

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
November 20, 2018**

AGENDA

- | | |
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| 9:30 | Presentations |
| 10:00 | Presentation of the Environmental Quality Advisory Council (EQAC) Annual Report |
| 10:10 | Board Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups |
| 10:20 | Items Presented by the County Executive |

**ADMINISTRATIVE
ITEMS**

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| 1 | Authorization to Advertise a Public Hearing to Reallocate Proffered Funds from the Springfield Cultural Center to the Springfield Branding Project (Lee District) |
| 2 | Authorization to Advertise a Public Hearing for the Enlargement of Small and Local Sanitary Districts for Refuse/Recycling and/or Vacuum Leaf Collection Service and to Advertise a Public Hearing for the De-Creation of Small and Local Sanitary Districts for Refuse/Recycling and/or Vacuum Leaf Collection Service (Providence and Mason Districts) |
| 3 | Extension of Review Period for 2232 Applications (Hunter Mill and Sully Districts) |
| 4 | Designation of Plans Examiner Status under the Expedited Land Development Review Program |
| 5 | Authorization to Advertise a Public Hearing on a Proposed County Code Amendment Re: Minor Revisions to Chapter 108.1 (Noise Ordinance) |

ACTION ITEMS

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| 1 | Approval of Fairfax Connector January 2019 Service Changes (Dranesville and Providence Districts) |
| 2 | Approval of Head Start Transportation Waiver Request for the Continuation of Fairfax County Public Schools 2018-2019 Transportation Services |

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
November 20, 2018**

**ACTION ITEMS
(Continued)**

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|---|---|
| 3 | Endorsement of Alternative for the Balls Hill Road and Old Dominion Drive Roadway Spot Improvement Project (Dranesville District) |
| 4 | Approval of Project Agreements Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Fiscal Year (FY) 2019 Transit Assistance Grant Funds |
| 5 | Approval of a Resolution to Add a Section of Pohick Road (Route 641) into the Secondary System of State Highways and Concur with the Abandonment of a Portion of the Former Alignment (Mount Vernon District) |
| 6 | Approval of Letter of Agreement with National Capital Region Transportation Planning Board for Implementation of Certain Provisions of the Federal Performance-Based Planning and Programming Process |
| 7 | Authorization to Use Economic Development Support Funding to Invest in an Innovation Hub |

**INFORMATION
ITEMS**

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|-------|---|
| 1 | Endorsement of Volume I Urban Design Guidelines for Fairfax County Commercial Revitalization Districts and Areas (Dranesville, Lee, Mason, Mount Vernon, and Providence Districts) and Volume II District Design Guidelines for Baileys Crossroads and Seven Corners (Mason District) |
| 2 | Contract Awards – Comprehensive Primary Care Services |
| 10:30 | Matters Presented by Board Members |
| 11:20 | Closed Session |

**ACTION ITEMS
(Continued)**

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| 3:00
Action 8 | Minor Variation Request for RZ 1997-BR-025 by Virendra Bery, Surendra Berry, and Shashi Berry to Modify the Architectural Treatments Approved by Proffer 1(c) on Proposed Single Family Detached Dwellings (Braddock District) |
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**FAIRFAX COUNTY
BOARD OF SUPERVISORS
November 20, 2018**

**PUBLIC
HEARINGS**

3:00		Public Hearing to Receive Comment from Citizens on the Proposed Legislative Program to be Presented to the 2019 Virginia General Assembly
3:30		Decision Only on RZ 2017-DR-023 (Tradition Homes, LLC) (Dranesville District)
3:30		Public Hearing on PRC B-846-05 (Woodfield Acquisitions, LLC) (Hunter Mill District)
3:30		Public Hearing on PCA-B-846-04 (Woodfield Acquisitions, LLC) (Hunter Mill District)
3:30		Public Hearing on DPA-HM-117-03 (Woodfield Acquisitions, LLC) (Hunter Mill District)
3:30	To be Indefinitely Deferred	Public Hearing on RZ 2018-MV-007 (Lafayette Building, LLC) (Mount Vernon District)
3:30		Public Hearing on RZ 2016-DR-027 (Pomeroy/Clark I, LLC) (Dranesville District)
3:30		Public Hearing on PCA-C-637-4 (Pomeroy/Clark I, LLC) (Dranesville District)
3:30		Public Hearing on RZ 2017-DR-028 (W-MRP LP Owner A VIII, LLC) (Dranesville District)
3:30		Public Hearing on PCA 79-C-037-08 (W-MRP LP Owner A VIII, LLC) (Dranesville District)
3:30		Public Hearing on PCA C-696-12 (W-MRP LP Owner A VIII, LLC) (Dranesville District)
4:00		Public Hearing on Proposed Plan Amendment 2017-III-P1, Located at 9901 and 9801 Braddock Road (Braddock District)
4:00		Public Hearing on Proposed Plan Amendment 2018-II-F1, Located in the Northeast Quadrant of the Intersection of Braddock Road and Roberts Road (Braddock District)
4:00		Public Hearing to Convey Board-Owned Property on South Van Dorn Street (Oakwood Property) to the Redevelopment and Housing Authority (Lee District)

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
November 20, 2018**

**PUBLIC
HEARINGS
(Continued)**

- | | |
|------|--|
| 4:30 | Public Hearing on Waiver of Public Street Frontage for 1016 Union Church Road (Dranesville District) |
| 4:30 | Public Hearing to Lease County-Owned Property (Building W-2 and W-2A) at 9528 Workhouse Way to the Workhouse Arts Foundation (Mount Vernon District) |
| 4:30 | Public Hearing to Consider Proposed Amendments to the Ordinances for the Fairfax County Employees', Uniformed and Police Officers Retirement Systems |



Fairfax County, Virginia

BOARD OF SUPERVISORS

AGENDA

**Tuesday
November 20, 2018**

9:30 a.m.

PRESENTATIONS

RECOGNITIONS

- RESOLUTION — To recognize Dr. Gerald R. Gordon, President and CEO of the Fairfax County Economic Development Authority, for his years of service. Requested by Supervisor Herrity.

DESIGNATIONS

- PROCLAMATION — To designate November 2018 as Adoption Awareness Month in Fairfax County. Requested by Chairman Bulova.
- PROCLAMATION — To designate December 3-7, 2018, as Inclusive Schools Week in Fairfax County. Requested by Supervisor Cook.
- PROCLAMATION — To designate November 2018 as Veterans and Military Families Month in Fairfax County. Requested by Chairman Bulova and Supervisors McKay and Storck.
- PROCLAMATION — To designate December 1, 2018, as HIV/AIDS Awareness Day in Fairfax County. Requested by Chairman Bulova.

— more —

Board Agenda Item
November 20, 2018

STAFF:

Tony Castrilli, Director, Office of Public Affairs

Bill Miller, Office of Public Affairs

Lisa Connors, Office of Public Affairs

Board Agenda Item
November 20, 2018

10:00 a.m.

Presentation of the Environmental Quality Advisory Council (EQAC) Annual Report

ENCLOSED DOCUMENTS:

The Environmental Quality Advisory Council Annual Report is available online at:
<https://www.fairfaxcounty.gov/planning-zoning/environmental-quality-advisory-council/annual-report-environment>

PRESENTED BY:

Stella Koch, Chairman, Environmental Quality Advisory Council

Board Agenda Item
November 20, 2018

10:10 a.m.

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

ENCLOSED DOCUMENTS:

Attachment 1: Appointments to be heard November 20, 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

November 20, 2018

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

APPOINTMENTS TO BE HEARD NOVEMBER 20, 2018
(ENCOMPASSING VACANCIES PROJECTED THROUGH DECEMBER 31, 2018)
(Unless otherwise noted, members are eligible for reappointment)

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Ronald Copeland; appointed 1/05-1/17 by Hudgins) Term exp. 1/18 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
Eileen J. Garnett (Appointed 1/03-2/17 by Gross) Term exp. 1/18	Mason District Representative		Gross	Mason

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Alison C. Balzer; appointed 6/17 by Foust) Term exp. 9/21 <i>Resigned</i>	Dranesville District Representative	Stephanie Sedgwick	Foust	Dranesville

AFFORDABLE DWELLING UNIT ADVISORY BOARD (4 years)
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
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 <i>Resigned</i>	Lending Institution Representative		By Any Supervisor	At-Large

AIRPORTS ADVISORY COMMITTEE (3 years)
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by George Page; appointed 1/05-1/16 by Hudgins) Term exp. 1/19 <i>Resigned</i>	Hunter Mill Business Representative		Hudgins	Hunter Mill

ARCHITECTURAL REVIEW BOARD (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Charles Bierce; appointed 11/86 by Egge; 8/89-9/13 by Hyland; 10/16 by Storck) Term exp. 9/19 <i>Resigned</i>	Architect #1 Representative		By Any Supervisor	At-Large

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ARCHITECTURAL REVIEW BOARD (3 years)

continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Susan Woodward Notkins (Appointed 11/96- 9/03 by Hanley; 9/06 by Connolly; 10/09- 6/16 by Bulova) Term exp. 9/18	Related Professional Group #3 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by John A. Carter; appointed 2/17 by Hudgins) Term exp. 9/18 <i>Resigned</i>	Related Professional Group #4 Representative		By Any Supervisor	At-Large

ATHLETIC COUNCIL (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Rachel Huhn; appointed 1/15-10/17 by Cook) Term exp. 6/19 <i>Resigned</i>	Braddock District Alternate Representative		Cook	Braddock
VACANT (Formerly held by Karin Stamper; appointed 9/09-4/16 by McKay) Term exp. 4/18 <i>Resigned</i>	Lee District Alternate Representative		McKay	Lee

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ATHLETIC COUNCIL (2 years)
 continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Terry Adams; appointed 11/11-7/13 by Gross) Term exp. 6/15	Mason District Alternate Representative		Gross	Mason
Jane Dawber (Appointed 3/13-9/16 by Hudgins) Term exp. 6/18	Women's Sports Alternate Representative		By Any Supervisor	At-Large

BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by 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.)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Susan Kim Harris; appointed 5/09-2/11 by Hudgins) Term exp. 2/15 <i>Resigned</i>	Alternate #4 Representative		By Any Supervisor	At-Large

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Asim Elfaki (Appointed 5/18 by Bulova) Term exp. 12/18	At-Large #1 Representative		By Any Supervisor	At-Large
Arthur S. Nachman (Appointed 6/14-12/16 by Foust) Term exp. 12/18	Professional #2 Representative		By Any Supervisor	At-Large
Noelle Maynard Holmes (Appointed 5/06-12/08 by Connolly; 12/10-12/16 by L. Smyth) Term exp. 12/18	Professional #4 Representative		By Any Supervisor	At-Large
M. Yvonne Demory (Appointed 1/07-1/17 by Hudgins) Term exp. 12/18	Professional #5 Representative		By Any Supervisor	At-Large
Sandy Pompelli (Appointed 1/15-12/16 by Bulova) Term exp. 12/18	Professional #6 Representative		By Any Supervisor	At-Large

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Grant Sitta; appointed 9/10-9/15 by Gross) Term exp. 9/19 <i>Resigned</i>	Mason District Representative		Gross	Mason

CHILD CARE ADVISORY COUNCIL (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Valerie Inman (Appointed 1/18 by Foust) Term exp. 9/18	Dranesville District Representative		Foust	Dranesville
Mercedes O. Dash (Appointed 3/15 by L. Smyth) Term exp. 9/17	Providence District Representative		L. Smyth	Providence

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Patrick J. Scott (Appointed 10/16 by Hudgins) Term exp. 5/18	Hunter Mill District Representative		Hudgins	Hunter Mill
Nicholas Ludlum (Appointed 1/17 by L. Smyth) Term exp. 5/18	Providence District Representative		L. Smyth	Providence

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Ronald Copeland; appointed 9/04-1/17 by Hudgins) Term exp. 12/18 <i>Resigned</i>	At-Large #2 Representative		By Any Supervisor	At-Large
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

CONSUMER PROTECTION COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Mehmood S. Kazmi (Appointed 11/12-6/15 by Bulova) Term exp. 7/18	Fairfax County Resident #3 Representative		By Any Supervisor	At-Large
Umair Javed (Appointed 2/17 by L. Smyth) Term exp. 7/18	Fairfax County Resident #13 Representative		By Any Supervisor	At-Large

CRIMINAL JUSTICE ADVISORY BOARD (CJAB) (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Francis Gallagher (Appointed 1/16 by Cook) Term exp. 11/18	Braddock District Representative		Cook	Braddock
Herbert C. Kemp (Appointed 1/17 by Foust) Term exp. 11/18	Dranesville District Representative		Foust	Dranesville
VACANT (Formerly held by Robert Gehring; appointed 1/14-2/15 by Hudgins) Term exp. 2/18 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Thomas D. Fleury (Appointed 6/01-3/14 by L. Smyth) Term exp. 3/18	At-Large #5 Representative		By Any Supervisor	At-Large

ECONOMIC ADVISORY COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Mark Silverwood; appointed 1/09-11/14 by Hudgins) Term exp. 12/17 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
Robert Yuen-Pai Tsien (Appointed 4/16 by K. Smith) Term exp. 12/18	Sully District Representative		K. Smith	Sully

ENGINEERING STANDARDS REVIEW COMMITTEE (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Maya Huber; appointed 12/09-1/14 by Confirmation; 05/18 by Bulova) Term exp. 3/21	Citizen #4 Representative		By Any Supervisor	At-Large

ENVIRONMENTAL QUALITY ADVISORY COUNCIL (EQAC) (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Debra A. Jacobson (Appointed 3/18 by Foust) Term exp. 11/18	Dranesville District Representative		Foust	Dranesville
Clyde Wilber (Appointed 3/14-1/16 by Herrity) Term exp. 11/18	Springfield District Representative	Clyde Wilber	Herrity	Springfield

FAIRFAX AREA DISABILITY SERVICES BOARD**(3 years- limited to 2 full consecutive terms per MOU, after initial term)**

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Thomas B. Bash (Appointed 10/16 by Bulova) Term exp. 11/18	At-Large Fairfax County Representative		By Any Supervisor	At-Large

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FAIRFAX AREA DISABILITY SERVICES BOARD**(3 years- limited to 2 full consecutive terms per MOU, after initial term)**

Continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Timothy W. Lavelle (Appointed 4/09-12/14 by Bulova) Term exp. 11/17 <i>Not eligible for reappointment</i>	At-Large #2 Business Community Representative		By Any Supervisor	At-Large
Tapan Banerjee (Appointed 2/07-3/16 by Foust) <i>Not eligible for reappointment</i>	Dranesville District Representative		Foust	Dranesville
Michele Hymer Blitz (Appointed 6/06-3/16 by Hudgins) Term exp. 11/18 <i>Not eligible for reappointment</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
Chester J. Freedenthal (Appointed 1/16 by McKay) Term exp. 11/18	Lee District Representative	Chester J. Freedenthal	McKay	Lee
VACANT (Formerly held by Harriet Epstein; appointed 5/10-12/16 by L. Smyth) Term exp. 11/19 <i>Resigned</i>	Providence District Representative		L. Smyth	Providence

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FAIRFAX AREA DISABILITY SERVICES BOARD
continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Mary Pauline Jones (Appointed 9/17 by Herrity) Term exp. 11/18	Springfield District Representative	Mary Pauline Jones	Herrity	Springfield
Sailesh Panchang (Appointed 1/18 by K. Smith) Term exp. 11/18	Sully District Representative		K. Smith	Sully

FAIRFAX-FALLS CHURCH COMMUNITY SERVICES BOARD
(3 years – limited to 3 full terms)

[NOTE: In accordance with *Virginia Code* Section 37.2-501, "prior to making appointments, the governing body shall disclose the names of those persons being considered for appointment." Members can be reappointed after 1-year break from initial 3 full terms, VA Code 37.2-502.

