FAIRFAX COUNTY
BOARD OF SUPERVISORS
January 23, 2018

AGENDA

8:30		Recognition Reception for Chet McLaren, J. Lambert Conference Center, Reception Area
8:30		Recognition Reception for Charles Fegan, J. Lambert Conference Center, Conference Rooms 9/10
8:30		Human Trafficking Awareness Month Proclamation Reception, J. Lambert Conference Center, Conference Room 8
9:30		Presentations
10:00		Report on General Assembly Activities
10:10		Board Organization and Appointments of Board Members to Various Regional and Internal Boards and Committees
10:20		Board Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups
10:30		Items Presented by the County Executive
	ADMINISTRATIVE ITEMS	
1		Authorization to Advertise a Public Hearing to Establish Parking Restrictions on Howard Avenue (Providence District)
2		Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance Expanding the Culmore Residential Permit Parking District, District 9 (Mason District)
3		Streets into the Secondary System (Sully District)
4		Designation of Plans Examiner Status under the Expedited Land Development Review Program
5		Authorization to Advertise Amendments to Chapters 107 (Problem Soils), Chapter 112 (Zoning Ordinance) of The Code of the County of Fairfax, Virginia (County Code) and the Public Facilities Manual (PFM) Related to the County Soils Map and Uses Exempt from Site Plan Requirements
6		Approval of Traffic Calming Measures and "Watch for Children" Signs as Part of the Residential Traffic Administration Program (Mason, Lee and Providence Districts)

FAIRFAX COUNTY
BOARD OF SUPERVISORS
January 23, 2018

ADMINISTRATIVE ITEMS (Continued)

7 Authorization to Advertise a Public Hearing to Establish Parking Restrictions on Javier Road (Providence District)

8 Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance Expanding the Greenway Downs Residential Permit Parking District, District 13 (Providence District)

9 Extension of Review Period for 2232 Application (Braddock and Springfield Districts)

10 Authorization to Advertise a Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Pedestrian Improvements - 2014 - Columbia Pike/Gallows Rd. Intersection (Mason District)

ACTION ITEMS

1 Approval of the Board of Supervisors' Meeting Schedule for Calendar Year 2018 and Authorization for the Chairman to Postpone a Scheduled Meeting in the Event of Weather or Other Hazardous Conditions

2 Approval to Continue Free Parking on Saturdays and Extend the Hours of Fee Collection on Weekdays at the Wiehle-Reston East Metrorail Station when the Washington Metropolitan Area Transit Authority (WMATA) Begins Saturday Parking Fee and Extends Weekday Hours of Collection for Parking (Hunter Mill District)

3 Authorization of Fairfax County Participation in the Go Virginia Grant Application for the Northern Virginia Tech Talent Pipeline

4 Board Approval of the First Interim Agreement: Master Development Plan Between the Board of Supervisors of Fairfax County, Virginia and The Alexander Company and Elm Street Development (Mount Vernon District)

5 Approval of License Agreement with the Gum Springs Historical Society for the Use of Space within Gum Springs Community Center (Mount Vernon District)

6 Approval of and Authorization to Execute a Standard Project Administration Agreement with the Virginia Department of Transportation for the Providence District Bikeshare Project and Approval of Supplemental Appropriation Resolution AS 18139

FAIRFAX COUNTY
BOARD OF SUPERVISORS
January 23, 2018

ACTION ITEMS
(Continued)

7	Approval of a Resolution Endorsing Additional Projects Being Submitted to the Northern Virginia Transportation Authority for FY 2018 to FY 2023 Regional Funding
8	Authorization for the County Executive to Sign the Agreement of Perpetual Maintenance Relative to the Route 7 Bridge Rehabilitation Project (Dranesville District)
9	Approval of a Revised Memorandum of Understanding (MOU) Between Fairfax County, the City of Fairfax, and George Mason University Regarding the Fairfax Campus Advisory Board (FCAB)

CONSIDERATION ITEMS

1	Proffer Interpretation Appeal Associated with The Reserve at Tysons Corner Related to Proffers Accepted for RZ/FDP 2003-PR-008
10:40	Matters Presented by Board Members
11:30	Closed Session

PUBLIC HEARINGS

3:00	Annual Meeting of the Fairfax County Solid Waste Authority
3:30	Public Hearing on SE 2017-MV-024 (Fabiola Salinas) (Mount Vernon District)
3:30	Public Hearing on SE 2017-MV-025 (My Little Angels Daycare Center, LLC) (Mount Vernon District)
3:30	Public Hearing on PCA 87-C-060-14 (Fairfax County School Board) (Hunter Mill District)
3:30	Public Hearing on PCA 93-H-045 (Fairfax County School Board) (Hunter Mill District)

FAIRFAX COUNTY
BOARD OF SUPERVISORS
January 23, 2018

PUBLIC HEARINGS (Continued)

3:30	**To be deferred to 3/20/18 at 3:30 p.m.**	Public Hearing on PCA 2011-PR-011-02 (Cityline Partners, LLC) (Providence District)
3:30		Public Hearing on SE 2015-DR-027 (Mahlon A. Burnette, III and Mary H. Burnette) (Dranesville District)
3:30		Public Hearing on SEA 96-L-034-05 (Greenspring Village, Inc.) (Lee District)
4:00		Public Hearing on Proposed Plan Amendment 2017-III-R1, Reston Transit Station Areas – Noise Guidance (Hunter Mill and Dranesville Districts)
4:00		Public Hearing on a Proposed Zoning Ordinance Amendment Re: Restaurants
4:00	**To be deferred to 5/1/18 at 4:00 p.m.**	Public Hearing on Proposed Plan Amendment 2017-IV-MV1, Located at 8419 and 8423 Sky View Drive (Mount Vernon District)
4:00		Public Hearing to Consider Parking Restrictions on Old Lee Highway (Providence District)
4:00		Public Hearing on Proposed Plan Amendment 2015-IV-MV5, Located at the Northeast Quadrant of the Intersection of Huntington Avenue and Telegraph Road (Mount Vernon District)
4:30		Public Hearing on Proposed Plan Amendment 2015-IV-MV4, Located South of Huntington Avenue, North of North Kings Highway and West of the Huntington Metrorail Station (Mount Vernon District)
4:30		Public Hearing to Consider Amending Fairfax County Code Chapter 82 (Motor Vehicles and Traffic), Article 5 (Stopping, Standing, and Parking)
4:30		Public Hearing on a Proposed Amendment to the Public Facilities Manual (PFM) and Engineering Standards Review Committee (ESRC) Charter to Update the ESRC's Membership
4:30		Public Hearing to Convey Board-Owned Property to the Fairfax County Park Authority (Lee and Mount Vernon Districts)

FAIRFAX COUNTY
BOARD OF SUPERVISORS
January 23, 2018

PUBLIC HEARINGS (Continued)

5:00	Public Hearing on PCA 87-C-060-13 (McNair Seniors Apartments, LP) (Hunter Mill District)
5:00	Public Hearing on AR 84-V-007-04 (EDH Associates LLC) (Mount Vernon District)
5:00	Public Hearing on SE 2017-SP-028 (Seritage SRC Finance, LLC) (Springfield District)
5:00	Public Hearing on SE 2017-LE-026 (Sheehy Auto Stores, Inc) (Lee District)
5:30	Public Hearing on RZ 2017-SP-017 (Shelter Development, LLC) (Springfield District)
5:30	Public Hearing on PCA 2002-HM-043-03/CDPA 2002-HM-043-02 (Arrowbrook Centre, LLC) (Dranesville District)
5:30	Public Hearing on PRC-C-378 (Kensington Senior Development, LLC) (Hunter Mill District)
5:30	Public Hearing on SE 2016-HM-024 (Kensington Senior Development, LLC) (Hunter Mill District)

Fairfax County, Virginia

BOARD OF SUPERVISORS AGENDA

Tuesday
January 23, 2018

9:30 a.m.

PRESENTATIONS

SPORTS AND SCHOOLS

- CERTIFICATE – To recognize the Lake Braddock Secondary School Girls Cross Country Team for winning the state championship. Requested by Supervisor Cook.

- CERTIFICATE – To recognize the Lake Braddock Secondary School Boys Cross Country Team for winning the state championship. Requested by Supervisor Cook.

RECOGNITIONS

- CERTIFICATE – To recognize Charles Fegan and Chet McLaren for their service to Fairfax County. Requested by Chairman Bulova.

- RESOLUTION – To recognize the Green Spring Gardens Master Gardeners' program for its 15th anniversary. Requested by Supervisor Gross.

DESIGNATIONS

- PROCLAMATION – To designate January 2018 as Human Trafficking Awareness Month in Fairfax County. Requested by Supervisor Herrity.

STAFF:
Tony Castrilli, Director, Office of Public Affairs
Bill Miller, Office of Public Affairs
Lisa Connors, Office of Public Affairs

Board Agenda Item
January 23, 2018

10:00 a.m.

Report on General Assembly Activities

ENCLOSED DOCUMENTS:
None. On January 23, 2018, materials will be distributed to the Board of Supervisors, and a printed copy will be made available for review in the Office of the Clerk to the Board.

PRESENTED BY:
Supervisor Jeff McKay, Chairman, Board of Supervisors' Legislative Committee
Bryan J. Hill, County Executive

Board Agenda Item
January 23, 2018

10:10 a.m.

Board Organization and Appointments of Board Members to Various Regional and Internal Boards and Committees

ENCLOSED DOCUMENTS:
Attachment 1 - Listing of Interjurisdicational Committees and Inter- and Intra-Governmental Boards and Committees for Calendar Year 2018

STAFF:
Catherine A. Chianese, Assistant County Executive and Clerk to the Board of Supervisors

INTERJURISDICTIONAL COMMITTEES AND INTER- AND INTRA-GOVERNMENTAL BOARDS AND COMMITTEES FOR CALENDAR YEAR 2018

INTERJURISDICTIONAL COMMITTEES

ALEXANDRIA

ARLINGTON

DISTRICT OF COLUMBIA

FAIRFAX CITY

FALLS CHURCH

FORT BELVOIR (Board of Advisors/Base Realignment and Closure)

HERNDON

LOUDOUN COUNTY

PRINCE WILLIAM

VIENNA

INTERGOVERNMENTAL BOARDS AND COMMITTEES
(including Federal and State)

COMMUNITY CRIMINAL JUSTICE BOARD

METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS (COG)

COG BOARD OF DIRECTORS

COG METROPOLITAN WASHINGTON AIR QUALITY COMMITTEE

COG CHESAPEAKE BAY AND WATER RESOURCES POLICY COMMITTEE

COG CLIMATE, ENERGY AND ENVIRONMENTAL POLICY COMMITTEE

COG EMERGENCY PREPAREDNESS COUNCIL

COG HUMAN SERVICES AND PUBLIC SAFETY COMMITTEE

COG REGION FORWARD COMMITTEE

COG TASK FORCE ON REGIONAL WATER SUPPLY ISSUES

COG NATIONAL CAPITAL REGION TRANSPORTATION PLANNING BOARD

GEORGE MASON UNIVERSITY FAIRFAX CAMPUS ADVISORY BOARD

INOVA HEALTH CARE SERVICES BOARD

INOVA HEALTH SYSTEMS BOARD

NORTHERN VIRGINIA REGIONAL COMMISSION (NVRC)

NORTHERN VIRGINIA TRANSPORTATION COMMISSION (NVTC)
(including WMATA and VRE Representatives)

PHASE I DULLES RAIL TRANSPORTATION IMPROVEMENT DISTRICT COMMISSION

PHASE II DULLES RAIL TRANSPORTATION IMPROVEMENT DISTRICT COMMISSION

POTOMAC WATERSHED ROUNDTABLE

ROUTE 28 HIGHWAY TRANSPORTATION IMPROVEMENT DISTRICT COMMISSION

VACo BOARD OF DIRECTORS (REGIONAL DIRECTORS)
(Recommendations. The Board of Supervisors makes recommendations to VACo for consideration.)

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (WMATA)
(Appointed by NVTC. The Board of Supervisors makes recommendations for consideration.)

INTRAGOVERNMENTAL AND OTHER COMMITTEES

50+ COMMITTEE
(Committee of the Whole)

AUDIT COMMITTEE

BOARD PROCEDURES COMMITTEE

BUDGET POLICY COMMITTEE
(Committee of the Whole)

COMMUNITY REVITALIZATION AND REINVESTMENT COMMITTEE
(Committee of the Whole)

DEVELOPMENT PROCESS COMMITTEE
(Committee of the Whole)

ECONOMIC ADVISORY COMMITTEE
(Committee of the Whole)

ENVIRONMENTAL COMMITTEE
(Committee of the Whole)

HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE
(Committee of the Whole)

HUMAN SERVICES COMMITTEE
(Committee of the Whole)

INFORMATION TECHNOLOGY COMMITTEE
(Committee of the Whole)

LEGISLATIVE COMMITTEE
(Committee of the Whole)

PERSONNEL AND REORGANIZATION COMMITTEE
(Committee of the Whole)

PUBLIC SAFETY COMMITTEE
(Committee of the Whole)

TRANSPORTATION COMMITTEE
(Committee of the Whole)

Board Agenda Item
January 23, 2018

10:20 a.m.

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

ENCLOSED DOCUMENTS:
Attachment 1: Appointments to be heard January 23, 2018
(An updated list will be distributed at the Board meeting.)

STAFF:
Catherine A. Chianese, Assistant County Executive and Clerk to the Board of Supervisors

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

APPOINTMENTS TO BE HEARD JANUARY 23, 2018

(ENCOMPASSING VACANCIES PROJECTED THROUGH JANUARY 31, 2018)

(Unless otherwise noted, members are eligible for reappointment)

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

Incumbent History	Requirement	Nominee	Supervisor	District
Clifford L. Fields (Appointed 1/96-1/03 by Hanley; 1/04-1/08 by Connolly, 2/09-3/17 by Bulova) Term exp. 1/18	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Jane W. Gwinn (Appointed 2/04-1/09 by Bulova; 1/10-1/17 by Cook) Term exp. 1/18	Braddock District Representative	**Jane W. Gwinn**	Cook	Braddock
Kerrie Wilson Appointed 1/10-1/17 by Foust) Term exp. 1/18	Dranesville District Representative		Foust	Dranesville
Ronald Copeland (Appointed 1/05-1/17 by Hudgins) Term exp. 1/18	Hunter Mill District Representative		Hudgins	Hunter Mill

Continued on next page

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

Incumbent History	Requirement	Nominee	Supervisor	District
Joseph Blackwell (Appointed 1/06-1/08 by Kauffman, 1/09-1/17 by McKay) Term exp. 1/18	Lee District Representative		McKay	Lee
Eileen J. Garnett (Appointed 1/03-2/17 by Gross) Term exp. 1/18	Mason District Representative		Gross	Mason
Clarke V. Slaymaker (Appointed 7/17 by Storck) Term exp. 1/18	Mount Vernon District Representative	**Clarke V. Slaymaker**	Storck	Mount Vernon
Ernestine Heastie (Appointed 2/04-1/17 by L. Smyth) Term exp. 1/18	Providence District Representative		L. Smyth	Providence
Philip E. Rosenthal (Appointed 1/92-2/08 by McConnell, 1/09-2/17 by Herrity) Term exp. 1/18	Springfield District Representative		Herrity	Springfield
Michael Coyle (Appointed 2/17 by K. Smith) Term exp. 1/18	Sully District Representative	**Michael Coyle**	K. Smith	Sully

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

Incumbent History	Requirement	Nominee	Supervisor	District
Francine Ronis (Appointed 2/16 by L. Smyth) Term exp. 9/17	Providence District Representative		L. Smyth	Providence

AFFORDABLE DWELLING UNIT ADVISORY BOARD (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Mark Drake (Appointed 2/09-5/12 by McKay) Term exp. 5/16	Engineer/Architect/ Planner #2 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 *Resigned*	Lending Institution Representative		By Any Supervisor	At-Large

AIRPORTS ADVISORY COMMITTEE (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Carol Hawn (Appointed 1/97-1/03 by Hanley; 1/06 by Connolly; 2/09-3/15 by Bulova) Term exp. 1/18	At-Large Chairman's Representative		Bulova	At-Large Chairman's
VACANT (Formerly held by George Page; appointed 1/05-1/16 by Hudgins) Term exp. 1/19 *Resigned*	Hunter Mill Business Representative		Hudgins	Hunter Mill
Sherri D. Jordan (Appointed 10/08-1/15 by Hyland) Term exp. 1/18	Mount Vernon District Representative		Storck	Mount Vernon
Michael F. Rioux (Appointed 2/17 by Storck) Term exp. 1/18	Mount Vernon District Business Representative	**Michael F. Rioux**	Storck	Mount Vernon
Mark G. Searle (Appointed 9/98-3/15 by Frey) Term exp. 1/18	Sully Business District Representative	**Mark G. Searle**	K. Smith	Sully

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.]

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Barbara Hyde; appointed 9/13-9/14 by Gross) Term exp. 2/16 *Resigned*	Mason District Representative		Gross	Mason

ARCHITECTURAL REVIEW BOARD (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (John Boland; appointed 2/91-9/95 by Dix; 7/01 by Mendelsohn; 9/04-9/07 by DuBois; 9/10-9/13 by Foust) Term exp. 9/16 *Resigned*	Attorney Representative		By Any Supervisor	At-Large

ATHLETIC COUNCIL (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Terry Adams; appointed 11/11-7/13 by Gross) Term exp. 6/15	Mason District Alternate Representative		Gross	Mason
Mr. Chip Chidester (Appointed 3/10-10/15 by Bulova) Term exp. 10/17	Member-At-Large Alternate Representative		Bulova	At-Large Chairman

AUDIT COMMITTEE (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Paul Svab (Appointed 1/17 by Bulova) Term exp. 1/18	At-Large #1 Representative		By Any Supervisor	At-Large
Lester A. Myers (Appointed 3/16 by Bulova) Term exp. 1/18	At-Large #2 Representative		By Any Supervisor	At-Large

BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Judith Fogel; appointed 6/12-5/15 by Gross) Term exp. 6/16 Resigned	Mason District Representative		Gross	Mason
VACANT (Formerly held by Joshua D. Foley; appointed 9/13-6/16 by Herrity) Term exp. 6/17 *Resigned*	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.)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Susan Kim Harris; appointed 5/09-2/11 by Hudgins) Term exp. 2/15 *Resigned*	Alternate #4 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Michael LeMay; appointed 2/87 by Pennino; 1/99 by Dix; 2/03-2/15 by Hudgins) Term exp. 2/19 *Resigned*	Design Professional #4 Representative		By Any Supervisor	At-Large

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

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Thomas Parr; appointed 12/04-12/08 by Connolly; 12/10-12/16 by Bulova) Term exp. 12/18 *Resigned*	At-Large #1 Representative		By Any Supervisor	At-Large
Robert Kyle McDaniel (Appointed 2/17 by Herrity) Term exp. 12/17	Professional #3 Representative	**Ryan Rauner** (Herrity)	By Any Supervisor	At-Large

CHESAPEAKE BAY PRESERVATION ORDINANCE EXCEPTION REVIEW COMMITTEE (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Stephen Kirby; appointed 12/03-1/08 by Kauffman; 9/11 by McKay) Term exp. 9/15 *Resigned*	Lee District Representative		McKay	Lee
VACANT (Formerly held by Grant; appointed 9/10-9/15 by Gross) Term exp. 9/19 *Resigned*	Mason District Representative		Gross	Mason
VACANT (Formerly held by David Schnare; appointed 12/08 by McConnell; 11/10-9/15 by Herrity) Term exp. 9/19 *Resigned*	Springfield District Representative	**David W. Schnare**	Herrity	Springfield

CHILD CARE ADVISORY COUNCIL (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Rosemary Kendall; appointed 5/14-9/16 by Foust) Term exp. 9/18 *Resigned*	Dranesville District Representative		Foust	Dranesville
Mercedes O. Dash (Appointed 3/15 by L. Smyth) Term exp. 9/17	Providence District Representative		L. Smyth	Providence
VACANT (Formerly held by Hugh Mac Cannon; appointed 12/09-9/14 by Herrity) Term exp. 9/16 *Resigned*	Springfield District Representative		Herrity	Springfield

CIVIL SERVICE COMMISSION (2 years)

[NOTE: The Commission shall include at least 3 members who are male, 3 members who are female, and 3 members who are from a member of a minority group.]

Current Membership: Males - 9 Females – 3 Minorities: 5

Incumbent History	Requirement	Nominee	Supervisor	District
Rosemarie Annunziata (Appointed 10/05-1/08 by Connolly; 12/09-1/16 by Bulova) Term exp. 12/17	At-Large #3 Representative		By Any Supervisor	At-Large
Patrick Morrison (Appointed 10/05-3/16 by Bulova) Term exp. 12/17	At-Large #7 Representative		By Any Supervisor	At-Large

COMMISSION FOR WOMEN (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Reena Desai; Appointed 7/16 by Hudgins) Term exp. 10/18 *Resigned*	Hunter Mill District Representative		Hudgins	Hunter Mill

COMMISSION ON AGING (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Robert Kuhns; appointed 2/15 by Hyland; 9/16 by Storck) Term exp. 9/18 *Resigned*	Mount Vernon District Representative		Storck	Mount Vernon

COMMUNITY ACTION ADVISORY BOARD (CAAB) (3 years)

CONFIRMATION NEEDED:

- Ms. Melandee Jones Canady as the AARP Representative

CONSUMER PROTECTION COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Hung Nguyen; appointed 3/04-7/06 by Connolly; 7/09-6/15 by Bulova) Term exp. 7/18 *Resigned*	Fairfax County Resident #9 Representative		By Any Supervisor	At-Large

DULLES RAIL TRANSPORTATION IMPROVEMENT DISTRICT ADVISORY BOARD, PHASE II (4 years)

CONFIRMATIONS NEEDED:

- Mr. Peter D. Johnston as the BOS At-Large #1 Representative
- Mr. Michael J. Cooper as the BOS At-Large #2 Representative
- Mr. Kevin Dougherty as the BOS At-Large #3 Representative

ECONOMIC ADVISORY COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Frank McDermott (Appointed 6/09-12/14 by Bulova) Term exp. 12/17	At-Large #4 Chairman's Land Use Representative		Bulova	At-Large Chairman's
Peter G. Hartmann (Appointed 2/09-11/14 by Bulova) Term exp. 12/17	At-Large Chairman's #1 Representative		Bulova	At-Large Chairman's
Denton Urban Kent (Appointed 2/09-12/14 by Bulova) Term exp. 12/17	At-Large Chairman's #2 Representative		Bulova	At-Large Chairman's
Mohammad S. Sheikh (Appointed 3/09-11/14 by Bulova) Term exp. 12/17	At-Large Chairman's #3 Representative		Bulova	At-Large Chairman's
Taylor Chess (Appointed 1/12-11/14 by Cook) Term exp. 12/17	Braddock District Representative	**Taylor Chess**	Cook	Braddock

Continued on next page

ECONOMIC ADVISORY COMMISSION (3 years) continued

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Esther Lee; appointed 12/5/17 by Foust) Term exp. 12/20 *Resigned*	Dranesville District Representative		Foust	Dranesville
VACANT (Formerly held by Mark Silverwood; appointed 1/09-11/14 by Hudgins) Term exp. 12/17 *Resigned*	Hunter Mill District Representative		Hudgins	Hunter Mill
John Harrison (Appointed 2/09-11/14 by L. Smyth) Term exp. 12/17	Providence District Representative		L. Smyth	Providence

ENVIRONMENTAL QUALITY ADVISORY COUNCIL (EQAC) (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Kenneth J. Lanfear (Appointed 11/14 by Hudgins) Term exp. 1/18	Hunter Mill District Representative	**Kenneth J. Lanfear**	Hudgins	Hunter Mill
Richard J. Healy (Appointed 3/15 by Gross) Term exp. 1/18	Mason District Representative		Gross	Mason

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.

Incumbent History	Requirement	Nominee	Supervisor	District
Timothy W. Lavelle (Appointed 4/09-12/14 by Bulova) Term exp. 11/17 ***Not eligible for reappointment***	At-Large #2 Business Community Representative		By Any Supervisor	At-Large
Leanne Alberts (Appointed 10/13-12/14 by Bulova) Term exp. 11/17	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Linda L. Collins (appointed 1/09 by Bulova; 12/11-11/14 by Cook) Term exp. 11/17 ***Not eligible for reappointment***	Braddock District Representative	**Karen Abraham**	Cook	Braddock
VACANT (Formerly held by Barbara Johnson; appointed 4/16 by K. Smith) Term exp. 11/18 *Resigned*	Sully District Representative	**Sailesh Panchang**	K. Smith	Sully

FAIRFAX COMMUNITY LONG TERM CARE COORDINATING COUNCIL
(2 years)

CONFIRMATIONS NEEDED:

- Mr. Charles (Chuck) C. Thornton Jr. as a Long Term Care Providers #10 Representative
- Ms. Ayeshia Quainoo-Tefera as a Long Term Care Providers #14 Representative
- Ms. Leeann Alberts as the Disability Services Board Representative

FAIRFAX COUNTY CONVENTION AND VISITORS CORPORATION BOARD OF DIRECTORS (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Theresa L. Fox; appointed 1/06-5/14 by Gross) Term exp. 6/17 *Resigned*	Mason District Representative		Gross	Mason

CONFIRMATIONS NEEDED:

- Ms. Sherri Cooper as the Fairfax County Convention and Visitors Corporation #2 Representative
- Ms. Claudia Eggspuhler as the Fairfax County Convention and Visitors Corporation #6 Representative
- Dr. Sue Slocum as the Fairfax County Convention and Visitors Corporation #10 Representative

FAIRFAX COUNTY EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES (4 years)

CONFIRMATION NEEDED:

- Dr. R. Chace Ramey as the Fairfax County Public Schools Representative

GEOTECHNICAL REVIEW BOARD (3 years)

CONFIRMATIONS NEEDED:

- Mr. Paul E. Burkart as the Alternate #3 Representative
- Mr. Daniel S. Rom as the Primary #2 Representative

HEALTH CARE ADVISORY BOARD (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Chafiq Moummi; appointed 1/17 by McKay) Term exp. 6/20 *Resigned*	Lee District Representative		McKay	Lee

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

Incumbent History	Requirement	Nominee	Supervisor	District
Richard T. Hartman (Appointed 2/14 by Bulova) Term exp. 6/17	Consumer #1 Representative		By Any Supervisor	At-Large

HISTORY COMMISSION (3 years)

[NOTE: The Commission shall include at least one member who is a resident from each supervisor district.] Current Membership:

Braddock - 3	Lee - 2	Providence - 1
Dranesville - 2	Mason - 1	Springfield - 2
Hunter Mill - 3	Mt. Vernon - 2	Sully - 2

Incumbent History	Requirement	Nominee	Supervisor	District
Esther W. McCullough (Appointed 3/00-11/02 by Hanley; 12/05-12/08 by Connolly; 3/12-9/15 by Bulova) Term exp. 12/17 *Sully District resident*	Citizen #10 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Naomi D. Zeavin; appointed 1/95 by Trapnell; 1/96-11/13 by Gross) Term exp. 12/16 *Mason District Resident Resigned*	Historian #1 Representative		By Any Supervisor	At-Large
Page S. Shelp (Appointed 1/09-11/14 by Foust) Term exp. 12/17 *Dranesville District Resident*	Historian #3 Representative		By Any Supervisor	At-Large

HUMAN RIGHTS COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Daoud Khairallah (Appointed 11/05-9/14 by Gross) Term exp. 9/17	At-Large #8 Representative		By Any Supervisor	At-Large
Mona Malik (Appointed 4/14-9/14 by Bulova) Term exp. 9/17	At-Large #9 Representative		By Any Supervisor	At-Large

HUMAN SERVICES COUNCIL (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Adrienne M. Walters; appointed 3/14 by L. Smyth) Term exp. 7/17 *Resigned*	Providence District #2 Representative		L. Smyth	Providence

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

CONFIRMATION NEEDED:

- Mr. John Hanks as the Federation of Citizens Associations Representative

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

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by John W. Herold; appointed 11/13-1/15 by Bulova) Term exp. 1/17 *Resigned*	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Alan M. Schuman (Appointed 7/16 by Foust) Term exp. 1/18	Dranesville District Representative		Foust	Dranesville
Michael N. Berger (Appointed 1/17 by McKay) Term exp. 1/18	Lee District Representative		McKay	Lee
Jan B. Reitman (Appointed 7/14-1/16 by Gross) Term exp. 1/18	Mason District Representative		Gross	Mason
Anya Gelernt-Dunkle (Appointed 1/17 by L. Smyth) Term exp. 1/18	Providence District Representative		L. Smyth	Providence
Melissa Smarr (Appointed 7/09-1/16 by Herrity) Term exp. 1/18	Springfield District Representative	**Melissa Smarr**	Herrity	Springfield

LIBRARY BOARD (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Charles Fegan; appointed 3/09-6/15 by Bulova) Term exp. 7/19 *Resigned*	At-Large Chairman's Representative		Bulova	At-Large Chairman's
VACANT (Formerly held by Yearn Hong Choi; appointed 5/16 by Herrity) Term exp. 7/17 *Resigned*	Springfield District Representative		Herrity	Springfield
VACANT (Formerly held by Karrie Delaney; appointed 4/13 by Frey; 3/16 by K. Smith) Term exp. 3/20 *Resigned*	Sully District Representative	**Stella Pekarsky**	K. Smith	Sully

MOSAIC DISTRICT COMMUNITY DEVELOPMENT AUTHORITY (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Gary Hurst; appointed 1/10-2/16 by L. Smyth) Term exp. 1/20 *Resigned*	Developer Representative		By Any Supervisor	At-Large

OVERSIGHT COMMITTEE ON DISTRACTED AND IMPAIRED DRIVING (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by William Uehling; appointed 3/10-7/12 by Bulova) Term exp. 6/15 *Resigned*	Braddock District Representative		Cook	Braddock
VACANT (Formerly held by Amy K. Reif; appointed 8/09-6/12 by Foust) Term exp. 6/15 Resigned	Dranesville District Representative		Foust	Dranesville
VACANT (Formerly held by Adam Parnes; appointed 9/03-6/12 by Hudgins) Term exp. 6/15 Resigned	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Jeffrey Levy; Appointed 7/02-6/13 by Hyland) Term exp. 6/16 Resigned	Mount Vernon District Representative		Storck	Mount Vernon
VACANT (Formerly held by Tina Montgomery; appointed 9/10-6/11 by L. Smyth) Term exp. 6/14 Resigned	Providence District Representative		L. Smyth	Providence

PARK AUTHORITY (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Mary Cortina; appointed 2/13-1/16 by Bulova) Term exp. 12/19 *Resigned*	At-Large #1 Representative		By Any Supervisor	At-Large
Walter L. Alcorn (Appointed 7/15 by Bulova) Term exp. 12/17	At-Large #2 Representative		By Any Supervisor	At-Large

PLANNING COMMISSION (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Karen Keys-Gamarra; appointed 1/16 by K. Smith) Term exp. 12/19 *Resigned*	Sully District Representative	**Donté Tanner**	K. Smith	Sully

RESTON TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD
The Board of Supervisors established the advisory board on April 4, 2017
There will be a total of 14 members on this advisory board. The appointees would serve for 4 year terms from April 4, 2017

Incumbent History	Requirement	Nominee	Supervisor	District
NEW POSITION	Residential Owners and HOA/Civic Association #1 Representative		Foust or Hudgins	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #2 Representative		Foust or Hudgins	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #3 Representative		Foust or Hudgins	At-Large
VACANT (Formerly held by Tyler Aaron Hall; appointed 9/17 by Hudgins) Term exp. 9/21 *Resigned*	Apartment or Rental Owner Associations Representative		Hudgins	At-Large

ROAD VIEWERS BOARD (1 year)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Joseph Bunnell; appointed 9/05-12/06 by McConnell; 2/08-11/13 by Herrity) Term exp. 12/14 *Resigned*	At-Large #1 Representative		By Any Supervisor	At-Large
Paul Davis, Jr. (Appointed 3/14 by Bulova) Term exp. 12/17	At-Large #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Stephen E. Still; appointed 6/06-12/11 by L. Smyth) Term exp. 12/12 *Resigned*	At-Large #4 Representative		By Any Supervisor	At-Large
Micah D. Himmel (Appointed 12/11-12/16 by L. Smyth) Term exp. 12/17	At-Large #5 Representative		By Any Supervisor	At-Large

ROUTE 28 HIGHWAY TRANSPORTATION DISTRICT ADVISORY BOARD (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Scott Crabtree (Appointed 4/04-1/14 by Frey) Term exp. 1/18	Resident/Owner Route 28 District #1 Representative	**Scott Crabtree** (K. Smith)	By Any Supervisor	At-Large
William H. Keech, Jr. (Appointed 4/08-1/14 by Frey) Term exp. 1/18	Resident/Owner Route 28 District #2 Representative	**William H. Keech** (K. Smith)	By Any Supervisor	At-Large
Jeffrey J. Fairfield (Appointed 11/04-1/14 by Hudgins) Term exp. 1/18	Resident/Owner Route 28 District #3 Representative		By Any Supervisor	At-Large

SMALL BUSINESS COMMISSION, FAIRFAX COUNTY (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Koorosh Cyrus Sobhani (Appointed 10/08-1/15 by Foust) Term exp. 12/17	Dranesville District Representative		Foust	Dranesville
VACANT (Formerly held by Patrick Fogarty; Appointed 12/16 by Storck) Term exp. 12/17 *Resigned*	Mount Vernon District Representative		Storck	Mount Vernon
VACANT (Formerly held by Samantha Lentz; appointed 2/17 by Herrity) Term exp. 12/17 *Resigned*	Springfield District Representative	**Kara Caldwell**	Herrity	Springfield

SOUTHGATE COMMUNITY CENTER ADVISORY COUNCIL (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Linda Diamond; appointed 3/07-4/13 by Hudgins) Term exp. 3/15 *Resigned*	Fairfax County #8 Representative		By Any Supervisor	At-Large

TENANT LANDLORD COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Michael Congleton; appointed 7/13-2/17 by Herrity) Term exp. 1/20 *Resigned*	Citizen Member #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Sally D. Liff; appointed 8/04-1/11 by L. Smyth) Term exp. 1/14 *Deceased*	Condo Owner Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Angelina Panettieri; appointed 6/11-1/15 by L. Smyth) Term exp. 1/18	Tenant Member #1 Representative		By Any Supervisor	At-Large

TRAILS AND SIDEWALKS COMMITTEE (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Kenneth Comer (Appointed 2/12-2/16 by Bulova) Term exp. 1/18	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Robert W. Cosgriff (Appointed 2/17 by Cook) Term exp. 1/18	Braddock District Representative	**Robert W. Cosgriff**	Cook	Braddock
Wade H. B. Smith (Appointed 4/02 by Mendelsohn; 1/05-1/08 by DuBois; 1/10-1/16 by Foust) Term exp. 1/18	Dranesville District Representative		Foust	Dranesville
Jeffrey A. Anderson (Appointed 5/11 by Hudgins) Term exp. 1/18	Hunter Mill District Representative		Hudgins	Hunter Mill
Robert W. Michie (Appointed 1/02-1/08 by Kauffman; 1/10-2/16 by McKay) Term exp. 1/18	Lee District Representative		McKay	Lee
VACANT (Formerly held by Steve Descano (Appointed 7/15 by Gross) Term exp. 1/18 Resigned	Mason District Representative		Gross	Mason
Peter Christensen (Appointed 2/06-3/14 by Hyland; 1/16 by Storck) Term exp. 1/18	Mount Vernon District Representative		Storck	Mount Vernon

Continued on next page

TRAILS AND SIDEWALKS COMMITTEE (2 years)
Continued

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Roger A Wilson; appointed 3/14-4/16 by L. Smyth) Term exp. 1/18 *Resigned*	Providence District Representative	**Stiven Foster**	L. Smyth	Providence
Karl D. Liebert (Appointed 9/17 by Herrity) Term exp. 1/18	Springfield District Representative	**Karl D. Liebert**	Herrity	Springfield
Nora Perry (Appointed 5/16 by K. Smith) Term exp. 1/18	Sully District Representative		K. Smith	Sully

TREE COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Thomas D. Fleury (Appointed 1/17 by L. Smyth) Term exp. 10/17	Providence District Representative		L. Smyth	Providence

TYSONS TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD (2 YEARS)

Incumbent History	Requirement	Nominee	Supervisor	District
Cory Scott (Appointed 1/16 by L. Smyth) Term exp. 2/17	Commercial or Retail Ownership Representative #2	**Cory Scott** (L. Smyth)	By Any Supervisor	At-Large
VACANT (Formerly held by Molly Peacock; appointed 2/13-1/15 by L. Smyth) Term exp. 2/17 *Resigned*	Providence District Representative #2		L. Smyth	Providence

WETLANDS BOARD (5 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Deana M. Crumbling (Appointed 1/14 by Bulova) Term exp. 7/16	Alternate #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Glenda Booth; appointed 4/88-1/13 by Hyland) Term exp. 12/17 *Resigned*	Mount Vernon District #1 Representative		Storck	Mount Vernon

YOUTH BASKETBALL COUNCIL ADVISORY BOARD (1 year)

CONFIRMATIONS NEEDED:

- Mr. Dave Vennergrund as the Chairman
- Mr. Grady Bryant as the Member Emeritus
- Mr. Frank DeLatour as the Parliamentarian
- Mr. Charles Chandler as the Scheduler
- Mr. Marvin Elliott as the Alexandria City Recreation Representative
- Mr. Ben Matthews as the Alexandria City Recreation Alternative Representative
- Mr. Lezone Kenney as the Annandale Boys and Girls Club Representative
- Mr. Charles Shaw as the Arlington County Recreation Representative
- Mr. Alex Eisenberg as the Arlington County Recreation Alternate Representative
- Mr. Greg Williams as the Baileys Community Center Representative
- Mr. Stew Clark as the Commissioner and Braddock Road Youth Club Representative
- Mr. Steve Bergstrom as the Braddock Road Youth Club Alternative Representative
- Mr. Bobby Seigle as the Burke Basketball Representative
- Ms. Katie Hodge as the Burke Basketball Alternate Representative
- Mr. John Enders as the Chantilly Youth Association Representative
- Mr. Phil Reed as the Chantilly Youth Association Alternate Representative
- Mr. George Ragan as the Fairfax Police Youth Club Representative
- Mr. Jimmy Ruby as the Falls Church Parks and Recreation Representative
- Mr. Herb Marshall as Member-at-Large and Fort Belvoir Youth Services Representative
- Mr. Pat McClanahan as the Fort Hunt Youth Athletic Association Representative
- Mr. Adrian Gresham as the Gainesville Basketball Association Representative
- Mr. John Brennan as the Great Falls Basketball Representative
- Mr. Marcus Ferguson as the Gum Springs Community Center Representative

Continued on next page

YOUTH BASKETBALL COUNCIL ADVISORY BOARD (1 year)
continued

CONFIRMATIONS NEEDED:

- Mr. James Passmore as the Herndon Optimist Club Representative
- Ms. Jasmine Faubert as the Herndon Optimist Club Alternate Representative
- Mr. Chris Chipps as the Hurricanes Representative
- Mr. Donald Lee as the James Lee Community Center Representative
- Mr. Kim Thompson, Sr. as the Lee District Basketball Representative
- Mr. James Bosley as the Member At-Large Representative and Lee Mount Vernon Sports Club Representative
- Mr. Mike Arrington as the Manassas Park Representative
- Mr. Tony Thomas as the Manassas Park Alternative Representative
- Mr. Gerry Megas as Secretary and the McLean Youth Incorporated Representative
- Mr. Jeff Goettman as the McLean Youth Incorporated Alternative Representative
- Mr. Dillon Lee as the Mount Vernon Youth Association Representative
- Mr. John Schmid as the Reston Youth Basketball League Representative
- Mr. James Byrne as the Reston Youth Basketball League Alternate Representative
- Mr. Keefe Matthews as the South County Representative
- Mr. David Kless as the South County Alternative Representative
- Mr. Andy Kim as the South Loudoun Representative
- Mr. Jason Murphy as the South Loudoun Alternate Representative
- Mr. Dave Scanlon as the Southwestern Youth Association Representative
- Mr. Leo Resquin as the Southwestern Youth Association Alternative Representative
- Mr. Dan Allen as the Springfield Youth Club Representative
- Mr. Scott Choate as the Turnpike Basketball Club Representative
- Mr. E. J. Thomas as the Treasurer and Vienna Youth Incorporated
- Representative
- Mr. Jay Brigham as the Vienna Youth Incorporated Alternative Representative

Board Agenda Item
January 23, 2018

10:30 a.m.

Items Presented by the County Executive

Board Agenda Item
January 23, 2018

ADMINISTRATIVE - 1

Authorization to Advertise a Public Hearing to Establish Parking Restrictions on Howard Avenue (Providence 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 Howard Avenue, in the Providence District.

RECOMMENDATION:
The County Executive recommends that the Board authorize advertisement of a public hearing for February 20, 2018, at 4:00 p.m. to consider adoption of a Fairfax County Code amendment (Attachment I) to Appendix R, to prohibit commercial vehicles, recreational vehicles, and trailers as defined, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50), from parking on Howard Avenue, from Boone Boulevard to Old Courthouse Road from 10:00 p.m. to 7:00 a.m., seven days a week.

TIMING:
The Board of Supervisors should take action on January 23, 2018, to provide sufficient time for advertisement of the public hearing on February 20, 2018, 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 diminishes the capacity of on-street parking for other uses.

Representatives of various property owners of land along Howard Avenue contacted the Providence District office requesting a parking restriction on Howard Avenue from 10:00 p.m. to 7:00 a.m., seven days a week.

This area has been reviewed multiple times over a period of 30 days. Staff has verified that long term parking is occurring, thereby diminishing the capacity of on-street parking for other uses. Staff is recommending a parking restriction for all commercial vehicles, recreational vehicles, and trailers along Howard Avenue, from Boone Boulevard to Old Courthouse Road, from 10:00 p.m. to 7:00 a.m., seven days a week.

FISCAL IMPACT:
The cost of sign installation is estimated to be $1,000. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:
Attachment I: Amendment to the Fairfax County Code, Appendix R (General Parking Restrictions)
Attachment II: Area Map of Proposed Parking Restriction

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:
Marc E. Gori, Assistant County Attorney

Attachment I

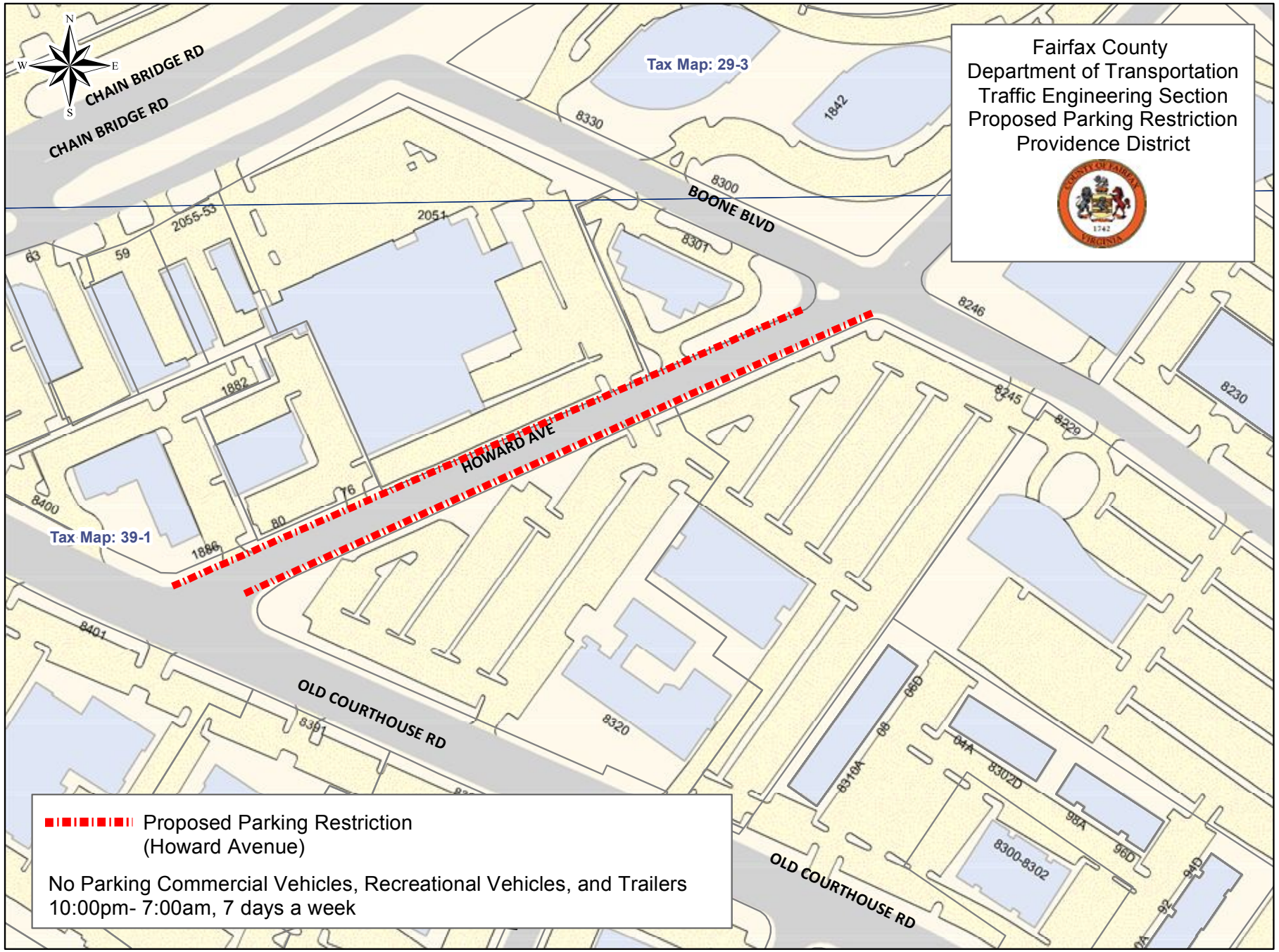
PROPOSED CODE AMENDMENT

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:

Howard Avenue (Route 786)
Commercial vehicles, recreational vehicles, and trailers, as defined, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50), are restricted from parking on Howard Avenue, from Boone Boulevard to Old Courthouse Road, from 10:00 p.m. to 7:00 a.m., seven days a week.

Attachment II



Board Agenda Item
January 23, 2018

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* (Fairfax County Code), 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 January 23, 2018, to advertise a public hearing for February 20, 2018, at 4:00 p.m.

BACKGROUND:
Section 82-5A-4(b) of the Fairfax County Code 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.

On September 21, 2017, a peak parking demand survey was conducted for the requested areas. The results of this survey verified that more than 75 percent of the total number of on-street parking spaces of the petitioned block faces were occupied by parked vehicles, and more than 50 percent of those occupied spaces were occupied by nonresidents of the petitioned blocks. All other requirements to expand the RPPD have been met.

FISCAL IMPACT:
The cost of sign installation is estimated to be $900. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:
Attachment I: Proposed Amendment to the Fairfax County Code
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 Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:
Marc E. Gori, Assistant County Attorney

Attachment I

Proposed Amendment

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

Pinetree Terrace (Route 986):

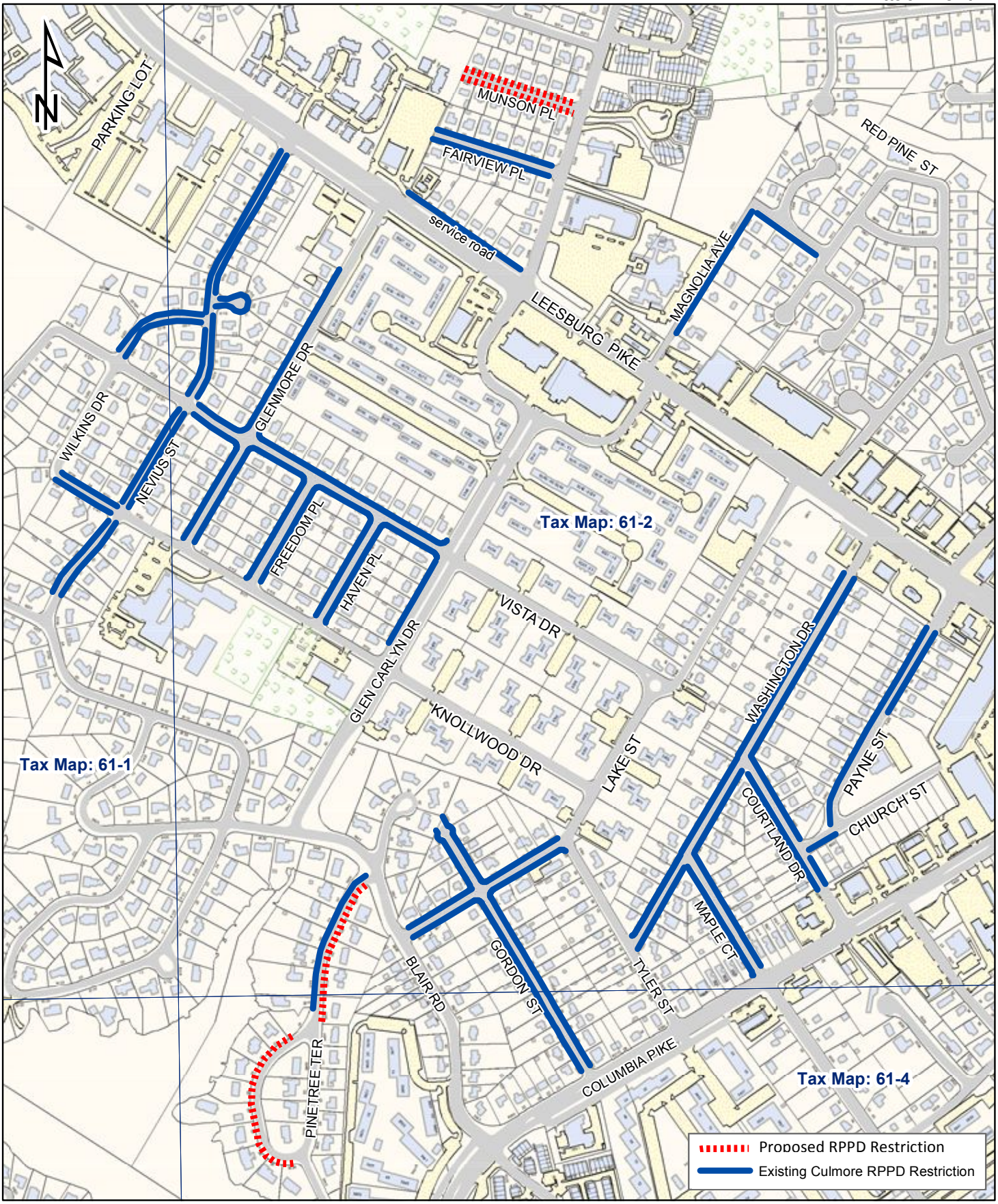
From Blair Road to the southern property boundary of 3516 Pinetree Terrace, west side ~~only~~; and to the southern property boundary of 3517 Pinetree Terrace, east side

From the northern property boundary of 3522 Pinetree Terrace to Boat Dock Drive, west side only

Munson Place (Route 983):

From Glen Carlyn Road to the end

Attachment II



Fairfax County Department of Transportation
Traffic Operations
Culmore Residential Permit Parking District
Mason District

Board Agenda Item
January 23, 2018

ADMINISTRATIVE – 3

Streets into the Secondary System (Sully District)

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.

Subdivision	**District**	**Street**
Heron Pines	Sully	Heron Drive Eames Drive

TIMING:
Routine

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

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1 – Street Acceptance Forms

STAFF:
Robert A. Stalzer, Deputy County Executive
William D. Hicks, P.E., Director, Land Development Services

Print Form

Street Acceptance Form For Board Of Supervisors Resolution - June 2005

FAIRFAX COUNTY BOARD OF SUPERVISORS
FAIRFAX, VA

Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.

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

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

PLAN NUMBER: 5594-SD-02

SUBDIVISION PLAT NAME: Heron Pines

COUNTY MAGISTERIAL DISTRICT: Sully

ENGINEERING MANAGER: Imad A. Salous, P.E.

BY: Nidia Alphonse

FOR OFFICIAL USE ONLY

DATE OF VDOT INSPECTION APPROVAL: 09/26/2017

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Heron Drive	Existing Heron Drive (Route 6727) - 389' S CL Cabell's Mill Drive (Route 6729)	348' S to CL Eames Avenue	0.07
Eames Drive	CL Heron Drive - 737' S CL Cabell's Mill Drive (Route 6729)	444' E to Beginning of Temporary Turnaround Easement	0.08
		TOTALS:	0.15

NOTES:

Eames Avenue: 4' Concrete Sidewalk on North Side to be maintained by Fairfax County.

Board Agenda Item
January 23, 2018

ADMINISTRATIVE – 4

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

ISSUE:
Board of Supervisors' action to designate individuals as Plans Examiners to participate in the Expedited Land Development Review Program.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors (the Board) take the following action:

- Reinstate the following individual, identified with his registration number, as a Plans Examiner:

Charles D. Lucas III	168 (Inactive on 9/9/2014)

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

Behzad Amir Faryar	323
Tucker Travis	324

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 Advisory Plans Examiner Board (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 Department of Land Development Services.

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

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. Detailed in a letter from the chairman of the APEB, dated November 28, 2017, one individual has applied for reinstatement as an active DPE. Upon review of his application and finding that his continuing education requirements have been satisfied, the APEB recommends his reinstatement 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 review of their applications and credentials, the APEB has found that the candidates listed above satisfy these requirements. This finding was documented in a letter dated November 16, 2017, from the Chairman of the APEB, James H. Scanlon, P.E., L.S., to Chairman Bulova.

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

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment I – Letter dated November 16, 2017, from the Chairman of the APEB to the Chairman of the Board of Supervisors, and letter dated November 28 to Chairman Bulova from Chairman of the Fairfax County Advisory Plans Examiner Board.

STAFF:
Robert A. Stalzer, Deputy County Executive
William D. Hicks, P.E., Director, Land Development Services

Attachment I

Engineers & Surveyors Institute

"A public/private partnership"

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Virginia Department of Transportation

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Tri-Tek Engineering

J. Keith Sinclair, Jr., P.E.
A. Morton Thomas & Associates, Inc.

William J. Skrabak
City of Alexandria, T&ES

Blake A. Smith, P.E.
Smith Engineering

Ross Stilling
Fairfax Water

Dennis M. Thomas, P.E.
Burgess & Niple, Inc.

Anita M. Tierney
Loudoun County, B&D

Aaron Vinson, P.E.
Walter L. Phillips, Inc.

Robert W. Walker, P.E., CLA
Gordon

Susan S. Wolford, CLA, AICP
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Current Past Chairman
William E. Fissel, P.E.
Dewberry

EXECUTIVE DIRECTOR
Jeffrey L. Blackford, P.E.

November 16, 2017

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
Behzad Amir Faryer	#323
Tucker Travis	#324

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, PE. LS
Chairman
Fairfax County Advisory Plans Examiner Board

Received

NOV 28 2017
IQ# 299554
Land Development Services
Directors Office

Attachment I

Engineers & Surveyors Institute

"A public/private partnership"

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Jeffrey L. Blackford, P.E.

November 28, 2017

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 individual as Designated Plans Examiner but his status was changed to inactive in 2014. He wishes to reactivate his status and has met the requirements set out by the reinstatement panel.

He has 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.

Charles D. Lucas III - DPE #168 --- Inactive 9/9/2014

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

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

Sincerely,

James H. Scanlon, P.E., LS.
Chairman
Fairfax County Advisory Plans Examiner Board

Received
DEC - 7 2017
Land Development Services
Directors Office

Board Agenda Item
January 23, 2018

ADMINISTRATIVE - 5

Authorization to Advertise Amendments to Chapters 107 (Problem Soils), Chapter 112 (Zoning Ordinance) of *The Code of the County of Fairfax, Virginia* (County Code) and the Public Facilities Manual (PFM) Related to the County Soils Map and Uses Exempt from Site Plan Requirements

ISSUE:
Board of Supervisors (Board) authorization is requested to advertise public hearings on proposed amendments to the County Code and PFM. Specifically, the proposed amendments update the County Soils Map to increase its accuracy and to clarify the uses that are exempt from site plan requirements.

RECOMMENDATION:
The County Executive recommends that the Board authorize the advertisement of the proposed amendments as set forth in the Staff Report dated January 23, 2018.

The proposed amendments have been prepared by Land Development Services (LDS) and coordinated with the Northern Virginia Soil and Water Conservation District (NVSWCD), the Department of Planning and Zoning (DPZ) and the Office of the County Attorney. The PFM amendments have been recommended for approval by the Engineering Standards Review Committee.

TIMING:
Board action is requested on January 23, 2018, to provide sufficient time to advertise public hearings on February 15, 2018, before the Planning Commission; and, on March 6, 2018, at 4:00 p.m. before the Board.

BACKGROUND:
LDS has been focusing on various ways to improve the quality of service provided to our building and land development customers. This effort includes updating the County Codes and PFM for clarity, efficiency, and consistency throughout land development provisions. These amendments align with Goal 3 of the County's Economic Success Strategic Plan.

County Soils Map: The County Soils Map is used by homeowners, land developers and engineers to identify the types of soils and the engineering tests and design required for

obtaining construction permits. Based on new information, the updated maps reflect more detailed topography and land use research done by the NVSWCD.

Minor Site Plans: Zoning Ordinance Section 17-104 identifies various uses exempt from site plan or minor site plan requirements. Specifically, proposed additions and alterations to existing uses are exempt, subject to the criteria set forth in Par.16 below:

16. The following uses provided that the use or activity shall not (a) exceed 250 square feet of gross floor area (GFA) or disturbed area; (b) exceed 500 square feet of GFA or disturbed area for additions and alterations to provide an accessibility improvement; (c) reduce required open space, parking, aisles or driveways and required transitional screening or barriers; and (d) necessitate the installation or relocation of storm sewer, public water or public sewer:

    A. Antennas and satellite earth stations.

    B. Additions and alterations to existing uses, which may include changes or additions to features such as decks, vestibules, loading docks, mechanical equipment and storage structures, changes to the site such as walkways, landscaping or paving, or the addition of light poles or lighting fixtures to an existing use that is permitted by right in the zoning district in which it is located.

    C. Accessory outdoor storage and display.

As currently written, Par. 16 has caused confusion about what uses are included in the GFA or disturbed area thresholds. Furthermore, the 250-and 500-square-foot thresholds may be too limiting, particularly since a grading plan is not required unless there is 2,500 square feet of disturbed land area. The proposed amendment would reorder the text to provide clarity, conform the definition of disturbed land area to other County provisions, and increase the GFA and land disturbing thresholds that do not require site plan or minor site plan approval.

PROPOSED AMENDMENTS:
Refer to Attachment 1 (Staff Report) for a description and copy of the proposed amendments.

REGULATORY IMPACT:
The proposed amendment to the County Soils Map shifts the soil boundaries. The revised soil boundaries enhance critical information for the soil types and soil-related

problems over 2011 County Soils Maps. Edits to Chapters 2, 4, and 11 of the PFM, and County Code Chapter 107 distinguish between the County's Soils Map and the maps published by the U.S. Department of Agriculture's Natural Resource Conservation Service (NRCS).

The proposed Zoning Ordinance amendment streamlines the site plan process by clarifying the uses that are exempt from site plan requirements. The amendment also increases the GFA and land-disturbing activity allowed for certain uses before triggering site plan requirements. The amendment reorders the text of Par. 16 of Sect. 17-104 and conforms the disturbed land area as defined in Chapter 104 of the County Code (Erosion and Sedimentation Control).

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1 – Resolution
Attachment 2 – Staff Report

STAFF:
Robert A. Stalzer, Deputy County Executive
William D. Hicks, P.E., Director, Land Development Services
Leslie B. Johnson, Zoning Administrator, Department of Planning and Zoning
Laura Grape, Executive Director, Northern Virginia Soil & Water Conservation District

ASSIGNED COUNSEL:
Paul Emerick, Senior Assistant County Attorney

ATTACHMENT 1

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center Building, Fairfax, Virginia, on January 23, 2018, at which meeting a quorum was present and the following resolution was adopted:

WHEREAS, Article 17 of the Zoning Ordinance requires site plan or minor site plan approval prior to construction and/or establishment of uses, including modifications or alterations to existing uses;

WHEREAS, certain uses are exempt from the site plan or minor site plan requirements in Sect. 17-104 of the Zoning Ordinance, including Par. 16 of Sect. 17-104 which exempts certain uses or activities that do not exceed 250 square feet of gross floor area or disturbed area, or 500 square feet of gross floor area or disturbed area to provide an accessibility improvement;

WHEREAS, it may be appropriate to revise Par. 16 of Sect. 17-104 to clarify the uses that may be exempt from site plan or minor site plan requirements and to clearly define "disturbed land area";

WHEREAS, it may be appropriate to increase the gross floor area and land disturbing threshold in Par. 16 of Sect. 17-104, as the current gross floor area threshold may be too limiting and it may be appropriate to align the land disturbing threshold with other County Ordinances; and

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

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

Given under my hand this 23rd day of January, 2018.

A Copy Teste:

_____

Catherine A. Chianese
Clerk to the Board of Supervisors

ATTACHMENT 2

LAND DEVELOPMENT SERVICES
January 23, 2018

STAFF REPORT

PREPARED BY CODE DEVELOPMENT AND COMPLIANCE

√	PROPOSED COUNTY CODE AMENDMENT
√	PROPOSED PFM AMENDMENT
√	PROPOSED ZONING AMENDMENT
	APPEAL OF DECISION
	WAIVER REQUEST

Proposed Amendments to *Chapters 107 (Problem Soils), Chapter 112 (Zoning Ordinance) of The Code of the County of Fairfax, Virginia (County Code) and the Public Facilities Manual (PFM) Related to the County Soils Map and Uses Exempt from Site Plan Requirements*

PUBLIC HEARING DATES

Authorization to Advertise:	January 23, 2018
Planning Commission Hearing:	February 15, 2018 at 7:30 p.m.
Board of Supervisors Hearing:	March 6, 2018 at 4:00 p.m.
Prepared By:	Code Development and Compliance Division Thakur Dhakal, P.E. (703) 324-2992

STAFF REPORT

STAFF RECOMMENDATION

Staff recommends that the Board of Supervisors adopt the proposed amendments.

DISCUSSION

Proposed Soils Map Amendment

The County Soils Map is based on field surveys prepared by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) and the Northern Virginia Water and Conservation District (NVSWCD). In 2008, NRCS released the survey to the public. Fairfax County was surveyed and mapped to national standards at a scale of 1:12,000 (1-inch = 1,000 feet), based on 2003 aerial photos and a topographic map with 10-foot contour lines. The information from the soils survey was transferred to the property identification maps and integrated into the county's Geographic Information System (GIS). The County Soils Map was adopted by the Fairfax County Board of Supervisors in 2011. It is on the county website at a 1:6,000 scale (1 inch = 500 feet).

Proposed Update to Soil Boundaries to Increase Accuracy

After its 2011 adoption, the NVSWCD began updating the County Soils Map to accommodate the 1:6,000 scale used, as well as correct inconsistencies that were found by NVSWCD. Newer, detailed aerial photographs from 2012 to 2015, and more recent topographic maps with 5-foot contour lines were used as the map base for the proposed updates.

The proposed amendment to the County Soils Map will shift the soil boundaries to correlate with the detailed topographic and land use information available. The revised soil boundaries will be more representative of the soil types and soil-related problems that exist on a site in comparison to the 2011 County Soils Maps.

The edits to Chapters 4 (Geotechnical Guidelines), 6 (Storm Drainage), and 11 (Erosion and Sediment Control) of the Public Facilities Manual (PFM) will help distinguish between the County's Soil Map and the maps published by NRCS. Edits are also proposed to Chapter 107 of the Code of the County of Fairfax (Problem Soils).

Proposed Zoning Ordinance Amendment

Article 17 of the Zoning Ordinance contains the site plan provisions, including a discussion of when a site plan or minor site plan is required. Sect. 17-104 of Article 17 contains a list of uses that are not subject to (exempt from) the requirement for a site plan or minor site plan. Par. 16 of Sect. 17-104 exempts antenna and satellite earth

stations, additions and alterations to existing uses, and accessory outdoor storage and display areas provided that such uses do not (a) exceed 250 square feet of gross floor area or disturbed area; (b) exceed 500 square feet of gross floor area or disturbed area for additions and alterations to provide an accessibility improvement; (c) reduce required open space, parking, aisles or driveways and required transitional screening or barriers; and (d) necessitate the installation or relocation of storm sewer, public water or public sewer.

Par. 16 as currently written has caused confusion as to what uses are included in the 250 or 500 square feet of gross floor area (GFA) or disturbed area thresholds, and what constitutes a "disturbed" area. GFA is defined in the Zoning Ordinance, in pertinent part, as the sum of the total horizontal areas of the several floors of all building on a lot, measured from the interior face of exterior walls. However, disturbed area is not defined in the Zoning Ordinance. Furthermore, it is believed that the 250 and 500 square foot threshold may be too limiting, particularly given that a grading plan is not required unless there is at least 2,500 square feet of land disturbing activity. In response to these concerns, the proposed Zoning Ordinance amendment revises Par. 16 of Sect. 17-104 to:

- Reorder the text to clarify that the GFA and land disturbing thresholds only apply to antennas and satellite earth stations, additions and alteration to existing uses, and accessory outdoor storage and display area.
- Clarify that the maximum permitted floor area ratio of the zoning district in which located cannot be exceeded.
- Clarify that 1) any additions and alterations to existing uses that increase the number of required parking spaces will continue to require the submission of a parking tabulation; and 2) any changes to the parking layout will continue to require a parking redesignation plan.
- Clarify that the disturbed land area is the same as defined in Chapter 104 of the County Code (Erosion and Sedimentation Control).
- Increase the GFA and land disturbing thresholds that do not require site plan or minor site plan approval as follows:
  - from 250 to 500 square feet of GFA,
  - from 250 to 2,500 square feet of disturbed land area, and
  - from 500 to 750 square feet of GFA, and from 500 to 2,500 square feet of disturbed land area for accessibility improvements.

ATTACHMENT DOCUMENTS:

Attachment A - Amendments to Chapter 107 (Problem Soils)
Attachment B - Amendment to the Public Facilities Manual (Problem Soils)
Attachment C - Amendments to Chapter 112 (Zoning Ordinance)
Attachment D - Proposed Soil Boundary Changes Examples 1, 2, and 3

ATTACHMENT A

PROPOSED AMENDMENTS
TO
CHAPTER 107 (PROBLEM SOILS)
OF THE CODE OF THE COUNTY OF FAIRFAX VIRGINIA

Amend Article 2 (Definitions), Section 107-2-1 (Definitions), definitions (a) through (f) to read as follows:

(a) Director means the Director of the Land Development Services or designated agent.

(b) Class I soils consist of Soil Nos. 11, 28, 33, 38, 39, 76, 79, 80, 81, 84, 85, 87, 88, and 90.

(c) Class II soils consist of Soil Nos. 2, 7, 9, 31, 75, 77, 78, 92, and 93.

(d) Class III soils consist of Soil Nos. 1, 8, 10, 29, 30, 32, 34, 35, 36, 37, 48, 49, 59, 60, 61, 62, 63, 64, 65, 74, 82, 83, 89, 91, ~~and~~ 94, and 109.

(e) Class IVA soils consist of Soil Nos. 13, 15, 17, 20, 21, 26, 27, 42, 43, 44, 47, 51, 52, 53, 54, 55, 56, 57, 69, 71, 73, 86, 103, and 106 ~~and 109~~.

(f) Class IVB soils consist of Soil Nos. 3, 4, 5, 6, 12, 14, 16, 18, 19, 22, 23, 24, 25, 27, 40, 41, 45, 46, 47, 50, 66, 67, 68, 70, 72, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 107, and 108.

ATTACHMENT B

PROPOSED AMENDMENTS
TO
THE PUBLIC FACILITIES MANUAL

Amend Chapter 4 (Geotechnical), § 4-0201 (County Soil Units, Map and Classes), by revising Paragraph 4-0201.5 to read as follows:

4-0201.5 Areas containing "marine clay" soils were mapped by the County Soil Science Office[1] and designated as such on prior County soil maps. The more recent soil mapping by NRCS, which utilizes national standards for soil unit names and descriptions, does not include a specific soil unit for "marine clay." Areas mapped as containing "marine clay" soils in earlier survey work are identified as "Previously Mapped Marine Clay" and are overlaid on the ~~NRCS~~ County soil map~~ping~~. Undisturbed soils within the "Previously Mapped Marine Clay" overlay are mostly Marumsco soils, but in some locations other soil units occur. In those locations within the "Previously Mapped Marine Clay" overlay where the soils are mapped as something other than Class III soils, the requirements outlined in § 4-020~~5~~4.1~~2.2~~ for Class ~~IVA~~ III soil shall be met, regardless of the classification based on the ~~recent NRCS~~ County soils map. Regulations in the Fairfax County Zoning Ordinance, regarding "marine clay" are only applicable to the areas mapped as "Previously Mapped Marine Clay."

Amend Chapter 6 (Storm Drainage), § 6-1605 (Geotechnical Design Guidelines for Stormwater Management Reservoirs with Earthdams), by revising Paragraph 6-1605.2C(1) to read as follows:

6-1605.2C(1) Field Investigation. The field investigation program shall be performed to explore the subsurface conditions for the proposed embankment dam, reservoir and borrow area. The field investigation program must include: 1) review of available data; 2) field reconnaissance; and 3) subsurface exploration. Existing information such as topographic and geologic data should be reviewed. References such as soil maps, the soil properties available from the County or the USDA-NRCS website, and any other sources of information should be reviewed. This review of available data should be followed by a field reconnaissance of the site of the dam and reservoir. The subsurface exploration program, consisting of test borings, test pits, or both, should be developed based on the complexity of the geologic and topographic features disclosed by the previous phases. Except when adequate measures are taken to restore the natural condition of excavations, test pits shall be in areas outside the alignment of the dam. At a minimum, three test borings shall be located along the dam alignment (centerline) and along the principal spillway profile at intervals not to exceed 100 feet. Additional borings shall be required at each major structure. Borings also shall be required throughout the

[1] The County Soil Science Office closed in 1996.

ponding area at a density of at least one per acre (evenly distributed) with a minimum of two borings for ponding areas less than 2 acres. The ponding area shall be defined as that area inundated by the 2-year water surface elevation. The depth of borings shall extend to competent material or to a depth equal to the lesser of either the embankment height or the foundation width. The use of geophysical techniques, where applicable, is encouraged. The subsurface exploration program shall be designed and implemented to evaluate the foundations, abutments, reservoir area and embankment design and any other pertinent geological considerations. *In situ* testing, such as permeability tests, undisturbed sampling and installation of piezometers may be required depending upon the site conditions and anticipated designs.

Amend Chapter 11 (Erosion and Sediment Control), § 11-0103 (Subdivision and Site Plan Preparation), by revising Paragraph 11-0103.2B to read as follows:

11-0103.2B The official soils map adopted by the Board of Supervisors is available on the county website ~~and published soil survey maps and text~~. Associated soil properties and tables are available on the County and NRCS websites.

Amend Chapter 11 (Erosion and Sediment Control), § 11-0408 (Soils of the County), by revising Paragraphs 11-408.2C and 11-0408.8 to read as follows:

11-0408.2C The Coastal Plain which consists of soils developing in ~~alluvial~~ deposits of sand, silt and clay sediments.

11-0408.8 (107-10-PFM, 56-96-PFM) The Erosion Factor and selected engineering data for the County Soils are available on the County and NRCS websites. Additional information and advice concerning the County soils is available from the NVSWCD and the NRCS.

ATTACHMENT C

PROPOSED ZONING ORDINANCE AMENDMENT
CHAPTER 112 OF THE FAIRFAX COUNTY CODE

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of January 23, 2018, 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.

Amend Article 17, Site Plans, Part 1, General Requirements, as follows:

- **Amend Sect. 17-104, Uses Exempt from a Site Plan or a Minor Site Plan, by revising the introductory paragraph and Par. 16 to read as follows:**

Unless otherwise required by proffered conditions or development conditions of an approved rezoning, special permit, special exception or variance, the following uses shall not be subject to the requirement for a site plan or a minor site plan. Such uses, however, ~~shall~~ will still be subject to all other applicable provisions of this Ordinance, the Public Facilities Manual and The Code.

16. ~~The following uses provided that the use or activity shall not (a) exceed 250 square feet of gross floor area or disturbed area; (b) exceed 500 square feet of gross floor area or disturbed area for additions and alterations to provide an accessibility improvement; (c) reduce required open space, parking, aisles or driveways and required transitional screening or barriers; and (d) necessitate the installation or relocation of storm sewer, public water or public sewer:~~

    ~~A. Antennas and satellite earth stations.~~

    ~~B. Additions and alterations to existing uses, which may include changes or additions to features such as decks, vestibules, loading docks, mechanical equipment and storage structures, changes to the site such as walkways, landscaping or paving, or the addition of light poles or lighting fixtures to an existing use that is permitted by right in the zoning district in which located.~~

    ~~C. Accessory outdoor storage and display.~~

    Antennas and satellite earth stations; accessory outdoor storage and display; and additions and alterations to existing uses and site modifications which may include, but are not limited to, changes or additions to decks, patios, concrete slabs, vestibules, loading docks,

mechanical equipment, storage structures, generators, walkways, landscaping, paving, and light poles/lighting fixtures. All such uses or activities must not:

A. Exceed 500 square feet of gross floor area or 2500 square feet of disturbed land area as defined in the Chapter 104 of The Code;

B. Exceed 750 square feet of gross floor area or 2500 square feet of disturbed land area as defined in the Chapter 104 of The Code for additions and alterations to provide an accessibility improvement;

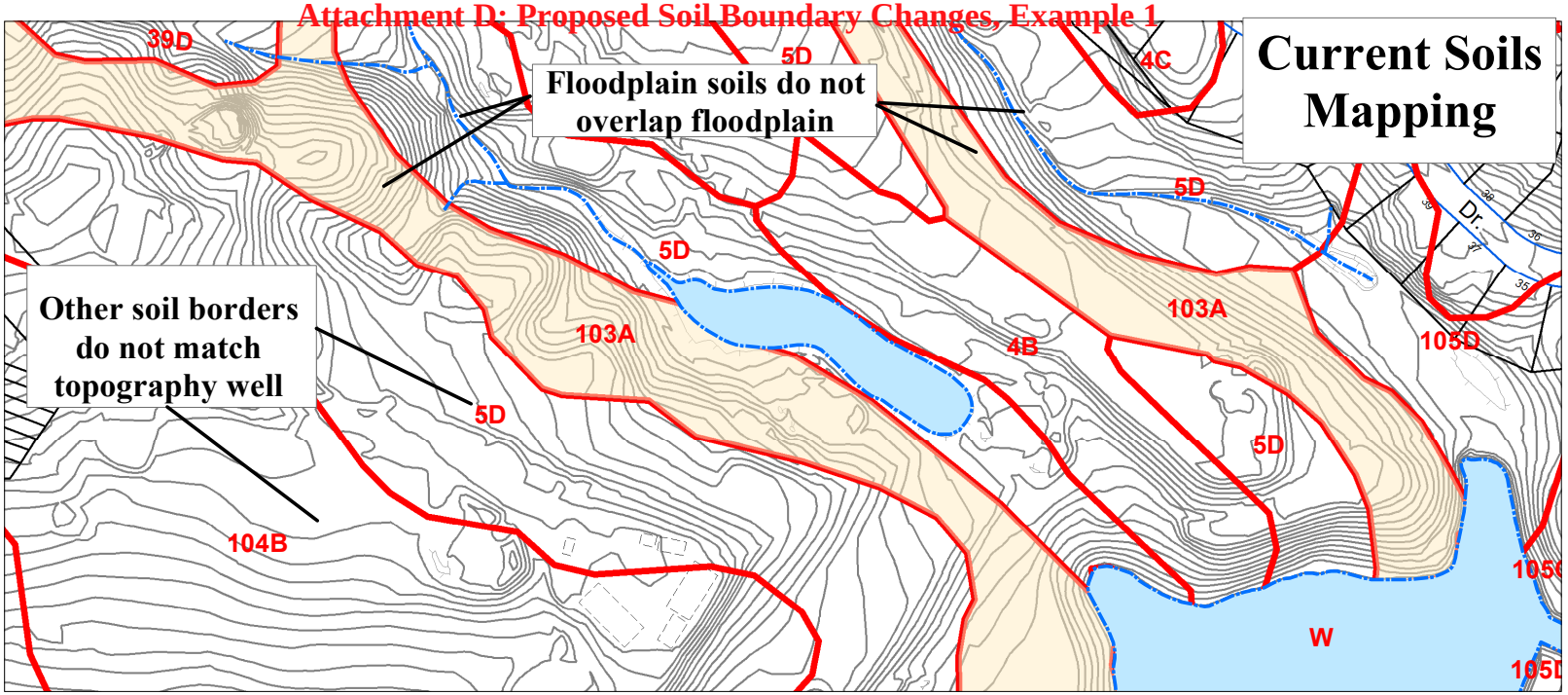
C. Exceed the maximum floor area ratio of the district in which located or the maximum floor area ratio permitted by any proffered or development conditions;

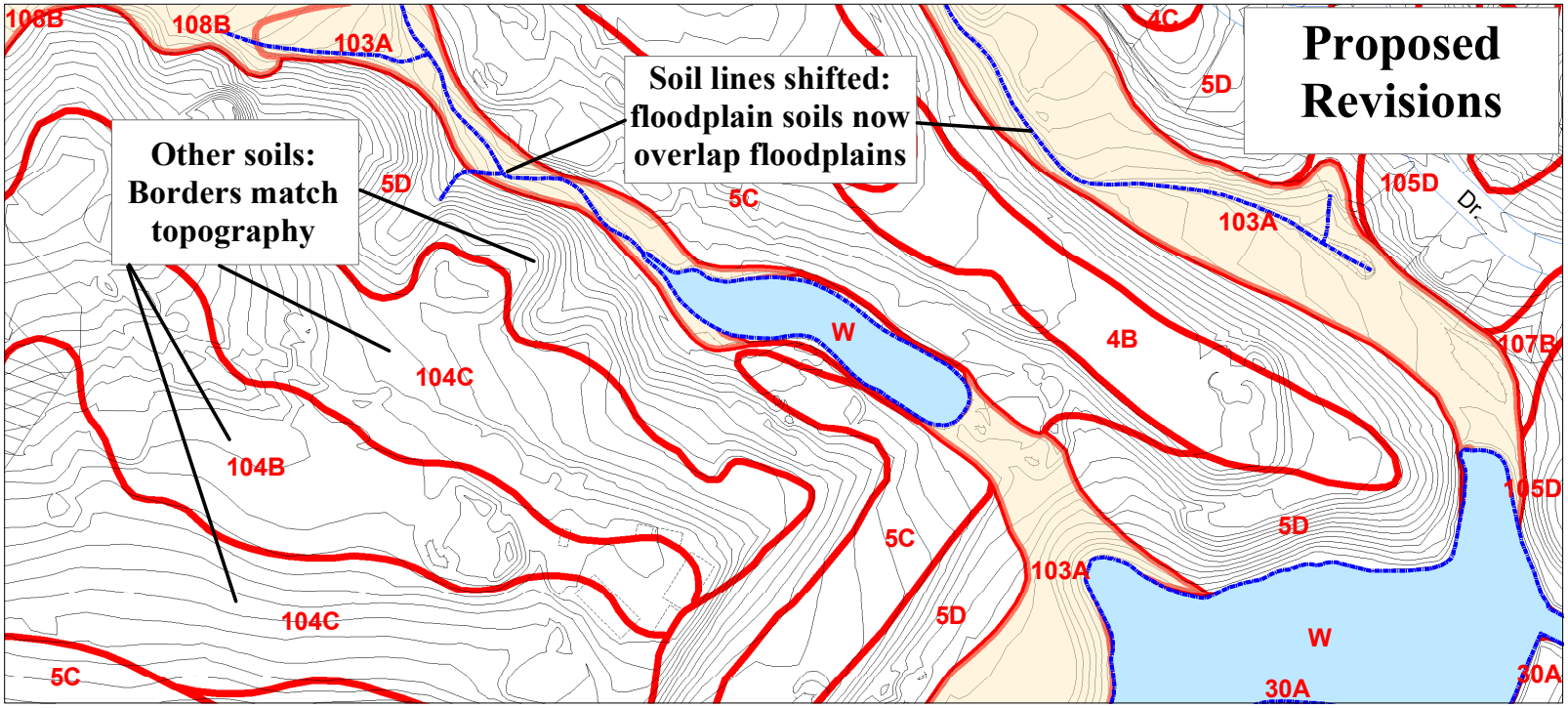
D. Reduce required landscaping, open space, parking, travel aisles or driveways, and transitional screening or barriers; and

E. Necessitate the installation or relocation of storm sewer, public water or public sewer.

Any additions or alterations to existing uses that increase the number of required off-street parking spaces requires the submission of a parking tabulation in accordance with Par. 8 above, and any changes to the parking layout requires the submission of a parking redesignation plan in accordance with Par. 9 above.

