of a dwelling unit in violation of Sect. 2-502.~~

4 ~~C. Obstruction of sight distance on corner lots in violation of Sect. 2-505.~~

5 ~~D. Keeping of animals in violation of Sect. 2-512.~~

6 ~~E. Conducting an accessory use in violation of Paragraphs 9 or 24 of Sect. 10-102.~~

7 ~~F. Parking a commercial vehicle in an R-district in violation of Par. 16 of Sect. 10-102.~~

8 ~~G. Location of basketball standard in a front yard in violation of Par. 12C of Sect. 10-~~
 9 ~~104.~~

10 ~~H. Erection of prohibited signs on private property in violation of Paragraphs 1, 4, 5, 6, 7,~~
 11 ~~11, 12, 13 or 14 of Sect. 12-104.~~

12 ~~I. Erection, alteration, refacing or relocation of a sign on private property in violation of~~
 13 ~~Sect. 12-301.~~

14 ~~J. Occupancy or use of structure without approval of a Residential or Non-Residential~~
 15 ~~Use Permit in violation of Sect. 18-701.~~

- 16
- 17 2. Each day during which any violation of the provisions ~~enumerated in~~ under Par. 1 above
 18 is found to have existed shall constitute a separate offense. However, in no event shall
 19 any such violation arising from the same set of operative facts be charged more
 20 frequently than once in any ten (10) day period, nor shall a series of such violations
 21 arising from the same set of operative facts result in civil penalties which exceed a total
 22 of \$5000.
- 23
- 24 4. After having served a notice of violation on any person committing or permitting a
 25 violation of the Zoning Ordinance provisions ~~enumerated in~~ under Par. 1 above and if
 26 such violation has not ceased within such reasonable time as is specified in such notice,
 27 then, upon the approval of the County Attorney, the Zoning Administrator shall cause
 28 two (2) copies of a summons to be served upon such person.
- 29

Planning Commission Meeting
April 4, 2013
Verbatim Excerpt

ZONING ORDINANCE AMENDMENT (CIVIL PENALTIES)

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed; Mr. Sargeant.

Commissioner Sargeant: Thank you, Mr. Chairman. I'm prepared to go out into the audience and provide some testimony but, no, I won't. This is very straightforward. I want to thank Mike Congleton with Code Compliance for all of the work to make this as smooth as it is and as detailed - - and for taking care of all the details ahead of time to make sure it has gone as smoothly as it has. Thank you. So, with that, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF THE PROPOSED ZONING ORDINANCE AMENDMENT REGARDING CIVIL PENALTIES, AS SET FORTH IN THE STAFF REPORT DATED FEBRUARY 26TH, 2013.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt the proposed Zoning Ordinance Amendment regarding civil penalties, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

//

(The motion carried unanimously with Commissioners Hall and Hedetniemi absent from the meeting.)

JN

Board Agenda Item
May 14, 2013

4:00 p.m.

Public Hearing on 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 on Map Page No. 30-2 and Board Policy for the Treatment of Approved and Pending Plans of Development (Dranesville District)

ISSUE:

Board of Supervisors' (Board) adoption of 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.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, April 25, 2013, the Planning Commission voted unanimously (Commissioner Hurley absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of the proposed amendments to the Map of the Chesapeake Bay Preservation Areas, Page 30-2, as set forth in the staff report dated February 27, 2013; and that the proposed amendments become effective at 12:01 a.m. on May 15, 2013; and
- Approval of the Board Policy for Treatment of Approved and Pending Plans of Development, as set forth in the staff report dated February 27, 2013.

RECOMMENDATION:

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

Board Agenda Item
May 14, 2013

TIMING:

Board action is requested on May 14, 2013. On March 19, 2013, the Board authorized the advertising of public hearings. The Planning Commission held a public hearing on April 25, 2013.

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. 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 as Attachment A of the staff report. These

Board Agenda Item
May 14, 2013

proposed amendments to the Chesapeake Bay Preservation Areas Map are the result of the field investigation, which is included as Attachment B in the staff report.

PROPOSED AMENDMENTS:

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 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 was mailed to the owners of property where the herein described RPAs will be designated.

FISCAL IMPACT:

None

Board Agenda Item
May 14, 2013

ENCLOSED DOCUMENTS:

Attachment 1 – Verbatim excerpt

Attachment 2 – Staff Report dated February 27, 2013, also available on-line at

http://www.fairfaxcounty.gov/dpwes/publications/pfm/chesbaymaps/staff_report_rpa30_2.pdf.

STAFF:

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

Michelle Brickner, Deputy Director, DPWES - Land Development Services

Randolph W. Bartlett, Director, Stormwater Management, DPWES

Planning Commission Meeting
April 25, 2013
Verbatim Excerpt

RESOURCE PROTECTION AREA MAP AMENDMENT (Dranesville District)

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed; recognize Mr. Donahue.

Commissioner Donahue: Thank you, Mr. Chairman. The main reason for this reevaluation came up at the Salona Task Force which, as they had continued to plan the plan for Salona, realized there might be some questions on exactly where the RPAs were and where the streams went. And they wanted to make sure they had confirmation on that before they planned the park and then found out that they had bad readings and might have to plan the park all over the again. So that is really the reason we are here tonight. And I really want to thank the work of Jerry Stonefield, Shannon Curtis, Andy Galusha with the Park Authority who were very good about attending meetings and making sure that the Task Force got this straight. And with that, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS ADOPTION OF THE PROPOSED AMENDMENTS TO THE MAP OF CHESAPEAKE BAY PRESERVATION AREAS, PAGE NUMBER 30-2, AS SET FORTH IN THE STAFF REPORT DATED FEBRUARY 27TH, 2013, AND THAT THE AMENDMENTS BECOME EFFECTIVE AT 12:01 A.M. ON MAY 15TH, 2013.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt the Resource Protection Area Map Amendment as articulated by Mr. Donahue, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Donahue: Further, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS ADOPTION OF THE BOARD POLICY FOR TREATMENT OF APPROVED AND PENDING PLANS OF DEVELOPMENT, AS SET FORTH IN THE STAFF REPORT DATED FEBRUARY 27TH, 2013.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Planning Commission Meeting
April 25, 2013
RPA MAP AMENDMENT

Page 2

Chairman Murphy: Opposed? Motion carries.

//

(The motions carried unanimously with Commissioner Hurley absent from the meeting.)

JN

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>

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

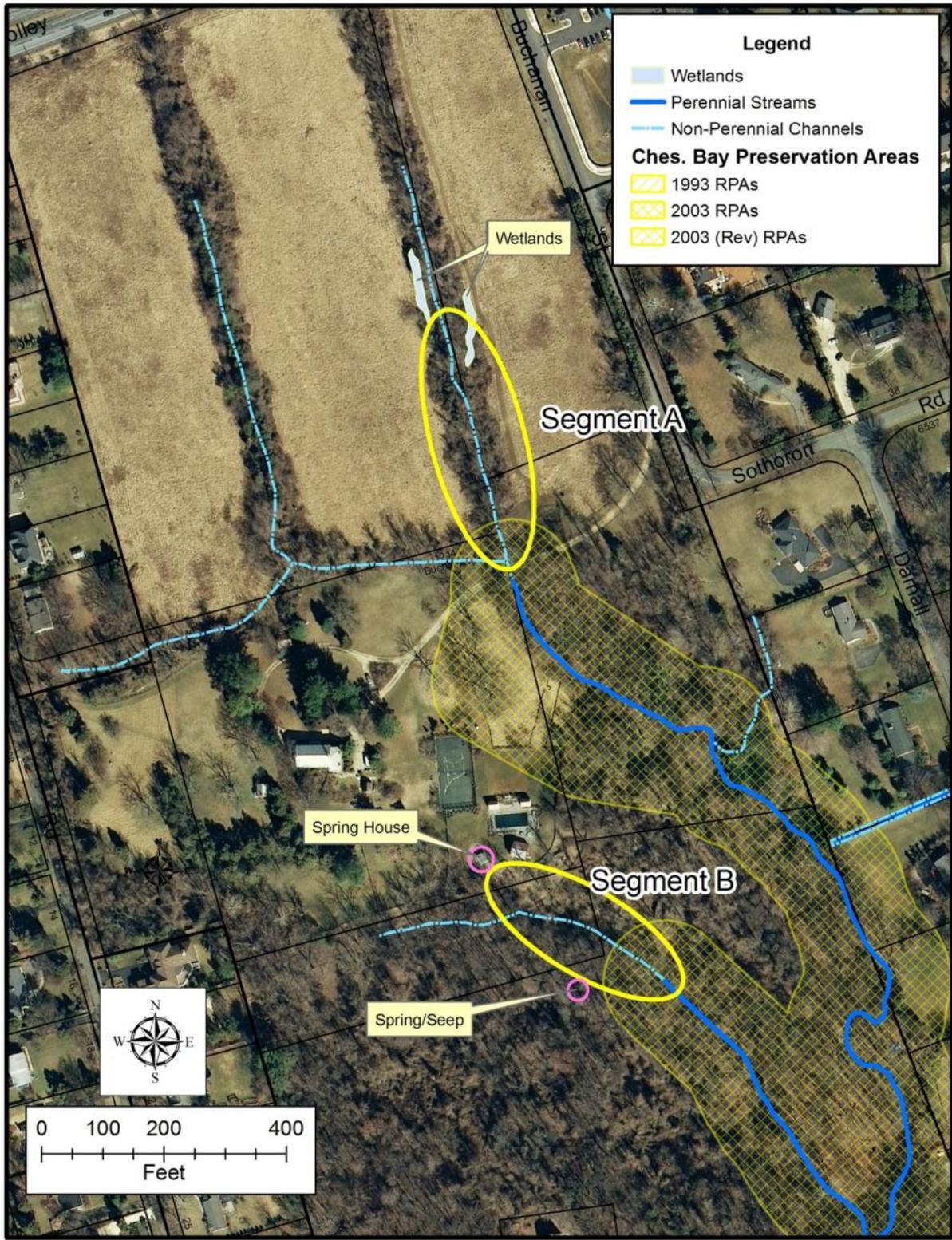


Figure 2: Areas of primary interest in the stream perennality study/observations

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.