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Paul Luisada; appointed 4/13-9/13 by Hyland; 10/16 by Storck) Term exp. 6/19 <i>Resigned</i>	Mount Vernon District Representative		Storck	Mount Vernon

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Dave Lucas (Appointed 12/10- 9/15 by Hyland) Term exp. 6/18	Provider #2 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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Jordan E. Tannenbaum (Appointed 2/16 by Herrity) Term exp. 12/18 <i>Springfield District Resident</i>	Citizen #1 Representative	Jordan E. Tannenbaum (Herrity)	By Any Supervisor	At-Large
Sallie Lyons (Appointed 3/05-12/12 by Hyland; 3/16 by Storck) Term exp. 12/18 <i>Mount Vernon District Resident</i>	Citizen #2 Representative		By Any Supervisor	At-Large
Lynne Garvey Hodge (Appointed 11/00-12/06 by McConnell; 1/09-1/16 by Herrity) Term exp. 12/18 <i>Springfield District Resident</i>	Citizen #4 Representative	Lynne Garvey Hodge (Herrity)	By Any Supervisor	At-Large
Deborah Robison (Appointed 5/07-11/12 by Frey; 1/06 by K. Smith) Term exp. 12/18 <i>Sully District Resident</i>	Citizen #5 Representative		By Any Supervisor	At-Large
Mary Lipsey (Appointed 5/06-11/12 by Bulova; 1/16 by Cook) Term exp. 12/18 <i>Braddock District Resident</i>	Citizen #6 Representative		By Any Supervisor	At-Large

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HISTORY COMMISSION (3 years)
 continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Michael Irwin (Appointed 12/05- 12/06 by Connolly; 1/10-4/15 by L. Smyth) Term exp. 12/18 <i>Providence District Resident</i>	Citizen #8 Representative		By Any Supervisor	At-Large
Anne M. Barnes (Appointed 9/03- 12/12 by Hyland; 3/16 By Storck) Term exp. 12/18 <i>Mount Vernon District</i>	Citizen/Minority 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 <i>Mason District Resident Resigned</i>	Historian #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Stephanie Sedgwick; appointed 1/18 by Term exp. 12/20 <i>Dranesville District Resident Resigned</i>	Historian #3 Representative		By Any Supervisor	At-Large

HUMAN RIGHTS COMMISSION (3 years)
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Vanessa G. Paul; appointed 11/16 by McKay) Term exp. 9/19 <i>Resigned</i>	At-Large #7 Representative		By Any Supervisor	At-Large
Daoud Khairallah (Appointed 11/05- 9/14 by Gross) Term exp. 9/17	At-Large #8 Representative		By Any Supervisor	At-Large

HUMAN SERVICES COUNCIL (4 years)

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

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
M. Kathryn Walsh (Appointed 6/01 by Hanley; 1/04-1/07 by Connolly; 12/09-1/16 by Bulova) Term exp. 12/31/18	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Bhaskar Kuppasamy (Appointed 9/11-1/16 by Hudgins) Term exp. 12/18	Hunter Mill District Representative		Hudgins	Hunter Mill
Michael Aschenaki (Appointed 1/16 by McKay) Term exp. 12/18	Lee District Representative	Michael Aschenaki	McKay	Lee

**OVERSIGHT COMMITTEE ON DISTRACTED AND
IMPAIRED DRIVING (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by William Uehling; appointed 3/10-7/12 by Bulova) Term exp. 6/15 <i>Resigned</i>	Braddock District Representative		Cook	Braddock
VACANT (Formerly held by Amy K. Reif; appointed 8/09-6/12 by Foust) Term exp. 6/15 <i>Resigned</i>	Dranesville District Representative		Foust	Dranesville

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OVERSIGHT COMMITTEE ON DISTRACTED AND IMPAIRED DRIVING (3 years)
continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Adam Parnes; appointed 9/03-6/12 by Hudgins) Term exp. 6/15 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)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Kiel Stone (Appointed 10/17 by Cook) Term exp. 12/18	Braddock District Representative		Cook	Braddock
Ronald J. Kendall (Appointed 2/17 by Gross) Term exp. 12/18	Mason District Representative	Ronald J. Kendall	Gross	Mason

Continued on next page

PARK AUTHORITY (4 years)
 continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Linwood M. Gorham (Appointed 2/11-11/14 by Hyland) Term exp. 12/18	Mount Vernon District Representative		Storck	Mount Vernon
Michael W. Thompson (Appointed 7/12-11/14 by Herrity) Term exp. 12/18	Springfield District Representative	Michael W. Thompson	Herrity	Springfield

PLANNING COMMISSION (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Timothy John Sargeant (Appointed 12/06 by Connolly; 12/10-11/14 by Bulova) Term exp. 12/18	At-Large #2 Representative	Timothy John Sargeant	Bulova	At-Large #2
Julie M. Strandlie (Appointed 12/14 by Gross) Term exp. 12/18	Mason District Representative		Gross	Mason
Peter F. Murphy (Appointed 12/82 by Travesky; 11/86-12/06 by McConnell; 12/10- 11/14 by Herrity) Term exp. 12/18	Springfield District Representative	Peter F. Murphy	Herrity	Springfield

POLICE CIVILIAN REVIEW PANEL

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Randy Sayles; appointed 2/17) Term exp. 2/19 <i>Resigned</i>	Seat #6 Representative		By Any Supervisor	At-Large

POLICE OFFICERS RETIREMENT SYSTEM BOARD OF TRUSTEES (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Brendan D. Harold (Appointed 5/05- 11/14 by Hyland) Term exp. 12/18	Citizen At-Large #2 Representative		By Any Supervisor	At-Large

RESTON TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD

The Board of Supervisors established the advisory board on April 4, 2017
There will be 14 members on this advisory board. The appointees would serve
for 4-year terms from April 4, 2017

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Deloris Bailey; appointed 9/17 by Hudgins) Term exp. 9/21 <i>Resigned</i>	Hunter Mill District #2 Representative		Hudgins	Hunter Mill
NEW POSITION	Residential Owners and HOA/Civic Association #1 Representative		Foust or Hudgins	At-Large

RESTON TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD
 continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
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 <i>Resigned</i>	Apartment or Rental Owner Associations Representative		Hudgins	At-Large

ROAD VIEWERS BOARD (1 year)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Joseph Bunnell; appointed 9/05-12/06 by McConnell; 2/08- 11/13 by Herrity) Term exp. 12/14 <i>Resigned</i>	At-Large #1 Representative		By Any Supervisor	At-Large
Paul Davis (Appointed 3/17-1/18 by Bulova) Term exp. 12/18	At-Large #2 Representative		By Any Supervisor	At-Large
Marcus Wadsworth (Appointed 6/09- 12/17 by McKay) Term exp. 12/18	At-Large #3 Representative	Marcus Wadsworth (McKay)	By Any Supervisor	At-Large

Continued on next page

ROAD VIEWERS BOARD (1 year)
 continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Stephen E. Still; appointed 6/06-12/11 by L. Smyth) Term exp. 12/12 <i>Resigned</i>	At-Large #4 Representative		By Any Supervisor	At-Large
Micah D. Himmel (Appointed 12/11- 1/18 by L. Smyth) Term exp. 12/18	At-Large #5 Representative		By Any Supervisor	At-Large

SMALL BUSINESS COMMISSION, FAIRFAX COUNTY (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
John D. Pellegrin (Appointed 9/09- 1/16 by Bulova) Term exp. 12/18	At-Large #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Claire L. Tse; appointed 9/16- 12/17 by Hudgins) Term exp. 12/20 <i>Resigned</i>	At-Large #2 Representative		By Any Supervisor	At-Large
Tracey Wood (Appointed 6/13- 3/16 by Bulova) Term exp. 12/18	At-Large #3 Representative		By Any Supervisor	At-Large
Elizabeth Novak (Appointed 10/05- 1/16 by Gross) Term exp. 12/18	Mason District Representative		Gross	Mason

Continued on next page

SMALL BUSINESS COMMISSION, FAIRFAX COUNTY (3 years)

Continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Eva Freund; appointed 11/14- 12/17 by L. Smyth) Term exp. 12/20 <i>Resigned</i>	Providence District Representative		L. Smyth	Providence
Marvin Powell (Appointed 10/04- 11/12 by Frey; 1/16 by K. Smith) Term exp. 12/18	Sully District Representative		K. Smith	Sully

SOUTHGATE COMMUNITY CENTER ADVISORY COUNCIL (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Emily Huaroco (Appointed 10/16 by Hudgins) Term exp. 3/18	Fairfax County #5 Representative		By Any Supervisor	At-Large

TENANT LANDLORD COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Michael Congleton; appointed 7/13-2/17 by Herrity) Term exp. 1/20 <i>Resigned</i>	Citizen Member #1 Representative		By Any Supervisor	At-Large

Continued on next page

TENANT LANDLORD COMMISSION (3 years)

continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Sally D. Liff; appointed 8/04-1/11 by L. Smyth) Term exp. 1/14 <i>Deceased</i>	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

TRANSPORTATION ADVISORY COMMISSION (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Micah Himmel; appointed 6/13-7/16 by L. Smyth) Term exp. 6/18 <i>Resigned</i>	Providence District Representative		L. Smyth	Providence

TREE COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Robert D. Vickers (Appointed 4/07 by DuBois; 11/09-10/15 by Foust) Term exp. 10/18	Dranesville District Representative		Foust	Dranesville

Continued on next page

TREE COMMISSION (3 years)
continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Thomas D. Fleury; appointed 1/17 by L. Smyth) Term exp. 10/17 Resigned	Providence District Representative		L. Smyth	Providence

**TYSONS TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD
(2 YEARS)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Molly Peacock; appointed 2/13-1/15 by L. Smyth) Term exp. 2/17 <i>Resigned</i>	Providence District Representative #2		L. Smyth	Providence

WETLANDS BOARD (5 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Kimberly Vanness Larkin (Appointed 10/16 by Storck) Term exp. 12/18	At-Large #1 Representative		By Any Supervisor	At-Large
Clyde Wilber (Appointed 10/12- 11/13 by Herrity) Term exp. 12/18	Springfield District Representative	Clyde Wilber	Herrity	Springfield

Board Agenda Item
November 20, 2018

10:20 a.m.

Items Presented by the County Executive

ADMINISTRATIVE - 1

Authorization to Advertise a Public Hearing to Reallocate Proffered Funds from the Springfield Cultural Center to the Springfield Branding Project (Lee District)

ISSUE:

The proffers accepted with RZ-2005-LE-022, (Residence Inn by Marriot Inc.), included a cash contribution of “Thirty thousand dollars (\$30,000.00) to the Springfield Cultural Center”. That contribution was made to the County. However, no such cultural center exists today or existed at the time of the rezoning, and there are no plans identified to develop such a facility. Due to the potential expiration of these proffered funds on October 20, 2019, authorization of a public hearing under Virginia Code § 15.22303.2(C) is requested to reallocate the proffered cash contribution to the Springfield Branding Project.

RECOMMENDATION:

The County Executive recommends that the Board authorize a public hearing to reallocate the proffered contribution to the Springfield Branding Project.

TIMING:

A public hearing is requested to be held on January 22, 2019, at 4:30pm.

BACKGROUND:

The Proffer Statement for RZ-2005-LE-022, dated June 4, 2006, included Cash Contributions (Section 5b): *“The following cash contributions shall be made prior to the issuance of the “Non-Rup” (or occupancy permit) for the Hotel: Thirty thousand dollars (\$30,000.00) to the Springfield Cultural Center”*.

The Springfield Branding Project aims to improve the image and identity of the Springfield area through the development of branding applications to include signs, banners and other streetscape improvements. Currently funded at \$100,000.00 through the Economic Development Success Fund, the original scope of the project can be expanded with additional funds.

Virginia Code § 15.22303.2(C) allows a locality to use cash payments proffered for capital improvements that are for alternative improvements of the same category and are within the vicinity of the improvements for which the cash payments were originally made.

