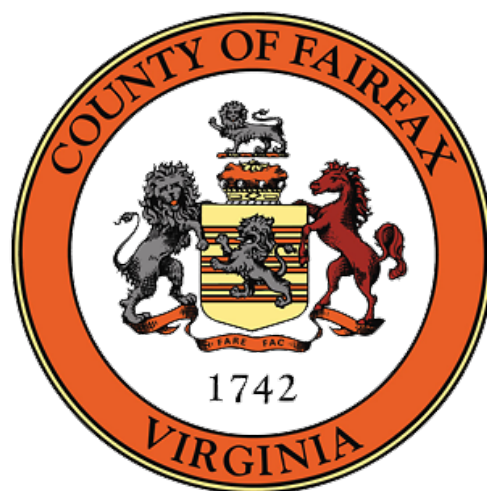


OFFICE OF FINANCIAL & PROGRAM AUDIT



February 2012

Quarterly Report

FAIRFAX COUNTY BOARD OF SUPERVISORS
AUDITOR OF THE BOARD

www.fairfaxcounty.gov/boardauditor/

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Office of Financial & Program Audit

QUARTERLY REPORT

EXECUTIVE SUMMARY

Dulles Metrorail Project

OFPA continues to monitor the Dulles Corridor Metrorail project. As of the December 2011 MWAA Monthly Progress Report, approximately \$1.77 billion of the total \$3.2 billion Phase I budget had been expended. The Design Build Contract has recorded change orders of approximately 4.57% of the contract amount. MWAA assesses this main construction component of the Project as 61% complete. Utility Relocation has recorded change orders of 17.7% of the contract amount. MWAA assesses this relocation activity as 99% complete.

The overall project schedule, as projected by DTP, changed from a 161 day projected schedule lapse in September 2011 to a 20 day projected lapse in December 2011. The date for the official start of revenue service has not been changed by MWAA.

Reston Glen Transaction Review

At the Audit Committee's request OFPA examined the financing of the Reston Glen affordable housing units. Reston Glen is an apartment complex in which FCRHA/HCD sought to and was able to preserve 40 units at up to 50% AMI for 30 years.

Total investment in the project was \$36.375 million through bonds and loans. A foreclosure was triggered by the inability of the then property owner to meet collateral requirements. Of the amount financed, \$2.375 million was a Penny Fund loan. This loan was lost due to its subordinate position during the foreclosure. The remaining financing due the County was repaid. The 40 unit affordability requirements on the property stay in place for the remainder of the 30 year period.

Transportation Demand Management Monitoring Study

Transportation Demand Management (TDM) is a program of strategies designed to reduce single-occupancy vehicle (SOV) traffic on roadways. In Fairfax County, proffered development conditions for proposed developments may include specific TDM proffers. This quarter's study focused on the Audit Committee's request to study TDM proffer monitoring and evaluate the county's oversight of TDM implementation by developers/property owners. During the period of this study, OFPA found that there were current monitoring efforts by the Department of Transportation (DOT) on a test group of agreements. Evidence of enforcement lapses were found in three of the agreements studied that had deliverables prior to July 2011. Construction status and occupancy permits were identified as key triggers for when components of TDM agreements become due. OFPA found an over reliance by DOT on developers/owners to provide information on the status of construction and the lack of a formal process to review proffer modification requests. To address these findings, the Auditor identified opportunities for independent confirmation of occupancy permit data and recommended DOT establish a process similar to DPZ to document determinations made on requests to make minor modifications to existing agreements. Upon review of this report on TDM proffer monitoring and enforcement, the Audit Committee discussed TDM effectiveness and requested that county staff conduct an

analysis of SOV trip reduction countywide as a result of TDM proffers. The Audit Committee asked that this analysis be reported back to the Board at an upcoming Transportation Committee meeting.

Sidewalks and Trails Maintenance

OFPA's initial study on sidewalks and trails (November 2011) identified maintenance as an issue and sought to identify best management practices for the Board and staff to consider. The best practices identified in the November report were explored during this quarter's follow up discussions with staff in the Department of Public Works and Environmental Services (DPWES), the Park Authority and the Department of Transportation (DOT). Discussions initiated this quarter revealed limited DPWES inventory data and opportunities for DPWES and Park Authority maintenance collaborations. OFPA recommends that DPWES and the Park Authority work with the Office of the Sheriff to explore the possible addition of a Community Labor Force crew dedicated to sidewalk and trail maintenance. Upon review of this final report on sidewalk and trail maintenance, the Audit Committee acknowledged the need for resources devoted to sidewalk and trail maintenance countywide. The Audit Committee requested that county staff include in the information for the Budget Committee discussion on the Capital Improvement Program options for a repair/replacement fund for sidewalks and trails.

Out of County Athletic Fees

The Audit Committee requested that OFPA review the implementation of out of county athletic fees to determine the equity of implementation and application. To accomplish this, OFPA looked at the team roster review process within the Department of Neighborhood and Community Services (DNCS). The review found that DNCS used a consistent methodology to review rosters/applications and assess the appropriate fees.

DNCS has agreed to improve the documentation of the review process to ensure future consistency and to take measures to keep what is currently a relatively small delinquent fee issue from increasing.

STUDY BRIEFINGS

DULLES METRORAIL PROJECT

The Audit Committee requested that OFPA monitor the Dulles Corridor Metrorail Project (Project) with a focus on the project costs and project timeframes. OFPA is tracking the following areas: 1) Project Cost, 2) Start of Revenue Service and 3) Funding Obligations.

Currently, only Phase I is under active construction. Information used in this OFPA report is based on the December 2011, MWAA Monthly Progress Report, dated February 1, 2012 and the Comprehensive Monthly Report issued by the Project Management Oversight Contractor (PMOC) for the FTA dated January 20, 2012.

I. PROJECT COST STRUCTURE

Phase I Budget

Phase I of the project has a total budget of approximately \$3.2 billion. As of December 2011 approximately \$1.77 billion of the Project funds have been expended.¹ The Project team assesses Phase I as 61% complete.² The overall project expenditure and construction completion rates are running roughly in parallel. The Contingency budget of \$297.7 million and the Allowance budget of \$485.7 million are 9% and 15% of the total Phase I budget respectively. The Project faces challenges in containing the usage rates of the Contingency and Allowance budgets.

Change Orders

The MWAA report divides change orders into two broad categories: Amended and Restated Design Build, and Utility Relocation. Through December 2011, there were \$78.3 million in total changes to the Design Build category³ which represent approximately 4.6% of the original total contract amount.

There have been \$22.9 million in total changes to the Utility Relocation category, which represent 17.7% of the total original contract amount.⁴ MWAA assesses this project phase as 99% complete.⁵ The Utility Relocation category data has been unchanged for approximately one year.

Contingency Utilization

The tracking of contingency fund use is helpful in monitoring the progression of a project and its financial commitments. Contingency funds are classified as federal and non-federal and are tracked separately by MWAA. In the event there are unspent contingency funds in one project phase, those funds are moved to the Project's contingency reserve account. Any positive amount in that reserve account is used prior to the contingency allocation for the next phase. The federal contingency had a starting balance of \$297.7 million. Of this amount, \$222.3 million has been utilized through project phases 1- 7, as noted in the following table:

¹ MWAA December Monthly Progress Report: Table 5, Page 12

² MWAA December Monthly Progress Report: Page 5

³ MWAA December Monthly Progress Report: Table 11, Page 28

⁴ MWAA December Monthly Progress Report: Table 12, Page 29

⁵ MWAA December Monthly Progress Report: Page 5

CONTIN. PHASE #	CONTIN. RESERVE	DESCRIPTION	PHASE AUTHORIZATION	CONTINGENCY RESERVE	UTILIZED	REMAINING
1		FFGA	\$ 59,000,000		\$ 22,179,347	\$ 36,820,653
	1R	Contingency Reserve From Phase 1		\$ 36,820,653	\$ 36,820,653	\$ 0
2		Station Design Complete ¹	\$ 40,000,000		\$ 4,429,829	\$ 35,570,171
	2R	Contingency Reserve From Phase 2		\$ 35,570,171	\$ 32,457,931	\$ 3,112,240
3		Utility Relocation Complete	\$ 40,000,000		\$ -	\$ 40,000,000
	3R	Contingency Reserve From Phase 3		\$ 43,112,240	\$ -	\$ 43,112,240
5		NATM Tunnel Mined	\$ 38,000,000			\$ 38,000,000
	5R	Contingency Reserve From Phase 5		\$ 81,112,240	\$ 81,112,240	\$ 0
4		Aerial and Station Foundations Complete	\$ 23,000,000		\$ 12,617,195	\$ 10,382,805
6		Complete crossover and turn outs at K-Line	\$ 18,000,000		\$ -	\$ 18,000,000
	6R	Contingency Reserve From Phase 6		\$ 28,382,805	\$ 28,382,804	\$ 0
7		Complete Running Rail - Tysons Tunnel	\$ 18,500,000		\$ 4,306,686	\$ 14,193,314
8		Stations Electrical Energization - Tysons West	\$ 14,500,000			
9		Ready for Interlocking Testing - Tysons 123 to Tysons West	\$ 10,000,000			
10		Substantial Completion	\$ 10,000,000			
11		Project ROD	\$ 20,000,000			
12		FFGA ROD	\$ 6,762,579			
TOTAL			\$ 297,762,579		\$ 222,306,685	\$ 75,455,894

1. This amount is subject to adjustment pending the Airports Authority's decision on the FTA directive to fund the costs associated with reintroduction of TPSS #7 and #9 from non-federal funding.

Source: MWAA Monthly Progress Report, December 2011 – Table 17, p 34

There is an additional \$34.1 million of Federal Contingency that has been obligated for Project phases 8 through 12. Since those obligations have not been utilized they are not included in the above MWAA table. To summarize the status of the Federal Contingency, of the original \$297.7 million budget, \$222.3 million has been utilized and \$34.1 million obligated – leaving a balance of \$41.3 million as of December 2011, or 14% of the original allocation. This is down from a remaining balance of \$70.8 million or 24% from September. The following MWAA table shows the contingency balance after utilized and obligated amounts have been subtracted. These figures do not include contingency amounts which are currently being reviewed or negotiated by MWAA.

Federal Contingency Utilized and Obligated Summary, December 2011

	BUDGET	TO-DATE	REMAINING
Phase 1 through 7	\$ 236,500,000	\$ 222,306,685 (Utilized)	\$ 14,193,315
Phase 8 through 12	\$ 61,262,579	\$ 34,121,021 (Obligated)	\$ 27,141,558
TOTAL	\$ 297,762,579	\$ 256,427,706	\$ 41,334,873

Source: MWAA Monthly Progress Report, December 2011 – Table 20, p 40

There is approximately \$28.3 million in additional Contract Change Orders currently under evaluation by MWAA.⁶ Depending on the outcome of these evaluations all or a portion of these change orders could be applied against the contingency budget.

⁶ MWAA December 2011 – Monthly Progress Report, Tables 13 & 14, Pages 30 & 31

Allowance Items

There is a \$485.7 million budget for allowance items. As the table below shows there are 17 major allowance items, each of which may contain multiple sub-projects.

Allowance Items Costs, December 2011

ALLOWANCE ITEM #	DESCRIPTION	ALLOWANCE ITEMS AWARDED AND TRANSFERRED TO FIRM FIXED PRICE				
		ALLOWANCE BUDGET W/COMMODITY ESCALATION	BUDGET AWARDED	PERCENT COMPLETE	AWARDED COST	BUDGET AWARDED/AWARDED COST VARIANCE
C-1	Trackwork ¹	\$ 81,431,330	\$ 81,431,330	100.00%	\$ 82,209,767	\$ 778,437
C-3	Station Finishes & MEP	\$ 88,834,891	\$ 51,369,004	57.83%	\$ 91,414,465	\$ 40,045,461
C-4	WFCY Sound and Box Platforms	\$ 6,686,211	\$ -	0.00%	\$ -	\$ -
C-12	WFCY S&I Building (excludes Site Work)	\$ 21,078,576	\$ -	0.00%	\$ -	\$ -
C-5	Pedestrian Bridges	\$ 13,614,891	\$ 3,591,557	26.38%	\$ 3,591,557	\$ -
C-6	Site Development	\$ 44,898,579	\$ 3,708,114	8.26%	\$ 6,746,657	\$ (4,921,896)
C-12	WFCY S&I Building (Site Work only)	\$ 7,960,439	\$ 7,960,439	100.00%	\$ -	\$ -
C-7	Installation of Public Art	\$ 633,862	\$ -	0.00%	\$ -	\$ -
C-8	Communications and Security	\$ 25,827,090	\$ 25,827,090	100.00%	\$ 26,104,556	\$ 277,466
C-9	Fire Suppression	\$ 2,667,214	\$ -	0.00%	\$ -	\$ -
C-10	Elevators and Escalators ⁴	\$ 38,732,282	\$ 38,732,282	100.00%	\$ 36,972,266	\$ (1,760,016)
C-11	Spare Parts	\$ 5,515,011	\$ -	0.00%	\$ -	\$ -
C-13	Traction Power Supply	\$ 59,318,269	\$ 43,105,601	72.67%	\$ 55,451,161	\$ 12,345,560
C-14	ATC Supply ³	\$ 27,944,840	\$ 26,918,698	96.33%	\$ 39,938,522	\$ 13,019,824
C-15	Corrosion & Stray Currents	\$ 1,579,685	\$ 1,579,685	100.00%	\$ 6,918,927	\$ 5,339,242
C-16	Contact Rail ¹	\$ 10,555,341	\$ 10,555,341	100.00%	\$ -	\$ (10,555,341)
C-17	Replacement Parking at Wiehle Avenue During Construction	\$ -	\$ -		\$ -	\$ -
	D-B Allowances Subtotal - Fed	\$ 437,278,511	\$ 294,779,141	67.41%	\$ 349,347,878	\$ 54,568,737
C-2	Wiehle Parking Garage (By others)	\$ 29,091,684	\$ -	0.00%	\$ -	\$ -
	Total Allowance Items - Fed	\$ 466,370,195	\$ 294,779,141	63.21%	\$ 349,347,878	\$ 54,568,737
C-6A	Site Development - Non Fed	\$ 18,687,604	\$ -	0.00%	\$ -	\$ -
C-8A	Communications and Security - Non Fed	\$ -	\$ -	NA	\$ -	\$ -
C-13A	Traction Power Supply - Non Fed ²	\$ 716,079	\$ -	0.00%	\$ 10,114,784	\$ 10,114,784
C-14A	ATC Supply - Non Fed ³	\$ -	\$ -	NA	\$ -	\$ -
	Total Allowance Items - Non Fed	\$ 19,403,683	\$ -	0.00%	\$ 10,114,784	\$ 10,114,784
	TOTAL ALLOWANCE ITEMS - FEDERAL and NON-FEDERAL	\$ 485,773,879	\$ 294,779,141	60.68%	\$ 359,462,661	\$ 64,683,521

1. Trackwork and Contact Rail are awarded as one Subcontract. The awarded cost of \$82,209,767 is shown in item # 1 in the above table.

2. This amount is subject to adjustment pending the Airports Authority's decision on the FTA directive to fund the costs associated with reintroduction of TPSS # 7 and #9 from nonfederal funding.

3. ATC Cables - portions of C-14, was revised from \$6,638,205 to \$6,395,889 due to reduction in quantities. The credit of \$242,316 has not been processed as of December 31, 2011.

4. Elevators and Escalators C-10 was revised from \$36,972,266 to \$36,200, 322. due inadvertent double counting of sales tax by DTP. The credit of \$771,944 has not been processed yet.

Source: MWAA Monthly Progress Report, December 2011 – Table 9, p23

Total committed allowance item funds through the December 2011 MWAA Progress Report is \$359.4 million, representing 74% of the allowance budget. Overruns are funded by contingency drawdowns. There have been \$64.6 million in overruns through December 2011. DTP has submitted requests for Contract Price Adjustments which could exceed the Allowance Item budget for those categories by approximately \$85.9 million.⁷ On a case by case basis MWAA examines if the DTP request is appropriate to the project scope and within the contract terms.