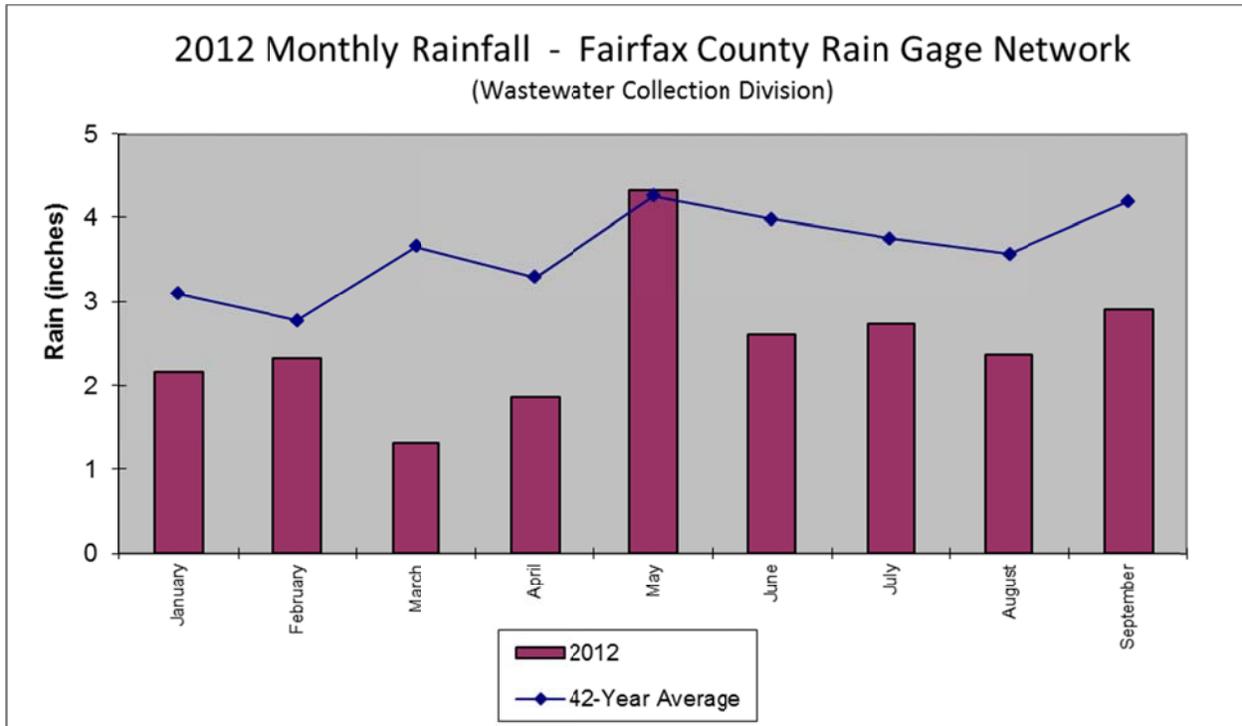


Figure 3: 2012 monthly rainfall averages from the Fairfax County Wastewater Collection Division’s rain gage network

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.

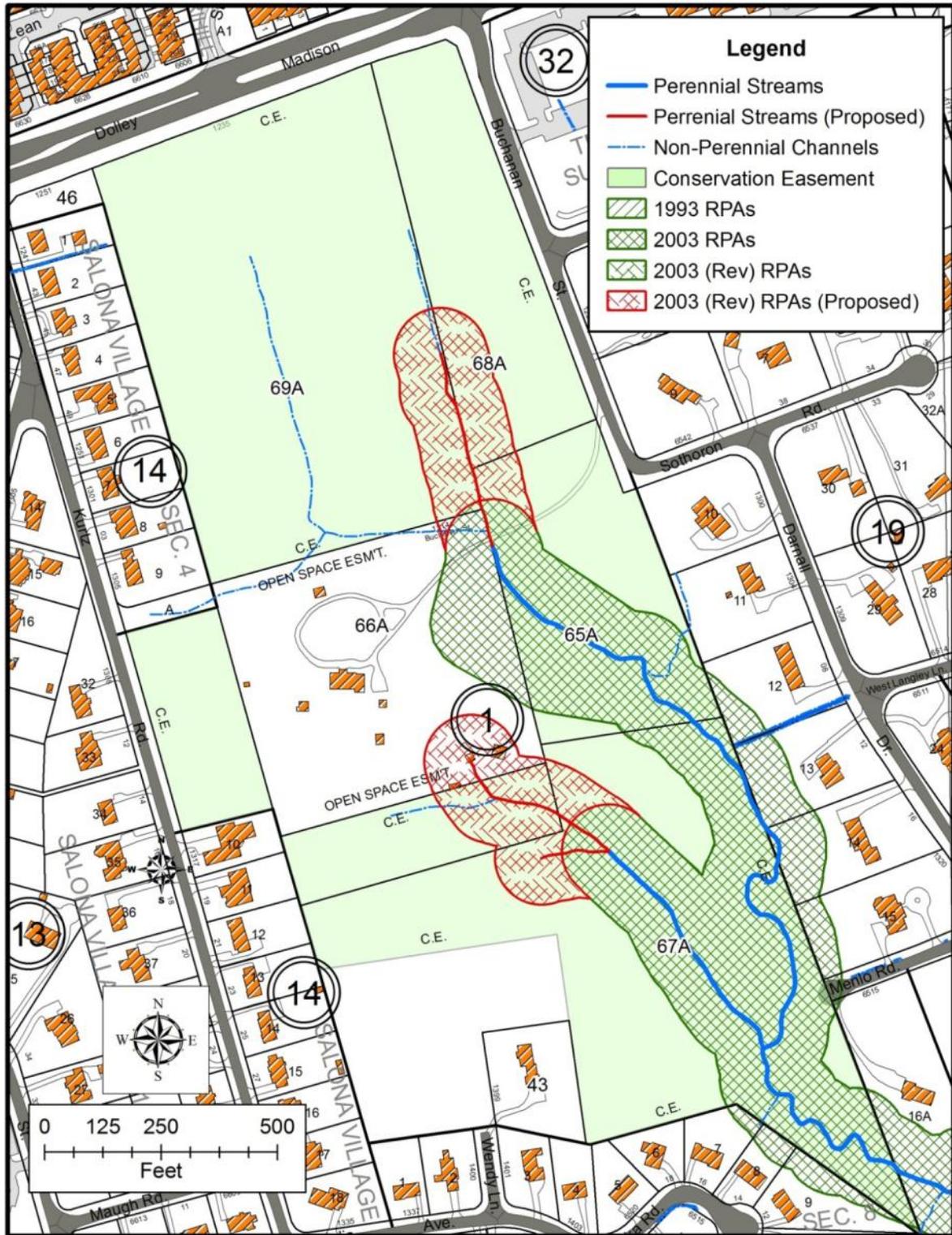


Figure 4: Proposed amendments to the Fairfax County Chesapeake Bay Preservation Area Map. (Note: wetlands depicted in Figure 2 are not buffered with the RPA because they are not “connected and contiguous” to the perennial stream. See 118-1-7-(b)(4))