Attachment D: Proposed Soil Boundary Changes, Example 1





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Soil Lines

Floodplain Soils

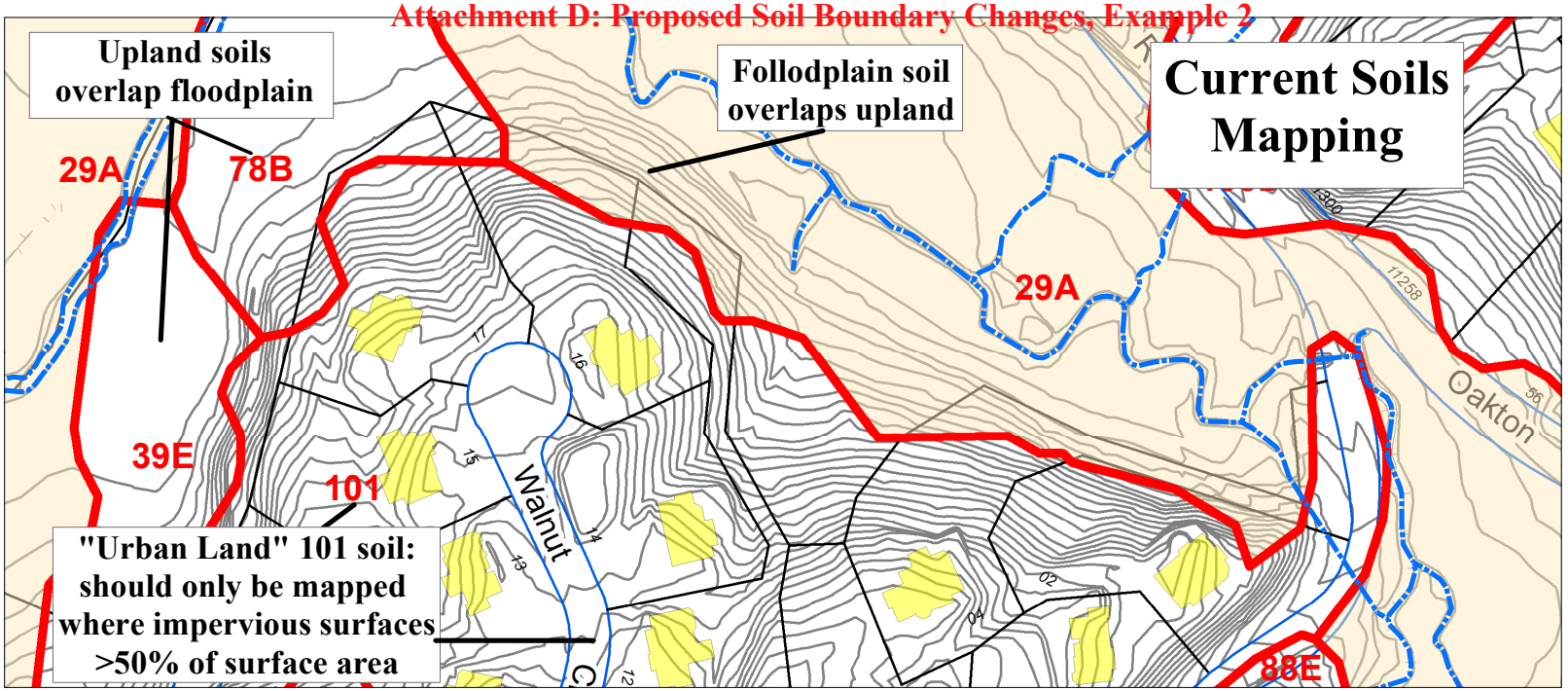
Lakes & Ponds

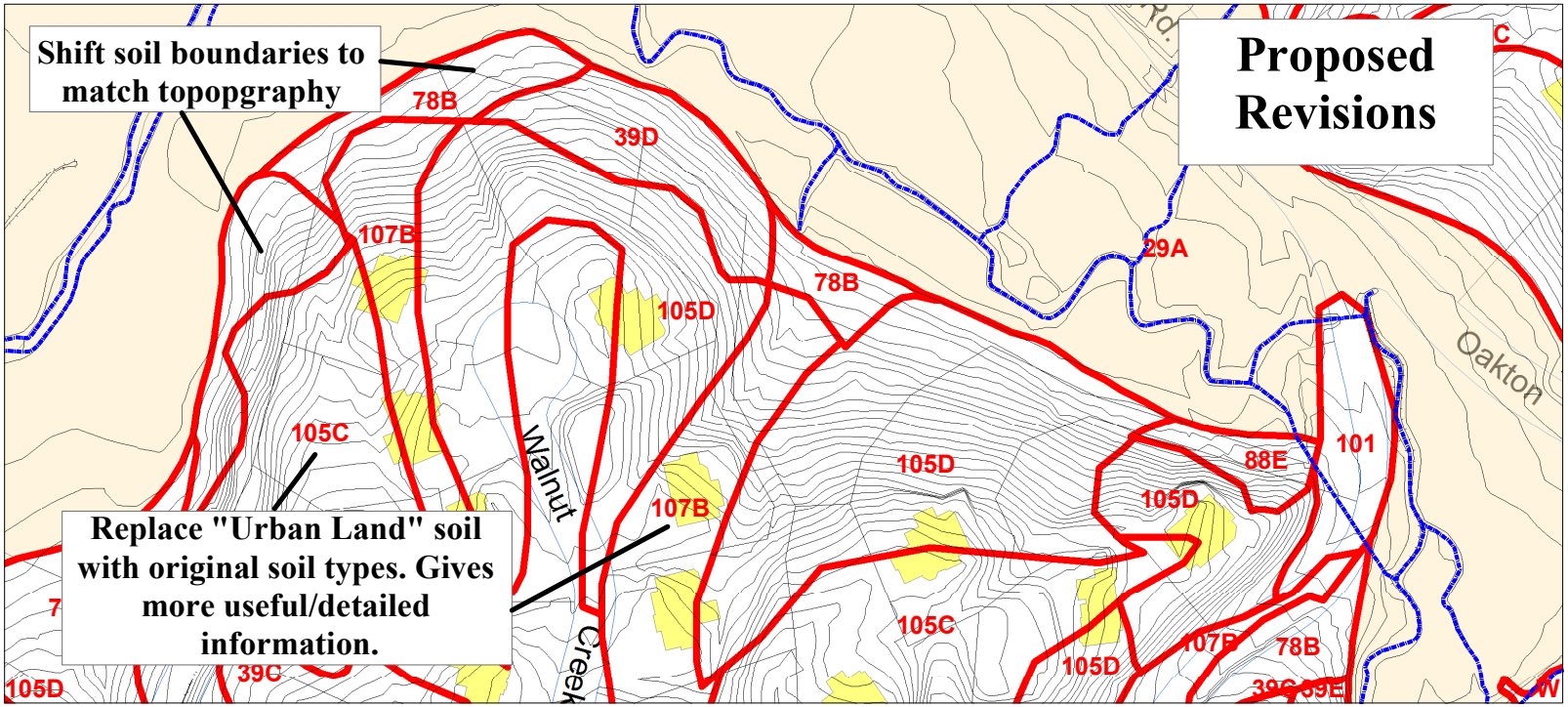
Streams

SOILS MAP

89-2

Attachment D: Proposed Soil Boundary Changes, Example 2





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Soil Lines

Floodplain Soils

Buildings

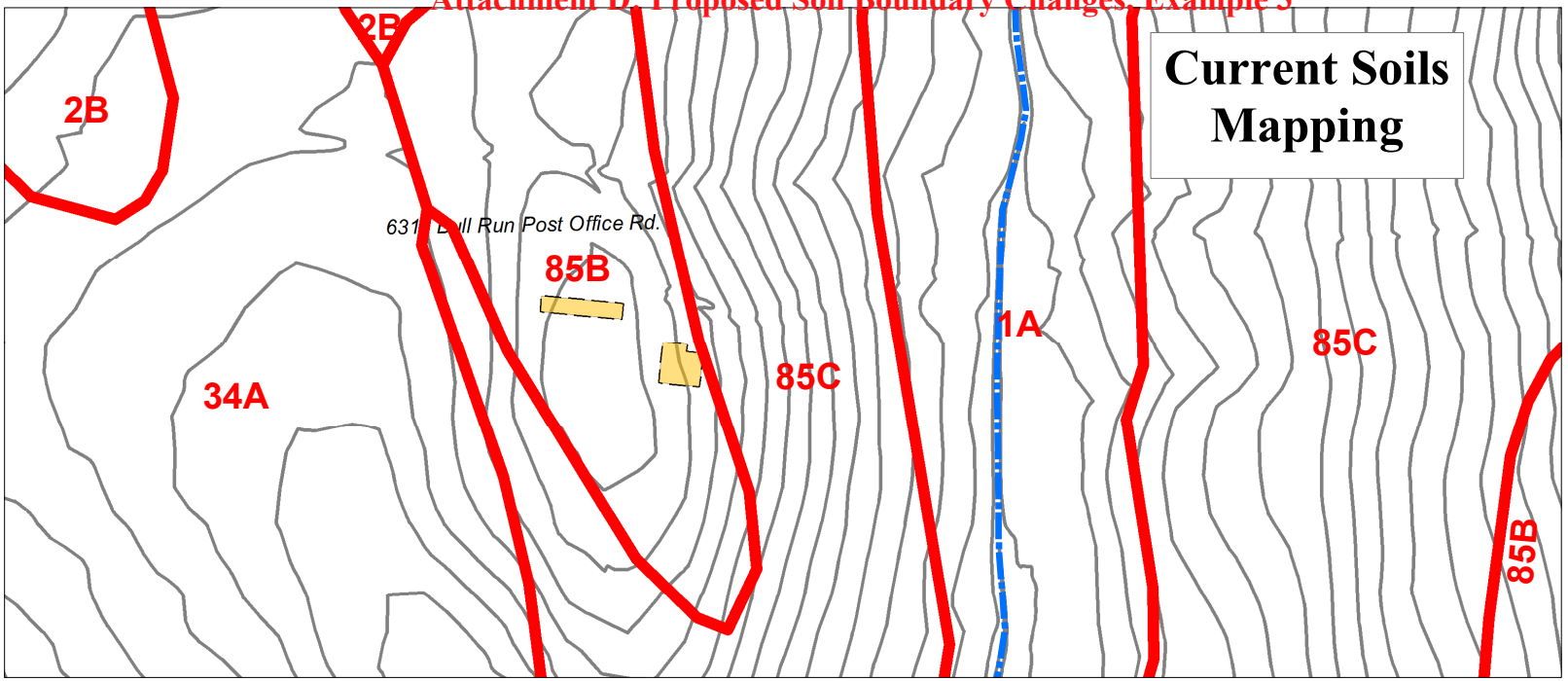
Lakes & Ponds

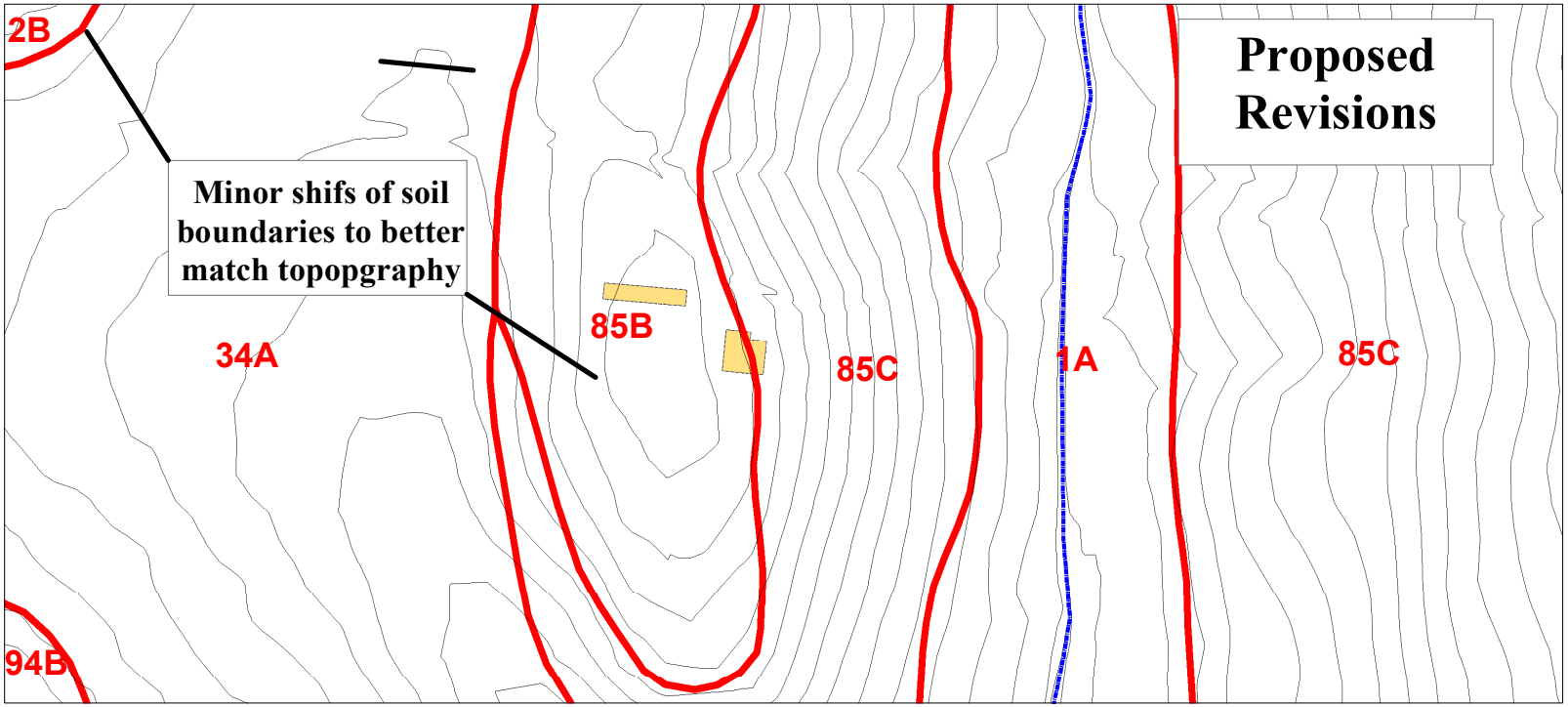
Streams

SOILS MAP

46-4

Attachment D: Proposed Soil Boundary Changes, Example 3





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Soil Lines

Floodplain Soils

Buildings

Lakes & Ponds

Streams

Prince William County

Prince Georges County

SOILS MAP

46-4

Board Agenda Item
January 23, 2018

ADMINISTRATIVE - 6

Approval of Traffic Calming Measures and "Watch for Children" Signs as Part of the Residential Traffic Administration Program (Mason, Lee and Providence Districts)

ISSUE:
Board endorsement of Traffic Calming measures as part of the Residential Traffic Administration Program (RTAP).

RECOMMENDATION:
The County Executive recommends that the Board endorse the traffic calming plans for Brandy Court consisting of the following:

- One speed hump on Brandy Court (Mason District)

The County Executive further recommends approval for “Watch for Children” signs on the following roads:

- Two ‘Watch for Children’ signs on Edison Drive (Lee)
- Three ‘Watch for Children’ signs on Rocky Branch Road (Providence)

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

TIMING:
Board action is requested on January 23, 2018.

BACKGROUND:
As part of the RTAP, roads are reviewed for traffic calming when requested by a Board member on behalf of a homeowners’ or civic association. Traffic calming employs the use of physical devices such as speed humps, speed tables, raised pedestrian crosswalks, chokers, median islands, traffic circles, or multi-way stop signs (MWS), to reduce the speed of traffic on a residential street. Staff performed engineering studies documenting the attainment of qualifying criteria. Staff worked with the local Supervisor’s office and communities to determine the viability of the requested traffic calming measures to reduce the speed of traffic. Once the plan for the road under

review is approved and adopted by staff, that plan is then submitted for approval to residents of the ballot area in the adjacent community. On November 20, 2017 (Brandy Court, Mason District) FCDOT received verification from the local Supervisor's office confirming community support for the above referenced traffic calming plan.

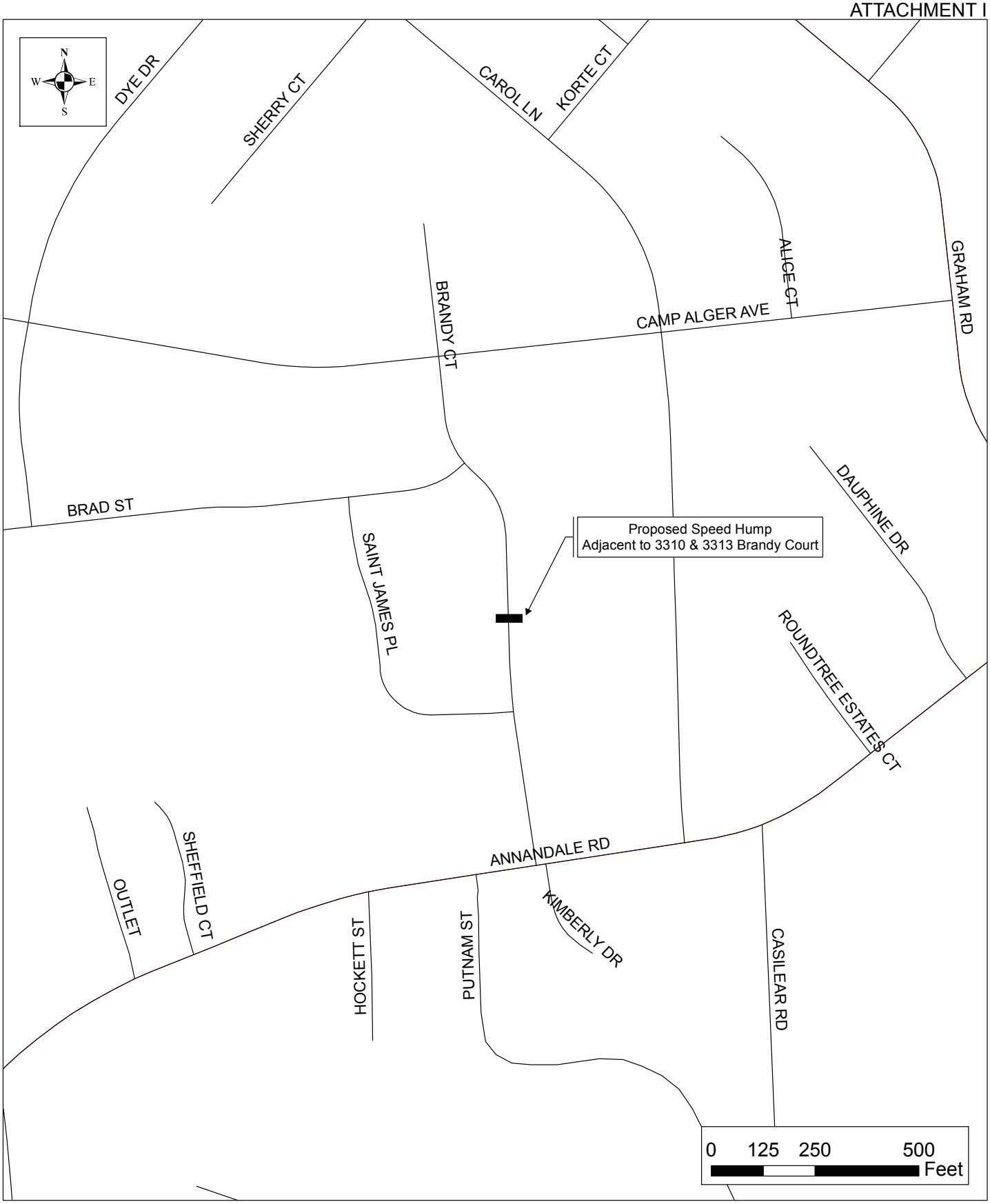
The RTAP allows for installation of "Watch for Children" signs at the primary entrance to residential neighborhoods, or at a location with an extremely high concentration of children relative to the area, such as playgrounds, day care centers, or community centers. FCDOT reviews each request to ensure the proposed signs will be effectively located and will not be in conflict with any other traffic control devices. On November 16, 2017, (Edison Drive, Lee District; Rocky Branch Road, Providence District) FCDOT received verification from the respective local Supervisor's office confirming community support for the referenced "Watch for Children" signs.

FISCAL IMPACT:
Funding in the amount of $8,000 for the traffic calming measures associated with the Brandy Court project is available in Fund 2G25-076-000, General Fund, under Job Number 40TTCP. Funding in the amount of $1,500 for the "Watch for Children" signs associated with the Edison Drive (Lee District) and Rocky Branch Road (Providence District) projects is available in Fund 2G25-076-000, General Fund, under Job Number 40TTCP.

ENCLOSED DOCUMENTS:
Attachment I: Traffic Calming Plan for Brandy Court

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Steven K. Knudsen, Transportation Planner, Traffic Engineering Section, FCDOT

ATTACHMENT I



December 2017

Fairfax County Department of Transportation
Residential Traffic Administration Program (RTAP)
TRAFFIC CALMING PLAN
BRANDY COURT
Mason District

A Fairfax Co. Va., publication

Tax Map: 60-1

Board Agenda Item
January 23, 2018

ADMINISTRATIVE - 7

Authorization to Advertise a Public Hearing to Establish Parking Restrictions on Javier Road (Providence 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 Javier Road, in the Providence District.

RECOMMENDATION:
The County Executive recommends that the Board authorize advertisement of a public hearing for February 20, 2018, at 4:00 p.m. to consider adoption of a Fairfax County Code amendment (Attachment I) to Appendix R, to prohibit commercial vehicles, recreational vehicles and trailers as defined, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50), from parking on Javier Road, from Williams Drive to Arlington Boulevard from 9:00 p.m. to 6:00 a.m., seven days a week.

TIMING:
The Board of Supervisors should take action on January 23, 2018, to provide sufficient time for advertisement of the public hearing on February 20, 2018, 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 diminishes the capacity of on-street parking for other uses.

Representatives of various property owners of land along Javier Road contacted the Providence District office requesting a parking restriction on Javier Road from 9:00 p.m. to 6:00 a.m., seven days a week.

This area has been reviewed multiple times over a period of 30 days. Staff has verified that long term parking is occurring, thereby diminishing the capacity of on-street parking for other uses. Staff is recommending a parking restriction for all commercial vehicles, recreational vehicles, and trailers along Javier Road, from Williams Drive to Arlington Boulevard from 9:00 p.m. to 6:00 a.m., seven days a week.

FISCAL IMPACT:
The cost of sign installation is estimated to be $600. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:
Attachment I: Amendment to the Fairfax County Code, Appendix R (General Parking Restrictions)
Attachment II: Area Map of Proposed Parking Restriction

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:
Sarah A. Hensley, Assistant County Attorney

Attachment I

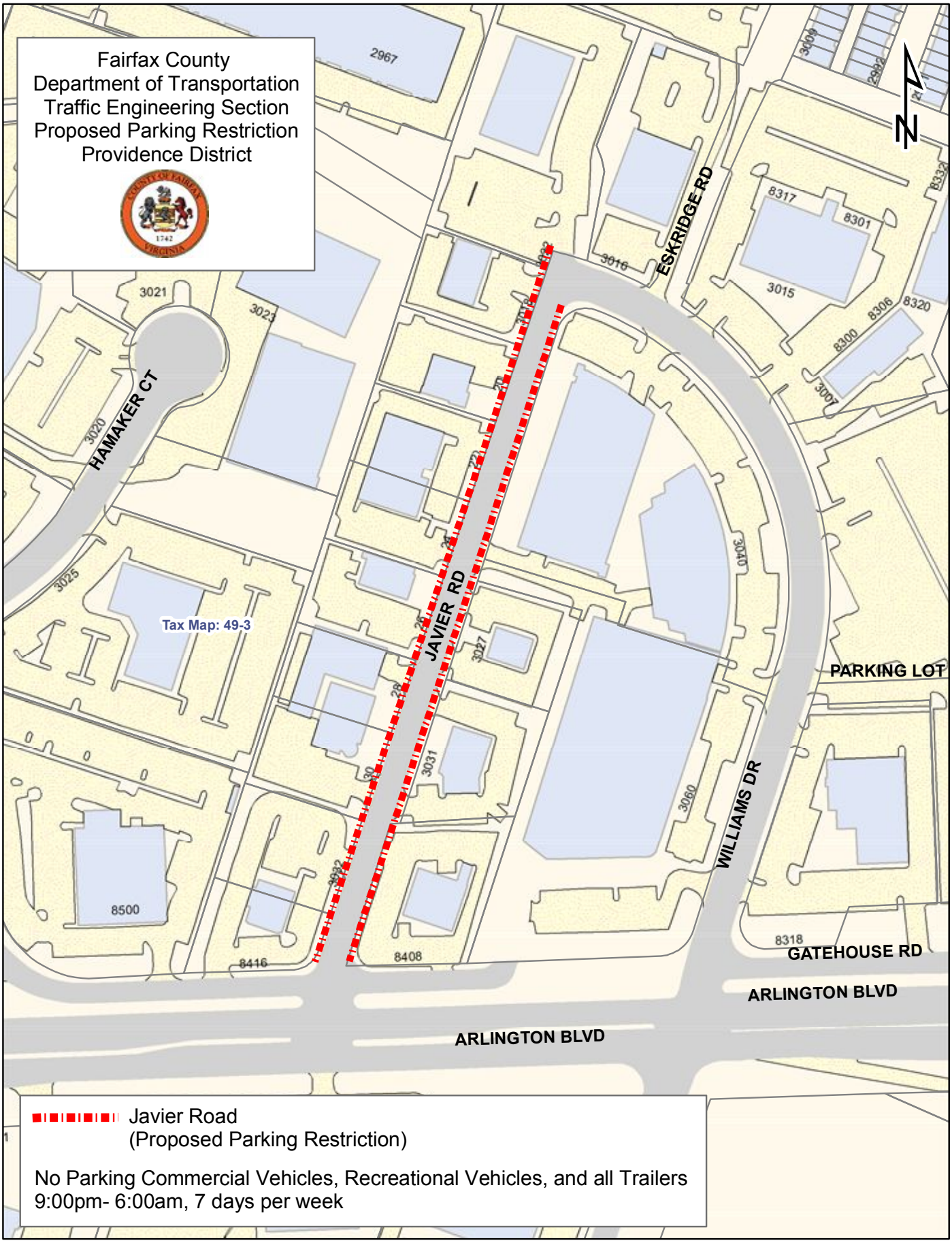
PROPOSED CODE AMENDMENT

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:

Javier Road (Route 5163)
Commercial vehicles, recreational vehicles, and trailers, as defined, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50), are restricted from parking on Javier Road, from Williams Drive to Arlington Boulevard, from 9:00 p.m. to 6:00 a.m., seven days a week.

Attachment II



Board Agenda Item
January 23, 2018

ADMINISTRATIVE - 8

Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance Expanding the Greenway Downs Residential Permit Parking District, District 13 (Providence 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* (Fairfax County Code), to expand the Greenway Downs Residential Permit Parking District (RPPD), District 13.

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

TIMING:
The Board should take action on January 23, 2018, to advertise a public hearing for February 20, 2018, at 4:00 p.m.

BACKGROUND:
Section 82-5A-4(b) of the Fairfax County Code 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.

On September 25, 2017, a peak parking demand survey was conducted for the requested area. The results of 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 to be $600. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:
Attachment I: Proposed Amendment to the Fairfax County Code
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 Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:
Marc E. Gori, Assistant County Attorney

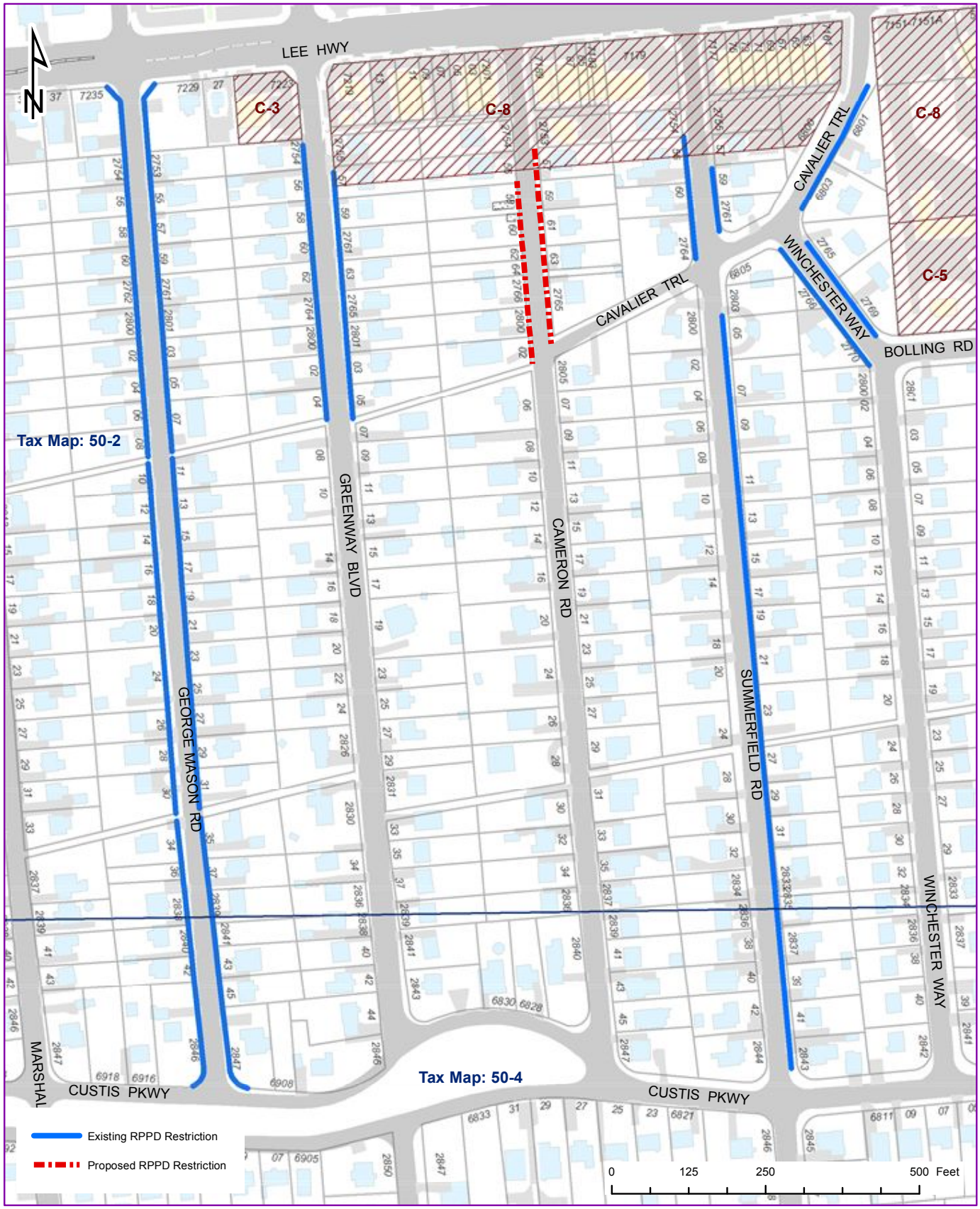
Attachment 1

Proposed Amendment

Amend *The Code of the County of Fairfax*, *Virginia*, by adding the following street in Appendix G-13, Section (b)(2), Greenway Downs Residential Permit Parking District, in accordance with Article 5A of Chapter 82:

Cameron Road (Route 1714):

From the northern property boundaries of 2758 Cameron Road, west side, and 2757 Cameron Road, east side, to Cavalier Trail



FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION
PROPOSED EXPANSION
GREENWAY DOWNS RPPD
PROVIDENCE DISTRICT

Board Agenda Item
January 23, 2018

ADMINISTRATIVE – 9

Extension of Review Period for 2232 Application (Braddock and Springfield Districts)

ISSUE:
Extension of review period for 2232 application to ensure compliance with 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: 2232-B/S17-41

TIMING:
Board action is required January 23, 2018, to extend the review period of the application noted above before its expiration date.

BACKGROUND:
Subsection B of *Section* 15.2-2232 of the *Code of Virginia* states: "Failure of the commission to act within 60 days of a submission, unless the time is extended by the governing body, shall be deemed approval." The need for the full time of an extension may not be necessary, and is not intended to set a date for final action.

The review period for the following application should be extended:

2232-B/S17-41	Virginia Railway Express 9016 Burke Road Burke, VA Braddock and Springfield Districts Accepted December 1, 2017 Extend to October 30, 2018

FISCAL IMPACT:
None.

Board Agenda Item
January 23, 2018

ENCLOSED DOCUMENTS:
None.

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred R. Selden, Director, Department of Planning and Zoning, DPZ
Marianne Gardner, Director, Planning Division, DPZ
Douglas W. Hansen, Senior Planner, Facilities Planning Branch, Planning Division, DPZ

Board Agenda Item
January 23, 2018

ADMINISTRATIVE – 10

Authorization to Advertise a Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Pedestrian Improvements - 2014 - Columbia Pike/Gallows Rd. Intersection (Mason District)

ISSUE:
Board authorization to advertise a public hearing on the acquisition of certain land rights necessary for the construction of Project 5G25-060-009, Pedestrian Improvements - 2014 - Columbia Pike/Gallows Rd. Intersection, Fund 300-C30050, Transportation Improvements.

RECOMMENDATION:
The County Executive recommends that the Board authorize advertisement of a public hearing for February 20, 2018, at 4:30 p.m.

TIMING:
Board action is requested on January 23, 2018, to provide sufficient time to advertise the proposed public hearing on the acquisition of certain land rights necessary to keep this project on schedule.

BACKGROUND:
This project consists of pedestrian improvements at the intersection of Columbia Pike and Gallows Road in Annandale. The Improvements include new sidewalk and improvements within an existing intersection island, seven American with Disabilities Act (ADA) compliant curb ramps, and cross-walk striping across Columbia Pike to the island and across Gallows Road.

The construction of this project requires the acquisition of Dedication for Public Street Purposes and Grading Agreement and Temporary Construction Easements.

Negotiations are in progress with the affected property owners; however, because resolution of these acquisitions is not imminent, it may be necessary for the Board to utilize quick-take eminent domain powers to commence construction of this project on schedule. These powers are conferred upon the Board by statute, namely, Va. Code Ann. Sections 15.2-1903 through 15.2-1905 (as amended). Pursuant to these provisions, a public hearing is required before property interests can be acquired in such an accelerated manner.

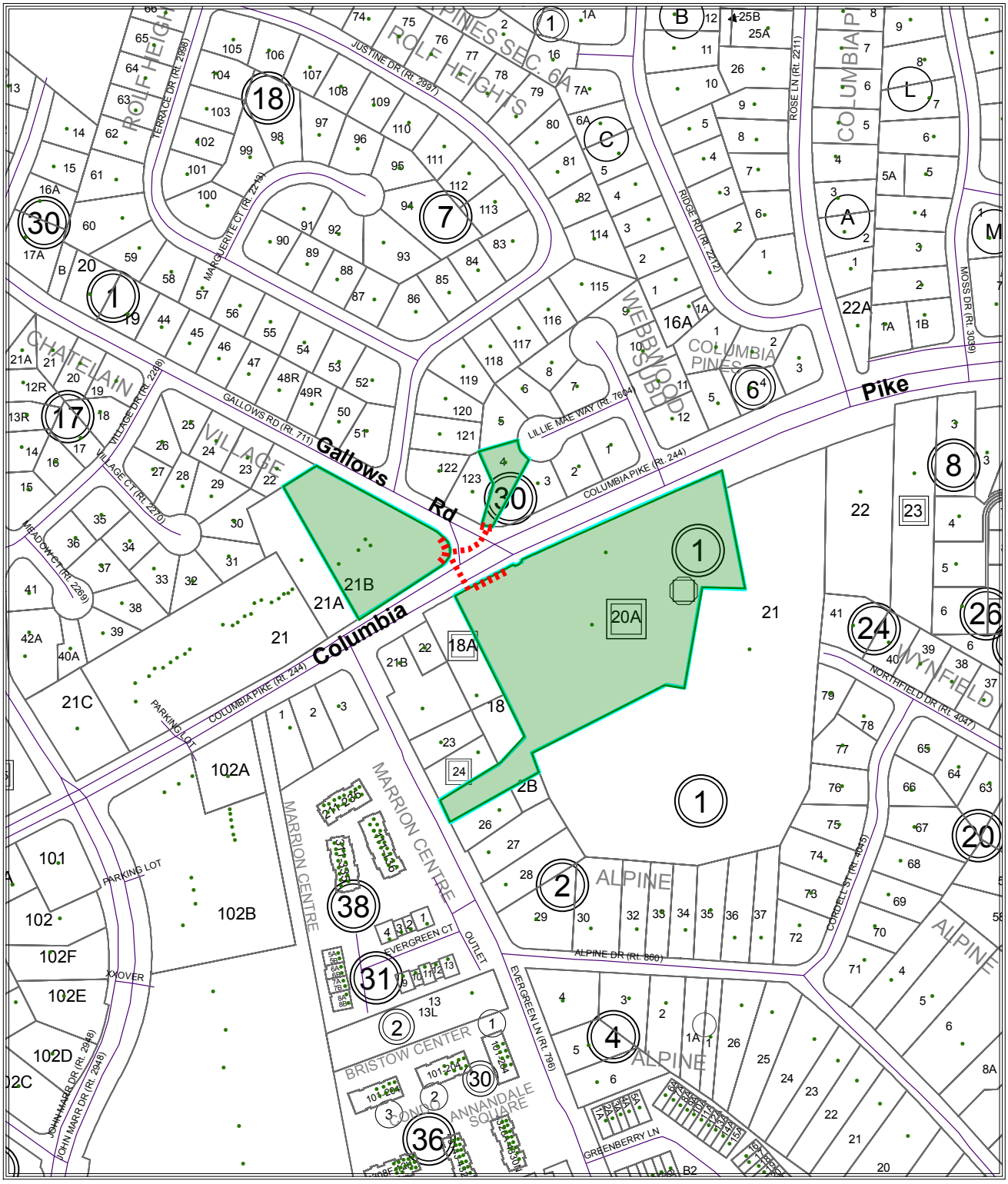
FISCAL IMPACT:
Funding is available in Project 5G25-060-009, Pedestrian Improvements - 2014 - Columbia Pike/Gallows Rd. Intersection, Fund 300-C30050, Transportation Improvements. This project is included in the Adopted FY2018 - FY2022 Capital Improvement Program (with future Fiscal Years to FY2027). No additional funding is being requested from the Board.

ENCLOSED DOCUMENTS:
Attachment A - Project Location Map
Attachment B - Listing of Affected Properties

STAFF:
Robert A. Stalzer, Deputy County Executive
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)
Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

ASSIGNED COUNSEL:
Pamela K. Pelto, Assistant County Attorney, Office of the County Attorney

ATTACHMENT A



COLUMBIA PIKE / GALLOWS ROAD PEDESTRIAN INTERSECTION IMPROVEMENTS

Project 5G25-060-009

Tax Map: 60-3 & 60-4 **Mason District** **Scale: Not to Scale**

Affected Properties: **Proposed Improvements:**

ATTACHMENT B

LISTING OF AFFECTED PROPERTIES
Project 5G25-060-009
Pedestrian Improvements 2014 - Columbia Pike/Gallows Rd. Intersection
(Mason District)

PROPERTY OWNER(S)

1. Annandale Shopping Center, LLC 060-3-01-0021B

   Address:
   7010 Columbia Pike,
   Annandale, VA 22003

2. Annandale United Methodist Church 060-4-01-0020A

   Address:
   6937 Columbia Pike,
   Annandale, VA 22003

3. Dereck and Anna Moeller 060-4-30-0004

   Address:
   6907 Lillie May Way,
   Annandale, VA 22003

Board Agenda Item
January 23, 2018

ACTION – 1

Approval of the Board of Supervisors' Meeting Schedule for Calendar Year 2018 and Authorization for the Chairman to Postpone a Scheduled Meeting in the Event of Weather or Other Hazardous Conditions

ISSUE:
Board approval of its meeting schedule for January through December 2018.

RECOMMENDATION:
The County Executive recommends that the Board (1) approve the Board meeting schedule for January through December 2018 and (2) authorize the Chairman to defer any scheduled meeting to the Tuesday following a scheduled Board meeting if the Chairman, or the Vice Chairman if the Chairman is unable to act, finds and declares that the weather or other conditions are such that it is hazardous for members to attend.

TIMING:
Immediate. Virginia law requires the Board to adopt its regular schedule of meetings for calendar year 2018 at the first meeting in January.

BACKGROUND:
Previously, on July 25, 2017, staff presented the Board with a preliminary meeting schedule for calendar year 2018 for planning purposes, but Virginia Code Section 15.2-1416 requires the governing body of each county to establish the days, times, and places of its regular meetings at the annual meeting, which is the first meeting of the year. For that reason, the meeting schedule for calendar year 2018 is being presented to the Board again for formal approval. Scheduled meetings may be adjourned and reconvened as the Board may deem necessary, and the Board may schedule additional meetings or adjust the schedule of meetings approved at the annual meeting, after notice required by Virginia law, as the need may rise.

In addition, Virginia Code Section 15.2-1416 authorizes the Board to fix the day or days to which a regular meeting shall be continued if the Chairman, or the Vice-Chairman if the Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend a regularly scheduled meeting. If those provisions are made, then all hearings and other matters previously advertised for that date shall be conducted at the continued meeting. In order to take advantage of that authority in such an emergency, staff recommends that the Board also authorize the Chairman to continue any scheduled meeting to the following Tuesday when weather or other conditions make attendance hazardous. In that circumstance, the Board then

would consider the agenda for that rescheduled meeting on that following Tuesday without further advertisement of hearings and other matters previously advertised. Notice of the rescheduled meeting must be given to the public in a manner reasonable under the circumstances, and contemporaneous with the notice given to Board members.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENT:
Attachment 1 – Proposed Meeting Schedule for Calendar Year 2018
Attachment 2 – Virginia Code Section 15.2-1416
Attachment 3 – Proposed Resolution Adopting Meeting Schedule and Authorizing the Chairman to Reschedule a Meeting in an Emergency

STAFF:
Catherine A. Chianese, Assistant County Executive and Clerk to the Board of Supervisors

Attachment 1

DRAFT

2018 Board of Supervisors Meeting Schedule

January 23, 2018

February 6, 2018

February 20, 2018

March 6, 2018

March 20, 2018

April 10, 2018
- 9:30 to 4:00 pm Board Meeting
- 4:00 p.m. Budget Public Hearing

April 11 – April 12, 2018
- 1:00 pm – Budget Public Hearings

April 24, 2018 (Budget Markup)

May 1, 2018

May 15, 2018

June 5, 2018

June 19, 2018

July 10, 2018

July 31, 2018

September 25, 2018

October 16, 2018

October 30, 2018

November 20, 2018

December 4, 2018

Code of Virginia
Title 15.2. Counties, Cities and Towns
Chapter 14. Governing Bodies of Localities

§ 15.2-1416. Regular meetings

The governing body shall assemble at a public place as the governing body may prescribe, in regular session in January for counties and in July for cities and towns. Future meetings shall be held on such days as may be prescribed by resolution of the governing body but in no event shall less than six meetings be held in each fiscal year.

The days, times and places of regular meetings to be held during the ensuing months shall be established at the first meeting which meeting may be referred to as the annual or organizational meeting; however, if the governing body subsequently prescribes any public place other than the initial public meeting place, or any day or time other than that initially established, as a meeting day, place or time, the governing body shall pass a resolution as to such future meeting day, place or time. The governing body shall cause a copy of such resolution to be posted on the door of the courthouse or the initial public meeting place and inserted in a newspaper having general circulation in the county or municipality at least seven days prior to the first such meeting at such other day, place or time. Should the day established by the governing body as the regular meeting day fall on any legal holiday, the meeting shall be held on the next following regular business day, without action of any kind by the governing body.

At its annual meeting the governing body may fix the day or days to which a regular meeting shall be continued if the chairman or mayor, or vice-chairman or vice-mayor if the chairman or mayor is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the regular meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised shall be conducted at the continued meeting and no further advertisement is required.

Regular meetings may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business before the governing body is completed. Notice of any regular meeting continued under this section shall be reasonable under the circumstances and be given as provided in subsection D of § 2.2-3707.

Notwithstanding the provisions of this section, any city or town that holds an organizational meeting in compliance with its charter or code shall be deemed to be in compliance with this section.

Code 1950, § 15-241; 1950, p. 8; 1954, c. 286; 1958, c. 291; 1960, c. 33; 1962, cc. 218, 623, § 15.1-536; 1964, c. 403; 1980, c. 420; 1994, cc. 371, 591;1997, c. 587;2004, c. 549;2017, c. 616.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

RESOLUTION ESTABLISHING THE BOARD MEETING SCHEDULE FOR CALENDAR YEAR 2018 AND AUTHORIZING THE CHAIRMAN TO RESCHEDULE A MEETING IN THE EVENT OF WEATHER OR OTHER HAZARDOUS CONDITIONS

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on Tuesday, January 23, 2018, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, Virginia Code Section 15.2-1416 requires the Board of Supervisors of Fairfax County, Virginia, to assemble at its first meeting in January to adopt a schedule of the days, times, and places of its regular meetings in calendar year 2018; and

WHEREAS, Virginia Code Section 15.2-1416 authorizes the Board of Supervisors of Fairfax County, Virginia, to fix the day or days to which a regularly scheduled meeting shall be continued if the Chairman, or the Vice-Chairman if the Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the regular meeting;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County:

1. During Calendar Year 2018, the Board of Supervisors will meet in the Board Auditorium at 12000 Government Center Parkway, Fairfax, Virginia, on January 23, February 6, February 20, March 6, March 20, April 10, April 11, April 12, April 24, May 1, May 15, June 5, June 19, July 10, July 31, September 25, October 16, October 30, November 20, and December 4;

2. All such meetings shall generally begin at 9:30 a.m. except that the Board meetings on April 11 and 12 begin at 1 p.m.; and

3. If the Chairman, or the Vice-Chairman if the Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend a regularly scheduled meeting, then that meeting shall be postponed and conducted on the following Tuesday and all hearings and other matters shall be conducted at that time without further advertisement of hearings and other matters previously advertised. Notice of the rescheduled meeting must be given to the public in a manner reasonable under the circumstances, and contemporaneous with notice given to Board members.

A Copy - Teste:

_____

Catherine A. Chianese
Clerk to the Board of Supervisors

Board Agenda Item
January 23, 2018

ACTION - 2

Approval to Continue Free Parking on Saturdays and Extend the Hours of Fee Collection on Weekdays at the Wiehle-Reston East Metrorail Station when the Washington Metropolitan Area Transit Authority (WMATA) Begins Saturday Parking Fee and Extends Weekday Hours of Collection for Parking (Hunter Mill District)

ISSUE:
Board approval to continue free parking on Saturdays and extend the hours of collection at the Wiehle-Reston East Metrorail Station when WMATA begins a pilot program on February 5, 2018, to charge a fee to park at all WMATA-owned parking facilities throughout the region on Saturdays and to extend the hours of collection for parking on weekdays. The Wiehle-Reston East Station parking facility is owned by the County. The County contracts with WMATA to collect and process the parking fees, and monitor the exit gates.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors approve continuing free parking on Saturdays and extending the hours of collection on weekdays from 7:30 a.m. - 1:00 a.m. Monday through Thursday and from 7:30 a.m. to 2:00 a.m. on Fridays at the Wiehle-Reston East Metrorail Station to match the change made by the WMATA board for the pilot period. This action also recommends approval to make the new weekday hours permanent at the Wiehle-Reston East Station, if the pilot is successful, and if the WMATA Board of Directors approves a permanent systemwide change.

TIMING:
Board action is requested on January 23, 2018, because the WMATA parking pilot is scheduled to start on February 5, 2018, and end on July 30, 2018.

BACKGROUND:
On July 29, 2014, the Fairfax County Board of Supervisors approved an operating agreement with WMATA for the County-owned 2,300 space parking garage at the Wiehle-Reston East Metrorail Station. It was constructed to provide parking for Metrorail patrons. The facility was designed and built to function like all other parking garages at Metrorail stations in Fairfax County. The County contracts with WMATA to remotely monitor the parking garage gates and fare collection equipment at the station.

WMATA is responsible for maintaining the equipment, and collecting and processing SmarTrip and credit card payments for this garage. The parking fees for this garage were set by the Board of Supervisors on July 1, 2014, and are currently the same as all other Metrorail stations in the County. The parking fee at these other Fairfax County Metrorail stations is set by the WMATA Board of Directors.

On July, 27, 2017, the WMATA board approved a parking pilot program to test the feasibility of the following changes to the parking fee structure:

- Begin collecting a fee for parking on Saturdays at all WMATA-owned parking facilities throughout the region. All parking lots are currently free on weekends.
- Extend the hours of parking fee collection on weekdays at all WMATA-owned parking facilities to collect for parking between 7:30 a.m. and 9:30 a.m., and from 1:00 a.m. to 2:00 a.m. on Fridays.
- Reduce the parking fees at two WMATA-owned parking facilities that have a utilization rate lower than 40 percent from $4.95 per day to $3.00 per day. (The West Falls Church Metrorail Station is the only facility in Fairfax County that meets this criteria).

Fairfax County staff does not support charging for parking at Metrorail stations on Saturdays for the following reasons:

- Parking usage and Metrorail ridership are lowest on weekends when it is currently free to park. There is also a significant amount of parking available on most weekends. Typical economics would lead to charging for parking when usage is in high demand and supply is low, rather than the reverse. The result may mean some modest increase in parking revenue at the expense of weekend ridership.
- Metrorail ridership is more discretionary on weekends. Charging for parking on weekends will discourage these discretionary transit trips. WMATA may actually lose more money from lost rail fares, than it gains from the new parking fee.
- Collecting parking fees on Saturday will add costs for equipment maintenance and personnel to service it. These costs will further decrease any revenue generated by parking fees.
- The non-discretionary work trips that are taken on the weekend, are often taken by those who can least afford another increase in transit costs.
- New and occasional riders often try transit first during off-peak times and on weekends. Charging for parking may discourage these new trips by increasing the trip cost, thereby reducing the potential for future Metrorail riders and fares.
- The region invested in Metrorail to provide an alternative to the single occupant automobile. Discouraging Saturday Metrorail trips works against the region's goal of providing alternatives to the single occupant automobile.

- Discouraging Metrorail trips has the effect of increasing weekend congestion and air pollution, since doing so will likely mean more cars and more congestion on the roadways, such as I-66, on Saturdays.
- Since SafeTrack is now complete, WMATA performs a significant amount of maintenance on weekends. This routinely leads to 20+ minute intervals between trains, station closures and line closures. Weekend rail riders already deal with these challenges. Implementing a parking charge adds to these challenges and again discourages weekend ridership.
- One of WMATA stated reasons for the Saturday parking fee is to collect user data. Some of this data could be collected through license plate surveys or other means without charging for parking.
- Over the past several years, WMATA's image has been significantly tarnished. Charging for parking on Saturdays, especially when there are so many reasons not to charge, will not improve WMATA's image.

On December 14, 2017, the Virginia members of the WMATA board offered an amendment to the original pilot resolution that would have allowed the Fairfax County stations to remain free on Saturdays by not participating in this part of the pilot. The amendment failed, due to a veto by the District of Columbia. Virginia members then requested to delay action on this pilot to allow time for further discussion at the Committee level, including public input, and this motion also failed, due to a veto by the District of Columbia. Therefore, the pilot will move forward as proposed and will start on February 8, 2018.

Since the Wiehle-Reston East Station is owned by the county, the Board of Supervisors controls the fee structure at this facility. Board action is required to charge parking fees. Staff supports increasing the hours of collection on weekdays. Currently, parking charges begin at 9:30 a.m. and end at 1:00 a.m. During the pilot project charging for parking would begin at 7:30 a.m., and extend to 2:00 a.m. on Fridays. This is expected to generate a small increase in parking revenue. Therefore, staff recommends that no fee be charged on Saturdays and that the hours of collection be changed to follow weekday changes made by the WMATA board for the rest of the system.

FISCAL IMPACT:
The County has an ongoing revenue stream from the Wiehle-Reston East Station parking facility. Extending the hours of collection of the parking fee on weekdays should generate a small amount of additional revenue for the County which is part of the total $4.95 daily parking fee. This ongoing revenue will be deposited into Fund 40125, Metrorail Parking System Pledged Revenues and used for debt service payments on bonds sold to fund additional Metrorail parking. Continuing free parking on Saturdays at this facility will have no impact on this ongoing revenue, because there is no current

charge on Saturdays. The lower $3.00 fee at West Falls Church Station will not affect the $1.25 surcharge fee that is currently collected to pay debt service, since the reduction will be taken from the portion of the fee that is used by WMATA to maintain the facilities.

ENCLOSED DOCUMENTS:
None

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Joe LaHait, County Debt Manager, Department of Management and Budget
Dwayne Pelfrey, Chief, Transit Operations Division, FCDOT
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT

Board Agenda Item
January 23, 2018

ACTION - 3

Authorization of Fairfax County Participation in the Go Virginia Grant Application for the Northern Virginia Tech Talent Pipeline

ISSUE:
Board of Supervisors (Board) authorization is requested for Fairfax County to participate in the Go Virginia grant for the Northern Virginia Tech Talent Pipeline (NVTTP) initiative. The state announced funding approval for this grant on December 12, 2017 (Attachment 1). $175,000 in County Local Cash Match has been pledged. The Board encumbered up to $200,000 in funding from the Economic Development Support Fund (EDSF) for these purposes on September 26, 2017. There are no County grant positions associated with this award. No additional County funding will be necessary.

RECOMMENDATION:
The County Executive recommends that the Board authorize the County to participate in the Go Virginia grant and utilize the previously encumbered EDSF funds for this purpose.

TIMING:
Board action is requested on January 23, 2018 in order to meet the county's commitment to the Go Virginia Region 7 grant.

BACKGROUND:
The Go Virginia Northern Virginia Region 7 Council is administering grant funds for the Commonwealth's new initiative to create jobs in high-wage industries. Region 7 includes the counties of Arlington, Fairfax, Loudoun, and Prince William; and the cities of Alexandria, Falls Church, Manassas, and Manassas Park. State funds in the amount of $3.2 million is available for award in this region, and will be shared by several successful proposals. In addition, $11.1 million in competitive state-wide funds is available for projects that engage localities in two or more of the state's regions.

Projects funded will address one or more of the Council's three broad goals:

- Grow and strengthen Northern Virginia's technology workforce,
- Support the expansion of small and medium sized growth companies, and
- Increase technology transfer and commercialization activities from research centers and institutions.

The Northern Virginia Tech Talent Pipeline project (Attachment 2) addresses the first goal of Go Virginia: to strengthen the technology workforce, by increasing the number of qualified candidates to meet the hiring needs of regional technology firms.

Northern Virginia Community College (NOVA) will serve as project administrator, working closely with the Northern Virginia Technology Council (NVTC). County staff convened the team for the project. Program partners include: George Mason University (GMU), Fairfax County Public Schools (FCPS), Alexandria- Arlington Workforce Investment Board, local governments and local economic development offices of Region 7. All have committed to support the Northern Virginia Tech Talent Pipeline nomination. The total project budget is $975,000 with the Fairfax County cash match of $175,000.

The overall goal of the Northern Virginia Talent Pipeline is to create a workforce system that effectively attracts, prepares, and retains qualified candidates to fill high demand jobs.

The target occupational areas are: Programming and Software Development; Networking and Cybersecurity; and Data and Data Warehousing.

The target populations are:

- Tech workers who lack the high demand credentials
- Military veterans and those transitioning from service
- College students, recent graduates and high school seniors with desired aptitudes
- Parents, teachers, and counselors who provide career guidance

The project consists of the following four strategies:

Create a common information platform that brings together the resources of Pipeline partners in a single website. The website will provide an interactive, easy to use experience with graphics and information organized by the interests and needs of the target populations. It will include labor market data, training and education programs, and financial assistance, and internship and job opportunities. NOVA will host the platform, building on the NVTC Tech Talent Initiative website: www.nvtc.org/resources/tech_talent_initiative.php .

Expand the NVTC Tech Talent Pipeline Employer Collaborative (TTEC). The TTEC is a collaborative organization of 20 regional tech employers using the Talent Pipeline Management (TPM) methodology, an initiative and methodology that the US Chamber of Commerce Foundation is implementing nationally, to develop a workforce with skills, competencies and certifications they require. Go Virginia funds will enable TTEC to add

new employers and expand the focus to address data analytics and network infrastructure in addition to ongoing work addressing software development and cybersecurity. The collaborative provides real-time feedback that will inform the other strategies.

Develop an outreach and promotional campaign with a common messaging and brand to reach the identified audiences and goals of NVTTP. The project administrator will engage contract services to work with partners to develop a communication and outreach plan and create print, broadcast, and social media tools to drive people to the web-platform where they will find information targeted to their interests and needs. Outreach activities will be planned to raise interest and provide information to target audiences.

Upskill our current and future workforce through a "credential enhancement" effort. Partners are retooling and expanding existing program content and delivery to focus on providing students with information needed to pass credential exams and gain soft skills and hands-on learning required to fill high demand jobs. Resources will be leveraged such as the Commonwealth's Fast Forward program, Workforce Financial Assistance (FANTIC), and federal Pell and Perkins Grants.

FISCAL IMPACT:
This item will result in the expenditure of $175,000 from the Economic Development Support Fund (Attachment 3).

ENCLOSED DOCUMENTS:
Attachment 1 – Press Release from the Office of the Governor
Attachment 2 – Executive Summary for NVTTP Go Virginia application
Attachment 3 – EDSF Nominations to Date and Fund Summary

STAFF:
Joe Mondoro, Chief Financial Officer
Eta Nahapetian Davis, Economic Initiatives Coordinator, Office of County Executive
Scott Sizer, P3 Coordinator, Office of County Executive
Patti Stevens, Director, Office of Public Private Partnerships

(http://www.virginia.gov/)

For Immediate Release: December 12, 2017
Contacts: Office of the Governor: Brian Coy, Brian.Coy@governor.virginia.gov | Virginia Department of Housing and Community Development: Elizabeth Rafferty, Elizabeth.Rafferty@dhcd.virginia.gov

Governor McAuliffe Announces $2.2 Million in First GO Virginia Grants

~Five projects address strategic needs of regions in order to create higher paying jobs~

RICHMOND – Governor Terry McAuliffe today announced the initial regional projects funded through the Growth and Opportunity for Virginia (GO Virginia) economic development program. The GO Virginia Board of Directors, which is comprised of members of the Governor's cabinet, the General Assembly, business community, and others, approved more than $2.2 million in GO Virginia Per Capita grant funding for five projects throughout the Commonwealth. GO Virginia offers state-incentives for local and regional collaboration to address region-specific economic challenges and create higher wage jobs.

The GO Virginia Board has $10.9 million available in FY 2018 for per capita grants for allocation to the nine regions. Four of the nine GO Virginia Regions submitted applications in this first round of per capita funding set aside for every region. All regions are expected to submit applications in the next round in January for their per capita share of funding. All regions will also be eligible for competitive grants that are expected to be awarded in April 2018. Projects approved for funding were reviewed by subject matter experts and Board members for alignment with the goals of the region's Growth and Diversification plan and GO Virginia.

"These projects will leverage public and private funding to grow and diversify each region's economy," **said Governor McAuliffe**. "There are many innovative proposals from our regions that will assist in addressing the challenges my administration has worked to tackle in areas such as cybersecurity and workforce development. These projects will strengthen our workforce, support collaborative programs, and will bolster our successful efforts to build the new Virginia economy."

"Today marks an important milestone for GO Virginia in that we funded the first round of applications to support projects identified in the regions as advancing the priorities of their growth and diversification plans," **said John "Dubby" Wynne, Chair of the GO Virginia Board.** "I want to commend all the regions and their GO Virginia Regional Councils for their commitment to working aggressively to address some of the key issues and opportunities facing our Commonwealth. Given the quality of the growth and diversification plans and the increased regional collaboration already experienced with GO Virginia incentives, I know we will continue to see excellent projects come forward in the comings months."

The GO Virginia Per Capita grant funds will be used to implement projects that align with the regions' Growth and Diversification Plans. These plans included both an economic analysis and assessments of the economic, workforce, and structural barriers to creating higher paying jobs in each region. Implementation of these projects will be the first step in addressing these challenges.

https://governor.virginia.gov/newsroom/newsarticle?articleId=21954

2017 Round 1 Per Capita Grant Awards:

GO VA Region and Localities within region involved in project award	Project Name	GO VA Per Capita Award	Project Description
Region 5- Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; and the County of York	HR Cyber Co-lab	$642,713	The HRCyber Co-Lab will serve as an anchor for innovation in the cybersecurity, data analytics, autonomous vehicles and virtual technologies markets in Hampton Roads.
Region 5- Cities of Hampton, Newport News, Williamsburg, Virginia Beach; Counties of James City and Isle of Wright	Virginia Digital Shipbuilding Workforce Program	$647,540	This project will create a regional and statewide program to train approximately 8,500 future workers – skilled craftsmen, engineers, designers, and IT professionals - to work in the new digital manufacturing environment and will support Hampton Roads' existing advanced manufacturing and shipbuilding clusters.
Region 7- Cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park, Counties of Arlington, Fairfax, Loudoun, and Prince William	Northern Virginia Tech Talent Pipeline	$487,500	This project will build upon Northern Virginia's existing computer services and cybersecurity clusters to create a workforce system that effectively attracts, prepares, and retains qualified candidates to fill high demand technology jobs in several targeted, high paying occupational areas: programming and software development; data and data warehousing; and networking and cybersecurity.

https://governor.virginia.gov/newsroom/newsarticle?articleId=21954

Region 7- City of Alexandria and County of Arlington	Strengthening Alexandria/Arlington's Technology Workforce	$201,896.62	This initiative is a combination of career pathway assistance, incumbent worker training, upskilling, on-the-job training and credentialing activities aimed to support computer services industry workers in newly located or newly established firms in Northern Virginia.
Region 7- Cities of Manassas and Manassas Park and Counties of Prince William, Loudoun, Fairfax	NOVA FabLab	$250,000	Northern Virginia Community College in collaboration with Micron Technology, U.S. Army's Night Vision and Sensors Directorate, and BAE Systems presented this project to create a state-of-the-art engineering technology "Fabrication Laboratory" in Northern Virginia. This project will help create high-paying engineering jobs by leveraging established internship programs at Micron Technology and BAE Systems as well as the existing SySTEMic curriculum at Northern Virginia Community College.

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Go Virginia Proposal to Develop the Northern Virginia Tech Talent Pipeline
Executive Summary

At the 2017 annual economic summit convened by Northern Virginia Chamber of Commerce and the Washington Business Journal, corporate leaders on a keynote panel were asked, "What keeps them up at night?" They all agreed that finding talent to fill jobs was their top concern and that lags in hiring cost were costing them money. The 2016 Greater Washington Workforce Needs Assessment and NOVA Workforce Labor Market Dashboard validate these concern, indicating that the demand for candidates with the skills, certifications, and experience to fill IT and cyber jobs significantly outpaces supply and the gap is projected to widen over the next decade.

Without a significant increase in the size of the Cyber/IT workforce in Northern Virginia, employers will move current positions and create new ones in lower cost second-tier markets to take advantage of lower costs. Attracting and retaining a qualified tech workforce is critical to sustain corporate growth and attract new companies to continue the economic success of our region. Leaders from local government, economic development and education have committed to work collaboratively to address this challenge by creating the **Northern Virginia Tech Talent Pipeline** with shared goals, an online information platform, communications and outreach strategies, and upskilling to increase numbers of credentialed candidates for jobs.

Through these combined efforts, we will attract more students and veterans to tech fields; upskill current tech workers with high demand credentials; and showcase Northern Virginia *as **the place*** for tech and cyber companies to find and retain Tech Talent. Conservative estimates are that 130 additional jobs will be filled in each year of the project at an average salary of $88,000. The GO Virginia funding invested in this project will yield an additional $1,836,070 of state tax revenue.

NOVA Workforce will lead this effort and serve as the administrative agency for the project. Northern Virginia Technology Council (NVTC) Tech Talent Employer Collaborative will provide data to monitor progress on this project and real-time feedback from employers. NVTC will collaborate with NOVA on the platform, building on their Tech Talent Initiative website: www.nvtc.org/resources/tech_talent_initiative.php. Other program partners include George Mason University's Volgenau School of Engineering and the College of Science, Fairfax County Public Schools; Alexandria- Arlington Workforce Investment Board, local governments and economic development authorities of the counties and cities within Region 7.

This project is complementary to the workforce initiatives being proposed as part of the new VEDP Strategy & Action Plan and addresses recommendations made in the NVTC Greater Washington Workforce Needs Assessment in 2016 and the Northern Virginia Regional Commission Roadmap to Regional Success in 2015. The **Northern Virginia Tech Talent Pipeline** will promote awareness of and improve access to resources provided through state and federal programs and the region's public and private workforce providers, educators, and employers.

The project connects the robust workforce development and educational resources of Region 7 with the communications expertise and contacts of the regional economic development agencies and local government. This system will create synergy and continue to produce results beyond the Go Virginia Grant.

Economic Development Support Fund (EDSF) Nominations to Date

1/4/2018

Project	Sponsor	Nomination Date	Initial Screening	Proposed Funding	Encumbrance Approval	Encumbrance Amount	Appropriation Approval	Appropriation Amount
AFID Grant - Local Match	Bulova / Foust	7/25/2017	10/17/2017	$500,000	11/21/2017	$500,000		
Annandale Pilot Projects	Gross	9/26/2017	10/17/2017	$125,000	11/21/2017	$125,000	12/5/2017	$125,000
Downtown Herndon Redevelopment	Bulova / Foust	9/26/2017	10/17/2017	$1,200,000	11/21/2017	$1,200,000		
Go Virginia: Tech Talent Pipeline - Local Match	Bulova / Foust	9/26/2017	10/17/2017	$200,000	9/26/2017	$200,000		
ESSP Implementation	Foust	9/26/2017		$350,000				
Greater Washington Export Center	Bulova / Foust	9/26/2017		TBD				
Historic Tourism and Marketing Support	Storck	9/26/2017		TBD				
Sports Tourism ED Opportunity	Herrity	9/26/2017		TBD				
Sports Tourism Task Force Recommendation	Herrity	9/26/2017		TBD				
Go Virginia: Innovation Initiative - Local Match	Foust	10/24/2017		TBD				
Go Virginia: MACH37 - Local Match	Foust	10/24/2017		$25,000				
Springfield Gateway Projects	McKay	11/21/2017		TBD				
Go Virginia: Security University	Foust	12/5/2017		TBD				

EDSF Fund Summary	
Initial Funding Amount	$ 5,000,000
Total Encumbered	$ 2,025,000
Total Appropriation Authorized	$ 125,000
Unencumbered Amount	$ 2,975,000

Board Agenda Item
January 23, 2018

ACTION – 4

Board Approval of the First Interim Agreement: Master Development Plan Between the Board of Supervisors of Fairfax County, Virginia and The Alexander Company and Elm Street Development (Mount Vernon District)

ISSUE:
Board approval of the First Interim Agreement: Master Development Plan, between the Board of Supervisors of Fairfax County, Virginia and The Alexander Company and Elm Street Development (collectively, the "Developer") for the master development plan for the Original Mount Vernon High School Redevelopment.

RECOMMENDATION:
The County Executive recommends that the Board approve the First Interim Agreement: Master Development Plan between the Board of Supervisors of Fairfax County, Virginia and The Alexander Company and Elm Street Development.

TIMING:
The Board held a public hearing on December 5, 2017. Pursuant to the proposal review process outlined in the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 (the "PPEA"), there must be a minimum of 30 days between the public hearing and authorization of the Agreement. Assuming approval of the First Interim Agreement, work is expected to begin in early 2018.

BACKGROUND:
The County owns approximately 22 acres of land located at 8333 Richmond Highway, Alexandria, Virginia (Mount Vernon District), and the Original Mount Vernon High School is located on this property. The building was constructed in 1939 and vacated in 2016 at the conclusion of a long-term lease. Current planning efforts are focused on both immediate occupancy and long-term redevelopment planning. The long-term planning and redevelopment will also consider the 18 acres of adjacent land owned by the Fairfax County Park Authority, and on which the George Washington RECenter is located. The County-owned property and the Park Authority property total approximately 42 acres.

On May 26, 2017, the Department of Procurement and Material Management (DPMM) advertised a Request for Proposals pursuant to the PPEA, seeking a qualified firm to enter into an agreement to develop a master development plan for the combined Original Mount Vernon High School and George Washington RECenter sites.

On June 30, 2017, the County received proposals from two offerors, both of which were determined to be responsive and were publicly posted under the PPEA notice requirements. After review and recommendation by the Selection Advisory Committee, the County entered negotiations with both offerors.

Negotiations with each offeror concluded on October 23, 2017, with a recommendation to enter into the Agreement with the Developer. The drafting of the master development plan is Phase 1 of the overall redevelopment effort and will be followed by Phase 2 for the master development plan implementation. Staff will return to the Board at a future date for authorization of Phase 2 work.

FISCAL IMPACT:
The County will pay the Developer for the actual cost of developing the master development plan up to $399,000. With the additional county contingency in the amount of $61,000 (approximately 15% of the master development plan cost), the total required funding is $460,000. Funding is available in Project 2G25-102-000 – Original Mount Vernon High School Redevelopment. This project is included in in the Adopted FY 2018 – FY 2022 Capital Improvement Program (with Future Fiscal Years to FY 2027).

ENCLOSED DOCUMENTS:
Attachment A – First Interim Agreement: Master Development Plan

STAFF:
Robert A. Stalzer, Deputy County Executive
Joseph Mondoro, Chief Financial Officer, Department of Management and Budget
Kirk Kincannon, Director, Fairfax County Park Authority
Cathy Muse, Director, Department of Procurement and Material Management
Martha Reed, Capital Programs Coordinator, Department of Management & Budget
James Patteson, Director, Department of Public Works and Environmental Services (DPWES)
Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

ASSIGNED COUNSEL:
Cynthia Bailey, Deputy County Attorney, Office of the County Attorney
Susan Timoner, Assistant County Attorney, Office of the County Attorney

RFP2000002301 – ORIGINAL MOUNT VERNON HIGH SCHOOL REDEVELOPMENT

FIRST INTERIM AGREEMENT: MASTER DEVELOPMENT PLAN

THIS FIRST INTERIM AGREEMENT: MASTER DEVELOPMENT PLAN (the "Agreement") is dated as of the ___ day of January 2018 (the "Contract Date"), by and between The Alexander Company, Inc. and Elm Street Development, Inc. (jointly, the "Developer"), and the Board of Supervisors of Fairfax County, Virginia (the "County"). The Developer and the County may be referred to collectively in this Agreement as the "Parties."

RECITALS

R-1. The Original Mount Vernon High School ("OMVHS" or the "Property") is located at 8333 Richmond Highway, Alexandria, Virginia and is comprised of the following Tax Map Parcels: Tax Map No. 101-4 ((01)) Parcels 5A, 57, 58A, and 47A; Tax Map No. 101-4 ((07)) Parcels 1 and 39; Tax Map No. 101-4 ((8E)) Parcel 1; Tax Map No. 101-4 ((8A)) Parcel A1. The Property also includes approximately 1.4 acres of right-of-way. Attached Exhibit A shows the general location of the Property. Built in 1939, with additions in the 1950s and renovations in the 1980s, the school is a classic example of Colonial Revival Architecture, and sits on the land that was once part of the estate of President George Washington. The facility has been nominated and is currently under review for inclusion in the National Register of Historic Places.

R-2 The building and the overall 42-acre site offer a unique opportunity to create a dynamic destination for residents of the entire region and harness innovative models of design, community building, social impact, and business ingenuity.

R-3 To that end, on May 26, 2017, the County issued a Request for Proposals ("RFP"), RFP No. 2000002301, to solicit a development partner pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002, as amended ("PPEA") to transform the OMVHS into an innovative campus that serves the surrounding communities.

R-4 The RFP included General Conditions and Instructions to Bidders, which General Conditions are attached as Exhibit B and are fully incorporated into this Agreement, as applicable.

R-5 The County has selected the Developer to perform the first phase ("Phase One") of the OMVHS redevelopment by creation of a Master Development Plan ("Master Development Plan") that will detail the vision for the Property such that its implementation can be economically and expeditiously achieved.

R-6 Following completion of Phase One, the Parties will endeavor to reach a mutual understanding upon subsequent agreements that will provide for the implementation of the OMVHS redevelopment effort ("Phase Two") in a manner consistent with the Master Development Plan.

R-7 The Parties want to enter into this Agreement to outline each of their respective responsibilities with respect to Phase One.

Accordingly, in consideration of the mutual promises in this Agreement, and other valuable consideration, the receipt and legal sufficiency of which are acknowledged by the Parties, the Parties agree to the following:

ARTICLE I
THE SCOPE OF WORK

Section 1.01. The Recitals are fully incorporated into this Agreement.

Section 1.02. The Developer will, within nine months from the Contract Date, provide the County with a Master Development Plan that will specifically detail an economically feasible plan to redevelop the Property in a form and with all substantive requirements as may be deemed necessary by County staff for presentation to the Board of Supervisors (the "Services") in accordance with the schedule described in Article III.

Section 1.03. The Master Development Plan documents will include the following items:

A. Existing context land uses, plans, and accompanying densities/intensities, construction type, and square footage of buildings;

B. Proposed land use and building uses with accompanying densities/intensities, construction type, and square footage, vehicular circulation and parking, open space and pedestrian circulation, and campus infrastructure;

C. Compliance with the County's Comprehensive Plan, and all governing ordinances, codes, policies, and regulations;

D. Identification of zoning actions and regulatory process for the implementation of the development;

E. Development alternatives with priorities and principals, and scenarios based on community needs, master development plan goals, and market conditions;

F. Environmental impacts and proposed solutions to mitigate such impacts;

G. A detailed development implementation schedule that may include a phasing plan with realistic and agreed upon timeframes for certain development components;

H. A long-term maintenance regime and property management plan;

I. Coordination and compliance with the land use, transportation grid, and design standards set forth in the Embark Richmond Highway Plan Amendment (2015-IV-MV1);

J. A description of possible proffered contributions including road and frontage improvements, stormwater management facilities, open space, affordable housing, infrastructure construction, and other public and community use/need facilities;

K. A detailed analysis of existing and proposed recreational amenities and open spaces as coordinated with the Fairfax County Park Authority's Needs Assessment, including use or replacement options for the George Washington RECenter located on the Property;

L. A comprehensive internal pedestrian network that connects all proposed uses within the Property and is integrated with the future Route 1 widening project and the Embark Bus Rapid Transit Station;

M. A detailed description of how to address the issues and challenges outlined by the following assessments, studies, and evaluations previously prepared:

1. The ADA Compliance Assessment Report;
2. The Facility Condition Assessment;
3. The Hazardous Material Feasibility Study;
4. The Historic Structure Report;
5. One Fairfax principals, including efforts to target economic opportunities to underserved segments of the Fairfax County community;
6. The Fairfax County Economic Success Strategic Plan; and
7. The OMVHS Re-utilization Task Force Report.

N. A detailed cost model showing the analysis of the detailed costs, and financial feasibility necessary to effectuate the Master Development Plan, including options that will allow flexibility to adapt to future needs. The Master Development Plan will address the relationship between type and quality of development versus development cost, and will outline economical design elements that include innovative approaches to aesthetics, construction methods and materials, sustainable design, life cycle, and maintenance, among others. Alternative funding sources should also be evaluated for the development, such as federal and state tax credits and possible grants;

O. The Master Development Plan will ensure that the on-site gymnasium services will be fully available throughout the duration of the Property's development, subject to temporary closure or relocation for reasonable periods of time (with coordination and approval by the County) when necessary for code-required improvements, maintenance, or repairs;

P. At the County's request, the Developer will provide alternative development concepts and land use scenarios with associated costs and development priorities.

Section 1.04. Development of the Master Development Plan must include engagement and formal input from the various County and community stakeholders, including, but not limited to, Fairfax County Neighborhood and Community Services, the Fairfax County Park Authority, the Fairfax County Department of Public Works and Environmental Services, the Fairfax County Department of Transportation, the Fairfax County Department of Planning and Zoning, members of the Fairfax County Board of Supervisors, the OMVHS Steering Committee, and other agencies and community organizations as the County may identify ("Stakeholders").

Section 1.05. The Developer will conduct at least three formal community meetings at intervals mutually agreed upon that are sufficiently advertised among the Stakeholders.

Section 1.06. The Developer will provide bi-weekly progress plans and reports and written updates ("Updates"), which the County may disseminate to the Stakeholders during the development of the Master Development Plan.

Section 1.07. The Developer may be required to present the Draft Master Development Plan and the Final Master Development Plan (as they are more fully described in Article II below) to designated community and/or County officials.

ARTICLE II
DELIVERABLES

Section 2.01. Preparation of the Master Development Plan will consist of three phases, reflecting in greater detail for each phase the items set forth in Section 1.03:

A. Preliminary Master Development Plan, to include: cost models, draft narratives, including an executive summary, preliminary site plan with a minimum of three proposed land use layouts and densities/intensities, and proposed vehicular and pedestrian connections, parking and open space areas throughout the public and private facilities and site. The Preliminary Master Development Plan will identify any actions required for implementation of proposed land uses and densities/intensities. With regard to the alternative proposed concepts to be included in the Preliminary Master Development Plan, Developer will provide development concept options offering different scenarios/types/mixes at concept level with sufficient information to provide for a cost model to aid in the evaluation and selection of the final option.

B. Draft Master Development Plan, to include:

1. Site Plan, describing proposed land uses, building types/uses, and densities/intensities, and proposed vehicular and pedestrian connections, parking and open space areas throughout the public and private facilities and site;
2. Executive Summary and Narratives explaining project vision;
3. Additional drawings/schematic plans and three dimensional models/views, as appropriate, to clearly demonstrate the proposed Master Development Plan elements, goals, and phasing;
4. Master Development Plan implementation plan and schedule; and
5. Phasing plan as may be applicable.

C. Final Master Development Plan, to be prepared consistent with all matters described in Section 1.03 and Section 2.01(B), in form and substance satisfactory to the County, including without limitation:

1. Final Site Plan;
2. Final Cost Model to include total Property development costs, hard costs by product type (total and by square foot), soft costs, and development fees;
3. Sources and Uses of Funds Table;
4. Detailed Development & Operating Pro Forma;
5. Structure of Public-Private Partnership;
6. Narrative describing financial plan and party obligations; and
7. Maintenance and Operations Regime and Property Management Plan.

Section 2.02. The Master Development Plan will be in both PDF format and in native source format, including Microsoft Work, Microsoft Project, PowerPoint, etc.

Section 2.03. The County retains all ownership rights to the Master Development Plan, without limitation, including any supporting data and the Developer work product (collectively all of the

foregoing are defined as the "Work Product"). The County has the right to provide the Master Development Plan together with all other Work Product to another developer or developers for the development of the Property or other related projects. The Developer will assign to the County all Work Product in the form acceptable to the County (the "Assignment"). In addition, the Developer will provide the County with a consent to the Assignment from all consultants of the Developer and other parties who may have an interest in the Work Product to assure the County of the legal right to use all of the Work Product without limitation.

ARTICLE III
PURCHASE PRICE AND PAYMENT SCHEDULE

Section 3.01. This Agreement is for a total amount of $399,000 ("Contract Price"), which is made up of the following, as set forth in Exhibit C: $340,000 ("Base Contract Amount"); $25,000 ("Reimbursable Expenses"); and $34,000 ("Contingency"). Payment of the Contract Price will be according to Section 3.02, and is contingent on the Developer's timely delivery of all deliverables as described in this Agreement, reasonably satisfactory to the County, in accordance with the following schedule:

A. Initial 30-Day Period. Within 30 days after the Contract Date, the Developer will provide a reasonable schedule to meet the development milestones showing start and end dates for each task and any critical path milestones and deliverables.

B. Initial Six-Month Period. Within six months after the Contract Date, during which time Developer will conduct all information gathering, Stakeholder outreach, preparation of a concept master plan and financial feasibility analysis, the Developer will provide the County with the all of the initial deliverables as set forth in Section 2.01(A) and (B) ("Initial Deliverables").

C. Final Two-Month Period. Within two months after the County reasonably determines that it has received all of the Initial Deliverables, but not later than eight months after the Contract Date, the Developer will update and refine the Initial Deliverables as described in Section 2.01(C) in a final draft format sufficient to enable County staff to commence preparation of a formal submission and recommendation to the Board of Supervisors of the Master Development Plan ("Draft Master Development Plan").

D. Final 30-Day Period. Within 30 days after the completion of all tasks for the Final Two-Month Period described in Section 3.01(C), the Developer will work with the County to finalize work on the Master Development Plan, including the Developer working with County staff on a Board item to be presented to the Board of Supervisors. The Developer will participate, if requested, in the presentation to the Board of Supervisors when the Board considers staff recommendations with regard to the Master Development Plan ("Final Master Development Plan").

Section 3.02. Payment of the Base Contract Amount will be in installments according to the schedule below. In addition, the County will reimburse Developer for all reasonable and necessary expenses directly related to the Services up to the Reimbursable Expenses. An invoice for such expenditures, with appropriate backup, will be provided by Developer to the County upon completion of each milestone as described in this Article III. Payment from the Contingency will be available only with justification for need and with the County's prior written authorization.

A. Within twenty-five business days of completion of the Initial Six-Month Schedule described in Section 3.01(B), as reasonably determined by the County, the County will pay up to 50% of the Base Contract Amount, based upon work performed by the Developer with supporting invoices and other documentation of costs and payments.

B. Within twenty-five business days of completion of the Final Two-Month Schedule as described in Section 3.01(C), as reasonably determined by the County, the County will pay up to an additional 25% of the Base Contract Amount, based upon work performed by the Developer with supporting invoices and other documentation of costs and payments.

C. Within twenty-five days after the County accepts the Master Development Plan following consideration by the Board of Supervisors, the County will pay up to the remaining balance of the Contract Price, based upon work performed by the Developer with supporting invoices and other documentation of costs and payments.

D. If, at any point during the duration of this Agreement, County staff chooses not to present the Master Development Plan to the Board of Supervisors, or the County elects not to accept the Master Development Plan after a presentation to the Board of Supervisors, the County will pay to the Developer an equitable portion of the Base Contract Amount, based upon work performed by the Developer with supporting invoices and other documentation of costs and payments.

ARTICLE IV
STAFFING

Section 4.01. The Developer has assigned the following personnel/consultants to perform the Services (the "Consultants"):

A.	Alexander Company	Co-Developer
B.	Elm Street Development	Co-Developer
C.	Walter L. Phillips	Civil Engineer
D.	Gorove/Slade	Traffic Engineer
E.	Wetland Studies & Solutions	Environmental Studies
F.	Geo-Technology Associates	Geotechnical Engineer
G.	McGuire Woods LLP	Land Use Counsel
H.	Heise Jorgenson & Stefanelli P.A.	Title Attorney
I.	LandDesign	Land Planning
J.	Smart Site	Value Engineering

Section 4.02. The Developer acknowledges that the County selected the Developer based, in critical part, on the qualifications of the Consultants. Accordingly, absent circumstances beyond the Developer's control such as death, illness, or turn-over, these Consultants will not be changed or substituted during the term of the Agreement without the County's consent. If any of the Consultants are unable or unwilling to meet the requirements of 7.02(A) or 7.02(B), which will be determined within 30 days of the Contract Date, the County may either amend the insurance requirements for that Consultant or allow the Developer, with the County's consent, to change or make a substitution for such Consultants. The Developer's competing business priorities shall not be a basis for a change or substitution of these Consultants. Any substitutions of key personnel of the Developer or the Consultants must be approved in advance by the County.

ARTICLE V
TERMINATION

Section 5.01. If the County terminates this Agreement for either convenience or cause as set forth under Paragraph 31 of the General Conditions attached as Exhibit B, the County reserves the right to work with any other developer who responded to RFP No. 2000002301.

ARTICLE VI
PHASE TWO

Section 6.01. After the Developer's delivery of the Master Development Plan and the County acceptance of the Master Development Plan, the County intends to negotiate in good faith with the Developer to reach subsequent agreements regarding the actual development of the Property. The County, however, is under no obligation to continue to Phase Two with the Developer. It is anticipated that Phase Two will involve at least two separate agreements. The first agreement, which is anticipated to be titled the Second Interim Agreement: Land Entitlements ("Second Interim Agreement"), will cover the portion of Phase Two where rezoning and other land entitlements will be pursued jointly by the County and the Developer and will detail the sharing of responsibility and costs for such land entitlements. While land entitlements are pursued under the terms of the Second Interim Agreement, the Parties will negotiate in good faith to reach a comprehensive agreement for the actual physical implementation of the redevelopment. Should the Parties be unable to agree on the terms of a comprehensive agreement, the County is under no obligation to continue Phase Two with the Developer. The Second Interim Agreement and the comprehensive agreement (which may consist of one or more contracts) will be presented to the Board of Supervisors for approval in accordance with the provisions of the PPEA.

Section 6.02. If the County, in its sole discretion, elects to move forward with the Developer on Phase Two, in whole or in part, County staff and the Developer will work collaboratively following the County's acceptance of the Master Development Plan to reach agreement on the terms of the Second Interim Agreement within 90 days of such acceptance, with the expectation that the Second Interim Agreement will be presented to the Board of Supervisors for its consideration and approval in accordance with the provisions of the PPEA.