Before using the cash contributions for the alternate improvements, thirty days written notice of the proposed alternative improvements must be given to the entities that made the cash payment and the Board must conduct a public hearing on the proposal. Following the public hearing, the Board can use the cash contributions for alternative improvements if it finds that: (a) the improvements for which the cash contributions were proffered cannot occur in a timely manner or the functional purpose for which the contributions were made no longer exists; (b) the alternative improvements are within the vicinity of the proposed improvements for which the cash payments were proffered; and, (c) the alternative improvements are in the public interest. Staff has concluded that the proposed re-allocation to the Springfield Branding Project would meet these requirements.

FISCAL IMPACT:

The reallocation of this proffer will supplement currently authorized funding for the Springfield Branding Project, and will be appropriated to CR-000008, OCR-Springfield Revitalization, Fund 30010, General Construction and Contributions. Should the Board not approve the reallocation, the funds proffered for the Springfield Cultural Center will expire on October 20, 2019, and become unavailable to be used for other improvements.

ENCLOSED DOCUMENTS:

None

STAFF:

Robert A. Stalzer, Deputy County Executive
Barbara A. Byron, Director, Office of Community Revitalization
Douglas A. Loescher, Revitalization Manager, Office of Community Revitalization

ASSIGNED COUNSEL:

F. Hayden Coddington, Assistant County Attorney

ADMINISTRATIVE - 2

Authorization to Advertise a Public Hearing for the Enlargement of Small and Local Sanitary Districts for Refuse/Recycling and/or Vacuum Leaf Collection Service and to Advertise a Public Hearing for the De-Creation of Small and Local Sanitary Districts for Refuse/Recycling and/or Vacuum Leaf Collection Service (Providence and Mason Districts)

ISSUE:

Board of Supervisors' authorization to advertise a Public Hearing for the Enlargement of Small and Local Sanitary District for refuse/recycling and/or vacuum leaf collection service.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize advertisement of a public hearing at 4:00 p.m. on Tuesday, February 19, 2019 to consider the following change to small and local sanitary districts for refuse/recycling and/or vacuum leaf collection service in accordance with the Board of Supervisor's adopted criteria for the creation of Small or Local Sanitary Districts.

<u>Sanitary District</u>	<u>Action</u>	<u>Service</u>	<u>Recommendation</u>
Small District Within Providence District (Luckett Ave Area)	Enlarge	Refuse, Recycling, & Vacuum Leaf	Approve
Small District Within Mason District (522 S. Larrimore St)	De-Create	Refuse, Recycling, & Vacuum Leaf	Approve

TIMING:

Board of Supervisors' authorization to advertise on November 20, 2018, is required for a Public Hearing to be held on February 19, 2019 at 4:00 p.m.

BACKGROUND:

The administrative responsibility for the Creation/Enlargement/De-Creation/Re-Creation of Small and Local Sanitary Districts in the County of Fairfax for refuse/recycling and/or leaf collection is with the Department of Public Works and Environmental Services. The establishment of sanitary districts is accomplished through the action of the Board of Supervisors at public hearings. Prior to any action by the Board of Supervisors on a proposed small or local sanitary district, certain relevant standards and criteria must be met in accordance with the Board of Supervisors' adopted criteria for the Creation/Enlargement/De-Creation/Re-Creation of Small and Local Sanitary Districts.

The submitted petition has been reviewed, and it has been determined that the petition meets the Board of Supervisors' Adopted Criteria. Staff recommends that the authorization to advertise a public hearing for the creation / de-creation of small and/or local sanitary districts for refuse/recycling and/or leaf collection be approved. If approved, the modification will become permanent in July 2019.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Summary Sheet (Luckett Ave Area)

Attachment 2: Data Sheet with Proposed Resolution and Map (Luckett Av Area)

Attachment 3: Summary Sheet (522 S. Larrimore St)

Attachment 4: Data Sheet with Proposed Resolution and Map (522 S. Larrimore)

STAFF:

Robert A. Stalzer, Deputy County Executive

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

SUMMARY SHEET

Proposed alterations to the following small and local sanitary districts for refuse/recycling and/or leaf collection service:

1. Enlarge Small District within Providence District for the purpose of providing County Refuse, Recycling and Vacuum Leaf Collection Service to the Lockett Ave Area.

DATA SHEET
Enlarge
Small District
Within the Providence District

Purpose: To provide County Refuse/Recycling and Vacuum Leaf Collection Service to the Lockett Ave area.

- Petition requesting service received September 19, 2018.
- Petition Area: 80 Properties.
- 44 Property Owners in favor. (55%)
- 25 property owners opposed.
- 11 Non-responsive / unable to contact.
- The Department of Public Works and Environmental Services can provide the requested service using existing equipment.
- The Department of Public Works and Environmental Services recommends that the proposed action be approved effective July 1, 2019.

NOTICE OF INTENTION TO PROPOSE FOR ADOPTION
A RESOLUTION AND A PUBLIC HEARING THEREON

TO ENLARGE
SMALL DISTRICT
WITHIN PROVIDENCE DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday the 20th day of November, 2018 it was proposed by said Board to adopt a resolution to enlarge a local district known as Small District within Providence District to include Lockett Ave area for the purpose of providing for refuse/recycling and vacuum leaf collection to be effective July 1, 2019, and the Clerk of said Board was directed to cause notice thereof by publication once a week for two consecutive weeks in a newspaper published in or having general circulation in said County, together with a notice that at a regular meeting of said Board to be held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

TUESDAY
February 19, 2019
COMMENCING AT 4:00 P.M.

The said Board of Supervisors of Fairfax County, Virginia, will hold a public hearing at which time and place any interested parties may appear and be heard. The full text of the resolution to be adopted is in the following words and figures, to-wit:

WHEREAS, Virginia Code Section *15.2-858*, as amended, provides for, among other things, the Creation by the Board of Supervisors of Fairfax County, Virginia, of a small/local sanitary district by resolution; and

WHEREAS, the Board of Supervisors has been presented with facts and information upon consideration of which said Board, finding the property embraced in the proposed local sanitary district will be benefited by creating the local sanitary district for the purpose of providing for refuse/recycling and vacuum leaf collection for the citizens who reside therein.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the advertisement for the proposed enlargement of a local sanitary district, pursuant to Virginia Code Section *15.2-858*, as amended, to be known as Small District within Providence District, Fairfax County, Virginia, which said creation of the local sanitary district shall be described as follows:

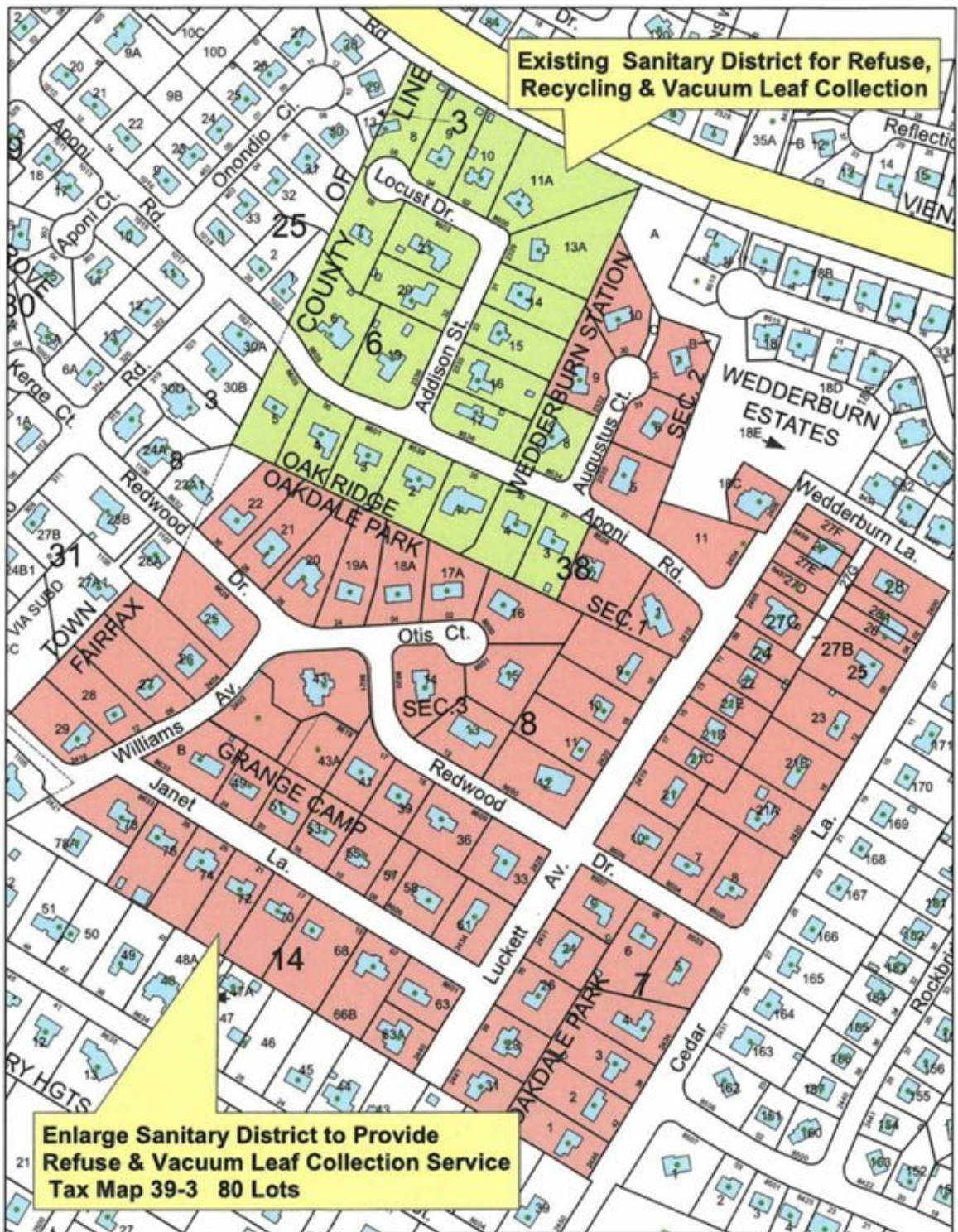
The creation of Small District within Providence District to include Lockett Ave area located in the County of Fairfax, Virginia, and as shown on the attached map.

AND BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Small District within Providence District is hereby created to wit:

To provide refuse/recycling and vacuum leaf collection service for the citizens who reside therein.

Given under my hand this____day of November, 2018

Catherine A. Chianese
Clerk to the Board



TAX MAP 39-3

LUCKETT AVE AREA

SUMMARY SHEET

Proposed alterations to the following small and local sanitary districts for refuse/recycling and/or leaf collection service:

2. De-Create Small District within Mason District for the purpose of discontinuing County Refuse, Recycling and Vacuum Leaf Collection Service to the 522 S. Larrimore St. This address is serviced by Arlington County for both refuse and vacuum leaf collection.

DATA SHEET
De-Create
Small District
Within the Mason District

Purpose: To Discontinue County Refuse/Recycling and Vacuum Leaf Collection Service to 522 S. Larrimore St.

- Petition requesting service received July 24 2018.
- Petition Area: 1 Properties.
- 1 Property Owners in favor. (100%)
- 0 property owners opposed.
- 0 Non-responsive / unable to contact.
- The Department of Public Works and Environmental Services recommends that the proposed action be approved effective July 1, 2019.

NOTICE OF INTENTION TO PROPOSE FOR ADOPTION
A RESOLUTION AND A PUBLIC HEARING THEREON

TO DE-CREATE
SMALL DISTRICT
WITHIN MASON DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday the 20th day of November, 2018 it was proposed by said Board to adopt a resolution to De-create a local district known as Small District within Mason District to include 522 S. Larrimore St area for the purpose of discontinuing refuse/recycling and vacuum leaf collection to be effective July 1, 2019, and the Clerk of said Board was directed to cause notice thereof by publication once a week for two consecutive weeks in a newspaper published in or having general circulation in said County, together with a notice that at a regular meeting of said Board to be held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

TUESDAY
February 19, 2019
COMMENCING AT 4:00 P.M.