⁷ MWAA December 2011 – Monthly Progress Report, pp. 24 - 25

Cost Mitigation

The PMOC report dated January 20, 2012 notes two significant cost mitigation possibilities. The first is \$71.8 million through savings, relative to budget, in finance charges.⁸ The second area of mitigation is related to 'betterments'. Betterments are features that have been added to the project but could be billed to outside parties. The PMOC's current assessment of the amount of betterments is approximately \$94 million.⁹ A significant portion of these betterments would require negotiation with WMATA.

II. START OF REVENUE SERVICE FOR PHASE I

Overall Project Schedule

Key milestone definitions have been established over the last quarter. These definitions do not make any material changes in the status of the Project. However, it is important to understand the definitions in the context of current and future reports. What had commonly been referred to as Revenue Operations Date or ROD (established as 12/16/2013) is now referred to as Project ROD. This differentiates it from the revenue operations date established by the FTA in the FFGA. That date is now referred to as the FFGA ROD (established as 12/1/2014). OFPA has reported on the Project ROD in this and prior reports and will continue to do so.

The MWAA report for December 2011 now anticipates a lag of 20 days (as projected by DTP) with the start of revenue operations in January 2014.¹⁰ (Note the official schedule has not been changed, this is a DTP projection.) The 161 day lapse reported as of September has been closed through an agreement between DTP and MWAA on a mitigation schedule. The cost of the mitigation schedule is not available.

Previous quarterly reports noted the ongoing disagreements between MWAA and DTP related to the West Falls Church rail yard and the railcar delays caused by the March 2011 earthquake in Japan. The DTP schedule projections do not include the rail yard or rail car delivery risks. WMATA has developed a fleet plan to use excess rail cars from within the existing fleet to mitigate the impacts of a delivery delay. This plan will need to be monitored and revised as the rail car delivery schedule develops.

III. FUNDING OBLIGATIONS OF FAIRFAX COUNTY

Based on the current funding agreement, Fairfax County is obligated to pay 16.1% of the total project costs. If Fairfax County decides not to proceed with Phase II of the project, the obligations would be for 16.1% of the final cost for Phase I. The Phase I activities will continue in 2012 through at least the early part of 2014. Over the next 3 to 6 months, as significant project phases are completed, the ability of MWAA to complete the Phase I - Design Build contract within budget will become apparent.

⁸ PMOC January 20, 2012 – p 3.

⁹ PMOC January 20, 2012 – p 4.

¹⁰ MWAA December 2011 – Monthly Progress Report, p. 44

RESTON GLEN TRANSACTION REVIEW

The Audit Committee requested OFPA examine the FCRHA/HCD financing of the Reston Glen affordable housing units and provide a report of the transaction details including any financial losses.

Background

Reston Glen is a 200 unit apartment complex listed in the County's tax records as 12242 Laurel Glade Ct. in Reston. This is a privately owned facility within which FCRHA sought to preserve the affordability of 40 out of 200 units for at least 30 years and to rehabilitate the property. The 40 units have been preserved at up to 50% Area Median Income (AMI) for 30 years and the property was rehabilitated.

The goals set forward by the FCRHA were achieved through the provision of project financing utilizing various tax beneficial financing mechanisms and access to low cost funding. Generally, these mechanisms allow a for-profit property owner to receive financial inducements to keep a percentage of units affordable (20% of the units in this case) for a contractually agreed amount of time (30 years). These financial transactions are not unusual for; or unique to FCRHA or Fairfax County. The original Reston Glen transaction was completed in June 2007.

Reston Glen Financing Transactions

In January 2007, Fairfield Laurel Glade (Fairfield) purchased the property for \$30,375,000 according to county tax records. After that purchase, Fairfield sought conduit financing from the County in return for keeping 40 of 200 units (20%) affordable at up to 50% AMI for at least 30 years and to finance the rehabilitation of the property.

In June 2007, the conduit financing was put in place by FCRHA. The financing took the form of \$28 million in bonds which were purchased by Goldman Sachs through a private placement transaction. Fairfield purchased \$6 million in additional borrower bonds bringing the total bond financing to \$34 million. A loan was also issued by the FCRHA through the Affordable Housing Partnership Program (AHPP) from the County's Penny Fund for \$2.375 million. This brings the total amount of financing provided for the project to \$36.4 million. The AHPP loan had a subordinate lien on the property to the \$28 million first lien bonds purchased by Goldman Sachs. The bonds had a fixed interest rate; however, the borrower (Fairfield) entered into an interest rate swap agreement with Goldman Sachs to take advantage of declining interest rates.

In September of 2009, HCD received notice of a technical default by Fairfield on the interest rate swap agreement. This was a technical default in that it was caused by Fairfield's inability to meet their collateralization obligations contained in the interest rate swap agreement with Goldman Sachs. Please note this was a technical default, the bonds themselves did not go into default. The unanticipated drop in real estate values required Fairfield to make up the difference between the collateral at closing and current market value. Fairfield was unable to make up the difference. In October of 2009, this technical default prompted Goldman Sachs to foreclose on the property.

In December of 2009, Fairfield filed a voluntary chapter 11 bankruptcy. Chapter 11 allows a debtor to reorganize pursuant to a court approved plan. By the time of the bankruptcy Fairfield had already lost Reston Glen to the Goldman Sachs foreclosure.

In December 2009, Goldman Sachs subsequently sold the property to Red Stone Partners IV Reston LLC (Red Stone). The AHPP loan was extinguished through the foreclosure resulting in a loss to the Penny fund of \$2.375 million. County tax records indicate that Red Stone acquired the property from Goldman Sachs for approximately \$22.5 million. According to FCRHA Board resolution 60-09, Goldman Sachs canceled \$4.9 million of the outstanding bonds and the \$6 million in Borrower Bonds were extinguished as a result of the foreclosure sale. Additionally, the former owner applied \$600,000 in savings from construction proceeds to prepay a portion of the bonds. The Red Stone sales price, bond reductions and application of construction proceeds totaled \$34 million.

HCD notes that it was able to negotiate an agreement with Red Stone (not secured by the property) concerning repayment of the AHPP loan. That agreement called for Red Stone to repay the note up to \$2.375 million at \$.25 on the dollar for every dollar Red Stone received in excess of \$34 million on a future sale of the property.

In December of 2010, Red Stone sold the property to Workforce Reston Glen, LLC (Workforce). The remaining FCRHA bonds were repaid in full through this sale. The sales price according to county tax records was approximately \$28.5 million. FCRHA had the option to purchase the property at the Red Stone marketed price of \$30 million, but declined the option. Workforce did not consent to the AHPP loan repayment agreement HCD had negotiated with Red Stone. Consequently, HCD wrote-off the loan at the end of FY 2011, which recorded the loss to the Penny Fund. The affordability restrictions were retained and 40 units will remain at affordable rents for at least 30 years. As noted earlier, the property was rehabilitated.

Transaction Details

Purpose of the AHPP Loan: As described by HCD, this loan is considered 'gap' financing. The purpose of the loan is cover the gap between the cost of property acquisition/rehabilitation and affordable rents. It is important to remember this transaction occurred in early 2007, prior to the drop in local real estate prices and what many consider the start of the national recession.

Interest Rate Swap: Interest rate swaps are financial contracts between two parties referred to as 'counterparties'. The contract is to exchange interest rate payments at specified dates in the future. Usually, one party pays a fixed rate while the other party pays a variable rate. Reston Glen was a Fixed-to-Floating SWAP (Synthetic Variable). This type of SWAP allows a borrower to opportunistically convert all or a portion of fixed rate debt to a variable rate. In this transaction Fairfield would be looking for the variable interest rate to be less than the fixed rate, thus reducing overall interest rate expense. The interest rate swap allowed Fairfield to take advantage of declining interest rates, yet maintain its fixed rate obligations to the bondholder (Goldman Sachs).