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

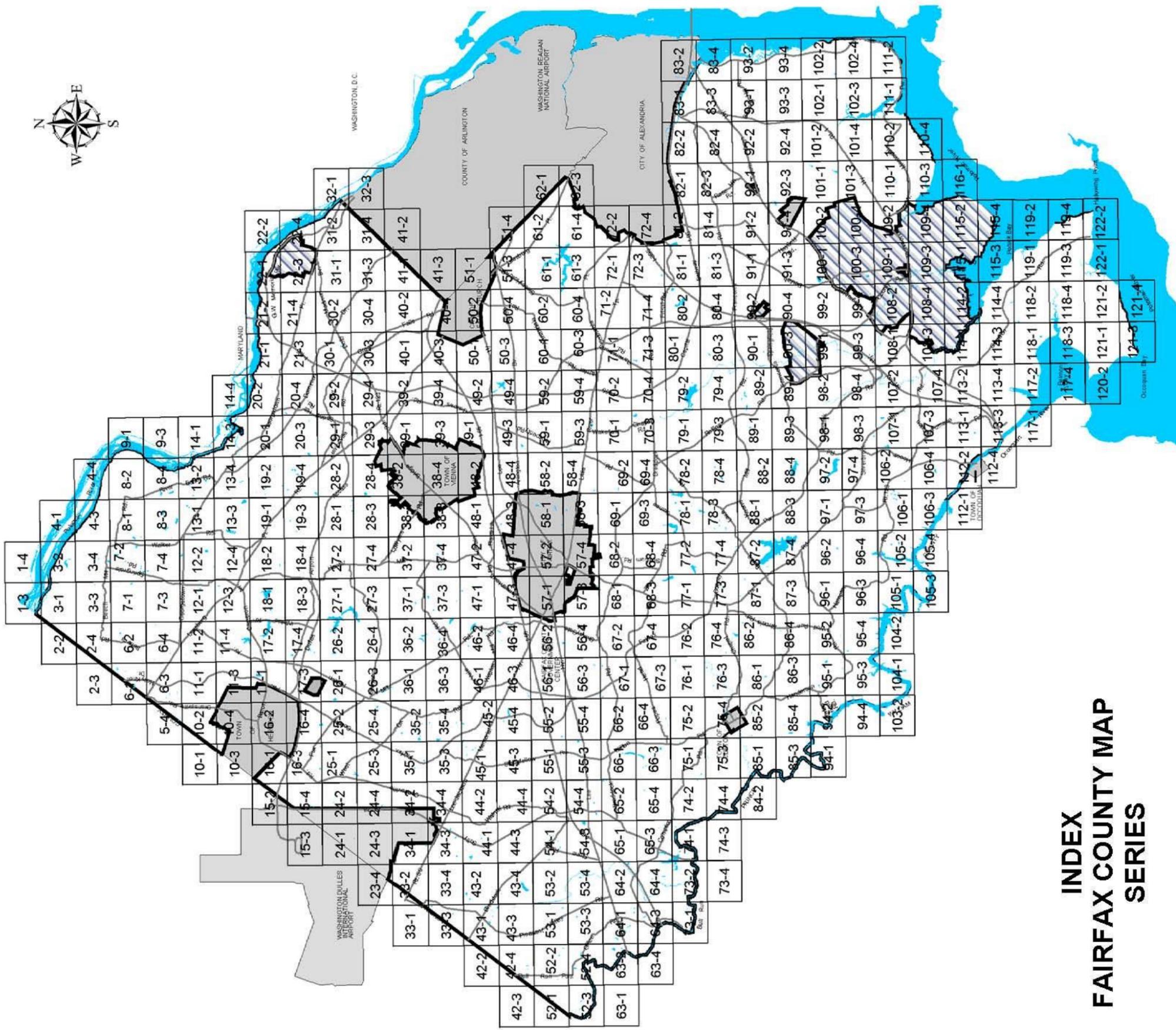
Lakes, Ponds

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**



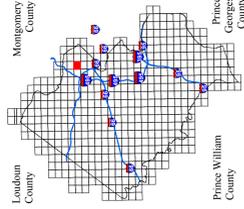
Map file is 57" X 70" based on NAD83 1:24,000 scale
7.12 minute Quad, Virginia Coordinate System
NAD 83/98 High Precision GPS Network adjustment.
National Geodetic, Vertical Datum 1929

GENERAL NOTES

CHESAPEAKE BAY PRESERVATION AREAS
LEGEND

- Resource Protection Areas (RPAs)
 - 1998 RPAs
 - 2008 (Rev) RPAs
 - Resource Management Areas (RAMAs)

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, accuracy or assurance of any kind. The County is not responsible for any errors or omissions that may appear in this map. The County is not liable for any damages, including consequential damages, arising from the use of this map. The County is not responsible for any other information that may appear on this map.



ADMINISTRATIVE INDEX

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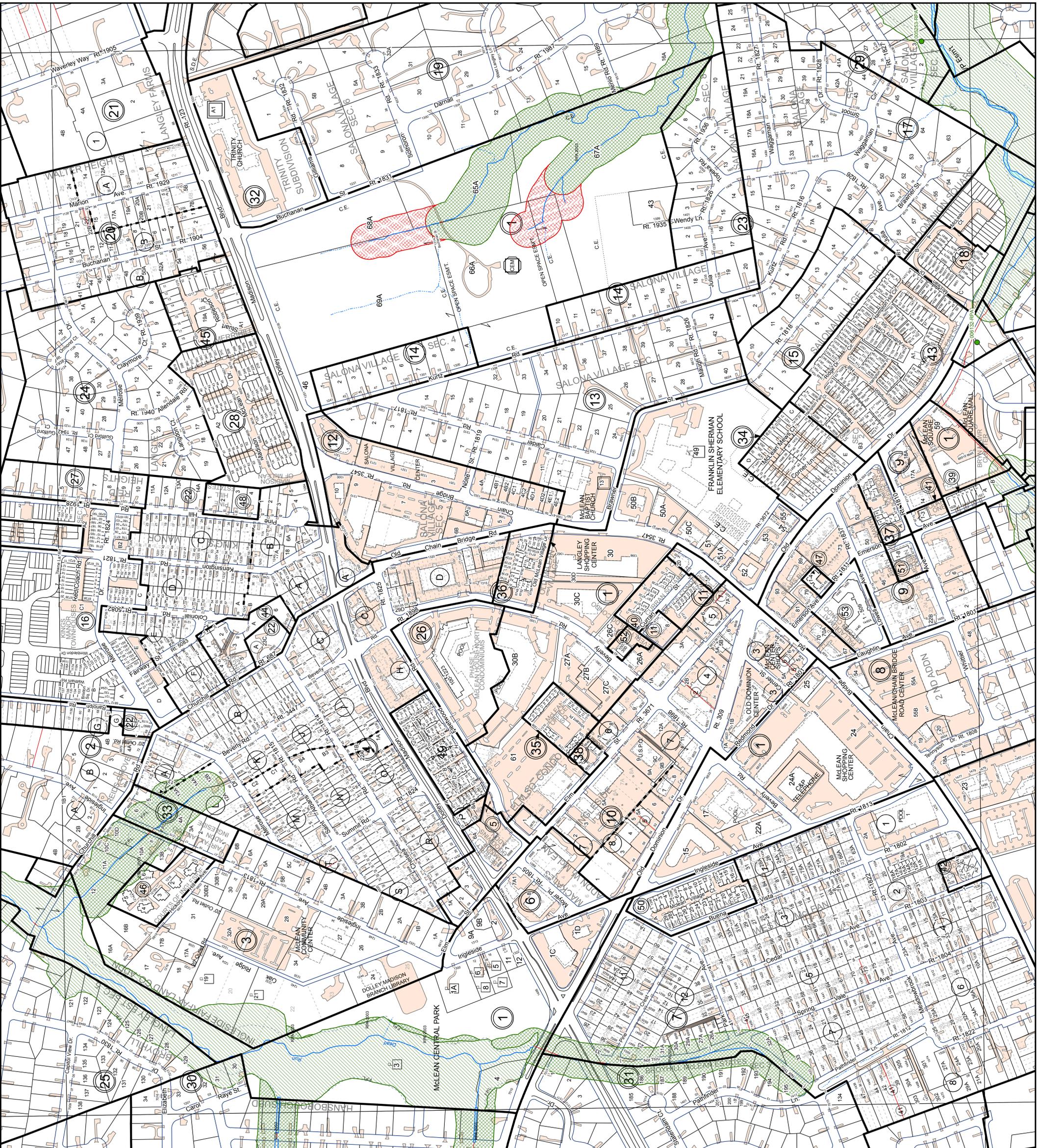
SHEET INDEX

CHESAPEAKE BAY
MAP
30-2

Revised to : 01 - 28 - 2013

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Print Date 28 Jan 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
FOR
TREATMENT OF APPROVED AND PENDING PLANS OF DEVELOPMENT
AFFECTED BY THE MAY 14, 2013, REVISIONS TO
THE MAP OF CHESAPEAKE BAY PRESERVATION AREAS**

(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
May 14, 2013

4:00 p.m.

Public Hearing on Proposed Amendments to Appendix H of the Fairfax County Code to Grant a Non-Exclusive Cable Television Franchise to CoxCom, LLC

ISSUE:

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 adopt the proposed ordinance amendment and authorize the County Executive to execute the proposed franchise agreement. The County Executive further recommends that the Board authorize the County Executive to provide formal notice to Cox terminating a 2002 Agreement between Cox and the County.

TIMING:

Board approval on May 14, 2013, will allow the proposed new franchise agreement to take effect when 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.

In preparation for renewal, in accordance with the formal renewal provisions of the federal 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 Cox's performance under the current franchise. 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. Staff also retained an expert on cable system finances to review Cox's financial qualifications. The consultant's report finds no reason to conclude that Cox is not qualified to perform

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its obligations under the proposed franchise, as it has under the current franchise. County staff drew on the results of the above studies, particularly the needs assessment, in negotiating the proposed renewal franchise agreement.

The proposed agreement (Attachment 2) 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). The agreement also provides for distribution of video programming to County and Fairfax County Public School sites.

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 access 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 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).

Department of Cable and Consumer Services (DCCS) staff met with the Consumer Protection Commission on March 19, 2013, to present the proposed franchise agreement. Representatives of Cox appeared at that meeting and provided responses to the Commission's questions. After discussion, the Commission recommended that the Board adopt the proposed franchise agreement.

DCCS staff has also met with staff from Fairfax County Public Schools, Fairfax Public Access, George Mason University, Northern Virginia Community College, and the County's Department of Information Technology to provide them with information about the proposed franchise agreement, particularly the PEG provisions relating to each of those entities.

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The proposed franchise agreement attached as Attachment 2 shows a change to the advertised version in brackets on pages 116-117 to clarify a fiber relocation provision. The change is within the scope of what was advertised to the public.

To conclude all matters relating to the current franchise agreement, staff also requests that the Board authorize the County Executive to send Cox and its parent corporation, Cox Communications, Inc., notice that effectively terminates a 2002 agreement (Attachment 4). The current franchise agreement required Cox to upgrade its cable system and complete construction of the County's I-Net by May 31, 2002. Cox did not meet that deadline. Therefore, on July 22, 2002, the Board found Cox in material breach of its franchise. In an agreement dated September 23, 2002, Cox and its parent corporation committed to take corrective actions. Cox fully and timely performed its obligations under the 2002 agreement.

FISCAL IMPACT:

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. As a result, anticipated revenue to Fund 40030, Cable Communications, will not be impacted by the franchise agreement.