Section 6.03. If the Developer fails to reach agreement with County staff on the terms of the Second Interim Agreement within 90 days of the County's acceptance of the Master Development Plan, the County will have the right to offer one or more developers the right to implement Phase Two, or in its sole discretion, it may extend the time in which to reach agreement on the Second Interim Agreement.

Section. 6.04. Nothing in this Agreement shall prohibit the County, in its sole discretion, from using or leasing the Property in any manner during any period before the implementation of Phase Two. If any such use, however, materially impacts the implementation of the Master Development Plan, the Parties will address any such impacts pursuant to their negotiation the Second Interim Agreement, or as applicable, a comprehensive development agreement.

ARTICLE VII
INSURANCE

Section 7.01. The Developer is responsible for its work and for all materials, tools, equipment, appliances, and property of any and all description used in connection with the project, whether owned by the Developer or by the County. The Developer and its Consultants assume all risks of direct and indirect damage or injury to any person or property wherever located, resulting from any action, omission, commission, or operation under this Agreement, or in connection in any way whatsoever with the contracted work.

Section 7.02. The Developer shall, during the continuance of all work under this Agreement provide the following:

A. Maintain statutory Worker's Compensation and Employer's Liability insurance in limits of not less than $100,000 to protect the Developer from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or Consultants, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.

B. Maintain Commercial General Liability insurance in the amount of $1,000,000 per occurrence/aggregate, to protect the Developer, its Consultants, and the interest of the County, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under this Agreement or in connection with contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required.

C. Maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of $1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Developer. In addition, all mobile equipment used by the Developer in connection with the contracted work will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy.

D. Maintain Professional Liability insurance in the amount of $1,000,000 per occurrence/aggregate to cover each individual professional staff.

E. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

F. Rating Requirements:

1. The Developer agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
2. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the Developer's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.

G. Indemnification: See Article 63 of the General Conditions and Instructions to Bidders (Exhibit B).

H. The Developer will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein, and shall have it filed with the County Purchasing Agent or Risk Manager before any work is started.

I. If the Developer delivers services from a County-leased facility, the Developer is required to carry property insurance on all equipment, to include County-owned installed and maintained equipment used by the Developer while in their care, custody and control for use under this Agreement.

J. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five day written notice to the County Purchasing Agent or Risk Manager. The Developer shall furnish a new certificate prior to any change or cancellation date. The failure of the Developer to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.

K. Precaution shall be exercised at all times for the protection of persons (including employees) and property.

ARTICLE VIII
DELAYS AND SUSPENSIONS

Section 8.01.

A. The County may direct the Developer, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time deemed appropriate for the convenience of the County. The County will extend the Developer's time of completion by a period of time that in the discretion of the County is reasonably suited for completion of work. The County may further amend this Agreement by mutual agreement for any increase in the cost of performance of the Agreement (excluding profit) resulting solely from the delay or suspension of the Agreement. No adjustment shall be made under this provision for any delay or interruption resulting from any other cause, including the fault or negligence of the Developer or its Consultants.

B. If the County does not direct the Developer, in writing, to suspend, delay, or interrupt the Agreement, the Developer must give the County written notice if the County fails to provide data or services that are required for completion of this Agreement by the Developer. The County may extend the Developer's time of completion by a period of time that in the

discretion of the County is reasonably suited for completion of work. The County may further amend this Agreement by mutual agreement for any increase in the cost of performance of the Agreement (excluding profit) resulting solely from the delay or suspension of this Agreement. No adjustment shall be made under this provision for any delay or interruption resulting from any other cause, including the fault or negligence of the Developer or its Consultants.

ARTICLE IX
ACCESS TO AND INSPECTION OF WORK PRODUCT

Section 9.01. County designated staff will, at all times, have access to the Work Product being performed under this Agreement wherever it may be in progress or preparation.

ARTICLE X
PROJECT AUDITS

Section 10.01.

A. The Developer shall maintain books, records, and documents of all costs and data in support of the services provided to the County in accordance with the County standard audit requirements as set forth in the RFP. The County or its authorized representative shall have the right to audit the books, records, and documents of the Developer under the following conditions:

1. If the Agreement is terminated for any reason in order to arrive at equitable termination costs;
2. In the event of a disagreement between the Developer and the County on the amount due the Developer under the terms of this Agreement;
3. To check or substantiate any amounts invoiced or paid which are required to reflect the costs of services, or the Developer's efficiency or effectiveness under this Agreement; and
4. If it becomes necessary to determine the County's rights and the Developer's obligations under the Agreement or to ascertain facts relative to any claim against the Developer that may result in a charge against the County.

B. These provisions for an audit shall give the County unlimited access during normal working hours to the Developer's books and records under the conditions stated above.

C. Unless otherwise provided by applicable statute, the Developer, from the effective date of final payment or termination hereunder, shall preserve and make available to the County for a period of three (3) years thereafter, at all reasonable times at the office of the Developer but without direct charge to the County, all its books, records, documents, and other evidence bearing on the costs and expenses of the services relating to the work hereunder.

D. The County's right to audit and the preservation of records shall terminate at the end of three (3) years as stated herein. The Developer shall include this "Right of Audit and Preservation of Records" clause in all subcontracts or consulting agreements issued by it and it shall require same to be inserted by all lower tier subcontractors in their subcontracts, if the lower tier subcontract amount is $10,000 or more, for any portion of the work.

E. If the Developer fails to include this clause in any such contract or lower tier contract, or otherwise fails to insure the County's rights hereunder, the Contractor shall be liable to the County for all reasonable costs, expenses and attorneys' fees that the County may have to incur in order to obtain an audit or inspection of or the restoration of records which would have otherwise been available to the County from said persons. Such audit may be conducted by the County or its authorized representative. If the County is unable to audit the actual cost records as a result of the Developer's failure to ensure the County's rights to inspect cost records as set forth in this paragraph, then the County will be entitled to commercially reasonable costs as reasonably estimated by the County.

ARTICLE XI
DISPUTE RESOLUTION

Section 11.01.

A. Any dispute concerning a question of fact as a result this Agreement which is not disposed of by the mutual agreement of the Parties shall be decided by the County Purchasing Agent, who shall reduce his/her decision to writing and mail or otherwise forward a copy to the Developer within ninety (90) days. The decision of the County Purchasing Agent shall be final and conclusive unless the Developer appeals within six months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. The Developer may not institute legal action, prior to receipt of the County Purchasing Agent's decision on the claim, unless the County Purchasing Agent fails to render such decision within the time specified.

B. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment; however, written notice of the Developer's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

ARTICLE XII
NOTICES

Section 12.01.

A. All notices, demands, or other communications between the Parties ("Notice") must be in writing. Notices must be given by (i) personal delivery or (ii) a nationally-recognized, next-day courier service, addressed as follows:

If to the County:

Fairfax County Department of Public Works and Environmental Services
Public Private Partnership Branch
12000 Government Center Parkway, Suite 449
Fairfax, Virginia 22035
Attn: Katayoon Shaya, Chief, P3 Branch

With a copies to:

Fairfax County
Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064
Attention: County Attorney

and:

Fairfax County Department of Procurement and Material Management
12000 Government Center Parkway, Suite 427
Fairfax, Virginia 22035-0064
Attention: Director

If to Developer:

_____
_____
_____

With a copy to:

_____
_____
_____

B. A Notice given in accordance with this Agreement will be effective upon receipt or refusal by the party to which it is given.

C. For convenience, Notices may be sent via email; however, such email Notice will not be considered effective until the original Notice is received by the party to which it is given pursuant to one of the delivery methods described in subsection (A) above.

D. Either Party may change its Notice address from time to time by informing the other Party in writing of such new address.

ARTICLE XIII
MISCELLANEOUS

Section 13.01. Entire Agreement. This Agreement, together with the attached Exhibits, all of which are incorporated by reference, is the entire agreement between the Parties. The terms of this Agreement may be amended or modified only by a written instrument executed by the Parties.

Section 13.02. Severability. If any provision of this Agreement or its application to any party or circumstances is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person

or circumstances, other than those as to which it is so determined invalid or unenforceable, will not be affected, and each provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law.

Section 13.03. Applicable Law. This Agreement and any dispute, controversy, or proceeding arising out of or relating to this Agreement (whether in contract, tort, common or statutory law, equity or otherwise) will be governed by Virginia law, without regard to conflict of law principles of Virginia or of any other jurisdiction that would result in the application of laws of any jurisdiction other than Virginia.

Section 13.04. Venue. All claims and litigation arising out of or related to this Agreement must be brought and resolved in the courts of the Commonwealth of Virginia located in the County of Fairfax, Virginia, or U.S. District Court for the Eastern District of Virginia, Alexandria Division.

Section 13.05. Assignability. The County may assign all of its rights and obligations under this Agreement without the written consent of the Developer; provided, however, that any assignee of the County will assume all of the obligations of the County under this Agreement. The Developer does not have the right to assign this Agreement.

Section 13.06. Captions; Interpretation. (a) The captions of this Agreement are for reference only and do not describe the intent of this Agreement or otherwise alter the terms of this Agreement. (b) When a reference is made in this Agreement to an Article, a Section, or an Exhibit, such reference is to an Article of, a Section of, or an Exhibit to this Agreement. (c) Whenever the words "include," "includes," or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." (d) The definitions contained in this Agreement are applicable to the singular as well as to the plural forms of such terms and to the masculine, feminine, and non-genders of such terms. Whenever the context requires, any pronouns used in this Agreement include the corresponding masculine, feminine, or non-gender forms.

Section 13.07. No Partnership. Nothing contained in this Agreement will be construed to create a partnership or joint venture between the Parties or their successors or permitted assigns.

Section 13.08. Time of Essence. Time is of the essence with respect to the performance of the obligations of the Parties under this Agreement.

Section 13.09. Counterparts and Distribution. This Agreement may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.

Section 13.10. Waiver. No waiver of any breach of this Agreement will be deemed a waiver of any preceding or succeeding breach under this Agreement or any other agreement. No extension of time for the performance of any obligation or act will be deemed an extension of time for the performance of any other obligation or act.

Section 13.11. Business Days. If any date set forth in this Agreement for the performance of any obligations by the Parties or for the delivery of any instrument or notice falls on a Saturday, Sunday, Legal Holiday, or day in which Fairfax County governmental offices are closed, the compliance with such obligations or delivery will be deemed acceptable on the next business day following such Saturday, Sunday, Legal Holiday, or closing. The term "Legal Holiday" will mean

any Fairfax County, Commonwealth of Virginia, or federal holiday on which post offices are closed in Virginia.

Section 13.12. Contract Date. The Contract Date is the date on which this Agreement is executed by and delivered to the Parties, which date will be inserted at the top of the first page.

Section 13.13. Waiver of Jury Trial. The Parties each waive all rights to a trial by jury in any claim, action, proceeding or counterclaim arising out of or in any way connected with this Agreement.

Section 13.14. Safeguard of Information. Unless approved in writing by the County, the Developer may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Developer or its consultants under this Agreement.

Section 13.15. Prohibition of Developer News Release. Unless approved in writing by the County, the Developer may not sell or give to any individual or organization any information, reports, or other materials given to, prepared or assembled by the Developer or its consultants under this Agreement or otherwise publicize Developer's role and involvement with the Property. Any public announcement of the proposed project pursuant to the Master Development Plan must be fully coordinated with the County.

Section 13.16. Americans with Disabilities Act.

A. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities, and services. Fairfax County government contractors, subcontractors, vendors, and suppliers are subject to this ADA policy. The Developer must make the same commitment and the Developer's execution of this Agreement is an express acknowledgement of the Developer's commitment and compliance with ADA.

B. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Anyone requesting special accommodations should call the Department ADA representative at 703-324-3201 or TTY 1-800-828-1140. Please allow seven working days in advance of the event to make the necessary arrangements.

Section 13.17. Authorization to Conduct Business in the Commonwealth. In accordance with mandatory County policy, the Developer shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. The Developer shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of this Agreement. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this Section.

Section 13.18. Drug Free Workplace. During the performance of this Agreement, the Developer agrees to (i) provide a drug-free workplace for the Developer's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Developer's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or

advertisements for employees placed by or on behalf of the Developer that the Developer maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over $10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this Section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to the Developer in accordance with this Section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

Section 13.19. Immigration Reform and Control Act. The Developer agrees that it does not, and shall not during the performance of this Agreement in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

Section 13.20. Survival. All representations, warranties, and indemnities contained in this Agreement or in any instrument, document, or agreement delivered pursuant to this Agreement will survive termination of this Agreement unless otherwise provided herein.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

DEVELOPER:

The Alexander Company, Inc.

By: _____

Name: _____

Title: _____

DEVELOPER:

Elm Street Development, Inc.

By: _____

Name: _____

Title: _____

THE COUNTY:

Fairfax County Board of Supervisors

By: _____
Bryan Hill

Exhibit A - General Location Map

Exhibit B

Rev 8-2013

COUNTY OF FAIRFAX
COMMONWEALTH OF VIRGINIA

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

(Vendor: The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT, unless otherwise specified. Bidders or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the bidder's own risk and relief cannot be secured on the plea of error.)

Subject to all State and local laws, policies, resolutions, and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, bids on all solicitations issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT will bind bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

I. AUTHORITY-
The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order (except for capital construction projects) issued by the County of Fairfax. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

2. DEFINITIONS-
AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

BEST VALUE: As predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

BID: The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER/OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.

CONSULTANT SERVICES: Any type of services required by the County, but not furnished by its own employees, which is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence and qualification for the type of service required and at fair and reasonable compensation, rather than by competitive sealed bidding.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

COUNTY: County of Fairfax.

GOODS: All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

INFORMALITY: A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

INVITATION FOR BID (IFB): A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the County. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

OPEN MARKET PROCUREMENT (OMP): A method of competitive bidding for the purchase or lease of goods, non-professional services or for the purchase of insurance, construction, or construction management when the estimated cost thereof shall be less than $50,000.

PROFESSIONAL SERVICES: Any type of professional service performed by an independent Contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a), and in conformance with the Fairfax County Purchasing Resolution).

PURCHASING AGENT: The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

REQUEST FOR PROPOSAL (RFP): A request for an offer from prospective offerors which will indicate the general terms which are sought to be procured from the offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

RESPONSIBLE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability

which will assure good faith performance, and having been prequalified, if required. (Reference paragraph 24, General Conditions and Instructions to Bidders).

RESPONSIVE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having submitted a bid which conforms in all material respects to the invitation for bid or request for proposal.

SERVICES: Any work performed by an independent Contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

SOLICITATION: The process of notifying prospective bidders that the County wishes to receive bids on a set of requirements to provide goods or services. The notification of County requirements may consist of public advertising (newspaper, County Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an Open Market Procurement (OMP), or telephone calls to prospective bidders.

STATE: Commonwealth of Virginia.

CONDITIONS OF BIDDING

3. BID FORMS-
Unless otherwise specified in the solicitation, all bids shall be submitted on the forms provided, to include the bid Cover Sheet and Pricing Schedule(s), properly signed in ink in the proper spaces and submitted in a sealed envelope or package. The item pages of the Pricing Schedule which do not include any items for which a bid is required need not be included in the submission of a bid.

Should the bid prices and/or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

4. LATE BIDS & MODIFICATIONS OF BIDS-

a. Any bid/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/modification is considered a late bid/modification. A late bid/modification will not be considered for award except under the following conditions only:

   1. It was sent by registered or certified mail not later than the fifth (5th) calendar date prior to the date specified for receipt of the bid/modification; or

2. The bid/modification was sent by mail and it is determined by the County Purchasing Agent that the late receipt was due solely to mishandling by the County after receipt at the address specified in the solicitation.

b. If an emergency or unanticipated event or closing interrupts or suspends normal County business operations so that bids cannot be received at the County office designated for receipt of bids by the exact time specified in the solicitation, the due date/time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal County business operations resume.

c. The official time used for receipt of bids/modifications is the Bid Clerk's time and date stamp clock located in the Department of Procurement and Material Management. "No other clocks, calendars, or timepieces are recognized. All bidders are responsible to ensure all bids/modifications are received prior to the scheduled due date/time.

d. A late hand-carried bid, or any other late bid not submitted by mail, shall not be considered for award.

5. WITHDRAWAL OF BIDS-

a. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing to the Purchasing Agent of his or her claim of right to withdraw his or her bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

b. A bidder for a contract other than for public construction may request withdrawal of his or her bid under the following circumstances:

1. Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the County Purchasing Agent in writing.

2. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the County Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.

c. No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

d. If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid.

e. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

f. If the county denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

g. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act.

6. ERRORS IN BIDS-
When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the bidder. Carelessness in quoting prices, or in preparation of bid otherwise, will not relieve the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.

7. MAILING OF BIDS-
All bids and proposals submitted in response to a Fairfax County solicitation shall be submitted in a sealed envelope or package identified with the solicitation number, title, and bidders name and address clearly marked on the outside of such envelope or package.

8. COMPLETENESS-
To be responsive, a bid must include all information required by the solicitation.

9. ACCEPTANCE OF BIDS/BINDING 90 DAYS-
Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.

10. CONDITIONAL BIDS-
Conditional bids are subject to rejection in whole or in part.

11. BIDS FOR ALL OR PART-
Unless otherwise specified by the County Purchasing Agent or by the bidder, the Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict his or her bid to consideration in the aggregate by so stating but shall name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.

12. AREA BIDS-
For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.

13. TIME FOR RECEIVING BID-
Bids received prior to the time of opening will be securely kept, unopened. The representative of the Purchasing Agent assigned to open them will decide when the specified time has arrived, and no bid received thereafter will be considered, except as provided in paragraph 4, General Conditions and Instructions to Bidders. No responsibility will attach to the Purchasing Agent or his or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered.

14. BID OPENING-
All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 68, General Conditions and Instructions to Bidders. Tabulations of bids received are posted on the Department of Purchasing & Supply Management Bulletin Board as well as the County's web site: http://www.fairfaxcounty.gov/dpsm/bidtab.htm. Proposals received in response to a Request for Proposal (RFP) will be made available as provided in paragraph 68, General Conditions and Instructions to Bidders.

15. OMISSIONS & DISCREPANCIES-
Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.

Should a bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.

16. RESPONSE TO SOLICITATIONS-
In the event a vendor cannot submit a bid on a solicitation; he or she is requested to return the solicitation cover sheet with an explanation as to why he or she is unable to bid on these requirements.

17. BIDDER INTERESTED IN MORE THAN ONE BID-
If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

18. TAX EXEMPTION-
The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the County. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the County at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

19. PROHIBITION AGAINST UNIFORM PRICING-
The County Purchasing Agent shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or open market methods of procurement. In submitting a bid each bidder shall, by virtue of submitting a bid, guarantee that he or she has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

SPECIFICATIONS

20. QUESTIONS CONCERNING SPECIFICATIONS-

Any information relative to interpretation of specifications and drawings shall be requested of the Purchasing Agent, in writing, in ample time before the opening of bids. No inquiries, if received by the Purchasing Agent within five (5) days of the date set for the opening of bids, will be given any consideration. Any material interpretation of a specification, as determined by the County Purchasing Agent, will be expressed in the form of an addendum to the specification which will be sent to all prospective bidders no later than three (3) days before the date set for receipt of bids. Oral answers will not be authoritative.

21. BRAND NAME OR EQUAL ITEMS-

Unless otherwise provided in the invitation for bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

22. FORMAL SPECIFICATIONS-

When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

23. FEDERAL SPECIFICATIONS-

Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).

AWARD

24. AWARD OR REJECTION OF BIDS-

The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in

combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders as deemed necessary to fulfill the anticipated requirements of Fairfax County. The Purchasing Agent also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

In determining the responsibility of a bidder, the following criteria will be considered:

a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
d. The quality of performance of previous contracts or services;
e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
g. The quality, availability and adaptability of the goods or services to the particular use required;
h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
i. The number and scope of the conditions attached to the bid;
j. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and
k. Such other information as may be secured by the County Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of non-responsibility, the County Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.

25. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS-

A written award (or Acceptance Agreement) mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract. The following documents which are included in the solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:

a. County of Fairfax Solicitation Form/Acceptance Agreement (Cover Sheet) and other documents which may be incorporated by reference, if applicable;
b. General Conditions and Instructions to Bidders;
c. Special Provisions and Specifications;
d. Pricing Schedule; and
e. Any Addenda/Amendments/Memoranda of Negotiations.

26. TIE-BIDS-

If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of re-advertisement for

bids, the County Purchasing Agent is authorized to award the contract to the resident Fairfax County tie bidder whose firm has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the County Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.

27. PROMPT PAYMENT DISCOUNT-

a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
b. In connection with any discount offered, time will be computed from the date of delivery of the supplies to the carrier when delivery, inspection and acceptance are at the point of origin; or, from date of delivery, inspection and acceptance at destination; or, from date correct invoice or voucher is received in the office specified by the County, if the latter is later than the date of acceptance. In the event the bidder does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.

For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check or issuance of an Electronic Funds Transfer.

28. INSPECTION-ACCEPTANCE-
For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.

29. DEFINITE BID QUANTITIES-
Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.

30. REQUIREMENT BID QUANTITIES-
On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

CONTRACT PROVISIONS

31. TERMINATION OF CONTRACTS-
Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:

a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause; and

b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.

32. TERMINATION FOR CONVENIENCE-
A contract may be terminated in whole or in part by the County in accordance with this clause whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

33. TERMINATION OF CONTRACT FOR CAUSE-

a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the County shall thereupon have the right to terminate, specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

b. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.

34. CONTRACT ALTERATIONS-
No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent.

35. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS-
It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person,

firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign his or her right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

36. FUNDING-
A contract shall be deemed binding only to the extent of appropriations available to each Agency for the purchase of goods and services.

37. DELIVERY/SERVICE FAILURES-
Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by the Purchasing Agent, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the Purchasing Agent, shall constitute authority for the Purchasing Agent to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

38. NON-LIABILITY-
The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at his or her discretion, cancel the contract.

39. NEW GOODS, FRESH STOCK-
All Contractors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.

40. NON-DISCRIMINATION-
During the performance of this contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over $10,000 so that the provisions will be binding upon each subcontractor or vendor.
e. Contractor and Subcontractor hereunder shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

41. SMALL AND MINORITY BUSINESS UTILIZATION-

a. It is the policy of the County of Fairfax as declared by the Fairfax County Board of Supervisors' adoption of a Small and Minority Business Enterprise Program, April 6, 1981, that Fairfax County and its employees undertake every effort to increase opportunity for utilization of small or minority businesses in all aspects of procurement to the maximum extent feasible.
b. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
c. Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

42. GUARANTEES & WARRANTIES-All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.

43. PRICE REDUCTION-If at any time after the date of the bid the Contractor makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor in addition will within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. FAILURE TO DO SO MAY REQUIRE TERMINATION OF THE CONTRACT. Upon receipt of any such notice of a general price reduction, all ordering offices will be duly notified by the Purchasing Agent. The Contractor, if requested, shall furnish, within ten days after the end of the contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the bid, or (2) if any such general price reductions were made, that as provided above, they were reported to the Purchasing Agent within ten (10) days and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include with respect to each price reduction (1) the date when notice of any such

reduction was issued, (2) the effective date of the reduction, and (3) the date when the Purchasing Agent was notified of any such reduction.

44. CHANGES-Should it become proper or necessary in the execution of this contract to make any change in design, or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

45. PLACING OF ORDERS-Orders against contracts will be placed with the Contractor on a Purchase Order (or Procurement Card) executed and released by the Purchasing Agent or his or her designee. The Purchase Order must bear the appropriate contract number and date. Where Blanket Purchase Agreements (BPAs) have been executed and a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

DELIVERY PROVISIONS

46. SHIPPING INSTRUCTIONS - CONSIGNMENT-Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.

47. RESPONSIBILITY FOR SUPPLIES TENDERED-Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

48. INSPECTIONS-Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

49. COMPLIANCE-Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Agent when not in conflict with the bid. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Special Provisions for the individual solicitation.

50. POINT OF DESTINATION-All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.

51. ADDITIONAL CHARGES-Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.

52. METHOD AND CONTAINERS-Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers, so constructed as to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.

53. WEIGHT CHECKING-Deliveries shall be subject to re-weighing over official sealed scales designated by the County. Payments shall be made on the basis of net weight of materials delivered. Normal shrinkage may be allowed in such instances where shrinkage is possible. Net weights only, exclusive of containers or wrapping, shall be paid for by the County.

54. DEMURRAGE AND RE-SPOTTING-The County will be responsible for demurrage charges only when such charges accrue because of the County's negligence in

unloading the materials. The County will pay railroad charges due to the re-spotting of cars, only when such re-spotting is ordered by the County.

55. REPLACEMENT-Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.

56. PACKING SLIPS OR DELIVERY TICKETS-All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:

1. The Purchase Order Number,
2. The Name of the Article and Stock Number (Supplier's),
3. The Fairfax County Identification Number (FCIN), if specified in the order,
4. The Quantity Ordered,
5. The Quantity Shipped,
6. The Quantity Back Ordered,
7. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

BILLING

57. BILLING-Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted, in DUPLICATE, for each purchase order immediately upon completion of the shipment or services. If shipment is made by freight or express, the original Bill of Lading, properly receipted, must be attached to the invoice. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

PAYMENTS

58. PAYMENT-Payment shall be made after satisfactory performance of the contract, in accordance with all of the provisions thereof, and upon receipt of a properly completed invoice. Fairfax County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

59. PARTIAL PAYMENTS-Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.

60. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING-When equipment requires installation (which shall also be interpreted to mean erection and/or setting up

or placing in position, service, or use) and test, and where such installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

61. GENERAL GUARANTY-Contractor agrees to:

a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County.
e. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.

62. SERVICE CONTRACT GUARANTY-Contractor agrees to:

a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the County may reduce the said services at any time.
b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
c. All work and services rendered in strict conformance to all laws, statues, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices and other agents.
d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Fairfax County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector

is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

63. INDEMNIFICATION-Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

64. OFFICIALS NOT TO BENEFIT-

a. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.

c. In the event the bidder or offeror has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia

22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

65. LICENSE REQUIREMENT-All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: http://www.fairfaxcounty.gov/dta/business_tax.htm. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.

66. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

67. COVENANT AGAINST CONTINGENT FEES-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

68. VIRGINIA FREEDOM OF INFORMATION ACT-All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:

a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept

any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

c. Trade secrets or proprietary information submitted by a bidder, offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

d. Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.

BIDDER/CONTRACTOR REMEDIES

69. INELIGIBILITY-

a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent.
   1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
   2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.

b. The County Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
   1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
   2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor;

3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
4. Violation of contract provisions, as set forth below, of a character which is regarded by the County Purchasing Agent to be so serious as to justify suspension or debarment action:
   (a) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
   (b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;
5. Any other cause the County Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
6. The Contractor has abandoned performance or been terminated for default on any other Fairfax County project;
7. The Contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.

c. If, upon appeal, it is determined that the action taken by the County Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

70. APPEAL OF DENIAL OF WITHDRAWAL OF BID-

a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.

b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4 a.9, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

71. APPEAL OF DETERMINATION OF NONRESPONSIBILITY-

a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the County Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.

b. If, upon appeal, it is determined that the decision of the County Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

72. PROTEST OF AWARD OR DECISION TO AWARD-

a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 3, Section 4, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4d of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 4d, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.
b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The County Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an

award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the County Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

73. CONTRACTUAL DISPUTES-

a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the County Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the County Purchasing Agent's decision on the claim, unless the County Purchasing Agent fails to render such decision within the time specified.

b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

74. LEGAL ACTION-No bidder, offeror, potential bidder or offeror, or Contractor shall institute any legal action until all statutory requirements have been met.

75. COOPERATIVE PURCHASING-The County may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in

any acquisition of goods and services. Except for contracts for architectural and engineering services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal (RFP) or invitation for bid (IFB), if the RFP or IFB specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

76. PROFESSIONAL AFFILIATION-The Department of Purchasing & Supply Management holds membership in the National Institute of Governmental Purchasing, Inc., a non-profit, educational and technical organization that includes among its goals and objectives the study, discussion, and recommendation of improvements in governmental purchasing and the interchange of ideas and experiences on local state, and national governmental purchasing problems.

77. DRUG FREE WORKPLACE-During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over $10,000, so that the provisions will be binding upon each sub-Contractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

78. IMMIGRATION REFORM AND CONTROL ACT: Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

APPROVED:

/S/ Elizabeth D. Teare
COUNTY ATTORNEY

/S/ Cathy A. Muse
COUNTY PURCHASING AGENT

Exhibit C

Cost Summary 10-23-17

		Preliminary Master Development Plan (A)	Draft Master Development Plan (B)	Final Master Development Plan (C)	Totals
Consultant	**Function**				
Land Design	Planning	$52,000	$15,000	$13,000	$80,000
Walter L. Phillips	Civil Engineering	$45,200	$18,000	$8,000	$71,200
Wetland Studies	Environmental	$32,000	$2,000	$2,000	$36,000
Gorove Slade	Traffic	$32,000	$8,000	$6,000	$46,000
GTA	Geotechnical	$17,300			$17,300
SmartSite	Cost Estimates/Value Engineering	$32,500	$7,500		$40,000
McGuire, Woods	Land Use Counsel	$8,000	$15,000	$15,000	$38,000
Heise, Jorgensen	Title	$11,500			$11,500
Subtotal		$230,500	$65,500	$44,000	$340,000
Contingency (10%)		$23,050	$6,550	$4,400	$34,000
Authorized Reimbursable Expenses		$9,000	$7,000	$9,000	$25,000
Totals Per Phase (Guaranteed Maximum Price)		**$262,550**	**$79,050**	**$57,400**	**$399,000**

Board Agenda Item
January 23, 2018

ACTION - 5

Approval of License Agreement with the Gum Springs Historical Society for the Use of Space within Gum Springs Community Center (Mount Vernon District)

ISSUE:
Board approval to license space at the Gum Springs Community Center at 8100 Fordson Road to the Gums Springs Historical Society to permit the storage and display of museum artifacts.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors authorize staff to execute a license substantially in the form of Attachment 2 and to direct staff to continue to allow the space to be used as a museum until otherwise directed by the Board.

TIMING:
Board action is requested on January 23, 2018, to allow the Board to formalize its relationship with the Gums Springs Historical Society and the operation of a museum at the Gum Springs Community Center.

BACKGROUND:
Gum Springs Historical Society, Inc. (GSHS) is a Northern Virginia-based, tax exempt public charity pursuant to Section 501(c)(3) of the Internal Revenue Code whose mission is to promote the historical and cultural heritage of Gum Springs, the oldest African American community in Fairfax County. GSHS currently occupies Suites 136 A-F at the Gum Springs Community Center (Community Center) at 8100 Fordson Road, also identified by Tax Map Parcel No. 1012 01 0047. GSHS uses approximately 1,747 square feet of space (Premises) for the interpretation and storage of pictures and artifacts that are representative of the history of Gum Springs.

The term of the license agreement will be continuous, subject to the right of GSHS to terminate the agreement with 30 days' written notice and the separate right of the County to terminate the agreement 30 days after the Board's approval of the termination. The County will allow the GSHS to use the Premises without charge. Because GSHS is a charitable institution that provides a service to Fairfax County residents, including the educational enrichment of students and the greater community, the Board is authorized to permit the GSHS to use the licensed space without payment of consideration pursuant to Va. Code Ann. § 15.2-953.

Normal operating hours of the museum are Tuesdays and Thursdays from 10 a.m. to 2 p.m., and on Saturdays from 1 p.m. to 3 p.m. GSHS will provide entrance to the museum at all other times by appointment between 10 a.m. and 5 p.m., Monday

through Saturday. GSHS will not have access to the Premises outside of the normal operating hours of the Community Center, and will coordinate its activities with Community Center staff to ensure that its programs and visitors do not interfere with other ongoing public functions at the building.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1 – Location Map for Community Center
Attachment 2 – Draft License Agreement between the Board and GSHS

STAFF:
David J. Molchany, Deputy County Executive
Jose A. Comayagua, Jr., Director, Facilities Management Department
Christopher A. Leonard, Director, Neighborhood and Community Services

ASSIGNED COUNSEL:
Daniel Robinson, Assistant County Attorney

ATTACHMENT 1

Gum Springs Community Center

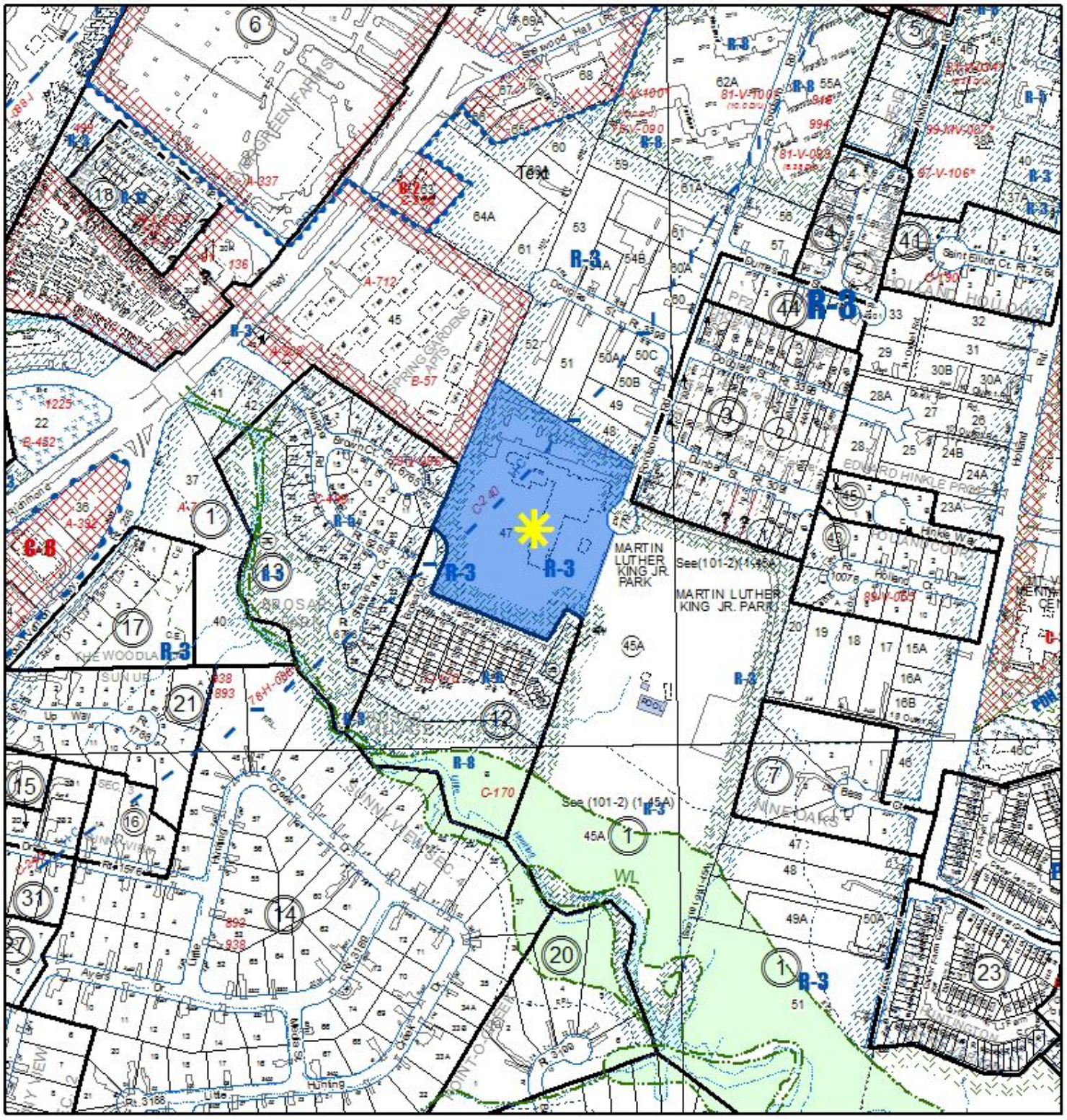
8100 Fordson Road

Tax Map No.1012 01 0047

Mount Vernon District

N

0 155 310 620 Feet



ATTACHMENT 2

Revised

COUNTY OF FAIRFAX LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is between the **Board of Supervisors for Fairfax County, Virginia**, (the "County") and the **Gum Springs Historical Society, Inc. ("GSHS")**, whose address is 8100 Fordson Road, Alexandria, Virginia 22306.

WHEREAS, the County and GSHS desire to enter into an agreement for certain County-owned premises for the GSHS to promote and to provide long-term support for the customary programs of the Gum Springs Museum and the history of Gum Springs, the oldest African American community in Fairfax County, Virginia through lectures, historical exhibits, research and educational programs for all interested persons (the "permitted use"); and

WHEREAS, GSHS will operate the Gum Springs Museum in accord with the terms of this Agreement, including the provisions of Exhibit A, which is attached hereto and incorporated herein; and

WHEREAS, the County's designated Neighborhood and Community Services Representative shall, except where otherwise stipulated, serve as the representative of the County;

NOW, THEREFORE, the parties mutually agree to the following:

1. **LOCATION OF PREMISES/PROPERTY**

   a. The premises which are the subject of this Agreement, hereafter referred to as the "premises," are Rooms 136 A, 136 B, 136 C, 136 D, 136 E, and 136 F located in the Gum Springs Community Center ("GSCC"), 8100 Fordson Road, Alexandria, Virginia 22306. The premises have been occupied and used by GSHS since 1996 and shall continue to be used by the GSHS solely for the permitted use and for no other purpose.

   b. It is agreed that by occupying the premises, GSHS acknowledges that it has had full opportunity to examine the building and accepts the premises "as is". This Agreement does not grant any right to make changes or additions to the premises. This Agreement does not grant any right to light or air over or about the premises.

   c. GSHS agrees to confine its use of the premises to the areas specifically described in this Agreement and any common areas necessary for entering or leaving the building, which is limited to hallways, stairways, doorways, elevators, and restrooms. GSHS agrees not to use, occupy, or obstruct any room or any area of the building not specifically authorized for use by GSHS.

2. **TERM and RENT:** GSHS has been occupying the premises since 1996. The term of this Agreement shall run indefinitely, unless the Agreement is terminated in accordance with Section 4, Section 10 or Section 18 of the Agreement. GSHS will not be charged monetary rent for its use of the Premises during the term of this Agreement. During the term of the Agreement, the County shall not permit any third party to use the premises for any activity which interferes with the operation of the Gum Springs Museum. The County and its contractors may enter upon the premises, or any portion thereof, for the purpose of inspection of the same, or performing any repairs herein allowed to be performed by the County.

3. **USE:** GSHS warrants that the premises will be used lawfully for the permitted use and agrees to abide by all the laws and regulations of all lawful authorities and for no other purpose. GSHS agrees that its use of the premises will not interfere with the use of the space by the County or any other party authorized by the County. GSHS shall only have access to the premises during regularly scheduled business hours of the Gum Springs Community Center ("GSCC"). County will inform GSHS of any planned building closures and/or scheduling conflicts, not related to inclement weather, in a timely manner. If for some reason GSCC faces an emergency closure not related to inclement weather, County will notify GSHS's single point of contact, who shall be designated in writing by GSHS.

4. **DEFAULT**

a. If GSHS breaches or violates any of the terms, conditions or covenants contained in this Agreement, and such breach or violation continues for thirty (30) days after written notice from the County, then GSHS shall be considered to have caused an event of default ("Event of Default"). If GSHS breaches or violates any of the terms, conditions or covenants contained in this Agreement more than three (3) times in a twelve (12) month period, and the County provides written notice of each such breach or violation, then GSHS shall be considered to have caused an Event of Default. Upon the occurrence of an Event of Default, this Agreement shall, at the sole option of the County, terminate upon 20 days written notice to the GSHS. GSHS shall cease its operations on the premises by close of business on such date of termination and vacate the property by close of business on such date of termination. Further, the County is authorized, with or without process of law, to repossess the premises, and, should GSHS fail to vacate the premises as provided herein, the County is authorized to enter onto the premises, and to expel and remove GSHS, together with all property of every kind belonging to it.

b. If GSHS abandons the premises or ceases to operate or use the premises for the intended use, GSHS shall vacate the premises within 30 days after the premises is abandoned or GSHS ceases to operate or use the premises and the Agreement will be terminated.

5. **PARKING** GSHS and Gum Springs Museum visitors shall have shared use, with other visitors and staff of the GSCC, of the parking lot of the Gum Springs Community Center at the sole risk of GSHS.

6. **MODIFICATION AND REPAIRS**

a. GSHS agrees to accept the premises "as is".

b. All improvements or modifications to the premises, including but not limited to structural, interior and exterior modifications or additions shall be subject to prior written approval by the County. GSHS will submit plans and specifications for approval.

c. If GSHS is approved to make modifications, the modifications shall be and remain the sole property of the County at the termination of the Agreement.

d. GSHS shall not place any of its organizational lettering, signs or objects on doors, windows or outside walls of premises without the permission of the County, which permission shall not be unreasonably withheld but which shall be subject to risk management approval in its absolute discretion. The Gum Springs Museum banner that is currently hanging in the GSCC is approved unless risk management advises otherwise.

e. GSHS shall not, without the prior approval of the County, paint, paper, decorate, or drive nails into, deface or injure the walls, ceiling, woodwork, or floors of premises, install any electrically or mechanically operated equipment (including air conditioners) in the premises. At the termination of this Agreement, or any extension or renewal thereof, all such improvements shall be and remain the property of the county. GSHS agrees that the County may, at its sole and absolute discretion, require such improvements to be removed and premises restored to original condition, with such removal and restoration to be at GSHS's expense.

f. GSHS shall be responsible for repairs or maintenance necessitated by the negligence of the GSHS, it agents, guests or invitees; and all damage to the premises caused by the GSHS or its agents, guests or invitees shall be repaired promptly by or at the expense of the GSHS.

g. Any renovation or improvements made or obtained by GSHS are made at GSHS's sole risk and expense, and the County shall not be held responsible for any claims for injury or loss of property due to renovation or improvements made by or for GSHS.

h. Any movable partition, trade fixtures, floor covering, or equipment installed in the premises at GSHS's expense shall remain the property of the GSHS and may be removed by the GSHS.

7. **SERVICES PROVIDED BY THE COUNTY**

a. County agrees to provide the following utilities to the premises for normal business operations; provided, however, the County shall not be liable for failure to furnish any of these utilities.

1) Electrical service for normal business operations. GSHS shall not connect any additional fixtures, appliances or equipment to the premises electrical system or make any alteration to the system, without the County's written approval.

2) Heat. Provided daily to maintain comfortable occupancy of the premises under normal business conditions.

b. County agrees to provide full maintenance to the premises during the term of this Agreement to include heat, plumbing, electrical, sewer and water systems, snow and ice removal in accordance with the County snow policy, sanding or salting of the driveway, walks and parking areas, grass cutting, and repair to the doors, windows and roof, not caused by the negligence of the GSHS.

c. County agrees to provide support copying/printing for the GSHS museum programing as deemed appropriate by the County.

d. County agrees to include the premises in the scheduled program of custodial services for the GSCC. This subsection (d) does not obviate GSHS's requirements under paragraph 8 of the GSHS Roles and Responsibilities attached as Exhibit A.

e. County agrees to be responsible for maintaining any equipment owned by the County and which the County, at its sole discretion, may provide for use in the premises.

f. County will include advertising regarding GSHS's activities at the GSCC in GSCC publications and will provide printing for the annual GSHS magazine. The scope and extent of the services provided in this subsection (f), including whether any these services are provided during a fiscal year, are subject to the sole discretion of the

Director of NCS or his designee after a review of the annual appropriations dedicated to the Gum Springs Community Center.

8. **LIABILITY AND INSURANCE**

a. Liability for damage to Personal Property and Person. All personal property owned, stored or used by GSHS (including its employees, business invitees, customers, clients, etc.), agents, family members, guests or trespassers, in and on the premises, shall be and remain at the sole risk of the GSHS, and the County shall not be liable to them for any damage to, or loss or theft of such personal property arising from any act of any other persons nor from the leaking of the roof, or bursting, leaking, overflowing of water, sewer or steam pipers, or from heating or plumbing fixtures, or from electrical wires or fixtures, or from air-conditioning failure. The County shall not be liable for any personal injury to the GSHS (including employees, business invitees, customers, clients, etc.), agents, family members, guests or trespassers arising from the use, occupancy and condition of the premises.

b. Liability Insurance. GSHS will maintain commercial general liability insurance with limits of not less than $1,000,000 per occurrence. If GSHS fails to maintain the required insurance, the County may, but does not have to, maintain the insurance at GSHS's expense. The policy shall expressly provide that it is not subject to invalidation of the County's interest by reason of any act or omission on the part of GSHS. The limits of the insurance will not limit the liability of GSHS.

c. GSHS's Insurance Policies. The County does not provide any type of insurance which would protect the GSHS's personal property from loss by fire, theft, or any other type of casualty loss. It is GSHS's responsibility to obtain such insurance. The GSHS, at its sole expense, shall secure its own insurance to protect GSHS and its property against all perils of whatever nature for One Hundred (100%) percent replacement of the stored property. Insurance on the GSHS's property is a material condition of this Agreement. GSHS shall make no claim whatsoever against the County in the event of any loss.

d. Indemnification. GSHS agrees to indemnify and hold harmless the Board of Supervisors of Fairfax County, Fairfax County, its officers, agents and all employees and volunteers from any and all claims for property damage, death, bodily injuries and personal injuries, including cost of investigation, all expenses of litigation, including reasonable attorney fees and the cost of appeals, arising out of any claims or suits because of GSHS, including its agents, employees, volunteers, business invitees, customers, guests or trespassers arising from the use, occupancy and condition of the premises.

9. **RESPONSIBILITIES OF GSHS:** GSHS agrees:

a. Not to injure or deface or suffer to be injured or defaced the premises or any part of the property and to promptly replace or repair any damages to the premises, other than damage to structural portions.

b. To keep the premises in good order and condition at all times and to notify the County of any defects in or damage to the structure, equipment, or fixtures of the premises.

c. Not to strip, overload, damage or deface the premises.

d. Not to keep gasoline of other flammable material or any explosive material in or near the premises. GSHS will not allow any equipment or practice that might void insurance coverage on the premises.

e. To take appropriate measures to conserve and efficiently use energy and other resources such as heat, water and utilities.

f. Not to allow on the premises any illegal, unlawful or improper activity which would be noisy, boisterous or in any manner constitute a nuisance to adjacent properties.

g. To supervise and conduct its activities in such a manner as to insure no disruption to the enjoyment and possession of other occupants of the building.

h. To comply with all rules, regulations, and conditions of this Agreement, which include the GSHS Roles and Responsibilities set forth on the attached Exhibit A and the County's policies applicable to the GSCC, copies of which are available upon request. Any violation of the rules, regulations and conditions, including the GSHS Roles and Responsibilities and the County's policies applicable to the GSCC, shall be a violation of this Agreement.

i. Not to obstruct or use the sidewalks, passages, and stairways and any other parts of the building which are not occupied by GSHS for any other purpose than entering and exiting the building.

j. GSHS shall be responsible for all repairs or maintenance or other damages caused by GSHS's use or occupancy of the premises.

k. GSHS shall not incur any long distance telephone charges. Any such charges incurred will be the financial responsibility of the GSHS, and GSHS will be billed accordingly.

l. GSHS shall be responsible for making a reasonable effort to secure the premises and the equipment held within the property cited in 1.a. of this Agreement. GSHS will be responsible for all equipment stored in the cited property.

10. **DAMAGE BY FIRE OR CASUALTY:** If the premises or any essential part of the premises is destroyed or damaged by fire or other casualty, so as to render it unfit for the use for which authorized by this Agreement, and the County, at its option, determines that use of the premises as required under the Agreement shall cease, the county shall be entitled to terminate this Agreement upon 15 days written notice. The county shall have the right, at its option, to repair such destruction or damage and GSHS shall, when the premises is rendered fit for purposes for which authorized for use by GSHS, continue to use the premises as provided in this Agreement .

11. **WAIVER:** The county shall not be liable for, and GSHS releases the county and its agents, employees, volunteers, contractors, and waives all claims for, damage to person or property sustained by the GSHS or any occupant of the premises resulting from the premises or any equipment or appurtenance becoming out of repair, or resulting from an accident at the building, or resulting directly or indirectly from any act or neglect of any GSHS occupant of the building.

12. **NOTICE OF DEFECTS:** GSHS shall give the County prompt written notice of accidents or defects on or about the premises or damages to the premises.

13. **INTEREST IN PROPERTY:** Nothing in this Agreement shall be interpreted to create anything other than that provided by the terms of the Agreement and shall specifically not create any right, title or interest in property nor shall it create an easement.

14. **COMPLIANCE WITH LAWS**: GSHS agrees to abide by the laws of the Commonwealth and the County in the performance of its services.

15. **SURRENDER OF POSSESSION**: GSHS agrees to remove all its goods, equipment and effects from the premises, in the event this Agreement expires or is terminated, and shall leave the premises in a clean condition reasonably acceptable to the county.

16. **ASSIGNMENT**: GSHS shall not transfer or assign this Agreement, nor sublet any part of the premises without the written consent of the County.

17. **RULES AND REGULATIONS**: GSHS and its agents and employees shall abide by and observe such reasonable rules and regulations as may be promulgated from time to time by the Fairfax County Board of Supervisors for the operation and maintenance of the building.

18. **TERMINATION OF AGREEMENT:** The Agreement is revocable at will by the County with the approval of the County Board of Supervisors, and upon such approval the Agreement will be terminated by the County 30 days after written notice of such termination is provided to GSHS. The County may also terminate the Agreement in compliance with Sections 4 and 10of this Agreement. GSHS may terminate this Agreement by providing the County with 30 days written notice of such termination. GSHS will be required to vacate the premises by close of business of Agreement termination date. Expiration or termination of this Agreement by either party shall not relieve or release GSHS from any liability or obligation which may have been incurred or assumed by GSHS prior to such expiration or termination.

19. **COUNTY'S FINANCIAL OBLIGATION:** All of the County's financial obligations under this Agreement are subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations.

20. **NO PARTNERSHIP**: Nothing contained in this Agreement shall be deemed to create a partnership or joint venture of or between the County and the GSHS.

21. **COMMON AREAS**: The County reserves the right to alter the common areas, as deemed necessary, in the sole discretion of the Fairfax County Board of Supervisors, so long as such alteration does not interfere with the GSHS's reasonable use of the space for the purposes authorized by this Agreement. This includes but is not limited to the parking area, grounds, common hallways, walkways, etc. and such right shall not be infringed by GSHS.

22. **SEVERABILITY**: If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws in effect during the term of this Agreement, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby.

23. **NOTICES**: All notices required or desired to be given hereunder by either party to the other shall be given by certified or registered mail. Notices to the respective parties shall be addressed as follows:

If to the GSHS: Gum Springs Historical Society, Inc.
8100 Fordson Road
Alexandria, VA 22306

If to the County: Fairfax County Government Center
Facilities Management Division
Attention: Leasing Agent
12000 Government Center Parkway
Suite 424
Fairfax, Virginia 22035

24. **ENTIRE AGREEMENT**: This Agreement contains the entire agreement between the County and GSHS. Oral statements, representations, and prior agreements not contained or referenced in this Agreement, shall have no force or effect. This Agreement may be modified only in writing executed by both parties.

GUM SPRINGS HISTORICAL SOCIETY

By: _____
Ronald Chase, GSHS President

08-07-2017
DATE

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: _____
David J. Molchany, Deputy County Executive

_____
DATE

EXHIBIT A

GSHS Roles and Responsibilities

1. GSHS will operate the museum at the GSCC on Tuesdays and Thursdays from 10am – 2pm, and on Saturdays from 1pm – 3pm. GSHS will provide entrance to the museum all other times by appointment during the year at the designated museum location between 10am and 5pm, Monday through Saturday. GSHS will notify GSCC staff when appointments are scheduled outside of the publicized times listed on Tuesdays, Thursdays, and Saturdays. This program will be closed on Fairfax County holidays and times when the GSCC is closed for operation.

2. GSHS will not admit visitors into the museum through the external museum door before 10am or after 5pm. The external museum door must remain locked before 10am and after 5pm regardless of whether the GSCC is otherwise open for operation.

3. GSHS will provide to the County's designated Neighborhood and Community Services Representative ("NCS Representative") by January of each year, a proposed written schedule outlining requested dates and times of room use for special events and programs in the GSCC for that year. The NCS Representative will submit in writing to GSHS approval of the dates and times set aside for the GSHS use within 10 days after the county receives the request. The County agrees to accommodate, schedule permitting, alteration of GSHS's scheduled room usage based on changes to the GSHS's event schedule, provided advance notification is given (at least 30 days in advance, if possible) to the NCS Representative of requested changes.

4. GSHS will abide by the policies and procedures governing use of the GSCC, a written copy of which will be provided to the GSHS by the NCS Representative.

5. GSHS will not make any permanent, significant additions or changes to any NCS property without first obtaining written permission from the county.

6. All property purchased or given to the GSHS will remain the property and responsibility of the GSHS unless otherwise agreed to by the two parties.

7. GSHS will be responsible for returning NCS property to its original condition and location after each use, except for normal wear and tear. GSHS will be responsible for the repair or replacement of any items damaged or removed by the GSHS or its agents, employees or contractors. The GSHS is not responsible for damage caused by any other users of GSCC.

Department of Neighborhood and Community Services
12011 Government Center Parkway, Tenth Floor
Fairfax, VA 22035
703-324-4600, TTY 711, Fax 703-222-9792
www.fairfaxcounty.gov/ncs

8. GSHS will be responsible for maintaining in clean and safe condition all areas of the museum, the office area, and museum storage areas.

9. GSHS will make available to NCS limited complimentary tickets/admission for GSHS sponsored special event or program at the GSCC. These tickets may be distributed, at NCS's discretion, to persons served by the GSCC or other county programs or to individuals identified in the community who might not otherwise be able to attend for financial reasons.

10. GSHS will include, without charge, publicity/advertising regarding GSCC programs and activities in GSHS publications.

11. GSHS will designate a member who will serve as the single point of contact for NCS on GSCC use and scheduling issues.

12. GSHS will track and report to NCS total monthly visitation data from the museum.

13. GSHS will have a staff person present for all times during museum operating hours.

14. GSHS will develop and maintain a manual of procedures and checklists for museum operations in order for museum employees and volunteers to safely staff the museum.

Board Agenda Item
January 23, 2018

ACTION - 6

Approval of and Authorization to Execute a Standard Project Administration Agreement with the Virginia Department of Transportation for the Providence District Bikeshare Project and Approval of Supplemental Appropriation Resolution AS 18139

ISSUE:
Board of Supervisor's approval of, and authorization for the Director of the Fairfax County Department of Transportation (FCDOT) to execute a Standard Project Administration Agreement, substantially in the form of Attachment 1, to accept grant funding in the amount of $400,000 and administer the Providence District Bikeshare Project (Project).

RECOMMENDATION:
The County Executive recommends that the Board approve a resolution (Attachment 2), authorizing the Director of FCDOT to execute a Standard Project Administration Agreement with the Virginia Department of Transportation (VDOT) substantially in the form of Attachment 1, as well as approve Supplemental Appropriation Resolution AS 18139 (Attachment 3), for the FCDOT to accept grant funding from the VDOT in the amount of $400,000. The required Local Cash Match of $100,000 has been identified in Fund 40010, County and Regional Transportation Projects. There are no positions associated with this award.

TIMING:
Board approval is requested on January 23, 2018, to enable staff to advance this project.

BACKGROUND:
On October 18, 2016, the Board of Supervisors endorsed the applications for Transportation Alternatives Projects. Ultimately, the Providence District Bikeshare was awarded a $400,000 grant. The Project will construct a public use bicycle share program in the Providence Magisterial District, specifically in the Merrifield area around the Dunn Loring Metrorail Station. This will connect to an already existing system - Capital Bikeshare - linking users in the Merrifield area to the rest of Fairfax County and neighboring jurisdictions. The capital equipment needed for a bikeshare station includes, but is not limited to, docking stations, bicycles and kiosks. This project will purchase capital equipment for 15 stations that will support 120 bicycles.

The funding status for the Providence District Bikeshare project is outlined below:

Total Project Estimate (TPE):	$750,000
Enhancement/TAP Awards to Date:	$400,000
Local Cash Match	$100,000
Remaining County Requirement:	$250,000

The Department of Transportation may continue to pursue additional grant awards to support the remaining funding needed for this project. Additionally, there may be contributions from businesses in the Providence District area to address the remaining County requirement. However, if no additional grant funding or private contributions are received, funding in Fund 40010, County and Regional Transportation Projects will be used to complete the project; no additional General Fund resources will be requested.

FISCAL IMPACT:
Grant funding of $400,000 is available from VDOT, with a Local Cash Match requirement of $100,000. The required Local Cash Match of $100,000 has been identified in Fund 40010, County and Regional Transportation Projects. Appropriation to the Federal-State Grant Fund totals $360,000 as VDOT expenses are not accounted for in the County's financial system. This action does not increase the expenditure level of the Federal-State Grant Fund, as funds are held in reserve for unanticipated grant awards. This grant does not allow for the recovery of indirect costs.

CREATION OF POSITIONS:
No positions will be created through this grant award.

ENCLOSED DOCUMENTS:
Attachment 1 – Standard Project Administration Agreement
Attachment 2 – Resolution to Authorize Staff to Execute Standard Project Administration Agreement
Attachment 3 – Supplemental Appropriation Resolution AS 18139

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, FCDOT
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Judith Howerton, Transportation Planner I, Coordination and Funding Division, FCDOT
Chris Wells, Bicycle and Pedestrian Programs Manager

ASSIGNED COUNSEL
Joanna L. Faust, Assistant County Attorney

STANDARD PROJECT ADMINISTRATION AGREEMENT
Federal-aid Projects

Project Number	UPC	Local Government
EN17-029-111	111399	Providence District Bikeshare Fairfax County

THIS AGREEMENT, made and executed in triplicate this ____ day of _____, 20____, 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 2 CFR 200.338, Remedies for Noncompliance, 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 33.2-214 or Section 33.2-331 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

$750,000 annually in federal funding, such certification shall include a copy of the LOCALITY's single program audit in accordance with 2 CFR 200.501, Audit Requirements.

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 the 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 33.2-1011 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, received 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:

_____
Chief of Policy Date
Commonwealth of Virginia
Department of Transportation

_____
Signature of Witness Date

Attachments

Appendix A

Appendix A

Date: 9/26/2017

Providence District Bikeshare

Project Number: EN17-029-111, P101, C501 **UPC:** 111399 **CFDA #** 20.205 **Locality:** Fairfax County

Project Location ZIP+4: 22003	**Locality DUNS#** 74837626	**Locality Address (incl ZIP+4):** Department of Transportation, 4050 Legato Road, Suite 400 Fairfax VA 22033-1608

Project Narrative

Scope:	Expansion of the bikeshare program to Tysons and Dunn Loring - Merrifield. Participating items will include docking stations, bicycles and kiosks.
From:	Dunn Loring - Merrifield Metro Station
To:	Woodburn Road / Gallows Road intersection

Locality Project Manager Contact Info: Todd Minnix / (703) 775-5600 / wesley.minnix@fairfaxcounty.gov

VDOT Project Coordinator Contact Info: Derick Undan - VDOT Northern VA District Office, 4975 Alliance Drive, Fairfax VA 22030, (703) 259-3347, Rhoderick.Undan@VDOT.Virginia.gov

Project Estimates

	Preliminary Engineering	Right of Way and Utilities	Construction	Total Estimated Cost
Estimated Locality Project Expenses	$5,000	$0	$705,000	$710,000
Estimated VDOT Project Expenses	$15,000	$0	$25,000	$40,000
Estimated Total Project Costs	$20,000	$0	$730,000	$750,000

Project Cost and Reimbursement

Phase	Estimated Project Costs	Funds type *(Choose from drop down box)*	Local % Participation for Funds Type	Local Share Amount	Maximum Reimbursement	Estimated Reimbursement to Locality
Preliminary Engineering	$20,000	Transportation Alternatives	20%	$4,000	$16,000	
				$0	$0	
				$0	$0	
				$0	$0	
Total PE	$20,000			$4,000	$16,000	$1,000
Right of Way & Utilities	$0	Transportation Alternatives	20%	$0	$0	
				$0	$0	
				$0	$0	
				$0	$0	
				$0	$0	
Total RW	$0			$0	$0	$0
Construction	$480,000	Transportation Alternatives	20%	$96,000	$384,000	
	$250,000	Local Funds	100%	$250,000	$0	
				$0	$0	
				$0	$0	
				$0	$0	
Total CN	$730,000			$346,000	$384,000	$359,000
Total Estimated Cost	$750,000			$350,000	$400,000	$360,000

Total Maximum Reimbursement by VDOT to Locality (Less Local Share)	$400,000
Estimated Total Reimbursement by VDOT to Locality (Less Local Share and VDOT Expenses)	$360,000

Project Financing

Transportation Alternatives (80%)	Local Match (20%)	Local Funds (100%)				Aggregate Allocations
$400,000	$100,000	$250,000				$750,000

Program and Project Specific Funding Requirements

- This project shall be administered in accordance with VDOT's Locally Administered Projects Manual and TA Program Guide
- This is a limited funds project. The Locality shall be responsible for any additional funding in excess of **$400,000** (if applicable)
- Reimbursement for eligible expenditures shall not exceed funds allocated each year by the Commonwealth Transportation Board in the Six Year Improvement Program.
- Eligible VDOT project expenses will be recovered as follows: 80% will be deducted from the federal allocation and 20% will be deducted from reimbursement requests.
- Any ineligible items identified throughout project development will not be reimbursable.
- The DEPARTMENT will conduct all environmental studies necessary to complete an environmental document in compliance with the National Environmental Policy Act. The LOCALITY is responsible for implementing any environmental commitments from the environmental document. In addition, the LOCALITY is responsible for obtaining any water quality permits and conducting any required hazardous materials due diligence efforts. VDOT's estimated cost for the environmental document and studies will be provided to the locality and deducted from the project funds.
- For Transportation Alternatives projects, the LOCALITY shall maintain the project or have it maintained in a manner satisfactory to the Department for its useful life and make ample provisions each year for such maintenance unless otherwise agreed to by the DEPARTMENT. Failure to do so, or the sale of a TAP funded improvement prior to the expectations as identified in the TAP Guide, may require repayment of federal funds.
- In accordance with CTB policy, the project must be under construction by **October 1, 2021** or the federal Transportation Alternatives funding may be subject to de-allocation.

Authorized Locality Official and Date

Typed or printed name of person signing

Authorized VDOT Official and Date

Typed or printed name of person signing

Revised: August 14, 2017

Attachment 2

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, January 23, 2018, 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 the Director of the Department of Transportation to execute on behalf of the County of Fairfax, a Standard Project Administration Agreement with the Virginia Department of Transportation for the Providence District Bikeshare Transportation Alternatives Project by the County of Fairfax.

Adopted this 23rd day of January, 2018, Fairfax, Virginia

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

SUPPLEMENTAL APPROPRIATION RESOLUTION AS 18139

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax Virginia on January 23, 2018, at which a quorum was present and voting, the following resolution was adopted:

BE IT RESOLVED by the Board of Supervisors of Fairfax County, Virginia, that the following supplemental appropriation is authorized and the Fiscal Planning Resolution is amended accordingly:

Appropriate to:

Fund:	500-C50000, Federal-State Grant Fund	
Agency:	G4040, Department of Transportation	$360,000
Grant:	1400146-2017, Providence District Bikeshare Project	

Reduce Appropriation to:

Agency:	G8787, Unclassified Admin	$360,000
Fund:	500-C50000, Federal-State Grant Fund	

Source of Funds: Virginia Department of Transportation, $360,000

A Copy - Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors

Board Agenda Item
January 23, 2018

ACTION - 7

Approval of a Resolution Endorsing Additional Projects Being Submitted to the Northern Virginia Transportation Authority for FY 2018 to FY 2023 Regional Funding

ISSUE:
Board approval of a resolution (Attachment 1) endorsing applications submitted by the Washington Metropolitan Area Transit Authority (WMATA) and Arlington County to Northern Virginia Transportation Authority (NVTA) for FY 2018 – FY 2023 Regional Funding. Projects submitted by the County and other regional partners were endorsed by the Board on December 5, 2017.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors approve Attachment 1 endorsing WMATA projects and concurring with Arlington County submitting the ART bus facilities project for NVTA's regional funding program.

TIMING:
Board of Supervisors' approval is requested on January 23, 2018, to provide NVTA a resolution of support for the projects, which were due on January 19, 2018. NVTA is expected to approve projects for its regional transportation funding in June 2018.

BACKGROUND:
At its meeting on October 12, 2017, NVTA approved issuance of the FY 2018 – FY 2023 Program Call for Projects. Funding for these capital projects is provided by NVTA's 70 percent share of regional revenues that NVTA retains. Project applications were due to NVTA on December 15, 2017, with a resolution of endorsement from the governing body where the project is physically located due by January 19, 2018.

The total amount of NVTA regional funding expected to be available during this time period is approximately $1.46 billion, based on the current allocation process. At its December 5, 2017, meeting, the Board of Supervisors adopted a resolution endorsing 15 projects to be submitted by Fairfax County to NVTA, as well as support of several projects submitted by regional partners. The Resolution is included as Attachment 2.

Following the action taken by the Board, the WMATA Board approved a list of projects to submit for WMATA funding:

- Automatic Trains Control (ATC) Power and Wayside Communications Upgrades on Blue/Orange Lines ($94.7 million): This request will build on the traction power upgrades previously funded by NVTA. Those projects upgraded the power generation and carrying capacity of the traction power system on the Orange and Blue Lines to allow deployment of a greater number of 8-car trains during peak hours. Those upgrades are scheduled for completion in FY2021. This request for funding would support comprehensive upgrades and replacement of all the ATC power and wayside communication equipment necessary to ensure safe and reliable operation of 8-car trains. This application for ATC power and wayside communications upgrades is part of a larger regional project.

- Blue/Orange/Silver Corridor Capacity and Reliability Improvements/ "New Blue Line" Alternatives Analysis and Project Development ($2.0 million): This funding would begin the process to address capacity issue at the Rosslyn Metrorail Station, as well as reliability issues throughout the corridor.

Additionally, Arlington County has submitted an application to fulfill the Arlington Transit (ART) bus facilities needs anticipated in their 2016 Transit Development Plan (TDP). This funding request includes two ART facility projects. The main property is located on Shirlington Road in Arlington County. At this time, it is anticipated that this facility will include bus operations, bus parking, and other support facilities. The other property under consideration is located in Springfield (in Fairfax County). It is anticipated that this site would accommodate heavy maintenance activities beyond that which can be accommodated in Arlington. The Arlington County Board approved the purchase of this property in December 2016, with a recent amendment in June 2017 to extend the Feasibility Period for Arlington County and seller to determine construction and subdivision feasibility, respectively.

On November 21, 2017, the Fairfax County Board of Supervisors, through a Board Matter, approved a motion that the Board direct the Directors of the Departments of Planning and Zoning and Land Development Services to expeditiously and simultaneously process all materials necessary to enable the completion of the review of the proposed subdivision plat, special exception application, site plan, and 2232 application for the property Arlington County is considering. The action also noted that the motion should not be construed as a favorable recommendation by the Board and does not relieve the applicants from compliance with the provisions of all applicable ordinances, regulations, or adopted standards.

NVTA's application requirements state that "Projects that are located in multiple jurisdictions must demonstrate multijurisdictional support in order to advance (e.g. resolutions of support from the governing body of each affected jurisdiction.)". As a

component of Arlington's project may be located in Fairfax County, staff recommends that the Board concur with Arlington County applying for the ART bus facilities project, noting that this concurrence should not be construed as a favorable recommendation for the related rezoning application by the Board as noted in the Board Matter.

FISCAL IMPACT:
There is no direct fiscal impact associated with this action.

CREATION OF POSITIONS:
No positions will be created through this action.

ENCLOSED DOCUMENTS:
Attachment 1 – Resolution of Endorsement of Projects Being Submitted by WMATA and Arlington County for Regional Funding to the Northern Virginia Transportation Authority
Attachment 2 – December 2017 Resolution of Endorsed Projects

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Ray Johnson, Senior Transportation Planner, Coordination and Funding, FCDOT
Noelle Dominguez, Senior Transportation Planner, Coordination and Funding, FCDOT

Attachment 1

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, January 23, 2018, at which meeting a quorum was present and voting, the following resolution was adopted.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby endorses the efforts of the Washington Metropolitan Area Transit Authority (WMATA) submitting applications to the Northern Virginia Transportation Authority (NVTA) for regional funding for FY 2018 – FY 2023 for the following projects located in or near Fairfax County:

- Automated Train Control Power and Wayside Communications Upgrades on Blue/Orange Lines ($94.7 million)
- Blue/Orange/Silver Corridor Capacity and Reliability Improvements/ “New Blue Line” Alternatives Analysis and Project Development ($2.0 million):

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby concurs with the submission of an application for the following project, which should not be construed as a favorable recommendation for the related rezoning application before the Board and does not relieve the applicants from compliance with the provisions of all applicable ordinances, regulations, or adopted standards:

- Arlington County - ART Bus Operations & Maintenance Facilities

Adopted this 23rd day of January 2018, Fairfax, Virginia.

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

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, December 5, 2017, at which meeting a quorum was present and voting, the following resolution was adopted:

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby approves the submission to the Northern Virginia Transportation Authority (NVTA) requests for regional funding for Fiscal Year (FY) 2018 – FY 2023 for the following projects in amounts not to exceed:

- Richmond Highway Widening (Mount Vernon Memorial Highway to Napper Road) - $127,000,000: TransAction ID 214 (Route 1 Widening: Route 235 North to Route 235 South)

- Route 28 Widening (Prince William County Line to Route 29) - $39,300,000: TransAction ID 30 (Route 28 Widening: Route 29 to Prince William County Line)

- Fairfax County Parkway Widening (Ox Road to Route 29) and Popes Head Road Interchange Improvements - $67,000,000: TransAction ID 57 (Fairfax County Parkway Widening: Ox Road (Route 123) to Lee Highway (Route 29))

- Seven Corners Ring Road (Phase 1A/Segment 1A) - $12,400,000: TransAction ID 18 (Seven Corners Ring Road Improvements)

- Frontier Drive Extension - $79,500,000: TransAction ID 84 (Frontier Drive Extension and Intersection Improvements)

- Braddock Road Improvements (Burke Lake to I-495) - $52,400,000: TransAction ID 336 (Braddock Road Intersection Improvements: Guinea Road to Ravensworth Road)

- Rolling Road Widening (Old Keene Mill Road to Fairfax County Parkway) - $17,000,000: TransAction ID 54 (Rolling Road Widening: Hunter Village Drive to Old Keene Mill Road)

- Route 29 Widening Phase II (Union Mill Road to Buckleys Gate Drive) - $7,600,000: TransAction ID 217 (Route 29 Widening: Waples Mill Road (Route 665) to Pickwick Road)

- Shirley Gate Road Extension - $42,000,000: TransAction ID 58 (Shirley Gate Road Extension: Braddock Road to Fairfax County Parkway)

- Richmond Highway Bus Rapid Transit (Huntington Metrorail Station to Fort Belvoir) - $250,000,000: TransAction ID 39 (Route 1 BRT)

- Soapstone Drive Extension (Dulles Toll Road (DTR) Overpass) - $157,000,000: TransAction ID 7 (Soapstone Drive Extension)

- Town Center Parkway Extension (DTR Underpass) - $17,000,000: TransAction ID 17 (Dulles Toll Road - Town Center Parkway Underpass)

- Richmond Highway CSX Underpass - $12,000,000: TransAction ID 282 (Route 1 Widening: Occoquan River Bridge to Telegraph Road (Route 235 North))

- Route 28 Widening (Northbound, McLearen Road to Route 50) - $19,000,000: TransAction ID 26 (Route 28 Widening: I-66 to Loudoun County line)

- Rock Hill Road Extension (DTR Overpass) - $170,000,000: TransAction ID 19 (Davis Drive Extension and Dulles Toll Road: Rock Hill Overpass)

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby approves the submission to the NVTA requests for funding from the federal Congestion Mitigation and Air Quality and Regional Surface Transportation Programs for FY 2024 for the following projects:

- Countywide Transit Stores

- Fairfax County Parkway Widening (Ox Road to Lee Highway), and Fairfax County Parkway/Popes Head Road Interchange Improvement

- Richmond Highway Bus Rapid Transit

- Richmond Highway Widening (Mount Vernon Highway to Napper Road)

- Seven Corners Ring Road (Phase 1A/Segment 1A)

- Soapstone Drive Extension (Dulles Toll Road (DTR) Overpass)

- Tysons Roadway Improvements

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby also endorses the efforts of the Town of Herndon, the Town of Vienna, Prince William County, and the Washington Area Metropolitan Transportation Authority (WMATA) in submitting applications to the NVTA requests for regional funding for FY 2018 – FY 2023, for the following projects located in or near Fairfax County that are submitted by regional entities:

- Town of Herndon - Herndon Bikesharing Services
- Town of Vienna - Metrorail Access Improvements
- Washington Metropolitan Area Transit Authority – To Be Determined

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby supports advancing the following project without endorsing a specific alternative:

- Prince William County - Route 28 Improvements south of Bull Run that are the subject of a current alternatives analysis to identify ways to ease congestion and improve traffic conditions

Adopted this 5th day of December 2017, Fairfax, Virginia

ATTEST: Catherine A. Chianese

Catherine A. Chianese
Clerk to the Board of Supervisors

Board Agenda Item
January 23, 2018

ACTION - 8

Authorization for the County Executive to Sign the Agreement of Perpetual Maintenance Relative to the Route 7 Bridge Rehabilitation Project (Dranesville District)

ISSUE:
Authorize the County Executive to sign the Agreement of Perpetual Maintenance between the Virginia Department of Transportation (VDOT) and Fairfax County, relative to the Route 7 Bridge Rehabilitation Project.

RECOMMENDATION:
The County Executive recommends that the Board authorize the Director of the Department of Transportation to sign the Agreement of Perpetual Maintenance between VDOT and Fairfax County, relative to the Route 7 Bridge Rehabilitation Project, as shown in Attachment 1, in substantial form.

TIMING:
Board action is requested on January 23, 2018, so that the agreement can be executed before construction is completed.

BACKGROUND:
In 2007, the Virginia Department of Transportation (VDOT) conducted a study to widen and replace the dual bridges on Route 7 over Dulles Access/Toll Road in Fairfax County. The study determined the feasibility of deck replacement, bridge widening, joint closure, addition of shared use paths, bridge rehabilitation, vertical clearance improvement, ramp alignment, approach roadway widening, construction sequencing and maintenance of traffic. The study also incorporated the modifications to Route 7 related to the Dulles Corridor Metrorail Project.

In October 2013, as per VDOT's request, the County provided a letter of support for the design-build method of procurement regarding the subject project. On April 29, 2014, the Board endorsed the project design plans as presented at the February 20, 2014, public hearing. Given the bridge's sub-standard deck geometry and vertical clearance on both eastbound and westbound lanes, it was necessary to widen the bridges to accommodate additional traffic lanes and the shared-use paths as per the VDOT Roadway Master Plan.

This project will widen Route 7 from four lanes to six lanes, from approximately 0.1 mile west of Tyco Road to approximately 0.6 mile west of Tyco Road. The decks of the two existing bridges over Dulles Toll Road (DTR) are being replaced and widened in the middle to accommodate one extra lane on each of the bridges. Shared-use paths are being built on each side of Route 7. The project also includes the provision of infrastructure to provide lighting for the shared-use paths. To ensure their continued maintenance, VDOT and Fairfax County need to enter into an agreement to operate and maintain the shared-use paths and lighting infrastructure. Exhibit A in Attachment 1 describes the various elements of the shared-use path for which Fairfax County and VDOT are responsible to operate, inspect and maintain. Under the agreement, Fairfax County is responsible for maintenance of lighting along the shared-use path and wayfinding signage for the shared-use path; and VDOT is responsible for maintenance of the shared-use path sub-base and asphalt pavement, mowing grass adjacent to the shared-use path, shared-use path regulatory signage, three underpasses, two bridge overpasses and wall structures.

The project was discussed with the Board at the Transportation Committee Meeting on December 12, 2017.

FISCAL IMPACT:
Department of Public Works is planning to increase their maintenance budget by $20,000 annually ($5,000 towards electricity and $15,000 towards lighting maintenance) for this project in FY19 to cover costs of lighting.

ENCLOSED DOCUMENT:
Attachment 1: Agreement of Perpetual Maintenance

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Karyn Moreland, Chief, Capital Projects Section, FCDOT
Michael Guarino, Transportation Planner IV, FCDOT
Smitha Chellappa, Transportation Planner III, FCDOT
Leo Ratchford, Department of Public Works

ASSIGNED COUNSEL:
Pamela Pelto, County Attorney

Agreement of Perpetual Maintenance

This Agreement of Perpetual Maintenance ("Agreement") is dated as of this 18 day of September 2017 and is made by and between the Virginia Department of Transportation (hereinafter "VDOT") and The County of Fairfax (hereinafter County).

WITNESSETH

WHEREAS, the Virginia Department of Transportation (VDOT) is rehabilitating and widening the Route 7 Bridges over the Dulles Toll Road and widening Route 7 from four lanes to six lanes from 0.564 Miles West Tyco Road to 0.162 Miles West of Tyco Road; and

WHEREAS, the rehabilitation and widening project will include the construction of a shared-use path for pedestrians and bicycles to travel in each direction; and

WHEREAS, the rehabilitation and widening project includes the provision of infrastructure to provide lighting for the Shared-Use Path; and

WHEREAS, VDOT and the County together agree to this Agreement of Perpetual Maintenance to operate and maintain the Shared-Use Path including but not limited to the lighting infrastructure.

Now, therefore the County for itself and its successors and/or assigns, does hereby agree to operate, inspect and maintain, at its sole cost and expense the Shared-Use Path elements, including the lighting infrastructure, as described in Exhibit A; and to restore if necessary the area affected by any such maintenance. Similarly, VDOT agrees to inspect and maintain, at its sole cost and expense the Shared-Use Path elements, including the shared-use path and structural elements defined by the bridges and the underpass structures, as described in Exhibit A.

The County agrees that all work that it is responsible for within the Shared-Use Path shall conform to the then current version of the Virginia Work Area Protection Manual issued by VDOT and all other applicable specifications and standards designed to protect the public safety.

VDOT will assume ownership, accept into the state's permanent inventory and will perform biennial inspections, in accordance with Federal Regulations, of the three underpass structures and two pedestrian bridges.

In the event that Fairfax County chooses to make modifications to the Shared-Use Paths, such modifications shall be executed in consultation with VDOT and only after the County receives VDOT's written approval. Temporary and permanent bridge attachments shall not be installed without VDOT Structure and Bridge approval.

The Agreements and obligations of the County, and its successors and/or assigns, contained herein are expressly intended to run with the land.

WITNESS THE FOLLOWING SIGNATURE AND ATTESTATION:

Helen Cuervo

Helen Cuervo, P.E.
Northern Virginia District Administrator
Commonwealth of Virginia
Virginia Department of Transportation

State of Virginia
Fairfax County

The foregoing instrument was acknowledged before me this 14th day of December, 2017, by Helen Cuervo, Northern Virginia District Administrator, Virginia Department of Transportation.

My Commission expires: July 2019

Rita M. Andrews

Notary Public

Tom Biesiadny
Director
Fairfax County Department of Transportation

The foregoing instrument was acknowledged before me this _____ day of _____, 2017 by Tom Biesiadny, the Director of the Fairfax County Department of Transportation.

My Commission expires: _____

Notary Public

Exhibit A

This exhibit describes the various elements of the Shared-Use Path for which The County of Fairfax and VDOT are responsible to operate, inspect and maintain.

The County of Fairfax and VDOT Responsibilities for Shared-Use Path Elements

Item	Description/Details	VDOT	The County of Fairfax
Shared-Use Path Sub-Base	Maintenance, Repair, and Replacement	Fully Responsible	Not Responsible
Shared-Use Path Asphalt Pavement	Maintenance, Repair, and Replacement	Fully Responsible	Not Responsible
Mowing Grass Adjacent to the Shared-Use Path	Cutting and Trimming	Responsible for normal VDOT lawn cutting practices	Not responsible, except if Fairfax County desires increased frequency than normal VDOT lawn cutting practices.
Lighting along the Shared-Use Path	Upkeep, Repair/Replacement as determined by Fairfax County	Not Responsible	Fully Responsible
Shared-Use Path Regulatory Signing	Upkeep, Repair/Replacement	Fully Responsible	Not Responsible
Shared-Use Path Wayfinding Signing	Upkeep, Repair/Replacement	Not Responsible	Fully Responsible
Three Underpasses and two Bridge Overpasses	NBIS Safety Inspection and Maintenance of structural elements	Fully Responsible	Not Responsible
Wall Structures	Upkeep and repair including removal of any vegetation	Fully Responsible	Not Responsible

Board Agenda Item
January 23, 2018

ACTION – 9

Approval of a Revised Memorandum of Understanding (MOU) Between Fairfax County, the City of Fairfax, and George Mason University Regarding the Fairfax Campus Advisory Board (FCAB)

ISSUE:
Approval of a revised MOU between the County, Fairfax City, and George Mason University changing the composition and appointment of officers for the FCAB.

RECOMMENDATION:
The County Executive recommends that the Board approve the revised MOU (Attachment 1).

TIMING:
Board action is requested on January 23, 2018.

BACKGROUND:
Established in 2010, the FCAB acts as a forum to foster open communication and the timely sharing of information between its members on matters of mutual concern, and to provide advice and recommendations on those matters from the FCAB's varying perspectives. The revised MOU leaves the purposes and structure of the FCAB largely unchanged and retains the composition and maximum size of the County's and City's membership, allowing a maximum of five members for each jurisdiction.

The revised MOU expands the University's maximum potential membership from three to five, and establishes two-year terms for members other than those designated by their office. Fairfax County's members designated by office are the Chairman, Braddock District Supervisor, or designees sitting in their places.

The existing MOU calls for a chairman and vice-chairman, elected to two-year terms and selected from the County and Fairfax City membership. The revised MOU appoints officers on a rotating basis to two-year terms and requires all three signatories' members to serve as officers. The revised MOU also changes the full name to "George Mason University Fairfax Campus and Community Advisory Board."

Board Agenda Item
January 23, 2018

The revised MOU is attached. A redlined version is also attached for the Board's reference.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1 – Proposed revised MOU
Attachment 2 – Redline of proposed revised MOU

ASSIGNED COUNSEL:
Martin R. Desjardins, Assistant County Attorney, Office of the County Attorney

George Mason University Fairfax Campus and Community Advisory Board

Memorandum of Understanding (MOU)

Whereas, Fairfax County (hereafter referred to as "the county"), the City of Fairfax (hereafter referred to as "the city"), and George Mason University (hereafter referred to as "the university") desire to establish a more structured and mutually supportive relationship for the benefit of all members of their respective communities by amending the original MOU for a George Mason University Fairfax Campus Advisory Board established September 13, 2010; and,

Whereas, it is in the best interests of the county, the city, and the university to foster open communication, to share information in a timely manner, and to make recommendations for the consideration of the appropriate decision making body; and,

Whereas, the Fairfax County Board of Supervisors, the Fairfax City Council, and the George Mason University Board of Visitors fully endorse these efforts;

Therefore, be it resolved that the George Mason University Fairfax Campus and Community Advisory Board (herein after referred to as "the Advisory Board") is established as a forum to share information on issues of mutual concern and provide recommendations on those issues from the Advisory Board's varying perspectives. The recommendations will be shared with appropriate county, city, and university staff.