The said Board of Supervisors of Fairfax County, Virginia, will hold a public hearing at which time and place any interested parties may appear and be heard. The full text of the resolution to be adopted is in the following words and figures, to-wit:

WHEREAS, Virginia Code Section 15.2-858, as amended, provides for, among other things, the De-Creation by the Board of Supervisors of Fairfax County, Virginia, of a small/local sanitary district by resolution; and

WHEREAS, the Board of Supervisors has been presented with facts and information upon consideration of which said Board, finding the property embraced in the proposed local sanitary district will be benefited by creating the local sanitary district for the purpose of discontinuing refuse/recycling and vacuum leaf collection for the citizens who reside therein.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the advertisement for the proposed enlargement of a local sanitary district, pursuant to Virginia Code Section 15.2-858, as amended, to be known as Small District within Mason District, Fairfax County, Virginia, which said de-creation of the local sanitary district shall be described as follows:

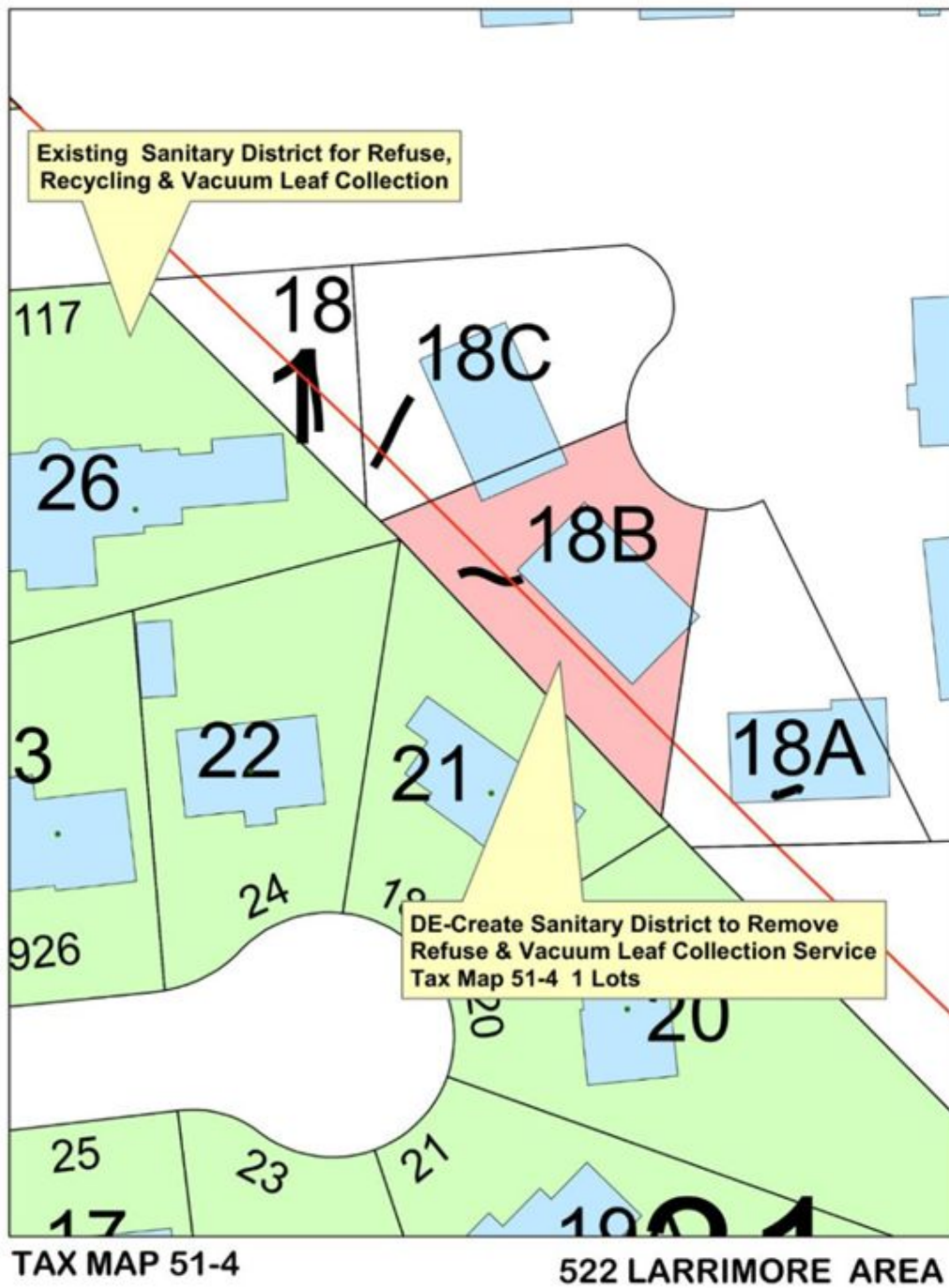
The de-creation of Small District within Mason District to include 522 S Larrimore St. located in the County of Fairfax, Virginia, and as shown on the attached map.

AND BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Small District within Mason District is hereby created to wit:

To discontinue refuse/recycling and vacuum leaf collection service for the citizens who reside therein.

Given under my hand this ____ day of November, 2018

Catherine A. Chianese
Clerk to the Board



ADMINISTRATIVE – 3

Extension of Review Period for 2232 Applications (Hunter Mill and Sully Districts)

ISSUE:

Extension of review period for 2232 applications 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 applications: 2232-H18-8 and 2232-Y18-19.

TIMING:

Board action is required on November 20, 2018, to extend the review period of the applications noted above before their expiration date.

BACKGROUND:

Subsection F of *Section 15.2-2232* of the *Code of Virginia* states: "Failure of the commission to act on any such application for a telecommunications facility under subsection A submitted on or after July 1, 1998, within 90 days of such submission shall be deemed approval of the application by the commission unless the governing body has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The governing body may extend the time required for action by the local commission by no more than 60 additional days. If the commission has not acted on the application by the end of the extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the commission." 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 applications should be extended:

2232-H18-8	Sprint 11921 Freedom Drive Reston, VA Hunter Mill District Accepted August 24, 2018 Extend to January 17, 2019
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Board Agenda Item
November 20, 2018

2232-Y18-19 Sprint
4700 Stonecroft Boulevard
Chantilly, VA
Sully District
Accepted August 24, 2018
Extend to January 17, 2019

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
None

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Michelle K. Stahlhut, Chief, Facilities Planning Branch, DPZ
Douglas W. Hansen, Senior Planner, Facilities Planning Branch, Planning Division, DPZ

ADMINISTRATIVE – 4

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

ISSUE:

Board of Supervisors' action to designate one individual as a Plans Examiner 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:

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

Greg M. Preville

330

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 Land Development Services, Department of Public Works and Environmental Services.

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

Board Agenda Item
November 20, 2018

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 candidate listed above satisfies these requirements. This finding was documented in a letter dated September 28, 2018, from the Chairman of the APEB, James H. Scanlon, P.E., L.S., to Chairman Bulova.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment I – Letter dated September 28, 2018, from the Chairman of the APEB to the Chairman of the Board of Supervisors.

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



Engineers & Surveyors Institute

"a public/private partnership"

Received

OCT 12 2018

**Land Development Services
Directors Office**

4795 Meadow Wood Lane
Suite 115 East
Chantilly, VA 20151
703-263-2232

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Fairfax County-DPW&ES

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VA Dept. Rail & Public
Transportation

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Charles P. Johnson & Associates
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Lee Ann Hall, P.E.
Virginia Department of
Transportation

David Logan, P.E.
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Fairfax Water

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EXECUTIVE DIRECTOR
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September 28, 2018

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

Dear Chairman, Bulova:

The following named individual has been approved by the Advisory Plans
Examiner Board for recommendation as Designated Plans Examiners:

Name	Reg. No
Greg M. Preville	330

He has been found to meet the qualifications outlined in Chapter 117-1-2 of the
Code of Fairfax County and is 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

ADMINISTRATIVE - 5

Authorization to Advertise a Public Hearing on a Proposed County Code Amendment
Re: Minor Revisions to Chapter 108.1 (Noise Ordinance)

ISSUE:

The proposed Noise Ordinance amendment is on the 2018 Priority 1 Zoning Ordinance Amendment Work Program and is in response to Senate Bill 926 which was adopted by the 2017 Virginia General Assembly and allows Police Departments to enforce the Noise Ordinance through the use of civil penalties. The proposed amendment implements Senate Bill 926 and would also allow staff to revoke noise waivers as a result of non-compliance with noise waiver conditions.

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of the proposed County Code amendment.

TIMING:

Board action is requested on November 20, 2018, to advertise the public hearing before the Board on January 22, 2019, at 4:00 p.m.

BACKGROUND:

The current Noise Ordinance (Chapter 108.1 of the County Code) was adopted on November 15, 2015, with an effective date of February 17, 2016. The delayed effective date was to provide time for staff training, update relevant County websites, and prepare information items to assist the public and staff in understanding the new regulations. In addition, the Board directed staff to monitor the effectiveness and impact of the new Noise Ordinance for an 18-month period after its enactment and report whether any adjustments to the Ordinance were needed. In a memorandum dated September 18, 2017, staff provided a Noise Ordinance update which included a discussion on staff training and outreach activities, enforcement statistics and noise waiver requests. The memorandum concluded that overall the Noise Ordinance appeared to be effective, but recommended several amendments to aid in enforcement. Specifically, staff recommended that the Noise Ordinance be amended to exempt animal noise during the day, to allow the Police Department to impose civil penalties, and to allow staff to revoke noise waivers for failure to comply with noise waiver conditions. The staff recommendations were included as a Priority 1 item on the 2018 Zoning Ordinance Amendment Work Program which was adopted by the Board on July 10, 2018. After further consideration, staff is recommending that animal noise continue to be monitored and to make no changes to amend the animal noise provisions in the

Noise Ordinance at this time. Specifically, the proposed amendments to the Noise Ordinance would:

- (1) Allow the Police Department to enforce the Noise Ordinance through the use of civil penalties; and
- (2) Allow staff to revoke noise waivers if the applicant fails to comply with all conditions of the noise waiver.

A more detailed discussion of the proposed changes is presented in the Staff Report enclosed as Attachment 1.

REGULATORY IMPACT:

The proposed amendment will facilitate the enforcement and implementation of the Noise Ordinance by allowing the Police Department to use civil penalties in the enforcement of the Noise Ordinance, and allowing staff to revoke noise waivers for failure to comply with all conditions of the Noise Ordinance waiver.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENT:

Attachment 1 – Staff Report

STAFF:

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

ASSIGNED COUNSEL:

Cherie Halyard, Assistant County Attorney, Office of the County Attorney



**FAIRFAX
COUNTY**

STAFF REPORT

V I R G I N I A

PROPOSED COUNTY CODE AMENDMENT

**Chapter 108.1 (Noise Ordinance) of the Fairfax County Code
Re: Minor Revisions**

PUBLIC HEARING DATE

Board of Supervisors

January 22, 2019 at 4:00 p.m.

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

November 20, 2018

RJ



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

STAFF COMMENT

Issue

The proposed Noise Ordinance Amendment is on the 2018 Zoning Ordinance Amendment Work Program and is response to Senate Bill 926 which was adopted by the 2017 Virginia General Assembly and allows Police Departments to enforce the Noise Ordinance through the use of civil penalties. The proposed amendment implements Senate Bill 926 and would also allow staff to revoke noise waivers as a result of non-compliance with noise waiver conditions.

Background

The current Noise Ordinance (Chapter 108.1 of the County Code) was adopted on November 15, 2015, with an effective date of February 17, 2016. The delayed effective date was to provide time for staff training, update relevant County websites, and prepare information items to assist the public and staff in understanding the new regulations. In addition, the Board directed staff to monitor the effectiveness and impact of the new Noise Ordinance for an 18-month period after its enactment and report whether any adjustments to the Ordinance were needed. In a memorandum dated September 18, 2017, staff provided a Noise Ordinance update which included a discussion on staff training and outreach activities, enforcement statistics and noise waiver requests. The memorandum concluded that overall the Noise Ordinance appeared to be effective, but recommended several amendments to aid in enforcement. Specifically, staff recommended that the Noise Ordinance be amended to exempt animal noise during the day, to allow the Police Department to impose civil penalties, and to allow staff to revoke noise waivers for failure to comply with noise waiver conditions. The staff recommendations were included as a Priority 1 item on the 2018 Zoning Ordinance Amendment Work Program which was adopted by the Board on July 10, 2018. Each of the recommendations are discussed below:

Imposition of Civil Penalties by the Police Department

Under Sect. 108.1-3-1, the Noise Ordinance is administered and enforced by the Director of Planning and Zoning (DPZ) and/or his duly authorized agents, including the Zoning Administrator, the Department of Code Compliance, and the Department of Public Works and Environmental Services. Under Section 108.1-302, violations of the Noise Ordinance can be enforced through the use of civil penalties, criminal misdemeanors, or prosecuted in Circuit Court by requests for Declaratory Judgment and Injunctive Relief. The primary goal of any enforcement action is to gain compliance and the use of a certain enforcement method may be more effective in certain situations.

Under Sect. 108.1-3-1(b) of the Noise Ordinance, the Police Department can only enforce violations of the Noise Ordinance as misdemeanors. In 2017, the Virginia General Assembly adopted Senate Bill 926 which allows police departments to enforce noise violations through the use of civil penalties. A copy of Senate Bill 926 is enclosed as Attachment A. It is believed that the Police Department's use of civil penalties could be an effective and reasonable means of gaining compliance in certain situations. In response, the proposed Noise Ordinance would

allow the Police to use civil penalties to enforce the Noise Ordinance. Specifically, the amendment would delete Sect. 108.1-3-1(b) and would amend Sect. 108.1-3-1(a) to add the Police Department to the list of authorized agents who can administer and enforce the Noise Ordinance through the use of civil penalties.

Revocation of Noise Waivers for Failure to Comply with Noise Waiver Conditions

Under Sect. 108.1-6-1, a person responsible for a noise source can apply to the Director of DPZ for a waiver or partial waiver from any of the provisions of the Noise Ordinance. The Director may grant the waiver provided that the noise does not endanger the public, health, safety or welfare; or compliance with the Noise Ordinance from which the waiver is sought would produce serious hardship without producing equal or greater benefit to the public; and reasonable efforts are made to minimize the adverse impacts of the noise on adjacent properties. The Zoning Inspections Branch processes such waiver requests. In determining whether to grant the waiver, staff considers the following: the time of day when noise will occur, duration of the noise, its loudness relative to the limits of the Noise Ordinance, whether the noise is intermittent or continuous, its extensiveness, ambient noise levels, the technical and economic feasibility of bringing the noise into conformance with the Noise Ordinance, and such other matters as are reasonably related to the impact of the noise on the health, safety and welfare of the community and the degree of hardship which may result from the enforcement of the Noise Ordinance. The Noise Ordinance allows a waiver to be approved for up to one year. All noise waiver requests are coordinated with the Board member's office of the Magisterial District in which the site is located. A noise waiver typically includes conditions that help mitigate the noise on nearby residences. For example, the use of jack hammers and other types of construction equipment may be prohibited during nighttime hours.

There is no provision in the Noise Ordinance that specifically allows the County to revoke a noise waiver for failure to comply with the noise waiver conditions. This additional enforcement tool is recommended by staff to ensure compliance with the Noise Ordinance, mitigate the potential adverse impacts that noise sources may have on the community, and to allow staff to more effectively enforce the Noise Ordinance. Therefore, the proposed amendment would add a new (f) to Sect. 108.1-6-1 that would allow the Director to revoke a noise waiver due to failure of the applicant to comply with all conditions of the waiver.