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: Proposed Franchise Agreement (Hard copy of the agreement is included for Board members and is available online at:

http://fairfaxcounty.gov/cable/regulation/franchise/cox/proposed_franchise_agreement_cox_fairfax_cty_2013.pdf)

Attachment 3: Staff report summarizing the proposed agreement

Attachment 4: Draft letter to Cox Communications Northern Virginia and Cox Communications, Inc., acknowledging termination of 2002 agreement

STAFF:

Michael S. Liberman, Director, Department of Cable and Consumer Services
Frederick E. Ellrod III, Director, Communications Policy and Regulation Division,
DCCS

Erin C. Ward, Senior Assistant County Attorney

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

4
5 Draft of March 1, 2013
6

7 **AN ORDINANCE** amending Appendix H of the Fairfax County Code to amend
8 Section A, granting a non-exclusive cable television franchise for the
9 North County and South County Franchise Areas of Fairfax County,
10 Virginia, pursuant to the provisions of Va. Code § 15.2-2108.20 and
11 Chapter 9.1 of the Fairfax County Code.
12

13
14 **Be it ordained by the Board of Supervisors of Fairfax County:**

15
16 1. That Section A of Appendix H of the Fairfax County Code is amended
17 as follows:
18

19 **APPENDIX H.**

20 **Cable Television Franchises.**

21 A. *North and South Franchise Areas.*
22

23 ~~Paragraph 1. Pursuant to applicable provisions of Virginia law, and subject~~
24 ~~to the conditions set forth in this Section and the second adoption clause of this~~
25 ~~ordinance setting forth the effective date and supersession provisions, the Fairfax~~
26 ~~County Board of Supervisors hereby accepts, approves, grants and awards to~~
27 ~~Media General Cable of Fairfax County, Inc. ("Media General Cable"), a non-~~
28 ~~exclusive franchise to provide cable television service within the North and South~~
29 ~~County Franchise Areas of Fairfax County, Virginia. The terms of the franchise to~~
30 ~~provide such cable television service shall consist of the document titled "A Cable~~
31 ~~Television Franchise Agreement Between Fairfax County, Virginia, and Media~~
32 ~~General Cable of Fairfax County, Inc." that was submitted to the Board of~~
33 ~~Supervisors by the Chairman of the Board of Media General Cable on February~~
34 ~~20, 1998 ("Proposal for a Franchise Agreement") together with: (i) all documents~~
35 ~~incorporated within that Proposal for a Franchise Agreement; (ii) all Appendices~~
36 ~~to that Proposal for a Franchise Agreement and documents incorporated therein;~~
37 ~~(iii) the provisions of Chapter 9 of the Fairfax County Code; (iv) the modifying~~
38 ~~provisions of Appendix H to the Fairfax County Code; and (v) the satisfaction of~~
39 ~~the conditions set forth in the second adoption clause of this ordinance.~~
40

41 ~~Paragraph 2. The Franchise Agreement described in Paragraph 1 of this~~
42 ~~Section shall be subject to: (i) the payment of \$156,000 to the County of Fairfax~~
43 ~~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 REPORTRenewal of Cox Communications Cable Franchise
May 14, 2013**Cox's Cable Franchise Renewal**

The County's current cable franchise with CoxCom, LLC ("Cox"), which dates from 1998, is due for renewal. The current franchise expires on June 9, 2013.

County staff has negotiated a proposed renewal agreement (the "Proposed Agreement") with Cox. The Board authorized public advertisement of the Proposed Agreement on March 19, 2013, for public hearing on May 14, 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 ("CST"). Under state law, this tax has taken the place of the franchise fee specified in the current agreement. § 8(a)(2), p. 67.

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. § 7(d), p. 55.

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. § 8(l), p. 65, & App. 1, p. 107.

Inspection and Complaints

Ability for County inspectors to monitor construction for compliance with safety and other standards, and respond to homeowner complaints. § 5, p. 25.

Service to County and School Sites

Television feed to County and school sites via the I-Net, at no charge. § 7(g), p. 58.

Security Instruments

Security for amounts due the County, including a \$100,000 performance bond and a \$50,000 letter of credit. § 12(a)-(c), p. 89.

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. § 10, p. 79.

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. § 4(b), p. 23.

Improved Video Service

The Proposed Agreement will simplify and customize the provision of video service to County and Fairfax County Public Schools (“FCPS”) sites over the I-Net, reducing complication and expense. § 7(g), p. 58.

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. § 7(a)(5), p. 48.

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. § 7(c), p. 53.

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. § 7(j)(2), p. 64.

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. § 12(f), p. 89.

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

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. App. 1, § 6(b), p. 124, and Exhibit A, p. 136.

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.

§ 7(a)(1).

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. Current § 6(o).

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 means 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. Current § 6(j).

Term

The Proposed Agreement covers a ten-year period, and would expire on June 9, 2023. § 2(c), p. 14.

Staff Recommendations

Approval of the Proposed Agreement. 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 recommends that the Board approve the Proposed Agreement by ordinance, and direct the County Executive to sign it on behalf of the County.

Allocation of CST Revenues. As shown in the table below, staff recommends that the 5% CST revenues be allocated by the Board for cable-related activities as follows: 1% out of the 5% to the County's General Fund as compensation to the County for general administrative overhead costs; 1% out of the 5% to the FCPS for video programming and cable-related purposes; and 3% to the County's Subfund 400-C40030 (formerly Fund 105) for the I-Net, cable programming, regulation, and other cable-related costs as determined by the Board in its annual budget deliberations. The dollar value of these percentages depends on the taxes collected by Cox and will change over time.

Staff Recommendation

Compensation to the County's General Fund	1.0%
FCPS Educational Access Grant	1.0%
<u>County Cable Fund</u>	<u>3.0%</u>
Total	5.0%

Recognizing the Board's interest in accounting for the use of cable-related revenues, staff recommends that FCPS provide an annual report on the use of these funds to the Board and the Communications Administrator. This recommendation carries forward the reporting requirement adopted at the time of the 1998 franchise.

Allocation of PEG Grant Revenues. As indicated above, the Proposed Agreement also provides for an additional payment of 3.0% of Cox's gross revenues from cable service for PEG access. Of that amount, 2.04% is paid to the County. The remaining 0.96% is paid directly to other entities that manage PEG access channels:

Fairfax Cable Access Corporation (public access)	<u>0.80%</u>
George Mason University	0.08%
<u>Northern Virginia Community College</u>	<u>0.08%</u>
Total	0.96%

Staff recommends that the County's 2.04% portion be allocated primarily for the capital costs of construction, maintenance, and related equipment of the I-Net. A fixed amount of \$350,000 each would be allocated annually for the capital costs of video production equipment for the County and FCPS, with the balance of the 2.04% grant going to the I-Net.



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

May __, 2013

Cox Communications, Inc.
Patrick Esser
President
Jennifer Hightower
Senior Vice President, Law & Policy
1400 Lake Hearn Drive
Atlanta, Georgia 30319

Cox Communications Northern Virginia
Gary McCollum
Senior Vice President and General Manager
1341 Crossways Blvd.
Chesapeake, VA 23320

Kathryn Falk
Vice President, Government Affairs
3080 Centreville Rd.
Herndon, VA 20171

Dear Mr. Esser, Ms. Hightower, Mr. McCollum, and Ms. Falk:

This letter is being written pursuant to paragraph 25 of the Agreement dated September 23, 2002, (“the 2002 Agreement”) between (i) the County of Fairfax, Virginia (“County”); (ii) CoxCom, Inc., d/b/a/ Cox Communications Northern Virginia (“CCNV); and (iii) Cox Communications, Inc. (“Cox”). The County and CCNV are also parties to a 1998 cable franchise agreement that was transferred to CCNV in 1999, and Cox unconditionally guaranteed the due and punctual performance of any and all of the obligations imposed upon CCNV in that cable franchise agreement.

The 2002 Agreement arose from a dispute between the County and CCNV about whether CCNV had timely performed its obligations under the cable franchise agreement to upgrade CCNV’s Home Subscriber Network and complete delivery of the County’s Institutional Network by May 31, 2002. In the 2002 Agreement, CCNV and Cox agreed to take certain steps to resolve the dispute. The County agreed that, when it determined that all terms and conditions of the 2002 Agreement had been fully performed, the County would provide notice to CCNV and Cox that the 2002 Agreement is of no further force and effect except as specifically provided in paragraph 18 of the 2002 Agreement.

This letter is to provide formal notice of the County's determination that both CCNV and Cox have fully performed all terms and conditions under the 2002 Agreement. Consequently, the 2002 Agreement has no further force and effect except for paragraph 18, which prohibits CCNV from passing through to its subscribers the costs it incurred to comply with its escrow and I-Net compensation credit obligations under the 2002 Agreement.

Sincerely,

Edward L. Long Jr.
County Executive

Members, Board of Supervisors
David J. Molchany, Deputy County Executive
Michael Liberman, Director, Department of Cable and Consumer Services
David P. Bobzien, County Attorney

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Board Agenda Item
May 14, 2013

4:30 P.M.

Public Hearing on Spot Blight Abatement Ordinance for 9713 Water Oak Drive, Fairfax, VA 22031 (Providence District)

ISSUE:

Public Hearing to adopt a Spot Blight Abatement Ordinance for 9713 Water Oak Drive, Fairfax, VA 22031 (048-3 ((34)) 0028) and approval of a blight abatement plan for the Property.

RECOMMENDATION:

The County Executive recommends that the Board adopt an ordinance to declare 9713 Water Oak Drive blighted, constituting a nuisance, and approve the blight abatement plan for the Property.

TIMING:

On April 9, 2013 the Board authorized advertisement of this public hearing to be held Tuesday, May 14, 2013 at 4:30 PM.

BACKGROUND:

Va. Code Ann. § 36-49.1:1 (2011) (Spot Blight Abatement Statute) allows the Board, by ordinance, to declare a blighted property a nuisance, thereby enabling abatement in accordance with Va. Code Ann. § 15.2-900 (2012) or Va. Code Ann. § 15.2-1115 (2012) (Abatement of Nuisance Statutes). The Abatement of Nuisance Statutes permits the County to compel the abatement or removal of nuisances. If, after reasonable notice, the owner(s) fails to abate or obviate the nuisance the County may abate the nuisance in which event the property owner(s) may then be charged for the costs of abatement, which may be collected from the property owner(s) in any manner provided by law for the collection of state or local taxes.