All loan/debt transactions contain risks. SWAP transactions contain specific risks, some of which are noted below:

- Interest rate risks – risk that interest rates rise or fall changing the economics of the SWAP.
- Basis Risk – Risk that the index used to calculate the SWAP are not equal to payments on the bonds.
- Termination Risk – Risk that the SWAP is terminated early.
- Counterparty Credit Risk – Risk that the Counterparty will be downgraded or fail to make payments to the issuer when due. *The inability of Fairfield to meet its collateral obligations is a form of counterparty credit risk.*

Conclusion

The loss of the \$2.375 million Penny Fund loan was triggered by the property owner's (Fairfield) inability to add additional collateral, as required under the SWAP agreement, when the market value of the property fell. HCD notes that this transaction was viewed by the FCRHA as a pilot, and, that it is unlikely that the FCRHA would contemplate future similar agreements, given the outcome and the change in market conditions.

Through the period of the transaction, HCD notified and/or involved the FCRHA Board, the County Attorney's Office, and the County Debt Manager. Additionally, the Affordable Housing Advisory Committee was notified of the loss in March 2011.

Recommendations

- FCRHA/HCD should develop a SWAP policy before entering into such future agreements. Key components of this policy should be:
 - Definition of the goals and objectives of the program
 - Identify permitted transactions
 - Identify authorizations and responsibility for analysis and recommendations
 - Impose constraints and limitations to limit risk exposure and ensure risks are understood and documented
 - Identify oversight and reporting responsibilities
- HCD should establish written internal policies for write offs consistent with the Department of Finance's DFN 036-1 and Accounting Technical Bulletin ATB036.
- FCRHA/HCD should formally notify the County Board of Supervisors in the event of a significant loan loss.

TRANSPORTATION DEMAND MANAGEMENT MONITORING STUDY

Overview

Transportation Demand Management (TDM) is a program of strategies designed to reduce single-occupancy vehicle (SOV) traffic on roadways. TDM plans provide and support travel options. Bus service, carpools, vanpools, Metrorail and commuter rail service, shuttle service, and infrastructure for walking and biking are all examples of TDM strategies used to reduce traffic going to and coming from residential, commercial or mixed use developments.

In Fairfax County, proffered development conditions for proposed developments may include specific TDM proffers. TDM proffers become legally binding agreements that run with the land and are in addition to the zoning district regulations for a development. They typically include goals associated with reducing SOV trips during peak commuter hours. In recent years, monetary penalties have been incorporated into some TDM proffered agreements to ensure commitments to reduce SOV trips are implemented.

This quarter's study is focused on the Audit Committee's request to study TDM proffer monitoring and evaluate the county's oversight of TDM implementation by developers/property owners.

TDM Monitoring Conducted by the Fairfax County Department of Transportation

TDM proffer monitoring and enforcement is overseen by the Fairfax County Department of Transportation (DOT). Goals are typically included in proffer language for survey response rates, reduced SOV trips or mode splits.¹¹ DOT uses proffered goals and reporting requirements to evaluate the effectiveness of TDM strategies employed at a site. DOT is responsible for ensuring that all legally binding TDM conditions approved by the Board of Supervisors are implemented as provided for in the proffered agreements.

Some TDM agreements include penalty provisions. OFPA found that penalties that fund additional investment in the site's TDM program (remedy payments) are far more typical than penalty payments required because agreement obligations were not met. DOT is responsible for monitoring all aspects of TDM proffers including both remedy and penalty provisions.

The county's Department of Public Works and Environmental Services (DPWES) plays a secondary role in the TDM proffer monitoring process with activities including permitting, site inspections, and acceptance of required payments and letters of credit associated with proffered agreements.¹² In addition, DPWES' land development and inspections databases capture permit milestone data that form the implementation triggers used in many TDM agreements. The availability of this data and its use in confirming TDM requirements are issues discussed later in this report.

OFPA met with DOT management and staff multiple times during the course of this study. We contacted DPWES staff in Land Development Services to review the site inspections process, available data and payment posting notifications. We concluded our study this quarter with input from Planning Commissioner

¹¹ "Mode split" is the industry term used for survey results that show the number of people using non-SOV modes of travel such as transit, car pool, bike, and walk. Mode split goals typically assign a target percentage to non-SOV travel.

¹² Letters of credit are issued by financial institutions and essentially represent a promise to pay by the developer. Proffer language reviewed as part of this study included provisions that allowed the county to draw from the stated funds promised in the letter of credit to pay for TDM related projects in the vicinity of the development if goals for reduced SOV trips were not met.

Ken Lawrence (Providence District). Commissioner Lawrence confirmed some of our findings and helped bring clarity to our understanding of TDM Program history in the county.

Test Group of Agreements Pulled to Evaluate DOT's Monitoring Efforts

OFPA used the County's Land Development System (LDS) to extract an independent test group of TDM proffered condition agreements. Thirteen proffer documents approved in conjunction with land use actions between 2004 and 2010 were selected to test DOT's current monitoring and enforcement efforts. Beyond the test group, additional proffer agreements were reviewed as examples of standard TDM language. Some of the additional agreements reviewed offered more insight into DOT's monitoring efforts over time and provided additional opportunities to review TDM related payments made to the county.

All of the 13 agreements in our test group were found to be actively monitored by DOT during the course of this study. While OFPA did observe evidence of current monitoring, issues associated with past monitoring of agreements and data used to confirm due dates for TDM deliverables were noted.

During the course of this study, DOT conducted a review of the LDS data OFPA used to extract the test sample. Approximately 10 agreements were identified by DOT staff that required monitoring but were not in DOT's active monitoring program. DOT's monitoring program has been updated to include the agreements found during DOT's review that coincided with our study.

TDM Monitoring Spans From Pre-Construction to Post-Construction

TDM proffered agreements are entered into at the time the property is rezoned or proffers are amended. Several months or years can pass before construction is commenced or occupancy of the site occurs. Most TDM deliverables are triggered by occupancy of the constructed site which can stretch the monitoring period over years and even decades.

OFPA found DOT efforts to monitor construction and occupancy for all of the 13 agreements tested. Five out of the 13 agreements were for sites where some TDM deliverables had already been triggered by current construction activity and/or occupancy. DOT reported that the 8 remaining sites in our test group were either under construction or had not yet begun construction effectively putting TDM deliverables on hold.

All 5 of the agreements with TDM deliverables due were found to be currently monitored by DOT during this study period. OFPA found 3 of the 5 agreements had requirements that, prior to July 2011, were not actively monitored or enforced by DOT. DOT's current Senior Transportation Planner assigned to monitor TDM agreements began employment in July 2011 and since that time we found evidence of active monitoring efforts on all the agreements in the test group. DOT reported that the Senior Transportation Planner position was vacant for 5 months prior to it being filled in July 2011.

It should be noted that 4 out of the 5 agreements with current TDM deliverables due had reporting deadline requirements at the conclusion of this study period. Those annual TDM reports were not received in time to be included in OFPA's review of DOT's monitoring efforts.

DOT reported difficulties in monitoring construction phases particularly in large scale development projects that have multiple Residential and/or Non-Residential Use Permits issued.¹³ One agreement in our test group required calculation of the number of use permits issued. The proffer required the development to show 15% or more of residents using transportation options other than SOV after 80% of the residential use permits have been issued. Current county data accessed by DOT does not provide for the calculation of 80% of total use permits for a site. The 15% goal in this agreement is tied to a data point that OFPA found DOT could not independently confirm.

All TDM Proffered Agreements are Unique and Require Site Specific Monitoring

OFPA found each of the 13 agreements in the test group to be unique. While many of the same elements were included in the agreements, the details associated with those elements and implementation triggers for those elements were all site specific. For example, TDM proffered agreements typically include goals to be met for reduced trips to the site and survey response rates. The basis for goals and the triggers that implement those goals, however, were unique in all the agreements in our test group. In addition to each of the goals being unique, some of the agreements had goals that were phased and tied to ranges of permit issuance that were observed to add further detail to the monitoring process.

DOT is charged with monitoring each agreement from pre-construction to as many as 15 years after full occupancy. Expiration dates for agreements were also observed to be unique.

DOT reported a total monitoring program of approximately 90 agreements, two thirds of which have reporting and survey requirements. Each contains TDM deliverables that are unique to the site.