I. Mission

The mission of the Advisory Board shall be to:

- Identify and promote relationships and programs in support of joint university-community initiatives;
- Provide recommendations to the county, city, and university administrations concerning university-community issues and relations;
- Address and resolve issues of community and university concern at the earliest possible time and at the lowest working level in the decision-making process.

II. Composition

The county, the city, and the university shall each establish a process for appointing a minimum of three, and no more than five, members to the Advisory Board in accordance with the following:

Fairfax County Members to include:

- Chairman of the Board of Supervisors or his/her designee;
- Braddock District Supervisor or his/her designee;

- At least one residential community member from the area surrounding the Fairfax Campus.

City of Fairfax Members to include:

- Mayor or his/her City Council designee;
- At least one residential community member from the area surrounding the Fairfax Campus.

George Mason University Members to include:

- A representative from Executive Council;
- A representative from Facilities;
- A representative from Community and Local Government Relations.

The terms of appointment for each community member and any other member not designated by specific offices above shall be for two years, and these members may be reappointed to successive terms.

III. Meetings, Officers, and Committees

The Advisory Board shall meet at least twice annually at a place and time to be determined by the Chairman. The notice of the meeting and agenda will be distributed to members at least one week prior to the meeting. The university administration shall be responsible for providing notice and keeping a record of each Advisory Board proceeding.

A representative from each signatory entity will serve in the capacity of Chairman and Vice Chairman on a rotating basis every two years (e.g. first term – City Chair, County Vice Chair; second term – County Chair, University Vice Chair; third term – University Chair, City Vice Chair, etc.). During the city's rotation, the position will be filled by the Mayor. During the county's rotation, the position will be filled by the Braddock District Supervisor. During the university's rotation, the position will be filled by the Executive Council member. The Chairman shall preside at all meetings. The Vice Chairman shall perform all duties in the absence of the Chairman. All recommendations from the Advisory Board will be shared with the signatory entity by an appropriate Advisory Board member.

The Chairman, with the consent of the majority of the members of the Advisory Board, shall establish any committees, temporary or standing, necessary to achieve the mission of the Advisory Board. The Chairman shall appoint committee members. Committee members may include individuals who are not members of the Advisory Board.

IV. Quorums and Voting

A quorum is required to hold an official meeting. A quorum shall be constituted by fifty (50) percent of the current roster of members of the Advisory Board. Voting on matters coming before the Advisory Board shall be by majority of those members present at the meeting.

V. Support of the Advisory Board by Signatories

To assist with meaningful input by the Advisory Board, county, city, and university representatives shall provide Advisory Board members with information that may have the potential for impact on university-community relations, including but not limited to proposed or planned capital improvements, transportation improvements, and proposed or planned changes to zoning or other policies.

In addition, county, city, and university representatives shall provide to the Advisory Board, at the earliest possible step in the decision-making process, relevant portions of respective capital improvement, facilities master plans, and/or comprehensive plans that may potentially impact university-community relations.

VI. Bylaws and Additional Policies and Procedures

The Advisory Board may, in its discretion, adopt bylaws and/or additional policies and procedures to govern the business of the Advisory Board provided that they are not in conflict with the provisions of this MOU. Adoption or amendment of bylaws, policies, and procedures shall require an affirmative vote of a two-thirds majority of the members of the Advisory Board and do not need to be approved by the signatories.

VII. Amendments of the MOU

Any article of this MOU may be amended or repealed, and any new article may be incorporated after all signatories have concurred with such changes. In addition, any signatory may remove themselves from participation in the Advisory Board by action of the respective governing body. The MOU shall be reviewed every three years to evaluate the effectiveness of the Advisory Board and determine changes for engagement as necessary.

This MOU supersedes any previous agreement or understanding, whether oral or written, regarding the Advisory Board.

_____ _____

Fairfax County Date

_____ _____

City of Fairfax Date

_____ _____

George Mason University Date

George Mason University Fairfax Campus and Community Advisory Board

Memorandum of Understanding (MOU)

Whereas, Fairfax County (hereafter referred to as "the county"), the City of Fairfax (hereafter referred to as "the city"), and George Mason University (hereafter referred to as "the university") desire to establish a more structured and mutually supportive ~~partnership~~relationship for the benefit of all members of their respective communities by amending the original MOU for a George Mason University Fairfax Campus Advisory Board established September 13, 2010; and,

Whereas, it is in the best interests of the county, the city, and the university to foster open communication, ~~the timely sharing of~~ to share information in a timely manner, and ~~a collaborative~~to make recommendations for the consideration of the appropriate decision making ~~process~~body; and,

Whereas, the Fairfax County Board of Supervisors, the Fairfax City Council, and the George Mason University Board of Visitors fully endorse these efforts;

Therefore, be it resolved that the George Mason University Fairfax Campus and Community Advisory Board (herein after referred to as "the Advisory Board~~)~~") is established as a forum to share information ~~among the parties~~ on issues of mutual concern and provide ~~advice and~~ recommendations on those issues from the Advisory Board's varying perspectives. The recommendations will be shared with appropriate county, city, and university staff.

I. Mission

The mission of the Advisory Board shall be to:

- Identify and promote ~~partnerships~~relationships and programs in support of joint university-community initiatives~~, including but not limited to research projects, contracts, general support, and economic development~~;
- Provide ~~advice and counsel~~recommendations to the county, city, and university ~~administration~~administrations concerning university-community ~~university~~ issues and relations; ~~and,~~
- Address and resolve issues of community and university concern at the earliest possible time and at the lowest working level in the decision--making process.

II. Composition

The county, the city, and the university shall each establish a process for appointing a minimum of three, and no more than five, members to the Advisory Board in accordance with the following:

Fairfax County~~.....Five (5) members,~~ Members to include~~ the~~ :

- Chairman of the Board of Supervisors or his/her designee~~, the~~ ;
- Braddock District Supervisor or his/her designee~~, and at~~;
- At least ~~two members of the~~ one residential community member from the area surrounding the Fairfax Campus.

City of Fairfax~~.....Five (5) members,~~ Members to include~~ the~~ :

- Mayor or his/her City Council designee~~ and at~~;
- At least ~~two members of the~~one residential community~~.~~ member from the area surrounding the Fairfax Campus.

George Mason University ~~Three (3) members,~~Members to include~~ the Chief of Staff. Terms of appointments~~:

- A representative from Executive Council;
- A representative from Facilities;
- A representative from Community and Local Government Relations.

The terms of appointment for each community member and any other member not designated by specific offices above shall be ~~determined by the respective signatories.~~for two years, and these members may be reappointed to successive terms.

III. Meetings, Officers, and Committees

The Advisory Board shall meet at least twice annually at a place and time to be determined by the ~~Advisory Board.~~Chairman. The notice of the meeting and agenda will be distributed to members at least one week prior to the meeting. The university administration shall be responsible for providing notice and keeping ~~records~~a record of ~~all~~each Advisory Board ~~proceedings for approval by the Advisory Board.~~ proceeding.

~~The members of the Advisory Board shall elect a~~ A representative from each signatory entity will serve in the capacity of Chairman and Vice Chairman ~~by a majority vote of the members at their first regular meeting and~~on a rotating basis every two years ~~thereafter. Should a vacancy occur, an election shall occur to fill the remainder of the term. Nothing shall prohibit members from holding an office for successive terms.~~ (e.g. first term – City Chair, County Vice Chair; second term – County Chair, University Vice Chair; third term – University Chair, City Vice Chair, etc.). During the city's rotation, the position will be filled by the Mayor. During the county's rotation, the position will be filled by the Braddock District Supervisor. During the university's rotation, the position will be filled by the Executive Council member. The Chairman shall preside at all meetings~~ and be responsible for conveying recommendations of the~~ ~~Advisory Board.~~. The Vice Chairman shall perform ~~the~~all duties ~~of the Chairman~~ in the absence of the Chairman. ~~Only representatives~~ All recommendations from the ~~county and the city are eligible~~Advisory Board will be shared with the signatory entity by an appropriate Advisory Board member. ~~to serve as Chairman and Vice Chairman.~~

The Chairman, with the consent of the majority of the members of the Advisory Board, shall establish any committees, temporary or standing, necessary to achieve the mission of the Advisory Board. The Chairman shall appoint committee members. Committee members may include individuals ~~that~~who are not members of the Advisory Board.

IV. Quorums and Voting

A quorum is required to hold an official meeting. A quorum shall be constituted by fifty (50) percent of the current roster of members of the Advisory Board. Voting on matters coming before the Advisory Board shall be by majority of those members present at the meeting.

V. ~~University~~Support of the Advisory Board by Signatories

To assist with meaningful input by the Advisory Board, county, city, and university representatives shall provide Advisory Board members with information ~~relevant to activities affecting~~that may have the ~~surrounding~~ potential for impact on university-community relations, including but not limited to proposed or planned capital improvements ~~and proposed or planned changes to policies concerning university life.~~

~~In addition, university representatives shall provide to the Advisory Board copies of the university's Six-Year Capital Plan for facilities and infrastructure prior to being submitted to the Board of Visitors and the Commonwealth for approval. In the case that a facility or infrastructure does not require submittal to the Commonwealth, university representatives shall provide plans at the earliest possible step in the decision-making process.~~

~~VI. City and County Support of the Advisory Board~~

~~To assist with meaningful input by the Advisory Board, county and city representatives shall provide the Advisory Board members with information relevant to activities affecting the university community, including but not limited to proposed or planned capital and,~~ transportation improvements, and proposed or planned changes to zoning or ~~plan approvals that might affect the university~~other policies.

In addition, county ~~and,~~ city, and university representatives shall provide to the Advisory Board, at the earliest possible step in the decision-making process, relevant portions of ~~the county and city's~~ respective capital improvement, facilities master plans, and/or comprehensive plans ~~prior to being submitted to the Board of Supervisors or City Council for approval. In the case that a facility or infrastructure does not require approval of the Board of Supervisors or the City Council, county and city represntatives shall provide plans at the earliest possible step in the decision-making process~~that may potentially impact university-community relations.

~~VII.~~ VI. Bylaws and Additional Policies and Procedures

The Advisory Board may, in its discretion, adopt bylaws and/or additional policies and procedures to govern the business of the Advisory Board provided that they are not in conflict with the provisions of this ~~Memorandum of Understanding.~~MOU. Adoption or amendment of bylaws, policies, and procedures shall require an affirmative vote of a two-thirds majority of the members of the Advisory Board and do not need to be approved by the signatories.

~~VIII.~~ VII. Amendments of the ~~Memorandum of Understanding~~MOU

Any article of this ~~Memorandum of Understanding~~MOU may be amended or repealed, and any new article may be incorporated after all signatories have concurred with such changes. In addition, any signatory may remove themselves from participation in the Advisory ~~Committee~~Board by action of the respective governing body. The MOU shall be reviewed every three years to evaluate the effectiveness of the Advisory Board and determine changes for engagement as necessary.

This MOU supersedes any previous agreement or understanding, whether oral or written, regarding the Advisory Board.

~~Sharon Bulova, Chairman~~ ~~Date~~

Fairfax County ~~Board of Supervisors~~ Date

~~Robert F. Lederer, Mayor~~ ~~Date~~

City of Fairfax Date

~~Alan G. Merten, President~~ ~~Date~~

George Mason University Date

Board Agenda Item
January 23, 2018

CONSIDERATION – 1

Proffer Interpretation Appeal Associated with The Reserve at Tysons Corner Related to Proffers Accepted for RZ/FDP 2003-PR-008

ISSUE:
Board consideration of an appeal of a proffer interpretation that determined Proffer 49 of RZ/FDP 2003-PR-008 remains in effect, but is not enforceable against a property not included in the subject rezoning.

TIMING:
Board deferred decision only at the October 24, 2017 Board meeting until November 21, 2017; at which time it was deferred until December 5, 2018; and then again deferred to January 23, 2018.

BACKGROUND:
On December 22, 2016, the Department of Planning and Zoning (DPZ) received a request for an interpretation of the proffers associated with RZ/FDP 2003-PR-008, a land use application that permitted the development of a residential community now referred to as "The Reserve at Tysons Corner" (hereinafter the "Reserve Property"). In this request, The Reserve at Tysons Corner Association, Inc., as the owners association, requested an interpretation regarding whether the proffers accepted in RZ/FDP 2003-PR-008 created a continuing obligation to provide offsite parking on an adjacent property (the "Meridian Property"), which was not subject to the proffers accepted with RZ/FDP 2003-PR-008. (See Zoning Determination in Attachment 1).

The Reserve Property and the Meridian Property were originally part of a single, 33.74-acre parcel zoned to the I-P District (now I-3) under RZ 75-7-004. In 2003, two concurrent applications were submitted to develop a portion of the property with residential development. One application, PCA 75-7-004-02, was submitted and approved to delete 19.04 acres from RZ 75-7-004. The other application, RZ/FDP 2003-PR-008, proposed to rezone the same 19.04 acres of land to the PDH-30 District. On March 15, 2004, the Board approved PCA 75-7-004-02 first, thereby deleting the 19.04-acre parcel, now the Reserve Property, from the original proffered conditions. On the same day, the Board then approved RZ 2008-PR-003. *See* Clerk's March 15, 2004, Board summary, Attachment 2 (describing the approval as an "[a]mendment of the Zoning Ordinance, *as it applies to the property which is the subject*

of Rezoning Application RZ 2003-PR-008, from the I-3 and HC Districts to the PDH-30 and HC Districts, subject to the proffers dated March 14, 2004").

The Reserve Property consists of 570 homes – 478 apartments owned by Simpson Property Group, LP and 92 townhomes which are owned individually and governed by the Townhouse at the Reserve Homeowners Association, Inc. It is located on the east side of Kidwell Drive, south of Leesburg Pike, west of Interstate 495 and south of Science Applications Court. Although it still shared the same tax map number as the Meridian Property at the time of the Reserve Property rezoning (RZ/FDP 2003-PR-008), it was separated, for zoning purposes, upon the Board's approval of PCA 75-7-004-02. It is now identified as Tax Map Nos. 39-2((56)) A1, B3, 1-92, 39-2((1)) 13A5 and A6.

The Meridian Property (Tax Map Nos. 39-2((1)) 13D and 13E), is currently owned by Tysons Enterprise West, LLC, and Tysons Enterprise East, LLC, and is developed with two existing office/data center buildings and a surface parking lot.

Proffer 49, the proffer at issue in this appeal, was approved in connection with the Reserve Property rezoning (RZ/FDP 2003-PR-008). It envisioned the provision of 150 overflow parking spaces on the Meridian Property. Proffer 49 states:

> *Prior to the approval of the final site plan on the Application Property, the Applicant shall provide evidence that a parking agreement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the I-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 pm) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.*

The "adjacent I-3 parcel" referenced in this proffer is the Meridian Property, which was not included in RZ 2003-PR-008. In fact, by referring to it as "the adjacent I-3 parcel," the proffer language makes clear that the Meridian Property was not part of the Application property subject to Proffer 49.

Zoning Determination

The Meridian Property recently obtained approval of PCA 75-7-003-3 and SE 2015-PR-021, which allow for redevelopment of the property, in part, with a full-size athletic field and parking garage. Because of the proposed redevelopment, the prior owner of the Meridian Property notified the Appellant in December of 2016 of its intent to terminate the parking agreement under the terms of a Declaration of Covenants recorded in 2005. The Appellant submitted its proffer interpretation request to ask

whether the Meridian Property is entitled to terminate the 150 offsite parking spaces in light of Proffer 49.

On May 30, 2017, the Zoning Evaluation Division (ZED) issued a determination letter in response to the Appellant's proffer interpretation request. Staff determined that, at the time of site plan approval, the Reserve Property demonstrated compliance with Proffer 49 by providing a copy of the Declaration of Covenants, Restrictions and Easements recorded on January 28, 2005 in Deed Book 16927 at Page 2195, which provided that the Meridian Property owner would provide to the Reserve Property owner the right to use 150 overflow parking spaces. The determination letter stated that the accepted proffers become part of the Zoning map for the property subject to the rezoning only, in this case the Reserve Property, and are not enforceable against an off-site property, in this case the Meridian Property. In addition, while the Meridian Property was included in a concurrent, but separate application (PCA 75-7-004-02), a proffer requiring provision of this parking was not included in proffers pertaining to that land area. Staff determined that Proffer 49 remains in effect for the Reserve Property and can be removed only through a Proffered Condition Amendment (PCA) approved by the Board of Supervisors.

The subject appeal was filed with the Board of Supervisors on June 29, 2017, by Lucia Anna Trigiani, agent for the Reserve, in the name of The Reserve at Tysons Corner Association, Inc. ("Association" and "Appellant") (See Attachment 3). The justification for the filing of the appeal alleges the following:

The Appellant is an aggrieved party and thus entitled to appeal the Zoning Determination regarding the proffers relating to RZ/FDP 2003-PR-008, because:

1. The Zoning Determination renders the Reserve Property in non-compliance with Proffer 49 through no fault of the Association or any of the members or residents who reside at the Reserve Property, and with no means of recourse or redress.[1]
2. Members of the Association and residents of the Reserve Property bear significant hardship without access to the overflow parking.
3. The resulting non-compliance and lack of adequate parking have negative impacts on property values and the ability to sell property in the Reserve Property.

[1] Emphasis added by appellant.

For the reasons that follow, these allegations do not establish that the Appellant is aggrieved by the Zoning Determination.

Discussion

The Board's authority to accept proffered conditions arises from Virginia Code §§ 15.2-2296 and 15.2-2303, under the development scheme known as conditional zoning. The Virginia Code defines "conditional zoning," when part of classifying land within a locality into areas and districts by legislative action, as "the allowing of reasonable conditions governing the use *of such property*." Va. Code § 15. 2-2201 (emphasis added). Once the Board approves a rezoning subject to proffered conditions, the proffers become a part of the zoning regulations *applicable to the property in question*. Zoning Ordinance § 18-204(3). Any development of the *property in question* must then be in substantial conformance with the proffered conditions. Zoning Ordinance § 18-204(4). Once proffered and accepted as part of an amendment, such conditions shall continue in effect until a subsequent amendment changes the zoning *on the property covered by the conditions.* Va. Code § 15.2-2303(A). The only way to impose (or enforce) proffered conditions on a property not subject to the original rezoning is by applying for an amendment. Zoning Ordinance § 18-204(6). The Meridian Property was not part of RZ 2003-PR-008, nor has the Board approved a proffered condition amendment to include the Meridian Property.

An applicant attempting to appeal a proffer determination to the Board must demonstrate that it is "aggrieved" by that determination. Va. Code § 15.2-2301; *see* Zoning Ordinance § 18-204 (10). For the reasons discussed below, the Appellant has not demonstrated that it is aggrieved by the Zoning Determination.

The Appellant has available means of redress.

For the reasons discussed above, Proffer 49 only applies to the Reserve Property. It required the demonstration of the provision of at least 150 overflow off-site parking spaces on the Meridian Property, which was to be secured via a parking agreement to be recorded in the land records prior to site plan approval. This private agreement was recorded in Deed Book 16927 at Page 2195, as required, and the proffer was noted as met for the purposes of site plan approval. The County has no legal authority to enforce Proffer 49 against the Meridian Property owner, and it also cannot enforce the provisions of a private agreement to which it was not a party.

The Zoning Determination does not render the property in noncompliance with Proffer 49 "with no means of recourse or redress," however. To the contrary, it plainly states that the Appellant may seek to amend the proffered conditions to delete the overflow parking requirement (notably, no enforcement action has been taken or even threatened against the Appellant due to its noncompliance). Alternatively, the Appellant could also take private legal action against the Meridian Property owner to restore the offsite

parking spaces, if necessary, or it could seek to, renegotiate a parking agreement with the Meridian Property owner.

The Reserve Property has Adequate Parking

The Appellant asserts in its second claim that it's left with inadequate parking. The Staff Report and Addendum prepared in conjunction with RZ/FDP 2003-PR-008, however, make no reference to the need for overflow parking. Rather, those documents state that "parking will be provided via structured parking within and/or adjacent to each of the multi-family buildings as well as on each single-family attached lot with additional visitor parking on the streets. Single-family attached units which are front-loaded will have driveways a minimum of 18 feet long[2]." Additionally, Sheet 2 of 13 of the approved CDP/FDP for RZ/FDP 2003-PR-008 demonstrates how adequate parking will be provided in accordance with Article 11 of the Zoning Ordinance in effect at the time of approval and in fact, the approved site as built for both The Reserve at Tysons Corner Townhomes (2481-SAB-002-1) and Multi-Family (2481-SAB-005-2) demonstrate that an excess of parking was provided on-site (total of 1,088 provided versus 997 spaces required). This excess parking does not include the 150 off-site overflow spaces. Based on this documentation, it appears that excess parking is already provided on the Reserve Property.

Impact on Property Values is Irrelevant to Zoning Determination

Finally, the Appellant contends that its non-compliance and lack of adequate parking have negative impacts on property values and the ability to sell property in the Reserve. Fiscal impacts are not taken into consideration during the staff's review of proffer language in response to a request for a determination. For the reasons described above, the Appellant may exercise various means of recourse to come into compliance with Proffer 49. It also has excess parking spaces onsite and could seek to renegotiate a new parking agreement with the Meridian Property for additional off-site parking.

Summary

The Zoning Determination properly concluded that accepted proffers become part of the Zoning map for the property subject to the rezoning only and are not enforceable against an offsite property. Proffer 49 is therefore unenforceable against the Meridian Property. Accordingly, and for the reasons stated above, staff requests that the Board of Supervisors uphold staff's determinations in the May 30, 2017, letter.

[2] See Page 18 of Staff Report Applications RZ/FDP 2003-PR-008 (concurrent with application PCA 75-7-004-2) dated September 4, 2003 in Attachment 4.

Board Agenda Item
January 23, 2018

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1: Zoning Determination, dated May 30, 2017
Attachment 2: March 15, 2004, Clerk's Board Summary
Attachment 3: Letter dated June 28, 2017, to Clerk of the Fairfax County; Notice of Appeal of Zoning Determination for RZ/FDP 2003-PR-008 The Reserve at Tysons Corner

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Leslie Johnson, Zoning Administrator, DPZ
Tracy Strunk, Director, Zoning Evaluation Division (ZED), DPZ
Suzanne Wright, Chief, Special Projects/Applications/Management Branch, ZED, DPZ
Kelly M. Atkinson, Sr. Staff Coordinator, ZED, DPZ

ASSIGNED COUNSEL:
Laura S. Gori, Senior Assistant County Attorney

County of Fairfax, Virginia

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

May 30, 2017

Lucia Anna Trigiani, Esq.
MercerTrigiani
112 South Alfred Street
Alexandria, VA 22314

Re: Interpretation for RZ/FDP 2003-PR-008; The Reserve at Tysons Corner; Tax Map Numbers 39-2 ((56)) A1, B3, 1-92, 39-2 ((1)) 13A5 and A6: Parking Obligation

Dear Ms. Trigiani:

This determination is in response to your letter of December 22, 2016, requesting an interpretation of the proffers, as well as the approved development conditions and Conceptual/Final Development Plan (C/FDP), accepted and approved in conjunction with the above-referenced application. As I understand it, you are requesting an interpretation of proffer language relating to parking on an adjacent offsite parcel. Specifically, your request concerns whether the proffers accepted in RZ/FDP 2003-PR-008 create a continuing obligation to provide offsite parking on an adjacent property (aka the "Meridian Property"). This determination is based upon your letter dated December 22, 2016, and Exhibit 1, entitled "Proffers RZ 2003-PR-008" dated March 14, 2004. Copies of this letter and exhibits are attached.

The subject property is located on the east side of Kidwell Drive, south of Leesburg Pike, west of Interstate 495 and south of Science Applications Court. The property is zoned PDH-30 pursuant to the approval of RZ 2003-PR-008 by the Board of Supervisors on March 15, 2004, with the Planning Commission approving FDP 2003-PR-008 on April 7, 2004, subject to proffers and development conditions. These applications permitted development of the property with 92 single-family attached and 478 multi-family dwelling units.

Prior to the approval of RZ/FDP 2003-PR-008, the subject property was part of a larger 33.74-acre property identified as Tax Map Number 39-2 ((1)) Parcel 13. This larger property was originally zoned to the I-P District (now I-3) pursuant to the approval of RZ 75-7-004 by the Board of Supervisors on October 29, 1975, subject to proffers. In 2003, two concurrent applications were submitted by Lincoln Property Company Southwest, Inc., in order to develop a portion of this overall property with the residential development described above. PCA 75-7-004-02 was submitted and approved on the entire 33.74 acres in order to delete 19.04 acres from RZ 75-7-004. RZ/FDP 2003-PR-008 was then approved, subject to proffers, to rezone that same 19.04 acres of land to the PDH-30 District. As the property included in all these applications was under single ownership, the proffers for both applications were signed by the same owner, Campus Point Realty Corporation II. The proffer at issue, however, was approved only in connection with the rezoning

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of the 19.04-acre parcel. Subsequent to the approval of RZ/FDP 2003-PR-008, the property subject to RZ/FDP 2003-PR-008 was subdivided from the larger property via approved site plans and record plats.

The proffer at issue with your current request is Proffer 49 of RZ 2003-PR-008, which envisioned the provision of 150 overflow parking spaces on the Meridian Property. Proffer 49 states:

> *Prior to the approval of the final site plan on the Application Property[1], the Applicant shall provide evidence that a parking agreement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the I-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 pm) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.*

It appears, through submitted plans for the subject property, that compliance with Proffer 49 was demonstrated to Fairfax County through the recordation of a parking agreement in the land records of Fairfax County. You state that you believe the Declaration of Covenants, Restrictions and Easements recorded on January 28, 2005 in Deed Book 16927 at Page 2195 in the Fairfax County land records is the document meant to satisfy Proffer 49—specifically, Section 12.17 of the Declaration of Covenants, Restrictions and Easements as it relates to Overflow Parking Spaces.

The 150 overflow parking spaces were to be located offsite from the 19.04 acres zoned PDH-30, on the portion which retained its I-3 zoning - the Meridian Property (Tax Map Numbers 39-2 ((1)) 13D and 13E), which is currently owned by Tysons Enterprise West LLC and Tyson Enterprise East LLC, and is developed with two existing office/data center buildings and surface parking. In accordance with PCA 75-7-003-3 and SE 2015-PR-021, the Meridian Property will be redeveloped, in part, with a full-size athletic field and parking garage. You now state that the Reserve at Tysons Corner Association Board has been notified that the prior owner of the Meridian Property seeks to terminate the parking agreement with the Association.

In accordance with Section 18-201 of the Zoning Ordinance ("Ordinance"), Board of Supervisors approval of a rezoning application constitutes a permanent (unless further amended) amendment to the Zoning Map. Further, per Section 18-204, any proffered conditions submitted as part of the rezoning application and accepted by the Board of Supervisors become "part of the zoning regulations applicable to the subject property in question, unless subsequently changed by an amendment to the Zoning Map." Therefore, an approved rezoning and accepted proffers become a part of the Zoning map only for the subject property included in the application, in this case the 19.04 acres described in the application for RZ/FDP 2003-PR-008. Proffer 49 was a commitment

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[1] Proffer #1 associated with RZ 2003-PR-008 states that *"Development of the Application Property shall be in substantial conformance with the Conceptual/Final Development Plan (CDP/FDP) prepared by VIKA Incorporated, consisting of thirteen (13) sheets dated January 17, 2003 as revised through March 11, 2004..."* As shown on Sheet 2 of the CDP/FDP, the portion of the property rezoned to the PDH-30 District per RZ 2003-PR-008 contains 19.04 acres, which is the Application Property referenced in Proffer 49. Please refer to Appendix 1 depicting the 19.04 acres subject to RZ 2003-PR-008, which is from the Staff Report published as part of this rezoning application.

that required the demonstration of the provision of at least 150 overflow parking spaces on the offsite Meridian Property, which was to be secured via a parking agreement to be recorded in the land records. As noted above, this agreement was recorded in Deed Book 16927 at Page 2195 prior to the approval of the site plan, as required.

Proffer 49 specifically required that the overflow parking spaces on an offsite parcel were to be implemented by a private agreement. As noted above, accepted proffers become part of the Zoning map for the property subject to the rezoning only and are not enforceable against an offsite property. By referring to the Meridian Property as the "adjacent I-3 parcel," the proffer language makes clear that that property was not part of the Application property subject to the proffer.

Based on the foregoing, it is my determination that Proffer 49 remains in effect for the 19.04 acres included in RZ 2003-PR-008. Although Proffer 49 remains in effect, a proffer violation cannot be enforced on Meridian because the proffer does not apply to them. The proffer can be removed only through a Proffered Condition Amendment (PCA) application approved by the Board of Supervisors. Information on how to apply for a PCA can be found on our website at: http://www.fairfaxcounty.gov/dpz/zoning/applications/.

The determination has been made in my capacity as duly authorized agent of the Zoning Administrator and address only those issues discussed herein and not any separately recorded private agreements. If you have any questions regarding this interpretation, please feel free to contact Kelly M. Atkinson at (703) 324-1290.

Sincerely,

Tracy D. Strunk, AICP, Director
Zoning Evaluation Division, DPZ

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Attachments: A/S

Cc: Linda Smyth, Supervisor, Providence District
Phillip Niedzielski-Eichner, Planning Commissioner, Providence District
Laura Gori, Esq., Assistant County Attorney, Office of the County Attorney
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ
Ellie Codding, Acting Director, Code Development and Compliance Division, LDS
Ken Williams, Manager, Site and Technical Services, LDS
Michael Davis, Section Chief for Site Analysis, DOT
Suzanne Wright, Chief, Special Projects/Applications Management Branch, ZED, DPZ
Tysons Enterprise West, LLC, Owner, Tax Map 39-2 ((1)) 13D
Tyson Enterprise East, LLC, Owner, Tax Map 39-2 ((1)) 13E
File: RZ 2003-PR-008, PCA 75-7-004-03 and SE 2015-PR-021, PI 17 01 001, Imaging

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December 22, 2016

OVERNIGHT MAIL

Barbara C. Berlin
Director of the Zoning Evaluation
Division Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

RE: Proffer RZ 2003-PR-008 dated March 14, 2004
Zoning Interpretation Request

Dear Ms. Berlin:

This firm represents The Reserve at Tysons Corner Association, Inc. ("Association"). The Association Board of Directors ("Association Board") has requested our assistance in submitting this interpretation request to you for consideration and response.

Background

The Association is a Virginia nonstock corporation responsible for the operation and administration of property located in Fairfax County, Virginia known as The Reserve at Tysons Corner ("Reserve Property").

The Reserve Property is subject to a Declaration of Covenants, Conditions, Restrictions and Reservations of Easements recorded on March 24, 2006 in Deed Book 18311 at Page 1041 among the Fairfax County land records ("Land Records") and amended by the First Amendment to Declaration of Covenants, Restrictions and Reservation of Easements recorded on August 27, 2008 in Deed Book 20085 at Page 425 among the Land Records (as amended, the "Master Declaration"). A copy of the Declaration is enclosed behind **Exhibit 1**.

The Reserve Property is also subject to Declaration of Covenants, Restrictions and Easements ("SAIC Declaration") which was recorded on January 28, 2005 in Deed Book 16927 at Page 2195 by Campus Point Realty Corporation ("Campus"), which presumably owned the Reserve Property at that time – prior to creation of the Association. The Reserve Property is referred to as *Parcel 1* in the SAIC Declaration. A copy of the SAIC Declaration is enclosed behind **Exhibit 2**.

The SAIC Declaration also encumbers property located immediately north of the Reserve Property (on the north side of Science Applications Court) – referred to as *Parcel 2* in the SAIC Declaration ("Meridian Property"), which is owned or was recently owned by the Meridian

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Group or its affiliates. The Meridian Property is in the process of being redeveloped into a project we believe is referred to as *Tysons Technology Center*. The Meridian Property, or a portion thereof, is currently under contract or has sold to another party as of the date of this letter. To our knowledge, the Meridian Property, as subdivided, consists of property identified as Tax Map Numbers 039-01-0013D and 039-2-01-0013E.

We also believe that the Meridian Property is subject to development conditions imposed by Fairfax County pursuant to Proffers RZ 2003-PR-008 dated March 14, 2004 ("Conditions") – referred to as the *Application Property* therein. A copy of the Conditions is enclosed behind **Exhibit 3**. Number 49 of the Conditions provides:

> *Prior to approval of the final site plan on the Application Property, the Applicant shall provide evidence that a parking arrangement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the 1-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 p.m.) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.*

The foregoing condition requires the owner of the Meridian Property to make available to residents of the Reserve Property a minimum of 150 "overflow" parking spaces on the Meridian Property. We are unaware of this condition being subsequently amended. The condition is ***unqualified*** in terms of its permanency.

Section 12.17 of the SAIC Declaration contemplates the overflow parking requirement, presumably in response to Number 49 of the Conditions. Section 12.17 provides:

> *The Parcel 2 Owner shall provide to the Parcel 1 Owner, for the benefit of the residents of Parcel 1, the right to use a minimum of 150 parking spaces on Parcel 2 during non-business hours on weekdays (i.e. after 6:00 p.m.) and on weekends ("Overflow Parking"). Prior to the sale or rental of the first housing units on Parcel 1, the Parcel 1 Owner or the Master Association shall establish, subject to the reasonable approval of the Parcel 2 Owner, reasonable rules and regulations for the use of the Overflow Parking. The Master Association (or, before there is a Master Association, the Parcel 1 Owner) shall enforce such rules and regulations. If the Parcel 1 Owner of the Master Association, as applicable, fails to establish and/or enforce such rules and regulations, in addition to any other remedies that may be available to it, the Parcel 2 Owner shall have the right to terminate the Parcel 1 Owner's right to use the Overflow Parking by sending a notice to the Parcel 1 Owner and, if the Parcel 2 Owner so elects, recording the same in the land records.*

However, unlike Condition 49, the language in Section 12.17 is ***qualified*** in that it provides that the Parcel 2 Owner (the owner of the Meridian Property) can *unilaterally* terminate the overflow parking arrangement if rules and regulations are not promulgated within a certain time frame.[1]

Less than two weeks ago, in conjunction with the sale of the Meridian Property, Meridian presented the Association Board with a copy of a Parking Agreement for execution contemplating reduced parking (under the 150 required parking spaces) during construction on the Meridian Property, as well as a right of the owner of the Meridian Property to unilaterally terminate the Parking Agreement (and the right of the Association to park on the Meridian Property) with 30 days' prior written notice.

Because the Association will not execute the Parking Agreement in substantially the form presented to the Association Board, counsel for Meridian yesterday advised that Meridian will now terminate the right of the Association residents to use the overflow parking on the Meridian Property pursuant to the termination language contained in 12.17 of the SAIC Declaration. The Board anticipates this letter will be received shortly.

We believe that termination of the right of Reserve Property residents to overflow parking on the Meridian Property is in direct contravention of the requirement that Meridian make at least 150 parking spaces available to such residents pursuant to Number 49 of the Conditions, which although establishes limitations on such parking, does not contemplate termination.

Inquiry

With the foregoing context, the Association Board respectfully requests the following question be answered:

> *Is the owner of the Meridian Property entitled to terminate the right of individuals residing on the Reserve Property to 150 overflow parking spaces on the Meridian Property under Number 49 of the Conditions?*

In conjunction with this question, the Association Board requests, pursuant to the Freedom of Information Act, copies of all documents in Fairfax County's possession pertinent to these inquiries which are not included with this correspondence. Please advise whether there is a cost associated with providing copies of these documents.

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[1] The Master Declaration also makes reference to this overflow parking, although it is not so qualified. Specifically, Article XIV, Section 8 provides: *The Property is benefitted by the right to the use of the "Overflow Parking" as described in Section 12.17 of the SAIC Declaration. It is expressly agreed that the Association is empowered to act on behalf of all Lot Owners with respect to the use and maintenance of the Overflow Parking and any dealings in connection therewith the owner of the land on which such Overflow Parking is located. The Association shall have the right to promulgate from time to time and enforce reasonable, non-discriminatory rules and regulations with respect to the use of such Overflow Parking by the Lot Owners and Residents.*

Should you have any questions, please contact me directly. Your consideration of this matter is greatly appreciated.

Sincerely,

Lucia Anna Trigiani

LAT/jlr
Enclosures - Exhibits 1, 2, 3 and 4 and Application Fee
cc: Supervisor Linda Smyth
The Reserve at Tysons Corner Association, Inc. Board of Directors
#131072

LINCOLN PROPERTY COMPANY SOUTHWEST INC.

PROFFERS

RZ 2003-PR-008

March 14, 2004

Pursuant to Section 15.2-2303(a), Code of Virginia, 1950 as amended, and subject to the Board of Supervisors approving a rezoning to the PDH-30 District for property identified as Tax Map 39-2 ((1)) part 13 (hereinafter referred to as the "Application Property"), Lincoln Property Company Southwest, Inc., the Applicant in RZ 2003-PR-008 proffers for the owners, themselves, and their successors and assigns the following conditions. In the event that this Application is approved, any previous proffers for the Application Property are hereby deemed null and void and hereafter shall have no effect on the Application Property.

Development Plan

1. Development of the Application Property shall be in substantial conformance with the Conceptual Plan/Final Development Plan (CDP/FDP) prepared by VIKA Incorporated, consisting of thirteen (13) sheets dated January 17, 2003 as revised through March 11, 2004, which CDP/FDP proposes a maximum of 570 dwelling units (including ADUs), with a maximum of 92 single family attached dwellings and 478 multi-family dwelling units. With the development of 570 dwelling units, there will be a minimum of 30 affordable dwelling units provided, based on compliance with Section 2-800 of the Zoning Ordinance. . If fewer number of market rate units are built, a proportionately fewer number of ADUs will be provided. The Generalized Development Plan for companion application PCA 75-7-004-2 is shown on Sheets 4 and 5.

   Secondary uses shall be limited to unmanned bank teller machines, swimming pool and associated facilities, fitness centers, basketball half-court/racquetball court/sports court, business/telecommuting centers, video/entertainment centers, leasing offices, recreational/community rooms, outdoor recreational uses, and other accessory uses typically provided in multi-family communities.

2. Notwithstanding that the CDP/FDP is presented on thirteen (13) sheets and said CDP/FDP is the subject of Proffer 1 above, it shall be understood that the CDP shall be the entire plan shown on Sheets 2 and 3, relative to the points of access, the maximum number and type of dwelling units, the amount of open space, the general location and arrangement of buildings and parking, and the peripheral setbacks. The Applicant or successors have the option to request a FDPA for elements other than the CDP elements from the Planning Commission for all of or a portion of the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance, if in conformance with the approved CDP and proffers.

3. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the CDP/FDP may be permitted as determined by the Zoning Administrator. The

EXHIBIT 2 tabbies

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Applicant or successors shall have the flexibility to modify the layouts shown on Sheets 2 and 3 of the CDP/FDP without requiring approval of an amended CDP/FDP provided such changes are in substantial conformance with the CDP/FDP as determined by the Department of Planning and Zoning ("DPZ") and do not increase the number of dwelling units, decrease the amount of open space, or decrease the setback from the peripheries.

4. Advanced density credit shall be reserved as may be permitted by the provisions of Paragraph 5 of Section 2-308 of the Fairfax County Zoning Ordinance for all eligible dedications described herein, including road dedications, park dedications and school dedications, or as may be required by Fairfax County or Virginia Department of Transportation ("VDOT") at the time of site plan approval.

Owner Associations

5. Prior to the issuance of the first Residential Use Permit ("RUP") on the Application Property, the Applicant shall establish an Umbrella Owners Association ("UOA") in accordance with Virginia law. Individual homeowner associations and/or condominium owners associations ("HOA/COAs") shall be formed for various areas of the Application Property in accordance with Virginia law. Each HOA/COA and rental component shall be a member of the UOA with voting rights based on the number of dwelling units within each. The respective UOA and HOA/COA documents shall specify the maintenance obligations as may be outlined in these proffers and as may be agreed upon between the HOA/COAs and rental components.

Transportation

6. At the time of site plan approval, or upon demand by Fairfax County, whichever shall occur first, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way along the Application Property's Gallows Road frontage measuring a minimum of seventy-four (74) feet from the existing centerline as shown on Sheet 3 of the CDP/FDP.

   Townhouse units fronting on Gallows Road shall be set back a minimum of 15 feet from the dedicated right-of way. Initial purchasers of the townhouses along Gallows Road shall be advised in writing prior to entering into a contract of sale that Gallows Road is planned to be widened in the future.

7. At the time of site plan approval, the Applicant shall escrow the cost of constructing a future right-turn deceleration lane along the Gallows Road frontage of the Application Property, in an amount to be determined by Department of Public Works and Environmental Services ("DPWES"). The escrow shall include the cost of relocating, if determined necessary, the underground utilities existing at the time of rezoning approval which include a fiber optic line and water easement. This new turn lane is anticipated to

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be needed at such time as the existing right-turn deceleration lane becomes a future through lane on Gallows Road.

8. The Applicant shall construct extensions of the existing left turn lanes on northbound Gallows Road at the Merry Oaks Lane intersection and southbound Gallows Road at Science Applications Court within the existing right-of-way as may be approved by DPWES and VDOT. Such extensions, if permitted, shall be completed prior to the issuance of the 100th Residential Use Permit (RUP) for the Application Property.

9. Science Applications Court shall remain a private street. Commensurate with development of the Application Property, the Applicant shall construct improvements to Science Applications Court on a new alignment as shown on the CDP/FDP. The Science Applications Court approach to Gallows Road shall accommodate two lanes entering and three lanes exiting the Application Property.

10. Prior to site plan approval, the Applicant shall perform a warrant analysis to determine if a traffic signal is warranted at the intersection of Gallows Road and Madrillon Road. If the study shows a signal is warranted now or will be warranted with the build-out of the Application Property, the Applicant shall escrow the sum of $25,000 with DPWES at the time of first site plan approval towards the design and installation of said traffic signal at the intersection of Gallows Road and Madrillon Road. If the signal has not been installed within five (5) years of the date of the rezoning approval, the escrowed amount shall be redirected to the Providence District Trails Fund.

11. The Applicant shall provide one (1) bus shelter along its Gallows road frontage with specific location determined by WMATA. The bus shelter shall be the typical open type and the installation shall be limited to the concrete pad, the shelter itself and a trash can. No bus turn outs or special lanes shall be provided by the Applicant. If, by the time of final bond release, WMATA has not determined the exact location of the bus shelter, the Applicant shall escrow the amount of $20,000 with DPWES for the installation of a bus shelter by others in the future. Once installed, the bus shelter and trash can shall be maintained by the Application Property's UOA. Initial purchasers shall be advised in writing prior to entering into a contract of sale that the UOA shall be responsible for the maintenance of the bus shelter. The UOA/HOA/COA documents shall specify that the UOA is responsible for the maintenance of the bus shelter.

    At the time of final site plan approval, the Applicant shall escrow the amount of $20,000 with DPWES for the installation of a bus shelter by others along the southbound frontage of Gallows Road in the vicinity of the Merry Oaks Lane intersection, with the specific location determined by WMATA. If, by the time of final bond release, WMATA has not determined the exact location of the bus shelter, the $20,000 escrow shall be redirected to DPWES for funding of another shelter elsewhere in the Dunn Loring/Tysons Corner area.

12. At the time of site plan approval, the Applicant shall dedicate in fee simple to the Board of Supervisors right-of-way along the Application Property's I-495 frontage measuring 25

feet from the existing right-of-way as shown on Sheet 3 of the CDP/FDP. The Applicant shall provide ancillary utility and grading easements to a width determined by VDOT provided VDOT reconstructs any permanent improvements and landscaping disturbed with use of the easement. Subject to approval of a licensing agreement with Fairfax County, the Applicant shall maintain and have the usage of the dedicated area for open space until such time as construction of the I-495 improvements commence.

13. The use of mass transit, ride-sharing and other transportation strategies shall be utilized to reduce single occupancy vehicular (SOV) traffic from the Application Property during peak hours by a minimum of 20 percent of the trips generated according to the Institute of Transportation Engineers (ITE) Trip Generation Manual, 6th Edition. The transportation demand management ("TDM") plan shall consist of at least two Level 3 TDM elements as outlined in Attachment A and as defined by Fairfax County Department of Transportation ("FCDOT") for residential communities, in order to achieve the equivalent Level 4 (Platinum) program status. Tenants and purchasers shall be advised of this transportation strategy development proffer.

The Applicant shall designate an individual(s) to act as the Transportation Coordinator(s) whose responsibility shall be to implement the TDMs in coordination with the FCDOT. The transportation strategies management position may be a part of other duties assigned to the individual(s). The transportation management strategies shall be implemented after issuance of the 200th RUP for the Application Property. Strategies shall include the following:

A. Providing amenities for bicycle storage;
B. Providing a telecommuting center for all residents' use with the potential for upgrading to T-1 or similar secure lines;
C. Providing internet connections in all dwelling units to facilitate working at home;
D. Providing a concierge service/central area where residents can arrange certain services such as dry cleaning/pharmacy/grocery deliveries;
E. Sidewalk system designed to encourage/facilitate pedestrian circulation; and
F. Participation in a shuttle service as outlined in Proffer 14.

Strategies may include the following:

A. Participation in the Fairfax County Ride Share Program;
B. Dissemination of Ridesharing information in residential lease and purchase packages;
C. Making ridesharing display maps and forms available to in each multi-family building;
D. Providing Metro checks with rental contracts;
E. Instituting a "Preferred Employer" program for SAIC offering reduced application fees, reduced deposits, and other incentives to encourage SAIC employees to live on the Application Property;

F. Implementing a comprehensive Ozone Action Days Program;
G. Developing a web page for residents of the Application Property describing and updating information on TDM strategies and services; and
H. Any other strategies found to be effective in reducing the number of single-occupancy vehicle trips, mutually agreed upon by the Applicant and FCDOT.

The Transportation Coordinator may work with adjacent homeowner associations to develop and share carpool, vanpool and other ride sharing information.

The Applicant shall notify FCDOT of the date that the TDM strategies are implemented. One year after the TDM strategies are implemented the Applicant shall conduct a survey of residents, visitors and employees to determine the transportation characteristics of building tenants and employees. This survey will form the basis of the on-going transportation management program.

Annually thereafter, the Transportation Coordinator shall conduct a multi-modal transportation split survey of the residents to demonstrate whether the goal of reducing SOV trips by 20 percent has been met during peak hours. The Transportation Coordinator shall prepare an annual report, in coordination with, and for review and approval of the FCDOT, which shall include the results of the survey and assess the success of the TDM strategies in reaching the stated goal and recommend adjustments in TDM strategies.

If the annual multi-modal transportation split surveys indicate that a reduction of SOV trips by 20 percent has not occurred, $40.00 per occupied dwelling unit shall be contributed annually to a TDM fund for the Application Property until such time as the reduction has occurred. The TDM fund shall be used by the Transportation Coordinator to implement existing or new strategies to reduce SOV trips during peak hours. The terms of this proffer with regard to contributing to a TDM fund shall expire fifteen (15) years after the last RUP is issued.

14. The Applicant shall provide a shuttle bus/van service from the Application Property to the Dunn Loring Metro Station and other office campuses within Tysons Corner. The Applicant may provide this shuttle service in concert with an existing shuttle service provided by the adjacent I-3 property and may share in the cost of operation. The shuttle service shall be provided to meet peak hour demand and shall, at a minimum, operate on weekdays (except for federal holidays) for three hours during the morning peak and three hours during the evening peak. The shuttle service shall commence prior to the occupancy of the 200th RUP on the Application Property and shall operate for at least three years following the issuance of the last RUP. Cost of the shuttle service shall be borne by the UOA. Initial purchasers shall be advised in writing prior to entering into a contract of sale that the UOA will fund the cost of operating the shuttle. The UOA/HOA/COA documents shall expressly state that the UOA shall be responsible for operation of the shuttle. If it is determined by the Applicant that demand for the shuttle service does not warrant continuation, the Applicant may elect to cease operation.

However, the Applicant shall provide ninety (90) days advance written notification to residents of the Application Property and FCDOT of the planned cessation of shuttle service. In addition, if FCDOT determines that the shuttle service interferes with the public bus service and notifies Applicant of same, the Applicant shall cease operation of the shuttle service upon ninety (90) days advance written notification to residents.

15. All private streets shall be constructed with materials and depth of pavement consistent with public street standards in accordance with the Public Facilities Manual, as determined by DPWES. The Applicant and subsequent UOA/HOA/COAs shall be responsible for the maintenance of all private streets. Initial purchasers shall be advised in writing prior to entering into a contract of sale that the UOA/HOA/COAs will be responsible for the maintenance of the private streets. The UOA/HOA/COA documents shall expressly state that the individual HOA/COA or rental component shall be responsible for the maintenance of the private streets serving that entity's development area.

16. The Applicant shall make a cash contributution to a fund administered by the FCDOT to be used toward Tysons Corner Area transportation improvements. The amount of the contribution shall be in keeping with the policy and formula adopted by the Board of Supervisors at the time of the approval of the rezoning (anticipated to be $734.00 per dwelling). Using the rezoning approval date as the base date, this cash contribution shall be adjusted accordingly to the construction cost index as published in the *Engineering News Record*. The contribution shall be paid in two equal (2) installments; the first installment to be paid at the issuance of the first RUP; the remaining installment shall be paid twelve (12) months later, but no later than final bond release.

17. The Applicant shall install appropriate warning signage and/or markers on the east side of Gallows Road as determined by VDOT, advising motorists of the curve in Gallows Road immediately north of Science Applications Court. If by the time of final bond release for the Application Property, VDOT has not determined what signers or markers would be appropriate, the Applicant's obligation under this proffer shall be null and void.

18. To increase pedestrian safety crossing Gallows Road at Science Applications Court, the Applicant shall make the following improvements subject to VDOT approval:

    A. Widen the existing concrete median located on the northern Gallows Road approach to a width of six (6) feet to provide for a pedestrian refuge. This shall be accomplished by shifting the Gallows Road curbing along the Application Property's frontage.

    B. Re-paint the pedestrian crosswalk.

    C. Install a new pedestrian signal that counts down the time available to cross the road.

    D. Work with VDOT to ensure adequate crossing time.

E. Install "no turn on red while pedestrians are present" signage on the Gallows Road northern approach and on Merry Oak Lane's eastbound approach to the intersection.

19. The Applicant shall construct a secondary emergency only access point onto Gallows Road as shown on the CDP/FDP, commensurate with development of the townhouse section. This access shall be constructed of grasscrete, ritter rings or other similar materials and shall be chained at the property line so that it is used only in emergency situations.

Architectural/Landscaping Details

20. The architectural design of the multi-family buildings and townhomes shall be in substantial conformance with the general character of the elevations shown on Sheet 13. The Applicant reserves the right to refine the elevations as a result of final architectural design, so long as the character and quality of design remains consistent with those shown. The townhouses shall be a maximum of three stories above grade with an additional optional loft incorporated into the roof structure (maximum building height of 45 feet). Building materials may include one or more of the following: brick, stone, pre-cast concrete, siding, stucco (excluding dryvit or other similar synthetic stucco material) and glass. Building facades will be predominantly masonry. The façade of the parking structure associated with Building 2 shall be predominantly either masonry or pre-cast concrete.

A copy of the architectural plans shall be submitted to the Providence District Planning Commissioner for review and comment prior to final site plan approval. At the time of each submission of the final site plan to the County, a copy of the submission shall be provided to the Providence District Planning Commissioner for review and comment.

21. A landscape plan shall be submitted as part of the first and all subsequent submissions of the site plan and shall be coordinated with and approved by the Urban Forester. This plan shall be in substantial conformance with the landscape concepts plan as to quantity and quality of plantings, and in general conformance with the location of plantings as shown on Sheets 6. The Applicant shall work with the Urban Forester to select plant species that in addition to meeting other landscaping requirements such as durability, availability and aesthetics, also aid in the maintenance of air quality. Location of plantings may be modified based on utility location, sight distance easements, and final engineering details as approved by the Urban Forester, but shall be consistent in the number and type of plantings.

22. The design details shown on Sheets 6, 8, 9 and 10 submitted with the CDP/FDP illustrate the design intent and overall community organization of the proposed development. Landscaping and on-site amenities shall be substantially consistent in terms of character and quantity with the illustrations and details presented on these sheets. Specific features

such as exact locations of plantings, pedestrian lighting, sidewalks to individual units, etc. are subject to modification with final engineering and architectural design. Landscaping and on-site amenities shall include:

a. A landscaped entry feature to be provided on site to include an entrance monument and/or signage, ornamental trees and shrubs;

b. Installation of streetscape elements and plantings along the Application Property's Gallows Road frontage as shown on Sheets 6 and 10 of the CDP/FDP. A planting strip a minimum of six (6) feet in width shall be provided between the future curb of Gallows Road anticipated with construction of an additional lane and the proposed asphalt trail. Street trees on the east side of the trail shall be planted at twice the density as street trees in the planting strip west of the trail, as shown on Sheet 10 of the CDP/FDP. Street trees shall be a minimum of three-inch caliper at the time of planting. Trees located within VDOT rights-of-way are subject to VDOT approval.

c. Installation of streetscape elements and plantings along the south side of Science Application Court as shown on Sheet 9 of the CDP/FDP.

d. A large community green in the eastern portion of the Property as shown on Sheet 8 of the CDP/FDP. This passive recreational area shall include pedestrian pathways, specialized landscaping, seating areas, and pedestrian lighting and shall be available for use by all residents of the Application Property.

e. Landscaped courtyards within the multi family Buildings 2 and 3 as shown on Sheet 6 and detailed on Sheet 8 of the CDP/FDP. These courtyards shall incorporate a courtyard walk, special paving areas with seating or picnic areas, a mixture of deciduous, evergreen and ornamental plantings, and a lawn panel. Each courtyard may vary in design detail and amenities.

Sidewalk/Trails

23. The Applicant shall provide sidewalks on both sides of Science Applications Court and throughout the Application Property linking buildings as shown on Sheet 6 of the CDP/FDP. Such construction shall occur commensurate with the development of each section of the Application Property. In addition, the Applicant shall construct a minimum five (5) foot wide asphalt trail around the stormwater management pond and between the I-495 frontage and the proposed parking garage as shown on the CDP/FDP. Trail construction shall occur concurrently with the construction of the stormwater management ponds.

24. The Applicant shall construct an eight (8) foot wide asphalt trail within the dedicated right-of way along the Gallows Road frontage as shown on Sheets 6 and 10 of the CDP/FDP.

Environment

25. All outdoor lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Fixtures used to illuminate residential streets, parking areas and walkways shall not exceed twenty (20) feet in height, shall be of low intensity design and shall utilize full cut-off fixtures which shall focus directly on the Application Property. All upper level parking deck lighting fixtures shall not exceed the height of the parapet wall. Lighting on the lower level of parking decks shall be installed between the ceiling beams to reduce glare.

    To prevent parking deck lighting impacts on Tysons Executive Village, the southern façade of the parking deck located adjacent to I-495 shall be solid including a solid garage door or panel door which will not allow light to pass through.

26. Signage on the Application Property shall be provided in accordance with Article 12 of the Zoning Ordinance. If lighted, signage shall be internally lighted or directed downward.

27. Unless modified by DPWES, the Applicant shall provide stormwater detention and Best Management Practices as required by the Public Facilities Manual (PFM) and as depicted on the CDP/FDP in up to three enhanced extended detention facilities. Plantings shall be provided within these ponds to the extent permitted by the PFM. The design of the southern pond will require a modification of the PFM to allow the installation of a dam cut-off wall. The ponds shall be maintained by the UOA, in association with the owners of the commercial structures governed by PCA 75-7-004-2.

28. Within 90 days of the Board's approval of the rezoning of the Application Property, the Applicant shall submit a written comparative analysis to the Tysons Executive Village ("TEV") Homeowners Association Board of Directors [Tax Map 39-2 ((48))], DPWES, and the Providence District Supervisor analyzing the effects of existing and future development on the existing wet pond in the TEV subdivision for the entire watershed of the pond and comparing the advantages and disadvantages of converting it to a dry pond or maintaining it as a wet pond. The TEV HOA shall be given the opportunity to review the analysis and provide a written determination to the Applicant and Providence District Supervisor as to its decision to maintain or convert the pond. As a result of that determination and after review of that analysis by DPWES, the Applicant shall undertake the following actions:

    a. If TEV elects to maintain their stormwater management facility as a wet pond, the Applicant shall remove accumulated sediment from the pond and restore the pond

it to its originally designed storage capacity at no cost to TEV. Such improvement shall be made concurrent with initiation of clearing and grading on the Application Property subject to TEV providing any necessary permission and/or easements at no cost to the Applicant. The Applicant shall perform a bathometric survey of the TEV pond following completion of the pond improvements and shall perform a second bathometric survey following completion of construction on the Application Property. Should these surveys show an unacceptable level of sedimentation has occurred, as determined by DPWES, the Applicant shall restore the pond to its approved storage volume prior to final bond release on the Application Property.

The Applicant shall then enter into an agreement with TEV agreeing to pay its proportionate share of all future pond maintenance costs (as defined in said agreement). Said agreement shall be recorded in the land records.

b. If TEV elects to convert their wet pond to a dry pond, the Applicant shall revise the TEV site plan accordingly and shall make the necessary improvements at no cost to TEV subject to TEV's written authority to do so and subject to DPWES approval. Landscaping in the pond shall be provided by Applicant as permitted by the Urban Forester and DPWES. In order to convert the pond it is understood that it may be necessary to provide Best Management Practices (BMPs) for TEV on the Application Property. Conversion of the pond shall occur concurrent with clearing and grading activities on the Application Property provided 1) the TEV site plan revision has been approved; and 2) TEV provides any necessary permission and/or easements at no cost to the Applicant. If the TEV site plan revision is not approved and/or necessary easements not provided prior to clearing and grading activities on the Application Property, the Applicant shall delay conversion of the pond until necessary approvals and easements are obtained but shall be allowed to proceed with clearing, grading and construction on the Application Property. Once the pond has been converted to a dry pond, TEV shall petition Fairfax County to accept maintenance of the pond. The Applicant shall be responsible for any additional improvements needed to ensure County acceptance.

c. The Applicant shall bond these public improvements in keeping with standard County policies.

If TEV does not provide a written determination to the Applicant and Providence District Supervisor within 60 days of its receipt of the Applicant's written comparative analysis, the Applicant shall implement improvements specified in Paragraph "a" above.

29. In an effort to mitigate existing drainage problems within the adjacent Courts of Tysons ("COT") community, the Applicant shall:

a. Design and install a storm drain system to intercept stormwater from Gallows Road currently being piped along the COT northern boundary line. The new system shall redirect this storm drainage through the Application Property as generally shown on the CDP/FDP.

b. Provide an underground TV inspection of the condition of the existing storm drain from Gallows Road to the proposed intercepts and correct any breaks, malfunctions, or sedimentation found, as determined necessary and approved by DPWES. Implementation of this proffer is dependent on the COT granting any necessary easements or letters of permission at no cost to the Applicant.

c. The Applicant shall bond these public improvements in keeping with standard County policies.

30. A tree preservation plan shall be submitted as part of the site plan in conformance with the tree save areas shown on the CDP/FDP. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the Urban Forestry Division. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees twelve (12) inches in diameter and greater within fifteen (15) feet of either side of the limits of clearing and grading. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the *Guide for Plant Appraisal* published by the International Society of Arboriculture.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing using four foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart, shall be erected at the limits of clearing and grading as shown on the CDP/FDP. All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. Three (3) days prior to the commencement of any clearing, grading, or demolition activities, the Urban Forestry Division shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.

The Applicant shall strictly conform to the limits of clearing and grading as shown on Sheet 3 of the CDP/FDP.

The limits of clearing and grading shall be marked with a continuous line of flagging prior to the pre-construction meeting. Before or during the pre-construction meeting, the limits of clearing and grading shall be walked with an Urban Forestry Division representative to determine where minor adjustments to the clearing limits can be made to increase the survivability of trees at the edge of the limits of clearing and grading. Representatives of the COT and TEV HOAs shall be invited to participate in walking the

limits of clearing and grading adjacent to their communities with the Applicant and the Urban Forester. Trees that are not likely to survive construction due to their species and/or their proximity to disturbance will also be identified at this time and removed as part of the clearing operation.

Any trees identified to be preserved adjacent to the COT, Courthouse Station and TEV property lines, which fail to survive within two years following construction activity shall be replaced by the Applicant with species as determined appropriate by the Urban Forester, in consultation with designated representatives of the COT HOA, Courthouse Station HOA, and TEV HOA and the UOA for the Application Property. To supplement the normal conservation escrow required, the Applicant shall post an additional $10,000 in the conservation escrow at the time of site plan approval to ensure replacement of construction damaged trees.

31. A fence a minimum of six feet in height shall be provided between the southernmost stormwater management pond on the Application Property and the adjacent TEV, Courthouse Station, and COT subdivisions as depicted on the CDP/FDP. The fence shall be constructed with masonry piers and wooden inserts. The fence shall be field located, with review by the Urban Forester, to ensure minimal disturbance to existing vegetation. Deciduous and evergreen trees shall be installed between the wall/fence and adjacent subdivisions to supplement existing vegetation to be preserved, as determined by the Urban Forester. Any trees identified to be preserved which fail to survive a two year period following construction shall be replaced by the Applicant with species determined appropriate by the Urban Forester, in consultation with designated representatives of the COT HOA, Courthouse Station HOA, and TEV HOA and the UOA for the Application Property.

Installing the above-referenced fence will result in a double set of fencing along the COT eastern boundary. If, in the future, both the COT HOA and the UOA for the Application Property jointly decide to eliminate the second fence located inside the Application Property, nothing in this proffer should prevent removal of that fence. In the event the removal of such second fence is jointly decided, a shared fence maintenance agreement for the eastern boundary of COT shall be executed prior to any removal.

32. Within the tree save area shown on the Application Property immediately north of the COT and around the south end of the Kidwell Drive cul-de-sac, the Applicant shall provide supplemental evergreen and deciduous trees as determined by the Urban Forester in consultation with the COT HOA and Heritage Point HOA in an effort to create an effective year round screen. Care shall be taken to retain healthy quality vegetation to the maximum extent possible, while augmenting the screening opportunities.

33. All units constructed on the Application Property shall meet the thermal standards of the CABO Model Energy Program for energy efficient homes, or its equivalent, as determined by DPWES for either electric or gas energy homes, as applicable.

34. Polysonics Corp. has prepared a Traffic Noise Analysis of the Application Property dated August 2003. This report provides an analysis of noise impacts associated with I-495 and Gallows Road. Based on the findings of that report, the Applicant shall provide the following noise attenuation measures:

a. In order to reduce interior noise associated with Interstate 495 to a level of approximately 45 dBA Ldn, the garage associated with Building 3 shall be utilized as a noise attenuation barrier as shown on the CDP/FDP.

b. In order to reduce interior noise to a level of approximately 45 dBA Ldn, for units which are projected to be impacted by highway noise from I-495 having levels projected to be greater than 70 dBA Ldn after the garage is in place, located on the eastern façade of Building 2 and the northern and southern facades of Building 3, these units shall be constructed with the following acoustical measures:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 45. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

c. In order to reduce interior noise to a level of approximately 45 dBA Ldn for units which are projected to be impacted by roadway noise from Gallows Road having levels projected to be between 65 and 70 dBA Ldn, located on the western façade of Building 1 and the townhouse units facing Gallows Road, these units shall be constructed with the following acoustical measures:

Exterior walls should have a laboratory sound transmission class (STC) rating of at least 39.Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 39. All surfaces should be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

d. Prior to the issuance of building permits, alternative interior noise attenuation measures may be provided subject to the implementation of a refined noise study as reviewed and approved by DPWES after consultation with the Department of Planning and Zoning.

e. Due to the placement of structures on the site, additional exterior noise mitigation is not necessary for most of the outdoor recreational uses on the site. The jogging trail with exercise stations located adjacent to I-495 will be impacted by noise but mitigation is not provided.

35. If required by DPWES, a geotechnical engineering study shall be submitted to DPWES for review and approval prior to final site plan approval, and recommendations generated by this study shall be implemented as required by DPWES.

36. Prior to the issuance of a demolition permit or land disturbance permit, a rodent abatement plan shall be submitted to Fairfax County Health Department that will outline the steps that will be taken to prevent the spread of rodents from the construction site to the surrounding community and sewers. The Applicant shall implement the rodent abatement plan.

Miscellaneous

37. The Applicant shall contribute the amount of $150,000 to Kilmer Intermediate School for the purchase of wireless computers or other technology based programs at the discretion of the principal. The Applicant shall provide documentation that this contribution has been made. Such contribution shall occur prior to the issuance of the first RUP for the Application Property

38. The Applicant shall contribute the amount of $465,000 to the Board of Supervisors for the construction of capital improvements to schools in the vicinity of the Application Property. The contribution shall be paid in two (2) installments; the first installment of $232,500 to be paid prior to issuance of the 100th RUP and the second installment of $232,500 shall be paid prior to the issuance of the 300th RUP.

39. The Applicant shall comply with the Affordable Dwelling Unit (ADU) Program as set forth in Section 2-801 of the Zoning Ordinance unless modified by the ADU Advisory Board. The Applicant reserves the right to provide ADUs for all of the Application Property within the multi-family buildings. Two of the required ADUs (one one-bedroom unit and one two-bedroom unit) shall be designed and constructed to be fully handicapped accessible. Three of the required ADUs shall be designed and constructed as handicapped adaptable units and shall be made fully handicapped accessible if demand dictates.

40. No temporary signs (including "Popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 of Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on- or off-site by the Applicant or at the Applicant' direction to assist in the initial sale or rental of residential units on the Application Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and sale and/or rental of residential units on the Application Property to adhere to this proffer.

41. The Applicant shall comply with Paragraph 2 of Section 6-110 of the Zoning Ordinance by contributing $955 per dwelling unit for developed recreational facilities. The Applicant shall receive credit for the on-site recreational facilities which shall include, but not be limited to a swimming pool; a community center with exercise facilities; a tot lot; an indoor basketball half-court/racquetball court/sport court (either within one of the residential buildings or in a separate structure as shown on the CDP/FDP); and a jogging trail with exercise stations. Any additional money remaining which is not spent for on-site facilities shall be contributed to the Fairfax County Park Authority.

42. Prior to the issuance of the first RUP on the Application Property, the Applicant shall contribute the amount of $150,000.00 to the Fairfax County Board of Supervisors for the acquisition of park land or improvement of park facilities in the Dunn Loring/Tysons Corner area.

43. A covenant shall be recorded which provides that townhouse garages shall only be used for a purpose that will not interfere with the intended purpose of garages (e.g., parking of vehicles) and that parking shall not be permitted in driveways that are less than 18 feet in length. This covenant shall be recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots and shall run to the benefit of the UOA/HOA/COA and the Fairfax County Board of Supervisors. Initial purchasers shall be advised in writing of the use restrictions prior to entering into a contract of sale and said restrictions shall be contained in the HOA/COA documents.

44. All front loaded townhouse driveways on the Application Property shall be a minimum of eighteen (18) feet in length from the garage door to the sidewalk.

45. A joint maintenance agreement between the UOA and the owners of the commercial structures governed by PCA 75-7-004-2 shall be provided for the maintenance of Science Application Court, pedestrian trails, and the stormwater management facilities serving the Application Property and the property subject to PCA 75-7-004-2. Purchasers shall be advised in writing prior to entering into a contract of sale that the UOA will share in the cost of such maintenance. The UOA documents shall expressly state that the UOA shall be responsible for shared maintenance of these facilities.

46. Property owners of two adjacent lots in TEV identified as Tax Map 39-2 ((48)) 9 and 10 have been utilizing portions of the Application Property as extensions of their rear yards. In order to allow this use to continue, the Applicant shall convey in fee simple the Outlot A-1 shown on the CDP/FDP to the owner of Lot10 and Outlot A-2 as shown on the CDP/FDP to the owner of Lot 9. Conveyance shall occur prior to bonding of the site plan for the Application Property. The Deeds of Conveyance shall include restrictive covenants which provide, among other things, that (1) density from the out lots shall be reserved in perpetuity for the benefit of the remainder of the Application Property; (2) no structures shall be constructed on the out lots, rather the out lots shall be left as open space with existing trees preserved to the maximum extent feasible; and (3) any future rezoning, proffered condition amendment, final development plan amendment, or site

plan approvals for the remainder of the Application Property shall not require the inclusion of the out lots or the joinder or consent of the owners of the out lots so long as the rezoning, proffered condition amendment, final development plan amendment or site plan does not include the area of the out lots.

47. In order to provide a tot lot for the COT Homeowners Association [Tax Map 39-2 ((27))], the Applicant shall convey in fee simple Outlot A-3 as shown on the CDP/FDP to the COT. Prior to the conveyance, the Applicant shall:

a. Install a tot lot on the outlot based on a determination as to the type of equipment COT desires. Such equipment cost shall not exceed $20,000. Care shall be taken to minimize disturbance to existing quality vegetation. The final location of the tot lot shall be determined by the Urban Forester;

b. Construct a pedestrian connection between the existing COT property and the tot lot as generally shown on the CDP/FDP; and

c. Install a fence around the perimeter of Outlot A-3 and remove sections of the existing fence between COT and Outlot A-3 to allow the pedestrian connection.

d. Bond these improvements in keeping with standard County policies.

Such improvements shall be made subject to COT providing any necessary permission and/or easements at no cost to the Applicant, and COT providing timely input into the type of tot lot equipment and fencing desired. In the event COT has not provided information with regard to equipment selection and fencing in a timely manner prior to the Applicant applying for its 100th RUP, the Applicant may elect to contribute $20,000 to the COT along with the fenced outlot conveyance and thereby be relieved of any further obligation to install the tot lot and pedestrian connection.

Conveyance of Outlot A-3 shall occur prior to issuance of the 100th RUP for the Application Property. The Deed of Conveyance shall include restrictive covenants which provide, among other things, that (1) density from the outlot shall be reserved in perpetuity for the benefit of the remainder of the Application Property; (2) no structures other than the tot lot shall be constructed on the outlot, (3) existing trees shall be preserved to the maximum extent feasible; and (4) any future rezoning, proffered condition amendment, final development plan amendment, or site plan approvals for the remainder of the Application Property shall not require the inclusion of the outlot or the joinder or consent of the owner of the outlot so long as the rezoning, proffered condition amendment, final development plan amendment or site plan does not include the area of the outlot.

48. Prior to the issuance of the first RUP on the Application Property, the Applicant shall either:

a. Contribute the sum of $25,000 to the COT Homeowners Association for the maintenance and future replacement of the fence installed by the COT along its common boundary with the Application Property. The Applicant shall provide documentation to DPWES that this contribution has been made; or

b. Enter into a fence maintenance agreement with the COT Homeowners Association. Said agreement shall specify that the COT and the Applicant, its successors or assigns shall share equally in the cost of future maintenance and/or replacement of the existing wooden fence along the Courts of Tysons northern boundary. The COT fence along its eastern boundary and the future fence around the tot lot described in Proffer 45 shall be the responsibility of the COT Homeowners Association. This agreement shall be recorded among the land records of Fairfax County. In the event an agreement to the satisfaction of both the parties has not been reached by the time the Applicant has applied for its first RUP, the Applicant shall contribute the sum of $25,000 to the COT Homeowners Association for the maintenance and future replacement of the fence and shall be released of its obligation to enter into a joint fence agreement.

The COT Homeowners Association shall be given the opportunity to inform the Applicant in writing of which of the two alternatives they prefer. If COT fails to provide a written determination to the Applicant within 60 days of its receipt of the Applicant's request for a determination, the Applicant shall implement the alternative in Paragraph "a" above.

49. Prior to approval of the final site plan on the Application Property, the Applicant shall provide evidence that a parking agreement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the I-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 pm) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.

50. Construction activity shall be permitted Mondays through Fridays from 7:00 a.m. to 7:00 p.m., Saturdays from 8:00 a.m. to 6:00 p.m. No construction activity shall be permitted on Sundays, Thanksgiving Day, Christmas Day and New Years Day. These construction hours shall be posted on the Application Property prior to any land disturbing activities. The Applicant shall include a construction hour notice in its contract with its general construction contractor.

51. These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one in the same instrument.

52. These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.

53. The individual sections within the Application Property may be subject to Proffered Condition Amendments and Final Development Plan amendments without joinder and/or consent of the other property owner of the other sections/buildings.

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[SIGNATURES BEGIN ON NEXT PAGE]

PROFFERS
RZ 2003-PR-008

APPLICANT/CONTRACT PURCHASER
OF TAX MAP 39-2 ((1)) 13 pt.

LINCOLN PROPERTY COMPANY
SOUTHWEST, INC.

By: Richard N. Rose
Its: Vice President

[SIGNATURES CONTINUED ON NEXT PAGE]

TITLE OWNER OF TAX MAP 39-2 ((1)) 13

CAMPUS POINT REALTY CORPORATION II

By: Frederick R. Hazard
Its: President

[SIGNATURES END]

BK 16927 2196

1 of 5

Tax Parcel ID No. 039-2-01-0013

DECLARATION OF CONDITIONS, RESTRICTIONS, AND EASEMENTS

THIS DECLARATION OF CONDITIONS, RESTRICTIONS, AND EASEMENTS (hereinafter "Declaration"), is made this 4th day of January, 2005 (the "Effective Date"), by CAMPUS POINT REALTY CORPORATION, a California corporation (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Declarant owns fee simple title to those certain tracts of land located in Fairfax County, Virginia, described on (i) Exhibit A-1 attached hereto and made a part hereof ("Parcel 1") and (ii) Exhibit A-2 attached hereto and made a part hereof ("Parcel 2"); and

WHEREAS, Declarant intends to convey Parcel 1 to a third party; and

WHEREAS, Declarant desires to create and establish (i) certain conditions and restrictions relating to construction on Parcel 1, (ii) certain easements for the benefit of Parcels 1 and 2 for (a) access, ingress, egress and regress, and (b) storm water management and (iii) rights with respect to signage.

NOW THEREFORE, in consideration of Ten Dollars ($10.00), the covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant agrees, covenants, and declares as follows:

EXHIBIT 3

ARTICLE I

GENERAL

Section 1.1 Definitions. The following words, when used in this Declaration, shall have the following meanings:

"Access Easement" shall have the meaning set forth in Section 3.1(a).

"Access Easement Area" shall mean those certain portions of Parcel 2 that are more particularly described in Exhibit B attached hereto and made a part hereof.

"Access Expenses" shall mean the reasonable costs and expenses of maintaining, repairing, and operating the Current Access Area and/or Access Easement Area. Access Expenses shall not include any amounts which would otherwise be included in Access Expenses which are paid to any Affiliate (as defined below) of the Parcel 1 Owner (as defined below) to the extent the costs of such services exceed the amount which would have been paid in the absence of such relationship for similar services of comparable level, quality and frequency rendered by persons of similar skill, competence and experience.

"Access Improvements" shall mean asphalt or concrete pavement, curbs, landscaping, directional signage, striping, lighting, utilities and other similar improvements constructed or installed in the Access Easement Area from time to time.

"Access Monument Sign" shall have the meaning set forth in Article VI.

"Affiliate" shall mean any person or entity controlling, controlled by, or under common control with, another person or entity. "Control" as used herein means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such controlled person or entity (the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, at least fifty-one percent (51%) of the voting interest in, any person or entity shall be presumed to constitute such control).

"Business Days" shall mean Mondays through Fridays other than those days on which national banks are not open for business in the Commonwealth of Virginia.

"Current Access Area" shall mean the area on Parcel 1 and Parcel 2 identified on Exhibit E hereto which, as of the Effective Date, serves, and until such time as the Access Improvements are completed will serve, as the access to and from Gallows Road for Parcels 1 and 2.

"Current Access Improvements" shall mean the pavement, curbs, landscaping, directional signage, striping, lighting, utilities and other similar improvements existing in the Current Access Area as of the date hereof or constructed or installed from time to time.

"First Class Standards" shall mean a quality that is equal to or in excess of the quality of similar facilities, services or improvements provided to or for the benefit of Class A office and/or luxury residential projects located in Fairfax County, Virginia.

"Governmental Authorities" shall mean the United States, the state, county, city and political subdivision in which the Parcels (as defined below) are located or which exercise jurisdiction over the Parcels or the Improvements (as defined below), and any agency, department, commission, board, bureau or instrumentality of any of them which exercises jurisdiction over the Parcels or Improvements, including, without limitation, the Virginia Department of Transportation.

"Improvement" or "Improvements" shall mean the buildings, structures, driveways, sidewalks and other improvements located on the Parcels from time to time.

"Initial Access Improvements" shall mean the Access Improvements to be constructed in the Access Easement Area in accordance with the Initial Development Plan and Section 3.2 hereof.

"Initial Development" shall mean the initial construction on Parcel 1 of Improvements that do not exist on Parcel 1 as of the Effective Date.

"Interest Rate" shall mean the lesser of (i) the rate per annum equal to the interest rate published from time to time as the prime rate in the Money Rates column of the Wall Street Journal (Eastern edition) (said rate to change on the first day of each calendar month) plus 300 basis points, or (ii) the then applicable maximum interest rate permitted to be charged by the laws of the Commonwealth of Virginia.

"Legal Requirements" shall mean any applicable law, statute, ordinance, order, rule, regulation, decree or requirement of a Governmental Authority and any other applicable public or private covenant, condition, restriction or other title matter affecting the Parcels as of the Effective Date.

"Mortgage" shall mean a lien, mortgage, deed of trust, deed to secure debt or other similar instruments securing the repayment of a debt to a bona fide third party (which is not an Affiliate of the borrower) and encumbering all or any portion of a Parcel or any interest (including any ground leasehold interest) therein; provided, however, that such term shall not include judgment or mechanic liens.

"Mortgagee" shall mean the mortgagee or beneficiary of a first lien Mortgage.

"Normal Business Hours" shall mean 7:00 a.m. to 7:00 p.m. on Business Days.

"Owner" shall mean the Person (as defined below) which is from time to time the record owner of fee simple title to any Parcel or any portion thereof, or the record lessee under any ground lease; provided, however, that such term shall not include any trustee under any Mortgage or any Mortgagee who may hold a lien against any such Parcel or leasehold interest under a ground lease pursuant to a Mortgage unless and until such party shall acquire record fee simple title or record leasehold title to any such Parcel through foreclosure, deed in lieu of foreclosure, or otherwise. A reference herein to "Owners" shall mean all Owners.

"Parcels" shall mean, collectively, Parcel 1 and Parcel 2.

"Parcel 1 Owner" shall mean the Owner or Owners of Parcel 1 or any portion thereof, from time to time and as applicable.

"Parcel 2 Owner" shall mean the Owner or Owners of Parcel 2 or any portion thereof, from time to time and as applicable.

"Permittees" shall mean any Owner, and its tenants, licensees, invitees, subtenants or authorized occupants of any portion of a Parcel and/or the Improvements located thereon and the respective officers, directors, employees, agents, partners, contractors, subcontractors, customers, visitors, invitees, guests, licensees and concessionaires of any such Person.

"Person" or "Persons" shall mean individuals, partnerships, associations, corporations and any other forms of organization, or one or more of them, as the context may require.

"Substantial Completion of the Improvements" shall mean the completion of the applicable Improvement except for details of construction, decoration or mechanical adjustment that, in the aggregate, are minor in character and do not, either by their nature or because of the repair or completion work necessary, materially interfere with the intended use or enjoyment of the applicable Improvement, such that it would be reasonable under the circumstances for such Improvement to be made available for its intended use and completion of any such details would not unreasonably interfere with such use in due course after such Substantial Completion thereof. To "Substantially Complete" shall mean to bring the applicable Improvement to Substantial Completion.

"Taking" shall mean any taking or condemnation for public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or by voluntary conveyance in lieu thereof.

Section 1.2 Property Subject to this Declaration. Each Parcel or portion thereof and any right, title or interest therein shall be owned, held, leased, sold and/or conveyed by the existing Owners, and any subsequent Owner of all or any part thereof, subject to this Declaration and the covenants, conditions, restrictions, easements, charges and liens (except as set forth in Section 8.4 below) set forth herein; provided, however, that after Substantial Completion of the Improvements contemplated in the Initial Development Plan (as hereinafter defined), the following provisions of this Declaration shall no longer be applicable and no Parcel or any Owner thereof shall be subject to such provisions: (a) Article II; (b) Section 3.2(a); and (c) Section 11.5. Notwithstanding the foregoing, as to each of the outlot parcels described in Exhibit F attached hereto (each an "Outlot Parcel"), when such Outlot Parcel is conveyed to the owner of the property adjacent to said Outlot Parcel pursuant to the "Lincoln Property Company Southwest Inc. Proffers (R2 2003-PR-008)" dated March 11, 2004 applicable to Parcel 1 (and, in particular, proffers numbered 46 and 47), then such Outlet Parcel shall automatically be released from this Declaration.

Section 1.3 Applicability to Parcel 2. Nothing in this Declaration shall be construed to require any demolition, alteration, construction or reconstruction of any Improvement, any landscaping or grading, or any thing whatsoever on Parcel 2 except the work to be done by the Parcel 1 Owner pursuant to Article III hereof or to empower the Parcel 1

Owner or any other party to require any such demolition, alteration, construction or reconstruction, or to restrict or prohibit the Parcel 2 Owner or the owner of any Improvement on Parcel 2 from demolishing, altering, rebuilding, restoring, repairing or reconstructing such Improvement following any casualty (whether partial or total) or from doing any other thing with Parcel 2 or the Improvements thereon.

ARTICLE II

CONSTRUCTION CONDITIONS AND RESTRICTIONS

Section 2.1 Conditions and Restrictions on Construction. Any and all construction activities on Parcel 1 and in the Access Easement Area shall be subject to the following conditions and restrictions:

(a) Diligent Completion of Construction. Subject to the last sentence of this Section 2.1(a), once commenced, demolition, alteration or construction of any Improvements on Parcel 1 or in the Access Easement Area, including, without limitation, demolition, alteration or construction connected with the Initial Development, shall be diligently pursued to completion as quickly as is commercially reasonable, subject to *force majeure*, so that it is not left in a partly finished condition any longer than is required by prudent construction practices. Notwithstanding anything to the contrary herein, the Initial Development may be constructed in phases, provided that once a phase is commenced, the Parcel 1 Owner of the phase under construction shall, subject to *force majeure*, pursue the construction of any Improvements commenced in such phase to final completion in accordance with the previous sentence or demolish said partially constructed improvements and promptly return the area substantially to the condition it was in prior to commencement of construction of said phase.

(b) Unobstructed and Safe Use of Access Easement. Throughout any period of construction on Parcel 1, the Parcel 1 Owner shall:

(i) subject to Section 3.3(c), not permit obstruction of the Parcel 2 Owner's use of the Access Easement or the Current Access Area as applicable; and

(ii) during hours of construction activity, post a traffic guard or guards on and/or in the vicinity of the Current Access Area and/or Access Easement Area as applicable in order to ensure the safety of all those using the Access Easement and, in all events, at least one such guard shall be posted during Normal Business Hours, when necessary or as determined by the Parcel 2 Owner, at the intersection of the Access Easement Area or the Current Access Area, as applicable, and Gallows Road.