Properties are considered "blighted" under the Spot Blight Abatement Statute as defined in Va. Code Ann. 36-3 (2011) as any individual commercial, industrial, or residential structure or improvement that endangers the public's health, safety, or welfare because the structure or improvement upon the property is dilapidated, deteriorated, or violates minimum health and safety standards, or any structure or improvement previously designated as blighted pursuant to § 36-49.1:1, under the process for determination of "spot blight."

Board Agenda Item
May 14, 2013

In November 1996, the Board authorized the implementation of a Blight Abatement Program using the Spot Blight Abatement Statute to address citizen concerns about specific properties in their communities which were abandoned, dilapidated, or otherwise kept in an unsafe state. Under guidelines established by the Board, a property can be considered “blighted” for purposes of a County Abatement Ordinance under the Spot Blight Abatement Statute if it meets the definition of “Blighted property” under Va. Code Ann. 36-3 (2011) and if it meets all of the following conditions:

1. It has been vacant and/or boarded up for at least one year.
2. It has been the subject of complaints.
3. It is no longer being maintained for useful occupancy.
4. It is in a dilapidated condition or lacks normal maintenance or upkeep.

The property located at 9713 Water Oak Drive is the subject of property maintenance complaints dating back to August, 2007. When the property was referred to the Blight Abatement Program (BAP) in May, 2009, it was the decision of the BAP staff to pursue this case under the Virginia Maintenance Code and the case was subsequently closed in December, 2010. In April, 2011, a new property maintenance case was opened as a result of another complaint for the deteriorating condition of the dwelling; the property maintenance case is currently in litigation. At the request of the Maintenance Official, a blight case was opened on June 12, 2012. The owner failed to respond to correspondence from the property maintenance investigator, the County Attorney’s Office or Blight Abatement Program staff. On February 6, 2013, under the authority of the Maintenance Official, an Inspection Warrant was executed. The interior inspection revealed large holes in the roof, causing partial collapse of the sheathing, ceilings, water and mold damage jeopardizing the structural integrity of the structure. The property was placarded as unsafe.

The dwelling was constructed in 1978 according to Fairfax County Tax Records. Inspection records indicate the property has been vacant since at least August 22, 2007.

Due to the deteriorated condition of the structure and the unresponsiveness by the owner to make any attempt to abate the blighted condition of the property, BAP staff feels that the dwelling is not economically feasible to repair and recommends demolition.

This property was reviewed by the Neighborhood Enhancement Task Force (NETF) on September 13, 2012 and the NETF Committee found that the subject property met the blighted property guidelines and the property received a preliminary blight determination. Certified and regular Notices were sent to the owner advising him of this determination.

Board Agenda Item
May 14, 2013

In accordance with the Spot Blight Abatement Statute, the Board, by Ordinance, may declare the Property to be blighted, and to constitute a nuisance, and approve abatement of blight as allowed under the Va. Code Ann. §15.2-1115 (2012). State Code requires that the Board provide notice concerning adoption of such and ordinance. Notice was published on April 26, 2013 and May 3, 2013.

Although the County will continue to seek cooperation from the owners to eliminate blighted conditions, it is requested that a public hearing, in accordance with the Spot Blight Abatement Statute, be held to adopt an Ordinance declaring the property to be blighted, which constitutes a nuisance. At the public hearing, the County will also request authorization to contract for demolition of the blighted structure on site pursuant to Va. Code Ann. §15.2-1115 (2012) as authorized under the Spot Blight Abatement Statute. If the owners fail to abate the blighted conditions within thirty days after notification to the property owners of the Board's action, the County will proceed with the demolition process for the structures. The county will incur the cost, expending funds that are available in Fund 300-C30010, General Construction and Contributions, Project 2G97-001-000, Strike Force Blight Abatement. The county will then pursue reimbursement from the owners who are ultimately liable for all abatement costs incurred. A lien will be placed on the property and recorded in the County land records and judgment records.

FISCAL IMPACT:

In the event that the blighted conditions are not eliminated by the owner, the County will fund the demolition from Fund 300-C30010, General Construction and Contributions, Project 2G97-001-000, Strike Force Blight Abatement. Funding is available in Project 2G97-001-000 to proceed with the demolition estimated to cost approximately \$30,000.

It is anticipated that all of the costs (including direct County administrative costs) of the blight abatement will be recovered from the property owner. Funds recovered will be allocated to the Blight Abatement Program in order to carry out future blight abatement plans.

ENCLOSED DOCUMENTS:

- Attachment 1: Property Photographs
- Attachment 2: Ordinance for 9713 Water Oak Drive (Providence District)
- Attachment 3: Blighted Property Technical Report and Abatement Plan

STAFF:

Jeffrey L. Blackford, Director, Department of Code Compliance
Karen McClellan, Operations Manager, Department of Code Compliance
Susan Epstein, Division Supervisor, Department of Code Compliance
Victoria Dzierzek, Code Compliance Investigator III, Department of Code Compliance

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**9713 Water Oak Drive
Tax Map # 048-3 ((34)) 0028
Providence District
Attachment 1**



9713 Water Oak Drive
Tax Map # 048-3 ((34)) 0028
Providence District
Attachment 1

**ORDINANCE FOR 9713 WATER OAK DRIVE
(PROVIDENCE DISTRICT)**

WHEREAS, a goal of the Fairfax County Board of Supervisors ("Board") is the preservation and improvement of residential neighborhoods and commercial areas; and

WHEREAS, the Code of Virginia empowers localities, by ordinance to declare any blighted property as defined in the Va. Code Ann. § 36.3 (2011) to constitute a nuisance and thereupon abate the nuisance pursuant to Va. Code Ann. § 15.2-900 (2012) or § 15.2-1115 (2012).

WHEREAS, the Board has approved the implementation of a blight abatement program authorized by State legislation; and

WHEREAS, citizens have expressed concern about specific properties in their communities which are abandoned, dilapidated or otherwise in an unsafe state; and

WHEREAS, it has been determined that the property located at 9713 Water Oake Drive (Providence District) identified on the Fairfax County Tax Map as 048-3 ((34)) 0028 ("Property") meets the definition of blight as defined in Va. Code Ann. § 36.3 (2011); and

WHEREAS, the Board desires that the blight constituting a nuisance be abated in accordance with Va. Code Ann. §15.2-1115 (2008), as authorized by Va. Code Ann. § 36-49.1:1 (2011);

NOW THEREFORE, BE IT RESOLVED, THAT BY ORDINANCE, the Property is deemed blighted as that term is defined in Va. Code Ann. § 36.3 (2011) and the Board hereby determines that the Property constitutes a nuisance.

BE IT FURTHER RESOLVED; THAT BY ORDINANCE the Board hereby directs that the aforementioned nuisance be abated in accordance with the terms of Va. Code Ann. § 15.2-1115 (2012) as authorized by Va. Code Ann. § 36.49.1:1 (2011), including without limitation that if the owner of the Property fails to abate or obviate the nuisance within thirty (30) days, Fairfax County may do so by demolishing the improvements on the Property and removing all debris from the site in which event the County may collect the costs thereof from the owner of the Property in any manner provided by law for the collection of state or local taxes.

Upon certification by the County Executive of Fairfax County or his designee that the nuisance has been abated and that all expenses of Fairfax County with respect thereto have been paid in full, this Ordinance shall be deemed of no further force or effect.

PROPERTY ADDRESS (DISTRICT)
9713 Water Oak Drive (Providence District)

TAX MAP NUMBER
048-3 ((34)) 0028

BLIGHTED PROPERTY TECHNICAL REPORT AND ABATEMENT PLAN

PROJECT TITLE (OWNERS): John M. Michaely

CASE: # 201102152 /SR # 84512

OWNER'S ADDRESS: 6930 Hovingham Court, Centreville, VA 20121

ADDRESS OF BLIGHTED PROPERTY: 9713 Water Oak Drive, Fairfax, VA 22031

TAX MAP NO.: 048-3 ((34)) 0028 **MAGISTERIAL DISTRICT:** Providence District

2013 ASSESSED VALUE: \$311,000 **LAND:** \$301,000 **IMPROVEMENTS:** \$10,000

PROPERTY ZONING: R-3 **YEAR BUILT:** 1978

TAX STATUS: Current through December, 2012

DESCRIPTION:

Located on the subject property is an abandoned, two story wood frame dwelling with large holes in the roof, causing partial collapse of the sheathing, ceilings, water and mold damage jeopardizing the structural integrity of the structure. The structure was placarded as unsafe under the Virginia Maintenance Code on February 6, 2102. The structure was constructed in 1978 according to Fairfax County Tax Records and is known to be vacant since at least August 2007. The owner has not submitted a written blight abatement plan and has been unresponsive to the court order to remedy the building code violations. BAP staff feels that the dwelling is not economically feasible to repair and recommends demolition.

IMPACT OF PROPERTY ON SURROUNDING USES:

The property in its current state is an attractive nuisance and blight on the surrounding community.

NATURE OF COMPLAINTS:

The property located at 9713 Water Oak Drive has been the subject of complaints since August 2007 and was referred to the Blight Abatement Program (BAP) on June 12, 2012 reference it's dilapidated condition.

STAFF RECOMMENDATION:

BAP recommends demolishing the dilapidated structures and removing all debris on the property in the event that the owners fail to cure the blighted conditions of the property after receiving written notice of the Board's adoption of the Blight Abatement Ordinance. Costs of blight abatement, including direct County administrative costs, would then be collected from the property owner.

Board Agenda Item
May 14, 2013

4:30 P.M.