TDM Agreements and Monitoring Have Evolved Over Time

Some of the earlier TDM proffer language in our test group included general requirements. OFPA found more recent TDM agreements to be far more specific. As an example, conditions that require annual reporting to DOT now typically include due dates for annual reports and inclusion of TDM budget expenditures by the development. In contrast, early proffer agreements reviewed included language that was vague and simply required a report with no requirements for when to submit the report to DOT or for the contents of the report. More specificity in proffer language allows for a more detailed level of monitoring.

OFPA observed a level of monitoring that appears to have evolved as the proffered language has evolved. Currently, DOT staff use summary Excel spreadsheets to track agreement deliverables, implementation triggers and due dates. During the course of this study, DOT staff explored additional database tools within the department to aid in their monitoring efforts.

OFPA also observed that the specificity of more recent proffer language has resulted in requests for minor modifications to the approved agreements. One agreement from the test group in the Dulles area required that the developer/owner purchase \$5,000 worth of SmarTrip cards annually (a minimum \$5 on each card) and distribute those cards to employees. This proffer language was drafted and approved in anticipation of Metro being extended to the Dulles area. DOT coordinated a minor modification to this proffer agreement to

¹³ A residential use permit (RUP) is issued by the county when a residential building unit has passed its final building inspections and is ready for occupancy. A non-residential use permit (Non-RUP) is issued by the county when a commercial building unit has passed its final building inspection and is ready for occupancy.

allow EZ Passes for carpooling and ride sharing on the toll road until Metro begins service in the area. This example illustrates DOT's willingness to work with developers/owners to meet the intent and overall purpose of the TDM requirements. DOT reported no formal process to approve minor proffer modifications. However, a formal process to address minor proffer modification requests does exist in the Department of Planning and Zoning (DPZ). DPZ makes determinations on minor modification requests and formalizes those determinations in proffer interpretation letters. DPZ files proffer interpretation letters with original proffer agreements. A formalized process in DOT for minor TDM modifications would be consistent with existing proffer modification procedures in DPZ and would document minor changes made to the legally binding agreements that run with the land.

Penalties for unmet goals have also evolved over time. Early proffer agreements studied had minimal penalties built-in or none at all. More recent proffer agreements reviewed in the test group included phased penalties that are dependent upon the degree by which goals are not achieved. OFPA also observed that more recent agreements in our test group had penalties associated with not filing proffered reports to DOT.

TDM Implementation and Goals Are Tied to Stages of Construction and Permitting

The majority of agreements in our test group had TDM implementation linked to the issuance of Residential and/or Non-Residential Use Permits. For example, one agreement had phased goals linked to the issuance of RUPs. When the development had been issued its first through 289th RUP, its goal for reduced peak hour trips was 30%. The proffered goal was increased to 35% when RUPs numbered 290 through 444 were issued.

OFPA observed efforts on the part of DOT to monitor and track site development in order to determine when TDM elements are triggered by specific stages of construction and/or permitting. This was evident in all the items in our test group and was noted by DOT as one of the more challenging aspects of TDM monitoring.

DOT currently uses two sources to confirm stages of development: 1) limited LDS and FIDO¹⁴ data and 2) self-reporting by developer/owners. One TDM proffer from our test group had requirements after the 1500th RUP was issued. This requirement cannot be confirmed with the limited LDS and FIDO data currently accessed by DOT. OFPA found an alternative data source used by DPWES site inspectors (SI2K) that tracks all RUPs and Non-RUPs issued. DOT staff does not currently use SI2K to monitor deliverables or triggers for implementation. Instead, DOT reported that they rely on information obtained by developers/owners to determine when agreement deliverables are due – especially the deliverables and goals linked to use permits issued. DOT's monitoring of agreements would be improved with access to site inspections data and a reduced reliance on self-reporting by developers/owners.

OFPA found that limitations on the ability to confirm RUPs and Non-RUPs have resulted in proffer language changes over time. DOT reported a move in recent years toward proffer language that provided for easier monitoring based on the assumed limited RUP and Non-RUP data from LDS/FIDO. Data sources like SI2K or others may assist DOT and developers in drafting proffer language that continues to use logical phased metrics such as issued use permits.

In addition to site inspection data, DOT's monitoring efforts would be aided by increased coordination with the three Site Development and Inspection Branches in DPWES. Site inspectors are involved in the land

¹⁴ FIDO is the acronym for Fairfax Inspection Database Online, a search tool on the county's public website, www.fairfaxcounty.gov.

development process from pre-construction meetings to bond release. For projects with TDM commitments, OFPA believes DOT proffer monitoring could be significantly improved if DOT staff participated in pre-construction meetings on site and coordinated with site inspectors through bond release.

TDM Penalties Vary and Are Predominantly Paid to Development Controlled Accounts to Fund Additional Remedies

The TDM agreements in our test group fell into one of three penalty categories:

1. Agreements with no penalty provisions (2 out of 13 agreements studied)
2. Agreements with penalty provisions that required **remedy payments** (8 out of 13 agreements studied)
3. Agreements with penalty provisions that required both **remedy payments and additional penalty payments** for not meeting agreement obligations (3 out of 13 agreements studied)

Remedy payments and penalty payments serve different purposes. Remedy payments function to incentivize additional investment in the site's TDM program and require sites to pay into site-controlled accounts to improve the TDM program and meet future goals. Penalty payments, in contrast, are more closely aligned with the notion of a penalty applied for an unfulfilled contract obligation. Both remedy payments and penalty payments are typically triggered when current goals are not met.

Two agreements in the test group that had penalty payment provisions required either advance cash payments to the county to establish a penalty fund or allowed a letter of credit/corporate guarantee giving the county access to funds to be used for TDM related projects in the vicinity of the developments if goals were not met in the future.¹⁵ DOT reported that neither of these two agreements in our test group had penalty provisions that had been triggered to date. OFPA's review of the most recent reports and documents available confirmed this finding.

Only one of the agreements in the test group specifically required a penalty payment be made directly to the county. This proffered agreement also required a remedy payment at the same time as the penalty payment. OFPA's review of the most recent reports and documents available confirmed that none of the construction milestones that trigger TDM penalties at that agreement's site have been completed to date.

DOT reported that none of the agreements in the test group that only required remedy payments had been triggered to date. OFPA's review of the most recent reports and documents available confirmed this finding.

For the universe of TDM agreements with built-in penalty language beyond our test group, DOT reported that, to date, no payments have been paid directly to the county as a result of unmet goals and no payments have been paid into development controlled accounts to fund further TDM remedies. The county has received advance payments and letters of credit to cover possible unmet TDM goals in the future. DOT staff noted that TDM agreements with penalty provisions have either met the requirements of the agreement or the developments have not yet reached the point in their phased plans in which penalties would be triggered. Penalties are typically triggered when goals are not met after full occupancy or after very late stages of occupancy. Some penalty provisions are not triggered until goals are missed over a period of consecutive reporting cycles.

¹⁵ Advance proffer payments to the county to establish a penalty fund are accepted by DPWES and deposited in the Contributed Roadway Improvement Fund. DPWES notifies DOT when deposits are made.

OFPA contacted Planning Commissioner Ken Lawrence for his input on TDM monitoring during the course of this study. Commissioner Lawrence agreed with DOT's report that the majority of agreements with remedy and penalty payment requirements in Providence District have not yet reached the penalty stages of their TDM proffer implementation. He noted that the bulk of knowledge and experience with penalty enforcement will be gained in the future as the agreements approved with those provisions complete construction and occupancy.

TDM Standards Will Improve Monitoring and Enforcement Efforts

The test group of agreements studied illustrated the need for standardization in proffer language to improve DOT's ability to monitor agreements. Currently, site specific agreements have common elements but each agreement may have implementation triggers, goals and penalties that differ from another and make monitoring more complicated.

TDM Program improvements and standards are planned to be presented to the Board of Supervisors during this calendar year. Monitoring standards, in particular, will assist DOT in ensuring legally binding agreements are implemented.

Conclusion

OFPA found that the proffer agreements reviewed to test DOT's monitoring efforts were being tracked and enforced by DOT during the period of this study. Evidence of enforcement lapses were found in three of the agreements studied that had deliverables prior to July 2011. Evidence of current monitoring was observed in all of the agreements in the test group.