(c) Vehicular Traffic. To the extent permitted by Legal Requirements, all vehicular traffic related to construction activities undertaken on Parcel 1 shall be diverted from the Access Easement Area or the Current Access Area, as applicable, onto an alternate path, road or other route on Parcel 1 as close to the Gallows Road end of the Access Easement Area or the Current Access Area, as applicable, as commercially reasonable so as to minimize the portion of the Access Easement Area and the Current Access Area, as applicable, that such vehicular traffic

utilizes. The Parcel 1 Owner shall implement reasonable speed limits for such vehicular traffic so as to minimize the disturbance of dust and/or other airborne particles and to protect individuals and property from harm related to such vehicular traffic.

(d) Construction Parking. All vehicles utilized for or otherwise related to construction activities (including, without limitation, construction machinery and vehicles utilized by contractors, subcontractors and their employees and agents) shall be parked in a designated area on a portion of Parcel 1, and as far removed as feasible from Parcel 2.

(e) Minimization of Noxious Substances. During construction, the Parcel 1 Owner, shall minimize noise, odor and dust and/or other airborne particles, debris or any other thing that potentially may materially adversely affect Parcel 2, the Parcel 2 Owner or its Permittees.

(f) Utilities. The Parcel 1 Owner shall use all reasonable efforts not to interfere with the service of any utility, telecommunications services or systems or storm management systems that benefits Parcel 2 and, in all events, shall comply with the provisions of Article IV if any such interference is unavoidable.

(g) Correction or Mitigation of Adverse Effects. The Parcel 1 Owner at no cost or expense to the Parcel 2 Owner, shall use commercially reasonable efforts to mitigate to the extent possible and commercially reasonable any and all potentially material adverse effects on Parcel 2, the Parcel 2 Owner or its Permittees arising from or connected with construction activities on Parcel 1 and shall promptly remedy any material adverse effects on Parcel 2, the Parcel 2 Owner or its Permittees, as applicable, resulting from or in connection with such activities.

Section 2.2 Delivery of Plan Prior to Construction. On or before sixty (60) days prior to the commencement of any construction activities on its Parcel, the Parcel 1 Owner shall submit to the Parcel 2 Owner for its review and approval a detailed construction plan identifying how such Owner intends to comply with the restrictions set forth in Section 2.1 during such construction activities ("Plan"). The Parcel 2 Owner shall approve or disapprove such Plan within ten (10) business days after receipt thereof. In the event that the Parcel 2 Owner disapproves the Plan, which disapproval shall set forth in reasonable detail the reasons therefor, the other Owner shall revise the same within ten (10) days after receipt of the Parcel 2 Owner's disapproval of the Plan. Within ten (10) business days after receipt of the revised Plan, the Parcel 2 Owner shall approve or disapprove the same. In addition to its obligations under Section 2.1, the Parcel 1 Owner shall comply with the Plan as approved by the Parcel 2 Owner when conducting its construction activities on Parcel 1 and shall not commence such construction until the Parcel 2 Owner has approved the Plan. Prior to making any material change to the Plan, the Parcel 1 Owner shall submit such proposed changes to Parcel 2 Owner for its review and approval. If the Parcel 1 Owner constructs any Improvements in phases, it shall submit its Plan for each phase to the Parcel 2 Owner for its review and approval, unless such Plan has been previously approved by the Parcel 2 Owner.

Section 2.3 Delivery of Initial Development Plan Prior to Construction. Prior to execution of this Declaration, Parcel 1 Owner submitted to Parcel 2 Owner, and Parcel 2

Owner has approved, the Conceptual/Final Development Plan dated March 11, 2004 (the "Initial Development Plan"). Prior to making any material change to the Initial Development Plan, the Parcel 1 Owner shall submit such proposed changes to the Parcel 2 Owner for its review and approval. The Parcel 2 Owner shall approve or disapprove any material changes to the Initial Development Plan within ten (10) days after receipt thereof. In the event that the Parcel 2 Owner disapproves any material changes to the Initial Development Plan, which disapproval shall set forth in reasonable detail the reasons therefor, the Parcel 1 Owner shall revise the same within ten (10) business days after receipt of the Parcel 2 Owner's disapproval of the Initial Development Plan. Within ten (10) business days after receipt of the revised Initial Development Plan, the Parcel 2 Owner shall approve or disapprove the same. In addition to its obligations under Section 2.1, the Parcel 1 Owner shall construct the Initial Development in accordance with the Initial Development Plan as approved by the Parcel 2 Owner.

ARTICLE III

ACCESS EASEMENT

Section 3.1 (a) Declaration of Access Easement. Subject to the provisions of this Declaration, Declarant hereby establishes and creates for the benefit of the Parcel 1 Owner and the Parcel 2 Owner and as an appurtenance to Parcel 1 and Parcel 2 a non-exclusive, perpetual easement over, upon, across and through the Access Easement Area (the "Access Easement") (i) for the purposes of pedestrian and vehicular ingress and egress between Gallows Road and the applicable Parcel, and (ii) for the purpose of constructing, operating, repairing, maintaining and (to the extent permitted herein) altering the Access Improvements.

(b) Declaration of Temporary Access. Until the Parcel 1 Owner has completed and opened the Initial Access Improvements for vehicular and pedestrian use in accordance herewith, the Declarant hereby establishes and creates for the benefit of the Parcel 1 Owner and the Parcel 2 Owner, and as an appurtenance to each of their Parcels, a non-exclusive easement over, upon, across and through the Current Access Area for the purpose of pedestrian and vehicular ingress and egress between the applicable Parcel and Gallows Road. Upon the termination of said temporary easement in accordance herewith, the temporary access easement established by that certain plat recorded at Deed Book 4800, Page 549 also shall be automatically terminated. If necessary, the Owners of the applicable Parcels shall record such documents as are reasonably necessary to confirm the termination or vacation of said temporary easement. The Parcel 1 Owner shall repair and maintain the Current Access Improvements until the Access Improvements are completed but shall not modify the Current Access Improvements or install new improvements within the Current Access Area without the prior consent of the Parcel 2 Owner, provided that such consent shall not be required to the extent any such modification of the Current Access Improvements or the installation of any new Improvements in the Current Access Area is contemplated in the Initial Development Plan.

Section 3.2 Construction, Operation, Maintenance and Alteration of Access Improvements.

(a) Construction of the Initial Access Improvements will result in a loss of parking spaces on Parcel 2. Therefore, in connection with the construction of the Initial Access Improvements, the Parcel 1 Owner shall, at its sole cost and expense, and in a good and workmanlike manner and in accordance with Sections 2.1, construct for the benefit of the Parcel 2 Owner a sufficient number of parking spaces in the locations identified on Exhibit D-1 ("Relocated Parking") hereto to cause the number of parking spaces available on Parcel 2 to be the same following construction of the Initial Access Improvements as existed on Parcel 2 on the date hereof ("Existing Parking"). The Parcel 1 Owner shall construct the Relocated Parking in accordance with plans and specifications to be reasonably approved by the Parcel 2 Owner which plans and specification shall, at a minimum, conform with the Fairfax County Public Facility Manual except that the Relocated Parking shall be constructed with a 11/4 inch surface course, 3 inch base course and 8 inch compacted 21A subbase stone. In the event that the Parcel 1 Owner does not complete construction of the Relocated Parking before any of the Existing Parking becomes unuseable, the Parcel 1 Owner shall provide the Parcel 2 Owner with temporary parking spaces so that at all times the Parcel 2 Owner shall have access to and use of the same number of parking spaces it has as of the date hereof. Such temporary spaces shall be in the locations identified on Exhibit D-2 hereto, or in such other locations mutually acceptable to the Parcel 2 Owner and Parcel 1 Owner.

(b) In connection with the construction of the Initial Development, the Parcel 1 Owner shall, at its sole cost and expense, in a good and workmanlike manner (i) construct the Initial Access Improvements in accordance with (x) the requirements of Virginia Department of Transportation and the Fairfax County Public Facilities Manual as if such road was a public road provided that if there are any inconsistencies between the two, the more stringent standard shall apply and (y) plans and specifications approved by the Parcel 2 Owner in accordance with this Section 3.2(b) and (ii) install landscaping on the Access Easement Area and in that portion of Current Access Area that is not part of the Access Easement Area, based on plans and specifications reasonably acceptable to the Parcel 2 Owner which landscaping shall be deemed an Access Improvement. Prior to undertaking the construction of the Initial Access Improvements in accordance with the previous sentence, the Parcel 1 Owner shall submit to the Parcel 2 Owner, for its approval, the plans and specifications for such work and shall not commence such work until the Parcel 2 Owner has approved the same in accordance with the schedule set forth in Section 2.2. The Parcel 1 Owner shall Substantially Complete the installation of the Initial Access Improvements within eight (8) months after the commencement of construction of such improvements; provided, however, the Parcel 1 Owner shall not be obligated to lay the topcoat until twenty-four (24) months after commencement of construction of said improvements; and provided further that both time periods set forth in this sentence shall be extended day for day for each day of delay resulting from *force majeure*. If, at any time after construction activities related to the Initial Development commence, such construction activities cease for a period of more than ninety (90) days, including, without limitation, as a result of the completion of any phase of the Initial Development and a delay in the commencement of the next phase, the Parcel 1 Owner shall repair and restore, at the Parcel 1 Owner's sole cost and expense, the Access Easement Area, including, without limitation, any Access Improvements thereon, within thirty (30) days thereafter and otherwise in accordance with this Section 3.2. Thereafter when construction of the Initial Development resumes, upon Substantial Completion of any such work or any further interruption for more than ninety (90) days, the Parcel 1 Owner,

at its sole cost and expense, shall again repave the Access Easement Area and, to the extent necessary, replace or repair the landscaping thereon, all subject to the provisions of this Section 3.2(b).

(c) The Parcel 1 Owner shall be obligated, for so long as the easement created pursuant to Section 3.1 exists, to repair and maintain the Current Access Easement and/or Access Easement Area, as applicable, in safe, clean, attractive and well-maintained condition and in accordance with First Class Standards, such maintenance to be done promptly and regularly and to include, but not be limited to, the following:

(i) Maintenance, repair and replacement of all paved surfaces, in a level, smooth, evenly covered and visually consistent condition;

(ii) Maintenance, repair and replacement of all curbs, curb cuts, gutters, walkways and retaining walls;

(iii) Maintenance, repair and replacement of all directional signs, markers (including, without limitation, any Access Monument Signs) and artificial lighting facilities (including, without limitation, the replacement of fixtures and bulbs);

(iv) Regular removal of all litter, trash, debris, waste, filth and refuse, including, without limitation, thorough sweeping of the Access Easement Area in order to keep the same in a clean and orderly condition at all times;

(v) Maintenance of all landscaping in a healthy, well-watered, well-pruned, mowed and attractive condition; and

(vi) Compliance with all Legal Requirements, including, without limitation, those related to health and safety, and all requests by Governmental Authorities made in accordance with Legal Requirements, including, without limitation, the Virginia Department of Transportation, provided that the Parcel 1 Owner shall notify the Parcel 2 Owner of any request by a Governmental Authority prior to undertaking such compliance (except in emergencies).

(d) The Parcel 1 Owner shall have the right, from time to time, to make changes in the Access Improvements and in the design (but not the location) thereof, subject to the prior written consent of the Parcel 2 Owner in accordance with the time periods set forth in Section 2.2, provided, however, (i) no such consent shall be required for any changes required by Legal Requirements or a Governmental Authority (unless various options are available, and then only as to which option is selected), (ii) any such changes must comply with Legal Requirements and be consistent with First Class Standards, and (iii) the Parcel 1 Owner shall use commercially reasonable efforts to ensure that throughout the time such changes are being made all parties entitled to use the Access Easement Area shall have continuous and reasonably unfettered access to the Access Easement Area and that such construction shall be completed in accordance with the provisions of Section 2.1.

(e) Notwithstanding anything to the contrary contained herein, each Owner shall have the right to construct, at its sole cost and expense, access points and curb cuts on the Access Easement Area and/or to connect driveways, sidewalks, parking areas and other Improvements on such Owner's Parcel to the Access Easement Area without the other Owners' consent but with prior notice, so long as the orderly flow of vehicular and pedestrian traffic is not materially and adversely affected thereby, all work is done in accordance with all Legal Requirements and the Owners continue to have continuous and reasonably unfettered access to the Access Easement while such work is being conducted.

(f) The cost of the activities in subsection (c) shall be an Access Expense subject to Sections 3.5 and 3.6 below; provided, however, the cost of any capital improvements (other than costs incurred pursuant to Section 3.2(c)(ii) to the extent any such costs are deemed to be capital improvements), shall be solely the responsibility of the Parcel 1 Owner and not an Access Expense unless (x) (i) such cost is required to comply with a Legal Requirement or the request of a Governmental Authority and (ii) is not incurred as a result of or in connection with construction or any other activity on Parcel 1 or (y) such cost is pre-approved by the Parcel 2 Owner and the Parcel 2 Owner agrees when it provides such pre-approval to share the cost of such work. In all events and notwithstanding the foregoing, the Parcel 1 Owner shall be solely responsible for the costs and expenses of the Initial Access Improvements, including the Relocated Parking.

Section 3.3 No Walls, Fences or Barriers and Temporary Closure.

(a) No buildings, walls, fences or barriers of any sort or kind shall be constructed or erected on any Parcel by any Owner which would prohibit or materially impair the use or exercise of the Access Easement or, until the opening of the Initial Access Improvements for vehicular and pedestrian ingress and egress, of the Current Access Area.

(b) The Access Easement or a portion thereof may be dedicated to the public, provided that the Parcel 1 Owner and/or Parcel 2 Owner, as applicable, shall obtain the prior written consent of the other Owner prior to permitting any such dedication and further provided that the Parcel 2 Owner shall not bear any costs or expenses associated with such dedication. To the extent that all or any portion of the Access Easement is so dedicated, then the Parcel 1 Owner shall be relieved of its obligations to maintain the portion of the Access Easement that has been dedicated.

(c) The Parcel 1 and/or Parcel 2 Owner shall have the right to temporarily close a portion of the Access Easement Area or the Current Access Area for such reasonable periods of time as may be reasonably necessary for cleaning, repair, alteration, improvement or maintenance or as required for emergencies. Notwithstanding the foregoing, (i) before closing off any part of the Access Easement Area or Current Access Area as provided above (except for emergencies), the applicable Owner shall give at least ten (10) days' prior written notice to the other Owner of its intention to do so and shall coordinate its closing with the activities of the other Owner so that no unreasonable interference with the operation of the applicable easement occurs, (ii) any such closure shall be limited to the minimum period and minimum amount of

closure reasonably necessary to achieve the applicable purpose and, to the extent reasonably feasible (except during emergencies), one drive lane shall be kept open for vehicular traffic, (iii) a safety guard or guards shall be placed on the Access Easement Area or Current Access Area, as applicable in order to facilitate the safe flow of traffic during any such closure and (iv) to the extent reasonably feasible (except for emergencies) any such closure shall not occur during Normal Business Hours.

Section 3.4 Hours of Operation. Subject to Section 3.3(c), the Current Access Area and, once constructed, the Access Improvements shall be open twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year, provided, that Parcel 2 Owner or Parcel 1 Owner, as applicable, shall temporarily close off the Access Easement Area or Current Access Area, as applicable, or a portion thereof for such reasonable periods of time as may be legally necessary to prevent the acquisition or creation of any prescriptive right by any Person or the public. Notwithstanding the foregoing, (i) before closing off any part of the Access Easement Area as provided above, the applicable Owner shall give at least ten (10) days' prior written notice to the other Owner of its intention to do so and shall coordinate its closing with the activities of the other Owner so that no unreasonable interference with the operation of the Access Easement occurs, (ii) any such closure shall be limited to the minimum period and minimum amount of closure reasonably necessary to prevent the acquisition or creation of any prescriptive right by any Person and, to the extent reasonably feasible, one drive lane shall be kept open for vehicular traffic, and (iii) to the extent reasonably feasible any such closure shall not occur during Normal Business Hours.

Section 3.5 Sharing of Access Expenses. Each Owner shall share in the Access Expenses based on the following: the Parcel 1 Owner shall pay 58.4% and the Parcel 2 Owner shall pay 41.6% of such Access Expenses.

Section 3.6 Calculation and Payment of Access Expenses.

(a) The Parcel 1 Owner shall keep accurate and complete books and records of all receipts and disbursements related to the operation, improvement, repair and maintenance of the Access Easement Area. Such books and records shall be available for inspection and copying by the other Owners during Normal Business Hours, and upon not less than five (5) days' prior written notice to the Parcel 1 Owner and shall be subject to any third party audit and/or inspection required by the other Owner, provided that no more than one (1) such audit and/or inspection shall be conducted during any calendar year. The Parcel 2 Owner shall continue to be obligated to make payments of its proportionate share of the Access Expenses required hereunder without offset or deduction notwithstanding the ongoing conduct of any such audit or inspection. The cost of any such third party audit or inspection shall be paid by the Owner requesting said audit; provided that if such audit reveals that the aggregate Access Expenses in a calendar year have been overstated by more than three percent (3%), the Parcel 1 Owner shall pay the cost of such audit.

(b) The Parcel 2 Owner shall reimburse the Parcel 1 Owner for its share of any Access Expenses pursuant to Section 3.5, within thirty (30) days after receipt of an invoice for the subject expense, provided that the Parcel 1 Owner shall provide sufficient documentation

regarding any such expense to allow confirmation that such expense is an Access Expense and was incurred in accordance with the provisions of the Declaration. Any invoice not paid when due shall bear interest at the Interest Rate from the due date until paid.

Section 3.7 Name of Access Easement Area. Until such time as neither Science Applications International Corporation nor any of its Affiliates owns any of the Parcels or a portion thereof, the name of the street located on the Current Access Area or Access Easement Area, as applicable, shall be "Science Applications Court." Declarant expressly states that it is not assigning to the Parcel 1 Owner or any other party any legal rights that Declarant or its Affiliates may have to the use of the trade name "SAIC" or "Science Applications" or any terms or phrases incorporating the foregoing except to use the term Science Applications Court as part of its address. Notwithstanding anything to the contrary herein, in the event that the Parcel 2 Owner desires that the name of the street change from "Science Applications Court", the Parcel 1 Owner shall cooperate in such name change at no cost or expense to the Parcel 1 Owner.

ARTICLE IV

NON-INTERFERENCE WITH UTILITIES

Each Owner shall use all reasonable efforts not to interfere in any way with the service of any utility, telecommunication service or system (telephone, computer or other) or storm water drainage or detention system (including, without limitation, the telephone and data cables identified on Exhibit G hereto) that benefits any other Parcel without the prior written consent of the Owner of the affected Parcel. If such interference cannot be avoided, (i) the Owner who is responsible for such interference shall deliver prior written notice to the other Owner of the likelihood of such interference as long in advance as possible and, in all events, at least thirty (30) days prior to such work (except during emergencies), and shall coordinate such interference with the activities of the Owner of the affected Parcel so that no unreasonable interference occurs, (ii) any interference shall be limited to the minimum period and minimum extent reasonably possible, and (iii) to the extent reasonably feasible, any such interference shall not occur during Normal Business Hours (except during emergencies). At the request of any Owner, each Owner shall execute and record easements to allow the use of the telephone, data and other telecommunication cables referenced in this Article IV all in accordance with this Article IV.

ARTICLE V

STORM WATER EASEMENT; NEW STORM WATER FACILITIES

Section 5.1 Storm Water Easement For the Benefit of Parcel 2. There is hereby reserved in, over and across Parcel 1 for the benefit of Parcel 2:

(a) A non-exclusive, perpetual easement for storm water detention and drainage across that portion of Parcel 1 described in Exhibit C-1 attached hereto and made a part

hereof ("Storm Water Easement Area"), including, without limitation, the right to install and repair underground pipes and tie into and utilize the sanitary and storm water sewers in or on the Storm Water Easement Area and downstream thereof, in accordance with Legal Requirements, provided that the Parcel 2 Owner shall promptly repair and restore the landscaping and any other Improvements on the Storm Water Easement Area or elsewhere on Parcel 1 that are damaged in connection with the Parcel 2 Owner's use of the easement granted herein. The Parcel 1 Owner shall be obligated to maintain the Storm Water Easement Area and any improvements for storm water detention and drainage located on Parcel 1 in compliance with all Legal Requirements. The Parcel 1 Owner shall have the right, at it sole cost and expense, to relocate the Storm Water Easement Area if such relocation is desirable in connection with any changes in the development of Parcel 1 so long as such relocation does not materially adversely affect storm drainage from Parcel 2.

(b) A non-exclusive, perpetual easement to compensatory storm water management capacity and Best Management Practices (BMPs) applicable in Fairfax County, Virginia as of the Effective Date sufficient to support Parcel 2 with (i) the Improvements located on Parcel 2 as of the Effective Date, (ii) any additional parking constructed thereon necessary to accommodate the parking requirements imposed by Legal Requirements for the Improvements located on Parcel 2 as of the Effective Date, and (iii) the Initial Access Improvements, on, over, across and under Parcel 1 and to the detention pond identified on Exhibit C-2 hereto, at no expense to the Parcel 2 Owner, provided that Parcel 2 Owner shall promptly repair and restore the landscaping and any other Improvements in such area or elsewhere on Parcel 1 that are damaged in connection with the Parcel 2 Owner's use of the easement granted herein, except to the extent resulting from the Initial Access Improvements which shall be shared by the parties as an Access Expense.

(c) The Parcel 1 Owner shall maintain the storm water detention and drainage systems provided for in subsections (a) and (b), provided that the Parcel 1 and 2 Owners shall share any cost or expense for such maintenance, including any cost and expense connected with compliance with a Legal Requirement, in proportion to the drainage flow into such detention system from each Parcel (excluding the flow from the Access Easement Area, if any) as determined by VIKA or another engineer mutually agreed upon by the Parcel 1 and Parcel 2 Owners, except that (i) the Parcel 2 Owner shall not be required to share in any fee, fine or levy resulting from the Parcel 1 Owner's failure to timely comply with any Legal Requirement or any costs resulting from or arising in connection with the development of Parcel 1, and (ii) the Parcel 1 Owner shall not be responsible for, or required to share in, any cost, expense, fee, fine or levy resulting from or arising in connection with the development of Parcel 2 (or any subsequent changes thereto) or any changes in Legal Requirements affecting Parcel 2 and not similarly affecting Parcel 1 (except to the extent relating to the Access Easement Area).

Section 5.2 Expansion or Installation of Storm Water Facilities.

In connection with the Initial Development or any subsequent development on Parcel 1, the Parcel 1 Owner, at its sole cost and expense and in accordance with Legal Requirements, shall (i) expand the existing detention pond in the Storm Water Easement Area and/ or (ii) install a new storm water management facility such that the then-existing facilities

will continue to be sufficient to support Parcel 2 as required pursuant to Section 5.1. However, if any changes to Parcel 2 or the Improvements located thereon require the installation of additional facilities or the modification of then-existing facilities, then the Parcel 2 Owner shall be responsible for the cost and expense therefor; provided, however, that in no event shall the Parcel 1 Owner be obligated to expand or otherwise modify the Storm Water Easement Area in a manner that would reduce the amount of Parcel 1 that can be developed in accordance with the Initial Development Plan.

ARTICLE VI

MONUMENT SIGNAGE

Each Owner shall have the right, but not the obligation, to install one (1) monument sign ("Access Monument Sign"), at such Owner's sole cost and expense, in the area identified in Exhibit B in a specific location selected by such Owner in its reasonable discretion, provided that the Owners shall agree in advance on the size of any Access Monument Sign and the nature and size of the lettering and graphics thereon. Notwithstanding the previous sentence, the Parcel 2 Owner's sign may include the "SAIC" logo with blue lettering.

ARTICLE VII

MAINTENANCE AND OPERATION OF PARCELS

Subject to the Parcel 1 and Parcel 2 Owner's obligations pursuant to Section 3.2 and in addition to all other requirements set forth herein, each of the Parcel 1 and Parcel 2 Owners shall use reasonable efforts to maintain its Parcel at all times, including without limitation during construction activities thereon, in accordance with First Class Standards, including without limitation by keeping its Parcel clean and as free of debris as is reasonably possible.

ARTICLE VIII

REMEDIES

Section 8.1 Legal and Equitable Relief. The covenants, conditions, restrictions, reservations, easements and rights herein contained shall run with the land and shall be binding upon and inure to the benefit of each Owner, its respective successors and assigns, and all other persons, parties or entities claiming by, through or under any of the foregoing. In the event any Owner ("Defaulting Party") defaults in any of its obligations hereunder or in the event of any violation or threatened violation of this Declaration by a Defaulting Party or such Defaulting Party's Permittees and such Defaulting Party fails to cure such default or stop such

violation or threatened violation within thirty (30) days after written notice from another Owner (the "Affected Party"), or if such default is not capable of being cured within such thirty (30)-day period, such Defaulting Party has not commenced the cure within such thirty (30)-day period and diligently pursued the completion of such cure, the Affected Party shall have the right to (i) institute legal action against the Defaulting Party for specific performance, injunctive relief, declaratory relief, damages, or any other remedy provided by law; provided, however, neither party shall be liable for consequential or punitive damages; (ii) recover damages for any such violation or default, and/or (iii) take self-help action to the extent and only to the extent permitted under Section 8.2 below. All remedies under this Declaration or at law shall be cumulative and not inclusive. As used herein, any reference to rights or remedies "at law" or "under applicable law" shall also include any rights or remedies "in equity".

Section 8.2 Right to Cure. In the event any Owner defaults under the provisions of this Declaration and such Owner fails to cure such default within the time period provided in Section 8.1 above, the Affected Party which sent the default notice shall have the right, but not the obligation, upon the expiration of such period, to cure such default for the account of and at the expense of the Defaulting Party. Prior to taking any such action, such Affected Party shall deliver thirty (30) days' prior written notice (which notice shall be in addition to the notice required under Section 8.1 hereof) to the Defaulting Party specifying with details the nature of the actions that such Affected Party giving such notice proposes to take in order to cure the claimed default. The Defaulting Party shall reimburse the Affected Party for expenses incurred by the Affected Party in connection with its exercise of its rights pursuant to this Section 8.2 within ten (10) days after an invoice therefor accompanied by appropriate supporting documentation for such costs.

Section 8.3 Interest. If any Affected Party so performs any of the Defaulting Party's obligations hereunder or if a Defaulting Party fails to make a payment under this Declaration to an Affected Party, the full amount of the cost and expense incurred by the Affected Party or the damage so sustained or the payment not made by the Defaulting Party to the Affected Party, as the case may be, shall immediately be due and owing by the Defaulting Party to the Affected Party and the Defaulting Party shall pay to the Affected Party upon demand the full amount thereof with interest at the Interest Rate from the date of payment (or in the case of a monetary default, the date such sum was due) until such payment is actually received by the Affected Party.

Section 8.4 Lien. The Affected Party is hereby granted a lien upon the Parcel of the Defaulting Party in the amount of any such payment made by the Affected Party or amount not paid by the Defaulting Party, pursuant to Sections 8.1, 8.2 or 8.3, together with interest at the Interest Rate thereon, which amount is not paid within thirty (30) days after demand is made, and said lien may be enforced by judicial foreclosure proceedings against the Defaulting Party's Parcel in accordance with then applicable Virginia law. The Affected Party shall have the right to file with the appropriate governmental office or offices a memorandum of lien, lis pendens or other notice or notices as may be required by law to give notice of such lien and the amount thereof, said notice or notices to be filed after the expiration of said thirty (30)-day period. The lien herein granted shall be prior to and superior to any other liens or encumbrances on the Defaulting Party's Parcel, including any liens arising or attaching before,

on and/or after the date on which notice of such lien and the amount thereof is filed with the appropriate governmental office or offices, but excluding the lien held by a third party holder of a bona fide first lien Mortgage affecting the Defaulting Party's Parcel recorded prior to the date on which notice of such lien and the amount thereof is filed with the appropriate governmental office or offices (however, notwithstanding the foregoing, such lien created by this Article VIII shall expressly survive any foreclosure or other enforcement action taken under any such first lien Mortgage). Additionally, notwithstanding the foregoing, in no event shall the foreclosure or any other enforcement of such lien created by this Article VIII result in a termination of any lease of any portion of a Parcel or any Improvements thereon.

The holder of a Mortgage on all or any portion of a Parcel shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this Article VIII affecting the property secured by its Mortgage upon payment of the amount secured by such lien.

Section 8.5 No Termination. A breach of this Declaration shall not entitle any party or person to cancel, rescind or otherwise terminate its obligations hereunder.

ARTICLE IX

MORTGAGEE PROTECTION

Each Affected Party giving a notice of default under this Declaration shall send, in accordance with Section 12.7 hereof, a copy of such notice to the Mortgagee under any Mortgage on the Parcel and/or Improvements of the Defaulting Party, provided such Mortgagee or Defaulting Party shall have previously sent such Affected Party a notice informing it of the existence of such Mortgage and the name of the person or officer and the address to which copies of the notices of defaults are to be sent, and such Mortgagee as recipient of notice pursuant to Section 12.7 below shall be permitted to cure any such default not later than sixty (60) days after a copy of the notice of default shall have been sent to such Mortgagee, provided that in the case of a default which cannot with diligence be remedied within such sixty (60)-day period, if such Mortgagee has commenced within such sixty (60)-day period and is proceeding with diligence to remedy such default, then such Mortgagee shall have such additional period as may be reasonably necessary to remedy such default with diligence and continuity, and during any such cure period the Affected Party shall forbear from exercising its remedy to enforce its lien against the Parcel of the Defaulting Party and/or Improvements thereon. Initiation of foreclosure proceedings against a Defaulting Party shall constitute "diligence" by a Mortgagee hereunder so long as such foreclosure proceedings are continuously pursued (provided that a stay issued during any bankruptcy, insolvency, or reorganization proceeding shall not be deemed to defeat continuous pursuance of such foreclosure proceedings). The foregoing requirements to give notice of default to a Mortgagee and allow such Mortgagee an opportunity to cure such default shall not preclude the exercise of any remedies by an Affected Party provided pursuant to Sections 8.2, 8.3 and 8.4 (except to the extent such Affected Party is required to forbear from exercising its lien pursuant to this Article IX). If a condominium association, a homeowners' association or another similar association has been established with respect to a Parcel or Parcels, then for purposes of this Article IX, an Affected Party giving a notice of default shall send such

notice to the applicable association (or the declarant under the applicable operating documents if such association has not yet been established) in lieu of sending such notice to the Mortgagees (a "Unit Mortgagee") of the members (a "Unit Owner") of the applicable association. The association receiving such default notice shall have the right to cure any such default and/or send a copy of such default notice to the applicable Unit Mortgagee who shall have the right to cure such default.

ARTICLE X

ASSIGNMENT, TRANSFER AND MORTGAGE, LIMITATION OF LIABILITY

Section 10.1 Owner Not Released Except as Provided Herein.

(a) If an Owner shall sell, transfer or assign all or any portion of its Parcel it shall (except as provided in this subsection (a) and, in the case of a ground lease, except as modified by Section 10.4), be released from its obligations hereunder with respect to such Parcel or portion thereof accruing from and after the date of such sale, transfer or assignment. It shall be a condition precedent to the release and discharge of any grantor or assignor Owner that the following conditions are satisfied: (a) such grantor or assignor shall give notice to the other Owners of any such sale, transfer, conveyance or assignment concurrently with the filing for record of the instrument effectuating the same (or in the case of a ground lease termination, within thirty (30) days after the termination thereof), and (b) the transferee shall execute and deliver to the other Owners a written statement in which (i) the name and address of the transferee shall be disclosed; and (ii) the transferee shall acknowledge its obligation hereunder and agreement to be bound by this Declaration and perform all such obligations applicable to it in accordance with the provisions of this Declaration. Failure to deliver any such written statement shall not affect the running of any covenants herein with the Parcels, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Declaration, but such failure shall constitute a default by the transferee hereunder. Notwithstanding anything to the contrary in this Section 10.1(a), the entity or entities to whom Declarant conveys Parcel 1 shall not have the right to sell, transfer or assign all or any portion of the Parcel without the prior written approval of Declarant until the earlier of (x) Substantial Completion of the Initial Development and (y) ten (10) years after the Effective Date; provided however, that nothing herein is intended to limit the Parcel 1 Owner's ability to transfer (I) all or any portion of the Parcel to an Affiliate, (II) if the Initial Development is completed in phases, any portion of the Parcel for which a phase has been finally completed to a third party; (III) all or any portion of the Parcel to an experienced, financially sound apartment, townhome, and/or condominium developer, having the reasonable ability to construct the improvements for its Parcel in accordance with this Declaration and applicable zoning approvals, subject to the Parcel 2 Owner's reasonable approval; or (IV) all or any portion of the Parcel to a Mortgagee (or otherwise prohibit said Mortgagee from exercising its remedies under a Mortgage including, without limitation, obtaining the Parcel through foreclosure or a deed-in-lieu). Any request submitted to the Parcel 2 Owner for approval shall be submitted with detailed information regarding the proposed purchaser or assignee and its plans for the Initial Development.

(b) If any Parcel is sold or otherwise transferred (including via a ground lease), such transfers shall be subject to this Declaration and the transferees (including the lessee under any new ground lease and the lessor under a ground lease reacquiring possession upon termination of such ground lease) shall be bound by its transferor's obligations hereunder as fully as if such transferees were originally parties hereto, and such obligations shall run with and be binding upon the Parcels and be binding upon all subsequent Owners thereof, including any claims or liens arising under this Declaration against a prior Owner of a Parcel which shall continue as to any transferee of such Parcel. Notwithstanding anything to the contrary herein, in the event that all or any portion of Parcel 1 or Parcel 2 is subject to one or more condominium regimes, any and all such condominium regimes shall be subject and subordinate to this Declaration.

(c) In the event that a Parcel is divided into one or more separate legal lots, or condominiums, each of such separate legal lots shall thereafter be considered to be a "Parcel" as defined in this Declaration and the owners of each such legal lot shall be an "Owner"; provided, however, that, with respect to a condominium, the declarant under the condominium regime and, thereafter as appropriate under the applicable condominium operating documents, the condominium association, as opposed to the individual condominium unit owners, shall be considered the "Owner" hereunder, except as otherwise provided herein. Further, in the event that the multiple owners of a Parcel are members of a homeowner's association, the declarant under the operating documents of the homeowner's association and, thereafter, as appropriate under the applicable documents, the homeowner's association itself, as opposed to the individual members, shall be considered the "Owner" hereunder, except as otherwise provided herein and provided further that the association has the right and authority pursuant to the association's governing documents to undertake such obligations and to assess it members therefor without the approval of the members. In the event that a portion (but not all) of Parcel 1 or an interest therein is conveyed or otherwise transferred such that there is more than one Owner of the land that constituted Parcel 1 as of the Effective Date, then the Owners of such Parcel shall designate one of them who shall have authority to act on behalf of such Owners vis-à-vis the Owner of Parcel 2 and they shall notify the Parcel 2 Owner of said designee. Notwithstanding the foregoing, nothing herein shall affect any of the remedies available to the Parcel 2 Owner pursuant to Article VIII, including, without limitation, the right of self-help and the right to place a lien on the property of any Owner, including any owner of a condominium unit or member of a homeowner's association, pursuant to Section 8.4. No Owner of a legal lot(s) shall be obligated or liable for the acts or omissions of an Owner of another legal lot(s), and the obligations and liabilities of each Owner shall not be joint and several. Each Owner agrees that any claim or right (including lien rights) it may have against another Owner pursuant to this Declaration shall be made or asserted against the applicable Owner(s) and the applicable Parcel(s) whose actions or omissions are at issue. Notwithstanding anything to the contrary contained herein, in the event that the Parcel 1 Owner creates a master owner's association for Parcel 1 and such association has the obligation and authority pursuant to the association's governing documents to undertake the Initial Construction and Maintenance Obligations and has the ability to assess it members therefor without the approval of the members ("Master Association"), the Parcel 2 Owner shall assert any claims or right that the Parcel 2 Owner may have arising from or relating to the Initial Construction and Maintenance Obligations against the Master Association. Until a Master Association satisfying the requirements of the previous sentence is created, the Owners of

Parcel 1 shall be jointly and severally liable for the Initial Construction and Maintenance Obligations. As used herein, "Initial Construction and Maintenance Obligations" shall mean only the obligations of the Parcel 1 Owner pursuant to Article 3, the expansion of the existing storm water detention pond pursuant to Section 5.2, and the obligation of the Parcel 1 Owner to maintain the Current Access Area, Access Easement Area and Storm Water Easement Area as set forth in this Declaration.

Section 10.2 Possessory Party Remains Responsible. Notwithstanding anything to the contrary herein contained, if any Owner shall (i) convey all or any portion of its Parcel in connection with a sale and leaseback or lease and sublease back, and it shall simultaneously become vested with a leasehold estate or similar possessory interest in its Parcel by virtue of a lease made by the grantee or lessee, as the case may be, or (ii) shall convey all or any portion of its Parcel or its interest therein by way of a Mortgage and retain its possessory interest in its Parcel, then, in neither of such events shall the assignee of this Declaration under such sale and leaseback or lease and sublease back, or the Mortgagee or beneficiary under any such Mortgage, be deemed to be an Owner with respect to such Parcel or portion thereof or to have assumed or be bound by any of such Owner's obligations hereunder for so long as such Owner shall retain such possessory interest, and such obligations and the status as an Owner hereunder with respect to such Parcel or portion thereof shall continue to remain solely those of such Owner so long as such Owner retains such possessory interest, and performance by such Owner of any act required to be performed under this Declaration by it or fulfillment of any condition of this Declaration by such Owner shall be deemed the performance of such act or the fulfillment of such condition and shall be acceptable to the Owners with the same force and effect as if performed or fulfilled by such assignee, lessor, subsequent Owner or Mortgagee or beneficiary.

Section 10.3 Rights of Parties. Notwithstanding anything to the contrary contained in this Declaration, each Owner may mortgage its Parcel or its interest therein and/or sell and leaseback or lease and sublease back its Parcel or its interest therein, and, in connection with any such transaction, assign its interest in this Declaration. If any such Mortgage is foreclosed or a deed delivered in lieu of foreclosure, or if any Owner shall have entered into a sale and leaseback or a lease and sublease back transaction involving its Parcel and any such Owner is the lessee or sublessee thereunder and such lessee or sublessee shall be deprived of possession of such Parcel by reason of its failure to comply with the terms of such leaseback or sublease back, any person or entity who has acquired, or shall thereafter acquire, title to such Parcel or a leasehold estate therein shall hold the same subject to all other terms, provisions, covenants, conditions and restrictions contained in this Declaration.

Section 10.4 Ground Leases. If any Owner of fee simple title to a Parcel has entered into, or shall enter into, a ground lease of its entire Parcel, then the lessee under such ground lease shall be deemed to be the Owner of such Parcel and to have assumed or be bound by any and all of such Owner's obligations (including, if applicable, the obligation to serve as the Parcel 1 Owner) hereunder for so long as such lessee shall be the lessee under such ground lease, and such obligations and the status as an Owner hereunder shall continue to remain solely those of such lessee so long as such lessee shall be the lessee under such ground lease. The lessor under any such ground lease shall not be the Owner of the Parcel, and shall not have any of the rights or obligations of an Owner hereunder until such time as the ground lease terminates or

expires, provided, that such lessor shall, at no cost or expense to such lessor, cooperate in good faith with the lessee if the involvement of the lessor is reasonably necessary under the circumstances. Upon such termination or expiration of such ground lease, the lessor thereunder shall become the Owner of the Parcel subject to and bound by the terms of this Declaration.

Section 10.5 Limitation of Liability. No Owner or its partners, venturers, employees, shareholders, affiliates, officers, directors, agents, representatives, advisors, or consultants shall have any personal liability for its or their failure to perform any covenant, term or condition of this Declaration, it being expressly declared that any money judgment recovered against any Owner shall be satisfied only out of, and the sole and exclusive recourse of any Owner damaged as a result of such default shall be against, the right, title and interest of such Owner in the Parcel involved and the Improvements thereon, including the proceeds of sale received upon execution of such judgment thereon, against the right, title and interest of such Owner in the Parcel involved and the Improvements thereon and the rents or other income or revenue from such property receivable by such Owner or the consideration received by such Owner from the sale or other disposition (including a condemnation) of all or any part of such Owner's right, title and interest in the Parcel involved and Improvements thereon or the insurance proceeds received by such Owner respecting any casualty affecting the Improvements.

Section 10.6 Priority of Declaration. This Declaration and the rights, interests, liens (subject to the provisions of Section 8.4 above), and easements created hereunder shall be prior and superior to any Mortgage or other lien upon or against any Owner's Parcel other than such liens as by law have priority over the lien and operation of this Declaration.

ARTICLE XI

GENERAL INSURANCE AND CONDEMNATION PROVISION

Section 11.1 Waiver of Subrogation. EACH OWNER HEREBY WAIVES ANY AND ALL CLAIMS WHICH ARISE, OR MAY ARISE, IN ITS FAVOR AGAINST ANY OTHER OWNER, FOR ANY AND ALL LOSS OF, OR DAMAGE TO, ANY OF ITS PROPERTY, INSURABLE UNDER ALL RISK POLICIES OF INSURANCE CUSTOMARILY AVAILABLE AT THE APPLICABLE TIME.

Section 11.2 Insurance.

(a) Each Owner shall continuously maintain separate policies of commercial general liability insurance issued by and binding upon insurance companies authorized to transact business in Virginia and of good financial standing and has a Best's Rating of A or better and a Financial Size Category of X or larger, such insurance to afford minimum protection of not less than $10,000,000 in respect of bodily injury or death and/or property damage in respect of any one occurrence.

(b) Each Owner shall, on the request of another Owner, promptly furnish the requesting Owner a certificate evidencing the former Owner's compliance with the insurance

coverage requirements of this Article XI. No Owner shall be required during any given 365-day period to honor more than one such request from each other Owner, unless an Owner states its reason for believing that a policy may have been cancelled. Upon request, any Owner shall permit any other Owner or its representative at such requesting Owner's cost and expense to inspect and copy any insurance policy required under this Article XI. Such inspection shall be at the place of business of the Owner requested to produce such policy or policies during Normal Business Hours.

(c) The limits of coverage required hereunder shall be adjusted from time to time throughout the term of this Declaration by agreement of all Owners, each acting reasonably, to limits then applicable for comparable projects.

(d) Each Owner (but not the declarant or association, as applicable, under a condominium regime) shall have the right, at its option, to comply with and satisfy its obligations under this Article XI by means of any so-called blanket policy or policies of insurance covering this and other locations of such Owner, provided that such policy or policies by the terms thereof shall allocate to the liabilities to be insured hereunder an amount not less than the amount of insurance required to be carried pursuant to this Article XI and shall not diminish the obligations of the particular Owner to carry insurance, so that the proceeds from such insurance shall be an amount not less than the amount of proceeds that would be available if the Owner were insured under a policy applicable only to the applicable Parcel.

(e) If a condominium association, a homeowners' association or another similar association has been established with respect to a Parcel or Parcels, then for purposes of maintaining the insurance required under this Section 11.2, the term "Owner" shall mean the applicable association (or the declarant under the applicable operating documents if such association has not yet been established) instead of the individual members of the applicable association provided that the association has the right and authority pursuant to the association's governing documents to undertake such obligations and to assess it members therefor without the approval of the members.

Section 11.3 Indemnification by Owners. Subject to Section 11.1 hereof, each Owner shall defend, indemnify and save the other Owners harmless against and from all claims, loss, damages, costs and expenses (including, without limitation, reasonable attorney's fees) because of bodily injury or death of persons or destruction of property resulting from or arising out of such Owner's construction on and/or use, occupancy or possession of its Parcel, the Access Easement Area, the Access Easement, the Current Access Area, the Overflow Parking and/or any other Owner's Parcel, except to the extent caused by the acts or omissions of another Owner.

Section 11.4 Taking. If a Taking affecting any Parcel occurs, the following shall apply:

(a) any award of compensation or damages for a Taking of a Parcel, or any portion thereof, or the Improvements thereon, shall belong and be payable solely to the Owner

that owns the Parcel taken and no other Owner shall share in such award, except as expressly provided below;

(b) any proceeds attributable to the Access Easement Area, any Access Improvement or any Access Monument Sign shall be paid to the Parcel 1 Owner and the Parcel 1 Owner shall use such proceeds to restore the Access Improvements or Access Monument Sign as nearly as possible to its condition immediately prior to such Taking to permit the continued use thereof. To the extent the cost of restoring such Access Improvements or Access Monument Sign exceeds the amount of proceeds available therefor, (i) as to the Access Improvements, each Owner shall be responsible for such excess in the same proportion as each such Owner is obligated to pay the Access Expenses pursuant to Section 3.5 and (ii) the Owner whose Access Monument Sign was taken as to any Access Monument Sign shall be responsible for such excess; and

(c) if, as a result of a Taking, the Access Easement is extinguished or materially impaired or the Access Monument Sign may no longer be maintained, then changes shall be made to provide an access easement and/or appropriate monument signage rights comparable to the extent commercially practicable under the circumstances to the Access Easement and monument signage rights created or reserved under this Declaration.

Section 11.5 Tax Payments and Contests. Each Owner shall pay all taxes, assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excess levies, license and sales and permit fees and taxes, and other charges by public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall be assessed, levied, charged, confirmed, imposed or applicable to a Parcel owned by such Owner or Improvements thereon. Each of the Owners may, at its expense, by appropriate proceedings, and after thirty (30) days' written notice to the other Owners, contest the validity, applicability, or amount of any such taxes and assessments applicable to its Parcel or Improvements thereon. Such contest must be made in good faith and must not allow the affected Parcel to be forfeited or placed in jeopardy of being forfeited.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Covenants Run with the Land. All of the provisions, rights, powers, easements, covenants, conditions and obligations contained in this Declaration shall be binding upon and inure to the benefit of the Owners, their respective successors and assigns. Each covenant to do or refrain from doing some act on each Parcel hereunder (a) is for the benefit of the other Parcels, (b) runs with each Parcel, and (c) shall benefit or be binding upon each successive Owner during its period of ownership of each Parcel.

Section 12.2 Recordation. This Declaration shall become effective and binding upon the Owners and their respective successors in interest upon the Effective Date and shall be promptly recorded in the real property records of Fairfax County, Virginia.

Section 12.3 Termination and Amendment.

(a) Except as otherwise specified in this Declaration (including, without limitation Section 12.17 which may be terminated by the Parcel 1 Owner alone), this Declaration may be canceled, changed, modified or amended in whole or in part only by written and recorded instrument executed by all Owners (and their respective Mortgagees); provided, however, that with respect to any Parcel for which a condominium association, a homeowners' association or another similar association has been established, the consent of a majority of the Unit Owners of each such association (and their respective Mortgagees) shall satisfy the requirements of this Section 12.3(a).

(b) The Owners shall use reasonable efforts to cooperate to consider reasonable modifications to this Declaration at the request of another Owner, and it shall not be reasonable for an Owner to withhold its cooperation or consent to any modification that neither adversely affects in a material manner such Owner's development or use of its respective Parcel as permitted in this Declaration nor increases such owner's obligations and/or liabilities hereunder.

Section 12.4 Approvals. Whenever approval or consent is required of any Owner, unless provision is made for a specific time period, approval or consent shall be required within twenty (20) Business Days after such Owner's receipt of the written request for approval or consent and such Owner shall be deemed to have consented if such Owner does not reply within said twenty (20)-Business Day period (provided such notice conspicuously states in bold letters that failure to respond within such twenty (20)-Business Day period shall be deemed consent). Whenever time periods are specified for approval herein (other than in the previous sentence) and the applicable Owner does not respond within the stated time period, the Owner requesting a response shall, at the end of the stated time period, deliver a second request for response in which event the responding Owner shall have ten (10) Business Days from receipt of the requesting Owner's second notice to respond. The responding Owner shall be deemed to have consented if such Owner does not reply within said ten (10)-Business Day period (provided such request or notice conspicuously states in bold letters that failure to respond within such ten (10)-Business Day period shall be deemed consent). If an Owner shall disapprove any matter as to which its consent is requested hereunder, the reasons therefor shall be stated in reasonable detail in writing. The consent or approval by an Owner to or of any act or request by any Owner shall not be deemed to waive or render unnecessary consent or approval to or of any similar or subsequent acts or requests. Except as otherwise expressly provided herein, any consent or approval rights granted to an Owner pursuant to this Declaration as it relates to another Owner shall be exercised in such Owner's reasonable discretion, without undue delay or conditions.

Section 12.5 Excusable Delays. Whenever performance is required of any Owner hereunder, that Owner shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage to work in progress by reason of fire or other casualty or cause beyond the reasonable control of an Owner (financial inability,

imprudent management or negligence excepted), the inability to obtain necessary governmental approvals, the discovery of hazardous materials or a failure of an Owner to timely act in a manner required herein, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. As used in this Declaration, an Owner's obligation to use or act with "due diligence," "diligent efforts" or words of similar meaning or import, or take any action required to "diligently complete," "diligently pursue" or words of similar meaning or import, shall be deemed satisfied if such Owner acts with or uses commercially reasonable efforts under the circumstances.

Section 12.6 Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect, unless enforcement of this Declaration as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Declaration.

Section 12.7 Notice. Any notice to any Owner shall be in writing and given by delivering the same to such Owner in person, by expedited, private carrier service (such as Federal Express), or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the Owner's mailing address. Copies of certain notices are required to be sent to Mortgagees pursuant to Article IX of this Declaration. Notices shall be sent to the Declarant and the Parcel 2 Owner as follows:

Declarant/Parcel 2 Owner: Campus Point Realty Corporation
10260 Campus Point Drive
San Diego, California 92121
Attn: SAIC Corporate Real Estate

and with a copy to: Gary E. Humes
Arnold & Porter
555 Twelfth Street, N.W.
Washington, DC 20004-1206

Any Owner may change its mailing address at any time by giving written notice of such change to the other Owners in the manner provided herein at least ten (10) days' prior to the date such change is to be effective. Additionally, each Owner may designate up to two (2) additional addresses to which copies of all notices shall be sent. All notices under this Declaration shall be deemed given, received, made or communicated on the date personal delivery is effected, or if mailed, on the delivery date or attempted delivery date shown on the return receipt, provided that any such notice set forth above is tendered prior to 6:00 P.M. in the time zone where the recipient of such notice is located on any Business Day (failing which such notice shall be deemed given, received, made or communicated on the next Business Day).

Section 12.8 Litigation Expenses. If any party shall bring a legal or equitable proceeding against any other party to this Declaration by reason of the breach or alleged violation of any covenant, condition, restriction, easement, term or obligation hereof, or for the

enforcement of any provision hereof or otherwise arising out of this Declaration, the prevailing party in such proceeding shall be entitled to recover from the non-prevailing party the reasonable costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by such prevailing party in connection with such proceeding, which shall be payable whether or not such action is prosecuted to judgment.

Section 12.9 Governing Law; Place of Performance. This Declaration and all rights and obligations created hereby shall be governed by the laws of the Commonwealth of Virginia, without reference to the choice of laws principles thereof.

Section 12.10 Non-Merger. The ownership, at any time during the term of this Declaration, of more than one Parcel by the same Owner shall not create a merger of title or estate, or other merger, including any merger of the dominant and servient estate with respect to easements created in this Declaration, and shall therefore not terminate any of the easements, restrictive covenants, or other terms or provisions of this Declaration.

Section 12.11 Term; Termination. The terms, covenants, provisions and conditions of this Declaration shall be effective as of the Effective Date and shall continue to be binding upon and inure to the benefit of any Owner from time to time and all persons, parties and entities claiming by, through or under any of them in perpetuity unless all persons or entities having an interest therein shall agree to terminate or otherwise modify the same.

Section 12.12 Time. Time is of the essence of this Declaration and each and every provision hereof.

Section 12.13 Estoppel Certificate. Any Owner may, at any time and from time to time, deliver written notice to any other Owner requesting such other Owner to certify in writing (a) that to the best knowledge of the certifying Owner, the requesting Owner is not in default in the performance of its obligations under this Declaration, or, if in default, to describe therein the nature and amount of any and all defaults, and (b) to such other reasonable matters as the requesting Owner may request. Each Owner receiving such request shall execute and return such certificate within ten (10) Business Days following the receipt thereof. Such certificate may be relied upon by actual or prospective purchasers, investors, tenants, transferees, lenders, mortgagees, deed of trust beneficiaries and leaseback lessors.

Section 12.14 No Partnership, Joint Venture or Principal-Agent Relationship. Neither anything in this Declaration nor any acts of an Owner shall be deemed by the Owners, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Owners (except as expressly set forth herein), and no provisions of this Declaration are intended to create or constitute any person or entity a third party beneficiary hereof.

Section 12.15 Headings; Exhibits; Gender. Captions in this Declaration are for convenience of reference only, and shall not be considered in the interpretation of this Declaration. All exhibits referenced in this Declaration are incorporated in this Declaration by this reference as if fully set forth herein. Whenever required by the context, the singular shall

include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

Section 12.16 Separate Parcel 1 Covenants. The initial owner of Parcel 1, after Declarant, shall have the right, from time to time and without the consent of the Parcel 2 Owner, to record separate covenants benefiting and/or burdening Parcel 1 and the owners thereof provided such covenants are and remain subordinate to this Declaration and do not impact the liabilities or obligations set forth herein.

Section 12.17 Overflow Parking Spaces. The Parcel 2 Owner shall provide to the Parcel 1 Owner, for the benefit of the residents of Parcel 1, the right to use a minimum of 150 parking spaces on Parcel 2 during non-business hours on weekdays (*i.e.* after 6:00 p.m.) and on weekends ("Overflow Parking"). Prior to the sale or rental of the first housing units on Parcel 1, the Parcel 1 Owner or the Master Association shall establish, subject to the reasonable approval of the Parcel 2 Owner, reasonable rules and regulations for the use of the Overflow Parking. The Master Association (or, before there is a Master Association, the Parcel 1 Owner) shall enforce such rules and regulations. If the Parcel 1 Owner or the Master Association, as applicable, fails to establish and/or enforce such rules and regulations, in addition to any other remedies that may be available to it, the Parcel 2 Owner shall have the right to terminate the Parcel 1 Owner's right to use the Overflow Parking by sending a notice to the Parcel 1 Owner and, if the Parcel 2 Owner so elects, recording the same in the land records.

IN WITNESS WHEREOF, the undersigned has executed and acknowledged this Declaration to be effective as of the Effective Date.

CAMPUS POINT REALTY CORPORATION,
a California corporation

By: _____
Name: FREDERICK HARARI
Title: PRESIDENT

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BK 16927 2223

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On January 25, 2005, before me, Mary E. Hyder, Notary Public, personally appeared Frederick R. Hazard, personally known to me - **OR** - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary E Hyder
Signature of Notary

MARY E. HYDER
Commission # 1376506
Notary Public - California
San Diego County
My Comm. Expires Sep 24, 2006

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EXHIBITS:

Exhibit A-1	Description of Parcel 1
Exhibit A-2	Description of Parcel 2
Exhibit B	Access Easement Area (and Access Monument Sign Area)
Exhibit C-1	Storm Water Easement Area
Exhibit C-2	Storm Water Detention Ponds
Exhibit D-1	Relocated Parking
Exhibit D-2	Temporary Parking
Exhibit E	Current Access Area
Exhibit F	Outlot Parcels
Exhibit G	Telephone and Data Cables

BK 16927 2225

ENGINEERS ■ PLANNERS ■ LANDSCAPE ARCHITECTS ■ SURVEYORS ■ GPS SERVICES

REVISED JANUARY 25, 2005
JANUARY 20, 2005

EXHIBIT A-1A
DESCRIPTION OF
PARCEL 1A
THE RESERVE AT TYSONS CORNER
BEING
A PORTION OF
THE PROPERTY OF
CAMPUS POINT REALTY CORPORATION,
as successor in interest to
CAMPUS POINT REALTY CORPORATION, II
DEED BOOK 11073 PAGE 890
PROVIDENCE DISTRICT
FAIRFAX COUNTY, VIRGINIA

Being a portion of the property described in a conveyance to Campus Point Realty Corporation, successor in interest to Campus Point Realty Corp., II as recorded in Deed Book 11073 at Page 890 all among the Land Records of Fairfax County, Virginia and being more particularly described as follows:

Beginning for the same at a point on the southwesterly corner of Tysons Executive Village as recorded in Deed Book 9777 at Page 1353 among the aforementioned Land Records, said point also being on the northerly line of Lot 9, Courthouse Station (Deed Book 7195 Page 438); thence running with a portion of Courthouse Station

1. North 79°10'45" West, 417.85 feet to a point being the southeasterly corner of Courts of Tyson (Deed Book 6020 Page 699); thence leaving Courthouse Station and running with Courts of Tyson and continuing so as to cross and include a portion of the aforesaid property of Campus Point Realty Corp II the following eleven (11) courses and distances:
2. North 10°50'42" East, 515.46 feet to a point; thence
3. North 11°48'13" West, 264.60 feet to a point; thence
4. North 79°09'07" West, 449.29 feet to a point; thence
5. 58.12 feet along the arc of the curve to the right having a radius of 37.00 feet and a chord bearing and distance of North 34°09'07" West, 52.33 feet to a point; thence

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Mclean, VA Germantown, MD

6. North 10°50'53" East, 128.62 feet to a point; thence

7. North 79°09'07" West, 192.48 feet to a point; thence

8. South 64°49'49" West, 21.66 feet to a point; thence

9. South 10°50'53" West, 57.89 feet to a point; thence

10. North 79°09'07" West, 58.98 feet to a point; thence

11. South 10°50'53" West, 102.68 feet to a point; thence

12. North 79°09'07" West, 27.40 feet to a point lying on the easterly right of way line of Gallows Road – Route 650 (width varies); thence running with a portion of said easterly right of way line

13. 52.71 feet along the arc of the curve to the left having a radius of 416.60 feet and a chord bearing and distance of North 06°56'31" West, 52.68 feet to a point; thence

14. 46.73 feet along the arc of a curve to the right having a radius of 35.54 feet and a chord bearing and distance of North 27°08'36" East, 43.43 feet to a point; thence departing Gallows Road and running so as to cross and include a portion of the subject property (Deed Book 11073 Page 890) the following nine (9) courses and distances

15. South 21°00'02" West, 19.05 feet to a point; thence

16. South 62°49'39" East, 13.72 feet to a point; thence

17. North 27°10'21" East, 46.73 feet to a point; thence

18. North 64°49'49" East, 240.41 feet to a point; thence

19. 125.73 feet along the arc of a curve to the right having a radius of 200.00 feet and a chord bearing and distance of North 82°50'21" East, 123.67 feet to a point; thence

20. South 79°09'07" East, 424.76 feet to a point; thence

14. 175.26 feet along the arc of a curve to the right having a radius of 168.00 feet and a chord bearing and distance of South 49°15'56" East, 167.42 feet to a point; thence

15. South 19°22'46" East, 121.31 feet to a point; thence

16. North 73°33'08" East, 169.34 feet to a point on the westerly right-of-way line of Interstate Route 495 (variable width right-of-way); thence running with Interstate Route 495 the following three (3) courses and distances

17. South 16°26'52" East, 64.26 feet to a point of curvature; thence

18. 423.65 feet along the arc of a curve to the right having a radius of 11,609.16 feet and a chord bearing and distance of South 11°28'32" East, 423.63 feet to a point; thence leaving said Interstate Route 495 and running with the westerly line of the aforementioned Tysons Executive Village the following course and distance

19. South 10°54'22" West, 485.88 to the point of beginning containing 540,309 square feet or 12.40379 acres of land.

BK 16927 2228

REVISED JANUARY 25, 2005
JANUARY 20, 2005

EXHIBIT A-1B
DESCRIPTION OF
PARCEL 1B
THE RESERVE AT TYSONS CORNER
BEING
A PORTION OF
THE PROPERTY OF
CAMPUS POINT REALTY CORPORATION,
as successor in interest to
CAMPUS POINT REALTY CORPORATION, II
DEED BOOK 11073 PAGE 890
PROVIDENCE DISTRICT
FAIRFAX COUNTY, VIRGINIA

Being a portion of the property described in a conveyance to Campus Point Realty Corporation, successor in interest to Campus Point Realty Corp., II as recorded in Deed Book 11073 at Page 890 all among the Land Records of Fairfax County, Virginia and being more particularly described as follows:

Beginning for the same at a point lying on the easterly right of way line of Gallows Road – Route 650 (width varies), said point also marking the northwesterly corner of the Courts of Tysons (D.B. 6020, Pg. 699); thence leaving said northwesterly corner and running with said easterly right of way line of Gallows Road the following three (3) courses and distances

1. North 11°10'53" East, 142.86 feet to a point of curvature (non-tangent); thence

2. 43.43 feet along the arc of a curve to the left having a radius of 209.00 feet and a chord bearing and distance of North 17°08'03" East, 43.36 feet to a point of compound curvature; thence

3. 105.42 feet along the arc of a curve to the left having a radius of 416.60 feet and a chord bearing and distance of North 03°55'54" East, 105.13 feet to a point; thence leaving the aforesaid right of way line of Gallows Road and running so as to cross and include a portion of the aforesaid property of Campus Point Realty Corp II, the following eleven (11) courses and distances:

4. South 79°09'07" East, 27.40 feet to a point; thence

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Mclean, VA Germantown, MD

5. North 10°50'53" East, 102.68 feet to a point; thence
6. South 79°09'07" East, 58.98 feet to a point; thence
7. North 10°50'53" East, 57.89 feet to a point; thence
8. North 64°49'49" East, 21.66 feet to a point; thence
9. South 79°09'07" East, 192.48 feet to a point; thence
10. South 10°50'53" West, 128.62 feet to a point; thence
11. 58.12 feet along the arc of the curve to the left having a radius of 37.00 feet and a chord bearing and distance of South 34°09'07" East, 52.33 feet to a point; thence
12. South 79°09'07" East, 449.29 feet to a point; thence
13. South 11°48'13" East, 264.60 feet to a point; thence
14. South 10°50'42" West, 53.81 feet to a point marking the northeasterly corner of the aforesaid Courts of Tysons (D.B. 6020, Pg. 699); thence running with the northerly line of said Courts of Tysons
15. North 79°09'07" West, 877.50 feet to the point of beginning containing 289,077 square feet or 6.63629 acres of land.

VIKA

BK 16927 2230

REVISED JANUARY 26, 2005
REVISED JANUARY 25, 2005
JANUARY 20, 2005

EXHIBIT A-2
DESCRIPTION OF
PARCEL 2
RESERVE AT TYSONS CORNER
BEING
A PORTION OF
THE PROPERTY OF
CAMPUS POINT REALTY CORPORATION,
as successor in interest to
CAMPUS POINT REALTY CORPORATION, II
DEED BOOK 11073 PAGE 890
PROVIDENCE DISTRICT
FAIRFAX COUNTY, VIRGINIA

Being a portion of the property described in a conveyance to Campus Point Realty Corporation, successor in interest to Campus Point Realty Corp., II as recorded in Deed Book 11073 at Page 890 all among in the Land Records of Fairfax County, Virginia and being more particularly described as follows:

Beginning for the same at a point on the southeasterly corner of 1951 Kidwell LP as recorded in Deed Book 9093 at Page 755 among the aforementioned Land Records, said point also being on the southerly right-of-way line of Interstate Route 495 (variable width right-of-way); thence running with Interstate Route 495 the following four (4) courses and distances

1. South 15°00'02" East, 152.09 feet to a point; thence
2. South 45°45'10" East, 458.38 feet to a point; thence
3. South 24°08'10" East, 256.84 feet to a point; thence
4. South 16°26'52" East, 344.89 feet to a point; thence leaving the aforementioned southerly right-of-way line of Interstate Route 495 and running so as to cross and include a portion of the aforementioned property of Campus Point Realty Corp. II the following nine (9) courses and distances
5. South 73°33'08" West, 169.34 feet to a point; thence
6. North 19°22'46" West, 121.31 feet to a point; thence

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Mclean, VA ■ Germantown, MD ■ Leesburg, VA

7. 175.26 feet along the arc of a curve to the left having a radius of 168.00 feet and a chord bearing and distance of North 49°15'56" West, 167.42 feet to a point; thence

8. North 79°09'07" West, 424.76 feet to a point; thence

9. 125.73 feet along the arc of a curve to the left having a radius of 200.00 feet and a chord bearing and distance of South 82°50'21" West, 123.67 feet to a point; thence

10. South 64°49'49" West, 240.41 feet to a point; thence

11. South 27°10'21" West, 46.73 feet to a point; thence

12. North 62°49'39" West, 13.72 feet to a point; thence

13. North 21°00'02" East, 19.05 feet to a point; thence running with Gallows Road, State Route 650 (width varies) and continuing with Kidwell Drive, State Route 736 (width varies) the following seven (7) courses and distances

14. North 51°51'56" East, 20.02 feet to a point; thence

15. South 64°51'20" West, 19.51 feet to a point; thence

16. North 32°24'41" West, 19.61 feet to a point; thence

17. North 11°10'32" East, 133.81 feet to a point of curvature (non-tangent); thence

18. 153.62 feet along the arc of a curve to the left having a radius of 50.00 feet and a chord bearing and distance of North 20°45'35" East, 99.94 feet to a point of reverse curvature; thence

19. 21.16 feet along the arc of a curve to the right having a radius of 25.00 feet and a chord bearing and distance of North 42°56'44" West, 20.54 feet to a point; thence

20. North 11°10'32" East, 636.22 feet to a point; thence leaving Kidwell Drive – Route 736 and running with southerly line of the aforementioned 1951 Kidwell LP the following three (3) courses and distances

21. South 78°19'06" East, 102.25 feet to a point; thence

22. North 73°31'20" East, 167.84 feet to a point; thence

23. South 89°58'51" East, 123.97 to the point of beginning containing 640,580 square feet or 14.70570 acres of land.

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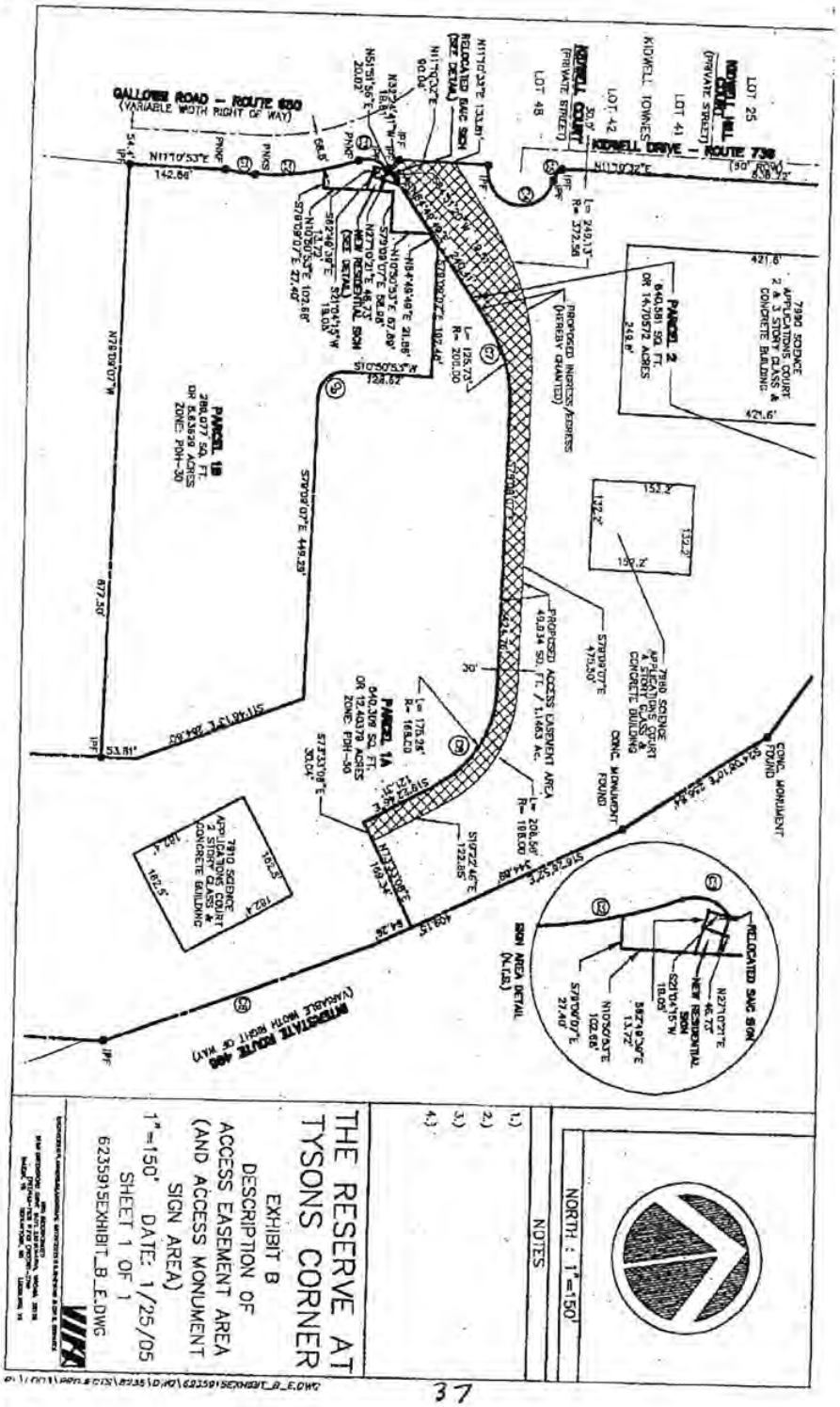
VIKA

Plat Attached

01/28/2005

BK 16927 2232



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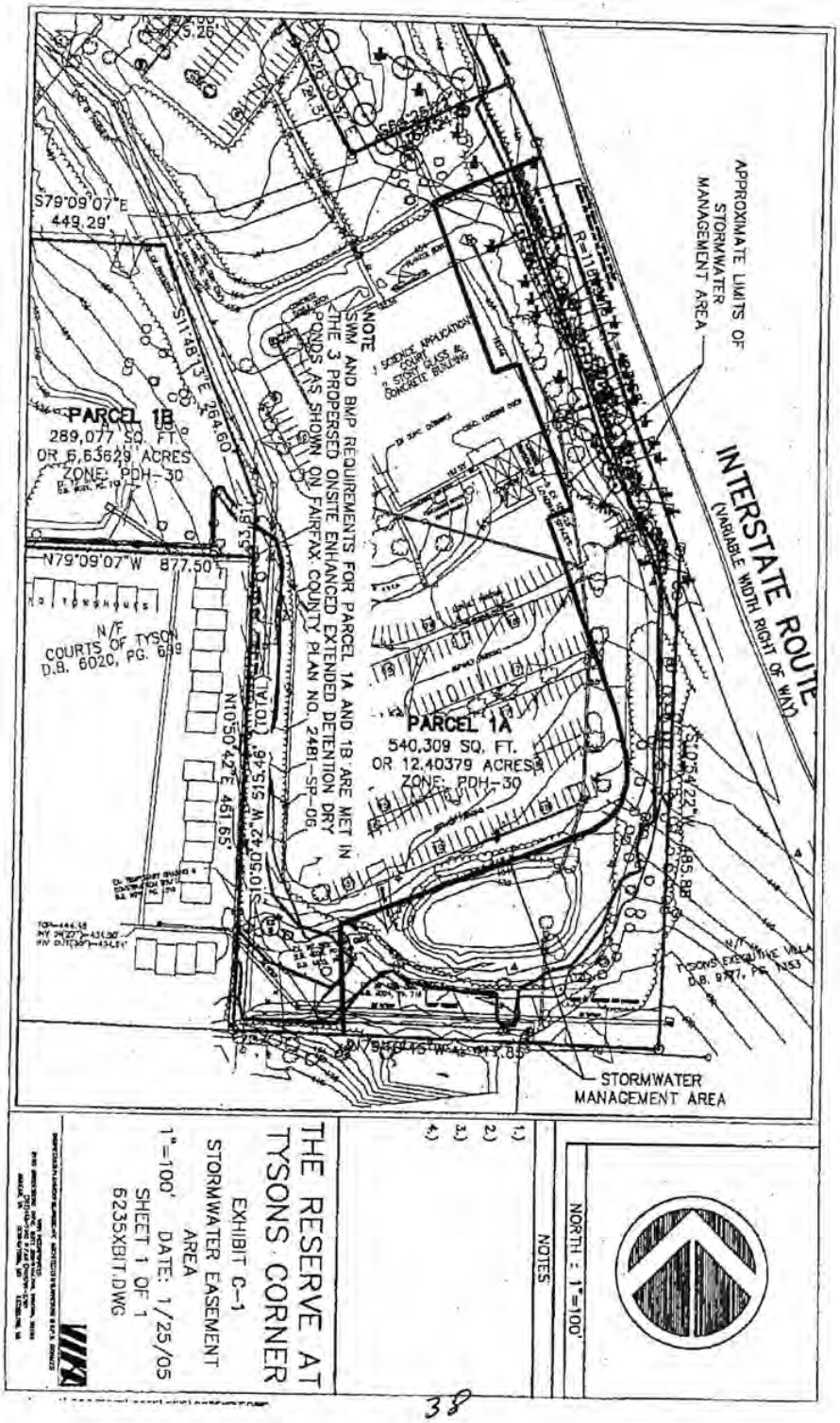
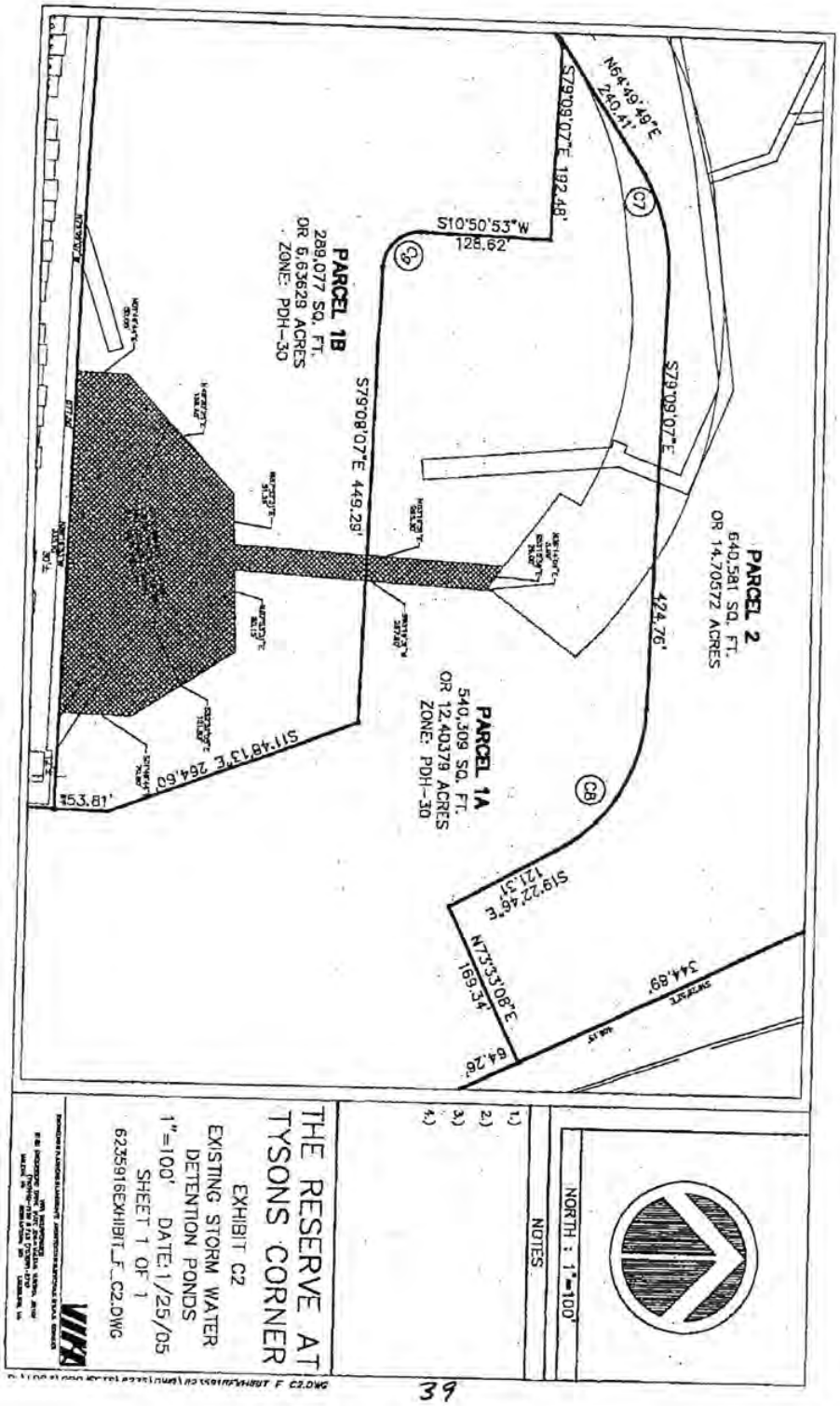
BK 16927 2233



BK 16927 2234



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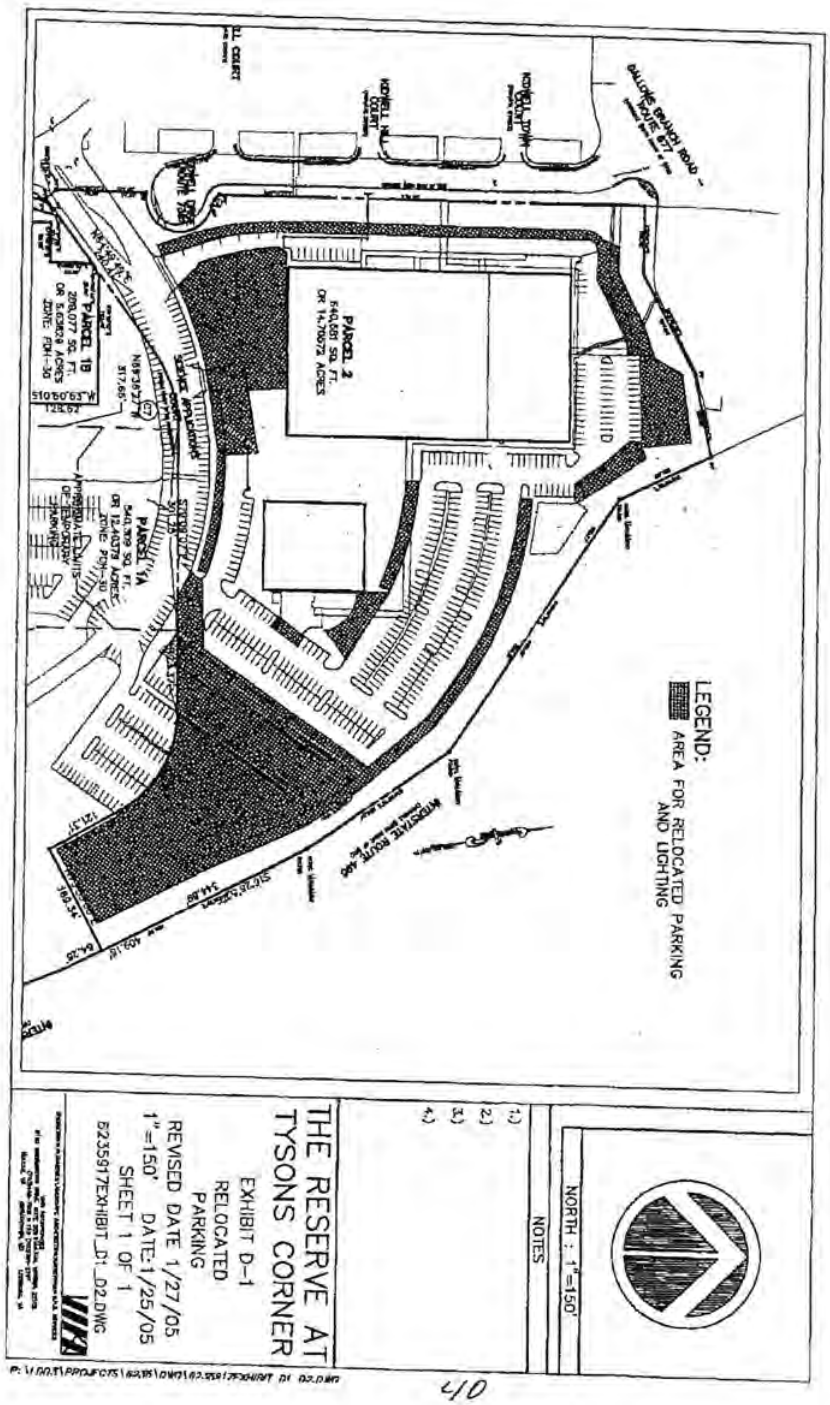
BK 16927 2235



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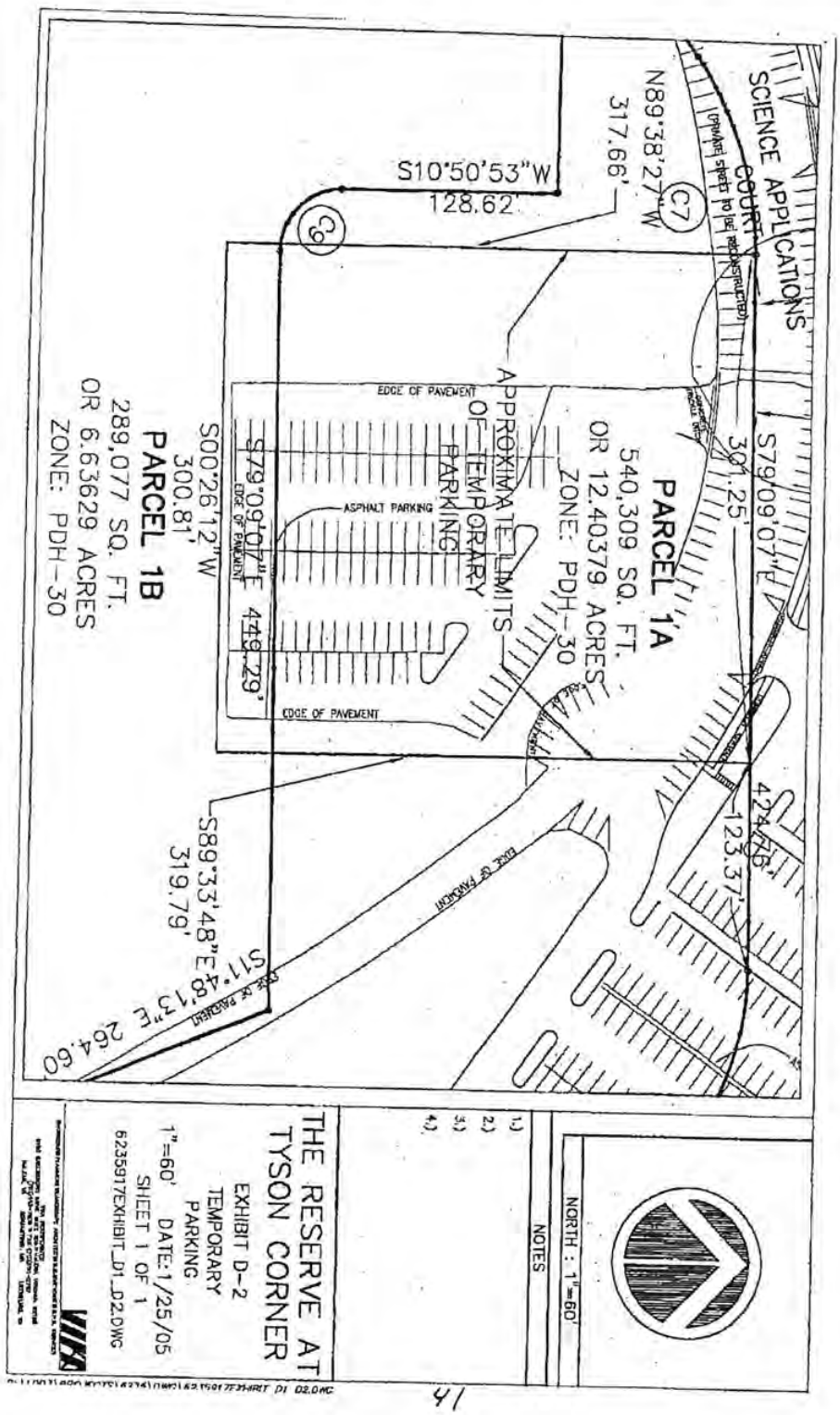
BK 16927 2236