Public Hearing on Spot Blight Abatement Ordinance for 4646 Holly Avenue, Fairfax, VA 22030 (Braddock District)

ISSUE:

Public Hearing to adopt a Spot Blight Abatement Ordinance for 4646 Holly Avenue, Fairfax , VA 22030 (056-3 ((02)) 0026) and approval of a blight abatement plan for the Property.

RECOMMENDATION:

The County Executive recommends that the Board adopt an ordinance to declare 4646 Holly Avenue, blighted, constituting a nuisance, and approve the blight abatement plan for the Property.

TIMING:

On April 9, 2013 the Board authorized advertisement of this public hearing to be held Tuesday, May 14, 2013 at 4:30 PM.

BACKGROUND:

Va. Code Ann. § 36-49.1:1 (2011) (Spot Blight Abatement Statute) allows the Board, by ordinance, to declare a blighted property a nuisance, thereby enabling abatement in accordance with Va. Code Ann. § 15.2-900 (2012) or Va. Code Ann. § 15.2-1115 (2012) (Abatement of Nuisance Statutes). The Abatement of Nuisance Statutes permits the County to compel the abatement or removal of nuisances. If, after reasonable notice, the owner(s) fails to abate or obviate the nuisance the County may abate the nuisance in which event the property owner(s) may then be charged for the costs of abatement, which may be collected from the property owner(s) in any manner provided by law for the collection of state or local taxes.

Properties are considered “blighted” under the Spot Blight Abatement Statute as defined in Va. Code Ann. 36-3 (2011) as any individual commercial, industrial, or residential structure or improvement that endangers the public's health, safety, or welfare because the structure or improvement upon the property is dilapidated, deteriorated, or violates minimum health and safety standards, or any structure or

Board Agenda Item
May 14, 2013

improvement previously designated as blighted pursuant to § 36-49.1:1, under the process for determination of "spot blight."

In November 1996, the Board authorized the implementation of a Blight Abatement Program using the Spot Blight Abatement Statute to address citizen concerns about specific properties in their communities which were abandoned, dilapidated, or otherwise kept in an unsafe state. Under guidelines established by the Board, a property can be considered "blighted" for purposes of a County Abatement Ordinance under the Spot Blight Abatement Statute if it meets the definition of "Blighted property" under Va. Code Ann. 36-3 (2011) and if it meets all of the following conditions:

1. It has been vacant and/or boarded up for at least one year.
2. It has been the subject of complaints.
3. It is no longer being maintained for useful occupancy.
4. It is in a dilapidated condition or lacks normal maintenance or upkeep.

A property maintenance case was opened and investigated in February 2011 for the dwelling unit being abandoned and in disrepair. The owner made repairs to the broken windows and secured the property and the case was closed for compliance in June 2011. A new complaint was received on July 25, 2012 for the dwelling being vacant and lacking maintenance, the case was referred to the Blight Abatement Program (BAP). A letter was sent to the owner in August, 2012, at which time the owner stated he had hired a contractor to demolish the structure. The owner did not follow through with that plan. The property was brought to the Neighborhood Enhancement Task Force (NETF) on September 13, 2012 and the NETF Committee found that the subject property met the blighted property guidelines and the property received a preliminary blight determination. Certified and regular Notices were sent to the owner advising him of this determination.

On February 4, 2013, a follow up inspection was performed which revealed the structure was again unsecured against entry to the public. Viewed through the open front door, it was observed the ceilings had collapsed. The structure was placarded as Unsafe and a call placed to the owner. The owner secured the structure, but, to date, has not followed through with the demolition of the structure. An inspection on April 10, 2013 revealed the boards were removed from the structure, and the dwelling was again unsecured.

In accordance with the Spot Blight Abatement Statute, the Board, by Ordinance, may declare the Property to be blighted, and to constitute a nuisance, and approve abatement of blight as allowed under the Va. Code Ann. §15.2-1115 (2012). State Code requires that the Board provide notice concerning adoption of such and ordinance. Notice was published on April 26, 2013 and May 3, 2013.

Board Agenda Item
May 14, 2013

Although the County will continue to seek cooperation from the owners to eliminate blighted conditions, it is requested that a public hearing, in accordance with the Spot Blight Abatement Statute, be held to adopt an Ordinance declaring the property to be blighted, which constitutes a nuisance. At the public hearing, the County will also request authorization to contract for demolition of the blighted structure on site pursuant to Va. Code Ann. §15.2-1115 (2012) as authorized under the Spot Blight Abatement Statute. If the owners fail to abate the blighted conditions within thirty days after notification to the property owners of the Board's action, the County will proceed with the demolition process for the structures. The county will incur the cost, expending funds that are available in Fund 300-C30010, General Construction and Contributions, Project 2G97-001-000, Strike Force Blight Abatement. The county will then pursue reimbursement from the owners who are ultimately liable for all abatement costs incurred. A lien will be placed on the property and recorded in the County land records and judgment records.

FISCAL IMPACT:

In the event that the blighted conditions are not eliminated by the owner, the County will fund the demolition from Fund 300-C30010, General Construction and Contributions, Project 2G97-001-000, Strike Force Blight Abatement. Funding is available in Project 2G97-001-000 to proceed with the demolition estimated to cost approximately \$31,000.

It is anticipated that all of the costs (including direct County administrative costs) of the blight abatement will be recovered from the property owners. Funds recovered will be allocated to the Blight Abatement Program in order to carry out future blight abatement plans.

ENCLOSED DOCUMENTS:

Attachment 1: Property Photographs

Attachment 2: Ordinance for 4646 Holly Avenue (Braddock District)

Attachment 3: Blighted Property Technical Report and Abatement Plan

STAFF:

Jeffrey L. Blackford, Director, Department of Code Compliance

Karen McClellan, Operations Manager, Department of Code Compliance

Susan Epstein, Division Supervisor, Department of Code Compliance

Victoria Dzierzek, Code Compliance Investigator III, Department of Code Compliance

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**4646 Holly Avenue, Fairfax
Tax Map # 056-3 ((02)) 0026
Braddock District
Attachment 1**



**4646 Holly Avenue, Fairfax
Tax Map # 056-3 ((02)) 0026
Braddock District
Attachment 1**

**ORDINANCE FOR 4646 HOLLY AVENUE
(BRADDOCK DISTRICT)**

WHEREAS, a goal of the Fairfax County Board of Supervisors ("Board") is the preservation and improvement of residential neighborhoods and commercial areas; and

WHEREAS, the Code of Virginia empowers localities, by ordinance to declare any blighted property as defined in the Va. Code Ann. § 36.3 (2011) to constitute a nuisance and thereupon abate the nuisance pursuant to Va. Code Ann. § 15.2-900 (2012) or § 15.2-1115 (2012).

WHEREAS, the Board has approved the implementation of a blight abatement program authorized by State legislation; and

WHEREAS, citizens have expressed concern about specific properties in their communities which are abandoned, dilapidated or otherwise in an unsafe state; and

WHEREAS, it has been determined that the property located at 4646 Holly Avenue (Braddock District) identified on the Fairfax County Tax Map as 056-3 ((02)) 0026 ("Property") meets the definition of blight as defined in Va. Code Ann. § 36.3 (2011); and

WHEREAS, the Board desires that the blight constituting a nuisance be abated in accordance with Va. Code Ann. §15.2-1115 (2008), as authorized by Va. Code Ann. § 36-49.1:1 (2011);

NOW THEREFORE, BE IT RESOLVED, THAT BY ORDINANCE, the Property is deemed blighted as that term is defined in Va. Code Ann. § 36.3 (2011) and the Board hereby determines that the Property constitutes a nuisance.

BE IT FURTHER RESOLVED; THAT BY ORDINANCE the Board hereby directs that the aforementioned nuisance be abated in accordance with the terms of Va. Code Ann. § 15.2-1115 (2012) as authorized by Va. Code Ann. § 36.49.1:1 (2011), including without limitation that if the owner of the Property fails to abate or obviate the nuisance within thirty (30) days, Fairfax County may do so by demolishing the improvements on the Property and removing all debris from the site in which event the County may collect the costs thereof from the owner of the Property in any manner provided by law for the collection of state or local taxes.

Upon certification by the County Executive of Fairfax County or his designee that the nuisance has been abated and that all expenses of Fairfax County with respect thereto have been paid in full, this Ordinance shall be deemed of no further force or effect.

PROPERTY ADDRESS (DISTRICT)
4646 Holly Avenue (Braddock District)

TAX MAP NUMBER
056-3 ((02)) 0026

BLIGHTED PROPERTY TECHNICAL REPORT AND ABATEMENT PLAN

PROJECT TITLE (OWNERS): Johnson A. Edosomwan, LLC

CASE: # 201205273 SR# 86267

OWNER'S ADDRESS: PO Box 7282 Fairfax Station, VA 22039

ADDRESS OF BLIGHTED PROPERTY: 4646 Holly Avenue, Fairfax, VA 22030

TAX MAP NO.: 056-3 ((02)) 0026 **MAGISTERIAL DISTRICT:** Braddock District

2013 ASSESSED VALUE: \$ 268,000 **LAND:** \$267,000 **IMPROVEMENTS:** \$1,000

PROPERTY ZONING: R-1 **YEAR BUILT:** 1940

TAX STATUS: Current through December 2012

DESCRIPTION:

Located on the subject property is an abandoned, one and a half story dwelling with a full basement. The dwelling was constructed in 1940 according to Fairfax County Tax Records. The interior appears to have smoke damage from an accidental fire that occurred on February 18, 2004 prior to the current owner. The structure has been vacant since at least July 2005. On February 4, 2013, an inspection was performed which revealed the structure was unsecured against entry to the public. Viewed through the open front door, it was observed the ceilings had collapsed. The structure was placarded as Unsafe and a call placed to the owner. The owner secured the structure; however, the structure was again observed unsecured on April 10, 2013. BAP staff feels that the dwelling is not economically feasible to repair and recommends demolition

IMPACT OF PROPERTY ON SURROUNDING USES:

The property in its current state is an attractive nuisance and blight on the surrounding community.