Animal Noise Exemption

Under Sect. 108.1-4-1, animal noise is prohibited between 10 p.m. and 7 a.m. when it is plainly audible and discernible in any other person's residence. Animal noise is also prohibited between 7 a.m. and 10 p.m. when plainly audible and discernible in any other person's residence as described above, and can be heard for more than 5 consecutive or nonconsecutive minutes in any 10-minute period. The daytime animal noise standard has been difficult for staff to enforce given that the inspector must hear the noise violation during the course of multiple inspections, and the animal noise cannot be the result of the animal responding to pain or injury or is protecting itself, its kennels, its offspring, or a person from a real threat. In order to facilitate enforcement, staff noted that the Noise Ordinance could be amended to exempt animal noise from the Noise Ordinance between 7 a.m. and 10 p.m. and maintaining the plainly audible

standard at night when most people are sleeping. However, after further consideration, staff is recommending that animal noise continue to be monitored and to make no changes to the animal noise provision in the Noise Ordinance at this time. However, it should be noted that the issue of rooster crowing is being addressed in conjunction with a Zoning Ordinance amendment which is scheduled for a Board public hearing in December, 2018. The proposed Zoning Ordinance amendment would prohibit the keeping of roosters on any lot, except when the rooster is located on lots of five acres or more and is part of a bonafide agricultural use.

Conclusion

The proposed amendment would allow the use of civil penalties by the Police Department in the enforcement of the Noise Ordinance and would also allow staff to revoke noise waivers as a result of non-compliance with noise waiver conditions. It is staff's opinion that the proposed amendment would facilitate the enforcement and implementation of the Noise Ordinance and would help mitigate adverse impacts of noise on adjacent properties. As such, staff recommends approval of the proposed amendments with an effective date of 12:01 a.m. on the day following adoption.

**PROPOSED AMENDMENTS
CHAPTER 108.1 (NOISE ORDINANCE)
OF THE FAIRFAX COUNTY CODE**

Amend Article 3. Administration, Penalties and Authority and Duties, Section 108.1-3-1. Administration and Enforcement, by revising Par. (a) to read as follows, deleting Par. (b), and relettering the subsequent paragraphs accordingly:

(a) The provisions of this Chapter ~~shall~~ will be administered and enforced by the Director and/or his/her duly authorized agents, including the Zoning Administrator, the Department of Code Compliance, the Police Department, and the Department of Public Works and Environmental Services, and ~~shall~~ will be assisted by other County departments as applicable.

~~(b) In addition, the provisions of the Chapter may also be enforced by the Police Department. If so enforced by the Police Department, the civil remedies referenced below shall not be applicable.~~

Amend Article 6. Waivers, Section 108.1-6-1. Waivers, by adding a new Par. (e) to read as follows and relettering the subsequent paragraph accordingly:

(e) A noise waiver may be revoked by the Director if the applicant fails to comply with all conditions of the waiver.

Code of Virginia
Title 15.2. Counties, Cities and Towns
Chapter 9. General Powers of Local Governments

§ 15.2-980. Civil penalties for violations of noise ordinances

Any locality may, by ordinance, adopt a uniform schedule of civil penalties for violations of that locality's noise ordinance. This provision shall not apply to noise generated in connection with the business being performed on industrial property. Civil fines will not exceed \$250 for the first offense and \$500 for each subsequent offense. The locality may authorize the chief law-enforcement officer to enforce any civil penalties adopted pursuant to the provisions of this section. The provisions of this section shall not apply to railroads. No ordinance of any locality shall apply to sound emanating from any area permitted by the Virginia Department of Mines, Minerals and Energy or any division thereof.

2010, cc. [501](#), [788](#); 2017, c. [649](#).

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.

ACTION - 1

Approval of Fairfax Connector January 2019 Service Changes (Dranesville and Providence Districts)

ISSUE:

Board of Supervisors' approval of Fairfax Connector's January 2019 service changes to implement a new Route 698 express service, as well as routing and running time adjustments on Routes 924 and 926.

RECOMMENDATION:

The County Executive recommends the Board approve the Fairfax Connector's January 2019 service changes to implement a new Route 698 express service, as well as routing and running time adjustments on Routes 924 and 926. The new Route 467, which was included in the public outreach, will be deferred until March 2019 for further assessment and funding considerations.

TIMING:

Board approval is requested on November 20, 2018, to allow for implementation on January 19, 2019.

BACKGROUND:

Route 698: Vienna Metrorail Station – Pentagon

Route 698 is proposed as a new route linking the Vienna Metrorail Station to the Pentagon. This express bus service features ten inbound morning trips and ten outbound afternoon trips operating during peak travel periods. Funding for the service is being provided through the multimodal grant program managed by the Northern Virginia Transportation Commission (NVTC) with revenue generated from tolls on I-66 inside the Beltway.

Routes 924 and 926: Herndon – Dranesville Road

Community agencies and the Dranesville District Supervisor's office requested a review of Fairfax Connector services near Herndon High School. Staff analysis found that (while the Herndon High School students do use several Fairfax Connector routes) Routes 924 and 926, which pass directly in front of the school, could be more convenient for students. There is a need to adjust the schedules for Routes 924 and 926 to better serve the students.

PROPOSAL DETAILS:

Route 698: Vienna Metrorail Station – Pentagon

Route 698 is a new route linking the Vienna Metrorail Station to the Pentagon. The express bus service features ten inbound morning trips and ten outbound afternoon trips operating during peak travel periods. Funding for the service is being provided through a multimodal grant program managed by NVTC as part of the I-66 Express Lanes Project funded through toll revenue from the express lanes inside the Beltway. This route is one of several transit and Travel Demand Management (TDM) projects being funded by NVTC to help manage peak-hour congestion on the I-66 corridor, allowing for more consistent travel times during periods of high travel demand. A map of Route 698 is included in Attachment II.

Following are details regarding the proposed level of service, estimated annual revenue hours, and estimated annual operating cost for the new service:

- The morning service will operate from 5:20 to 8:00 A.M.
- The afternoon service will operate from 3:00 to 6:00 P.M.
- Fairfax County will use grant funding to purchase four new buses at a total cost of \$2.2 million to operate the service.
- The estimated annual grant funding for operating costs is \$611,300 with a total two-year funding of approximately \$1.2 million.
- The grant includes \$30,000 for marketing of the new service.
- The fare will be \$4.25.

Routes 924 and 926: Herndon – Dranesville Road

Staff assessment of the Fairfax Connector routes in the Herndon High School area showed that students are only making limited use of Routes 924 and 926, even though they pass directly in front of the school. These routes only operate during peak hours and the schedules do not align with the Herndon High School's dismissal bell times.

Staff recommends the following service adjustments to Routes 924 and 926:

- Adjust the first afternoon northbound and southbound trips to better align with the 2:55 P.M. school dismissal.
- Shift the current 3:15 to 9:35 P.M. schedule to 2:35 to 8:45 P.M.

Public Involvement

To inform the public of the proposed service changes and receive feedback from passengers, staff posted detailed information on the Fairfax Connector website and social media accounts, installed flyers on buses, hosted two public meetings to directly engage the public, and responded to public comments and questions. The public comments were incorporated into the proposal, where feasible. The new Route 467, which was included in the public outreach, will be deferred until March 2019 for further

Board Agenda Item
November 20, 2018

assessment and funding identification. A summary of the public feedback is included as Attachment III.

TITLE VI:

The service changes to Routes 698, 924, and 926 proposed for implementation in January 2019 were reviewed as mandated by the Federal Transit Administration (FTA) in *Circular C4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients*. The analysis showed the proposed service changes will not create a negative disparate impact on minority riders or a negative disproportionate burden on low-income riders. The changes will result in an overall service improvement for Fairfax Connector riders and the serviced communities. The Title VI analysis is included as Attachment IV.

FISCAL IMPACT:

The implementation of the new Route 698 and the service changes on Routes 924 and 926 will constitute adjustments in total system revenue hours. The new Route 698 will be funded through a NVTC grant using tolls from I-66 inside the Beltway. The total NVTC grant for Route 698 is \$3.43 million over two years. The service changes to Routes 924 and 926 will be absorbed within the existing FY 2019 budget through Fund 40000 (County Transit Systems). Therefore, there will be no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment I – News Release
Attachment II – Route Maps
Attachment III – Public Comments Summary
Attachment IV – Service Equity (Title VI) Analysis

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Dwayne Pelfrey, Division Chief, Transit Services Division, FCDOT
Michael Felschow, Planning Section Chief, Transit Services Division, FCDOT



NEWS RELEASE

Attachment I

Public Input Sought on Proposed Changes to Existing Fairfax Connector Service and Establishment of New Routes

For Immediate Release

September 5, 2018

#C024_18

Fairfax County Department of Transportation (FCDOT) is seeking public input on [proposed changes to Fairfax Connector service](#) that aim to enhance the customer experience. Routes included in this service change proposal are Route 467 (new complimentary route to [Route 462](#)), Route 698 (new express service from the Vienna Metrorail Station to the Pentagon), and Routes [924 / 926](#). After receiving and reviewing public feedback, FCDOT staff is scheduled to present the final proposed changes to the Fairfax County Board of Supervisors in November 2018. If approved, the changes will go into effect in January 2019.

Proposal Highlights

- **Route 698: Vienna - Pentagon**
New express route, via I-66, providing 10 morning rush-hour trips to the Pentagon from the Vienna Metrorail Station and 10 evening rush-hour trips from the Pentagon to the Vienna Metrorail Station.
- **Route 467: Vienna - Tysons**
New route will provide complementary mid-day and evening service to Route 462 which only provides morning and evening rush-hour service. The route will also provide service on Saturdays and aims to improve transit access to the Vienna Park neighborhood.
- **Route [924/926](#): Herndon – Dranesville Road**
Times of service for both routes will be aligned with the school's bell schedule to provide better access to Herndon High School.

We Want to Hear From You! Opportunities for Public Comment

FCDOT staff will host two outreach events to explain the proposed changes, answer questions and take comments from the public:

- **Fairfax County Government Center – Sept. 17, 2018, at 6 p.m.**
12000 Government Center Parkway, Conference Room 7, Fairfax
Transit connections: • Fairfax Connector Routes [605](#), and [621/622/623](#) • Metrobus [1C](#)
- **Herndon Middle School – Sept. 18, 2018, at 6 p.m.**
901 Locust Street, Herndon
Transit connections: • Fairfax Connector [Route 926](#) , [Route 937](#) and [Route 950](#)

more

Can't make an outreach event? **Public comments and feedback will be accepted until 5 p.m. on Friday October 5, 2018.** There are three easy ways to provide comments:

1. Take a survey [online](#).
2. E-mail fairfaxconnector@fairfaxcounty.gov.
3. Call 703-339-7200, TTY 703-339-1608 (Mon. - Fri., 5 a.m. -10 p.m.; Sat.- Sun., 7 a.m. - 9 p.m.)

Stay Connected and Informed

- Visit www.fairfaxconnector.com
- Call 703-339-7200, TTY 703-339-1608 (Mon. - Fri., 5 a.m. -10 p.m.; Sat.- Sun., 7 a.m. - 9 p.m.)
- Follow us on [Twitter](#) & [Facebook](#)
- Visit a Connector Transit Store:

Franconia-Springfield Metro Station 6880 Frontier Drive, Springfield, VA 22150 Monday - Friday: 6:30 a.m. - 7 p.m.	Stringfellow Park and Ride 4920 Stringfellow Road, Centreville, VA Monday, Tuesday and Thursday: 6:30 - 10:30 a.m., 3 - 7 p.m.
Herndon-Monroe Park and Ride 12530 Sunrise Valley Drive, Herndon, VA 20171 Monday, Tuesday and Thursday: 6:30 - 10:30 a.m., 3 - 7 p.m.	Tysons West*Park Transit Station 8300 Jones Branch Drive, McLean, VA 22102 Monday - Friday: 10 a.m. - 6 p.m.
Reston Town Center Transit Station 12051 Bluemont Way, Reston, VA 20190 Monday - Friday: 6:30 a.m. - 7 p.m.	Wiehle-Reston East Metro Station 11389 Reston Station Boulevard, Reston, VA 20190 Monday - Friday: 6:30 a.m. - 7 p.m.

###

Fairfax County Transportation News and Information

Sign-up for alerts at www.fairfaxcounty.gov/alerts

Follow FCDOT on [Facebook](#) or visit www.fairfaxcounty.gov/transportation/news

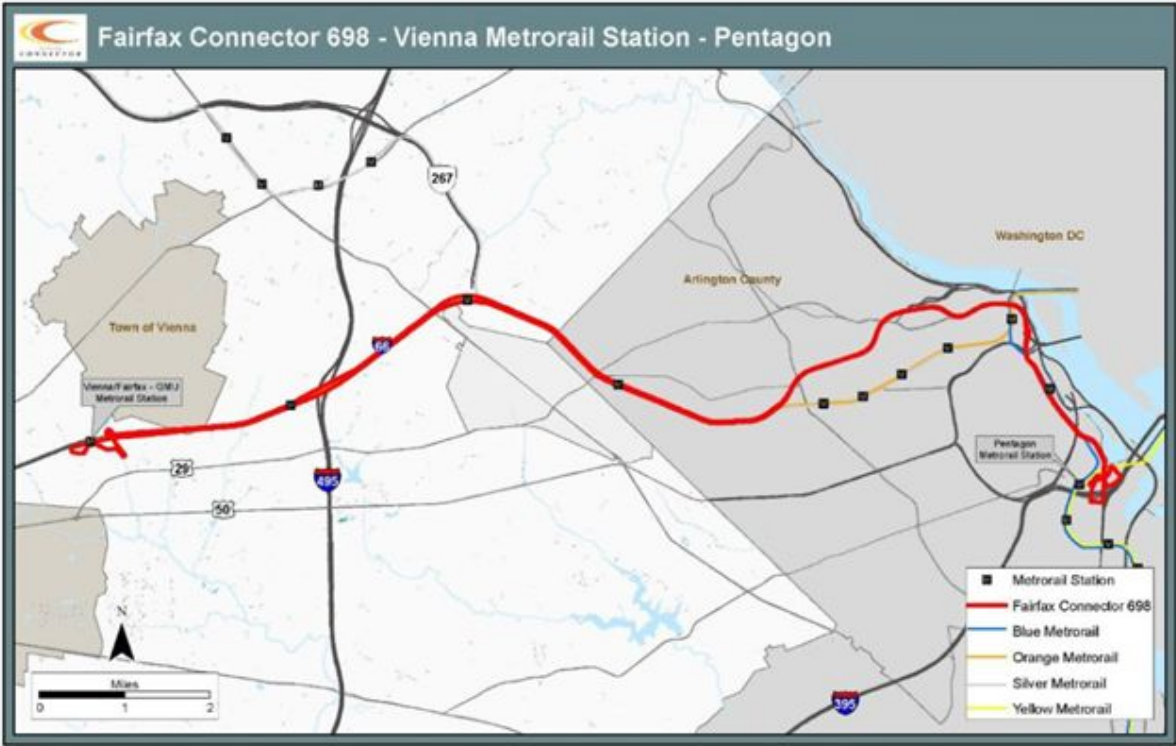
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Media Relations

Robin P. Geiger, Head of Communications, [Fairfax County Department of Transportation](#), via e-mail
Call 703-877-5602, TTY 711 (direct) | 703-826-6457 (cell) | 703-268-8953 (after hours)

Accessibility

Fairfax County Department of Transportation (FCDOT) ensures nondiscrimination in all programs and activities in accordance with Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA). If you need this information in an alternate format or would like to request reasonable accommodations for persons with disabilities or limited English proficiency for events, contact FCDOT at 703-877-5600, TTY 711. Requests for assistance must be received at least 7 business days in advance of an event.