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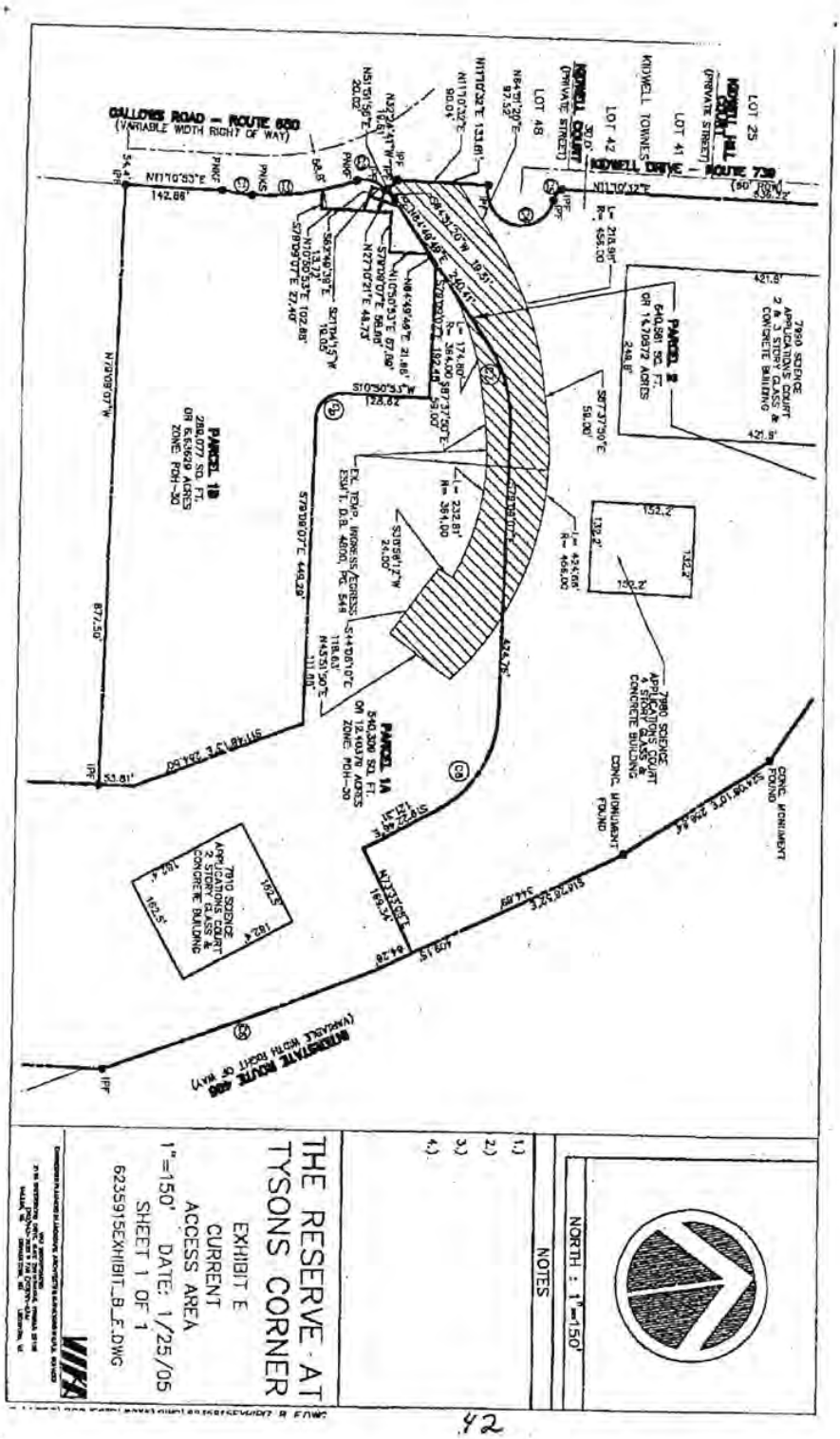
BK 16927 2237


GALLOWS ROAD – ROUTE 650
(VARIABLE WIDTH RIGHT OF WAY)
KIDWELL DRIVE – ROUTE 738
(60' R/W)
KIDWELL COURT
(PRIVATE STREET)
KIDWELL HILL COURT
(PRIVATE STREET)
KIDWELL TOWNES
LOT 25
LOT 41
LOT 42
LOT 48
PARCEL 1B
284,077 SQ. FT.
OR 6.5232 ACRES
ZONE PDH-30
PARCEL 1A
540,309 SQ. FT.
OR 12.4037 ACRES
ZONE: PDH-30
PARCEL 2
540,561 SQ. FT.
OR 14.70372 ACRES
248.8'
7910 SCIENCE APPLICATIONS COURT
2 & 3 STORY GLASS & CONCRETE BUILDING
7910 SCIENCE APPLICATIONS COURT
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7910 SCIENCE APPLICATIONS COURT
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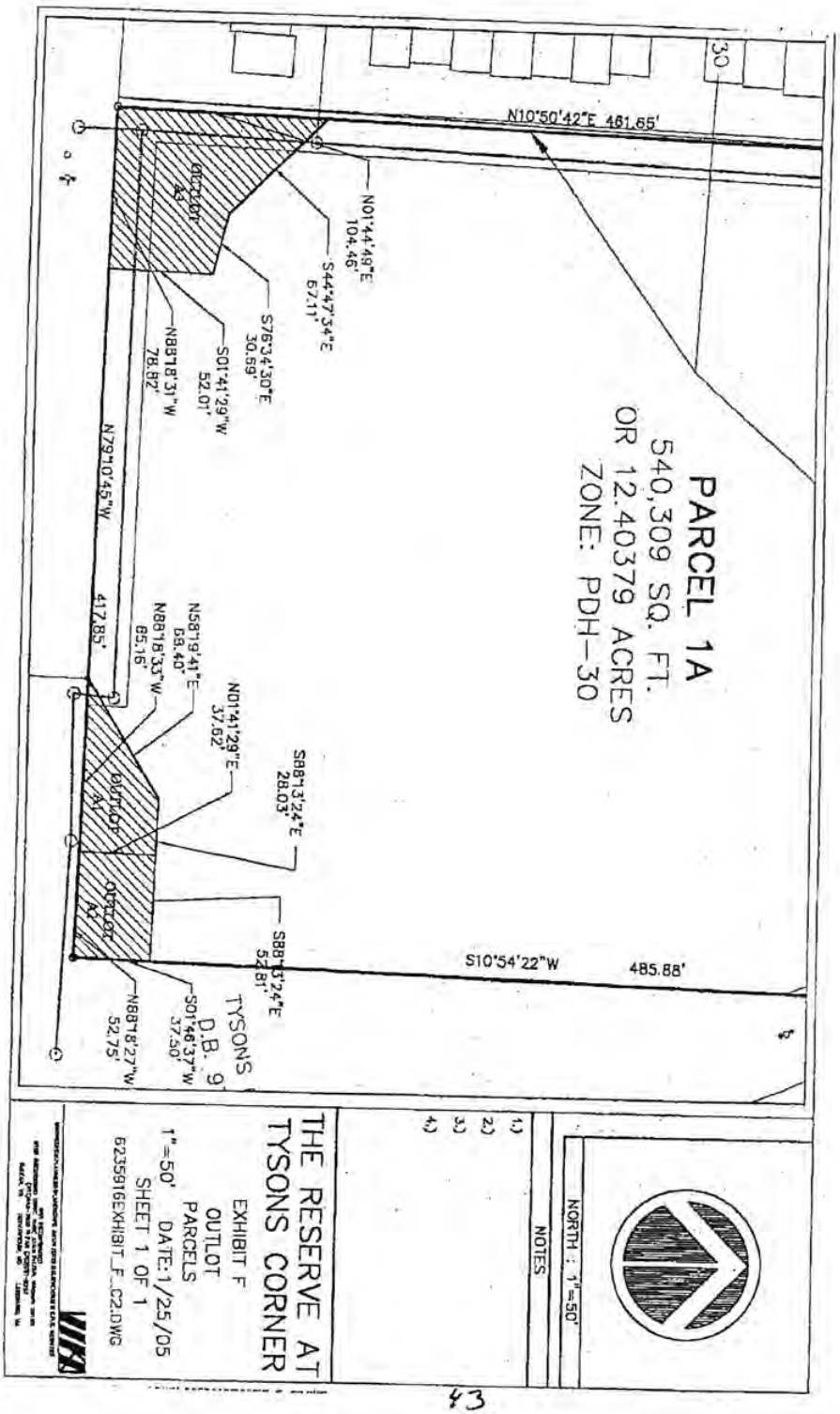

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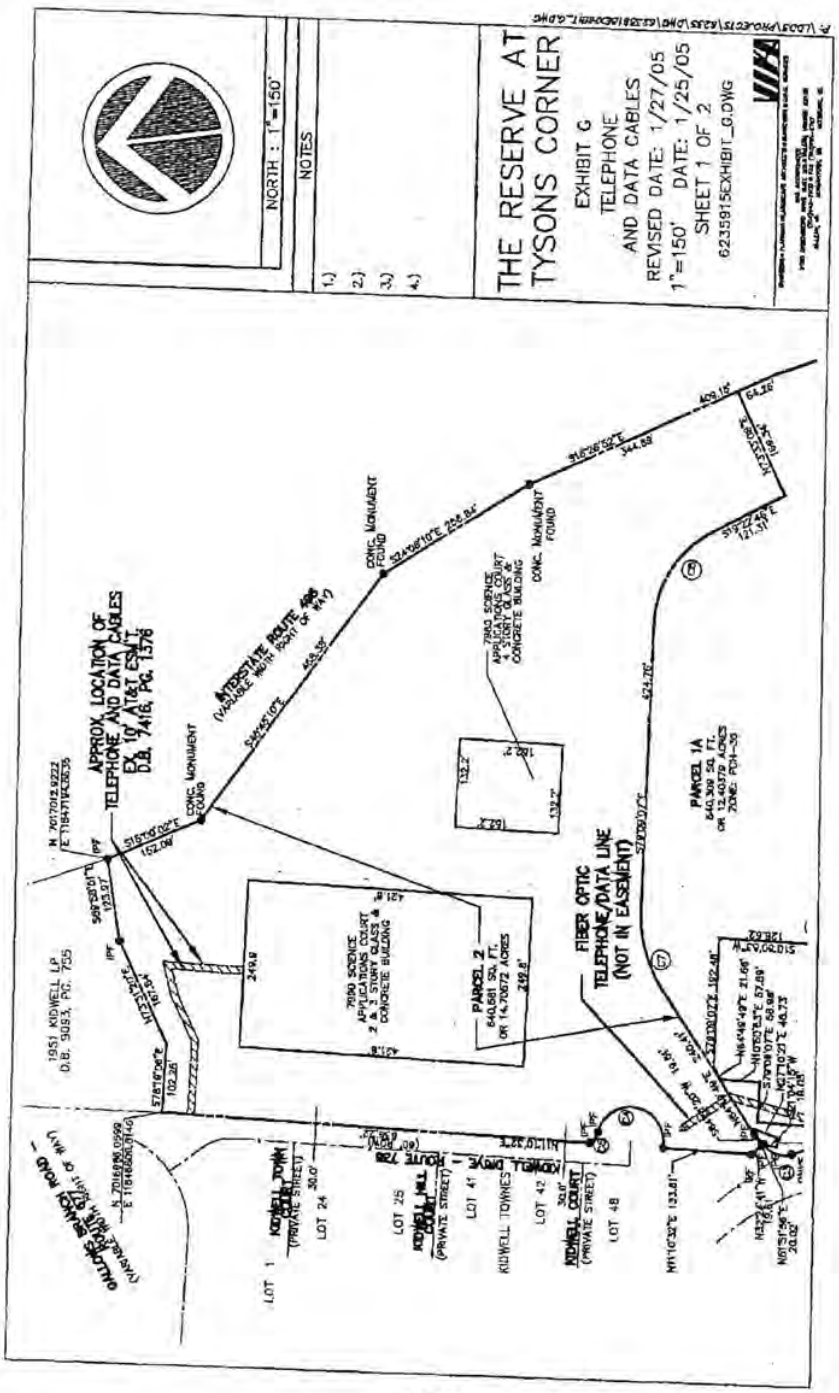

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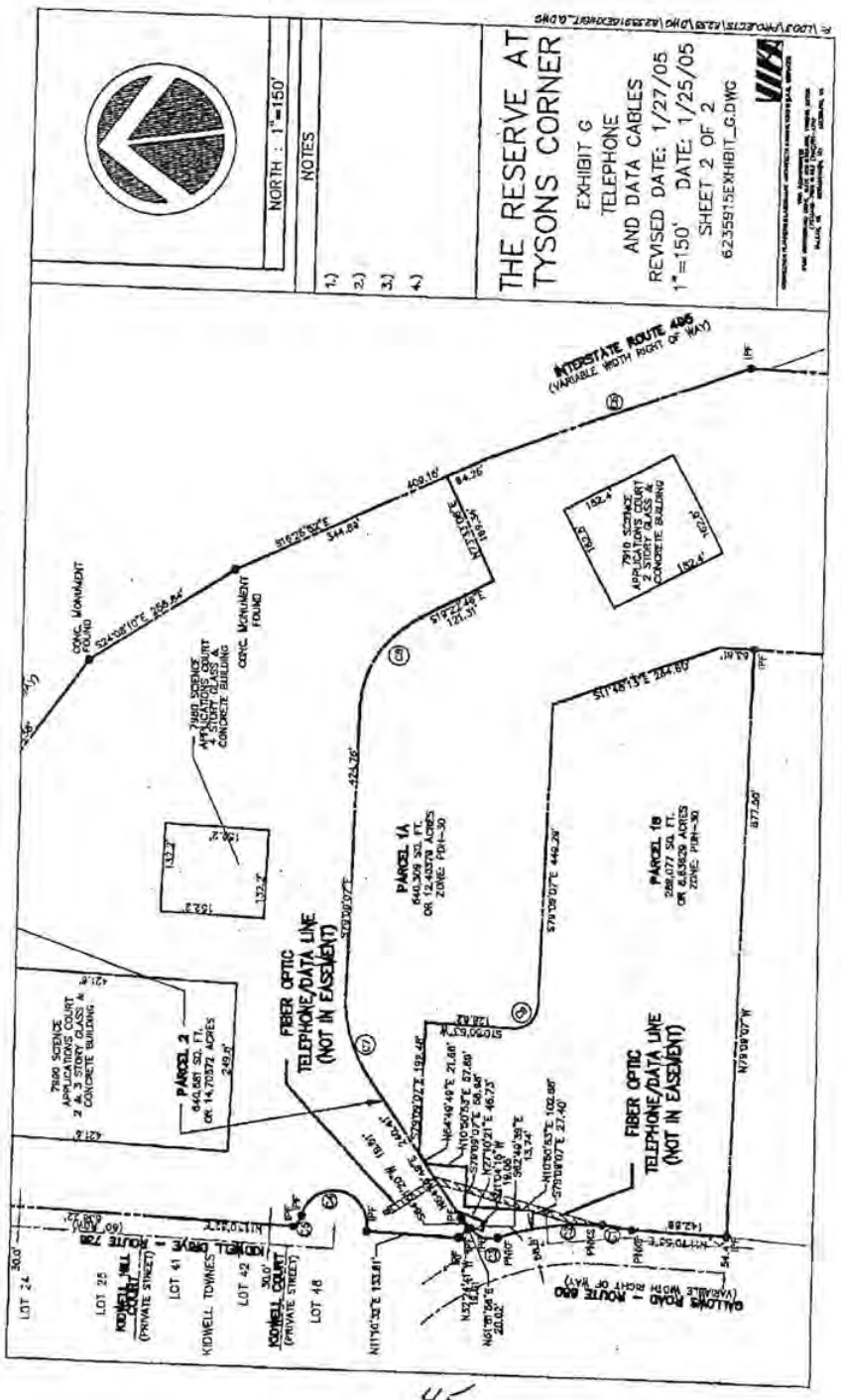

45

County of Fairfax, Virginia

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

RECEIVED
JUN 23 2017
MercerTrigiani LLP

May 30, 2017

Lucia Anna Trigiani, Esq.
MercerTrigiani
112 South Alfred Street
Alexandria, VA 22314

Re: Interpretation for RZ/FDP 2003-PR-008; The Reserve at Tysons Corner; Tax Map Numbers 39-2 ((56)) A1, B3, 1-92, 39-2 ((1)) 13A5 and A6: Parking Obligation

Dear Ms. Trigiani:

This determination is in response to your letter of December 22, 2016, requesting an interpretation of the proffers, as well as the approved development conditions and Conceptual/Final Development Plan (C/FDP), accepted and approved in conjunction with the above-referenced application. As I understand it, you are requesting an interpretation of proffer language relating to parking on an adjacent offsite parcel. Specifically, your request concerns whether the proffers accepted in RZ/FDP 2003-PR-008 create a continuing obligation to provide offsite parking on an adjacent property (aka the "Meridian Property"). This determination is based upon your letter dated December 22, 2016, and Exhibit 1, entitled "Proffers RZ 2003-PR-008" dated March 14, 2004. Copies of this letter and exhibits are attached.

The subject property is located on the east side of Kidwell Drive, south of Leesburg Pike, west of Interstate 495 and south of Science Applications Court. The property is zoned PDH-30 pursuant to the approval of RZ 2003-PR-008 by the Board of Supervisors on March 15, 2004, with the Planning Commission approving FDP 2003-PR-008 on April 7, 2004, subject to proffers and development conditions. These applications permitted development of the property with 92 single-family attached and 478 multi-family dwelling units.

Prior to the approval of RZ/FDP 2003-PR-008, the subject property was part of a larger 33.74-acre property identified as Tax Map Number 39-2 ((1)) Parcel 13. This larger property was originally zoned to the I-P District (now I-3) pursuant to the approval of RZ 75-7-004 by the Board of Supervisors on October 29, 1975, subject to proffers. In 2003, two concurrent applications were submitted by Lincoln Property Company Southwest, Inc., in order to develop a portion of this overall property with the residential development described above. PCA 75-7-004-02 was submitted and approved on the entire 33.74 acres in order to delete 19.04 acres from RZ 75-7-004. RZ/FDP 2003-PR-008 was then approved, subject to proffers, to rezone that same 19.04 acres of land to the PDH-30 District. As the property included in all these applications was under single ownership, the proffers for both applications were signed by the same owner, Campus Point Realty Corporation II. The proffer at issue, however, was approved only in connection with the rezoning

of the 19.04-acre parcel. Subsequent to the approval of RZ/FDP 2003-PR-008, the property subject to RZ/FDP 2003-PR-008 was subdivided from the larger property via approved site plans and record plats.

The proffer at issue with your current request is Proffer 49 of RZ 2003-PR-008, which envisioned the provision of 150 overflow parking spaces on the Meridian Property. Proffer 49 states:

> *Prior to the approval of the final site plan on the Application Property[1], the Applicant shall provide evidence that a parking agreement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the I-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 pm) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.*

It appears, through submitted plans for the subject property, that compliance with Proffer 49 was demonstrated to Fairfax County through the recordation of a parking agreement in the land records of Fairfax County. You state that you believe the Declaration of Covenants, Restrictions and Easements recorded on January 28, 2005 in Deed Book 16927 at Page 2195 in the Fairfax County land records is the document meant to satisfy Proffer 49—specifically, Section 12.17 of the Declaration of Covenants, Restrictions and Easements as it relates to Overflow Parking Spaces.

The 150 overflow parking spaces were to be located offsite from the 19.04 acres zoned PDH-30, on the portion which retained its I-3 zoning - the Meridian Property (Tax Map Numbers 39-2 ((1)) 13D and 13E), which is currently owned by Tysons Enterprise West LLC and Tyson Enterprise East LLC, and is developed with two existing office/data center buildings and surface parking. In accordance with PCA 75-7-003-3 and SE 2015-PR-021, the Meridian Property will be redeveloped, in part, with a full-size athletic field and parking garage. You now state that the Reserve at Tysons Corner Association Board has been notified that the prior owner of the Meridian Property seeks to terminate the parking agreement with the Association.

In accordance with Section 18-201 of the Zoning Ordinance ("Ordinance"), Board of Supervisors approval of a rezoning application constitutes a permanent (unless further amended) amendment to the Zoning Map. Further, per Section 18-204, any proffered conditions submitted as part of the rezoning application and accepted by the Board of Supervisors become "part of the zoning regulations applicable to the subject property in question, unless subsequently changed by an amendment to the Zoning Map." Therefore, an approved rezoning and accepted proffers become a part of the Zoning map only for the subject property included in the application, in this case the 19.04 acres described in the application for RZ/FDP 2003-PR-008. Proffer 49 was a commitment

---

[1] Proffer #1 associated with RZ 2003-PR-008 states that *"Development of the Application Property shall be in substantial conformance with the Conceptual/Final Development Plan (CDP/FDP) prepared by VIKA Incorporated, consisting of thirteen (13) sheets dated January 17, 2003 as revised through March 11, 2004..."* As shown on Sheet 2 of the CDP/FDP, the portion of the property rezoned to the PDH-30 District per RZ 2003-PR-008 contains 19.04 acres, which is the Application Property referenced in Proffer 49. Please refer to Appendix 1 depicting the 19.04 acres subject to RZ 2003-PR-008, which is from the Staff Report published as part of this rezoning application.

that required the demonstration of the provision of at least 150 overflow parking spaces on the offsite Meridian Property, which was to be secured via a parking agreement to be recorded in the land records. As noted above, this agreement was recorded in Deed Book 16927 at Page 2195 prior to the approval of the site plan, as required.

Proffer 49 specifically required that the overflow parking spaces on an offsite parcel were to be implemented by a private agreement. As noted above, accepted proffers become part of the Zoning map for the property subject to the rezoning only and are not enforceable against an offsite property. By referring to the Meridian Property as the "adjacent I-3 parcel," the proffer language makes clear that that property was not part of the Application property subject to the proffer.

Based on the foregoing, it is my determination that Proffer 49 remains in effect for the 19.04 acres included in RZ 2003-PR-008. Although Proffer 49 remains in effect, a proffer violation cannot be enforced on Meridian because the proffer does not apply to them. The proffer can be removed only through a Proffered Condition Amendment (PCA) application approved by the Board of Supervisors. Information on how to apply for a PCA can be found on our website at: http://www.fairfaxcounty.gov/dpz/zoning/applications/.

The determination has been made in my capacity as duly authorized agent of the Zoning Administrator and address only those issues discussed herein and not any separately recorded private agreements. If you have any questions regarding this interpretation, please feel free to contact Kelly M. Atkinson at (703) 324-1290.

Sincerely,

Tracy D. Strunk, AICP, Director
Zoning Evaluation Division, DPZ

N:\Interpretations\Reserve At Tysons Corner RZ 2003-PR-008\2017-02-22 Proffer Interpretation Response - Reserve At Tysons Corner RZ 2003-PR-008.Doc

Attachments: A/S

Cc: Linda Smyth, Supervisor, Providence District
Phillip Niedzielski-Eichner, Planning Commissioner, Providence District
Laura Gori, Esq., Assistant County Attorney, Office of the County Attorney
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ
Ellie Codding, Acting Director, Code Development and Compliance Division, LDS
Ken Williams, Manager, Site and Technical Services, LDS
Michael Davis, Section Chief for Site Analysis, DOT
Suzanne Wright, Chief, Special Projects/Applications Management Branch, ZED, DPZ
Tysons Enterprise West, LLC, Owner, Tax Map 39-2 ((1)) 13D
Tyson Enterprise East, LLC, Owner, Tax Map 39-2 ((1)) 13E
File: RZ 2003-PR-008, PCA 75-7-004-03 and SE 2015-PR-021, PI 17 01 001, Imaging

Attachment 1

MERCERTRIGIANI

Lucia Anna Trigiani
Pia.Trigiani@MercerTrigiani.com

Direct Dial: 703-837-5008
Direct Fax: 703-837-5018

February 17, 2017

VIA OVERNIGHT MAIL

Suzanne Wright, Branch Chief
Zoning Evaluation Division, Fairfax County
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035-55055

Re: Proffer RZ 2003-PR-008 dated March 14, 2004--
Zoning Interpretation Request – Response Letter

Dear Ms. Wright:

This firm represents The Reserve at Tysons Corner Association, Inc. ("Association"), the entity responsible for the operation and administration of The Reserve at Tysons residential community located in Fairfax County, Virginia ("The Reserve Property").

As you are aware, we submitted a Zoning Interpretation Request to Barbara Berlin on December 22, 2016 on behalf of the Association relating to overflow parking requirements contemplated in Proffer RZ 2003-PR-008 dated March 14, 2004 ("Conditions"). A copy of that letter is enclosed. *Capitalized terms in this letter which are not defined have the meanings contained in our December 22nd letter.*

Since that time, we understand that Brian Winterhalter at Cooley, counsel for Tysons Enterprise East, LLC and Tysons Enterprise West, LLC ("Tysons Enterprise") – the owner of the adjacent Meridian Property, and David Gill at McGuire Woods, counsel for The Boro I Developer, L.P. and The Boro I-C Developer L.L.C. ("Boro Developer") – the developer of the Meridian Property, have submitted letters to you addressing the Association's request for a proffer interpretation.

In their letters, Mr. Winterhalter and Mr. Gill assert, among other things, that Fairfax County lacks authority to issue a proffer interpretation binding the Meridian Property because the Conditions were associated with the redevelopment of The Reserve Property and only bind the property which is part of The Reserve. Messrs. Winterhalter and Gill also maintain that the Meridian Property is subject to its own set of proffers, which supersede any and all prior proffers to which the Meridian Property may have been previously subject.

In response to the arguments presented by Messrs. Winterhalter and Gill, we offer the following:

- **Authority**. The Director of the Zoning Evaluation ("Division") has absolute statutory authority pursuant to the Zoning Ordinance to provide interpretations *of the Zoning Ordinance*, which **includes** Fairfax County accepted conditions for a property. In this instance, the

112 South Alfred Street • Alexandria, Virginia 22314
telephone: (703) 837-5000 • fax: (703) 837-5001

www.MercerTrigiani.com

EXHIBIT
tabbies 5

Association has the right to request an interpretation of the Conditions and the Division has authority to interpret the Conditions, *without reservation.*

- **Standard of Review.** In interpreting the Conditions, the Division must rely on the ***precise*** wording of the pertinent proffer – in this case, Proffer 49, and *must consider the record of the application.* In other words, the purpose of the proffer must be considered, taking into account *all relevant details related to the application* and the basis underlying the proffer with those details in mind.

- **Record of the Application.** Lincoln Property Company Southwest, Inc. ("Lincoln Property") applied for rezoning of The Reserve Property – as contract purchaser of The Reserve Property, and in conjunction with the rezoning, the Conditions were established. **Both** Lincoln Property and Campus Point Realty Corporation II ("Campus Point") - the owner of both the Reserve Property ***and the Meridian Property*** at that time, executed the Conditions.

Also, while the Conditions were established in conjunction with Lincoln Property's application for the rezoning of The Reserve property – the contract purchaser at the time ("Applicant"), a concurrent application was submitted to amend the development plan which encompassed *both* The Reserve Property and the Meridian Property. As a result of that concurrent application, it appears that the Meridian Property acquired additional FAR to accommodate future expansion. In other words, the Meridian Property benefitted in the rezoning of The Reserve Property. The zoning and rezoning of the two properties was and continues to be intertwined.

- **SAIC Declaration.** Purportedly, to satisfy Proffer 49, the predecessor-in-title to ***both*** ***The Reserve Property and Meridian Property*** – Campus Point, recorded the SAIC Declaration among the Land Records encumbering The Reserve Property and the Meridian Property. Section 12.17 of the SAIC Declaration recites the language in Proffer 49, with one exception – Section 12.17 incorporates a right for the owner of the Meridian Property to terminate the overflow parking rights unilaterally.

While Mr. Gill maintains that the SAIC Declaration cannot be considered by the Division because it is a private contract between the parties, the SAIC Declaration is purportedly the *very instrument which was intended to satisfy the Proffer 49*, and is, consequently, pertinent to the proffer inquiry. The termination language is unquestionably in direct contravention to Proffer 49, and therefore, is null and void. The remainder of the SAIC Declaration – *including the remainder of Section 12.17 which requires overflow parking in accordance with Proffer 49*, survives pursuant to the severability clause in Section 12.6 of the SAIC Declaration, and encumbers both The Reserve Property and the Meridian Property.

- **Adverse Impact on Zoning Compliance.** The improper *unilateral* termination by Tysons Enterprise of the unqualified proffered right for The Reserve residents to utilize overflow parking on the Meridian Property would render the Meridian Property to be in noncompliance with Proffer 49, through no fault of, action by or omission of the Association or its members.

We believe it is worth noting the Association has consistently been told and has been receptive to working with all shareholders to address parking. Even after submitting the interpretation request, we sent a letter to William Rothschild, also counsel for Tysons Enterprise (perhaps in conjunction with the purchase of the Meridian Property), advising that our client is willing to engage in a dialogue regarding these matters and to accommodate Tysons Enterprise to the extent possible and permissible. While Mr. Rothschild did telephone us acknowledging receipt of our letter in mid-January, we have had no one representing Tysons Enterprise reach out to us since then in an effort to develop a working plan. We find this regrettable.

For the foregoing reasons, we respectfully request that the Division proceed with its determination, and interpret the matter in favor of the Association and the many individuals who reside in The Reserve Community, permitting them to continue to utilize at least 150 parking overflow spaces on the Meridian Property as Proffer 49 contemplates and the SAIC Declaration mandates.

To issue an unfavorable determination to our client - especially in light of the proposed construction of a ballfield, the operation of which will undoubtedly result in increased competition for street parking, will profoundly and negatively impact hundreds of residents in The Reserve, many of whom have been supportive of the ballfield, divesting them of their property rights and potentially impacting their property values.

If you have any questions, please contact Janie Rhoads or me directly. Your consideration of this matter is greatly appreciated.

Very truly yours,

Lucia Anna Trigiani

LAT/jlr
Enclosure
cc: Supervisor Linda Smyth
Barbara C. Berlin, Director Evaluation Division Department of Planning and Zoning
Members, Board of Directors, The Reserve at Tysons Corner Association, Inc.
Janie L. Rhoads, Attorney at Law
#133278

Mr. Marshall had filed the necessary notices showing that at least 25 adjacent and/or interested parties had been notified of the date and hour of this public hearing and he proceeded to present his case.

Following the public hearing, Kristen Abrahamson, Branch Chief, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff and Planning Commission recommendations.

Chairman Connolly relinquished the Chair to Vice-Chairman Bulova and moved:

- Amendment of the Zoning Ordinance, as it applies to the property which is the subject of Rezoning Application RZ 2003-SP-044, from the R-1 District to the R-3 District, subject to the proffers dated February 10, 2004.
- Modification of the requirement for a sidewalk along Silverbrook Road to permit an eight-foot wide asphalt trail.

Vice-Chairman Bulova seconded the motion and it carried by a vote of seven, Supervisor DuBois, Supervisor Gross, Supervisor Hudgins, Supervisor Kauffman, Supervisor Smyth, Chairman Connolly, and Vice-Chairman Bulova voting "AYE," Supervisor Frey and Supervisor Hyland being out of the room, Supervisor McConnell being absent.

Vice-Chairman Bulova returned the gavel to Chairman Connolly.

ADDITIONAL BOARD MATTER

62. **DISCLOSURE BY CHAIRMAN CONNOLLY REGARDING REZONING APPLICATION RZ 2003-PR-008 AND PROFFERED CONDITION AMENDMENT APPLICATION PCA 75-7-004-2 (PROVIDENCE DISTRICT)** (4:33 p.m.)

Chairman Connolly relinquished the Chair to Vice-Chairman Bulova and said that the next two applications on the agenda involve property owned by Campus Point Realty Corporation II, a closely related business affiliate of his employer, Science Applications International Corporation. He said that because consideration of the applications will constitute a transaction having application solely to a property or business in which he has a personal interest, he will disqualify himself and shall not vote or in any manner act on behalf of the Board in this transaction, including participation in these hearings.

(NOTE: Later in the meeting, the Board held this public hearing. See Clerk's Summary Item CL#63.)

AGENDA ITEMS

63. **4 P.M. – PH ON REZONING APPLICATION RZ 2003-PR-008 AND PROFFERED CONDITION AMENDMENT APPLICATION PCA 75-7-004-2 (LINCOLN PROPERTY COMPANY, INCORPORATED) (PROVIDENCE DISTRICT)** (4:34 p.m.)

(O) (NOTE: Earlier in the meeting, Chairman Connolly recused himself from this case. See Clerk's Summary Item CL#62.)

The applications are located on the east side of Gallows Road and on the north and south sides of Science Applications Court, Tax Map 39-2 ((1)) 13 pt.

Ms. Elizabeth Baker reaffirmed the validity of the affidavit for the record.

Ms. Baker had filed the necessary notices showing that at least 25 adjacent and/or interested parties had been notified of the date and hour of this public hearing and she proceeded to present her case.

Following the public hearing, which included testimony by seven speakers, Cathy Belgin, Senior Staff Coordinator, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff and Planning Commission recommendations.

Discussion ensued with input from Barbara A. Byron, Director, Zoning Evaluation Division, Department of Planning and Zoning.

Supervisor Smyth moved approval of Proffered Condition Amendment Application PCA 75-7-004-2, subject to the proffers dated March 11, 2004. Supervisor Kauffman seconded the motion and it carried by a vote of seven, Supervisor Hyland and Chairman Connolly being out of the room, Supervisor McConnell being absent.

Supervisor Smyth further moved:

- Amendment of the Zoning Ordinance, as it applies to the property which is the subject of Rezoning Application RZ 2003-PR-008, from the I-3 and HC Districts to the PDH-30 and HC Districts, subject to the proffers dated March 14, 2004.

- Modification of the transitional screening requirement along the southeastern and southern boundaries where the multi-family units abuts the Courts of Tysons and Tysons Executive Village communities in favor of that shown on the CDP/FDP.

- Waiver of the barrier requirement along the southeastern and southern boundaries where the multi-family housing abuts the Courts of Tysons and Tysons Executive Village communities in favor of that shown on the CDP/FDP.

- Modification of the non-core streetscape design along Gallows Road for the Tysons Urban Center in favor of that shown on the CDP/FDP.

- Waiver of the 200 square foot privacy yard requirement for single family attached homes.

- Modification of the loading space requirement for multi-family dwellings in favor of one loading space provided for each of the buildings (two total spaces).

- Waiver of the 600-foot maximum private street length requirement.

Supervisor Kauffman seconded the motion and it carried by a vote of seven, Supervisor DuBois, Supervisor Frey, Supervisor Gross, Supervisor Hudgins, Supervisor Kauffman, Supervisor Smyth, and Vice-Chairman Bulova voting "AYE," Supervisor Hyland and Chairman Connolly being out of the room, Supervisor McConnell being absent.

ADDITIONAL BOARD MATTER

64. **AGENDA FOR BUDGET WORKSHOP** (5:42 p.m.)

Vice-Chairman Bulova distributed the agenda for the Budget Workshop scheduled for March 22, 2004.

Lucia Anna Trigiani
Pia.Trigiani@MercerTrigiani.com

MERCERTRIGIANI

Direct Dial (703) 837-5008
Direct Fax: (703) 837-5018

June 28, 2017

VIA HAND DELIVERY

Clerk, Board of Zoning Appeals
Zoning Evaluation Division
Department of Planning and Zoning
12055 Government Center Parkway, 801
Fairfax, Virginia 22035

Re: The Reserve at Tysons Corner Association, Inc. --
Notice of Appeal – Zoning Determination for RZ/FDP 2003-PR-008
The Reserve at Tysons Corner
Tax Map Numbers 39-2 ((56)) A1, B3, 1-92, 39-2 ((1)) 13A5 and A6

Dear Clerk of the Board of Zoning Appeals:

This firm represents The Reserve at Tysons Corner Association, Inc. ("Association"), the Virginia nonstock corporation entity which is responsible for the operation and administration of The Reserve at Tysons community in Fairfax, Virginia.

The Reserve at Tysons community consists of 570 homes – 478 apartments owned by Simpson Property Group, LP and 92 townhomes which are owned individually and are governed by the Townhouse at the Reserve Homeowners Association, Inc. ("Townhouse Association").

Pursuant to Section 18-300 et seq. of the Fairfax County Zoning Ordinance ("Ordinance"), this letter serves as our Notice of Appeal to the Zoning Determination rendered in response to our Zoning Interpretation request submitted on December 22, 2016 ("Interpretation Request"). A copy of the Interpretation Request is enclosed as **Exhibit 1**. ***Capitalized terms used in this letter have the meanings set forth in in the Interpretation Request.***

The Interpretation Request requested an interpretation of Proffer 49 of the Conditions. A copy of the Conditions is enclosed as **Exhibit 2**. A copy of the SAIC Declaration is enclosed as **Exhibit 3**. In summary, on behalf of the Association, we requested whether the owner of the Meridian Property is entitled to *unilaterally* terminate the rights of individuals residing on the Reserve Property to the minimum of 150 overflow parking spaces required to be located on the Meridian Property for the use of Reserve Property residents pursuant to Proffer 49 of the Conditions, which is *unqualified* in light of its permanency.

On May 30, 2017 – ***six months after the Zoning Interpretation was submitted***, Tracy D. Strunk, AICP, Director of the Zoning Evaluation Division of the Department of Planning and Zoning for Fairfax County, Virginia issued a Zoning Determination on behalf of the Zoning Administrator and in response to our Interpretation Request. A copy of the Zoning Determination is enclosed as **Exhibit 4**. In short, the Zoning Determination holds that Proffer 49 remains in effect for the 19.04 acres included in RZ 2003-PR-008 – which comprises The Reserve Property, but is not enforceable against Meridian.

Pursuant to Section 18-301 of the Ordinance, any person aggrieved by any decision of the Zoning Administrator relating to a proffered condition may appeal to the Board of Supervisors as provided in Paragraph 10 of Section 18-204 of the Ordinance. Paragraph 10 of Section 18-204 of the Ordinance provides that such appeal shall specify the grounds on which the party is aggrieved and the basis for the appeal.

The Association is aggrieved by the Zoning Determination because, *among other things*:

- The Zoning Determination renders the Reserve Property in non-compliance with Proffer 49 of the Conditions – through no fault of the Association or any of the members or residents who reside at the Reserve Property, *and with no means of recourse or redress*.

- Members of the Association and residents in the community bear significant hardship without access to the overflow parking spaces which are clearly contemplated in and unequivocally required by the Conditions to be located on the Meridian Property.

- The resulting zoning non-compliance and lack of adequate parking have a negative impact on property values and the ability to sell property located in the Reserve at Tysons community.

This forced non-compliance and the significant hardships imposed on Association members and Reserve Property residents are the direct result of the Zoning Determination which holds that the proffers remain in effect, but are unenforceable. ***This determination is irreconcilable and inconsistent***. The Zoning Interpretation has a negative impact on property values and the sale of property in The Reserve at Tysons community. The foregoing matters serve as the primary basis of this Notice of Appeal, as do the arguments raised in our Interpretation Request and letter to Suzanne Wright dated February 17, 2017 ("Response Letter"), a copy of which is enclosed as **Exhibit 5**.

Pursuant to Section 18-106 of the Ordinance, we have provided a copy of this Notice of Appeal and enclosures and a check in the amount of $600.00 to the Zoning Administrator. Please contact my colleague, Janie Rhoads, or me with questions or if additional information is needed. We look forward to hearing from you.

Very truly yours,

Lucia Anna Trigiani

LAT/mch
cc: Zoning Administrator
Members, Board of Directors
Janie L. Rhoads, Attorney at Law
Enclosures: Interpretation Request (**Exhibit 1**); Conditions (**Exhibit 2**); SAIC Declaration (**Exhibit 3**); Zoning Determination (**Exhibit 4**); Response Letter (**Exhibit 5**)

#138498

Board Agenda Item
January 23, 2018

10:40 a.m.

Matters Presented by Board Members

Board Agenda Item
January 23, 2018

11:20 a.m.

CLOSED SESSION:

(a) Discussion or consideration of personnel matters pursuant to Virginia Code § 2.2-3711(A) (1).

(b) Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Virginia Code § 2.2-3711(A) (3).

(c) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Virginia Code § 2.2-3711(A) (7).

1. Claim Arising from Critical Incident Near 3105 Annandale Road on April 20, 2016

2. *Nancy Schoenig v. Fairfax County Police Department and Fairfax County Park Authority*, Case No. CL-2017-0014553 (Fx. Co. Cir. Ct.)

3. Appeal to State Tax Commissioner by Taxpayer claiming that it is exempted from BPOL tax under the Internet Tax Freedom Act

4. *Harrison Neal v. Fairfax County Police Department and Colonel Edwin C. Roessler Jr.*, Record No. 170247 (Va. Sup. Ct.)

5. *Magaly Hernandez v. Fairfax County, Virginia*, Appeal No. 17-1152 (U.S. Ct. of App. for the Fourth Cir.)

6. *Vincent Dennis Randazzo, Administrator of the Estate of Michael Vincent Randazzo, Deceased v. Sandra Mauldin*, Case No. CL-2016-0009634 (Fx. Co. Cir. Ct.)

7. *William N. Holland v. Board of Supervisors of Fairfax County*, Case No. CL-2017-0009115 (Fx. Co. Cir. Ct.)

8. *Michael A. Norton v. J.M. Boyd and R.C. Shelnutt*, Case No. GV17-021964 (Fx. Co. Gen. Dist. Ct.)

9. *David Park and Susan Park v. Constance Morris*, Case No. CL-2017-0011280 (Fx. Co. Cir. Ct.)

10. *Dwain Foltz v. Fairfax County*, Case No. 1:17-cv-939 (E.D. Va.)

11. *Linda Owens v. Jennifer Svites, Fire Chief Richard Bowers and the County of Fairfax*, Case No. CL-2017-0015086 (Fx. Co. Cir. Ct.)

12. *Debra T. Chubb v. Fairfax County, Virginia*, Case No. CL-2017-0014194 (Fx. Co. Cir. Ct.)

13. *Wajma Sataryar v. James Jones*, Case No. CL-2017-0003834 (Alex. Cir. Ct.)

14. *Saba Ishan v. James Jones*, Case No. CL-2017-0003539 (Alex. Cir. Ct.)

15. *Armindo Iraheta-Ortiz, by Allstate Insurance Company, Subrogee v. John Doe*, Case No. GV17-010235 (Fx. Co. Gen. Dist. Ct.)

16. *Mirsada Karalic-Loncarevic, by GEICO, Subrogee v. Jeffrey Dion Cox and Fairfax County*, Case No. GV17-011867 (Fx. Co. Gen. Dist. Ct.)

17. *Matias Rodlauer by GEICO, subrogee v. Hypolite Essorezam Padameli and Fairfax County*, Case No. GV17-025781 (Fx. Co. Gen. Dist. Ct.)

18. *Gerald E. Preston v. Officer A. Harrell*, Case No. GV17-011154 (Fx. Co. Gen. Dist. Ct.)

19. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia and Leslie B. Johnson, Fairfax County Zoning Administrator v. Shepherd Scott and Marquetta J. Scott*, Case No. CL 2016-0007733 (Fx. Co. Cir. Ct.) (Braddock District)

20. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Randal S. Cordes*, Case No. CL-2013-0000441 (Fx. Co. Cir. Ct.) (Dranesville District)

21. *Leslie B. Johnson, Fairfax County Zoning Administrator and Elizabeth Perry, Property Maintenance Code Official for Fairfax County v. Carolyn Umstott Fisher, Trustee of the Carolyn W. Umstott Revocable Trust and Nancy Susan Umstott, Trustee of the Carolyn W. Umstott Revocable Trust*, Case No. CL-2017-0004336 (Fx. Co. Cir. Ct.) (Dranesville District)

22. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Jamshid Khosravi and Farnaz Lohrasebi*, Case No. CL-2017-0014917 (Fx. Co. Cir. Ct.) (Dranesville District)

23. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Eugene B. Meyer*, Case No. CL-2017-0014842 (Fx. Co. Cir. Ct.) (Dranesville District)

24. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Herbert H. Becker*, Case No. CL-2017-0007128 (Fx. Co. Cir. Ct.) (Dranesville District)

25. *Elizabeth Perry, Property Maintenance Code Official v. C. Shannon Roberts*, Case No. GV17-025110 (Fx. Co. General Dist. Ct.) (Dranesville District)

26. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Alees S. Coates*, Case No. CL-2017-0011608 (Fx. Co. Cir. Ct.) (Hunter Mill District)

27. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. George O. Gilpin and Carmella Gilpin*, Case No. GV17-023119 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)

28. *Leslie B. Johnson, Fairfax County Zoning Administrator v. 8428 Richmond Highway, L.L.C.*, Case No. CL-2017-016710 (Fx. Co. Cir. Ct.) (Lee District)

29. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Edgar Gramajo and Miryam Gramajo*, Case No. CL-2017-0001352 (Fx. Co. Cir. Ct.) (Lee District)

30. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Hugh J. Milligan*, Case No. CL-2017-0017046 (Fx. Co. Cir. Ct.) (Lee District)

31. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Juan Carlos Aranibar Chinchilla, Rossemary Jeanneth Arnez Villarroel, and A&A Investment, LLC*, Case No. CL-2016-0006961 (Fx. Co. Cir. Ct.) (Lee District)

32. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Rehmet U. Mokel and Nasreen A. Mokel*, Case No. GV17-023045 (Fx. Co. Gen. Dist. Ct.) (Lee District)

33. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Edualter Carhuancho and Gloria C. McGee*, Case No. GV17-021745 (Fx. Co. Gen. Dist. Ct.) (Lee District)

34. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ernestina P. Urquieta*, Case No. GV17-0026318 (Fx. Co. Gen. Dist. Ct.) (Lee District)

35. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Antoniel F. DeLeon and Estela C. Barrios*, Case No. CL-2017-0009016 (Fx. Co. Cir. Ct.) (Mason District)

36. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Build America, LLC, and Bella Café and Lounge*, Case No. CL-2017-0007126 (Fx. Co. Cir. Ct.) (Mason District)

37. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Patricia Martinez, d/b/a Isha's Day Care*, Case No. CL-2017-0014125 (Fx. Co. Cir. Ct.) (Mason District)

38. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Tabor Realty, LLC, and Degen, Inc., d/b/a Balager Restaurant & Market, a/k/a Balager Restaurant*, Case No. CL-2017-0012814 (Fx. Co. Cir. Ct.) (Mason District)

39. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Isobel Arthur-Ackumey and Nelson Y. Acmanuel*, Case No. GV17-023489 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)

40. *Board of Supervisors of Fairfax County, Virginia v. DSF/Long Metro, LLC and Lexon Insurance Company,* Case No. CL-2017-0016541 (Fx. Co. Cir. Ct.) (Providence District)

41. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Marina P. Farzad*, Case No. CL-2014-0005184 (Fx. Co. Cir. Ct.) (Providence District)

42. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Good-Spradlin Joint Venture No. 1 and U-Haul Fairfax Store No. 21318*, Case No. CL-2017-0018177 (Fx. Co. Cir. Ct.) (Providence District)

43. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Duane S. Whitney, Edward N. Whitney, Arthur M. Whitney, Pamela V. Whitney, Rhonda L. Whitney, Candace Alexander, and Jeanette Alexander*, Case No. CL-2007-0005644 (Fx. Co. Cir. Ct.) (Providence District)

44. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Otis Perry and Elcetia L. Perry*, Case No. CL-2008-0005923 (Fx. Co. Cir. Ct.) (Providence District)

45. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Kenneth L. Wines, Sr., and Shirley M. Wines*, Case No. GV17-021931 (Fx. Co. Gen. Dist. Ct.) (Providence District)

46. *Board of Supervisors of Fairfax County, Virginia v. Virginia Alcoholic Beverage Control Board and Bates on Yates, LLC; Additional Party, Concerned Clifton Residents*, Case No. CL-2017-0013861 (Fx. Co. Cir. Ct.) (Springfield District)

47. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Cra Mac Holdings, LLC*, Case No. CL-2018-0000145 (Fx. Co. Cir. Ct.) (Springfield District)

48. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Rubina Siddiqui*, Case No. GV17-019994 (Fx. Co. Gen. Dist. Ct.) (Springfield District)

49. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Roberta Couver*, Case No. CL-2017-0017257 (Fx. Co. Cir. Ct.) (Sully District)

50. *Eileen M. McLane, Fairfax County Zoning Administrator v. Cynthia Elaine Porter*, Case No. CL-2012-0004358 (Fx. Co. Cir. Ct.) (Sully District)

51. *Leslie B. Johnson, Fairfax County Zoning Administrator v. William O. Robinson, Jr.*, Case No. CL-2017-0006625 (Fx. Co. Cir. Ct.) (Sully District)

52. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Nicholas A. Nikzad and Pamela L. Nikzad*, Case No. GV17-023487 (Fx. Co. Gen. Dist. Ct.) (Sully District)

53. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Nicholas A. Nikzad and Pamela L. Nikzad*, Case No. GV17-023486 (Fx. Co. Gen. Dist. Ct.) (Sully District)

54. *Leslie B. Johnson, Fairfax County Zoning Administrator v. John J. Mehan, III*, Case No. GV17-007125 (Fx. Co. Gen. Dist. Ct.) (Sully District)

55. *Board of Supervisors of Fairfax County v. Caremed Urgent Care, LLC.*, Case No. GV17-027802 (Fx. Co. Gen. Dist. Ct.) (Braddock District)

56. *Board of Supervisors of Fairfax County v. JETSOM, LLC f/k/a SELL4CASHAUCTIONS, LLC*, Case No. GV17-027801 (Fx. Co. Gen. Dist. Ct.) (Lee and Mount Vernon Districts)

57. *Board of Supervisors of Fairfax County v. HANDSONREI, LLC*, Case No. GV17-027803 (Fx. Co. Gen. Dist. Ct.) (Dranesville, Lee, Mount Vernon, and Providence Districts)

Board Agenda Item
January 23, 2018

3:00 p.m.

Annual Meeting of the Fairfax County Solid Waste Authority

ISSUE:
Fairfax County Solid Waste Authority annual meeting.

RECOMMENDATION:
The County Executive recommends that the Fairfax County Solid Waste Authority hold its annual meeting in accordance with the Bylaws for the Authority; appoint officers; approve the minutes of the last annual meeting on January 24, 2017; and review the financial statements.

TIMING:
Immediate. The Bylaws of the Fairfax County Solid Waste Authority require the annual meeting to coincide with the time for the last regular meeting of the Board of Supervisors set in January.

BACKGROUND:
According to the Bylaws of the Fairfax County Solid Waste Authority, the regular annual meeting of the Authority shall coincide with the time for the last regular meeting of the Board of Supervisors set in January. The proposed agenda of the Authority meeting is included as Attachment I. The Bylaws further require a review and approval of the minutes of the previous year's meetings (Attachment II) and that officers of the authority be appointed to serve for a one-year term.

On February 2, 2016, the relationship between the Solid Waste Authority, Fairfax County and Covanta Fairfax, Inc. changed significantly with the end of the Service Agreement and the award of the Waste Disposal Agreement. The 25-year Service Agreement ended and a new contract for five years was executed with Covanta Fairfax, Inc. Fairfax County reduced its liability for the operations at the Covanta Energy/Resource Recovery Facility (E/RRF) while guaranteeing a below market price for its waste disposal. Fairfax County provides an annual waste amount up to 682,500 tons and the remaining waste processed at the E/RRF is merchant waste. Fairfax waste includes some waste from Prince William County, Ft. Belvior and other entities outside Fairfax County.

In FY 2017, Fairfax County met all of its contractual obligations. However, there was a significant fire at the Covanta facility in February 2017 closing all four units of the facility. Fairfax County contracted for emergency transportation and disposed of its waste at downstate landfills through December 2017. The insurance claim for reimbursement for these emergency expenses is still being processed and the settlement should cover most personnel, equipment, disposal, and transportation costs that resulted from the fire. The facility opened to receive waste again in December 2017.

Since the facility did not process waste for four months of the fiscal year, the metrics are reduced from previous years:

FY2017 Waste Tons Delivered from Fairfax (July 2016-February 2, 2017)	427,667 tons

There was minimal impact on county customers from the fire because transfer operations continued transparently from the Transfer Station to downstate landfills.

Additional financial information is contained in the Financial Statements (Attachment III).

FISCAL IMPACT:
Minimal

ENCLOSED DOCUMENTS:
Attachment I – Fairfax County Solid Waste Authority Meeting Agenda, January 23, 2018
Attachment II – Minutes of the January 24, 2017, Solid Waste Authority Annual Meeting
Attachment III – Financial Statements

STAFF:
Robert A. Stalzer, Deputy County Executive
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)
John W. Kellas, Deputy Director, Department of Public Works and Environmental Services, Solid Waste Management Program

Attachment I

FAIRFAX COUNTY SOLID WASTE AUTHORITY

Annual Meeting Agenda

January 23, 2018

1. Call-to-Order

2. Appointment of Officers.

- Chairman	- Sharon Bulova, Chairman, Fairfax County Board of Supervisors
- Vice-Chairman	- Penelope A. Gross, Vice-Chairman, Fairfax County Board of Supervisors
- Secretary	- Catherine A. Chianese, Clerk to the Fairfax County Board of Supervisors
- Treasurer	- Christopher Pietsch, Director, Department of Finance
- Attorney	- Elizabeth Teare, County Attorney
- Executive Director	- Bryan Hill, County Executive
- Authority Representative	- John W. Kellas, Deputy Director, Department of Public Works and Environmental Services, Solid Waste Management Program

3. Approval of the minutes from the January 24, 2017 meeting.

4. Approval of the financial statement for the Authority.

MINUTES OF THE ANNUAL MEETING OF THE SOLID WASTE AUTHORITY

January 24, 2017

At the Annual Meeting of the Fairfax County Solid Waste Authority held in accordance with Article III, Section I of the bylaws, in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, January 24, 2017, at 3:30 p.m., there were present:

MEMBERS OF THE BOARD OF DIRECTORS AND OFFICERS:

Chairman Sharon Bulova, presiding

Supervisor John C. Cook, of Braddock District

Supervisor John W. Foust, of Dranesville District

Supervisor Penelope A. Gross, of Mason District

Supervisor Catherine M. Hudgins, of Hunter Mill District

Supervisor Jeffrey C. McKay, of Lee District

Supervisor Patrick S. Herrity, of Springfield District

Supervisor Kathy L. Smith, of Sully District

Supervisor Linda Q. Smyth, of Providence District

Supervisor Daniel G. Storck, of Mount Vernon District

Edward L. Long Jr., County Executive; Authority Executive Director

Catherine A. Chianese, Clerk of the Board of Supervisors; Authority Secretary

Christopher Pietsch, Director, Department of Finance; Treasurer

Elizabeth Teare, County Attorney; Authority Attorney

John Kellas, Director, Solid Waste Management Program Operations Division, Department of Public Works and Environmental Services (DPWES); Authority Representative

Meeting Minutes
The Fairfax County Solid Waste Authority
January 24, 2017

Supervisor Gross moved that the Board appoint the following officers and officials to the Fairfax County Solid Waste Authority:

OFFICERS

Sharon Bulova Chairman, Fairfax County Board of Supervisors	– Chairman
Penelope A. Gross Vice-Chairman, Fairfax County Board of Supervisors	– Vice-Chairman
Catherine A. Chianese Clerk to the Fairfax County Board of Supervisors	– Secretary
Christopher Pietsch Director, Office of Finance	– Treasurer
Elizabeth Teare County Attorney	– Attorney
Edward L. Long Jr. County Executive	– Executive Director
John Kellas Deputy Director, Solid Waste Management Program, Department of Public Works and Environmental Services (DPWES)	– Authority Representative

Chairman Bulova seconded the motion and it carried by unanimous vote.

Supervisor Gross moved approval of the minutes from the July 26, 2016, special meeting of the Fairfax County Solid Waste Authority. Chairman Bulova seconded the motion and it carried by unanimous vote.

Supervisor Gross moved approval of the financial statements for the Authority. Chairman Bulova seconded the motion and it carried by unanimous vote.

Supervisor Gross moved to adjourn the Annual Meeting of the Fairfax County Solid Waste Authority. Chairman Bulova seconded the motion and it carried by unanimous vote.

At 3:41 p.m., the Annual Meeting of the Fairfax County Solid Waste Authority was adjourned.

Meeting Minutes
The Fairfax County Solid Waste Authority
January 24, 2017

The foregoing minutes record the actions taken by the Fairfax County Solid Waste Authority at its meeting held on Tuesday, January 24, 2017, and reflects matters discussed by the Authority. Audio or video recordings of all proceedings are available in the Office of the Clerk to the Board of Supervisors of Fairfax County, Virginia.

Respectfully submitted,

Catherine A. Chianese, Secretary
Solid Waste Authority

Attachment III

FAIRFAX COUNTY SOLID WASTE AUTHORITY

Fiduciary Report

June 30, 2017 and 2016

FAIRFAX COUNTY SOLID WASTE AUTHORITY

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FAIRFAX COUNTY SOLID WASTE AUTHORITY

Notes to Fiduciary Report

June 30, 2017 and 2016

FAIRFAX COUNTY SOLID WASTE AUTHORITY

Statements of Fiduciary Assets and Liabilities
June 30, 2017 and 2016

	2017	2016
Assets:		
Investments	$ -	$ -
Liabilities:		
Liability under reimbursement agreement	$ -	$ -

See accompanying notes to fiduciary report

FAIRFAX COUNTY SOLID WASTE AUTHORITY

Notes to Fiduciary Report

June 30, 2017 and 2016

1. Organization

The Fairfax County Solid Waste Authority (the Authority) was formed by resolution of the Board of Supervisors of the County of Fairfax, Virginia (the County), on July 27, 1987. The Authority's board consists of the County's Board of Supervisors. Therefore, the Authority is considered a blended component unit of the County.

The Authority was formed for the purpose of constructing and overseeing the operations of a resource recovery facility (the Facility) in Lorton, Virginia, on a site that was purchased in July 2002 by the County from the United States. Prior thereto, legal title to the site was vested in the United States to the benefit of the District of Columbia; the site was leased by the District to the County, and the County assigned the leased site to the Authority. The Assignment of Site Lease to the Authority, dated as of February 1, 1988, has not been amended, terminated, rescinded, or revoked, and remains in full force and effect in accordance with its terms.

The construction of the Facility was partially financed by $237,180,000 and $14,900,000 of Series 1988A tax-exempt and Series 1988B taxable industrial revenue bonds, respectively, issued by the Fairfax County Economic Development Authority (EDA) during 1988. The Series 1988B Bonds were retired in February 1996. The Authority invested all bond proceeds through a trust account with a major bank. The Authority was responsible for making all investment decisions and authorizing all disbursements from the trust.

On February 1, 1988, an Installment Sales Agreement between the EDA and the Authority was executed whereby the Facility and the bond proceeds were sold to the Authority. Concurrent with this Installment Sales Agreement, the Authority entered into a Conditional Sale Agreement whereby the Facility, the bond proceeds and the Authority's leasehold interest in the site were sold to Covanta Fairfax, Inc. Under a related service agreement, between the Authority, Fairfax County and Covanta, Covanta designed, constructed, and operated the Facility. The Facility was completed and began commercial operations in June 1990. The County and the Authority had agreed to provide guaranteed minimum annual amounts of waste and annual tipping fees to the Facility. Under the terms of the Conditional Sale Agreement, debt service on the bonds was paid by Covanta through the Authority solely from solid waste system revenues generated by the Facility. The bonds were not general obligations of the Authority, the County, or the EDA.

During the fiscal year ended June 30, 1995, the EDA sold, at the request of the Authority for the benefit of the Facility, a call option on the Series 1988A Bonds to a financial institution for $10,250,000. The option, which was exercised in November 1998, required the EDA to issue new bonds to the institution at certain agreed–upon interest rates. The proceeds of the new Series 1998A Resource Recovery Revenue Refunding Bonds together with certain proceeds remaining from the Series 1988A Bonds and certain other available funds were used to refund the remaining outstanding Series 1988A Bonds in February 1999. The final principal and interest payments on the Series 1998A Resource Recovery Revenue Refunding Bonds were made on February 1, 2011 and the full ownership of the facility reverted to Covanta Fairfax. The bank accounts held with the fiscal agent,

FAIRFAX COUNTY SOLID WASTE AUTHORITY

Notes to Fiduciary Report

June 30, 2017 and 2016

US Bank, to service the debt payments and invest the debt service reserve were closed in FY2011. As a result, there were no fiduciary assets, obligations, or transactions to record or report in FY2016.

The Service Agreement between the Solid Waste Authority, Fairfax County and Covanta Fairfax expired on February 1, 2016, and was replaced with a term contract between Fairfax County and Covanta Fairfax for continued disposal of solid waste at the facility. The new contract reduced the County's liability for operational and maintenance costs and established a fixed rate for disposal. Amendments to the contract established that the County would accept Covanta's ash in the I-95 Ashfill as well as transport the ash from Covanta's facility. This contract was based upon the County Procurement Agent's contracting authority. Disposal rates are guaranteed to be the lowest market rates in the area and the County has preferential capacity at the facility. The contract operates as a standard term contract and was awarded for a period of 5 years through February 1, 2021 with two additional five-year renewals available to extend the contract through 2031. Some terms and conditions can be renegotiated at each renewal.

On February 2, 2017, a catastrophic fire occurred at the facility closing it for eleven months. During the closure, County waste was transported to downstate landfills for disposal. An insurance settlement will pay most of the additional personnel, equipment, transportation and disposal costs incurred by the County because of the fire. The facility is scheduled to open in December 2017.

Prior to the fire, the County had met its contractual obligations for delivery of waste and payment for disposal. Covanta Fairfax had paid for ash disposal and transportation of ash. No financial issues remain open.

Because the bonds had been paid earlier and the new Waste Disposal Agreement, there was a reduced County liability for Covanta operations and separate accounting for the facility operations, revenues and expenses. At the end of FY2017, the County terminated Fund 160, transferring all revenue, expenses, personnel, equipment and reserves to Fund 150. There has been no activity in Fund 160 in FY2018.

Board Agenda Item
January 23, 2018

3:30 p.m.

Public Hearing on SE 2017-MV-024 (Fabiola Salinas) to Permit a Home Child Care Facility, Located on Approximately 6,272 Square Feet of Land Zoned PDH-3 (Mount Vernon District)

This property is located at 8471 Summer Breeze Lane, Springfield, 22153. Tax Map 98-1 ((4)) 338

PLANNING COMMISSION RECOMMENDATION:
On November 30, 2017, the Planning Commission voted of 9-0-1 (Commissioner Cortina abstained from the vote and Commissioner Flanagan was absent from the public hearing) to recommend to the Board of Supervisors approval of SE 2017-MV-024, subject to the development conditions dated November 15, 2017.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
http://www.fairfaxcounty.gov/dpz/staffreports/bos-packages/

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Harold Ellis, Planner, DPZ

Board Agenda Item
January 23, 2018

3:30 p.m.

Public Hearing on SE 2017-MV-025 (My Little Angels Daycare Center, LLC) to Permit a Child Care Center, Located on Approximately 3.91 Acres of Land Zoned C-8, CRD and HC (Mount Vernon District)

This property is located at 8806 Pear Tree Village Court, #B and #C, Alexandria, 22309. Tax Map 109-2 ((2)) 4, 4A, 19A and 110-1 ((17)) 19

PLANNING COMMISSION RECOMMENDATION:
On January 18, 2018, the Planning Commission voted 11-0 to recommend to the Board of Supervisors approval of SE 2017-MV-025, subject to the proposed development conditions dated January 16, 2018.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Jay Rodenbeck, Planner, DPZ

Board Agenda Item
January 23, 2018

3:30 p.m.

Public Hearing on PCA 87-C-060-14 (Fairfax County School Board) to Amend the Proffers and Conceptual Development Plan for a Portion of RZ 87-C-060 Previously Approved for a Public School with Ballfields to Allow an Expansion of the Public School Use and Other Associated Modifications to Proffers and Site Design with a Floor Area Ratio of 0.341 on the Subject Property and an Overall 0.345 Floor Area Ratio on the Entire School Site, Located on Approximately 13.87 Acres of Land Zoned PDH-16 (Hunter Mill District) (Concurrent with PCA 93-H-045)

and

Public Hearing on PCA 93-H-045 (Fairfax County School Board) to Amend the Proffers and Conceptual Development Plan for RZ 93-H-045 Previously Approved for Ballfields Associated with a Public School to Allow an Expansion of the Public School Use and Associated Modifications to Proffers and Site Design with an Overall Floor Area Ratio of 0.381 on the Subject Property and an Overall 0.345 on the Entire School Site, Located on Approximately 1.36 Acres of Land Zoned PDH-8 (Hunter Mill District) (Concurrent with PCA 87-C-060-14)

This property is located on the East side of Thomas Jefferson Drive approximately 300 feet North of Coppermind Road. Tax Map 16-3 ((1)) 41

This property is located on the South side of Fox Mill Road approximately 1200 feet West of its intersection with Frying Pan Road. Tax Map 16-3 ((7)) C

PLANNING COMMISSION RECOMMENDATION:
On January 18, 2018, the Planning Commission voted 11-0 to recommend the following actions to the Board of Supervisors:

- Approval of PCA 93-H-045 and the concurrent Conceptual Development Plan Amendment, subject to proffers consistent with those dated November 16, 2017;

- Approval of PCA 87-C-060-14 and the concurrent Conceptual Development Plan Amendment, subject to proffers consistent with those dated November 16, 2017; and

- Approval of a modification of the transitional screening and barrier requirements along all property boundaries in favor of the existing and proposed landscaping and the barriers shown on the CDPA/FDPA, and as proffered and conditioned.

In a related action, the Planning Commission voted 11-0 to approve FDPA 93-H-045 and FDPA 87-C-060-09-03, subject to the development conditions dated January 17, 2018 and subject to the Board of Supervisors' approval of the associated PCA applications.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
William O'Donnell, Planner, DPZ

To be Deferred to March 20, 2018 at 3:30 p.m.

Board Agenda Item
January 23, 2018

3:30 p.m.

Public Hearing on PCA 2011-PR-011-02 (Cityline Partners, LLC) to Amend the Proffers and Conditions for RZ 2011-PR-011 Previously Approved for Mixed Use Development to Permit Modifications to Proffers and Site Design with an Overall Floor Area Ratio of 4.57, Located on Approximately 6.21 Acres of Land Zoned PTC and HC (Providence District)

This property is located SouthEast quadrant of the intersection of Colshire Drive and Dolley Madison Boulevard. Tax Map 30-3 ((01)) 6D, 6E and 30-3 ((28)) 4B (pt.) 4D, 4E (pt.)

This public hearing was deferred at the July 11, 2017 Board meeting until October 24, 2017 at 3:30 p.m., at which time it was deferred again to January 23, 2018 at 3:30 p.m.

PLANNING COMMISSION RECOMMENDATION:
On Thursday, January 26, 2017, the Planning Commission voted 10-0-2 (Commissioners Hart and Strandlie abstained from the vote) to recommend the following actions to the Board of Supervisors:

- Approval of PCA 2011-PR-011-02, subject to the execution of proffers consistent with those contained in Appendix 1 of the Staff Report dated November 14, 2016; and

- Reaffirmation of all previously-approved waivers and modifications.

In a related action, on Thursday, January 26, 2017, the Planning Commission voted 10-0-2 (Commissioners Hart and Strandlie abstained from the vote) to approve FDP 2011-PR-011-04, subject to the Development Conditions contained in Appendix 2 of the Staff Report, dated November 22, 2016, and subject to the Board of Supervisors' approval of PCA 2011-PR-011-02.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
http://www.fairfaxcounty.gov/dpz/staffreports/bos-packages/

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Stephen Gardner, Planner, DPZ

Board Agenda Item
January 23, 2018

3:30 p.m.

Public Hearing on SE 2015-DR-027 (Mahlon A. Burnette, III and Mary H. Burnette) to Permit a Waiver of the Minimum Lot Width Requirement, Located on Approximately 4.0 Acres of Land Zoned R-E (Dranesville District)

This property is located at 631 Walker Road, Great Falls, 22066. Tax Map 7-4 ((1)) 47

PLANNING COMMISSION RECOMMENDATION:
The Planning Commission public hearing was held on December 6, 2017, the decision was deferred to January 18, 2018. On January 18, 2018, the decision was further deferred to February 8, 2018. The Planning Commission's recommendation will be forwarded to the Board of Supervisors subsequent to that date.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Bob Katai, Planner, DPZ

Board Agenda Item
January 23, 2018

3:30 p.m.

Public Hearing on SEA 96-L-034-05 (Greenspring Village, Inc.) to Amend SE 96-L-034 Previously Approved for Elderly Housing with Nursing Facilities and Telecommunications Facility to Permit Associated Modifications to Site Design and Development Conditions, Located on Approximately 64.68 Acres of Land Zoned R-3 (Lee District)

This property is located at 7470 Spring Village Drive, Springfield, 22150. Tax Map 90-1 ((1)) 63G and 64

PLANNING COMMISSION RECOMMENDATION:
On January 18, 2018, the Planning Commission voted 11-0 to defer the decision only for SEA 96-L-034-05 to a date certain of January 24, 2018 with the record remaining open. The Commission's recommendation will be forwarded to the Board of Supervisors subsequent to that date.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Katelyn Antonucci, Planner, DPZ

Board Agenda Item
January 23, 2018

4:00 p.m.

Public Hearing on Proposed Plan Amendment 2017-III-R1, Reston Transit Station Areas – Noise Guidance (Hunter Mill and Dranesville Districts)

ISSUE:
Plan Amendment (PA) 2017-III-R1 proposes to restore language regarding transportation-generated noise guidance pertaining to Reston Transit Station Areas, which was inadvertently deleted during the preparation of the Reston Comprehensive Plan.

PLANNING COMMISSION RECOMMENDATION:
On Thursday, November 16, 2017, the Planning Commission voted unanimously to recommend to the Board of Supervisors the adoption of Plan Amendment 2017-III-R1, found on pages 1 and 2 of the staff report dated November 2, 2017.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors adopt the Planning Commission recommendation as shown on pages 1 and 2 of the staff report dated November 2, 2017.

TIMING:
Planning Commission public hearing – November 2, 2017
Board of Supervisors' public hearing – January 23, 2018

BACKGROUND:
On June 6, 2017, the Fairfax County Board of Supervisors (Board) authorized Plan Amendment (PA) 2017-III-R1 to restore language regarding transportation-generated noise guidance pertaining to Reston Transit Station Areas, which was inadvertently deleted during from the Reston Comprehensive Plan.

FISCAL IMPACT:
None

Board Agenda Item
January 23, 2018

ENCLOSED DOCUMENTS:
Attachment I: Planning Commission Verbatim Excerpt
The Staff Report for 2014-I-B1 has been previously furnished and is available online at:
https://www.fairfaxcounty.gov/dpz/comprehensiveplan/amendments/2017-iii-r1.pdf

STAFF:
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Marianne R. Gardner, Director, Planning Division (PD), DPZ
Denise M. James, Branch Chief, Planning Division (PD), DPZ
John R. Bell, Planner III, Environmental and Development Review Branch, PD, DPZ

County of Fairfax, Virginia
Planning Commission Meeting
November 16, 2017
Verbatim Excerpt

PA 2017-III-R1 – PLAN AMENDMENT – Concerns the Reston Transit Station Areas, and is further described as the areas located along both sides of the Dulles Airport Access Road and Dulles Toll Road (DAAR, Route 267) from Hunter Mill Road on the east and Centreville Road on the west. The Amendment is intended to restore language regarding noise impacts language that was omitted from the Plan during Phase II of the Reston Master Plan Special Study. This language was adopted during Phase I of the study. This Plan Amendment is noted as editorial and no changes are proposed to the original adopted language. Copies of the staff report for this proposed Plan amendment may be obtained from the Dept. of Planning & Zoning, 7th floor, Herrity Bldg., 12055 Government Center Pkwy, Fairfax, VA, and can also be viewed on the Web at, two weeks prior to the public hearing. Persons desiring to speak on this proposed amendment at the public hearing should call 703-324-2865 to have their names placed on the speakers' list. Any questions may be directed to the Planning Div. at 703-324-1380. (Dranesville and Hunter Mill)

After close of the Public Hearing

Commissioner de la Fe: Thank you very much. As I – as has been stated, this places back into the Comprehensive Plan, language which was – had gone through the public hearing process, the Planning Commission recommended approval, the Board of Supervisors adopted it, and then in the process of being more modern, we dropped it from what was published and we were told that in order – we couldn't just say, "oops" and put it back in – in and into the plan without going through the whole process again. So what we're doing is restoring the language that was previously approved. Mr. Chairman, staff has provided us with a recommendation of approval to the Plan Amendment that is entirely editorial involving the restoration of the Comprehensive Plan guidance regarding transportation generated noise for the Reston Transit Station Areas. This language was previously adopted during Phase I of the Reston Plan, and – but inadvertently deleted from the electronic versions after adoption of Phase II of the Reston Plan. The original language is being restored. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE ADOPTION OF PLAN AMENDMENT 2017-III-R1 FOR THE RECOMMENDATION OF THE STAFF REPORT DATED NOVEMBER 2ND, 2017.

Commissioners Hart and Sargeant: Second.

Chairman Murphy: Seconded by Mr. Hart and Mr. Sargeant. Is there a discussion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt PA 2017-III-R1, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.

The motion carried by a vote of 9-0. Commissioner Strandlie was absent from the public hearing.

SL

Board Agenda Item
January 23, 2018

4:00 p.m.

Public Hearing on a Proposed Zoning Ordinance Amendment Re: Restaurants

ISSUE:
The proposed amendment deletes the definitions for Eating Establishments and Fast Food Restaurants, and establishes and defines the new uses of Restaurants, Restaurants with Drive-through and Carryout Restaurants. The amendment revises the Zoning Ordinance to reflect the new uses, the zoning districts in which they can be located, and their associated parking requirements.

PLANNING COMMISSION RECOMMENDATION:
On December 7, 2017, the Planning Commission unanimously voted to recommend to the Board of Supervisors adoption of the proposed Zoning Ordinance Amendment regarding Restaurants, as set forth in the Memorandum dated November 15, 2017, with the stipulation that Option 2 is recommended where different options are presented. The Planning Commission also recommended that Par. 9 of Sect. 11-104 be revised to exempt from parking calculations outdoor seating that is accessory to a Restaurant or Drive-through, up to a maximum of 20 outdoor seats for an establishment with a gross floor area of less than 5000 square feet, and up to a maximum of 32 outdoor seats for an establishment with a gross floor area of 5000 square feet or more. The Planning Commission recommended adoption of the grandfather provisions as set forth in the Staff Report. A verbatim copy of the Planning Commission's discussion on the proposed amendment is included as Attachment 3.

RECOMMENDATION:
The County Executive concurs with the Planning Commission recommendation.

TIMING:
The Board of Supervisors authorized advertisement of this amendment on October 24, 2017. On November 30, 2017, the Planning Commission held its public hearing, and deferred decision to December 7, 2017. The Board of Supervisors' public hearing is scheduled for January 23, 2018, at 4:00 p.m.

BACKGROUND:
The proposed amendment is identified on the 2017 Priority 1 Zoning Ordinance Amendment Work Program as part of the review of use categories under the Zoning

Ordinance Modernization (zMOD) Project. The 2016 Priority 1 Work Program also included this topic as part of the Retail Initiative, and this topic was reflected in the 2015 "Strategic Plan to Facilitate the Economic Success of Fairfax County," specifically Goal 3: Improving the Speed, Consistency, and Predictability of the Development Review Process. One of the recommendations of that goal is to consider revisions that accommodate the evolving nature of retail development and update outdated land use definitions. zMOD will conduct a comprehensive review of use definitions to combine them into broader categories with similar impacts to better accommodate new uses. This amendment represents a first step in that direction and focuses on restaurants since they are an important component of the brick-and-mortar retail economy. To these ends, the purpose of this amendment is to clarify and simplify the Zoning Ordinance regulations relating to restaurants to keep pace with the evolving food industry. Zoning Administration staff has researched the topic, reviewed the current zoning regulations relating to restaurants, and received input from industry and citizens. The amendment proposes new definitions that include all types of restaurants, establishes the zoning districts in which they can be located, and proposes changes to parking and other associated requirements to reflect the new definitions and delete unnecessary use limitations.

This amendment also deletes the Super-Regional Retail Commercial District (C-9), because there isn't any property zoned or anticipated to be zoned to this district in the County.

The amendment was discussed at the Board's Development Process Committee meetings on July 18 and September 19, 2017. Based on those discussions, the amendment was advertised to permit the Board to consider ranges for the parking rates and the number of outdoor seats that would be exempt from parking calculations, and to consider permitting restaurants and carryouts as by right uses (instead of by special exception) in the C-2 District. It was also discussed whether restaurants, as a principal use, should be permitted by right in the industrial districts. Given the current opportunity for restaurants to locate in the industrial districts as accessory service uses, staff recommends future review of this issue as part of the evaluation of use categories with the zMOD project.

A more detailed discussion is set forth in the Staff Report, enclosed as Attachment 1. Revised text with minor editorial revisions which remove the word "shall" and provide other clarifications is presented in the memorandum dated November 15, 2017, enclosed as Attachment 2.

REGULATORY IMPACT:
The proposed amendment defines new land uses and removes obsolete operational characteristics, thereby allowing for increased flexibility in locating restaurants without a

drive-through in commercial, industrial, and planned development districts. The amendment, including the revised parking requirements, will not impact existing restaurant establishments that have been legally established.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1 – Staff Report available online at:
https://www.fairfaxcounty.gov/dpz/zoningordinance/proposed/restaurants.pdf
Attachment 2 – Memorandum to the Planning Commission with Revised Text
Attachment 3 – Planning Commission Verbatim Excerpt

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred Selden, Director, Department of Planning and Zoning (DPZ)
Barbara Byron, Director, Office of Community Revitalization
Leslie B. Johnson, Zoning Administrator, DPZ
Carmen Bishop, Senior Assistant to the Zoning Administrator, DPZ

ASSIGNED COUNSEL:
Laura S. Gori, Senior Assistant County Attorney, OCA

County of Fairfax, Virginia

MEMORANDUM

DATE: November 15, 2017

TO: Peter F. Murphy, Chairman
Members, Fairfax County Planning Commission

FROM: Carmen Bishop, Senior Assistant to the Zoning Administrator
Zoning Administration Division

SUBJECT: Revised Text for Restaurants Zoning Ordinance Amendment
Public Hearing Date November 30, 2017

The Staff Report for the proposed Zoning Ordinance amendment regarding Restaurants was published on October 24, 2017. Since then, staff has prepared minor editorial revisions to the proposed text which remove the use of the word "shall" and provide other clarifications. The revisions do not modify the intended meaning of the text and are within the scope of advertising. As noted in the recent memorandum to the Planning Commission regarding the Minor Modifications amendment, the Zoning Ordinance will be in a period of transition as the modernization moves forward. Text that is included in the proposed amendment is revised with plain language, and it is acknowledged that it may not match the remainder of the Ordinance that has not yet been updated.

Attachment: Proposed text dated November 15, 2017

Department of Planning and Zoning
Zoning Administration Division
Ordinance Administration Branch
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035-5505
Phone 703-324-1314 FAX 703-803-6372
www.fairfaxcounty.gov/dpz

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PROPOSED AMENDMENT
Revised November 15, 2017

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of October 24, 2017, 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.

Changes to the proposed text contained in the Staff Report (dated October 24, 2017) are shown with strikethrough and shaded italics.

Amend Article 20, Ordinance Structure, Interpretations and Definitions, Part 3, Definitions, as follows:

- **Delete the definitions for EATING ESTABLISHMENT; FAST FOOD RESTAURANT; RESTAURANT; RESTAURANT, FAST FOOD; SHOPPING CENTER, SUPER-REGIONAL and SUPER-REGIONAL SHOPPING CENTER in their entirety.**

- **Add the following new definitions in their proper alphabetical sequence, as follows:**

CARRYOUT RESTAURANT: Any establishment that provides, as a principal use, the preparation and sale of food and/or beverages in a ready-to-consume state, primarily for consumption off the premises. A carryout restaurant ~~shall~~ *does* not include drive-through facilities, and up to eight (8) seats may be provided for on-site consumption and/or customer waiting. A restaurant with more than eight seats~~, and which does not contain a drive-through, shall be deemed~~ *is considered* a RESTAURANT. A QUICK-SERVICE FOOD STORE or CRAFT BEVERAGE PRODUCTION ESTABLISHMENT ~~shall not be deemed to be~~ *is not considered* a CARRYOUT RESTAURANT. ***[Advertised to permit the Board to consider 0 to 15 seats in the definition.]***

RESTAURANT: Any establishment that provides, as a principal use, the preparation and sale of food and/or beverages in a ready-to-consume state for consumption on or off the premises. A RESTAURANT WITH DRIVE-THROUGH, CARRYOUT RESTAURANT, QUICK-SERVICE FOOD STORE, or CRAFT BEVERAGE PRODUCTION ESTABLISHMENT as defined herein, ~~shall not be deemed to be~~ *is not considered* a RESTAURANT.

This use ~~shall~~ *does* not ~~be deemed to~~ include a snack bar or refreshment stand at a public or non-private recreational facility ~~which~~ *that* is operated solely by the agency or group operating the recreational facility as an accessory use for the convenience of the patrons of the facility.

Entertainment that is provided for the enjoyment of the patrons ~~shall be~~ *is* considered accessory to a restaurant. *Such entertainment may*, ~~to~~ include dancing by patrons, ~~provided~~ *if* the space made available for ~~such~~ dancing ~~shall~~ *is* not ~~be~~ more than one-eighth (1/8) of ~~that part of~~ the floor area available for dining. Provisions for dancing made available under this definition ~~shall be~~ *are* subject to the licensing requirements of Chapter 27 of The Code.