TDM deliverables and goals are often linked to stages of development. OFPA found an over reliance by DOT on developers/owners to provide information on the status of construction and occupancy permits issued for a site. Information from developers is used to determine when some TDM requirements become due. OFPA found the reliance on developer information is due, in part, to assumptions on the lack of available county-derived data - especially RUP and Non-RUP data. OFPA found opportunities for independent confirmation of data and coordinated site review that will aid DOT in their monitoring efforts and improve the overall site inspection and proffer enforcement process.

Recommendations

1. Later this year, DOT is preparing to present to the Board of Supervisors recommendations for improvements to the overall TDM program. Improvements to be recommended include standards for TDM requirements based on proximity to transit centers and other factors. OFPA recommends that the proposed standards and TDM program changes to be presented to the Board include specific explanations for how those standards and requirements will be monitored by DOT.
2. OFPA recommends that DOT coordinate reviews of development milestones with the Site Development and Inspection Division in DPWES. Specifically DOT should explore use of the SI2K system to confirm RUP and Non-RUP issuance. In addition DOT should explore opportunities to coordinate with site inspectors on pre-construction meetings, bond release reviews and other site related activities.
3. OFPA recommends that DOT consider establishing a process similar to that in the Department of Planning and Zoning to document determinations made on requests to modify existing proffers. TDM proffers are legally binding agreements that run with the land and a formal process to document minor modifications should be considered by DOT management.

4. OFPA recommends that DOT continue current monitoring levels and consider expansion of monitoring efforts as existing TDM deliverables come due on construction projects underway and new TDM proffers come online for large scale developments anticipated in Tysons Corner and other areas of the county.

Upon review of this report on TDM proffer monitoring and enforcement, the Audit Committee discussed TDM effectiveness and requested that county staff conduct an analysis of SOV trip reduction countywide as a result of TDM proffers. The Audit Committee asked that this analysis be reported back to the Board at an upcoming Transportation Committee meeting.

SIDEWALKS AND TRAILS MAINTENANCE

OFPA's initial study on sidewalks and trails (November 2011) identified maintenance as an issue and sought to identify best management practices for the Board and staff to consider. The best practices identified in our initial report were explored during this quarter's follow up discussions with staff in the Department of Public Works and Environmental Services (DPWES), the Park Authority and the Department of Transportation (DOT).

This study focused on the miles of sidewalk and trail that are maintained by the Department of Public Works and Environmental Services (DPWES) and the Park Authority.¹⁶ Funding sources for maintenance were found to be limited, in comparison to construction funding. All maintenance work on approximately 950 miles of sidewalk and trail inventory is done on an emergency/complaint basis by DPWES and the Park Authority. Both agencies compete for the same limited dollars to maintain similar assets. Maintenance funding for both agencies is ultimately derived from the General Fund that is transferred to a number of smaller funds and project numbers.

In our research, OFPA found communities across the nation challenged with maintaining sidewalk and trail networks. Our research indicated that the organizations that had the most success in maintaining infrastructure incorporated a few key best practices into their maintenance programs. Those key best practices were:

1. Improve Inventory Data and Budget for Maintenance
2. Use Volunteers to Supplement Limited Budgets
3. Capitalize on Collaboration Opportunities

The timing of this overall study coincided with ongoing significant work on pedestrian infrastructure priorities by both the Board of Supervisors and county management. The Board is currently continuing its work in developing an updated Transportation Plan that will include priorities for multi-modal transportation projects.¹⁷ In addition, the Board will soon enter the budget review and approval process for FY 2013. Recent Board actions have indicated an interest in reviewing maintenance needs in the capital budget. OFPA is sensitive to the current work underway and offers this final wrap up report with recommendations designed to support these efforts.

Best Practice: Improve Inventory Data and Budget for Maintenance

OFPA reviewed available sidewalk and trail inventory data for sidewalks and trails that are maintained by DPWES or the Park Authority. The inventory table below includes construction/acquisition data back to Fiscal Year 2003 and illustrates a growing maintenance inventory of over 100 maintenance miles from FY 2003 to FY 2011.¹⁸

¹⁶ The Virginia Department of Transportation (VDOT) also shares maintenance responsibility for sidewalk and trail that are located in VDOT right-of-way and that are built to VDOT standards. A more detailed discussion of maintenance responsibility is available in OFPA's Quarterly Report issued in November 2011.

¹⁷ The term multi-modal is issued in the transportation industry to describe facilities that have multiple uses (pedestrian, bicycle) and have multiple connection opportunities to other types of transportation (bus, rail).

¹⁸ Asset records that indicate acquisition/construction are required by GASB 34. The Government Accounting Standards Board (GASB) Statement No. 34 requires that governments depreciate their capital assets including sidewalk and trail infrastructure.

	DPWES Maintenance Miles					Park Authority Maintenance Miles				
	Asphalt	Concrete	Natural/ Other	Totals	Added from Prior Year	Asphalt	Concrete	Natural/ Other	Total	Added from Prior Year
FY 2003 and prior	195	365	0	561	n/a	119	10	153	282	n/a
FY 2004	197	367	0	564	3	120	11	154	285	3
FY 2005	199	369	0	568	5	123	11	155	289	4
FY 2006	207	376	0	583	15	124	11	156	291	3
FY 2007	212	408	0	620	38	127	11	159	297	6
FY 2008	217	415	0	632	11	131	11	166	308	11
FY 2009	219	418	0	637	5	135	12	167	313	5
FY 2010	221	421	0	641	4	135	12	170	317	3
FY 2011	221	421	0	641	0	137	12	170	319	2
Total	221	421	0	641	81	137	12	170	319	36

Source: DPWES and the Park Authority; DPWES data provided in this table updates the data previously reported to OFPA and included in the November 2011 Quarterly Report.

OFPA observed recent efforts to improve asset inventory data for Park Authority maintained sidewalks and trails. Park Authority staff reported recent completion of a GIS mapping project. In addition, Park Authority staff provided construction/acquisition data dating back several decades. DPWES staff reported interest in a similar mapping project for the 600 plus miles of sidewalk and trail that they maintain. DPWES staff reported that construction/acquisition data prior to 2003 was not available for sidewalks and trails maintained by them.

During the course of this continued study, on December 6, 2011, the Board of Supervisors directed the County Executive to include in the upcoming budget discussions on the Capital Improvement Program an assessment of maintenance funding needs for existing infrastructure including sidewalks and trails.¹⁹ In discussion related to this action, the Board noted concern over being able to maintain assets and the ultimate costs associated with deferred maintenance.

OFPA noted best practices for maintenance budgeting in our initial report. We found the organizations that have addressed maintenance funding for sidewalks and trails do the following:

1. consider maintenance responsibility and costs in addition to construction costs in project funding
2. use inventory data (including surface type, age and condition) to develop the basis of an overall maintenance budget

OFPA found limited consideration, currently, for future maintenance costs in fiscal impact assessments for proposed sidewalk and trail projects. The Park Authority builds and maintains trails constructed on park property. To prioritize new trail projects, the Park Authority staff includes estimates of future maintenance costs in evaluating each proposal.²⁰ OFPA, however, did not observe where this data later formed the basis for maintenance budget planning by the Park Authority.

¹⁹ December 6, 2011, Board Summary item # 78: Joint Board Matter by Supervisors Cook and Smyth, **Maintenance of County Infrastructure**

²⁰ The Park Authority has several trail project priority criteria published in their *Trail Development Strategy Plan*: user value, development impact, and sustainability. Sustainability is noted in the plan as an important factor to consider because maintenance funding is not added at the time new trail segments are constructed and come online. Sustainability is evaluated on surface material, width of trail, location and maintenance unit costs. Proposed trail projects are given a weighted score based on this sustainability evaluation.

DOT also coordinates construction of pedestrian projects. DOT projects that are outside the VDOT right-of-way or that are not built to VDOT standards are maintained by DPWES. OFPA discussed consideration of future maintenance costs in project proposals with DOT as well. DOT expressed concern about adding future costs estimates to projects that are already difficult to fund. DOT also noted the typical life span of asphalt and concrete (20 years for asphalt, 30 years for concrete) and said that projected maintenance costs may not occur until decades after construction.