Public Comment Summary

The following is a summary of public comment received regarding the January 2019 service change proposal, including comments received at the Public Meetings on September 17 and 18, 2018.

- Public meetings: 2
- Public meeting attendees: 8
- Written, email, and telephone comments: 363

Route(s)	Comment	Response
698	The addition of an express bus from Vienna to the Pentagon is great news! So many people who took it during SafeTrack hoped it would be a permanent route. Thank you!	
698	Would love a permanent FC Route from Vienna to the Pentagon – super convenient & quick!	
698	Loved, love the Vienna-Pentagon express on Fairfax Connector buses. I support the idea and would be a regular on that route if implemented.	
698	I hope this helps provide another good public transportation option for commuters.	
698	Ok	
698	Good idea! Save Metro trips and traffic	
698	Yes. Any improvement is welcomed	
698	We really need it.	
698	Great bus service to the Pentagon. I would like to suggest a direct bus from Govt Center to the Pentagon as well (or make it another stop on the 699 bus)	FCDOT will take this suggestion under advisement.
698	A new route should also be added from Wiehle-Reston East to East Falls Church Metro or directly to downtown DC. Slug lines should be enacted as well.	FCDOT will take this suggestion under advisement.
698	Yes!!	
698	I support this change.	
698	Does not affect me personally.	
698	It is always nice to have options to and from the Metro station	
698	I used this route during the blue line shut down and orange line single track in August and it was fantastic. 20 min travel time to and from greatly reduced my travel time and made more time for me at home. Would happily pay for this service.	

698	This will help many people who works at Pentagon and people who can transfer to yellow or blue line.	
698	Yes, very needed	
698	Absolutely. This will create more work life balance for my family. It will knock more than an hour commute time each way. Happy wife happy life!	
698	Great idea. Could reduce overcrowding on the Orange Crush. Is it to the Pentagon or Pentagon Metro?	
698	Yes	
698	As a Vienna resident, I support this new express route.	
698	Now that I-66 has a toll, this is a better option to get into and from DC at an affordable rate	
698	Ok	
698	Great idea.	
698	Great way to cut down on traffic	
698	This is a very important and beneficial route.	
698	This would be greatly appreciated. I highly recommend this route.	
698	As you can tell from the 2-week period of Metro issues, this route is VERY popular and well in demand.	
698	Yes, please! All of us who rode this during SafeTrack lamented that this wasn't a permanent route. It cuts travel time in half and alleviates the overcrowded Orange Line evening transfer issues at Rosslyn.	
698	Yes	
698	Yes, please do! I would take it.	
698	Support	
698	Yes, this needs to be an option for commuting workers.	
698	Yes, this is a good route. Complementing existing Metrorail routes with a bus alternate in case of track work is smart and allows for non-SOV alternatives.	
698	Would help ease traffic on I-66.	
698	Mass transit options are vital to helping relieve congestion on I-66. I am supportive of this change.	
698	As long as ridership justifies expansion	
698	I value the bus system and I know if there are more availability of bus trips and times it would really improve rush hour traffic and help people get to work without paying the new tolls.	

698	This would certainly relieve some traffic congestion	
698	Good idea. Do NOT reduce service on Route 599, the Pentagon Express route from Reston.	
698	This would be great!	
698	There needs to be an express route to Downtown DC from Wiehle RESTON too	FCDOT will take this suggestion under advisement.
698	Has to pass through wfc	
698	This does not apply to me.	
698	Love this!!	
698	an excellent addition to service, esp. due to uncertainties with Metro repair work.	
698	Does not apply to me.	
698	Outstanding!!! Please add this service!!! PLEASE!	
698	This is an excellent option as long as it's timed correctly to connect with busses that continue the journey west to Centreville like 641.	
698	I support this plan	
698	My number one wish is this service.	
698	My Pentagon City colleagues appreciated this route during Metro work and since the bay is next to my Pentagon bus, it seemed busy	
698	I used this route during the recent construction and it was awesome. Convenient and quicker than Metro. Worked out very well for morning and evening commute. Now to reduce parking fare to go with it!	
698	Any thought of this bus leaving from the Fairfax government center?	The current operating budget does not allow for an extension to the Fairfax County Government Center. Route 698 will be evaluated over the next 24 months to determine if additional service is needed.
698	Some of these trips should instead go from Vienna to DC (Foggy Bottom or Farragut West).	The current operating budget does not allow for an extension to Washington, DC.
698	I would not use this.	
698	This sounds good to me, I have used the equivalent service from Wiehle Ave metro.	
698	I took this daily during Metro Safe-Track and will do so again, even without Metro track work.	
698	I strongly support this new route. I will use it 5 days a week.	

698	First Morning route needs to leave around 5 am for my commute into town to be worth it. Out bound start times can stay the same as it was previously	The current operating budget does not allow for an extension of service from 5:00 A.M. Route 698 will be evaluated over the next 24 months to determine if additional service is needed.
698	I walk to the Vienna Metro from my house and take the train to my job at Federal Center SW. During the Metro shutdown in August, 2018 (and previously during SafeTrack), I rode the Vienna-Pentagon bus every day. From Pentagon, I take Metro one stop to L'Enfant and walk to my office. I am in favor of making this service permanent because this service is faster and more reliable than Metro's Orange Line. Additionally, we need options because (1) Metro is planning to shut down Orange Line stations to accommodate the I-66 Express lanes construction, and (2) Metro plans to shut down the Vienna Station for a long period of time to renovate the station. The Fairfax Connector Express Bus to Downtown D.C. from the Government Center is not an option for me because of where I live and where I work. Thank you for considering my comments. I am very hopeful that this service will be made permanent.	
698	Rode this route during SafeTrack repairs to the Orange Line. Other riders and I greatly appreciated it. Having the route as a daily alternative to Metro will go a long way to providing riders with ways to avoid delays. Very much in favor of making this route permanent.	
698	I would ride if economical	
698	I was a frequent rider when FCDOT offered this route during SafeTrack and Metro's recent track-work on the Orange line in August 2018. The route allows commuters to reach the Pentagon much faster and is more reliable than Metrorail. I am in favor of this new route and would ride it on a regular basis.	
698	Having taken this bus during the most recent single tracking on the Orange line, I believe this would be a great addition to Fairfax Connector's regular routes. I work in Gallery Place and I find that even with the transfer from bus to Metro at the Pentagon, this gets me to work faster than taking the Metro all	

	the way from Vienna for a minimal increase in paid fare.	
698	Good initiative	
698	This is an outstanding idea and will be heavily used. Definitely want this route to happen!	
698	Good idea!	
698	Sounds good, but why stop so early in the morning? Longer hours for this would be better.	The current operating budget does not allow for an extension of service later in the morning. Route 698 will be evaluated over the next 24 months to determine if adjustments or additional service is needed.
698	The sooner the better. This route is a significant time saver and huge value to me.	
698	Why there are no express service from Stringfellow P&R?	FCDOT will take this suggestion under advisement.
698	Strongly recommend the service begin at FFX County Government Center (free parking) similar to 699. This will provide 20 rush hour trips to the core. Traffic Congestion between Route 50 & Vienna Metro (parking \$4.95) is soul crushing & will not improve during I-66 HOT lane construction	
698	I would recommend this route for implementation.	
698	This is a great improvement.	
698	I travel from Centreville to Pentagon City every day, using the Fairfax Connector to Vienna, the Orange line to Rosslyn, then connecting to the blue line to Pentagon City. This is a very long, tiring commute. Having this new route will be so much more convenient and time saving for commuters. When this route was in effect during SafeTrack everyone I spoke to who took this express bus were all hoping it would one day be made permanent. I hope you approve this route. Thank you.	
698	Great idea. My trip from Vienna to King street was quicker by 15 minutes. Bring back the bus.	
698	This route was a life saver during all the Orange Line track work over the last year. It cut my commute time in half!! Each time I took the bus it was mostly full which shows how popular this route is.	
698	This would be fantastic and keep my family and I from moving out of Fairfax county and	

	into Arlington county to shorten our commutes.	
698	This is a great addition! Can there be reverse-commute trips, or will the buses be empty in the reverse direction?	Route 698 will be evaluated over the next 24 months to determine if additional service is needed and if there is an opportunity for reverse-commute trips.
698	Smart move	
698	IT IS ABOUT TIME. RIDERS WOULD APPRECIATE THIS NEW ROUTE	
698	This would be a great service and one that I would personally use and one that I think others would use as well.	
698	Between 7:30 am - 9:30 am, I-66 eastbound even with the tolls has significant traffic. Are there ways which buses could be sped up?	
924/926	This is a smart decision that will certainly help families and students.	
924/926	Ok	
924/926	This one is the closest to what I need. I will be moving to Herndon soon, but don't drive. I need a bus from Worldgate Centre to terminal drive in Sterling	
924/926	It going to be a plus.	
924/926	I don't take this bus.	
924/926	yes. Good for school's kids.	
924/926	Does not affect me personally.	
924/926	Students will benefit greatly from this. I relied on public bus service to get to and from school in high school.	
924/926	Help students to get to school on time.	
924/926	I'm not familiar with this need.	
924/926	Yes	
924/926	I support this proposal for change.	
924/926	A good idea for those who need it	
924/926	I support this bus route.	
924/926	Student use - after-school activities, if parents/caretakers are at work and will miss end of day pick up time	
924/926	ok	
924/926	yes	
924/926	great idea.	
924/926	I am not sure how this affects the area.	
924/926	This makes a lot of sense to me!	
924/926	Sounds like a plan!	
924/926	I would not take it.	
924/926	Yes	
924/926	Support	
924/926	This doesn't affect me.	

924/926	The bus should run more often than every 30 minutes at peak headways to allow more rider flexibility and provide a better option for riders.	The current operating budget does not allow for shorter headways on Routes 924 and 926. Over the next 24 months, FCDOT will be evaluating all the routes operating in the Herndon-Reston area and will be making recommendations for adjustments.
924/926	Better timing sounds like a better schedule.	
924/926	I am supportive of students, teachers, and staff being able to use mass transit to get to work. I am supportive of the changes that need to occur to better align with the school bell schedule.	
924/926	As long as ridership justifies expansion	
924/926	This is a no brainer!	
924/926	Smart planning	
924/926	If county school bus service is adequate for school bell hours, the changes would at least allow non-student groups who must visit the school, visit the school. These groups include employees of the school and the representatives, parents or guardians of students who attend, or should be attending the school. Decades ago, when I was a student in the Fairfax County Public Schools, I was presented with the information that some classes, particularly vocational courses, were offered at some high schools but not others and that a student may transfer from a school that does not offer such a course He or She would take over to a school that does. If the situation is still pertinent, along with the then coexisting stipulation that such a student provide his own transportation to the school outside of the county school bus system, the existence of compatible public transportation could possibly allow the student and the local business community to benefit from such opportunities.	
924/926	Will not use it, a connection between WFC and Reston Lake Fairfax Park is what I want to use. In the evening the Tyson area is blocked by rush hour traffic. There needs to be a service between the Reston, Sterling & Herndon areas to Falls Church stations to avoid traffic	
924/926	This does not apply to me.	
924/926	Wonderful to see alignment with schools. Since FCPS has the largest bus fleet in the	

	nation, though much aged, it is great to give students and staff options to use public transit, and increase ridership. I hope that the county and FCSP do a strong communications and education campaign to teach people about the bus options. 100% support this.	
924/926	Sounds fine.	
924/926	No opinion but logical	
924/926	Makes sense to me.	
924/926	Not affected either way	
924/926	I don't use this route.	
924/926	While I think, this would be a good change, however my family would not frequent this service unless the 924 ran in both directions in PM (we live on 924 route off Herndon Parkway and Sterling/606).	The current operating budget does not allow for additional service in the opposite direction on Route 924. Over the next 24 months, FCDOT will be evaluating all the routes operating in the Herndon-Reston area and will be making recommendations for adjustments.
924/926	Good idea	
924/926	Nope	
924/926	again, be sure students there know they can get a pass to ride for free	
924/926	Not good idea	
467	I am writing in support of the proposed Fairfax Connector 467 Bus Route. I attend Vienna Baptist Church and frequent the Maple Avenue and Park Street areas for services, shopping and restaurants. I am excited about the newly renovated Vienna Community Center and its programs for all ages. I am also concerned with the impact that the termination of the 2T Bus Line has had on my neighbors in the Cunningham Park Elementary School Community, Vienna Park Apartments and Tysons Towers. I've heard personal stories of people walking 1-2 miles to access doctors, grocery stores and jobs. I strongly recommend implementation of the new 467 bus route in order to better serve the needs of the Vienna/ Tysons community.	
467	I live in Oakton, attend church in Vienna, and do most of my shopping and community service activities in Vienna. I would like to express my concern about the change in the bus route on Park Street that serviced the Vienna Park Apartments and others along Park Street in Vienna. Canceling the bus service in that area has created a major	