RESTAURANT, CARRYOUT: See CARRYOUT RESTAURANT

RESTAURANT WITH DRIVE-THROUGH: Any establishment *that contains a drive-through and* provides, as a principal use, the preparation and sale of food and/or beverages in a ready-to-consume state for consumption on or off the premises~~, and which contains a drive-through~~. A FOOD TRUCK that does not comply with the provisions set forth in Sect. 2-510 ~~shall be deemed~~ *is considered* a RESTAURANT WITH DRIVE-THROUGH.

- **Revise the definitions of QUICK-SERVICE FOOD STORE; RETAIL SALES ESTABLISHMENT; HOTEL, MOTEL; MARINA; AND THEATER, as follows:**

QUICK-SERVICE FOOD STORE: Any building, ~~except a service station or service station/mini-mart, which~~ *that* contains less than 5000 square feet of net floor area and ~~which~~ is used for the retail sale of ~~food or~~ food and other items. A quick-service food store, also referred to as a convenience store, is characterized by the frequent turnover of customers, and the retail sale of food, beverages, and other frequently needed items for household use or consumption. This definition ~~shall~~ *does* not include a SERVICE STATION or SERVICE STATION/MINI-MART~~;~~ and is not intended to include small grocery, specialty or gourmet food stores, which are ~~deemed~~ *each considered* a RETAIL SALES ESTABLISHMENT.

RETAIL SALES ESTABLISHMENT: Any establishment wherein the primary occupation is the sale of merchandise for use or consumption by the immediate purchaser. This term ~~shall~~ also include*s* establishments such as television and tool rental establishments, ~~and~~ photographic and portrait studios, and small grocery, specialty or gourmet food stores. For the purpose of this Ordinance, however, retail sales establishment ~~shall~~ *does* not ~~be deemed to~~ include AUTOMOBILE-ORIENTED USES, HEAVY EQUIPMENT AND SPECIALIZED VEHICLE, SALE, RENTAL AND SERVICE ESTABLISHMENTS, RETAIL SALES ESTABLISHMENTS-LARGE, QUICK-SERVICE FOOD STORES, VEHICLE LIGHT SERVICE ESTABLISHMENTS, OR VEHICLE SALE, RENTAL AND ANCILLARY SERVICE ESTABLISHMENTS.

HOTEL, MOTEL: A building or portion thereof or a group of buildings which provide sleeping accommodations in six (6) or more separate units or rooms for transients on a daily, weekly or similar short-term basis, whether such establishment is designated as a hotel, inn, automobile court, motel, motor inn, motor lodge, tourist cabin, tourist court, tourist home or otherwise. A hotel or motel ~~shall be deemed to~~ include*s* any

establishment ~~which~~ *that* provides residential living accommodations for transients on a short-term basis, such as an apartment hotel. A hotel or motel may contain one or more ~~eating establishments~~ restaurants as a subordinate use, provided that such establishment is located within the principal hotel/motel structure, and meeting rooms and/or conference facilities.

MARINA:

- COMMERCIAL OR CLUB-TYPE: A marina designed and operated for profit, or operated by any club or organized group where hull and engine repairs, boat and accessory sales, packaged food sales, ~~eating establishments~~ restaurants, personal services, fueling facilities, storage and overnight guest facilities or any combination of these are provided.

THEATRE: A building or structure designed for the enactment of dramatic performances and/or showing of motion pictures. For the purpose of this Ordinance, a dinner theatre ~~shall be deemed~~ *is considered* ~~an EATING ESTABLISHMENT~~ a RESTAURANT, and a drive-in motion picture theatre and an adult mini motion picture theatre ~~shall be deemed~~ *are considered* separate and distinct uses.

Amend Article 4, Commercial District Regulations, as follows:

- **Amend Part 2, C-2 Limited Office District, as follows:**

OPTION 1:

- **Amend Sect. 4-202, Permitted Uses, by adding new Paragraphs 2 and 11 to read as follows, and renumbering all affected paragraphs:**

2. Carryout restaurants.

11. Restaurants.

- **Amend Sect. 4-204, Special Exception Uses, by deleting Par. 4C, and re-lettering the subsequent paragraphs accordingly:**

4. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

~~C.~~ ~~Eating establishments~~

OPTION 2:

- **Amend Sect. 4-204, Special Exception Uses, by deleting Par. 4C, adding new Paragraphs 4A and 4F to read as follows, and re-lettering all affected paragraphs accordingly:**

4. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

A. Carryout restaurants

~~C. Eating establishments~~

F. Restaurants

STAFF RECOMMENDS OPTION 2

- **Amend Part 3, C-3 Office District, as follows:**

- **Amend Sect. 4-302, Permitted Uses, by deleting Par. 5, adding new Paragraphs 2 and 16 to read as follows, and re-numbering all affected paragraphs:**

2. Carryout restaurants.

~~5. Eating establishments, limited by the provisions of Sect. 305 below.~~

16. Restaurants.

- **Amend Sect. 4-303, Special Permit Uses, by deleting Par. 3A, and re-lettering the subsequent paragraph accordingly:**

3. Group 7 – Older Structures, limited to:

A. ~~Restaurants~~

~~B.~~ Rooming houses

- **Amend Sect. 4-304, Special Exception Uses, by deleting Par. 4C, and re-lettering all subsequent paragraphs accordingly:**

4. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

~~C. Eating establishments~~

- **Amend Sect. 4-305, Use Limitations, by revising Par. 1 to read as follows, deleting Par. 5, and re-numbering all subsequent paragraphs:**

1. All business, service, storage, and display of goods ~~shall~~ *must* be conducted within a completely enclosed building, except ~~outdoor seating provided in association with an eating establishment,~~ a restaurant, those permitted uses, accessory uses set forth in Part 1 of Article 10, and special permit and special exception uses which by their nature must be conducted outside a building*, and*

outdoor seating provided in association with a restaurant.

~~5. Eating establishments shall be permitted by right only when such use is located in a building which has a gross floor area of at least 100,000 square feet and is designed to contain at least one or more other uses permitted by right. Eating establishments which do not meet these limitations may be allowed by special exception in accordance with the provisions of Article 9.~~

- **Amend Part 4, C-4 High Intensity Office District, as follows:**

  - **Amend Sect. 4-402, Permitted Uses, by deleting Par. 6, adding new Paragraphs 2 and 18 to read as follows, and re-numbering all affected paragraphs accordingly:**

    2. Carryout restaurants.

    ~~6. Eating establishments, limited by the provisions of Sect. 405 below.~~

    18. Restaurants.

  - **Amend Sect. 4-403, Special Permit Uses, by deleting Par. 3A, and re-lettering the subsequent paragraph accordingly:**

    3. Group 7 – Older Structures, limited to:

       ~~A. Restaurants~~

       ~~B.~~ Rooming houses

  - **Amend Sect. 4-404, Special Exception Uses, by deleting Par. 4C, and re-lettering all affected paragraphs accordingly:**

    4. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

       ~~C. Eating establishments~~

  - **Amend Sect. 4-405, Use Limitations, by revising Par. 1 to read as follows, deleting Par. 5, and re-numbering all affected paragraphs accordingly:**

    1. All business, service, storage, and display of goods ~~shall~~ *must* be conducted within a completely enclosed building, except ~~outdoor seating provided in association with an eating establishment,~~ those permitted uses, accessory uses set forth in Part 1 of Article 10, and special permit and special exception uses which by their nature must be conducted outside a building*, and outdoor seating provided in association with a restaurant*.

    ~~5. Eating establishments shall be permitted by right only when such use is located in~~

~~a building which has a gross floor area of at least 90,000 square feet and is designed to contain at least one or more other uses permitted by right. Eating establishments which do not meet these limitations may be allowed by special exception in accordance with the provisions of Article 9.~~

- **Amend Part 5, C-5 Neighborhood Retail Commercial District, as follows:**

  - **Amend Sect. 4-502, Permitted Uses, by deleting Paragraphs 11 and 12, adding new Paragraphs 3 and 27 to read as follows, and re-numbering all affected paragraphs accordingly:**

    3. Carryout restaurants.

    ~~11. Eating establishments.~~

    ~~12. Fast food restaurants, limited by the provisions of Sect. 505 below.~~

    27. Restaurants.

  - **Amend Sect. 4-504, Special Exception Uses, by deleting Par. 4G, adding new Par. 4M to read as follows, and re-lettering all affected paragraphs accordingly:**

    4. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

       ~~G. Fast food restaurants~~

       M. Restaurants with drive-through

  - **Amend Sect. 4-505, Use Limitations, by revising Paragraphs 1 and 11C to read as follows:**

    1. ~~Fast food restaurants, d~~Drive-in financial institutions and quick-service food stores ~~shall be~~ *are* permitted by right in accordance with the following:

       ~~A. Fast food restaurants without any drive-through facilities shall be permitted by right:~~

       ~~(1) When located in a shopping center, and the fast food restaurant does not occupy (a) more than 1500 square feet of gross floor area and (b) more than thirty-five (35) percent of the gross floor area of the building in which located; or~~

       ~~(2) When located in a shopping center of 25,000 square feet or more of gross floor area, the fast food restaurant may occupy more than 1500 square feet but not to exceed 2500 square feet of gross floor area, provided that the fast food restaurant does not occupy more~~

~~than twenty-five (25) percent of the gross floor area of the building in which located.~~

~~B.~~A. ~~Fast food restaurants, other than those permitted under Par. 1A above,~~ ~~d~~Drive-in financial institutions~~,~~ and quick-service food stores ~~shall be~~ *are* permitted by right when:

(1) Such use is located within a building of a shopping center, which building contains at least six (6) other uses which are not ~~fast food restaurants, other than those permitted by Par. 1A above,~~ drive-in financial institutions~~,~~ or quick-service food stores; and

(2) All uses within that building are connected by party walls or partitions to form one continuous structure.

~~C.~~B. For all of the above, the shopping center and the building in which such drive-in financial institution~~, fast food restaurant,~~ or quick-service food store is located ~~shall~~ *must* be subject to an approved unified site plan. In addition, vehicular access to the use shall be provided only via the internal circulation system of the shopping center.

Drive-in financial institutions~~, fast food restaurants~~ and quick-service food stores which do not meet the limitations set forth above may be allowed by special exception in accordance with the provisions of Article 9.

11. Craft beverage production establishments ~~shall be~~ *are* permitted by right in accordance with the following:

C. Parking ~~shall~~ *must* be provided in accordance with the requirements ~~for an eating establishment pursuant to~~ of Sect. 11-104 of the Zoning Ordinance.

- **Amend Part 6, C-6 Community Retail Commercial District, as follows:**

  - **Amend Sect. 4-602, Permitted Uses, by deleting Paragraphs 11 and 12, adding new Paragraphs 3 and 29 to read as follows, and re-numbering all affected paragraphs accordingly:**

3. Carryout restaurants.

~~11. Eating establishments.~~

~~12. Fast food restaurants, limited by the provisions of Sect. 605 below.~~

29. Restaurants.

- **Amend Sect. 4-604, Special Exception Uses, by deleting Par. 4H, adding new Par. 4O to read as follows, and re-lettering all affected paragraphs accordingly:**

4. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

~~H. Fast food restaurants~~

O. Restaurants with drive-through

- **Amend Sect. 4-605, Use Limitations, by revising Paragraphs 1 and 13C as follows:**

1. ~~Fast food restaurants, d~~Drive-in financial institutions, quick-service food stores and vehicle light service establishments ~~shall be~~ *are* permitted by right in accordance with the following:

~~A. Fast food restaurants without any drive-through facilities shall be permitted by right:~~

~~(1) When located in a shopping center, and the fast food restaurant does not occupy (a) more than 1500 square feet of gross floor area and (b) more than thirty-five (35) percent of the gross floor area of the building in which located; or~~

~~(2) When located in a shopping center of 25,000 square feet or more of gross floor area, the fast food restaurant may occupy more than 1500 square feet but not to exceed 2500 square feet of gross floor area, provided that the fast food restaurant does not occupy more than twenty-five (25) percent of the gross floor area of the building in which located.~~

~~B.~~A. ~~Fast food restaurants, other than those permitted under Par. 1A above, d~~Drive-in financial institutions~~,~~ and quick-service food stores ~~shall be~~ *are* permitted by right when:

(1) Such use is located within a building of a shopping center, which building contains at least six (6) other uses which are not ~~fast food restaurants, other than those permitted by Par. 1A above,~~ drive-in financial institutions~~,~~ or quick-service food stores; and

(2) All uses within that building are connected by party walls or partitions to form one continuous structure.

~~C.~~B. Vehicle light service establishments ~~shall be~~ *are* permitted by right when located within the main structure of a regional shopping center.

~~D.~~C. For all of the above, the shopping center and the building in which such

drive-in financial institution, ~~fast food restaurant,~~ quick-service food store or vehicle light service establishment is located ~~shall~~ *must* be subject to an approved unified site plan. In addition, vehicular access to the use ~~shall~~ *must* be provided only via the internal circulation system of the shopping center.

Drive-in financial institutions, ~~fast food restaurants,~~ quick-service food stores and vehicle light service establishments which do not meet the limitations set forth above may be allowed by special exception in accordance with the provisions of Article 9.

13. Craft beverage production establishments ~~shall be~~ *are* permitted by right in accordance with the following:

C. Parking ~~shall~~ *must* be provided in accordance with the requirements ~~for an eating establishment pursuant to~~ of Sect. 11-104 of the Zoning Ordinance.

- **Amend Part 7, C-7 Regional Retail Commercial District, as follows:**

  - **Amend Sect. 4-702, Permitted Uses, by deleting Paragraphs 14 and 15, adding new Paragraphs 6 and 34 to read as follows, and re-numbering all affected paragraphs accordingly:**

    6. Carryout restaurants.

    ~~14. Eating establishments.~~

    ~~15. Fast food restaurants, limited by the provisions of Sect. 705 below.~~

    34. Restaurants.

  - **Amend Sect. 4-704, Special Exception Uses, by deleting Par. 4J, adding new Paragraph 4P to read as follows, and re-lettering all affected paragraphs accordingly:**

    4. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

    ~~J. Fast food restaurants~~

    P. Restaurants with drive-through

  - **Amend Sect. 4-705, Use Limitations, by revising Paragraphs 1 and 15C to read as follows:**

1. ~~Fast food restaurants, d~~Drive-in financial institutions, quick-service food stores and vehicle light service establishments ~~shall be~~ *are* permitted by right in accordance with the following:

~~A. Fast food restaurants without any drive-through facilities shall be permitted by right:~~

~~(1) When located in a shopping center, and the fast food restaurant does not occupy (a) more than 1500 square feet of gross floor area and (b) more than thirty-five (35) percent of the gross floor area of the building in which located; or~~

~~(2) When located in a shopping center of 25,000 square feet or more of gross floor area, the fast food restaurant may occupy more than 1500 square feet but not to exceed 2500 square feet of gross floor area, provided that the fast food restaurant does not occupy more than twenty-five (25) percent of the gross floor area of the building in which located.~~

~~B.~~A. ~~Fast food restaurants, other than those permitted under Par. 1A above, d~~Drive-in financial institutions~~,~~ and quick-service food stores ~~shall be~~ *are* permitted by right when:

(1) Such use is located within a building of a shopping center, which building contains at least six (6) other uses which are not ~~fast food restaurants, other than those permitted by Par. 1A above,~~ drive-in financial institutions~~,~~ or quick-service food stores; and

(2) All uses within that building are connected by party walls or partitions to form one continuous structure.

~~C.~~B. Vehicle light service establishments ~~shall be~~ *are* permitted by right when located within the main structure of a regional shopping center.

~~D.~~C. For all of the above, the shopping center and the building in which such drive-in financial institution, ~~fast food restaurant,~~ quick-service food store or vehicle light service establishment is located ~~shall~~ *must* be subject to an approved unified site plan. In addition, vehicular access to the use ~~shall~~ *must* be provided only via the internal circulation system of the shopping center.

Drive-in financial institutions, ~~fast food restaurants,~~ quick-service food stores and vehicle light service establishments which do not meet the limitations set forth above may be allowed by special exception in accordance with the provisions of Article 9.

15. Craft beverage production establishments ~~shall be~~ *are* permitted by right in accordance with the following:

C. Parking ~~shall~~ *must* be provided in accordance with the requirements ~~for an eating establishment pursuant to~~ of Sect. 11-104 of the Zoning Ordinance.

- **Amend Part 8, C-8 Highway Commercial District, as follows:**

  - **Amend Sect. 4-802, Permitted Uses, by deleting Paragraphs 15 and 16, adding new Paragraphs 6 and 35 to read as follows, and re-numbering all affected paragraphs accordingly:**

6. Carryout restaurants.

~~15. Eating establishments.~~

~~16. Fast food restaurants, limited by the provisions of Sect. 705 below.~~

35. Restaurants.

  - **Amend Sect. 4-804, Special Exception Uses, by deleting Par. 4I, adding new Par. 4P to read as follows, and re-lettering all affected paragraphs accordingly:**

4. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

~~I. Fast food restaurants~~

P. Restaurants with drive-through

  - **Amend Sect. 4-805, Use Limitations, by revising Paragraphs 1 and 17C to read as follows:**

1. ~~Fast food restaurants, a~~Automobile-oriented uses, drive-in financial institutions, quick-service food stores and vehicle light service establishments ~~shall be~~ *are* permitted by right in accordance with the following:

~~A. Fast food restaurants without any drive-through facilities shall be permitted by right:~~

~~(1) When located in a shopping center, and the fast food restaurant does not occupy (a) more than 1500 square feet of gross floor area and (b) more than thirty-five (35) percent of the gross floor area of the building in which located; or~~

~~(2) When located in a shopping center of 25,000 square feet or more of gross floor area, the fast food restaurant may occupy more than~~

~~1500 square feet but not to exceed 2500 square feet of gross floor area, provided that the fast food restaurant does not occupy more than twenty-five (25) percent of the gross floor area of the building in which located.~~

~~B.~~A. ~~Fast food restaurants, other than those permitted under Par. 1A above,~~ ~~a~~Automobile-oriented uses, drive-in financial institutions, and quick-service food stores ~~shall be~~ *are* permitted by right when:

(1) Such use is located within a building of a shopping center, which building contains at least six (6) other uses which are not ~~fast food restaurants, other than those permitted by Par. 1A above,~~ automobile-oriented uses, drive-in financial institutions, or quick-service food stores; and

(2) All uses within that building are connected by party walls or partitions to form one continuous structure.

~~C.~~B. Vehicle light service establishments ~~shall be~~ *are* permitted by right when located within the main structure of a regional shopping center.

~~D.~~C. For all of the above, the shopping center and the building in which such automobile-oriented use, drive-in financial institution, ~~fast food restaurant,~~ quick-service food store or vehicle light service establishment is located ~~shall~~ *must* be subject to an approved unified site plan. In addition, vehicular access to the use ~~shall~~ *must* be provided only via the internal circulation system of the shopping center.

Automobile-oriented uses, drive-in financial institutions, ~~fast food restaurants,~~ quick-service food stores and vehicle light service establishments which do not meet the limitations set forth above may be allowed by special exception in accordance with the provisions of Article 9.

17. Craft beverage production establishments ~~shall be~~ *are* permitted by right in accordance with the following:

C. Parking ~~shall~~ *must* be provided in accordance with the requirements ~~for an eating establishment pursuant to~~ of Sect. 11-104 of the Zoning Ordinance.

Delete Part 9, C-9 Super-Regional Retail Commercial District, in its entirety, and all references to the C-9 District throughout the Ordinance, to include:

- **Par. 4 of Sect. 7-608**
- **Paragraphs 1 and 2 of Sect. 8-302**
- **Par. 2 of Sect. 8-402**
- **Paragraphs 1 and 2 of Sect. 8-502**

- **Par. 1 of Sect. 8-902**
- **Paragraphs 1 and 2 of Sect. 9-302**
- **Par. 2 of Sect. 9-402**
- **Paragraphs 1 and 2 of Sect. 9-502**
- **Introduction to Par. 4 and Par. 4A of Sect. 9-505**
- **Par. 3 of Sect. 9-509**
- **Par. 2 of Sect. 9-515**
- **Sections 9-533, 9-607 (introductory paragraphs)**
- **Par. 1E of Sect. 9-622**
- **Par. 1 of Sections A7-104, A7-204, A7-304, A7-404, A7-504**

- **Revise the introductory paragraph to Sect. 9-610, Provisions for Waiving Minimum Lot Size Requirements, to read as follows:**

The Board may approve, either in conjunction with the approval of a rezoning or as a special exception, the waiving of the minimum district size and/or lot width requirement for an R District, except for all cluster subdivisions~~,~~; the minimum lot area and/or lot width requirements for a C district ~~or the minimum district size requirement for the C-9 District,~~; and the minimum district size, lot area and/or lot width requirements for an I district, but only in accordance with the following:

- **Revise Par. 34A(1) of Sect. 10-102, Permitted Accessory Uses, to read as follows:**

34. Donation drop-off boxes, but subject to the following:

A. Donation drop-off boxes ~~shall be~~ *are* permitted:

(1) In the C-5 through ~~C-9~~ C-8 districts on a lot containing not less than 40,000 square feet;

- **Revise Par. 14 of Sect. 17-104, Uses Exempt from a Site Plan or a Minor Site Plan, to read as follows:**

14. Temporary public uses not to exceed 875 square feet of gross floor area for a maximum time period of two (2) continuous years, and quasi-public athletic fields in the C-1 thru ~~C-9~~ C-8 and I-1 thru I-6 Districts as an interim use.

- **Revise the last paragraph of the definition of PLANT NURSERY in Article 20 to read as follows:**

Establishments growing nursery stock and retailing nursery stock and other items in the retail commercial districts (C-5 through ~~C-9~~ C-8 Districts) ~~shall be deemed~~ *are considered* a RETAIL SALES ESTABLISHMENT. The growing and/or maintenance of nursery stock for wholesale sales ~~shall be deemed~~ *is considered* to be AGRICULTURE.

Amend Article 5, Industrial District Regulations, as follows:

- **Amend Part I, I-I Industrial Institutional District, as follows:**

  - **Amend Par. 3 of Sect. 5-I02, Permitted Uses, to read as follows:**

    3. ~~Eating establishments~~ Restaurants as an accessory service use, subject to the use limitations presented in Sect. I05 below.

  - **Amend Par. 6 of Sect. 5-I05, Use Limitations, to read as follows:**

    6. ~~Eating establishments~~ Restaurants and health clubs, spas, sauna and steam baths, swimming pools, tennis courts, and other such similar facilities, as accessory service uses, ~~shall be~~ *are* permitted in accordance with the following:

- **Amend Part 1, I-1, Light Industrial Research District, Par. 3 of Sect. 5-105, Use Limitations, to read as follows:**

  3. All operations, activities and storage ~~shall~~ *must* be conducted within a completely enclosed building, except for biological research when exposure to sunlight is required, ~~and outdoor seating provided in association with an eating establishment~~ a restaurant, ~~,~~ those permitted uses, accessory uses set forth in Part 1 of Article 10 and special permit and special exception uses which by their nature must be conducted outside a building*, and outdoor seating provided in association with a restaurant*.

- **Amend Part 2, I-2 Industrial Research District, as follows:**

  - **Amend Sect. 5-204, Special Exception Uses, by deleting Par. 5B, adding new Par. 5F to read as follows, and re-lettering all affected paragraphs accordingly:**

    5. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

       ~~B. Eating establishments~~

       F. Restaurants

  - **Amend Sect. 5-205, Use Limitations, to read as follows:**

    2. All operations, activities and storage ~~shall~~ *must* be conducted within a completely enclosed building, except for biological research when exposure to sunlight is required, and outdoor seating provided in association with ~~an eating establishment,~~ a restaurant, those permitted uses, accessory uses set forth in Part 1 of Article 10 and special permit and special exception uses which by their nature must be conducted outside a building.

- **Amend Part 3, I-3 Light Intensity Industrial District, as follows:**

  - **Amend Sect. 5-304, Special Exception Uses, by deleting Par. 5E, adding new Par. 5M to read as follows, and re-lettering all affected paragraphs accordingly:**

    5. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

       ~~E. Eating establishments~~

       M. Restaurants

  - **Amend Sect. 5-305, Use Limitations, by revising Paragraphs 2 and 8B to read as follows:**

    2. All operations, activities and storage ~~shall~~ *must* be conducted within a completely enclosed building, except for biological research when exposure to sunlight is required, ~~and outdoor seating provided in association with an eating establishment, a restaurant,~~ those permitted uses, accessory uses set forth in Part 1 of Article 10 and special permit and special exception uses which by their nature must be conducted outside a building*, and outdoor seating provided in association with a restaurant*.

    8. Craft beverage production establishments ~~shall be~~ *are* permitted by right in accordance with the following:

       B. Parking for the portion of the establishment devoted to production activities ~~shall~~ *must* be provided in accordance with the parking requirements for a manufacturing establishment pursuant to Sect. 11-105 of the Zoning Ordinance. Parking for a tasting room ~~shall~~ *must* be provided in accordance with the requirements ~~for an eating establishment pursuant to~~ of Sect. 11-104 of the Zoning Ordinance.

- **Amend Part 4, I-4 Medium Intensity Industrial District, as follows:**

  - **Amend Sect. 5-404, Special Exception Uses, by deleting Par. 5E, adding new Par. 5M to read as follows, and re-lettering all affected paragraphs accordingly:**

    5. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

       ~~E. Eating establishments~~

       M. Restaurants

  - **Amend Sect. 5-405, Use Limitations, by revising Paragraphs 2 and 9B to read as follows:**

2. All operations, activities and storage ~~shall~~ *must* be conducted within a completely enclosed building, except for biological research when exposure to sunlight is required, ~~and outdoor seating provided in association with an eating establishment, a restaurant,~~ those permitted uses, accessory uses set forth in Part 1 of Article 10 and special permit and special exception uses which by their nature must be conducted outside a building*, and outdoor seating provided in association with a restaurant*. All storage of vehicles and activities associated with a vehicle transportation service establishment ~~shall~~ *must* be conducted within a completely enclosed building.

9. Craft beverage production establishments ~~shall be~~ *are* permitted by right in accordance with the following:

B. Parking for the portion of the establishment devoted to production activities ~~shall~~ *must* be provided in accordance with the parking requirements for a manufacturing establishment pursuant to Sect. 11-105 of the Zoning Ordinance. Parking for a tasting room ~~shall~~ *must* be provided in accordance with the requirements ~~for an eating establishment pursuant to~~ of Sect. 11-104 of the Zoning Ordinance.

- **Amend Part 5, I-5 General Industrial District, as follows:**

  - **Amend Sect. 5-504, Special Exception Uses, by deleting Paragraphs 5F and 5G, adding new Paragraphs 5C, 5N, and 5O to read as follows, and re-lettering all affected paragraphs accordingly:**

5. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

C. Carryout restaurants

~~F. Eating establishments~~

~~G. Fast food restaurants~~

N. Restaurants

O. Restaurants with drive-through

  - **Amend Sect. 5-505, Use Limitations, by revising Par. 10B to read as follows:**

10. Craft beverage production establishments ~~shall be~~ *are* permitted by right in accordance with the following:

B. Parking for the portion of the establishment devoted to production activities ~~shall~~ *must* be provided in accordance with the parking requirements for a manufacturing establishment pursuant to Sect. 11-105

of the Zoning Ordinance. Parking for a tasting room ~~shall~~ *must* be provided in accordance with the requirements ~~for an eating establishment pursuant to~~ of Sect. 11-104 of the Zoning Ordinance.

- **Amend Part 6, I-6 Heavy Industrial District, as follows:**

  - **Amend Sect. 5-604, Special Exception Uses, by deleting Par. 5F, adding new Paragraphs 5C, 5O, and 5P to read as follows, and re-lettering all affected paragraphs accordingly:**

    5. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

       C. Carryout restaurants

       ~~F. Fast food restaurants~~

       O. Restaurants

       P. Restaurants with drive-through

  - **Amend Sect. 5-605, Use Limitations, by revising Par. 9B to read as follows:**

    9. Craft beverage production establishments ~~shall be~~ *are* permitted by right in accordance with the following:

       B. Parking for the portion of the establishment devoted to production activities ~~shall~~ *must* be provided in accordance with the parking requirements for a manufacturing establishment pursuant to Sect. 11-105 of the Zoning Ordinance. Parking for a tasting room ~~shall~~ *must* be provided in accordance with the requirements ~~for an eating establishment pursuant to~~ of Sect. 11-104 of the Zoning Ordinance.

Amend Article 6, Planned Development District Regulations, as follows:

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

  - **Amend Sect. 6-103, Secondary Uses Permitted, by deleting Par. 7, and adding new Paragraphs 4B and 18 to read as follows, and re-numbering and re-lettering all affected paragraphs:**

    4. Commercial and industrial uses of special impact (Category 5), limited to:

       B. Carryout restaurants

    ~~7.~~ ~~Eating Establishments~~

18. Restaurants.

- **Amend Sect. 6-105, Special Exception Uses, by revising Par. 2C to read as follows:**

2. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

C. ~~Fast food restaurants~~ Restaurants with drive-through

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

- **Amend Sect. 6-202, Principal Uses Permitted, by deleting Par. 2, adding new Par. 11 to read as follows, and re-numbering all affected paragraphs accordingly:**

~~2. Eating establishments.~~

11. Restaurants.

- **Amend Sect. 6-203, Secondary Uses Permitted, by deleting Par. 4G, adding new Paragraphs 4D and 4M to read as follows, and re-lettering all affected paragraphs accordingly:**

4. Commercial and industrial uses of special impact (Category 5), limited to:

D. Carryout Restaurants

~~G. Fast food restaurants~~

M. Restaurants with drive-through

- **Amend Sect. 6-205, Special Exception Uses, by deleting Par. 2B, as follows:**

2. Category 5 – Commercial and Industrial Uses of Special Impact, limited to:

~~B. Fast food restaurants~~

- **Amend Sect. 6-206, Use Limitations, by deleting Par. 10, re-numbering all subsequent paragraphs accordingly, and revising renumbered Par. 16C to read as follows:**

~~10. Fast food restaurants shall be permitted only in accordance with the following:~~

~~A. Fast food restaurants may be permitted as a secondary use when shown on an approved final development plan, and provided such use is located in a structure containing at least one (1) other permitted principal or secondary use, in accordance with the following:~~

~~(1) Such fast food restaurants shall be oriented to cater primarily to occupants and/or employees in the structure in which located, or of that structure and adjacent structures in the same building complex which are accessible via a clearly designated pedestrian circulation system; and~~

~~(2) Such use(s) shall comprise not more than fifteen (15) percent of the approved gross floor area of the planned development.~~

~~(3) No drive-through facilities shall be permitted when such fast food restaurant is located in a building with any residential uses.~~

~~B. Fast food restaurants not permitted under the provisions of Par. A above may be permitted as a secondary use by special exception, in accordance with the following:~~

~~(1) The structure containing the fast food restaurant shall be designed as an integral component of a building complex, and shall be reviewed for compatibility with the approved PDC development; and~~

~~(2) The fast food restaurant shall be safely and conveniently accessible from surrounding uses via a clearly defined pedestrian circulation system which minimizes points of conflict between vehicular and pedestrian traffic. Pedestrian ways shall be prominently identified through design features such as, but not limited to, the use of special pavement treatments for walkways and crosswalks, and/or the use of consistent and distinctive landscaping. Vehicular access to the use shall be provided via the internal circulation system of the building complex, and no separate entrance to the use shall be permitted from any thoroughfare intended to carry through traffic.~~

16.~~17.~~ Craft beverage production establishments ~~shall be~~ *are* permitted only in accordance with the following:

C. Parking ~~shall~~ *must* be provided in accordance with the requirements ~~for an eating establishment pursuant to~~ of Sect. 11-104 of the Zoning Ordinance.

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

  - **Amend Sect. 6-302, Permitted Uses, by deleting all references to Fast food restaurants and Eating establishments in Paragraphs B, C and E; adding Carryout restaurants, Restaurants with drive-through and Restaurants to read as follows, and re-numbering and re-lettering the paragraphs accordingly:**

B. The following uses are permitted in those locations approved for a Neighborhood Convenience Center, which should be neighborhood-oriented in scope and location. A neighborhood convenience center should be oriented to both pedestrian and vehicular access.

(2) Commercial and industrial uses of special impact (Category 5), limited to:

(c) Carryout restaurants

~~(e) Fast food restaurants~~

(h) Restaurants with drive-through

~~(6) Eating establishments.~~

(14) Restaurants.

C. The following uses are permitted in those locations approved for a Village Center which should be a central location for activity of retail, community and leisure uses on a scale serving a number of neighborhoods. A village center should be easily accessible to both vehicles and pedestrians. Within such a center, the primary emphasis should be on the pedestrian circulation system. A village center should contain uses such as professional offices, a supermarket, a hardware store, specialty shops and other uses as listed below.

(3) Commercial and industrial uses of special impact (Category 5), limited to:

(d) Carryout restaurants

~~(f) Fast food restaurants~~

(j) Restaurants with drive-through

~~(8) Eating establishments.~~

(19) Restaurants.

E. The following uses are permitted in those locations approved for a Convention/Conference Center, which should have the facilities to accommodate conventions or large meetings and retail or commercial establishments necessary to serve the people using such facilities and any residents of the Center.

(3) Commercial and industrial uses of special impact (Category 5), limited to:

(c) Carryout restaurants

~~(e) Fast food restaurants~~

(g) Restaurants with drive-through

~~(8) Eating establishments.~~

(18) Restaurants.

- **Amend Sect. 6-305, Use Limitations, by revising Par. 15C to read as follows:**

15. Craft beverage production establishments ~~shall be~~ *are* permitted only in accordance with the following:

C. Parking ~~shall~~ *must* be provided in accordance with the requirements ~~for an eating establishment pursuant to~~ of Sect. 11-104 of the Zoning Ordinance.

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

- **Amend Sect. 6-403, Secondary Uses Permitted, by deleting Paragraphs 5B and 9, adding new Paragraphs 5A and 20 to read as follows, and re-numbering and lettering all affected paragraphs accordingly:**

5. Commercial and industrial uses of special impact (Category 5), limited to:

A. Carryout restaurants

~~B. Fast food restaurants~~

~~9. Eating establishments.~~

20. Restaurants.

- **Amend Sect. 6-406, Use Limitations, by revising Par. 14C to read as follows:**

14. Craft beverage production establishments ~~shall be~~ *are* permitted only in accordance with the following:

C. Parking ~~shall~~ *must* be provided in accordance with the requirements ~~for an eating establishment pursuant to~~ of Sect. 11-104 of the Zoning Ordinance.

Amend Part 5, PTC Planned Tysons Corner Urban District, as follows:

- **Amend Sect. 6-502, Permitted Uses, by deleting Paragraphs 5E and 11, adding new Paragraphs 5C, 5K, and 27 to read as follows, and re-numbering and lettering all affected paragraphs accordingly:**

5. Commercial and industrial uses of special impact (Category 5), limited to:

C. Carryout restaurants

~~E. Fast food restaurants~~

K. Restaurants with drive-through

~~11. Eating establishments.~~

27. Restaurants.

- **Amend Sect. 6-505, Use Limitations, by revising Par. 20C to read as follows:**

20. Craft beverage production establishments ~~shall be~~ *are* permitted only in accordance with the following:

C. Parking ~~shall~~ *must* be provided in accordance with the requirements ~~for an eating establishment pursuant to~~ of Sect. 11-104 of the Zoning Ordinance.

- **Amend Sect. 6-509, Off-Street Parking and Loading, by revising Par. 1B (1), as follows:**

(1) In the TOD Districts, ~~there shall be~~ no minimum number of parking spaces *are* required and the rates set forth in such Sections ~~shall~~ serve as the maximum number of parking spaces permitted. In a multiple story structure, the first 5,000 square feet of gross floor area located on the ground or street level for the following uses ~~shall~~ *are* not ~~be~~ included in the calculation of required parking: retail, personal/business services, ~~fast food restaurant,~~ quick-service food store, restaurant, carryout restaurant and/or ~~eating establishment~~ restaurant with drive-through.

Amend Article 7, Overlay and Commercial Revitalization District Regulations, as follows:

- **Amend Part 4, Airport Noise Impact Overlay District, NOISE COMPATIBILITY TABLE, by deleting the entry, "Eating establishments, commercial recreation restaurants and fast food restaurants," and adding the entry, "Restaurants, carryout restaurants, restaurants with drive-through, and commercial recreation restaurants," in the appropriate alphabetical sequence, to read as follows:**

Uses	Noise Impact Areas (DNL dBA) 75+	70-75	65-70
~~Eating establishments, commercial recreation Restaurants and fast food restaurants~~	~~P2~~	~~P3~~	~~P~~
Restaurants, carryout restaurants, restaurants with drive-through, and commercial recreation restaurants	P2	P3	P

- **Amend Part 6, Highway Corridor Overlay District, as follows:**

  - **Amend Sect. 7-601, Purpose and Intent, by deleting Par. 2, adding new Par. 3 to read as follows, and re-numbering all affected paragraphs accordingly:**

    ~~2. Fast food restaurants~~

    3. Restaurants with drive-through.

  - **Amend Sect. 7-604, Administration, to read as follows:**

    The administration of the provisions of the Highway Corridor Overlay District ~~shall be as~~ *is* provided for in Article 9 for drive-in financial institutions, ~~fast food~~ restaurants with drive-through, quick-service food stores, service stations and service station/mini-marts and as provided for in Article 18 for all other uses.

  - **Amend Sect. 7-607, Special Exception Uses, by revising Par. 2 to read as follows:**

    2. Except as permitted by right pursuant to Sections 4-502, 4-602, 4-702, 4-802, ~~4-902~~ and 10-202, drive-in financial institutions, ~~fast food~~ restaurants with drive-through, quick-service food stores, service stations, and service station/mini-marts subject to the provisions of Part 6 of Article 9 and Sect. 608 below.

  - **Amend Sect. 7-608, Use Limitations, by revising the introductory paragraph to read as follows:**

    All uses ~~shall be~~ *are* subject to the use limitations set forth in the underlying zoning district(s), and, in addition, drive-in financial institutions, ~~fast food~~ restaurants with drive-through, quick-service food stores, service stations, and service station/mini-marts ~~shall be~~ *are* subject to the following use limitations:

Amend Article 8, Special Permits, Part 7, Older Structures, Sect. 8-702, Districts in Which

Group 7 Uses May be Located, by deleting the reference to Restaurants in the C-3 and C-4 Districts as follows:

Group 7 uses may be allowed by special permit in the following districts:

R-P, R-C Districts: Limited to uses 3 and 5
R-E, R-1 Districts: All uses
R-2, R-3, R-4 Districts: Limited to uses 1, 2, 4 and 5

C-1, C-2, ~~C-3, C-4~~ Districts: Limited to uses 3 and 4
C-3, C-4 Districts: Limited to use 4

Amend Article 9, Special Exceptions, as follows:

- **Amend Part 5, Commercial and Industrial Uses of Special Impact, as follows:**

  - **Amend Sect. 9-501, Category 5 Special Exception Uses, by deleting Paragraphs 9 and 11, revising Par. 13N, and adding new Paragraphs 44, 45 and 46 to read as follows:**

    9. ~~Eating establishments.~~

    11. ~~Fast food restaurants.~~

    13. Heavy industrial uses, to include:

        N. Garbage incineration other than in municipal plants or incidental to the operation of hotels~~, eating establishments~~ and dwellings.

    44. Restaurants.

    45. Carryout restaurants.

    46. Restaurants with drive-through.

  - **Amend Sect. 9-502, Districts in Which Category 5 Uses May be Located, by deleting all references to uses 9 (Eating establishments) and 11 (Fast food restaurants) in Paragraphs 1 and 2, and adding references to new uses 44, 45, and 46, as follows:**

    OPTION 1:

    1. Category 5 uses may be permitted by right or as an accessory service use in the following districts:

Add use 44 (Restaurants) to the following districts: PDH, PDC, PRC, PRM, PTC, C-2, C-3, C-4, C-5, C-6, C-7, C-8, and I-I;

Add use 45 (Carryout restaurants) to the following districts: PDH, PDC, PRC, PRM, PTC, C-2, C-3, C-4, C-5, C-6, C-7, and C-8; and

Add use 46 (Restaurants with drive-through) to the following districts: PDC, PRC, and PTC.

2. Category 5 uses may be allowed by special exception in the following districts:

Add use 44 (Restaurants) to the following districts: I-2, I-3, I-4, I-5, and I-6;

Add use 45 (Carryout restaurants) to the following districts: I-5, and I-6; and

Add use 46 (Restaurants with drive-through) to the following districts: PDH, C-5, C-6, C-7, C-8, I-5, and I-6.

OPTION 2:

1. Category 5 uses may be permitted by right or as an accessory service use in the following districts:

Add use 44 (Restaurants) to the following districts: PDH, PDC, PRC, PRM, PTC, C-3, C-4, C-5, C-6, C-7, C-8, and I-I;

Add use 45 (Carryout restaurants) to the following districts: PDH, PDC, PRC, PRM, PTC, C-3, C-4, C-5, C-6, C-7, and C-8; and

Add use 46 (Restaurants with drive-through) to the following districts: PDC, PRC, and PTC.

2. Category 5 uses may be allowed by special exception in the following districts:

Add use 44 (Restaurants) to the following districts: C-2, I-2, I-3, I-4, I-5, and I-6;

Add use 45 (Carryout restaurants) to the following districts: C-2, I-5, and I-6;

Add use 46 (Restaurants with drive-through) to the following districts: PDH, C-5, C-6, C-7, C-8, I-5, and I-6.

STAFF RECOMMENDS OPTION 2

- **Amend Sect. 9-505, by revising the section name, and Paragraphs 6 and 7 to read as follows:**

9-505 Additional Standards for Automobile-Oriented Uses, Car Washes, Drive-In Financial Institutions, Drive-Through Pharmacies, ~~Fast Food Restaurants,~~ Quick-Service Food Stores, Restaurants, Restaurants with Drive-Through, Carryout Restaurants, Service Stations, and Service Stations/Mini-Marts

6. In the PDH ~~and PDC~~ District~~s~~, in addition to Par. 1 above:

A. ~~In the PDH District, fast food r~~Restaurants with drive-through may be permitted only in accordance with the provisions of Sect. 6-106 and the following:

(1) Such use may be permitted only upon a finding by the Board that the planned development is of sufficient size to support the proposed use, and that the use is designed to serve primarily the needs of the residents of the development.

(2) Such use ~~shall~~ *must* be designed and located so as to maintain the intended secondary nature of the use, and so that the associated impacts, including but not limited to associated on-site and off-site vehicular traffic, noise, odors, and visual impact, will not adversely affect the residential character of the development and surrounding properties.

(3) All direct vehicular access to the use ~~shall~~ *must* be provided via the internal circulation system of a commercial area of the PDH development~~, which commercial area shall~~ *that* contain~~s not less than~~ *at least* three (3) non-automobile-related commercial establishments.

(4) The proposed development ~~shall~~ *must* provide clearly designated pedestrian facilities for safe and convenient access from surrounding residential and commercial uses.

~~B. In the PDC District, fast food restaurants may be permitted only in accordance with the provisions of Sect. 6-206.~~

7. In the PTC District, car washes, drive-in financial institutions, drive-through pharmacies, ~~fast food~~ restaurants with drive-through, carryout restaurants, quick-service food stores, service stations and service stations/mini-marts may only be permitted in accordance with the provisions of Sect. 6-505.

- **Amend Sect. 9-526, Additional Standards for Bed and Breakfasts Uses, by revising Par. 3 to read as follows:**

3. A bed and breakfast ~~shall~~ *may* not include ~~an eating establishment~~ a restaurant~~,~~; however, breakfast and other light fare may be provided for resident guests. In addition, this provision ~~shall~~ *does* not preclude the filing and approval of a separate Group 7 special permit application for a restaurant.

- **Amend Part 6, Miscellaneous Provisions Requiring Board of Supervisors' Approval, Sect. 9-601, Special Exception Uses, by revising Paragraphs 7 and 8 to read as follows:**

7. Approval of drive-in financial institutions, ~~fast food~~ restaurants with drive-through, quick-service food stores, service station and service station/mini-marts in a Highway Corridor Overlay District.

8. Approval of the enlargement, extension, relocation or increase in intensity of existing drive-in financial institutions, ~~fast food~~ restaurants with drive-through, quick-service food stores and service stations in a Highway Corridor Overlay District.

- **Amend Sect. 9-611 to read as follows:**

9-611 Provisions for Approving Drive-In Financial Institutions, ~~Fast Food~~ Restaurants with Drive-through, Quick-Service Food Stores, Service Stations, and Service Station/Mini-Marts in a Highway Corridor Overlay District

The Board may approve a special exception for the establishment or for the enlargement, extension, relocation or increase in intensity of a drive-in financial institution, ~~fast food~~ restaurant with drive-through, quick-service food store, service station or service station/mini-mart in a Highway Corridor Overlay District, but only in accordance with the provisions of Part 6 of Article 7.

Amend Article 10, Accessory Uses, Accessory Service Uses and Home Occupations, as follows:

- **Amend Part 1, Accessory Uses and Structures, Sect. 10-102, Permitted Accessory Uses, by revising Par. 1 to read as follows:**

1. Amusement machines, but only accessory to ~~eating establishments~~ restaurants, motels, hotels, bowling alleys, skating facilities, and establishments for billiards, ping pong, indoor archery, and other indoor games of skill, and retail sales establishments with greater than 5000 square feet of floor area open to the general public.

- **Amend Part 2, Accessory Service Uses, as follows:**

  - **Amend Sect. 10-202, Permitted Accessory Service Uses, by deleting Paragraphs 1A, 2C, and 3B, adding new Paragraphs 1E, 2B, 2K to read as follows, and re-lettering all affected paragraphs accordingly:**

    1. Accessory to a principal use of multiple family dwellings in the R-12, R-16, R-20, R-30 and in the PDH, PDC and PRC Districts when such dwelling or dwelling complex has a minimum of 250 dwelling units.

       ~~A. Eating establishments.~~
       E. Restaurants.

    2. Accessory to a principal use of offices, industrial establishments, or institutional buildings in the C-1, C-2, C-3, C-4, I-1, I-2, I-3, I-4, I-5 and I-6 Districts:

       B. Carryout restaurants.
       ~~C. Eating establishments.~~
       K. Restaurants.

    3. Accessory to a principal use of offices or industrial establishments in the I-5 and I-6 Districts, in addition to the uses set forth in Par. 2 above:

       ~~B. Fast food restaurants.~~

  - **Amend Sect. 10-203, Use Limitations, by revising Paragraphs 3, 4 and 6 to read as follows:**

    3. Accessory service uses in the C-4 District may be located in a freestanding building separate from the principal use, and ~~an eating establishment~~ a restaurant in the I-1 through I-5 Districts may also be located in a freestanding building; but such freestanding buildings ~~shall be~~ *are* allowed only in those locations shown on an approved development plan or site plan for an office facility or industrial park.

       Those accessory service uses set forth in Par. 2E of Sect. 202 above, which by their nature must be conducted outside a building, ~~shall~~ *must* be located on the same lot as the principal use.

    4. Drive-in financial institutions, ~~fast food~~ restaurants, and quick-service food stores in the I-5 and I-6 Districts may be located in a freestanding building; ~~provided,~~ however, ~~that~~ such uses ~~shall~~ *may* not have frontage *on* or direct access to a street defined in the adopted comprehensive plan as a major or minor arterial, and such uses ~~shall~~ *must* be an integral design element of a site plan for an industrial building or building complex containing not less than 30,000 square feet of gross floor area.

6. No accessory service use ~~shall~~ *may* be located above the second floor of the building in which located, with the exception of:

   A. The residence of a proprietor or owner, which may be located on any floor.

   B. A~~n eating establishment~~ restaurant which may be located in a rooftop penthouse.

- **Amend Sect. 10-303, Home Occupations Not Permitted, by revising Par. 3 to read as follows:**

3. ~~Eating establishments~~ Restaurants.

Amend Article 11, Off-Street Parking and Loading, Private Streets, as follows:

- **Amend Part 1, Off-Street Parking, Sect. 11-104, Minimum Required Spaces for Commercial and Related Uses, to establish parking and stacking requirements for Restaurant, Carryout Restaurant, Restaurant with Drive-through, Craft Beverage Production Establishment and Outdoor Seating by revising Paragraphs 7, 8, 9, 17, 23, to read as follows:**

OPTION 1:

7. ~~Eating Establishment~~ Restaurant, Craft Beverage Production Establishment or Commercial Recreation Restaurant:

   One (1) space per four (4) seats plus one (1) space per two (2) employees where seating is at tables,

   and/or

   One (1) space per two (2) seats plus one (1) space per two (2) employees where seating is at a counter

   Spaces designated for curb-side pickup cannot be counted toward the minimum required number of parking spaces.

8. ~~Fast Food~~ Restaurant with Drive-through:

   One (1) space per two (2) seats for table and/or counter seating, whether such seating facilities are inside or outside~~.~~ ***[Advertised to permit the Board to consider parking Restaurant with Drive-through at the same rate as Restaurant]***, plus eleven (11) stacking spaces for the drive-through window, with a minimum of five (5) such spaces designated for the ordering station.

Such spaces ~~shall~~ *must* be designed so as not to impede pedestrian or vehicular circulation on the site or on any abutting street. ~~For fast food restaurant with no seating facilities, one (1) space per sixty (60) square feet of net floor area with a minimum of ten (10) spaces~~

Spaces designated for curb-side pickup cannot be counted toward the minimum required number of parking spaces.

9. ~~Fast Food Restaurant With Drive-In Facilities~~ Outdoor Seating:

~~As required in Par. 8 above, plus eleven (11) stacking spaces for the drive-in window, with a minimum of five (5) such spaces designated for the ordering station. Such spaces shall be designed so as not to impede pedestrian or vehicular circulation on the site or on any abutting street~~
As required for Restaurant, Restaurant with Drive-through, or Shopping Center, except that parking ~~will~~ *is* not ~~be~~ required for outdoor seating that is accessory to a Restaurant or a Restaurant with Drive-through, up to a maximum of twenty (20) outdoor seats. Parking ~~will be~~ *is* required for outdoor seating in excess of twenty (20) seats, in accordance with the applicable standards for such uses. ***[Advertised to allow the Board to exempt 0 to 35 outdoor seats from parking calculations.]***

17. Quick-Service Food Store or Carryout Restaurant:

Six and one half (6.5) spaces per 1000 square feet of gross floor area

Spaces designated for curb-side pickup cannot be counted toward the minimum required number of parking spaces.

23. Shopping Center:

A. 100,000 square feet of gross floor area or less: Four and three-tenths (4.3) spaces per 1000 square feet of gross floor area

B. Greater than 100,000 but equal to or less than 400,000 square feet of gross floor area: Four (4) spaces per 1000 square feet of gross floor area

C. Greater than 400,000 but less than 1,000,000 square feet of gross floor area: Four and eight-tenths (4.8) spaces per 1000 square feet of gross floor area

D. 1,000,000 square feet of gross floor area or more: Four (4) spaces per 1000 square feet of gross floor area

For purposes of determining whether Par. A, B, C or D above is applicable, the size of the shopping center ~~shall be~~ *is* based on the definition of gross floor area as

set forth in Article 20, and ~~shall be inclusive of~~ *includes* any gross floor area devoted to offices, ~~eating establishments~~ restaurants, restaurants with drive-through and hotels. The gross floor area calculation as qualified in Sect. 102 above ~~shall then be~~ *is* used to determine the required number of parking spaces.

The off-street parking requirement set forth above ~~shall be applicable~~ *applies* to all uses in a shopping center, except that the area occupied by offices, ~~eating establishments~~ any ~~individual~~ restaurant or restaurant with drive-through *establishment* that exceeds 5000 square feet of gross floor area, and hotels ~~shall be~~ *is* parked in accordance with the applicable standards for such uses as set forth in this Section. For shopping centers subject to Par. A, B or C above, the area occupied by theaters ~~shall be~~ *is* parked in accordance with the applicable shopping center requirement~~, provided that~~*; however,* for theaters with more than 2000 seats, an additional three-tenths (0.3) space ~~shall~~ *must* be provided for each seat above 2000 seats. For shopping centers subject to Par. D above, the area occupied by theaters ~~shall be~~ *is* parked in accordance with the applicable shopping center requirement~~, provided that~~*; however,* for theaters with more than 750 seats, an additional six (6) spaces ~~shall~~ *must* be provided for each 100 seats above 750 seats.

In addition, for all shopping centers, stacking spaces as required by this Part ~~shall~~ *must* be provided for those uses which have drive-in or drive-through facilities. Spaces designated for curb-side pickup cannot be counted toward the minimum required number of parking spaces.

OPTION 2:

7. ~~Eating Establishment or~~ Craft Beverage Production Establishment or Commercial Recreation Restaurant:

One (1) space per four (4) seats plus one (1) space per two (2) employees where seating is at tables,

and/or

One (1) space per two (2) seats plus one (1) space per two (2) employees where seating is at a counter

8. ~~Fast Food Restaurant~~ Restaurant or Restaurant with Drive-through:

A. Restaurant:

(1) Ten (10) spaces per 1000 square feet of gross floor area for restaurants with a gross floor area of less than 5000 square feet

(2) Eleven (11) spaces per 1000 square feet of gross floor area for restaurants with a gross floor area of 5000 square feet or more

(3) Spaces designated for curb-side pickup cannot be counted toward the minimum required number of parking spaces

B. Restaurant with Drive-through:

~~One (1) space per two (2) seats for table and/or counter seating, whether such seating facilities are inside or outside. For fast food restaurant with no seating facilities, one (1) space per sixty (60) square feet of net floor area with a minimum of ten (10) spaces~~
Twelve (12) spaces per 1000 square feet of gross floor area, plus eleven (11) stacking spaces for the drive-through window, with a minimum of five (5) such spaces designated for the ordering station. Such spaces ~~shall~~ *must* be designed so as not to impede pedestrian or vehicular circulation on the site or on any abutting street.

Spaces designated for curb-side pickup cannot be counted toward the minimum required number of parking spaces.

[Advertised to allow the Board to consider parking rates for Restaurant and Restaurant with Drive-through in the range of 9 to 12 spaces per 1000 square feet of gross floor area.]

9. ~~Fast Food Restaurant With Drive-In Facilities~~ Outdoor Seating:

~~As required in Par. 8 above, plus eleven (11) stacking spaces for the drive-in window, with a minimum of five (5) such spaces designated for the ordering station. Such spaces shall be designed so as not to impede pedestrian or vehicular circulation on the site or on any abutting street~~
As required for Restaurant, Restaurant with Drive-through, or Shopping Center, except that parking ~~will~~ *is* not ~~be~~ required for outdoor seating that is accessory to a Restaurant or a Restaurant with Drive-through, up to a maximum of twenty (20) outdoor seats. Parking ~~will be~~ *is* required for outdoor seating that exceeds twenty (20) seats, based on the area of such seating, in accordance with the applicable standards for such uses.
[Advertised to allow the Board to exempt 0 to 35 outdoor seats from parking calculations.]

17. Quick-Service Food Store or Carryout Restaurant:

Six and one half (6.5) spaces per 1000 square feet of gross floor area

Spaces designated for curb-side pickup cannot be counted toward the minimum required number of parking spaces.

23. Shopping Center:

A. 100,000 square feet of gross floor area or less: Four and three-tenths (4.3) spaces per 1000 square feet of gross floor area

B. Greater than 100,000 but equal to or less than 400,000 square feet of gross floor area: Four (4) spaces per 1000 square feet of gross floor area

C. Greater than 400,000 but less than 1,000,000 square feet of gross floor area: Four and eight-tenths (4.8) spaces per 1000 square feet of gross floor area

D. 1,000,000 square feet of gross floor area or more: Four (4) spaces per 1000 square feet of gross floor area

For purposes of determining whether Par. A, B, C or D above is applicable, the size of the shopping center ~~shall be~~ *is* based on the definition of gross floor area as set forth in Article 20, and ~~shall be inclusive of~~ *includes* any gross floor area devoted to offices, ~~eating establishments~~ restaurants, restaurants with drive-through and hotels. The gross floor area calculation as qualified in Sect. 102 above ~~shall then be~~ *is* used to determine the required number of parking spaces.

The off-street parking requirement set forth above ~~shall be applicable~~ *applies* to all uses in a shopping center, except that the area occupied by offices, ~~eating establishments~~ any ~~individual~~ restaurant or restaurant with drive-through *establishment* that exceeds 5000 square feet of gross floor area, and hotels ~~shall be~~ *is* parked in accordance with the applicable standards for such uses as set forth in this Section. For shopping centers subject to Par. A, B or C above, the area occupied by theaters ~~shall be~~ *is* parked in accordance with the applicable shopping center requirement~~, provided that~~*; however,* for theaters with more than 2000 seats, an additional three-tenths (0.3) space ~~shall~~ *must* be provided for each seat above 2000 seats. For shopping centers subject to Par. D above, the area occupied by theaters ~~shall be~~ *is* parked in accordance with the applicable shopping center requirement~~, provided that~~*; however,* for theaters with more than 750 seats, an additional six (6) spaces ~~shall~~ *must* be provided for each 100 seats above 750 seats.

In addition, for all shopping centers, stacking spaces as required by this Part ~~shall~~ *must* be provided for those uses which have drive-in or drive-through facilities. Spaces designated for curb-side pickup cannot be counted toward the minimum required number of parking spaces.

STAFF RECOMMENDS OPTION 2

- **Amend Sect. 11-103, Minimum Required Spaces for Residential and Lodging Uses, as follows:**

6. Hotel, Motel:

One (1) space per rental unit, plus four (4) spaces per fifty (50) rental units, plus such spaces as are required for ~~eating establishments~~ restaurants, assembly rooms and affiliated facilities as determined by the Director

- **Amend Sect. 11-104, Minimum Required Spaces for Commercial and Related Uses, as follows:**

1. Bowling Alley:

Four (4) spaces per alley, plus one (1) space per employee, plus such additional spaces as may be required herein for affiliated uses such as ~~eating establishments~~ restaurants

- **Amend Sect. 11-106, Minimum Required Spaces for Other Uses, as follows:**

20. Tennis Club:

Four (4) spaces per court, plus such additional spaces as may be required herein for affiliated uses such as ~~eating establishments~~ restaurants

- **Amend Part 2, Off-Street Loading, Sect. 11-203, Minimum Required Spaces, by deleting Par. 5, and adding new Par. 16, and re-numbering all affected paragraphs accordingly:**

~~5.~~ ~~Eating Establishment, Fast Food Restaurant or Commercial Recreation Restaurant: Standard D.~~

16. Restaurant, Carryout Restaurant, Restaurant with Drive-through or Commercial Recreation Restaurant: Standard D.

Amend Article 13, Landscaping and Screening, by revising the uses in the Transitional Screening and Barrier Matrix, replacing Eating establishments with Restaurants and Carryout restaurants in Par. 8, and replacing Fast food restaurants with Restaurants with drive-through in Par. 9, in their appropriate alphabetical sequence.

Amend Appendix 1, Historic Overlay Districts, as follows:

- **Amend Part 1, Pohick Church Historic Overlay District, Sect. A1-102, Permitted, Special Permit and Special Exception Uses, by revising Par. 2 to read as follows:**

2. Commercial uses ~~shall be~~ *are* limited to local serving and tourist-oriented uses such as libraries, professional offices, craft shops, ~~eating establishments~~ restaurants, and antique shops. No service stations, service station/mini-marts, vehicle light service or major service establishments, ~~fast food~~

restaurants with drive-through or quick-service food stores ~~shall~~ *may* be permitted.

- **Amend Part 2, Woodlawn Historic Overlay District, Sect. A1-202, Permitted, Special Permit and Special Exception Uses, by revising Par. 2 to read as follows:**

2. Commercial uses ~~shall be~~ *are* limited to offices and tourist-oriented uses, including but not limited to antique shops, craft shops, ~~eating establishments~~ restaurants, hotels and motels. No service stations or ~~fast food~~ restaurants with drive-through ~~shall~~ *may* be permitted.

- **Amend Part 13, Centreville Historic Overlay District, Sect. A1-1302, Permitted, Special Permit and Special Exception Uses, by revising Par. 2 to read as follows:**

2. Automobile-oriented uses, car washes, drive-in financial institutions, drive-through pharmacies, ~~fast food~~ restaurants with drive-through ~~facilities~~, service stations, service station/mini-marts, vehicle light service establishments and vehicle transportation service establishments ~~shall~~ *are* not ~~be~~ permitted for properties not contiguous to Route 29.

County of Fairfax, Virginia
Planning Commission Meeting
November 30, 2017
Verbatim Excerpt

ZONING ORDINANCE AMENDMENT – ARTICLES 4, 5, 6, 7, 8, 9, 10, 11, 13, 17, 20, AND APPENDICES 1 AND 7; RESTAURANTS – To amend Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax, as follows: Amend Sect. 20-300 to include new definitions for restaurants, restaurants with drive-through (drive-throughs), and carryout restaurants (carryouts), and these definitions result in the following: (a) restaurants encompass uses currently deemed an eating establishment or a fast food restaurant without a drive-through; (b) drive-throughs include establishments that sell food and contain a drive-through; and (c) carryouts have up to eight seats [Option: 0-15 seats]. The amendment also clarifies definitions of quick-service food store and retail sales establishment, and replaces eating establishments with restaurants in the definitions of hotel, motel, marina, and theatre.

(1) Delete the definitions of Eating Establishments and Fast Food Restaurants from Sect. 20-300 and delete all references to those terms throughout the Zoning Ordinance, and, where applicable, replace those terms with restaurants or drive-throughs, respectively.

(2) Revise Commercial District Regulations to: (a) allow carryouts and restaurants as permitted uses in the C-2 through C-8 Districts (or, Option 2: require special exception approval for those uses in the C-2 District); (b) delete eating establishment and fast food restaurant use limitations; (c) require special exception approval of drive-throughs in the C-5 through C-8 Districts; and (d) delete Part 9 to eliminate the C-9 District and delete all references to the C-9 District throughout the Zoning Ordinance.

(3) Revise the Industrial District Regulations to allow restaurants as an accessory service use in the I-I District; allow restaurants by special exception in the I-2 through I-4 Districts; allow carryouts, restaurants, and drive-throughs by special exception in the I-5 and I-6 Districts; and replace eating establishment with restaurant in the use limitations of the I-I through I-4 Districts.

(4) Revise Planned Development District Regulations as follows: (a) PDH District: permit restaurants and carryouts as a secondary use, but allow a drive-through by special exception; (b) PDC District: permit restaurants as a principal use and allow carryouts and drive-throughs as a secondary use; (c) PRC District: permit restaurants, carryouts and drive-throughs in areas designated Neighborhood Convenience Center, Village Center, Town Center, and Convention/Conference Center; (d) PRM District: carryouts and restaurants would be a secondary use; (e) PTC District: allow restaurants, carryouts, and drive-throughs as a permitted use; replace fast food and eating establishment with restaurant, carryout, and drive-through.

(5) Revise Overlay District regulations to replace eating establishments and fast food restaurants with restaurants, carryouts, and drive-throughs in the Noise Compatibility Table. Also replace fast food with drive-throughs in the Highway Corridor Overlay District.

(6) Delete special permit requirement for restaurants in older structures in the C-3 and C-4 Districts in Articles 4 and 8.

(7) Revise Special Exception regulations to (a) allow the following uses by right or as an accessory service use: (i) restaurants and carryouts in all P and C-2 through C-8 Districts

(OPTION 2: Require a special exception for restaurants and carryouts in the C-2 District); (ii) restaurants in I-I District; (iii) drive-throughs in PDC, PRC, and PTC Districts; (b) require a special exception for the following: (i) restaurants in the I-2 through I-6 Districts; (ii) carryouts in the I-5 and I-6 Districts; and (iii) drive-throughs in the PDH, C-5 through C-8, and I-5 and I-6 Districts; and (c) to update additional standards to include restaurants, drive-throughs, and carryouts; delete references to PDC District; and, in Part 6, replace fast food with drive-throughs.

(8) Revise Article 10 to replace eating establishment with restaurant, and revise Part 2 of Art. 10 to identify where restaurants and carryouts will be permitted as accessory service uses.

(9) Revise parking regulations in Section 11-104 as follows: (a) OPTION 1: Leave the parking rate as is, except that the term eating establishment is replaced with restaurant and fast food is replaced with drive-through [additional OPTION: drive-throughs could be parked at the restaurant rate]; or (b) OPTION 2: Create new parking rates for restaurants and drive-throughs based on gross floor area [Range: between 9-12 parking spaces per 1000 square feet of gross floor area]. Under either option, amend the following:

- *(a) Add carryout to the quick-service food store parking rate;*
- *(b) Within shopping centers, allow restaurants and drive-throughs that are 5000 square feet or less to park at the shopping center rate;*
- *(c) Permit up to 20 outdoor seats that are not included in parking calculations for restaurant or drive-through [Option: 0 to 35 seats];*
- *(d) Exclude spaces designated for curb-side pickup from minimum required parking; and*
- *(e) Establish a parking rate for craft beverage production establishment which is the same as the eating establishment rate.*

(10) Revise Article 13, Transitional Screening & Barrier Matrix, by replacing eating establishments with restaurants and carryouts and replacing fast food with drive-through. (Countywide)

After Close of the Public Hearing

Commissioner Hart: Thank you. First, I wanna thank the speakers for coming out tonight and contributing to this discussion. I also want to thank staff, Ms. Bishop, Mr. Hushour, Ms. Johnson, for their fine work on this. I think we're very close. I also would note this doesn't go to the Board till January 23rd. And I think I would just like to take one more pass at the outdoor parking, and think about, you know, the sliding scale was kind of a new idea tonight. And I don't know but, I wonder if there's some – let's reflect on that. We have time, we don't have to decide this tonight. So, I also had a minor question about the effective date, but we can talk about that offline. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION DEFER THE DECISION ONLY FOR THE PROPOSED ZONING ORDINANCE AMENDMENT

REGARDING RESTAURANTS TO A DATE CERTAIN OF DECEMBER 7, 2017, WITH THE RECORD REMAINING OPEN FOR WRITTEN AND ELECTRONIC COMMENTS.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of the motion? All those in favor of the motion to defer decision only on the proposed Zoning Ordinance Amendment on Restaurants, to a date certain of December 7th, with the record remaining open for written comments, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.

Commissioner Hart: Thank you.

The motion carried by a vote of 9-0-1. Commissioner Cortina abstained from the vote. Commissioner Flanagan was absent from the public hearing.

SL

County of Fairfax, Virginia
Planning Commission Meeting
December 7, 2017
Verbatim Excerpt

ZONING ORDINANCE AMENDMENT – ARTICLES 4, 5, 6, 7, 8, 9, 10, 11, 13, 17, 20, AND APPENDICES 1 AND 7; RESTAURANTS – To amend Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax, as follows: Amend Sect. 20-300 to include new definitions for restaurants, restaurants with drive-through (drive-throughs), and carryout restaurants (carryouts), and these definitions result in the following: (a) restaurants encompass uses currently deemed an eating establishment or a fast food restaurant without a drive-through; (b) drive-throughs include establishments that sell food and contain a drive-through; and (c) carryouts have up to eight seats [Option: 0-15 seats]. The amendment also clarifies definitions of quick-service food store and retail sales establishment, and replaces eating establishments with restaurants in the definitions of hotel, motel, marina, and theatre.

(1) Delete the definitions of Eating Establishments and Fast Food Restaurants from Sect. 20-300 and delete all references to those terms throughout the Zoning Ordinance, and, where applicable, replace those terms with restaurants or drive-throughs, respectively.

(2) Revise Commercial District Regulations to: (a) allow carryouts and restaurants as permitted uses in the C-2 through C-8 Districts (or, Option 2: require special exception approval for those uses in the C-2 District); (b) delete eating establishment and fast food restaurant use limitations; (c) require special exception approval of drive-throughs in the C-5 through C-8 Districts; and (d) delete Part 9 to eliminate the C-9 District and delete all references to the C-9 District throughout the Zoning Ordinance.

(3) Revise the Industrial District Regulations to allow restaurants as an accessory service use in the I-I District; allow restaurants by special exception in the I-2 through I-4 Districts; allow carryouts, restaurants, and drive-throughs by special exception in the I-5 and I-6 Districts; and replace eating establishment with restaurant in the use limitations of the I-I through I-4 Districts.

(4) Revise Planned Development District Regulations as follows: (a) PDH District: permit restaurants and carryouts as a secondary use, but allow a drive-through by special exception; (b) PDC District: permit restaurants as a principal use and allow carryouts and drive-throughs as a secondary use; (c) PRC District: permit restaurants, carryouts and drive-throughs in areas designated Neighborhood Convenience Center, Village Center, Town Center, and Convention/Conference Center; (d) PRM District: carryouts and restaurants would be a secondary use; (e) PTC District: allow restaurants, carryouts, and drive-throughs as a permitted use; replace fast food and eating establishment with restaurant, carryout, and drive-through.

(5) Revise Overlay District regulations to replace eating establishments and fast food restaurants with restaurants, carryouts, and drive-throughs in the Noise Compatibility Table. Also replace fast food with drive-throughs in the Highway Corridor Overlay District.

(6) Delete special permit requirement for restaurants in older structures in the C-3 and C-4 Districts in Articles 4 and 8.

(7) Revise Special Exception regulations to (a) allow the following uses by right or as an accessory service use: (i) restaurants and carryouts in all P and C-2 through C-8 Districts

(OPTION 2: Require a special exception for restaurants and carryouts in the C-2 District); (ii) restaurants in I-I District; (iii) drive-throughs in PDC, PRC, and PTC Districts; (b) require a special exception for the following: (i) restaurants in the I-2 through I-6 Districts; (ii) carryouts in the I-5 and I-6 Districts; and (iii) drive-throughs in the PDH, C-5 through C-8, and I-5 and I-6 Districts; and (c) to update additional standards to include restaurants, drive-throughs, and carryouts; delete references to PDC District; and, in Part 6, replace fast food with drive-throughs.

(8) Revise Article 10 to replace eating establishment with restaurant, and revise Part 2 of Art. 10 to identify where restaurants and carryouts will be permitted as accessory service uses.

(9) Revise parking regulations in Section 11-104 as follows: (a) OPTION 1: Leave the parking rate as is, except that the term eating establishment is replaced with restaurant and fast food is replaced with drive-through [additional OPTION: drive-throughs could be parked at the restaurant rate]; or (b) OPTION 2: Create new parking rates for restaurants and drive-throughs based on gross floor area [Range: between 9-12 parking spaces per 1000 square feet of gross floor area]. Under either option, amend the following:

- *(a) Add carryout to the quick-service food store parking rate;*
- *(b) Within shopping centers, allow restaurants and drive-throughs that are 5000 square feet or less to park at the shopping center rate;*
- *(c) Permit up to 20 outdoor seats that are not included in parking calculations for restaurant or drive-through [Option: 0 to 35 seats];*
- *(d) Exclude spaces designated for curb-side pickup from minimum required parking; and*
- *(e) Establish a parking rate for craft beverage production establishment which is the same as the eating establishment rate.*

(10) Revise Article 13, Transitional Screening & Barrier Matrix, by replacing eating establishments with restaurants and carryouts and replacing fast food with drive-through. (Countywide)

Decision Only During Commission Matters
(Public Hearing held on November 30, 2017)

Commissioner Hart: Thank you, Mr. Chairman. On November 30 the Commission held a public hearing on a second installment of the zMOD project, a proposed zoning ordinance amendment regarding restaurants. I want to thank the citizens who testified at the public hearing or submitted written comments to staff. I also want to thank County staff, specifically Carmen Bishop and Drew Hushour who are here tonight, and also our Zoning Administrator, Leslie Johnson, for their fine work on a difficult topic. The absence of opposition at the public hearing confirms the value of their analysis and the success of their outreach efforts to build the community consensus. I believe we have agreement among staff and industry representatives as to the bulk of the changes as set out in the staff report. This package is a positive step for clarification and simplification of

a frequently confusing topic of zoning applications. I plan to move Option 2 in the staff report which has staff's favorable recommendation as well as broad industry support, subject to one modification. The biggest remaining issue of uncertainty at the public hearing concerned parking requirements for outdoor seating. We were presented with a range of options and I think it is safe to say there is a corresponding range of opinions among the Commissioners all along the spectrum from zero to thirty-five seats to be exempt from parking calculations. My recommendation will be that we go with the staff recommendation of a maximum of twenty outdoor seats not requiring additional parking but for restaurants at 5,000 square feet or more that we allow a maximum of up to 32 seats. I believe after further review that a "one size fits all" approach does not sufficiently accommodate the variety of sizes and configurations of restaurants in Fairfax County. I believe this compromise also accommodates the objective of some Commissioners to allow more outdoor seating and activate outdoor spaces in existing shopping centers without requiring additional applications or parking spaces which may be difficult and expensive to provide. Other location requirements will continue to apply so the outdoor seating will not be able to block the sidewalk or traffic. I believe the amendment is ready to forward to the Board with our modifications the outdoor seating provisions. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS ADOPTION OF THE PROPOSED ZONING ORDINANCE AMENDMENT REGARDING RESTAURANTS, AS SET FORTH IN THE MEMORANDUM DATED NOVEMBER 15, 2017, WITH THE STIPULATION THAT OPTION 2 IS RECOMMENDED WERE DIFFERENT OPTIONS ARE PRESENTED, AND FURTHER THAT PARAGRAPH 9 OF SECTION 11-104, OUTDOOR SEATING, BE REVISED TO READ AS FOLLOWS "AS REQUIRED FOR RESTAURANT, RESTAURANT WITH DRIVE-THROUGH OR SHOPPING CENTER, EXCEPT THAT PARKING IS NOT REQUIRED FOR OUTDOOR SEATING THAT IS ACCESSORY TO ANY RESTAURANT OR RESTAURANT WITH DRIVE-THROUGH UP TO A MAXIMUM OF 20 OUTDOOR SEATS FOR AN ESTABLISHMENT WITH A GROSS FLOOR AREA OF LESS THEN 5,000 SQUARE FEET, AND UP TO A MAXIMUM OF 32 OUTDOOR SEATS FOR AN ESTABLISHMENT WITH A GROSS FLOOR AREA OF 5,000 SQUARE FEET OR MORE. PARKING IS REQUIRED FOR OUTDOOR SEATING THAT EXCEEDS THE NUMBER OF SEATS STATED ABOVE BASED ON THE SQUARE FOOTAGE OF THE EXCESS SEATING IN ACCORDANCE WITH THE APPLICABLE PARKING REQUIREMENTS FOR SUCH USES." I ALSO MOVE THAT THE PLANNING COMMISSION RECOMMEND ADOPTION OF THE GRANDFATHER PROVISIONS, AS SET FORTH IN THE STAFF REPORT, AND THAT THE AMENDMENT BECOME EFFECTIVE AT 12:01 A.M. THE DAY FOLLOWING ADOPTION.

Commissioner: Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of the motion? Yes, Mr. Ulfelder.

Commissioner Ulfelder: I think I'm one of the ones who had raised some concerns. To me - I know there are some restaurants with seasonal outdoor seating that are in older smaller shopping center areas where the parking is already limited and that was what kind of drove my concern about this because to me if there are seats, people come and people drive, whether they are seating outdoors or whether they are seating indoors. But I think in some of these restaurants the option is to either sit outdoors or indoors and people are choosing to do it, to sit outdoors during

the season where that's appropriate and it's really not having a significant impact on the parking and traffic in the parking areas. So with that I plan to support this amendment.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt Zoning Ordinance Amendment Articles 4, 5, 6, 7, 8, 9, 10, 11, 13 and 17 and 20, regarding - and Appendices 1 and 7, regarding restaurants, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

The motion carried by a vote of 10-0. Commissioner Flanagan was absent from the public hearing.

IK

To be Deferred to
May 1, 2018 at 4:00 p.m.

Board Agenda Item
January 23, 2018

4:00 p.m.

Public Hearing on Proposed Plan Amendment 2017-IV-MV1, Located at 8419 and 8423 Sky View Drive (Mount Vernon District)

ISSUE:
Plan Amendment (PA) 2017-IV-MV1 proposes to amend the Comprehensive Plan guidance for Tax Map Parcels # 101-3 ((10)) 6A and 7A, located at 8419 and 8423 Sky View Drive, in the Richmond Highway Corridor Area of the Mount Vernon Planning District, Mount Vernon Supervisor District. The amendment considers adding an option for residential density similar to the neighboring Skyview Park subdivision, which was developed at approximately 13 dwelling-units-per-acre (du/ac). The Plan amendment is being considered concurrently with rezoning case number RZ/FDP 2017-MV-024.

PLANNING COMMISSION RECOMMENDATION:
On Thursday, January 11, 2018, the Planning Commission voted to defer the public hearing to a date certain of Thursday, March 8, 2018. The Planning Commission recommendation will be forwarded under separate cover when available.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors adopt the Planning Commission recommendation.

TIMING:
Planning Commission public hearing – March 8, 2018
Board of Supervisors' public hearing – January 23, 2018

BACKGROUND:
On July 25, 2017, the Board of Supervisors authorized PA 2017-IV-MV1, for Tax Map Parcels # 101-3 ((10)) 6A and 7A. The approximately 0.90-acre subject area is currently zoned R-2 and consists of two single-family residential parcels. The parcels are currently planned for residential use at 2-3 du/ac, with an option for residential use up to 8 du/ac, if compatible with and integrated with the neighboring Skyview Park

To be Deferred to
May 1, 2018 at 4:00 p.m.

Board Agenda Item
January 23, 2018

community. The Board authorization directed staff to evaluate the impacts of Plan language for the subject properties that would match the density of the Skyview Park development (which is planned for up to 16 du/ac, but was developed at approximately 13 du/ac).

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment I: Planning Commission Verbatim Excerpt (to be provided after PC meeting)

The Staff Report for 2015-IV-MV4 has been previously furnished and is available online at: https://www.fairfaxcounty.gov/dpz/comprehensiveplan/amendments/2017-iv-mv1.pdf

STAFF:
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Marianne R. Gardner, Director, Planning Division (PD), DPZ
Meghan Van Dam, Branch Chief, Planning Division (PD), DPZ
Michael Lynskey, Planner II, Policy & Plan Development Branch, PD, DPZ

Board Agenda Item
January 23, 2018

4:00 p.m.

Public Hearing to Consider Parking Restrictions on Old Lee Highway (Providence District)

ISSUE:
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 Old Lee Highway in the Providence District.

RECOMMENDATION:
The County Executive recommends that the Board adopt an amendment (Attachment I) to Appendix R, of the Fairfax County Code, to prohibit commercial vehicles, recreational vehicles and trailers as defined, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50), from parking on the west side of Old Lee Highway, from Hilltop Road to the southern driveway of the Old Lee Highway Professional Condominium complex, from 6:00 p.m. to 9:00 a.m., seven days a week.

TIMING:
The public hearing was authorized on December 5, 2017, for January 23, 2018, 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 diminishes the capacity of on-street parking for other uses.

A representative of various property owners of land along Old Lee Highway contacted the Providence District office requesting a parking restriction along Old Lee Highway, from 6:00 p.m. to 9:00 a.m., seven days a week.

This area has been reviewed multiple times over a period of 30 days. Due to the road configuration on Old Lee Highway, the restricted parking designation should be applied as shown in attachment II. Staff has verified that long term parking is occurring at this location, thereby diminishing the capacity of on-street parking for other uses. Staff is recommending a parking restriction for all commercial vehicles, recreational vehicles, and trailers along the west side of Old Lee Highway, from Hilltop Road to the southern driveway of the Old Lee Highway Professional Condominium complex, from 6:00 p.m. to 9:00 a.m., seven days a week.

FISCAL IMPACT:
The cost of sign installation is estimated to be $600. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:
Attachment I: Proposed amendment to Fairfax County Code, Appendix R
Attachment II: Area Map of Proposed Parking Restriction

STAFF:
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:
Marc E. Gori, Assistant County Attorney

Attachment I

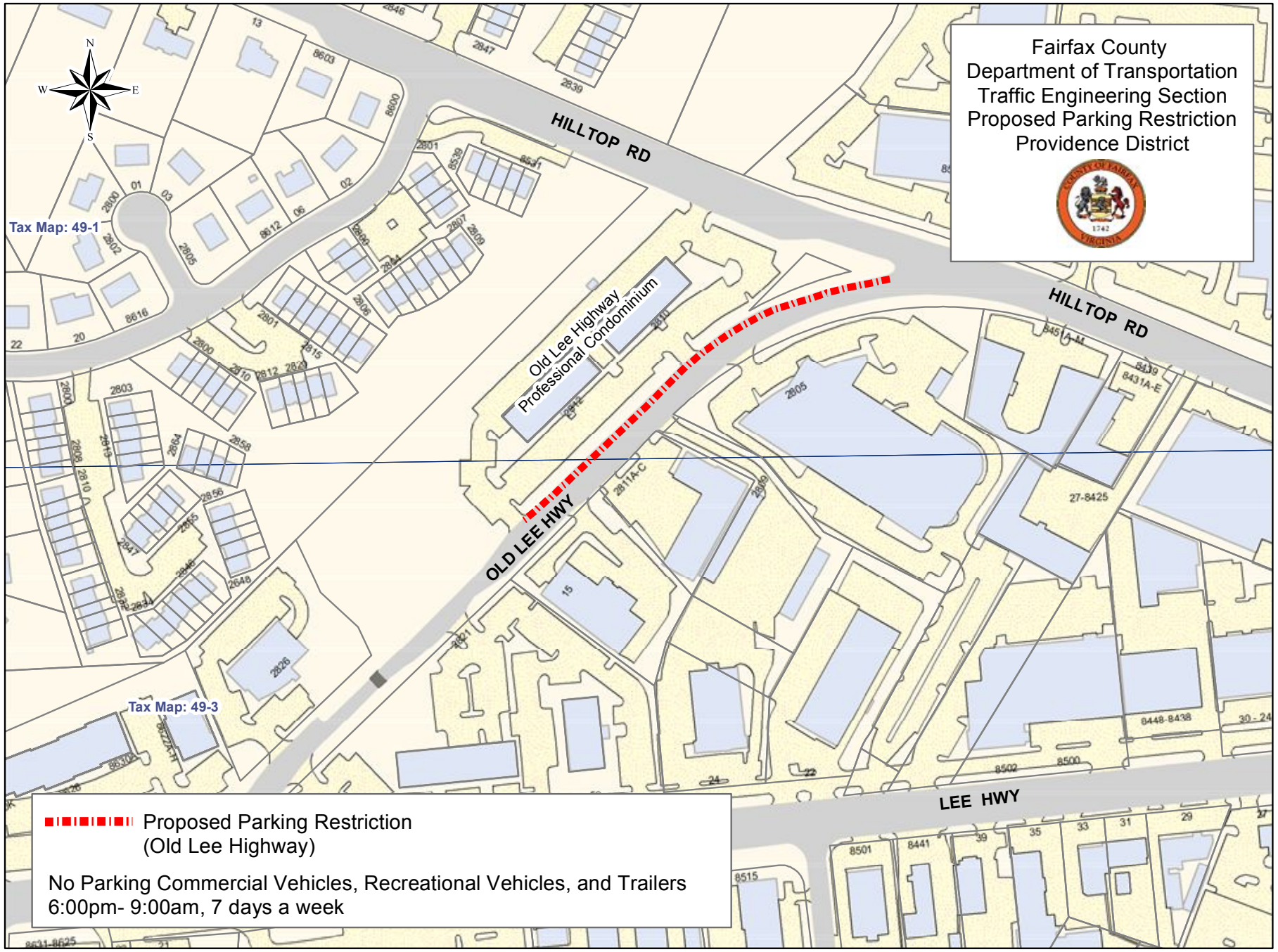
PROPOSED CODE AMENDMENT

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:

Old Lee Highway (Route 3741) from Hilltop Road to the southern driveway of the Old Lee Highway Professional Condominium complex.
Commercial vehicles, recreational vehicles, and trailers, as defined, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50), are restricted from parking on the west side of Old Lee Highway, from Hilltop Road to *the southern driveway of the Old Lee Highway Professional Condominium complex*, from 6:00 p.m. to 9:00 a.m., seven days a week.