NATURE OF COMPLAINTS:

The property located at 4646 Holly Avenue was referred to the Blight Abatement Program (BAP) on July 25, 2012 reference it's dilapidated and attractive nuisance conditions.

STAFF RECOMMENDATION:

BAP recommends demolishing the dilapidated structures and removing all debris on the property in the event that the owners fail to cure the blighted conditions of the property after receiving written notice of the Board's adoption of the Blight Abatement Ordinance. Costs of blight abatement, including direct County administrative costs, would then be collected from the property owners.

Board Agenda Item
May 14, 2013

4:30 p.m.

Public Hearing to Establish the Reflection Community Parking District (Dranesville District)

ISSUE:

Proposed amendment to Appendix M, of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to establish the Reflection Community Parking District (CPD).

RECOMMENDATION:

The County Executive recommends that the Board adopt the amendment to the Fairfax County Code shown in Attachment I to establish the Reflection CPD in accordance with existing CPD restrictions.

TIMING:

On April 9, 2013, the Board authorized advertisement of a Public Hearing to consider the proposed amendment to Appendix M, of the *Fairfax County Code* to take place May 14, 2013, at 4:30 p.m.

BACKGROUND:

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

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

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

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

Fairfax County Code Section 82-5B-3-1(b), requires that an application fee be submitted for each petitioning address within a proposed district. Section 82-5B-3-1(c), allows for the Board of Supervisors to waive this requirement. On April 9, 2013, the Board partially waived this requirement, requiring only a fee equal to the minimum number of petition signatures required for the Reflection community.

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

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

FISCAL IMPACT:

The cost of sign installation is estimated at \$1,500 to be paid out of Fairfax County Department of Transportation (FCDOT) funds.

ENCLOSED DOCUMENTS:

Attachment I: Amendment to the *Fairfax County Code*, Appendix M (CPD Restrictions)

Attachment II: Area Map of Proposed Reflection CPD

STAFF:

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Division Chief, Capital Projects and Operations Division, FCDOT
Selby Thannikary, Section Chief, Traffic Operations Section, FCDOT
Maria Turner, Sr. Transportation Planner, FCDOT

PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA
APPENDIX M

M-79 Reflection Community Parking District

(a) *District Designation.*

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

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

Blue Ridge Court (Route 5715)

From Maleady Drive to cul-de-sac inclusive.

Bryce Court (Route 7042)

From Tamani Drive to end.

Catoctin Court (Route 7041)

From Tamani Drive to cul-de-sac inclusive.

Farougi Court (Route 5718)

From Maleady Drive to the end.

Frinks Court (Route 6903)

From Maleady Drive to cul-de-sac inclusive.

Hamer Court (Route 5717)

From Maleady Drive to cul-de-sac inclusive.

Herman Court (Route 5721)

From Maleady Drive to cul-de-sac inclusive.

Keisler Court (Route 5716)

From cul-de-sac west to cul-de-sac east.

Maleady Drive (Route 5715)

From Blue Ridge Court to end south.

Parcher Avenue (Route 5050)

From the western boundary of 13195 Parcher Avenue to

the end west.

Pocono Court (Route 6905)
From cul-de-sac west to cul-de-sac east.

Pocono Place (Route 6904)
From Parcher Avenue to Pocono Court.

Saunders Drive (Route 5723)
From Parcher Avenue to cul-de-sac inclusive.

Seaman Court (Route 5722)
From Maleady Drive to cul-de-sac inclusive.

Springer Drive (Route 5051)
The entire length.

Sugarloaf Court (Route 6906)
From Parcher Avenue to cul-de-sac inclusive.

Tamani Drive (Route 7040)
From end north to cul-de-sac south.

Veenendaal Court (Route 5720)
From Maleady Drive to cul-de-sac inclusive.

Whisonant Court (Route 5719)
From Farougi Court to cul-de-sac inclusive.

(b) *District Provisions.*

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

(2) Parking of watercraft; boat trailers; motor homes; camping trailers; any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds except school buses used on a current and regular basis to transport students; any vehicle designed to transport 16 or more passengers including the driver, except school buses used on a current and regular basis to transport students; and any vehicle of any size that is being used in the transportation of hazardous materials as defined in Virginia Code § 46.2-341.4 is prohibited at all times on the above-described streets within the Reflection Community Parking District.

(3) No such Community Parking District shall apply to (i) any commercial vehicle when discharging passengers or when temporarily parked pursuant to the performance of work or service at a particular location or (ii) utility generators located on trailers and being used to power network facilities during a loss of commercial power or

(iii) restricted vehicles temporarily parked on a public street within any such District for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip or (iv) restricted vehicles that are temporarily parked on a public street within any such District for use by federal, state, or local public agencies to provide services.

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

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

FAIRFAX COUNTY CODE §82-5B

Fairfax County Department of Transportation
Traffic Operations Section
COMMUNITY PARKING DISTRICT (CPD)
Proposed Reflection CPD
Dranesville District



LOUDOUN
COUNTY

Tax Map: 16-1

INNOVATION AV

DULLES TOLL RD

BRYCE CT

BLUERIDGE CT

CATOCTIN CT

FRINKS CT

SUGARLOAF CT

POCONO CT

KEISLER CT

HAMER CT

SEAMAN CT

VEVENDAL CT

HERMAN CT

WHISONANT CT

FAPUG CT

SAUNDERS DR

HERNDON PKWY

SPRINGER DR

PARCHER AVE

CENTREVILLE RD

13195

0 250 500 1,000 Feet

 Proposed CPD Parking Restrictions

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4:30 p.m.

Public Hearing on Proposed Zoning Ordinance Amendment Re: Home Child Care Facilities

ISSUE:

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

PLANNING COMMISSION RECOMMENDATION:

On Thursday, April 4, 2013, the Planning Commission voted 9-1 (Commissioner Migliaccio opposed and Commissioners Hall and Hedetniemi absent from the meeting) to recommend to the Board of Supervisors approval of the proposed Zoning Ordinance amendment regarding home child care facilities, as advertised, with a special permit application fee set at \$435.00, and an effective date of 12:01 a.m. on the day following adoption.

The Planning Commission also voted unanimously (Commissioners Hall and Hedetniemi absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Direct staff to evaluate whether the 6:00 p.m. evening cut-off could be modified in view of the current Northern Virginia traffic situation and the uncertainties of evening traffic and, in particular, under what circumstances a home child care provider ought to be allowed to have a non-resident employee on-site after 6:00 p.m. and make a recommendation for an additional amendment as appropriate;
- Direct staff to investigate whether, and to what extent, our application process could be harmonized with the State licensing process and information and/or paperwork shared, or any other streamlining of the zoning approval process and report back to the Board of Supervisors with appropriate suggestions;
- Direct staff to evaluate whether the current filing fee of \$1,100 for other child care uses up to 99 children should be adjusted upward in the context of the next available review of DPZ application fees; and

Board Agenda Item
May 14, 2013

- Direct staff to continue to monitor the applications under the amended Ordinance for 24 months and, in light of that experience, report back to the Board of Supervisors with suggestions for any additional amendments to the Home Child Care Provisions of the Zoning Ordinance as appropriate.

RECOMMENDATION:

The County Executive concurs with the Planning Commission's recommendation.

TIMING:

Board of Supervisors' authorization to advertise – January 29, 2013; Planning Commission public hearing – March 20, 2013; Planning Commission decision – April 4, 2013, Board of Supervisors' public hearing – May 14, 2013 at 4:30 p.m.

BACKGROUND:

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

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

- (4) Reduces the current special permit application fee of \$1,100 for home child care facilities to as low as \$435.

A more detailed discussion of the proposed amendment is set forth in the Staff Report enclosed as Attachment 1.

REGULATORY IMPACT:

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

The proposed amendment brings into better alignment the differences between County and State regulations with regard to the maximum number of children. It also facilitates the maintenance of existing facilities and the establishment of new home child care facilities that may require special permit approval by potentially reducing the application fee and by making the approval process for such facilities the same in all P districts.

FISCAL IMPACT:

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

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ENCLOSED DOCUMENTS:

Attachment 1 – Staff Report, also available at

<http://www.fairfaxcounty.gov/dpz/zoningordinance/proposed/homechildcarefacilities.pdf>

Attachment 2 – Planning Commission Verbatim Excerpt

STAFF:

Fred Selden, Director, Department of Planning and Zoning (DPZ)

Leslie B. Johnson, Zoning Administrator, DPZ

Cathy S. Belgin, Senior Assistant to the Zoning Administrator, DPZ



FAIRFAX
COUNTY

ATTACHMENT 1

STAFF REPORT

V I R G I N I A

PROPOSED ZONING ORDINANCE AMENDMENT

Home Child Care Facilities

PUBLIC HEARING DATES

Planning Commission

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

Board of Supervisors

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

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

January 29, 2013

CSB



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

STAFF COMMENT

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

Current Zoning Ordinance Provisions

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

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposed Amendment

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

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

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

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

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

Conclusion

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

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

PROPOSED AMENDMENT

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

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

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

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

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

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

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

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

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

9 Application for a:

10 Group 3 special permit

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

17
 18 Application for a:

19 Category 3 special exception

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

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

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

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

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

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

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

1
2 A. Churches, chapels, temples, synagogues and other such places of worship

3
4 B. Convents, monasteries, seminaries and nunneries

5
6 C. Group housekeeping units

7
8 D. Churches, chapels, temples, synagogues and other such places of worship
9 with a child care center, nursery school, or private school of general or
10 special education

- 11
12 - **Amend Sect. 6-104, Special Permit Uses, by adding a new Par. 1 to read as follows,**
13 **and renumbering the subsequent paragraphs accordingly.**

14
15 For specific Group uses, regulations and standards, refer to Article 8.