	<p>hardship for our neighbors living along Park St and in the Vienna Park Apartments, many of whom do not own cars or because of age or ability are not able to drive. Now there is no economical way they can travel to get to doctors' appointments, grocery stores, and work. I strongly recommend that the bus service in that area be resumed.</p>	
467	<p>I would like to encourage establishment of the proposed connector bus Route 467. It would be nothing short of wonderful as my husband has glaucoma and no longer drives. I still do but am a reluctant driver. We are in our eighties and otherwise able.</p> <p>I also believe that considering the traffic in the area a relief of it with a bus is our future. It's better for the environment, mental health of drivers and pedestrians, public safety, and livability of the community.</p> <p>Thank you for this opportunity to express my opinions.</p>	
467	<p>I am a resident of Vienna and strongly support the 467 bus.</p> <p>It greatly improves the quality of life for so many people. Seniors and teens can buy groceries, go to doctor appointments and get jobs.</p> <p>Vienna's traffic increases yearly. Public buses help reduce auto omissions.</p> <p>Bus 467 is a "win/ win situation for everyone in Vienna.</p>	
467	<p>I have lived in Vienna over ten years and we desperately need the 467 bus service started. So many folks live near Thoreau Middle School and Cunningham Park Elementary School and they need access to the Town of Vienna and the Metro. I teach ESOL at Vienna Presbyterian Church and students need the bus in order to attend class. Please create this route as soon as possible and especially before the Winter months when transportation is critical.</p>	
467	<p>Please implement bus route 467. There is a strong need for public transportation in the Cedar Lane Community. As a former teacher at Cunningham Park Elementary School I am well aware of the limited</p>	

	<p>transportation options along Cedar Lane. Many of our parents were not able to attend school meetings or functions because of transportation issues. Also many students do not have access to the Patrick Henry Library, the Vienna Community Center, and other activities sponsored by the Town of Vienna.</p>	
467	<p>I support the new 467 bus route. It is needed for our community. Thank you.</p>	
467	<p>I am writing to support the proposed change to enhance availability of the 467 bus route. This will enhance residents' ability to reach various community and commercial services.</p> <p>Thank you for your approval of this proposal.</p>	
467	<p>Customer called to support a Route 467, customer used that Route from Park St & Cedar Ln heading toward Vienna Metro</p>	
467	<p>I live in Vienna and would like to see bus route 467 started. This will help those without cars get to the metro, grocery stores, and library. It may also help with traffic congestion if people opt for the bus instead of driving somewhere.</p> <p>Please implement bus route 467. It will be a great service for this community. Thank you for your consideration.</p>	
467	<p>Customer called to suggest the Route 467 bus who can help neighborhood a lot, customer used that Route before on Cedar Ln and Park.</p>	
467	<p>As a member of the Vienna community, I am writing this email to express my support for the proposed 467 bus line. It is important to me that all members of our community have access to transportation to get to their jobs, grocery stores or simply for entertainment purposes. As a member of the Cunningham Park ES community, I know that this is an important service for many of our families and therefore consider it and absolute necessity to improve the livelihoods and educational opportunities for all of our families and for efforts to make this community more inclusive and welcoming.</p> <p>For my two growing boys and for the many senior citizens in the area, I see Line 467 as a great way to safely navigate the city and exercise their independence. Access to public transport to and from key areas such</p>	

	<p>as Tysons Corner, the Mosaic District, Dunn Loring and the surrounding metro stations is critical to meet the needs of our growing community.</p> <p>I strongly support and encourage you to implement this route.</p>	
467	<p>Hi, I'm emailing to express my support for the new proposed bus route. I've lived in Vienna nearly all my life and would have loved access to a bus route like this when I was growing up, before I could afford a car of my own. It would have been much more easy for me to hold a job as a teenager if I'd had easy transportation to Tysons like that! My personal reason to advocate for this route now is that I work with a lot of people in the local community who don't have their own vehicles and this route would be incredibly helpful for them to get around and go about their lives. Please implement this route!</p>	
467	<p>I am a member of the Vienna community who would like to see the new 467 service started. My kids would love to ride the bus to the library and checkout books. It is important that all people have to access to transportation to get jobs, grocery stores, doctors, etc. It can also give kids and senior adults independence. It's also better for the environment to use public transit, etc. Please implement the 467 in Vienna.</p>	
467	<p>I live in the SW part of Vienna and I want to see the new 467 service started as soon as possible. The service will greatly benefit the community. I anticipate my children being able to use the bus to get from Thoreau Middle School area to downtown Vienna. Not only will it benefit me, but it will make a monumental impact on the diverse community in our small town. It is important for all individuals to have the resources necessary to get to jobs, store, doctors, etc. It will also provide children and senior adults independence.</p> <p>Please implement the 467 route.</p>	
467	<p>I am emailing you in regards to the 2T bus line. I am a member of the Vienna community who would like to see the new 467 service started.</p>	

	<p>I have several reasons why I think this route should be implemented ----</p> <p>Personally, I would like to be able to take it to the newly renovated Vienna Community Center or the Patrick Henry Library with my kids. I would also take it to the Dunn Loring or Tysons Corner Metro stations or take it to Tysons Corner Mall for shopping and dining.</p> <p>I also feel it is important that all people have to access to transportation to get jobs, go to the grocery store and to see doctors. The 467 service would do just that for many people. It can also give kids and senior adults independence. It's also better for the environment to use public transit.</p> <p>Please implement this route.</p>	
467	<p>Hi of course we need the bus 2T all the time. Also, the same schedule as the last year. Thank you very much.</p>	
467	<p>As a longtime member of the Vienna area community (22+ years), I think it would be a terrific idea to implement the new 467 bus route and hours, this route/schedule will allow more residents to have easier access to the Vienna Community Center (including the seasonal farmer's market) and the Patrick Henry Library, with its many services. These locations provide numerous activities for children and adults, including senior citizens. Readily available public transportation allows older children and senior citizens to independently travel to where they want and need to go.</p> <p>This route will also help local residents to get to necessary locations such as jobs, doctors, and grocery stores. An added benefit is that fewer trips would need to be made by individual cars or ride services. This would be cheaper for the residents, better for the environment, and reduce the frustration from Vienna's ever increasing traffic.</p> <p>Given the many ways the new 467 bus route would benefit the Vienna area community, I urge you to implement the proposed route.</p>	
467	<p>I live in Vienna, VA and would like to see the new 467 service started. I would use the public transportation to go to Tyson's Corner mall. I especially love how the service would</p>	

	support vulnerable communities in my neighborhood by providing them with transportation to jobs, schools, doctor appointments, and grocery stores. Public transportation is important to me and I support the 467 service.	
467	<p>I am writing regarding the proposed new route FFX Connector 467, supplementary service to route 462 which currently provides only rush hour service. I am hoping this new route, which I strongly support, will provide better service for the Vienna Woods/Park St corridor. The old FFX connector route, which traveled down Park St from Moore Ave was eliminated with the opening of the Silver Line and this, in combination with the elimination of Metrobus Route 2T, left a transportation "hole" in this area, with no easy bus service for either Vienna Metro station or Dunn Loring station. I hope route planners will take this in consideration when contemplating new routes for improves access to metro stations.</p> <p>In an ideal world with strong financial support from local and state government, there would be frequent bus service throughout the area all day, every day to metro stations, and getting in the car to park at metro all day would be a thing of the past. I know this isn't Europe where this is common but I appreciate any and all efforts of Fairfax County government to reduce the number of cars on the road. Adding more bus service to heavily residential areas like Vienna neighborhoods is a great start.</p>	
467	I am a member of the Vienna community and am writing to voice my support for the proposed 467 bus route. While the route would not service me personally as I live on the north side of route 123, I am familiar with the needs of the community that it would serve. Members of the community need to have access to the center of town for a number of reasons: to transport their children to the Vienna Community Center and Library for important enrichment events; to have access to full service grocery shopping opportunities such as the Giant and H-Mart; to have access to doctors, dentists and other services along the route and finally to have access to job	

	<p>opportunities with the employers along the route.</p> <p>I feel very strongly that our public transportation system needs to better address the needs of our community members who have no alternatives to the bus. Please adopt the route as suggested.</p>	
467	<p>I am currently the Chairman of a local charity. The purpose of this note is to strongly encourage you to pass this proposal and make this route permanent in the Fairfax Connector Service. We serve many clients that would use this service and it also would greatly enhance their ability not only to visit us, but to reach the stores, restaurants, etc. in the Town of Vienna. If you would like any more information, please let me know. Thanks.</p>	
467	<p>I support the establishment of the new Connector route, number 467.</p>	
467	<p>We live in nearby Dunn Loring Woods and would like to have this route. It will provide easy access to the Vienna community center, to local shopping centers and to the metro station.</p>	
467	<p>My wife and I have lived in Vienna for 26 years, and our two children were in high school here. I am writing to encourage the establishment of Fairfax Connector Route 467.</p> <p>I believe this is especially important for people near me in the Cedar Park vicinity. Many do not have automobiles and therefore have difficulty accessing grocery stores or doctors, or even getting to work. In our affluent County, we need to always keep "the least of these" in mind as decisions about public services are made.</p> <p>Thank you for your good work on behalf of our community.</p>	
467	<p>I am a resident of Vienna, VA (22180). I am yet another resident who would like to see the new 467 service started. Along with my husband and three kids, we feel we could use definitely use this service. Especially for trips to the Dunn Loring and Tysons Corner metro stations, visits to our local library, and even trips to Tysons Corner for dinners and activities. But more importantly, there are</p>	

	<p>people in our community who would use it for crucial trips such as grocery shopping to buy food and water, doctor visits to keep their families healthy, and to become more active members of their communities and community events.</p> <p>Every day, I am trying to be more conscientious of our environment and our community. Not only do I think riding the bus would allow my kids to see that there are different, more environment friendly ways of getting around, but also my kids and I want to see that our neighbors, my kids friends, my fellow school parents have a reliable way of getting around town and their community. My kids have been in the car with me numerous times to take friends/friends parents to the dentist, the grocery store, Walmart, meetings, etc. I am happy to help fellow Vienna residents get to where they need to be, but they should not have to ask other people for rides and be reliant on the generosity of others. I believe everyone deserves a dependable way to get to where they need to be. And right now, a lot of them don't have that.</p> <p>Please make the 467 bus line happen. It could change our Vienna community in great ways. Thank you for listening.</p>	
467	<p>This is in support of the proposed new Route 467 (Vienna-Tysons), which will complement the existing Route 462 and replace some of the services previously provided by Metro's 2T bus route.</p> <p>I'm very excited to hear that our neighborhood will soon have bus service again during non-rush hours. As a non-driver for medical reasons, transit is my lifeline. Before it was discontinued, I used the 2T bus two to four times a week for medical appointments and shopping in downtown Vienna, as well as trips to the Dunn Loring Metro. I look forward to being able to do these activities again without worrying about getting rides or paying big bucks for ridesharing. I'm also looking forward to easier access to the Mosaic District and Tyson's.</p>	

	<p>I'm also excited to learn that the Vienna Park complex will once again have transit options throughout the day. As a regular on the 2T, I saw many of my Vienna Park neighbors using the bus for work, doctor's appointments, and shopping between the hours of 9 am and 3 pm. Expanded bus service will be a real help to these residents and their families.</p> <p>I hope the Department of Transportation will do the right thing and bring back our bus service.</p>	
467	<p>I write in support of the proposed 467 bus line. I have owned a home [in Vienna] for the last 6 years, and I understand the bus line would run right near our house. On a community level, I support this effort to provide public transportation to allow members of our community who do not drive to more easily access necessities such as medical care, groceries, the Community Center, and Library -- not to mention easier access to Metro.</p> <p>Personally, I expect the bus line will make my family more likely to walk and/or take the bus to downtown Vienna rather than drive the short distance. We have two young children and often drive for fear they will be too tired to walk the whole way back. With bus as an option, that fear would disappear! The bus also would make it much easier when my brother, an adult with autism who does not drive, comes to visit, as he does for several weeks out of the year. During his visits, he spends a lot of time trying to figure out transportation in our area to make it possible for him to safely and efficiently get to downtown Vienna, Tysons, Mosaic and Dunn Loring. For him -- and especially for full time members of our community who do not drive for a variety of reasons -- this bus line would make a huge difference.</p> <p>I wholeheartedly support this proposal. Please don't hesitate to contact me if you have any questions about my above comments.</p>	
467	<p>I am writing to you regarding the proposed Connector bus Route 467 which we would like to have start service in January 2019. I</p>	