Attachment II



Board Agenda Item
January 23, 2018

4:00 p.m.

Public Hearing on Proposed Plan Amendment 2015-IV-MV5, Located at the Northeast Quadrant of the Intersection of Huntington Avenue and Telegraph Road (Mount Vernon District)

ISSUE:
Plan Amendment (PA) 2015-IV-MV5 proposes to amend the Comprehensive Plan guidance for Tax Map Parcels 83-1 ((1)) 33, 45 and 45a, an approximately 4.2-acre area located along Huntington Avenue, near the I-495 and Telegraph Road interchange, in the western portion of Land Unit G of the Huntington Transit Station Area (TSA), in the Mount Vernon Supervisor District. The amendment considers adding an option for mixed-use redevelopment on the parcels, to include residential and/or hotel and office uses up to an intensity of 3.0 floor area ratio (FAR), and also considers consolidation of the parcels and potential expansion of the adjacent Transit Development Area (TDA) to include the subject properties.

PLANNING COMMISSION RECOMMENDATION:
On January 11, 2018, the Planning Commission voted 11-0 to recommend to the Board of Supervisors adoption of the staff recommendations presented on pages 16-20 of the staff report for Plan Amendment 2015-IV-MV5, dated November 6, 2017, as modified by the handout dated January 11, 2018 which is included in Attachment 1.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors adopt the Planning Commission recommendation.

TIMING:
Planning Commission public hearing – January 11, 2018
Board of Supervisors' public hearing – January 23, 2018

BACKGROUND:
On November 17, 2015, the Board of Supervisors authorized PA 2015-IV-MV5 for Tax Map Parcels 83-1 ((1)) 33, 45 and 45A. The subject area is currently planned for office use up to an intensity of 0.30 FAR. The Board authorization directed staff to evaluate a Comprehensive Plan Amendment to consider mixed-use redevelopment on the parcels, to include residential and/or hotel and office uses up to an intensity of 3.0 FAR, and to

also consider consolidation of the parcels and potential expansion of the adjacent TDA to include the properties. The staff report also considers a recent revision of the Federal Emergency Management Agency (FEMA) flood zone map for the area, which has resulted in a much larger portion of the site being subject to 100-year floodplain, Resource Protection Area, and Environmental Quality Corridor designations than previously acknowledged.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment I: Planning Commission Verbatim Excerpt (including a January 11, 2018 handout)

The Staff Report for 2015-IV-MV4 has been previously furnished and is available online at: https://www.fairfaxcounty.gov/planning-zoning/sites/planning-zoning/files/assets/documents/compplanamend/huntingtontsalug/2015-iv-mv5.pdf

STAFF:
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Marianne R. Gardner, Director, Planning Division (PD), DPZ
Meghan Van Dam, Branch Chief, Planning Division (PD), DPZ
Michael Lynskey, Planner II, Policy & Plan Development Branch, PD, DPZ

County of Fairfax, Virginia
Planning Commission Meeting
January 11, 2018
Verbatim Excerpt

PA 2015-IV-MV5– COMPREHENSIVE PLAN AMENDMENT (HUNTINGTON TRANSIT STATION AREA, LAND UNIT G pt.) – To consider proposed revisions to the Comprehensive Plan for Fairfax County, VA, in accordance with the Code of Virginia, Title 15.2, Chapter 22. This Amendment concerns approx. 4.21 ac. generally located on the north side of Huntington Avenue at Telegraph Road [NE quadrant of intersection]; Tax Map Parcels 83-1 ((1)) 33 (2560 Huntington Ave), 83-1 ((1)) 45 (2600 Huntington Ave) and 83-1 ((1)) 45a (No address assigned), in the Mount Vernon Supervisor District. The area is planned for office use up to 0.30 FAR. The amendment will consider residential and/or office and hotel mixed-use up to 3.0 FAR and possible expansion of Transit Development Area. Recommendations relating to the transportation network may also be modified. (Mount Vernon District)

After close of the Public Hearing

Commissioner Flanagan: Thank you, Mr. Chairman. I intend to recommend approval of the recommendations included in the published staff report for the amendment with some modifications to the recommended text that was – has been supported, as you have heard, you know, by the Southeast Fairfax Development Corporation and the…the land use committee of the Mount Vernon Council and the adjacent – the surrounding Huntington Community. The proposed modifications have been distributed to you on a separate handout dated January 11, 2017, so you should have all that. The staff recommendation in this case supports expansion of the Huntington Transit Development Area to include Parcel 33 of the subject area and includes an option for mixed-use redevelopment on Parcel 33, but would have that option conditioned on full consolidation with lots – with Parcels 45 and 45A. The owner of Parcel 33 has voiced concerns that such a condition may threaten the ability of that parcel to be redeveloped if consolidation is not achievable. The modified language tonight would support redevelopment up to 3.0 FAR, or approximately 275,000 gross square feet, on Parcel 33 with full consolidation, but also provides an alternative for Parcel 33 to redevelop without full consolidation. This alternative would be limited to a lesser maximum intensity of 2.6 FAR on that parcel or approximately 240,000 gross square feet. This tiered intensity approach would allow the property owner to potentially move forward with redevelopment, even if consolidation cannot be achieved, but still provides an economic incentive for both property owners to fully consolidate by offering a higher potential development intensity in that case. The other modification of the staff recommendation replaces proposed stormwater management recommendations for the site with text that more closely replicates recommendations included in the Plan text for Land Unit I and other sites within Huntington – the Huntington TSA and that includes the upcoming application for Land Unit I. I concur with the modified staff recommendations, as does the property owner, Mount Vernon Planning and Zoning Committee and the Mount Vernon District Council. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS ADOPTION OF THE STAFF RECOMMENDATIONS PRESENTED ON PAGES 16 TO 26 OF THE STAFF REPORT FOR PLAN AMENDMENT 2015-IV-MV5, DATED NOVEMBER 6, 2017, AS MODIFIED ON MY HANDOUT DATED JANUARY 11, 2017, WHICH SHALL BE INCLUDED IN THE RECORD OF THE CASE.

Commissioners Migliaccio and Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant and Mr. Migliaccio. Discussion of the motion? Ms. Hurley.

Commissioner Hurley: We're back to the problem of the word "should." It occurs at least four times. Do you mean "should" – that you – it is recommended that they do that? Or do you mean "must"? If you mean "must", we should use the word "must" and not "should."

Commissioner Flanagan: I think in the Plan, we can only recommend.

Commissioner Hurley: Then say, "is recommended that" this happen.

Commissioner Flanagan: Yeah.

Commissioner Hurley: I'm just trying to avoid the word "should."

Commissioner Flanagan: Oh, in the motion itself?

Commissioner Hurley: Yeah, in your modified words, just avoid the word "should" by rewording it to say, "it is recommended that" this applicant – instead of, "it should happen." Because the word "should" gets us into trouble. You're saying the same thing. We're just avoiding…

Chairman Murphy: Well, let me…Ms. Van Dam, is that what we're doing now with Plan Amendments? I know it's Zoning Ordinances…

Meghan Van Dam, Planning Division, Department of Planning and Zoning (DPZ): We…we typically try to avoid the word "shall." Should is associated with a recommendation so it should be fine.

Chairman Murphy: It…should, should be fine.

Ms. Van Dam: Right, but if you – if the Planning Commission…

Commissioner Hurley: You just change it to, "is recommended that" we do this instead of saying…

Ms. Van Dam: Right. I don't know that that would…would hurt anything if the Planning Commission chose this.

Commissioner Flanagan: They prefer "recommended," I think.

Chairman Murphy: Mr. Migliaccio.

Commissioner Migliaccio: Thank you, Mr. Chairman. I seconded the motion. I intend to support it, but I just would like to have staff comment on Mr. Flanagan's changes, especially as it relates to the ongoing EMBARK Richmond Highway process. I want to make certain that this doesn't impact it at all or negatively impact it. I don't think it does, but I just want to make certain that that's on the record.

Michael Lynskey, Zoning Evaluation Division, DPZ: In which context are you talking about? Effects to EMBARK?

Commissioner Migliaccio: Any part of it with the changes here. I just want to make certain that staff has had no heartburn over what's being changed.

Mr. Lynskey: Well…yeah, there's the…the, sort of, tiered FAR. Then, that…that stormwater…stormwater change had a little bit to do with EMBARK because the original language it had was from, sort of, the EMBARK – the current EMBARK language they're using. And…but, as far as the rest of Huntington, the desire was to change it to conform with the rest of the Huntington TSA, which the language is already in effect for – which, in effect, is pretty similar to what…to what this…the original language was.

Commissioner Migliaccio: No heartburn.

Mr. Lynskey: So we're fine with that. We have no heartburn over that. And then the tiered intensity level – that's something – our recommendation still holds that we, technically, still recommend full consolidation. From a Plan perspective, that makes sense, but we also realize that there is market forces and ownership things going on that we really can't anticipate, but we can't fully, you know, anticipate all the – those angles. From a Plan perspective, it makes sense to consolidate because without that, that's not a way of ensuring that the environmental objectives get met on the other parcel. Because, like it was said before, there's really no – it's no mechanism to implement the plan, other than through a rezoning process, which is not going to happen on that parcel.

Commissioner Migliaccio: I was trying to make it simple – heartburn, no heartburn.

Mr. Lynskey: All right.

Commissioner Migliaccio: I think no heartburn is the way you're going. Okay.

Ms. Van Dam: Right. And if…if I may, just one more point towards the EMBARK. The additional density could actually help with the ridership of the BRT so, from that context, we would support it.

Commissioner Migliaccio: Okay. Thank you.

Chairman Murphy: Mr. Niedzielski-Eichner and then Mr. Hart.

Commissioner Niedzielski-Eichner: Thank you. Just a clarification – the proposed revisions to the Land Unit G staff recommendation…it's dated January 11th, 2017. Is that just…is that correct? And just by virtuous coincidence, this is January 11th, 2018?

Mr. Lynskey: Yeah, that is an error. It should read 2018.

Commissioner Niedzielski-Eichner: Okay, so…I thought so. Thank you.

Chairman Murphy: Good catch.

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Yes, Mr. Hart.

Commissioner Hart: Thank you. Before we get too carried away with the changes to the wording at the last minute, I want to be careful that we're not conflating different problems. The "should/shall" thing is different from "shall/must." And "should" is correct here. The "shall/must" problem is a Zoning Ordinance problem for zMOD where we have to do something and the County Attorney's office wanted us to use the word "must" instead of "shall" to clarify what's an imperative. The Comprehensive Plan, which this – this piece that we're looking at tonight – is different. It's supposed to have flexibility for the Board of Supervisors. The last thing we want to do in the Comprehensive Plan is use words like "shall" and "must" because then when the Board votes to bust the Plan, as is their prerogative, the citizens are outraged because they feel that they've – the expectations have been built up because we approved a Plan that said, "You shall do this. You must do that." And then that doesn't have any force of law. It doesn't bind anyone. Should is an appropriate word. They should…they should do it. But the Board is going to have flexibility. This is a general guide. It…it's not in something that's going to be enforced. I think "should" is correct, as it's used here and – please, let's not monkey with this at almost midnight the night of the vote. Thank you.

Commissioner Flanagan: I agree. Thank you.

Chairman Murphy: Without objection. Further discussion? Okay, motion carries. Thank you very much.

Commissioner Hart: We didn't have our vote yet.

Chairman Murphy: Oh, okay. All those – okay, I'm sorry. All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. I just said that. Thank you very much. I appreciate that.

The motion carried by a vote of 11-0.

JLC

PA 2015-IV-MV5 – Huntington TSA, Land Unit G (pt.)
Proposed Revisions to Land Unit G Staff Recommendation
January 11, 2017

The following modifications will be made to the proposed Plan text included on pages 16-18 of the published staff report for PA 2015-IV-MV5, dated November 6, 2017. Additional text to be deleted is shown with ~~double strikethrough~~, and additional text to be added is shown with double underline:

MODIFY: Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, as amended through 3-14-2017, MV1 - Huntington Community Planning Sector, Transit Development Area Conditions and Recommendations, page 105-108:

" • Up to ~~320,000~~ 275,000 gross square feet of additional development on Parcel 83-1 ((1)) 33 of Land Unit G."

MODIFY: Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, as amended through 3-14-2017, MV1 Huntington Community Planning Sector, page 122 (to separate Land Unit G text):

"An option for mixed-use development of residential~~,~~ and/or office, hotel, and~~/or~~ supporting restaurant/retail uses on Parcel 83-1 ((1)) 33 may be appropriate up to a maximum of 3.0 FAR (approximately ~~320,000~~ 275,000 gross square feet (GSF) of development), and a maximum height of 165 feet, subject to full consolidation of Parcels 83-1 ((1)) 33, 45 and 45a. If full consolidation cannot be achieved, said redevelopment option for Parcel 83-1 ((1)) 33 should be limited to a maximum of 2.6 FAR (approximately 240,000 GSF). The primary access for such development should be consolidated to Robinson Way, along the east boundary of Parcel 33. Redevelopment is expected to consist of high-quality architecture and landscaping that represents an attractive, if not iconic, gateway to the Huntington Transit Station Area. ~~Parcels 45 and 45a, as well as the portions of Parcel 33~~

All areas that are subject to 100-year floodplain, RPA, and EQC ~~shall~~ should be ecologically restored and revegetated, to the extent possible, and utilized as a public open-space/recreational area that connects to similar neighboring areas along Cameron Run. Streetscape improvements along Huntington Avenue and Robinson Way should be coordinated with neighboring development, including undergrounding of remaining overhead utility lines along Huntington Avenue. Consideration should be given to including green roofs and/or solar panels on rooftops.

Any redevelopment per this Plan option should also ~~achieve the following stormwater management/water quality goals:~~ include stormwater quantity and quality control measures that are substantially more extensive than minimum requirements, with the goal of reducing the total runoff volume. The emphasis should be on low-impact development (LID) techniques and best-management practices (BMPs) that evapotranspire water, filter water through vegetation and/or soil, return water into the ground, or re-use water, and should include features

such as rooftop landscaping. Stormwater management measures that are sufficient to attain the stormwater-related credit(s) of the most current version of the Leadership in Energy and Environmental Design for New Construction (LEED®-NC) or Leadership in Energy and Environmental Design for Core and Shell (LEED®-CS) rating systems (or third-party equivalent of these credits) should be provided. If this goal is demonstrated not to be achievable, all measures should be implemented to the extent possible in support of this goal.

~~1. A reduction in runoff volume leaving the site equivalent to one inch of rainfall. If this level of runoff volume reduction cannot be attained, a combination of runoff volume reduction and peak flow and velocity reduction should be provided to the extent necessary to protect downstream water resources.~~

~~2. The phosphorus load from existing impervious areas should be reduced by at least 30 percent from predevelopment loads.~~

~~3. As proposed intensities increase from 1.0 FAR, and/or as proposals incorporate additional increases in impervious cover, commensurate increases in performance targets for these parameters should be pursued.~~

~~4. As an alternative to items 1, 2 and 3, stormwater management measures may be provided sufficient to attain the Rainwater Management credit of the most current version of Leadership in Energy and Environmental Design – New Construction (LEED-NC) or Core & Shell (LEED-CS) rating systems (or equivalent of these credits, based on an alternate rating system, that includes runoff reduction in addition to stormwater treatment).~~

5. ~~As an alternative to the guidelines above, stormwater management measures and/or downstream improvements may be pursued to optimize site-specific stormwater management and/or stream protection/restoration efforts, consistent with the adopted watershed management plan(s) that is/are applicable to the site. Such efforts should be designed to protect downstream receiving waters by reducing stormwater runoff volumes and peak flows from existing and proposed impervious surfaces to the maximum extent practicable, consistent with watershed plan goals. Consideration may be given to other stormwater runoff-related factors such as downstream flooding, drainage complaints, character and condition of downstream channels, and identified stream impairments.~~"

Board Agenda Item
January 23, 2018

4:30 p.m.

Public Hearing on Proposed Plan Amendment 2015-IV-MV4, Located South of Huntington Avenue, North of North Kings Highway and West of the Huntington Metrorail Station (Mount Vernon District)

ISSUE:
Plan Amendment (PA) 2015-IV-MV4 proposes to amend the Comprehensive Plan guidance for Tax Map Parcels 83-1 ((23))1-364 and 83-1((1))32, an approximately 19.5-acre area located south of Huntington Avenue, north of North Kings Highway and west of the Huntington Metrorail Station in Land Unit I of the Huntington Transit Station Area (TSA) in the Mount Vernon Supervisor District. The amendment considers increasing the maximum intensity recommended under an option for transit-oriented mixed-use development from an intensity up to 3.0 floor area ratio (FAR) to 4.0 FAR. Conditions related to parcel consolidation and building height adjacent to North Kings Highway are also proposed to be modified.

PLANNING COMMISSION RECOMMENDATION:
On January 11, 2018, the Planning Commission voted 11-0 to recommend to the Board of Supervisors adoption of the staff recommendation for Plan Amendment 2015-IV-MV4 with an editorial modification to the condition regarding stormwater guidance as shown on the handout dated January 11, 2018. The amendment will revise the current Plan option for transit-oriented mixed-use development on Land Unit I of the Huntington Transit Station Area from an intensity up to 3.0 floor area ratio (FAR) to 3.5 FAR and the conditions related to consolidation and building height, as shown on pages 13-16 of the staff report dated October 23, 2017.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors adopt the Planning Commission recommendation.

TIMING:
Planning Commission public hearing – January 11, 2018
Board of Supervisors' public hearing – January 23, 2018

Board Agenda Item
January 23, 2018

BACKGROUND:
On October 20, 2015, the Fairfax County Board of Supervisors (Board) authorized PA 2015-IV-MV4 for Tax Map Parcels 83-1((23))1-364 and 83-1((1))32 located in Land Unit I of the Huntington Transit Station Area (TSA). The Comprehensive Plan for the subject area recommends residential use at a density of 16-20 dwelling units per acre at the baseline with an option for mixed-use transit-oriented development up to a 3.0 FAR. The Board authorized staff to consider increasing the intensity up to 4.0 FAR, subject to an analysis of the impacts to the surrounding neighborhoods, transportation networks, parks, public facilities including schools and other considerations. Due to site constraints, the property owner proposes an intensity up to a 3.5 FAR may better achieve planning objectives related to transitions to the adjacent low density neighborhoods, while remaining consistent with the Guidelines for Transit-Oriented Development, which encourages land use intensity around transit stations that can maximize the efficient use of transit.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment I: Planning Commission Verbatim Excerpt
Attachment II: Handout dated January 11, 2018

The Staff Report for 2015-IV-MV4 has been previously furnished and is available online at: https://www.fairfaxcounty.gov/planning-zoning/sites/planning-zoning/files/assets/documents/compplanamend/huntingtontsalui/2015-iv-mv4.pdf

STAFF:
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Marianne R. Gardner, Director, Planning Division (PD), DPZ
Meghan Van Dam, Branch Chief, Planning Division (PD), DPZ
Aaron Klibaner, Planner II, Policy & Plan Development Branch, PD, DPZ

County of Fairfax, Virginia
Planning Commission Meeting
January 11, 2018
Verbatim Excerpt

PA 2015-IV-MV4– COMPREHENSIVE PLAN AMENDMENT (HUNTINGTON TRANSIT STATION AREA, LAND UNIT I) – To consider proposed revisions to the Comprehensive Plan for Fairfax County, VA, in accordance with the Code of Virginia, Title 15.2, Chapter 22. This Amendment concerns approx. 19.5 ac. generally located south of Huntington Avenue, north of North Kings Highway and west of the Huntington Metro Station, Tax Map Parcels 83-1 ((23)) 1-364 and 83-1 ((1)) 32. The area is planned for residential use at a density of 16-20 dwelling units per acre with an option for mixed-use development at an intensity up to 3.0 floor area ratio. The amendment will consider amending the existing option for mixed-use development to increase the planned intensity to 4.0 FAR. Recommendations relating to the transportation network may also be modified. (Mount Vernon District)

After close of the Public Hearing

Commissioner Flanagan: We have to…I'd like to also thank the staff because Marianne Gardner and Meghan Van Dam, and Mr. Sorenson, actually, for a while – he's not here, I don't know where he is, but anyway – and Aaron Klibaner. We have all been – you know, we were stuck with a problem here. We had a development that couldn't go anywhere because we were stuck at a 3.0 countywide, so we had to make that change before we could really loosen up what would happen there. And it was staff that basically said – gave in and said, "Well, why don't we try a higher FAR?" And so we eventually did have to go countywide with that, you know, so we went – eventually, we got 5.0 FAR authorized at certain centers – the community business centers and transit centers. And we made that change in the Ordinance. This made it all really come together, finally. And I really appreciate everybody that worked hard, you know, to bring all that about. With all that, Mr. Chairman, I have a motion. The subject area of the Plan Amendment 2015-IV-MV4 comprises approximately 19.5 acres on Tax Map Parcels 83-l ((23)) 1 through 364 and 83-1 ((1)) 32, which is the one lot – small lot – that we may still consolidate. And it presents a unique opportunity to achieve a high-intensity, mixed-use development adjacent to the Huntington Metro Station. The proposed amendment, when implemented, will create a high-quality development that includes a mix of housing types and onsite retail, office, hotel, and recreational amenities. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE ADOPTION OF THE STAFF RECOMMENDATIONS FOR PLAN AMENDMENT 20-IV-MV4 [sic] WITH A SLIGHT EDITORIAL MODIFICATION TO THE CONDITION ABOUT STORMWATER GUIDANCE TO REMOVE AN OUTDATED NAME OF THE LEED RAINWATER CREDIT. THE AMENDMENT WOULD REVISE THE CURRENT PLAN OPTION FOR TRANSIT-ORIENTED MIXED-USE DEVELOPMENT ON LAND UNIT I OF THE HUNTINGTON TSA FROM AN INTENSITY UP TO 3.0 FAR TO 3.5 FAR AND THE CONDITIONS RELATED TO THE CONSOLIDATION AND BUILDING HEIGHT, AS SHOWN ON PAGES 13-16 OF THE STAFF REPORT DATED OCTOBER 23, 2017. THE REVISION TO THE STORMWATER GUIDANCE IS SHOWN ON MY HANDOUT DATED JANUARY 11, 2018. AND I SO MOVE.

Commissioner Migliaccio: Second.

Commissioner Sargeant: Mr. Chairman, I'm happy to second this as well.

Chairman Murphy: Seconded by Mr. Sargeant and 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 PA 2015-IV-MV4, Comprehensive Plan Amendment, Huntington Transit Station Area, Land Unit I, say aye.

Commissioners: Aye.

Chairman Murphy: Say aye. Opposed? Motion carries. Thank you very much.

The motion carried by a vote of 11-0.

JLC

Attachment 2
Handout

PLANNING COMMISSION RECOMMENDED PLAN TEXT
PLAN AMENDMENT 2015-IV-MV4 – HUNTINGTON TSA, LAND UNIT I
JANUARY 11, 2018

The Comprehensive Plan will be modified as shown below. Text proposed to be added is shown as underlined, and text proposed to be deleted is shown as ~~strikethrough~~.

MODIFY: Fairfax County Comprehensive Plan, 2017 Edition, Area IV, Mount Vernon Planning District, as amended through 3-14-2017, MV1 Huntington Community Planning Sector, Recommendations, Land Use, Land Unit I, page 112:

. . .

"Stormwater quantity and quality control measures that are substantially more extensive than minimum requirements should be provided, with the goal of reducing the total runoff volume. The emphasis should be on low impact development (LID) techniques and best management practices (BMPs) that evapotranspire water, filter water through vegetation and/or soil, and return water in to the ground or reuse it and should include such features as rooftop landscaping. Stormwater management measures that are sufficient to attain the stormwater-related ~~design quantity control~~ credit(s) ~~and stormwater design quality control credit~~ of the most current version of the Leadership in Energy and Environmental Design for New Construction (LEED®-NC) or Leadership in Energy and Environmental Design for Core and Shell (LEED®-CS) rating system (or third party equivalent of these credits) should be provided. If this goal is demonstrated not to be achievable, all measures should be implemented to the extent possible in support of this goal."

Board Agenda Item
January 23, 2018

4:30 p.m.

Public Hearing to Consider Amending Fairfax County Code Chapter 82 (Motor Vehicles and Traffic), Article 5 (Stopping, Standing, and Parking)

ISSUE:
Public hearing to consider amending Chapter 82, Article 5 of *The Code of the County of Fairfax, Virginia* (Fairfax County Code). Changes being considered include code revisions to allow certain residential parking restrictions adjacent to governmental property, to update the pay for parking sections of the code to reflect current and future technologies, to prohibit habitation in vehicles, and to prohibit maintenance of vehicles in the public right of way, except for emergency repairs, such as fixing a flat tire or changing a battery.

RECOMMENDATION:
The County Executive recommends that the Board adopt the proposed amendments to Fairfax County Code Chapter 82 (Motor Vehicles and Traffic), Article 5 (Stopping, Standing, and Parking). The County Executive recommends that the Board adopt the proposed amendments to Chapter 82, Article 5 (Attachments I through V) of the Fairfax County Code. Proposed amendments include code revisions to allow certain residential parking restrictions adjacent to governmental property, to update the pay for parking sections of the code to reflect current and future technologies, to prohibit habitation in vehicles, and to prohibit maintenance of vehicles in the public right of way, except for emergency repairs, such as fixing a flat tire or changing a battery.

TIMING:
On December 5, 2017, the Board authorized advertisement of a public hearing on January 23, 2018, at 4:30 p.m.

BACKGROUND:
On September 10, 2013, the Board directed County staff to assemble a working group with representatives from various County agencies to review the County Parking Ordinance, to consider changes in technology, parking management and community needs.

In February 2014, a list of parking issues was distributed to each Magisterial District office, followed by discussions with Board aides from each District regarding proposed ordinance revisions. Fairfax County Department of Transportation staff worked with the Office of the County Attorney and Fairfax County Police to develop the proposed

amendments to Chapter 82 (Motor Vehicles and Traffic), Article 5 (Stopping, Standing, and Parking) of The Fairfax County Code. In October 2016, the proposed ordinance revisions were presented to the Board Transportation Committee for comment and feedback. An updated version of the proposed ordinance revisions was presented to the Board Transportation Committee in February 2017.

The proposed amendments include the addition of a general definitions section for Section 82-5, along with four sets of changes to the parking code. The definitions section is found in Attachment I. Attachment II is a code revision to allow certain residential parking restrictions adjacent to governmental property. Attachment III includes modifications to the pay for parking sections of the code to reflect current and future technologies. Attachment IV is a new code section prohibiting habitation in vehicles parked in public rights-of-way. Attachment V is a new code section regarding maintenance of vehicles parked in public rights-of-way, except for emergency repairs, such as fixing a flat tire or changing a battery.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment I: Proposed Amendment to the Fairfax County Code, § 82-5-0; Definitions
Attachment II: Proposed Amendment to the Fairfax County Code, § 82-5-7; Parking commercial vehicles in residential districts.
Attachment III: Proposed Amendment to the Fairfax County Code, § 82-5-11 through 14, 16, and 17; Pay for parking
Attachment IV: Proposed Amendment to the Fairfax County Code, § 82-5-42; Habitation in vehicles parked in public right-of-way
Attachment V: Proposed Amendment to the Fairfax County Code, § 82-5-43; Maintenance of vehicles parked in public right-of-way

STAFF:
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT

ASSIGNED COUNSEL:
F. Hayden Codding, Assistant County Attorney

Attachment I

Proposed Amendment

Amend *The Code of the County of Fairfax*, *Virginia*, by adding the following Section, in accordance with Article 5 of Chapter 82:

Section 82-5-0. - Definitions

For the purposes of this Article, the following words and phrases shall have the meanings ascribed to them in this Section, except in those instances where the context clearly indicates a different meaning:

(a) *Acceptable form of payment* means the use of United States legal tender in the form of coins or paper currency, as well as the use of a credit card and other forms of payment or the equivalent as determined by the Board of Supervisors or approved designee.

(b) *Public right-of-way* denotes land or property dedicated and used for public street purposes such as pedestrian, roadway or highway use in Fairfax County.

Proposed Amendment

Amend *The Code of the County of Fairfax*, *Virginia*, by modifying the following Section, in accordance with Article 5 of Chapter 82:

Section 82-5-7. - Parking commercial vehicles in residential districts.

…

"Areas zoned for ~~of~~ residential use" includes all areas of the County which have been zoned to a zoning classification which permits one or more residential dwelling units. The zoning boundaries shall be used in the enforcement of the requirements of this Subsection. However, in any case in which a highway serves as the boundary between an area zoned for residential use and an area zoned for another use, then the centerline of that highway shall be considered as the boundary between the area zoned for residential use and the area zoned for another use. In such cases, the prohibitions of this Subsection shall apply only to the side of the highway that abuts the area zoned for residential use except as otherwise provided in Section 82-5-37(~~5~~4). In any case in which a service road or frontage road is adjacent to an area zoned for residential use, then the prohibitions of this Subsection shall apply to the side of the highway that abuts the area zoned for residential use except as otherwise provided in Section 82-5-37(~~5~~4).

In any case in which a roadway is adjacent to an area zoned for residential use on one side and not zoned on the other as a result of government owned or maintained land, then the prohibitions of this Subsection shall apply to both sides of the roadway.

Proposed Amendment

Amend *The Code of the County of Fairfax*, *Virginia*, by modifying the following Sections, in accordance with Article 5 of Chapter 82:

Section 82-5-11. Pay for p~~P~~arking zones~~meters~~; authority of County Executive.

The County Executive is hereby authorized to designate pay for parking zones, and to locate, install, maintain and operate parking meters in the public right-of-way and on County-owned or -leased property.

Section 82-5-12. ~~Parking meters; installation and operation generally.~~ Legal parking in pay for parking zones

Parking meters and other methods to allow or indicate legal parking in pay for parking zones are defined in this section. Other methods not specifically defined in this section may be acceptable as long as the method is approved by the County Executive and meets the requirements of specifying the legal parking length of time and uses an acceptable form of payment.

Parking meters ~~shall~~ may be placed adjacent to ~~the~~ individual parking spaces hereinafter described. Each parking meter, if installed, shall be placed or set in such a manner as to show or display by signal that the parking space adjacent to such meter is or is not legally in use. Each parking meter shall be set to display upon deposit of ~~proper coin or coins of the United States therein~~ acceptable form of payment, a signal indicating the remaining, allowable time for parking at that meter in that particular pay for parking zone, ~~a signal indicating legal parking for the period of time conforming to the limit of parking time established for meter zone,~~ and shall continue to operate ~~from the time of deposit of such coin or coins therein~~ until the expiration of the paid period for parking. ~~time fixed as a parking limit for the parking meter zone.~~

In-vehicle parking meters may also be made available to the public for lease or purchase for the regulation of prepaid parking. Each such device shall be able to differentiate between various parking periods and rates and shall be capable of being attached within the user's vehicle in such manner as to permit the unobstructed view of its display from outside said vehicle. Each such device shall be set to display a signal showing the amount of legal parking time remaining at the rate and for the period of time as is designated on the parking meter for the parking space being used. Each such device shall also be so arranged that upon expiration of the lawful time limit it will indicate by a proper visible signal or display that the lawful parking period has expired. In such cases, the right of such vehicle to occupy such space shall cease and the operator, owner, possessor or manager of the vehicle shall be subject to the penalties provided in Section 82-1-32. Accommodations may also be authorized for persons with disabilities as may be necessary concerning such in-vehicle parking

meters, including other means of prepaid parking for disabled persons who are not physically able to operate in-vehicle parking meters.

Multi-space parking meters may also be installed to provide metering for more than one parking space at a time on the street, in surface lots or in garages within pay for parking zones. Immediately after occupancy of a multi-space parking meter space, the operator of a vehicle shall deposit an acceptable form of payment in said multi-space meter and follow operational procedures in accordance with the instructions posted on the meter. When appropriate, a receipt must be displayed that is clearly visible through the front windshield from outside the vehicle per the instructions on the parking meter.

Electronic payment options for pay for parking zones may also be implemented allowing payment of a parking fee with no physical parking meter, parking device or multi-space parking meter.

The operator of any vehicle parked in any parking space or area within a pay for parking zone during the hours when payment is required shall, upon parking in such space or area, use the acceptable form of payment that is required in that zone.

Section 82-5-13. ~~Parking meters; how meters and space to be used; time limit; parking overtime generally.~~ Parking at meters indicating unused time and rates for parking in pay for parking zones.

~~(a) When any vehicle shall be parked in any space in the parking meter zone, the operator of such vehicle shall, upon entering such parking space, immediately deposit or cause to be deposited the proper coin or coins of the United States in such parking meter, and when required by directions on a meter, such operator shall also set or cause to be set in operation the timing mechanism on such meter in accordance with directions, and the parking space may then be used by such vehicle during the parking period purchased by the proper coin or coins deposited in accordance with the provisions of this Section.~~

~~(b) If such vehicle shall remain parked in any such parking space beyond the time limit paid for such parking space, then such vehicle shall be considered as parking overtime and beyond the period of legal parking time, and such parking shall be deemed a violation.~~

~~(c) It shall be unlawful for any person to deposit or cause to be deposited in a parking meter a coin or coins for the purpose of extending the parking time beyond the maximum time established for the parking meter.~~

~~(d)~~(a) Any person placing a vehicle in a parking space adjacent to a meter which indicates that unused time has been left in the meter by the previous occupant of the space shall not be required to pay as long as his occupancy of such space does not exceed the indicated unused parking time.

~~(e)~~(b) The rate for ~~metered parking spaces~~ pay for parking zones established pursuant to Section 82-5-11 shall be determined by the County Executive. ~~Twenty-five Cents (one quarter) for each half hour; Fifty Cents (two quarters) for each hour period, and One Dollar (four quarters) for each two-hour period.~~

Section 82-5-14. Pay for p~~P~~arking zones ~~meters~~; parking overtime prohibited.

Failure to follow the operational procedures, or remaining in the parking space after the expiration of the lawful time limit, shall cause the operator, owner, possessor, or manager of the vehicle thereof to be subject to the penalties provided in Section 82-1-32. ~~It shall be unlawful for any person to cause, allow, permit or suffer any vehicle to be parked overtime or beyond the period of legal parking time established for that parking meter zone.~~

Section 82-5-16. Parking meters; injuring or tampering with prohibited.

(a) It shall be unlawful for any person to deface, injure, tamper with, open or willfully break, destroy or impair the usefulness of any parking meter or in-vehicle parking meter installed under the provisions of this Section.

(b) Any person violati~~on~~ing this Section shall, upon conviction, be subject to the penalties provided in Section 82-1-32. ~~fined not less than One Dollar ($1.00) nor more than One Hundred Dollars ($100.00)~~.

Section 82-5-17. ~~Parking meters~~ Pay for parking zones; ~~when to be in~~hours of operation.

The ~~parking meters~~ pay for parking zones provided for in Section 82-5-11 shall be operated as specified for each zone. ~~between the hours of 8:00 A.M. and 5:00 P.M. each day, except on Saturdays, Sundays or legal holidays of the State.~~

Proposed Amendment

Amend *The Code of the County of Fairfax*, *Virginia*, by adding the following Section, in accordance with Article 5 of Chapter 82:

Section 82-5-42 – Habitation in vehicles parked in public right-of-way.

For purposes of this Section, the following words and phrases shall have the meanings ascribed to them in this Section, except in those instances where the context clearly indicates a different meaning:

Camper means a structure designed to be mounted to a motor vehicle and to provide facilities for human habitation or camping purposes.

House car means a motor vehicle originally designed or permanently or temporarily altered and equipped for human habitation, or to which a camper has been permanently or temporarily attached.

Human habitation shall mean the use of a vehicle for dwelling. Evidence of human habitation shall include activities such as sleeping, food preparation, and/or any other activity where it reasonably appears, in light of all the circumstances, that a person or persons is using the vehicle as a living accommodation. The use of a vehicle for six or more consecutive hours for eating, resting, recreating and/or sleeping shall per se constitute "human habitation" for purposes of this chapter.

Recreational vehicle shall mean a motor home, travel trailer, trailer coach, truck camper, camping trailer or park trailer, and vehicles which are designed for recreational, emergency, or other types of human habitation.

This Code Section refers to any motorized vehicle including, but not limited to, a recreational vehicle or house car.

(a) It shall be unlawful for any person to use, occupy, or permit the use or occupancy of any automobile, truck, camper, house car, mobile home, recreational vehicle, trailer, trailer coach, or similar equipment for human habitation on any public property, street, avenue, alley, or other public right-of-way within Fairfax County, except in a designated public campground, recreational park, or licensed mobile home park.

(b) Penalty.
Penalties as defined in Section 82-1-32.

Attachment V

Proposed Amendment

Amend *The Code of the County of Fairfax*, *Virginia*, by adding the following Section, in accordance with Article 5 of Chapter 82:

Section 82-5-43 – Maintenance of vehicles parked in public right-of-way.

(a) It shall be unlawful for a person, firm or corporation to service any motor vehicle stopped or parked on any public street or public right-of-way within the County, except for minor repairs as necessitated by an emergency. Emergency repairs constitute the least amount of immediate repair necessary for a vehicle to operate. Examples of repairs would be replacing a battery or changing a tire. Regularly required vehicle maintenance or complex vehicle repairs would not be considered emergency repairs.

(b) Penalty.
Penalties as defined in Section 82-1-32.

Board Agenda Item
January 23, 2018

4:30 p.m.

Public Hearing on a Proposed Amendment to the Public Facilities Manual (PFM) and Engineering Standards Review Committee (ESRC) Charter to Update the ESRC's Membership

ISSUE:
Board of Supervisors' adoption of a proposed amendment to update the PFM and ESRC Charter to replace the Citizens Committee on Land Use and Transportation appointment with an At-Large Citizen appointment.

PLANNING COMMISSION RECOMMENDATION:
On Thursday, December 7, 2017, the Planning Commission voted 9-1 (Commissioner Strandlie voted in opposition, Commissioner Flanagan was absent from the meeting) to recommend that the Board approve the proposed amendment, as set forth in the staff report dated November 21, 2017, with an effective date of 12:01 a.m. on January 24, 2018

RECOMMENDATION:
The County Executive recommends that the Board adopt the proposed PFM amendment and update to the ESRC Charter as set forth in the Staff Report dated November 21, 2017.

TIMING:
Board action is requested on January 23, 2018. On November 21, 2017, the Board authorized the advertising of public hearings. The Planning Commission held a public hearing on December 7, 2017. If adopted, the proposed amendment will become effective on January 24, 2018, at 12.01 a.m.

BACKGROUND:
At their March 14, 2017 meeting, the Board asked that the ESRC consider updating their Charter to replace the Citizens Committee on Land Use and Transportation appointment, with an At-Large Citizen appointment. This action would allow the ESRC to retain the same capacity following the dissolution of the Citizens Committee on Land Use and Transportation.

Board Agenda Item
January 23, 2018

PROPOSED AMENDMENTS:
The proposed amendment updates Article 2, Paragraph 5, of the ESRC Charter to replace the Citizens Committee on Land-Use and Transportation appointment with an At-Large Citizen appointment. The same update is being made to Section 1-0301.1 of the PFM to reflect the change in the ESRC Charter.

REGULATORY IMPACT:
None. No new regulations are proposed.

FISCAL IMPACT:
None

ENCLOSED DOCUMENT:
Attachment 1: Staff Report
Attachment 2: Planning Commission Verbatim Excerpt

STAFF:
Robert A. Stalzer, Deputy County Executive
William D. Hicks, P.E., Director, Land Development Services

ASSIGNED COUNSEL:
Paul Emerick, Senior Assistant County Attorney

ATTACHMENT 1

LAND DEVELOPMENT SERVICES

STAFF REPORT

PREPARED BY CODE DEVELOPMENT AND COMPLIANCE DIVISION

November 21, 2017

☐ PROPOSED COUNTY CODE AMENDMENT

☑ PROPOSED PFM AMENDMENT

☐ PROPOSED ZONING AMENDMENT

☐ APPEAL OF DECISION

☐ WAIVER REQUEST

Proposed Amendment to the Public Facilities Manual and Engineering Standards Review Committee (ESRC) Charter to Update the ESRC's Membership

PUBLIC HEARING DATES

Authorization to Advertise:	November 21, 2017
Planning Commission Hearing:	December 7, 2017 at 8:15 p.m.
Board of Supervisors Hearing:	January 23, 2018 at 4:30 p.m.
Prepared By:	Thakur Dhakal, P.E. (703) 324-2992

Proposed Amendment to the Public Facilities Manual (PFM) and Engineering Standards Review Committee (ESRC) Charter to Update the ESRC's Membership

STAFF RECOMMENDATION

Staff recommends that the Board of Supervisors (Board) adopt the proposed amendment to the Public Facilities Manual (PFM) and approve the change to the Engineering Standards Review Committee (ESRC) Charter to update the ESRC's membership.

BACKGROUND

At their March 14, 2017 meeting, the Board asked the ESRC to consider updating their Charter to replace the Citizens Committee on Land Use and Transportation appointment that is now non-operational. As a result, the addition of one more At-Large Citizen appointment has been recommended.

REGULATORY IMPACT

None

FISCAL IMPACT

None

PROPOSED AMENDMENT

The proposed amendment updates Article 2, Paragraph 5, of the ESRC Charter to replace the Citizens Committee on Land-Use and Transportation appointment with an At-Large Citizen appointment. The same update is being made to Section 1-0301.1 of the PFM as follows:

Proposed Amendment

to the Engineering Standards Review Committee (ESRC) Charter

Amend the ESRC Charter, Article 2 (Office, Duration and Compensation), Paragraph 5, to read as follows:

Article 2. Office, Duration and Compensation

1. Working facilities of the committee shall be as provided by the County Executive.

2. The duration of this committee is determinable by the Board of Supervisors.

3. The removal or resignation or withdrawal of any or all members of the committee shall not result in the dissolution of the committee.

4. Any member that misses three consecutive meetings shall be deemed to have resigned unless reinstated by the Board.

5. Members of the committee will be assigned by the Board of Supervisors. Sponsorship of one member may be requested from the following named organizations or types of organizations.

   A. Northern Virginia Regional Council of the Virginia Society of Professional Engineers.

   B. Virginia Association of Surveyors (Mount Vernon Chapter)

   C. Northern Virginia Building Industry Association

   D. Fairfax District, Virginia Department of Transportation

   E. Fairfax County Federation of Citizens Associations

   F. Fairfax County Bar Association

   G. League of Women Voters of the Fairfax Area

   H. ~~Three~~Four citizens at large

   I. County Department of Planning and Zoning

   J. County ~~Department of Public Works and Environmental Services,~~ Land Development Services (technical advisor/administrative member)

   K. County Department of Public Works and Environmental Services (regular member)

   L. Northern Virginia Chapter of Heavy Construction Contractors Association

   M. Virginia Chapter of Associated Builders and Contractors

   N. Northern Virginia Soil and Water Conservation District

   O. Washington Area Council of Engineering Laboratories

   ~~P. Citizens Committee on Land Use and Transportation~~

   ~~Q.~~ P. National Association of Industrial Office Parks (Northern Virginia Chapter)

   ~~R.~~ Q. Engineers and Surveyors Institute

Proposed Amendment

to the Public Facilities Manual (PFM)

Amend Chapter 1 (General Information) of the PFM, Section 1-0300 (Establishment of the ESRC), Section 1-0301 (ESRC Charter), by revising Paragraph 1-0301.1, to read as follows:

1-0300 ESTABLISHMENT OF THE ESRC

1-0301 ESRC Charter. On Dec. 11, 1963, the Board established a Continuing Review Committee to evaluate the original Policies and Guidelines for the Preparation of Subdivision and Site Plans. On March 5, 1973, the Board adopted a charter establishing the Engineering Standards Review Committee (ESRC). On Aug. 17, 1983, the charter was amended and adopted by the Board.

1-0301.1 This committee now consists of one representative from each of the following organizations:

Citizens-at-Large (~~three~~four)
Northern Virginia Regional Council of the Virginia Society of Professional Engineers
Virginia Association of Surveyors (Mount Vernon Chapter)
Northern Virginia Building Industry Association
Fairfax County Federation of Citizens Associations
Fairfax County Bar Association
League of Women Voters
Northern Virginia Chapter of Heavy Construction Contractors Association
VDOT, Fairfax District (Advisory)
Associated Builders and Contractors
Northern Virginia Soil and Water Conservation District
Washington Area Council of Engineering Laboratories
National Association of Industrial and Office Parks (Effective 2-13-89)
~~Citizens Committee on Land-Use and Transportation (Effective 2-13-89)~~
Engineers & Surveyors Institute (Effective 12-13-93)

Members serve for three years and may be reappointed.

County of Fairfax, Virginia
Planning Commission Meeting
December 7, 2017
Verbatim Excerpt

PUBLIC FACILITIES MANUAL AMENDMENT – ESRC CHARTER UPDATE – Proposed Amendment to the Public Facilities Manual (PFM) and Engineering Standards Review Committee (ESRC) Charter to Update the ESRC's Membership - Amend Chapter 1 (General Information) of the PFM, Section 1-0300 (Establishment of the ESRC), Section 1-0301 (ESRC Charter), by revising Paragraph 1-0301.1, to read as follows:

1-0300 ESTABLISHMENT OF THE ESRC

1-0301 ESRC Charter. On Dec. 11, 1963, the Board established a Continuing Review Committee to evaluate the original Policies and Guidelines for the Preparation of Subdivision and Site Plans. On March 5, 1973, the Board adopted a charter establishing the Engineering Standards Review Committee (ESRC). On Aug. 17, 1983, the charter was amended and adopted by the Board.

1-0301.1 This committee now consists of one representative from each of the following organizations:

Citizens-at-Large (three four)
Northern Virginia Regional Council of the Virginia Society of Professional Engineers Virginia Association of Surveyors (Mount Vernon Chapter)
Northern Virginia Building Industry Association
Fairfax County Federation of Citizens Associations
Fairfax County Bar Association
League of Women Voters
Northern Virginia Chapter of Heavy Construction Contractors Association
VDOT, Fairfax District (Advisory)
Associated Builders and Contractors
Northern Virginia Soil and Water Conservation District
Washington Area Council of Engineering Laboratories
National Association of Industrial and Office Parks (Effective 2-13-89)
Citizens Committee on Land-Use and Transportation (Effective 2-13-89) Engineers & Surveyors Institute (Effective 12-13-93)
Members serve for three years and may be reappointed. (Countywide)

After Close of the Public Hearing

Commissioner Sargeant: Thank you, Mr. Chairman. This is a very straightforward amendment – a PFM document, based on a request by the Board of Supervisors earlier this year to consider updating their charter to replace the citizens committee on land use and transportation appointment that's now non-operational. And as a result, the addition of one more at-large citizen appointment has been recommended in this amendment. Very quickly, I'd like to MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD ADOPT THE PROPOSED AMENDMENTS IN THE PUBLIC FACILITIES MANUAL ENGINEERING STANDARDS REVIEW COMMITTEE CHARTER, AS SET FORTH IN THE STAFF REPORT DATED NOVEMBER 21ST, 2017. AND I FURTHER MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD

THAT THIS AMENDMENT SHALL BECOME EFFECTIVE AT 12:01 A.M. ON JANUARY 24TH, 2018.

Commissioner Ulfelder: Second.

Chairman Murphy: Seconded by Mr. Ulfelder. Is there a discussion? All those in favor of the motion…

Commissioner Strandlie: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Strandlie: Hi, I just – hi, sorry. I just noticed an error in this. Under F, it's listed as Fairfax County Bar Association. It's actually Fairfax Bar Association. So if that can be updated either by amendment or before this goes to the Board, that would be advisable.

Commissioner de la Fe: It's the – five?

Commissioner Strandlie: 5F. And also in the proposed amendment, it's Fairfax Bar Association, not Fairfax County Bar Association.

Chairman Murphy: Did you get that?

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Hart: I hate to rebut. Commissioner Strandlie is exactly right, except that might be outside the scope of the advertising – if it's not something that we advertise we were going to change. Maybe we should fix that before the Board.

Commissioner Strandlie: It's just correcting the name of it. It's not changing the entity.

Commissioner Hart: I'm just pointing that out.

Commissioner Strandlie: Okay, because Fairfax County Bar Association doesn't exist.

Commissioner Hart: I – you're right, but we have to advertise things before we change them.

Chairman Murphy: All right.

Commissioner Sargeant: Mr. Chairman, I believe we can – we can make that amendment prior to its submission to the Board of Supervisors.

Chairman Murphy: Could we have an audio and an identification on that, please, just for the record?

Commissioner Sargeant: So…

Commissioner Strandlie: People are shaking heads one way or another.

Thakur Dhakal, Site Code Research & Development Branch, Land Development Services: This is Thakur Dhakal from Land Development Services. Well, like Commissioner said, it was advertised and we'll check to see if we can change before the Board of Supervisors public hearing.

Commissioner Strandlie: Okay.

Chairman Murphy: All those in…

Mr. Dhakal: Thank you.

Chairman Murphy: I'm going to go ahead with this, no matter what. All those in favor of the motion to recommend to the Board of Supervisors that it adopt Public Facilities Manual Amendment, ESRC Charter Update, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Strandlie: I'm going to vote "no." I'll vote "no" on this one.

Chairman Murphy: Okay, Ms. Strandlie votes no.

The motion carried by a vote of 9-1. Commissioner Strandlie voted in opposition. Commissioner Flanagan was absent from the meeting.

JLC

Board Agenda Item
January 23, 2018

4:30 p.m.

Public Hearing to Convey Board-Owned Property to the Fairfax County Park Authority (Lee and Mount Vernon Districts)

ISSUE:
Public hearing regarding the conveyance of Board-owned property to the Fairfax County Park Authority (FCPA).

RECOMMENDATION:
The County Executive recommends that the Board authorize staff to convey the Board-owned property to the FCPA.

TIMING:
On December 5, 2017, the Board authorized the advertisement of a public hearing to convey Board-owned property to the FCPA.

BACKGROUND:
The Board of Supervisors is the owner of the following five (5) parcels in Lee and Mount Vernon Districts:

Name	Tax Map No.	Acreage	District
Telegraph Road site	0921 01 0006	1.22 Acres	Lee
Archstone site	0812 01 0012E	1.22 Acres	Lee
Loftridge site	0822 01 0003C	6.37 Acres	Lee
Rolling Wood site	0894 06 D	3.36 Acres	Mount Vernon
Rolling Wood site	0982 06 D9	9.55 Acres	Mount Vernon

The Archstone and Rolling Wood sites were developer dedications to the Board and contain active recreational amenities, while the Loftridge property was acquired by the Board for open space purposes and the Telegraph Road parcel was purchased in connection with a County transportation project. The FCPA has requested the conveyance of these parcels for inclusion in their parkland inventory and for use in accordance with any existing FCPA park master plans and the County Comprehensive Plan. The Board has already delegated responsibility for maintaining the Rolling Wood elementary school site to the FCPA pursuant to an Interim Use Agreement.

Since all but the Telegraph Road property were acquired by the Board for public parkland or open space purposes, the Telegraph Road parcel is the only property subject to the existing Land Bank Agreement between the Board and the FCPA. The Land Bank serves as a mechanism to allow the FCPA to convey land to the Board

without the requirement of fair market value compensation in return. In exchange for the conveyance of the properties to the FCPA, the Board will receive a credit in the Land Bank in an amount equivalent to the tax-assessed value of the Telegraph Road parcel. The existing balance in the Bank operates as an accounting measure only and cannot be "cashed out" by either party to the agreement.

Staff recommends that the conveyance of the property to the FCPA be subject to the condition that the parcels must be used for public park and stormwater purposes. Staff further recommends that the conveyance be made subject to the County's reservation of the right to assign to public entities, public utilities, or telecommunications or cable television providers the right to construct improvements on the property for the purpose of providing utilities and other public services. Staff also recommends that any public utilities located on the property that are owned and maintained by County agencies, such as sanitary sewers, storm sewers and stormwater management facilities and structures, continue to be owned and maintained by the County.

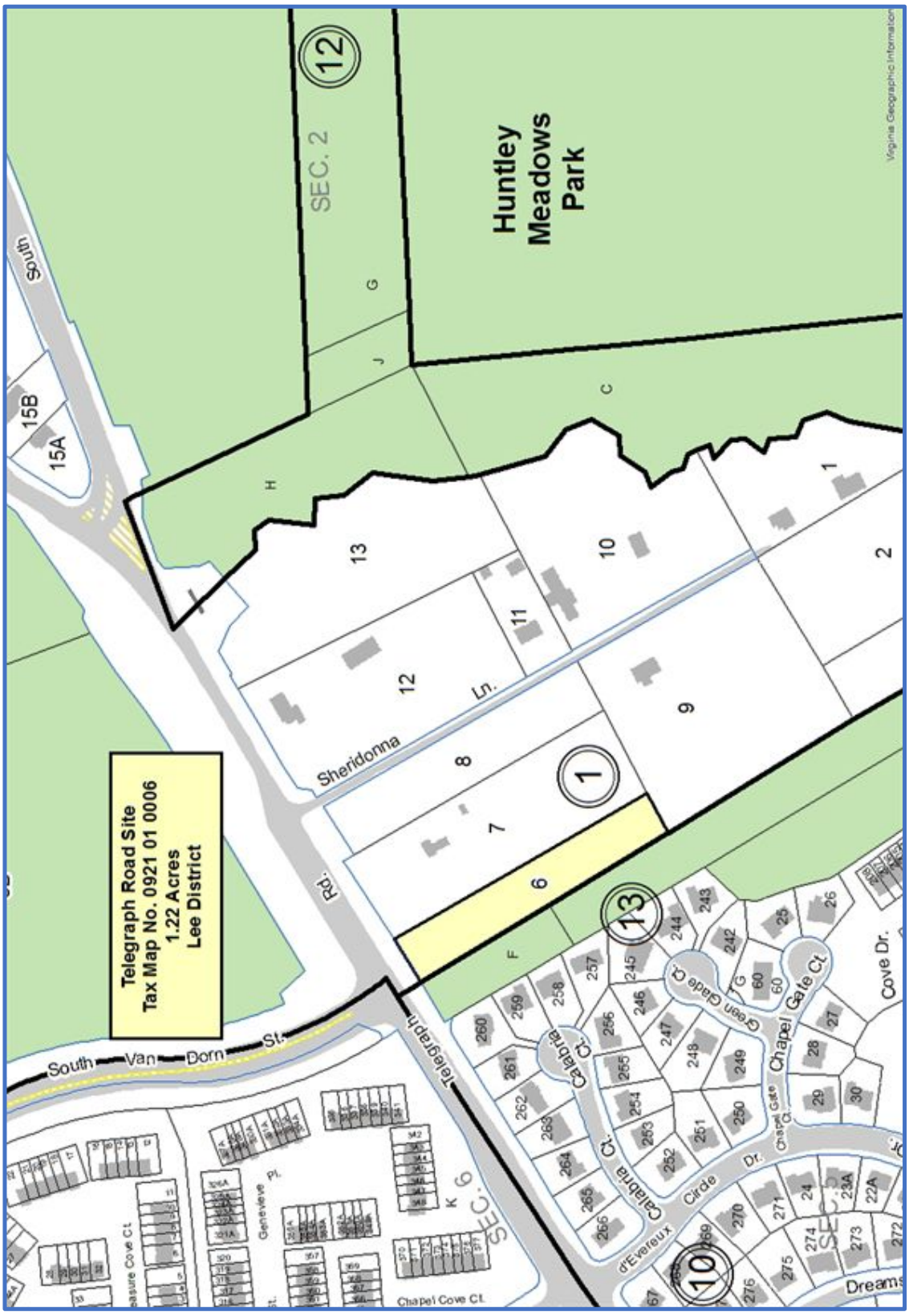
Staff recommends that the Board authorize staff to execute all necessary documents to convey the above-referenced properties to the FCPA.

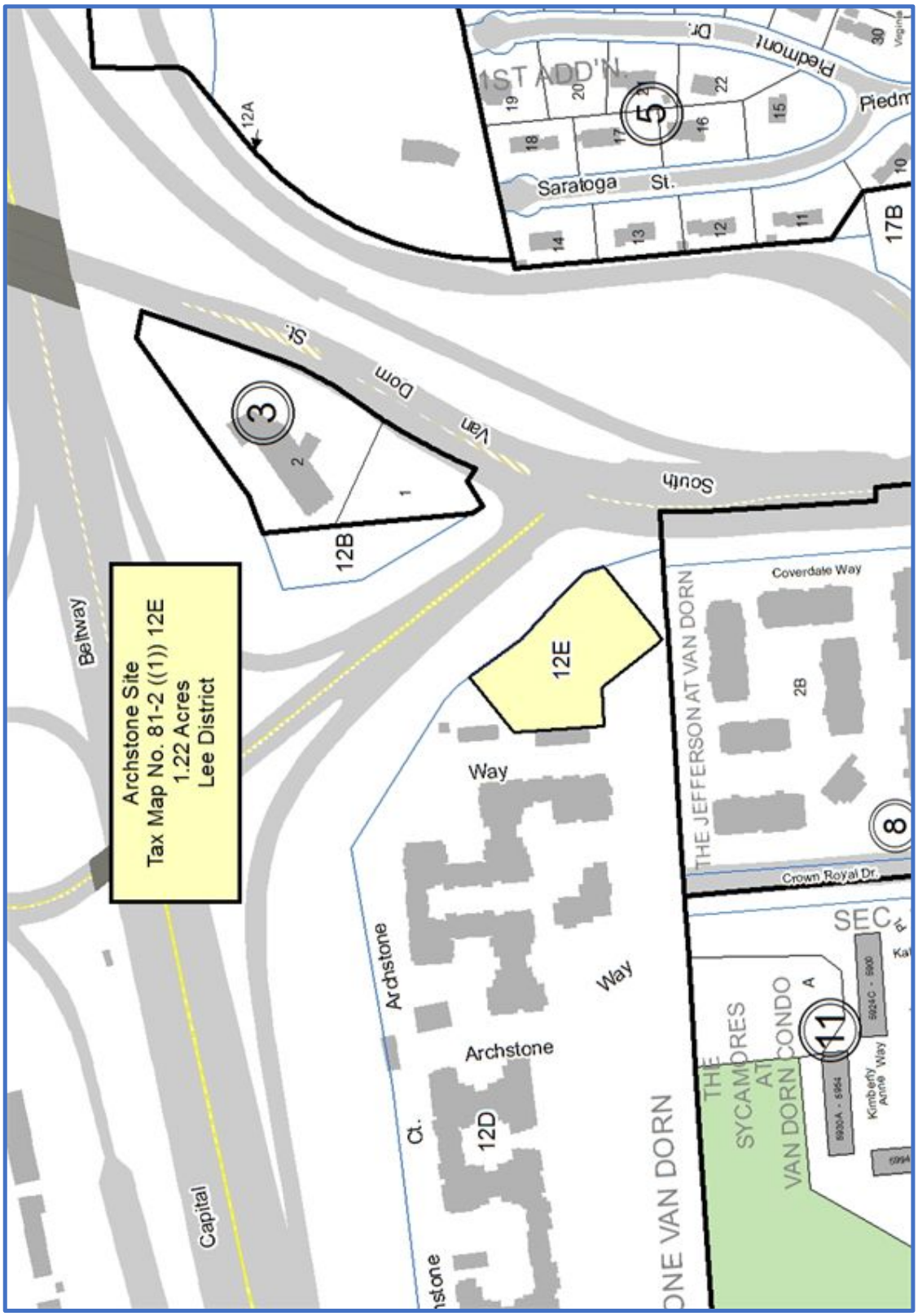
FISCAL IMPACT:
None

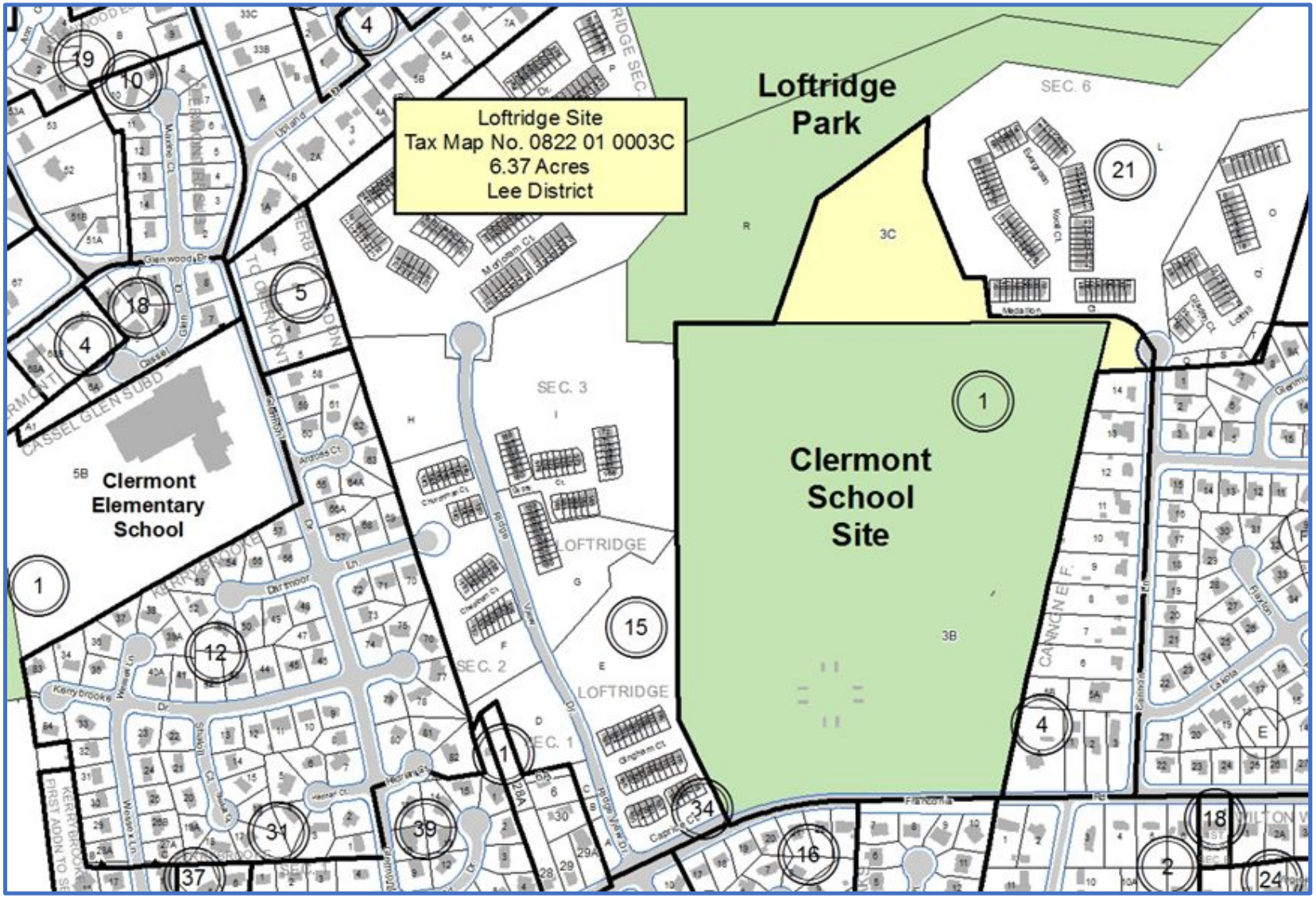
ENCLOSED DOCUMENTS:
Attachment 1 – Location Maps
Attachment 2 – Resolution

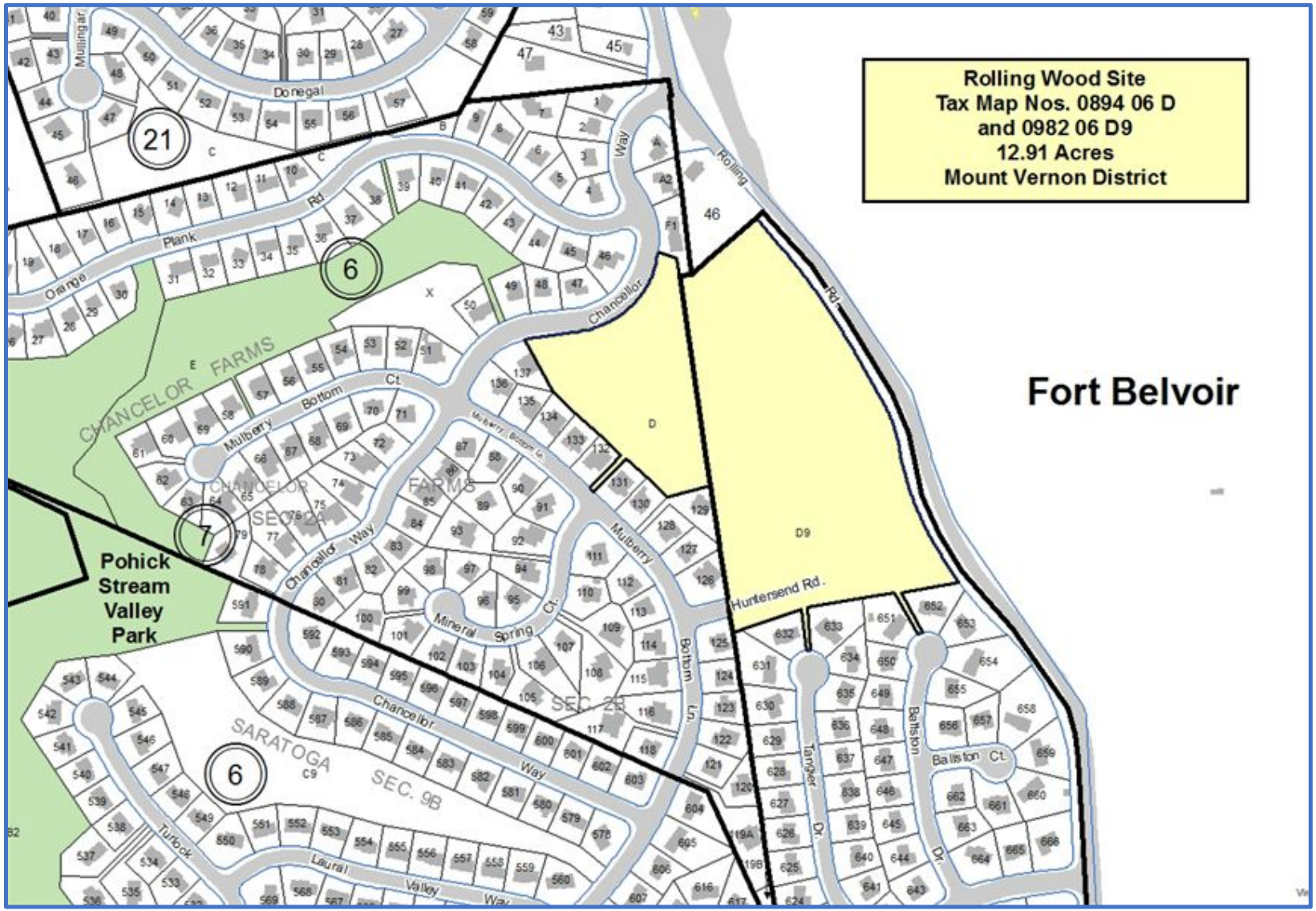
STAFF:
David J. Molchany, Deputy County Executive
Joseph M. Mondoro, CFO, Department of Management and Budget
Kirk Kincannon, Director, FCPA
José A. Comayagua, Director, Facilities Management Department

ATTACHMENT 1




Archstone Site
Tax Map No. 81-2 ((1)) 12E
1.22 Acres
Lee District
Beltway
Capital
12A
12B
12D
12E
17B
1ST ADD'N.
Saratoga St.
Piedmont Dr.
Van Dorn St.
South
Archstone Way
Archstone Ct.
THE JEFFERSON AT VAN DORN
Coverdale Way
Crown Royal Dr.
THE SYCAMORES AT VAN DORN CONDO
Kimberly Anne Way
ONE VAN DORN


Loftridge Site
Tax Map No. 0822 01 0003C
6.37 Acres
Lee District
Loftridge Park
Clermont School Site
Clermont Elementary School
SEC. 6
SEC. 3
SEC. 2
SEC. 1
LOFTRIDGE
LOFTRIDGE
3C
3B
5B


Rolling Wood Site
Tax Map Nos. 0894 06 D
and 0982 06 D9
12.91 Acres
Mount Vernon District
Fort Belvoir
Pohick
Stream
Valley
Park
CHANCELOR FARMS
SEC. 2A
SEC. 2B
SEC. 9B
SARATOGA
Donegal
Plank Rd.
Orange
Mulberry Bottom Ct.
Chancellor Way
Mineral Spring Ct.
Chancellor
Huntsend Rd.
Rolling Rd.
Tanglyer Dr.
Ballston Ct.
Turlock
Laural Valley Way
21
6
7
D
D9

ATTACHMENT 2

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 at Fairfax, Virginia, on Tuesday, January 23, 2018, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, the Board of Supervisors owns five parcels of land in Lee and Mount Vernon Districts identified by Tax Map Nos. 0812 01 0012E, 0822 01 0003C, 0894 06 D, 0921 01 0006 and 0982 06 D9;

WHEREAS, the Fairfax County Park Authority (Park Authority) has asked the Board of Supervisors to transfer these five parcels to the Park Authority for inclusion in its park inventory,

WHEREAS, the County has no current or planned use for these parcels,

WHEREAS, the Board of Supervisors finds that it would be in the best interest of the citizens of Fairfax County to convey the real property as described above to the Park Authority.

NOW,THEREFORE, upon public hearing duly advertised according to law, it is **RESOLVED** that the County Executive or Deputy County Executive is hereby authorized to execute all necessary documents to convey the real property described above to the Park Authority.

A Copy Teste:

_____
Catherine A. Chianese
Clerk to the Board of Supervisors

Board Agenda Item
January 23, 2018

5:00 p.m.

Public Hearing on PCA 87-C-060-13 (McNair Seniors Apartments, LP) to Amend the Proffers and Conceptual Development Plans for RZ 87-C-060 Previously Approved for Housing for the Elderly to Permit an Independent Living Facility and Associated Modifications to Proffers and Conditions at a Density of 46.95 Dwelling Units per Acre, Located on Approximately 3.12 Acres of Land Zoned PDH-16 (Hunter Mill District)

This property is located on the North Side of Coppermind Road approximately 250 feet East of its intersection with Centreville Road. Tax Map 16-3 ((1)) 38D

PLANNING COMMISSION RECOMMENDATION:
On January 11, 2018, the Planning Commission voted 11-0 to recommend the following actions to the Board of Supervisors:

- Approval of PCA 87-C-060-13, to amend the proffers for PCA 87-C-060-5 to revise the use listed for Housing for the Elderly to an Independent Living Facility and reduce the age of residents from 62 and older to 55 and older, subject to the execution of proffers consistent with those contained in Appendix 1 of the staff report; and

- Approval of a modification to Paragraph 1 of Section 9-306 of the Zoning Ordinance to permit a reduction in the age limitation of occupants from 62 years and older to 55 years and older.

In a related action, on January 11, 2018, the Planning Commission voted 11-0 to approve FDPA 87-C-060-18-02, subject to the development conditions dated December 26, 2017, and the Board of Supervisors' approval of PCA 87-C-060-13.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
http://www.fairfaxcounty.gov/dpz/staffreports/bos-packages/

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Jay Rodenbeck, Planner, DPZ

Board Agenda Item
January 23, 2018

5:00 p.m.

Public Hearing on AR 84-V-007-04 (EDH Associates LLC) to Permit Renewal of a Previously-Approved Local Agricultural and Forestal District, Located on Approximately 114.99 Acres of Land Zoned R-E (Mount Vernon District)

This property is located on the West side of Belmont Boulevard at the terminus of Gunston Drive. Tax Map 113-4 ((1)) 27Z

PLANNING COMMISSION RECOMMENDATION:
On January 18, 2018, the Planning Commission voted 11-0 to recommend to the Board of Supervisors approval of AR 84-V-007-04 and amendment of Appendix F of the Fairfax County Code to renew the Belmont Bay II Local Agricultural and Forestal District, subject to Ordinance provisions consistent with those dated January 11, 2018.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Erin Haley, Planner, DPZ

Board Agenda Item
January 23, 2018

5:00 p.m.

Public Hearing on SE 2017-SP-028 (Seritage SRC Finance, LLC) to Permit a Waiver of Certain Sign Regulations, Located on Approximately 15.07 Acres of Land Zoned C-7 and HC (Springfield District)

This property is located at 12000 L Fair Oaks Mall, Fairfax, 22033. Tax Map 46-3 ((8)) 2

PLANNING COMMISSION RECOMMENDATION:
On January 11, 2018, the Planning Commission voted 11-0 to recommend to the Board of Supervisors approval of SE 2017-SP-028, subject to the development conditions dated January 8, 2018.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
http://www.fairfaxcounty.gov/dpz/staffreports/bos-packages/

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Zachary Fountain, Planner, DPZ

Board Agenda Item
January 23, 2018

5:00 p.m.

Public Hearing on SE 2017-LE-026 (Sheehy Auto Stores, Inc) to Permit Continuation of Previously Approved Vehicle Sale, Rental and Ancillary Service Establishment and Temporary Parking to Permit Car Wash, Site Modifications and Waiver of Open Space Requirements, Located on Approximately 6.65 Acres of Land Zoned C-7, C-8, SC and HC (Lee District)

This property is located at 6727 Loisdale Road. Tax Map 90-2 ((1)) 51A, 53, 54, 55 and 57D

PLANNING COMMISSION RECOMMENDATION:
On November 16, 2017, the Planning Commission voted 9-0. (Commissioner Strandlie was absent from the public hearing) to recommend the following actions to the Board of Supervisors:

- Approval of SE 2017-LE-026, subject to development conditions dated November 14, 2017;

- Approval of a waiver of the service drive requirement along the southern portion of the property abutting the Franconia-Springfield Parkway per Fairfax County Public Facilities Manual (PFM) Section 7-0104.1;

- Approval of a modification of the 15% open space requirement per Zoning Ordinance Section 4-708. The current open space is at approximately 10.5% and is proposed to be increased to 13.5%;

- Approval of a modification of the 10-foot peripheral parking lot landscaping requirement along Loisdale Road, Spring Mall Drive, Franconia-Springfield Parkway, and Metropolitan Center Drive per Zoning Ordinance Section 13-203(2);

- Approval of a modification of the bike lane and major paved trail along Spring Mall Road and Loisdale Road per Zoning Ordinance Section 17-201(2); and

- Approval of a modification of the 10-foot parking lot setback from the front property line per Zoning Ordinance Section 11-102(8).

Board Agenda Item
January 23, 2018

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
http://www.fairfaxcounty.gov/dpz/staffreports/bos-packages/

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Daniel Creed, Planner, DPZ

Board Agenda Item
January 23, 2018

5:30 p.m.

Public Hearing on RZ 2017-SP-017 (Shelter Development, LLC) to Rezone from R-1 and WS to PDH-4 and WS to Permit an Independent Living Facility at a Density of 15.16 Dwelling Units Per Acres and an Assisted Living Facility with an Overall Floor Area Ratio of .21 and Approval of the Conceptual Development Plan, Located on Approximately 6.07 Acres of Land (Springfield District)

This property is located on the South side of Lee Highway approximately 450 feet West of its intersection with Summit Drive. Tax Map 55-4 ((1)) 30 and 31

PLANNING COMMISSION RECOMMENDATION:
On November 16, 2017, the Planning Commission voted 9-0 (Commissioner Strandlie was absent from the public hearing) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2017-SP-017 and its associated Conceptual Development Plan, subject to the proffers dated November 9, 2017;

- Approval of a modification of Par. 3 of Sect. 13-305 of the Zoning Ordinance to modify the transitional screening planting requirements along all property lines in favor of using the existing vegetation supplemented with the proposed plantings on the FDP;

- Approval of a modification of Par. 3 of Sect. 13-305 of the Zoning Ordinance to modify the placement of the barrier requirement to the periphery of the property lines on the East, South and West sides of the property as shown on the FDP;

- Approval of a waiver of Par. 3 of Sect. 13-305 of the Zoning Ordinance to waive the barrier requirement along the northern property line;

- Approval of a modification of Par. 13 of Section 11-203 of the Zoning Ordinance to modify the loading space requirement for three loading spaces in lieu of that shown on the FDP;

- Approval of a modification of Pars. 2 and 3 of Sect. 17-201 of the Zoning Ordinance of the construction requirements for the shared use path and service drive along Lee Highway in lieu of that shown on the FDP;

Board Agenda Item
January 23, 2018

- Approval of a waiver of Par. 3 of Section 17-201 of the Zoning Ordinance to waive the requirement to provide interparcel access to east and west in lieu of the service drive as shown on the FDP; and

- Approval of a waiver of Par. 2 of Sect. 17-201 of the Zoning to waive the requirement to construct a sidewalk along Lee Highway in lieu of the Shared Use Path as shown on the FDP.

In a related action, on November 16, 2017, the Planning Commission voted 9-0 (Commissioner Strandlie was absent from the public hearing) to approve FDP 2017-SP-017, subject to the development conditions dated November 1, 2017, and subject to the Board of Supervisor's approval of RZ 2017-SP-017.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
http://www.fairfaxcounty.gov/dpz/staffreports/bos-packages/

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Kelly Atkinson, Planner, DPZ

Board Agenda Item
January 23, 2018

5:30 p.m.

Public Hearing on PCA 2002-HM-043-03/CDPA 2002-HM-043-02 (Arrowbrook Centre, LLC) to Amend the Proffers and Conceptual Development Plan for RZ 2002-HM-043, Previously Approved for Mixed-Use Development to Permit Site Modifications and Associated Modifications to Proffers and Site Design at a Density of 31.96 Dwelling Units per Acre, Located on Approximately 7.20 Acres of Land Zoned PDC (Dranesville District)

This property is located on the West side of Centreville Road North of Arrowbrook Center Drive, South of the Dulles Airport Access Road. Tax Map 16-3((20)) 1, 2 (pt.), 6 (pt.), 7 (pt.) and 10 (pt.)

PLANNING COMMISSION RECOMMENDATION:
On January 18, 2018, the Planning Commission voted 11-0 to recommend the following actions to the Board of Supervisors:

- Approval of PCA 2002-HM-043-03 and CDPA 2002-HM-043-02, subject to the proffers consistent with those dated January 12, 2018;

- Approval of a modification of the Use Limitations on Corner Lots in Sect. 2-505 of the Zoning Ordinance to permit structures, plantings and other objects within the corner triangles as shown on the CDPA and FDPA;

- Approval of a modification of Sect. 2-506 of the Zoning Ordinance to allow a parapet wall, cornice or similar project to exceed the established height limit by more than three (3) feet as shown on the CDPA and FDPA;

- Approval of a modification of Sect. 6-206 of the Zoning Ordinance to allow the maximum 50 percent of GFA for secondary use (residential area) permitted in the PDC District to increase to 65 percent of the development in accordance with the uses shown on the CDPA and the Proffers;

- Approval of a modification of the private street limitations in Sect. 11-302 of the Zoning Ordinance to permit a private street length greater than 600 feet;

- Approval of a modification of Sect. 13-202 and Sect. 13-203 of the Zoning Ordinance to permit interim surface parking lots on land bays prior to construction of parking garages or buildings;

- Approval of a modification of the transitional screening yard and barrier requirements within the Property and to uses adjacent to the north in favor of the streetscape and landscaping shown on the CDPA and FDPA;

- Approval of a modification of Sect. 11-103 of the Zoning Ordinance requiring loading spaces to permit nine loading spaces in lieu of the 37 required spaces;

- Approval of a modification of PFM Standards 12-0510 4E (5) and 12-601.1B to permit a reduction of the minimum planting width requirement from eight feet to a minimum of four feet as shown on the CDPA and FDPA and described in the proffers;

- Approval of a modification of PFM Standards 12-0511 to permit the overall 10-year tree canopy for the property to be calculated based on the gross floor area of the original rezoning application consisting of 53.84 acres; and

- Approval of the parking reduction request of up to 101 parking spaces for Arrowbrook Centre, Land Bay D2 (1504-PKS-001-1) pursuant to Par. 5A, Section 11-102 of the Zoning Ordinance based on proximity of a mass transit station and subject to the conditions dated December 4, 2017, contained in Appendix 9 of the staff report.

In a related action, the Planning Commission voted 11-0 to approve FDPA 2002-HM-043-04 and FDPA 2002-HM-043-05, subject to the development conditions dated December 28, 2017.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Sharon Williams, Planner, DPZ

Board Agenda Item
January 23, 2018

5:30 p.m.

Public Hearing on PRC-C-378 (Kensington Senior Development, LLC) to Approve the PRC Plan Associated with RZ-C-378 to Permit a Medical Care Facility, Located on Approximately 1.8 Acres of Land Zoned PRC (Hunter Mill District) (Concurrent with SE 2016-HM-024)

and

Public Hearing on SE 2016-HM-024 (Kensington Senior Development, LLC) to Permit a Medical Care Facility, Located on Approximately 1.8 Acres of Land Zoned PRC (Hunter Mill District) (Concurrent with PRC-C-378)

This property is located at 11501 Sunrise Valley Drive, Reston, 20191. Tax Map 17-4 ((17)) 1C

PLANNING COMMISSION RECOMMENDATION:
On December 7, 2017, the Planning Commission voted 9-0-1 (Commissioner Cortina abstained from the vote and Commissioner Flanagan was absent from the public hearing) to recommend the following actions to the Board of Supervisors:

- Approval of PRC C-378, subject to the development conditions dated December 6, 2017;

- Approval of SE 2016-HM-024, subject to the development conditions dated December 6, 2017;

- Approval of a waiver of Paragraph 3 of Section 9-308 of the Zoning Ordinance which requires that service vehicles have access to the building on the side or rear entrance;

- Approval of a modification of Paragraph 5 of Section 9-308 of the Zoning Ordinance which requires that no building be located closer than 45 feet to any street line to permit the building to be located 25 feet from the right-of-way;

- Approval of a modification of Paragraph 13 of Section 11-203 of the Zoning Ordinance to reduce the loading spaces from two to one;

- Approval of a modification of Section 13-303 of the Zoning Ordinance which requires transitional screening to permit the landscaping shown on the SE/PRC

Plat and waiver of the barrier requirements of Section 13-304 of the Zoning Ordinance;

- Approval of a waiver of Paragraph 3 of Section 17-201 of the Zoning Ordinance which requires a service drive along Sunrise Valley Drive; and

- Approval of a modification of Paragraph 2 of Section 17-201 of the Zoning Ordinance for the countywide Trails Plan to provide a sidewalk along Sunrise Valley Drive as shown on the SE/PRC plat.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
http://www.fairfaxcounty.gov/dpz/staffreports/bos-packages/

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Harold Ellis, Planner, DPZ