For sidewalks and trails maintained by DPWES, OFPA found that better inventory and condition data is needed to assess maintenance funding needs. DPWES was only able to provide acquisition/construction data for fiscal years 2011 – 2003. OFPA estimates that approximately 80% of the DPWES inventory was acquired/constructed prior to FY 2003 and DPWES noted no data available on the age or condition of those older assets, in particular.

DPWES indicated an interest in learning more about the Park Authority's efforts to improve inventory data and how the lessons learned by the Park Authority could be applied to the effort DPWES is considering. During the course of this study, staff began those discussions.

Best Practice: Use Volunteers to Supplement Limited Budgets

Our best practice research indicated widespread use of volunteers nationwide to supplement limited maintenance budgets. During the presentation of our initial report, the Audit Committee expressed interest in the use of volunteers especially for minor maintenance and trail clearing. The Audit Committee was interested in two volunteer topics: 1) the current and possible future use of court-appointed community service volunteers and 2) the development of agreements with volunteer trail groups that would assist in the maintenance of assets in the DPWES inventory.

OFPA investigated the use of court-appointed community service volunteers. OFPA contacted Volunteer Fairfax, a local organization that matches volunteers with non-profit agencies. Volunteer Fairfax, via its Alternative Community Service Program (ACS) places court-ordered clients in community service positions. All defendants who are assigned by Fairfax County General District Court or the Alcohol Safety Action Program to the ACS Program are placed at nonprofit, religious and governmental agency partners. ACS placements are generally first-time offenders who have committed low-level misdemeanors. Volunteer Fairfax does not accept juvenile offenders or those who have committed violent or sexual crimes into ACS for placement.

The Park Authority is a governmental agency partner with Volunteer Fairfax and currently accepts ACS placements. OFPA found the placement process decentralized in the Park Authority with individual Park Authority managers overseeing assignments. OFPA interviewed one Park Authority Manager who had five years of experience overseeing ACS clients. The manager noted success using ACS clients to complete minor trail clearing and landscaping work at the park site she manages. According to Volunteer Fairfax and DPWES, no ACS placements are currently made in DPWES for minor sidewalk and trail assignments. DPWES and DOT staff noted oversight concerns with using volunteers in general and ACS clients in particular as the court and Volunteer Fairfax have supervisory requirements. In addition, it was noted by Volunteer Fairfax that location and availability may limit use of ACS clients by DPWES. Clients are usually placed close to home or work and are predominantly available on weekends or evenings for service.

Our follow up discussions with staff this quarter included the general use of volunteers and policies associated with their use. The Park Authority confirmed the existence of customized agreements in place with volunteer groups and individuals to assist in the maintenance of specific segments of trail. It is important to note that the majority of maintenance work conducted by volunteers on Park Authority property was reported as minor in

nature (clearing and natural surface repairs) and most agreements excluded the use of power tools. DPWES and DOT noted work had begun on similar volunteer agreements for sidewalk and trail maintenance on county owned property maintained by DPWES but those agreements had not yet been finalized.

Best Practice: Capitalize on Collaboration Opportunities

Our initial report included several collaboration opportunities within the county organization that could increase efficiencies and result in potential cost savings. Two opportunities, in particular, were the focus of our follow up discussions this quarter: 1) improved communication and 2) collaboration with the Office of the Sheriff.

Improved communication between the Park Authority and DPWES on sidewalk and trail maintenance has the potential to reap efficiencies countywide. Currently, communication occurs on the planning and construction of trails with the two agencies working together with DOT to complete projects that impact respective business areas or occur on adjacent parcels. Maintenance of these added miles and existing infrastructure, however, is a completely separate operation in each agency with little communication between DPWES and the Park Authority. Both agencies ultimately derive maintenance budgets from the same General Fund source. Individually they oversee separate maintenance operations with separate equipment and staff. Improved collaboration on developing maintenance standards and asset management policies has the potential to aid both agencies in developing a stronger maintenance funding strategy as both entities now compete for the same limited dollars. In addition, there may be opportunities to share equipment or expertise and experience. The Park Authority, with established volunteer agreements and recent completion of trail mapping, could assist DPWES with both endeavors. During the course of this study, staff from DPWES and the Park Authority began discussions to explore potential collaboration opportunities.

Our discussions with agencies this quarter included additional exploration of collaborations with the Office of the Sheriff and specifically the Sheriff's Community Labor Force Program.²¹ Use of inmate labor programs was noted in our initial report as a cost efficient practice observed in other communities. DPWES currently uses the Sheriff's Community Labor Force Program to conduct some maintenance – especially at bus shelters. The Labor Force has not typically been used for sidewalk and trail maintenance by DPWES in the past. In contrast, the Park Authority reported successful use of the Labor Force for sidewalk and trail maintenance in the past, but reported no current relationship with the Sheriff. The Park Authority expressed interest in renewing their relationship with the Community Labor Force and possibly assisting the Sheriff with equipment and supplies needed to establish an additional crew. An additional Labor Force crew could assist both the Park Authority and DPWES in maintenance related to sidewalks and trails.

Recommendations

1. OFPA recommends that DOT and DPWES consider including the following in new pedestrian project funding proposals:
 - a. Entity responsible for maintenance once the project is constructed
 - b. Future maintenance cost estimates

²¹ The Community Labor Force Program in the Office of the Sheriff provides labor crews consisting of well-screened inmates and a Deputy Sheriff. The program partners with county agencies to provide labor services that include removing trash at over 300 bus stops and shelters, graffiti removal, and landscaping services at county facilities.

The Park Authority currently includes a maintenance estimate to prioritize projects being considered for construction funding. DOT and DPWES could benefit from a similar process. Maintenance funding countywide would benefit from a strong link between estimates at the time of construction and future maintenance program development.

2. OFPA recommends that the Park Authority and DPWES continue maintenance collaboration discussions begun this quarter. In particular, OFPA recommends that the Park Authority and DPWES enter into discussions with the Sheriff to explore creation of an additional Community Labor Force Crew dedicated to sidewalk and trail maintenance. The three departments should collaborate on the use of existing tools and equipment to avoid significant estimated startup costs.
3. OFPA recommends that staff include the following in documents being prepared for the Board's Budget Committee discussion on infrastructure maintenance and the Capital Improvement Program:
 - a. Plans to improve sidewalk and trail inventory and condition data. Better data is needed to form the basis of future maintenance funding requests.
 - b. Status of agreements with volunteers to maintain sidewalks and trails in the DPWES inventory.
 - c. Status of Park Authority and DPWES discussions with the Office of the Sheriff, Community Labor Force Program to collaborate on sidewalk and trail maintenance.

Upon review of this final report on sidewalk and trail maintenance, the Audit Committee acknowledged the need for resources devoted to sidewalk and trail maintenance countywide. The Audit Committee requested that county staff include in the information for the Budget Committee discussion on the Capital Improvement Program options for a repair/replacement fund for sidewalks and trails.

OUT OF COUNTY ATHLETIC FEES REVIEW

At the request of the Audit Committee, we reviewed the manner in which the Department of Neighborhood and Community Services (DNCS) was administering the assessment of the athletic fee that is charged to participants who reside outside of the County. There was concern that the County might be scrutinizing permit applications from some organizations more closely than others.

Groups participating in athletic activities within Fairfax County must first receive a permit from the County. Applications for the permits are submitted several times a year and cover a variety of sports including baseball, basketball, soccer, and cheerleading. In order to receive a permit, applicants must pay a fee of \$5.50 per participant per team. In addition, participants who reside outside of the County must pay an additional fee of \$30. During Fiscal Year 2011, the County's financial records showed that the participation fee generated revenue of almost \$1.2 million and the out of county fee resulted in the collection of an additional \$375,000.

DNCS receives permit applications either from organizations that operate leagues involving a number of teams or from groups of individuals who get together on a regular basis to participate in an athletic activity. Each permit submission contains information on the type of facility that is being requested and the number of times per week it is planned to be used. After the season for which the permit is requested starts, the applicant is also required to submit a roster of participants. The roster includes each player's name; street address, city and zip code; home phone number; and whether the participant is or is not a county resident. The payment to the County is based on the information contained in the submitted roster.