16
17 1. Group 3 - Institutional Uses, limited to:

18 A. Home child care facilities

- 19
20
21
22 - **Amend Part 2, PDC Planned Development Commercial District, as follows:**

- 23
24 - **Amend Sect. 6-203, Secondary Uses Permitted, by revising Par. 8 to read as follows:**

25
26 The following secondary uses shall be permitted only in a PDC District which contains
27 one or more principal uses; only when such uses are presented on an approved final
28 development plan prepared in accordance with the provisions of Article 16; and subject to
29 the use limitations set forth in Sect. 206 below.

30
31 8. Institutional uses (Group 3), limited to:

32
33 A. Churches, chapels, temples, synagogues and other such places of worship

34
35 B. Convents, monasteries, seminaries and nunneries

36
37 C. Group housekeeping units

38
39 D. Churches, chapels, temples, synagogues and other such places of worship
40 with a child care center, nursery school, or private school of general or
41 special education

- 42
43 - **Amend Sect. 6-204, Special Permit Uses, by adding a new Par. 1 to read as follows,**
44 **and renumbering the subsequent paragraphs accordingly.**

45
46 For specific Group uses, regulations and standards, refer to Article 8.

47
48 1. Group 3 - Institutional Uses, limited to:

1
2 A. Home child care facilities

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

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

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

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

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

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

15
16 (c) Group housekeeping units

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

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

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

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

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

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

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

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

35
36 (c) Group housekeeping units

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

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

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

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

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

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

3
4 A. Home child care facilities

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

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

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

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

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

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

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

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

25
26 A. Home child care facilities

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

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

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

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

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

39
40 B. Convents, monasteries, seminaries and nunneries

41
42 C. Group housekeeping units

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

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

1
2
3
4
5
6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Attachment B

Home Child Care Regulations in Neighboring Jurisdictions

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

Planning Commission Meeting
April 4, 2013
Verbatim Excerpt

ZONING ORDINANCE AMENDMENT (HOME CHILDCARE FACILITIES)

Decision Only During Commission Matters
(Public Hearing held on March 20, 2013)

Commissioner Hart: Thank you, Mr. Chairman. On March the 20th, the Commission held a public hearing on a proposed Zoning Ordinance Amendment regarding home child care facilities. First, let me thank all the citizens who came and testified and those who submitted written comments. Provision of high-quality, affordable child care is an issue of high priority to the Board, to the Commission, and working parents in Fairfax County. Let me also thank staff, Cathy Belgin and Lorrie Kirst, for their fine work on a very difficult case. Currently, home child care applications are reviewed on a case-by-case basis through a public hearing process, generally a Special Permit in residential, or R-Districts, and a Special Exception in most planned development, or P-Districts. The established public hearing process allows balancing of the interests of the applicants and their neighbors and an evaluation of how best to mitigate impacts of not only this use but also many others through development conditions. Although some home child care providers obtained the required zoning approval, others did not. As a result of some administrative changes last year by the Department of Social Services in Richmond, it has become apparent that many home child care providers, who had obtained state licenses allowing up to 12 children, unfortunately never obtained a corresponding Special Permit or Special Exception for zoning approval. This discovery has created logistical problems for Zoning Enforcement as well as uncertainty for many providers. At the Board's request, staff investigated the home child care situation in Fairfax County and neighboring jurisdictions and made several recommendations as to how best to harmonize the local Zoning Ordinance with the state licensing requirements. Staff proposed, principally, four items: first, raising the possible maximum number of children over and above those in the provider's household from 10 to 12; second, streamlining the process for P-District applications to shift those cases from a Special Exception requiring two public hearings to a Special Permit with one public hearing before the Board of Zoning Appeals; third, giving the BZA some additional flexibility with respect to parking and loading requirements possibly being offsite, and; fourth, lowering the \$1,100 filing fee, possibly as low as \$435. The Board authorized only those narrow procedural issues for advertising and those amendments described in the staff report are the only issues under consideration at this time. This Amendment will facilitate home child care providers coming into compliance with the Zoning Ordinance. Let me reiterate that at no time was there a Zoning Ordinance Amendment proposed or advertised to lower the number of by-right children in a home child care facility in Fairfax County. Although many of the emails we received also requested the Commission consider allowing home child care up to 12 children by right, that issue was not authorized by the Board and was outside the scope of the advertising. Nevertheless, I will have a number of follow-on motions on the general subject of child care, including a monitoring period by staff. We may have more to discuss on this topic at a later date. I agree in general with the staff proposal, with the caveat that I am going to suggest that we recommend a filing fee of \$435, which is the low end of the advertised range. Staff had recommended reducing the fee from \$1,100 to \$910, but advertised a range down to \$435. Although a \$435 fee barely covers the

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ZOA (HOME CHILDCARE FACILITIES)

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advertising, I am persuaded that Fairfax County wants to facilitate these applications being filed and make it easier for parents to locate affordable and convenient child care. In this instance a lower filing fee may be part of the County's governmental function and helps achieve the Board's goals of accessible child care for working parents. I will have another [sic] – I will have a number of other follow-on motions as well, some of which were suggested by the constructive comments we received. I recognize that 12 additional children in a house, on top of the provider's own children, particularly in a townhouse or apartment, may be too many and may create impacts on the neighbors and aggravate existing parking situations. The maximum number of children may not work in every residence. But I also believe that in many homes increasing the maximum to as many as 12 children will not create significant problems for the neighbors and will be welcomed. Our public hearing process will allow these competing concerns to be balanced, with the impacts and corresponding development conditions to be evaluated on a case-by-case basis. The Amendment has significant community support as well as staff's favorable recommendation, with which I concur. Therefore, Mr. Chairman, I first MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE PROPOSED ZONING ORDINANCE AMENDMENT REGARDING HOME CHILD CARE FACILITIES, AS ADVERTISED, WITH A SPECIAL PERMIT APPLICATION FEE SET AT \$435.00, WITH AN EFFECTIVE DATE OF 12:01 A.M. ON THE DAY FOLLOWING ADOPTION.

Commissioner Lawrence: Second.

Chairman Murphy: Seconded by Mr. Lawrence. Is there a discussion of the motion? Mr. Migliaccio.

Commissioner Migliaccio: Mr. Chairman, I am not going to be able to support this motion tonight. I do not believe taking the - - taking the SE away and making it a Special Permit and putting it into the venue of the BZA would be in the best interest. So that is why I am not supporting it. I'm okay with moving it from 10 to 12, but I would rather keep the SE for the P-Districts. Thank you.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve the home care – home child care facilities Zoning Ordinance Amendment, as articulated by Mr. Hart this evening, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Migliaccio votes no.

Commissioner Hart: Secondly, Mr. Chairman, I MOVE THAT THE COMMISSION RECOMMEND THAT THE BOARD DIRECT STAFF TO EVALUATE WHETHER THE 6:00 P.M. EVENING CUT-OFF COULD BE MODIFIED IN VIEW OF THE CURRENT NORTHERN VIRGINIA TRAFFIC SITUATION AND THE UNCERTAINTIES OF EVENING TRAFFIC AND, IN PARTICULAR, UNDER WHAT CIRCUMSTANCES A HOME CHILD

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CARE PROVIDER OUGHT TO BE ALLOWED TO HAVE A NON-RESIDENT EMPLOYEE ON-SITE AFTER 6:00 P.M., AND MAKE A RECOMMENDATION FOR AN ADDITIONAL AMENDMENT AS APPROPRIATE.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: Third –

Chairman Murphy: Mr. Migliaccio, what are you going to do on this one?

Commissioner Migliaccio: Aye.

Chairman Murphy: Oh, okay.

Commissioner Hart: Third, Mr. Chairman, I MOVE THAT THE COMMISSION RECOMMEND THAT THE BOARD DIRECT STAFF TO INVESTIGATE WHETHER AND TO WHAT EXTENT OUR APPLICATION PROCESS COULD BE HARMONIZED WITH THE STATE LICENSING PROCESS AND INFORMATION AND/OR PAPERWORK SHARED, OR ANY OTHER STREAMLINING OF THE ZONING APPROVAL PROCESS, AND REPORT BACK TO THE BOARD WITH APPROPRIATE SUGGESTIONS.

Commissioners Lawrence and Sargeant: Second.

Chairman Murphy: Seconded by Mr. Lawrence and Mr. Sargeant. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: Fourth, Mr. Chairman, I MOVE THAT THE COMMISSION RECOMMEND THAT THE BOARD DIRECT STAFF TO EVALUATE WHETHER THE CURRENT FILING FEE OF \$1,100 FOR OTHER CHILD CARE USES UP TO 99 CHILDREN SHOULD BE ADJUSTED UPWARDS IN THE CONTEXT OF THE NEXT AVAILABLE REVIEW OF DPZ APPLICATIONS FEES.

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Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: Finally, Mr. Chairman, I MOVE THAT THE COMMISSION RECOMMEND THAT THE BOARD DIRECT STAFF TO CONTINUE TO MONITOR THE APPLICATIONS UNDER THE AMENDED ORDINANCE FOR 24 MONTHS AND, IN LIGHT OF THAT EXPERIENCE, REPORT BACK TO THE BOARD WITH SUGGESTIONS FOR ANY ADDITIONAL AMENDMENTS TO THE HOME CHILD CARE PROVISIONS OF THE ZONING ORDINANCE AS APPROPRIATE.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

//

(The first motion carried by a vote of 9-1 with Commissioner Migliaccio opposed; Commissioners Hall and Hedetniemi absent from the meeting.)

(The second through fifth motions carried unanimously with Commissioners Hall and Hedetniemi absent from the meeting.)

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