For the fall 2011 season, we randomly selected 11 of the 118 permit applications that had been submitted by organizations that operated leagues involving a number of teams. The applications included 2,900 in-county participants and an additional 548 who resided out of the county. We found that DNCS was consistent in its review of all of the applications. The rosters were examined to determine whether the computations submitted by the applicants were correct with regard to the number of participants, including those who had an out of county residence.

DNCS uses an honor system when reviewing roster submissions. Its' review consists of reviewing the submitted rosters by verifying the calculation on the number of participants and by checking zip codes to determine whether the applicant has properly calculated the number of out of county residents. If DNCS finds that the numbers have been incorrectly stated based on its review, an adjustment is made to the amount that needs to be paid. We noted that there was no additional documentation requested from any of the applicants to support the validity of the claims that had been made.

DNCS guidelines state that it will conduct random roster audits to verify the accuracy of the organizational rosters that have been submitted. The guidelines state that roster information may be verified by facility visits, phone calls, matches with various Fairfax County databases, review of documents for proof of residency, or other methods. DNCS officials told us that such audits are reserved for situations where it receives a complaint about a program or when based on their own personal knowledge, they know that a permit request has been improperly submitted. The officials said that these audits are rarely done. In fact, agency personnel we spoke with could not recall one ever having been performed.

In order to ensure a thorough understanding of how DNCS administers out of county fees, we expanded the rosters from our original sample set purposefully looking for rosters that typically had a larger representation of out of county athletes. Through this judgmental selection, one roster came to our attention. We found no problems with the manner in which that roster had been reviewed, but we did note that the County had not yet received all of the money from fees for participation and out of county residency. Of a total of \$21,223.50 that was owed to the County by July 6, 2011, only \$10,000 had been collected as of February 10, 2012.

In light of other OFPA studies on the collection of agency receivables, we followed up with DNCS as to their overall collection experience and number of overdue accounts. In response to our inquiry, DCNS told us there was only one other organization that was significantly in arrears, but the amount owed was considerably less and progress was being made by the applicant to resolve the delinquency.

Conclusion

OFPA found that DNCS uses a consistent approach to its roster reviews for out of county residents.

Recommendations

- We recommend that DNCS document the steps it takes to review applicant submissions. Although the steps taken are relatively straight forward and, based on our analysis, seem to have been consistently applied, documenting the process would further ensure that all applications have been treated consistently.
- DNCS has the authority to deny permits for upcoming seasons until the payments for current seasons have been made. To not do so is unfair to organizations and athletes that have submitted their payments on time. With respect to the organization with the \$11,000 delinquency, we recommend that DNCS put it on notice that future permits will be denied unless payment for the summer 2011 season is received.

PRIOR STUDIES FOLLOW-UP

COLLECTION OF NON-TAX RECEIVABLES

In the March 2011 Quarterly Report to the Audit Committee, OFPA identified delinquency collection issues with the School Age Child Care Program (SACC). OFPA made two recommendations which were agreed to by SACC, accepted by the Audit Committee and subsequently the Board of Supervisors.

The first recommendation was that SACC start adding the cost of the collection agency (20% of the debt) to the outstanding balance thereby reducing the need for General Fund support to the program by \$60,000/year. This recommendation was in accord with the Board of Supervisors adoption of the use of a collection agency on May 11, 2010. SACC reports this was implemented on new referrals to the collection agency beginning in June 2011.

The second recommendation was that SACC impose a late payment fee of 10%. OFPA found in our study a predictable pattern of late payment on SACC bills, particularly for those accounts paying the full fee on the sliding scale. In addition to assisting SACC in the collection of overdue accounts, the recommended fee would have resulted in the need for almost \$400,000 in reductions in General Fund support for the SACC program. After initially agreeing to the fee, SACC reported that it was waiting for policy guidance from the Department of Finance (DOF) on the specifics of implementation. As part of the policy guidance being developed by DOF, an issue arose as to whether the County needed an additional ordinance to implement the late payment penalties on general fees established by agencies. The DOF policy guidance is still in draft form.

Out of County Athletic Fees were reported elsewhere in this quarterly report. During that study OFPA noted a single delinquency of approximately \$21,000 from July 2011. As of January 2012, approximately \$11,000 of this bill is still unpaid. The administrator of the fee, the Department of Neighborhood and Community Service (NCS) is limited in what it can do to encourage payment, short of disallowing access to facilities and thereby inconveniencing adult or child athletes. The ability to add a delinquency fee would have resulted in a \$2,000 penalty plus interest, providing motivation to the debtor and improving the ability of NCS to prevent or collect the delinquency.

Follow-Up Recommendations

In order to improve the collection of delinquent non-tax receivables countywide and provide greater clarity to agencies, OFPA makes the following recommendations:

1. That the Board of Supervisors request the County Attorney prepare an ordinance consistent with Code of Virginia § 15.2-105: Penalty and interest for failure to pay accounts when due. The purpose of such ordinance, once passed by the Board of Supervisors, will be to clarify the imposition of penalty and interest on unpaid accounts. This ordinance will also allow for the waiver of such penalties and interest if such failure was not in any way the fault of the debtor.
2. That the Board of Supervisors define 'due date' for the purpose of the imposition of penalty and interest, and other collection activities as the original due date of the bill. Such action would make the day after the due date, the first day of delinquency.

FUTURE CONSTRUCTION ESCROWS

In our June 2011 report to the Audit Committee, OFPA discussed problems with the management of future construction escrow (FCE) deposits. FCEs are funds deposited by developers for items related to a project that cannot be constructed until a future point in time.

In response to our review, DPWES initiated a comprehensive analysis of deposits in the future construction escrow account. This month, DPWES advised us that FCE deposits totaling approximately \$4.5 million were actually cash proffers that were posted in error. DPWES reported that the funds have been transferred to the following County agencies:

Department of Transportation	\$4,457,377
Park Authority	\$ 37,162

DPWES has also worked with the Department of Finance to determine the nature of the discrepancy between the information in their internal records and the information in the County's financial system. The Department of Finance has verified that a large part of the discrepancy (\$7.8 million) was due to the 1997 upgrade of the County's previous financial system, FAMIS. Specifically, summary balances for each deposit document at that time were brought over to FAMIS, but without the detailed transaction information.

DPWES has formed a team to review all operating procedures related to deposits. This effort is aimed at improving procedures and ensuring consistency among the different types of deposit accounts. To support this effort, DPWES has reclassified a position to assist with the on-going efforts to monitor the future construction escrow account.

WIRELESS FACILITY LEASES ON COUNTY-OWNED PROPERTY

The recommendation made in the January 2011 Quarterly Report to acquire true market data via contracted services has been completed by the Facilities Management Department (FMD). FMD coordinated participation in the study with the Park Authority and the Fairfax County Public Schools. FMD and OFPA are currently analyzing the data and recommendations in the consultant report to quantify the lease revenue implications for the County.

LIST OF ACRONYMS

ACS	Alternative Community Service Program
AHPP	Affordable Housing Partnership Program
AMI	Area Median Income
DNCS	Fairfax County Department of Neighborhood and Community Services
DOT	Fairfax County Department of Transportation
DPWES	Fairfax County Department of Public Works and Environmental Services
DPZ	Fairfax County Department of Planning and Zoning
DTP	Dulles Transit Partners
FCE	Future Construction Escrow
FCRHA	Fairfax County Redevelopment and Housing Authority
FFGA	Full Funding Grant Agreement
FIDO	Fairfax Inspections Database Online
FMD	Fairfax County Facilities Management Department
HCD	Fairfax County Housing and Community Development
LDS	Land Development System
MWAA	Metropolitan Washington Airports Authority
Non-RUP	Non-residential Use Permit
OFPA	Fairfax County Office of Financial and Program Audit
PMOC	Project Management Oversight Contractor
ROD	Revenue Operations Date
RUP	Residential Use Permit
SACC	School Age Child Care
SOV	Single Occupancy Vehicle
TDM	Transportation Demand Management
WFC	West Falls Church
WMATA	Washington Metropolitan Area Transit Authority