	<p>live just outside Vienna, with a Vienna mailing address.</p> <p>I am concerned about the current lack of bus service to the area around Thoreau off-peak. People there who are without cars are pretty much stranded for much of the day, but their area is not self-sufficient. For example, there are no supermarkets there or in walking distance. This bus would help them with shopping and with access to jobs in Vienna and at Tysons. Many of the jobs they work are not 9-5 jobs so the current bus service is inadequate. Others along the route can leave their cars home and get to their destinations easily without adding to pollution.</p> <p>I would urge you to approve this bus service and support this community!</p>	
467	<p>I'm a senior and I'm a resident of Vienna Town. Public transportation is the only way for be to get to my primary care doctor at Maple street, to the Church, Vienna Community Center, library, to the bank, to the grocery stores (Giant, Harris Teeter, H-Mart), Dunn Loring or Tyson Corner Metro stations. After route 2T has been cancelled I'm unable to visit all this places without assistance from my relatives and friends. Taxi is too pricey for me to use. I'm very excited to see new 467 service started. Though it doesn't completely overlaps with route 2T (I wish it go through Park St to Maple Ave- access to the Presbyterian Church, Whole Foods, Vienna Community Center, Giant, Patrick Henry library) at least it will give me independent access to Harris Teeter grocery, metro, BB&T bank, Tyson's Corner Mall, Mosaic District. New 467 bus will bring more colors into my life and very beneficial for all Vienna community. Thank you.</p>	
467	<p>I'm a Vienna town resident and frequent user of public transportation. I'm highly missing 2T bus as it allowed me to go to the metro, library, shopping. The previous bus route through Park street is very convenient as it allows to go to Giant, Whole Foods, Presbyterian Church, Public Library. It could be extended to Electric Ave. from Maple street through Follin Lane and back to Maple</p>	

	Street. I know some senior neighbors who don't use internet and will benefit a lot from 2T bus restoration.	
467	Very important	
467	Great news! The Vienna Park neighborhood needs to be serviced outside of typical rush hour times!	
467	this route is critical to members of our community for purposes of work, school, errands and to provide the opportunity for community involvement (ie, getting to the library, community center, town green).	
467	This is an important route for my community in the Town of Vienna. It will help people of all ages--children, parents, and senior adults--have safe and affordable public transportation to access the area. I look forward to the 467 starting service in January.	
467	This would be very helpful!	
467	I'm a member of the Vienna community who would like to see the new 467 service started. Many people in our community do not have transportation and this route would help them get to jobs, grocery shopping, medical treatment and things they need for their independence like English classes. Please implement this route!	
467	This neighborhood is lower income and they would benefit greatly from easier access to shopping and jobs. Great idea!!	
467	I am a senior citizen living at Old Meadow Road in Tysons/McLean and would very much like to have this service available to me during the day, evenings, and on Saturdays. Driving is becoming more difficult as I age and I prefer public transportation when possible. I particularly want to use this for access to the Mosaic district (Mom's groceries and other shopping) at any time (I currently fear the traffic there as I am unused to it) and to Tysons Mall during bad weather (shopping, movies) or when arthritis makes the long walk difficult. I know there are places within the Vienna portion of the route that I will stop at once access is available. I can also use this route, as planned, to get to my physicians during bad weather or when I feel ill. Currently, the walk is about 3 - 4 miles one way, good when I am good, but tough to do when I am ill. I think it is safer for the community and me to have public	

	<p>transportation available though I am currently able to drive. I also think the other advantages typically ascribed to public transportation will pertain to this route (e.g., reduction in pollution, reduction in harms from traffic accidents or slow-downs, more accessibility of public and private enterprise to others not able or willing to drive by virtue of age, cost, disability, or other limiting condition). Please consider instituting this service favorably. I think it will serve the communities well and know it will serve me well. Thank you.</p>	
467	Yes	
467	<p>This will be a great service to people who live in the Vienna Park neighborhood. For residents without cars, it will give them more shopping opportunities, as well as access to cultural and educational sites. This is also good for the environment and reduces traffic on the streets and highways.</p>	
467	<p>I am a member of the Vienna community who would like to see the new 467 service started. Our neighbors can take it to the newly renovated Vienna Community Center or the Patrick Henry Library, or the Dunn Loring or Tysons Corner Metro stations. It provides access for various shopping at grocery stores, or to the Mosaic or Tysons Corner Center mall. It also provides a way for my neighbors to get to and from work. In our community, we value the ability for all to have to access to transportation to complete daily needs. It provides a service to many and will be well used.</p>	
467	<p>Strongly support this new route to help residents along this line who have no other means of transportation to get to the Vienna Community Center, the Patrick Henry Library, Metro stations, grocery shopping, work, medical appointments, shopping, etc. at times that fit their needs. Many residents have little or no access and often limit their activities/needs because of the cost of existing, but expensive transportation alternatives.</p>	
467	It would be perfect!	
467	I don't take this bus.	
467	<p>The Vienna Park neighborhood needs this county transportation for commuting to work at odd hours and for access to grocery stores and other outlets.</p>	

467	This schedule and route modification will make my life much better as I won't have to wait for my daughter to come back from work and drive me to the areas I need to get. I am a senior citizen and cannot transport myself and walking for 45 minutes to get to the library is not an option for my physical condition. I would be so much more independent if this change was introduced.	
467	This change is crucial to allow my family members who can't drive get to the library and shopping areas. I highly support this proposal and hope it gets approved.	
467	Adding mid-day service will help us attend doctor appointments, go grocery shopping, and do other necessary errands.	
467	yes! will really improve a lots of lives.	
467	The Vienna Park neighborhood is a special needs population that has had only peak hour since WMATA terminated the 2T route. Vienna Park has a high percentage immigrant population that is very dependent on public transit services.	
467	This is a great idea, and sorely needed -- I fully support the new route!	
467	I am a resident of Vienna and I am writing to express my support for Route 467. I was negatively impacted by the cancellation of the 2T bus line. I would use this bus as an alternative, together with Metro, to commute to my job in Crystal City. Please implement this route.	
467	Not sure if this will solve the problems of doing away with metro bus RT 2T but might help. My daughter-in-law who has epilepsy counted on that route to get to work in Vienna from Cedar lane area. Having buses run only during rush hour also limits access for older people. However, any way to get from Cedar Lane area to Vienna center would be helpful.	
467	I would love to see this route in Vienna. I feel that public transportation is an important option for the environment, and I would like for my children to learn to use it. It would be perfect for my children to take it to the newly renovated Vienna Community Center or the Patrick Henry Library, and any of the fun places to eat in downtown Vienna--and Mosaic! It would also be helpful as another mode of transportation in our household to get us to Whole Foods or Giant, or to either	

	of the Metros (Dunn Loring or Tysons Corner). I feel it's important for all people to have access to transportation to get where they need to go, and to promote/support independence, whether it's a person or family without a personal car, or an elderly person-- I would love to see this route implemented!!	
467	I highly support and will use frequently instead of discontinued 2T.	
467	I live in Vienna and want the 467-service started. I would take 467 to the metro to get to work. This would be vital transportation for me to get to work each day. Please implement this route.	
467	I am a member of the Vienna community. The proposed route 467 will be a boon for a sizable number of Vienna residents who live on or near Park street, between Cedar Lane and Maple Avenue. This is a main corridor in Vienna, that includes the Vienna Community Center and the Vienna Town offices and Police Station, as well as the Patrick Henry branch of the Fairfax County Public Library and shops and restaurants. I think the proposed new Connector route 467 is a great idea and will be well patronized.	
467	Just run the 462 during the times proposed. It is confusing to add more routes that operate limited times. I will not be able to remember which is which.	The routes are complementary but not identical. Information for Routes 462 and 467 will be available on the same schedule brochure.
467	This will be nice to provide more people access to the Tyson's area since there are so many shops there. Many people in the Vienna Park neighborhood would rely on the bus for this access.	
467	I am a member of Emmaus UCC, a partner congregation of VOICE, and am committed to providing reliable bus service for residents of the Vienna Park neighborhood. Public transportation is critical to our common good and economic justice.	
467	I strongly support this new route! The residents of Vienna Park Apartments, especially, are folks who often do not own cars and need transportation for jobs, shopping, to the Community Center, schools, doctors, library and more! This route would enable them to get to Metro stops, downtown Vienna and Tysons Corner, among other places.	

467	This route will help many people who don't own cars to Vienna Park neighborhood.	
467	100% Essential. Please add this service. Many of these residents only have public transportation to reach services in the Town of Vienna.	
467	I'm a member of Vienna Community and support this new route to start.	
467	The suggested routing would give many people an excellent opportunity to connect to e.g. the Vienna Community Center, the Patrick Henry Library, medical services in central Vienna, and multiple shopping opportunities.	
467	Wonderful! Please make this happen.	
467	Great idea as a test to measure ridership first though.	
467	Yes	
467	This new route would be very beneficial to the local community who lives in the Park Street/Cedar Lane area. Right now, there is no easy access to public transportation. This makes it difficult for citizens who do not have a car to get to the grocery store, medical appointments and other places. Thank you for your consideration!	
467	I support this proposal for change.	
467	Could this end at the McLean Metro station in Tyson's east?	The requested extension would increase the operating cost of Route 467 beyond the constraints of the available operating budget. Route 467 will be evaluated over a 24-month time-period after implementation to determine if additional service is needed.
467	A good idea for Tysons access	
467	This will provide transportation to Vienna businesses, community center, ESOL classes - making residents more independent and a part of our community.	
467	As a Vienna resident, I support bus route 467 - anything to reduce car traffic.	
467	Good alternative transit for work, especially on days a car is not available	
467	I am a member of the Vienna community and I would like to see this bus route available for our families and kids.	
467	Highly desirable service that will help young people and seniors get access to the metro	
467	yes	
467	Yes please. I can use this bus to go to the library.	

467	This is very important for my students. They need to be able to get to school (ESL) and get to work and grocery shop without having to walk for miles or spend their limited funds on taxis.	
467	Very helpful route for commuting to Tysons.	
467	Yes, this is really important as a bus rider as we can use it to take our children to the newly renovated Vienna Community Center or the Patrick Henry Library.	
467	Great idea!	
467	This would be a welcome change to the diverse south west Vienna and Dunn Loring Woods neighborhoods. This would add a great clean alternative to getting into the center of Vienna to give everyone a chance to experience events in town such as the weekly farmers market, library and shopping.	
467	I live in Vienna and my 24-year-old daughter does not drive. This route will provide a way for her to get to the Dunn Loring Metro station during the day where she takes the shuttle bus to NOVA. Please start this route. It's important that everyone have access to Metro Stations during the day.	
467	I live in SE Vienna VA. I would like to see the new 467 service started. Please give my teenagers the option to take a bus to Mosaic or Tysons or the Library! Traffic is terrible. And they should know how to use public transportation...and that it exists to places they go to! Plus, it's important that all people have to access to transportation to get jobs, grocery stores, doctors, etc. I would love to ride the bus to get cars off the road. Traffic in Vienna/Tysons is awful and we need more public transportation options. (or be able to the to the metro without driving) This bus route is vital to Vienna especially with so many new developments and MAC zoning being implemented on all the construction projects on Maple Avenue. Thanks	
467	I would not take it.	
467	I support the Route 462 bus route. As a Vienna resident, I would love to use the bus to visit the library, community center and Farmers Market with my kids. I support having a public transportation option so that more residents are able to easily access the activities Vienna has to offer and to provide	

	an environmentally friendly option of transportation for our community. Thank you!	
467	Yes!	
467	This route would make it much easier to access the Tysons Corner Metro station, thereby cutting down on traffic on 123 and reducing the need for parking at/by the mall. We frequently shop and dine at Tysons Corner Center and being able to access the mall during off hours is much more convenient. In addition, we are trying to teach our child the importance of making environmentally friendly choices. Our family also believes it is important that all people, ESPECIALLY those who are poor and working hard to make ends meet, have to access to transportation to get jobs, shop for groceries, get to the doctor, etc. We request the implementation of the new 467 route.	
467	support	
467	So, grateful that the county is considering this route and schedule, as it is one of the only routes that connect downtown Vienna to the Dunn Loring Metro Station. I live along that route and would plan to use it as much as possible.	
467	I don't even live in Vienna Park apartments (but in surrounding area) and I would definitely use this service. Also, the lives of a lot of families we know (and children that go to school with my children) would be greatly improved with this service.	
467	My family lives in Vienna, my children attend Cunningham Park Elementary School, and I would like to see the new 467 service started. I am excited about the proposed bus route to include the Vienna community center, Patrick Henry library, Giant, Dunn Loring metro, Tysons mall, and Mosaic. It is important for me and my children to have access to safe and reliable public transportation in our neighborhood, allowing us to work, shop, see doctors, and take care of errands as needed. I feel it is important that everyone have access to public transportation to live their best lives with dignity. Public transportation is safe, affordable, and better for the environment. I have been saddened that many of my neighbors in Vienna Park without cars have lost their bus route and have struggled with	

	work and personal/health issues due to the stress of commuting on foot. Please bring 467 to Vienna.	
467	I am a Town of Vienna resident and am super excited about the Route 467. I would definitely use this service to get to the Patrick Henry library and the Giant shopping center. I would benefit by not having to worry about getting a parking space while reducing my carbon footprint on the environment. It would also be really nice to go on a shopping trip without the stress of worrying about traffic. Route 467 would also enable people without private means of transportation to be independent and mobile to accomplish their shopping, pursue educational and entertainment trips, and, most importantly, enable people to get to work. I urge FCDOT to implement Route 467. Thank you for your consideration.	
467	I would love to see this bus route added. I plan to ride it from Cedar to Tysons. Also, there is a community without access to cars in the area who is now forced to walk over 1.5 miles to the closest stop when this route isn't in service.	
467	You're a member of the Vienna community who would like to see the new 467 service started.	
467	This would be absolutely fantastic and much needed, there aren't many opportunities for public transportation within our town and when we have out of town visitors or students who sometimes stay with me it will give them much better access to the town and metro systems. Also, the freedoms for lower income families and the elderly to be able to have reasonable rates and accessibility and independence. Thanks for allowing us to comment.	
467	This route will greatly benefit the community. It is a critical need for students and parents in the area.	
467	75 minute off-peak/weekend headways are not nearly enough service to drive demand/ridership. The hours of service are decent for a new route, but the buses need to come much more often than every 75 minutes in order to get people out of their cars and onto the bus.	A more frequent headway would increase the operating cost of Route 467 beyond the constraints of the available operating budget. Route 467 will be evaluated over a 24-month time-period after implementation to determine if additional service is needed.

467	This would be very welcome to us. Letting people here get to downtown Giant, CVS, library and other things.	
467	Hi, I live in Vienna, and I think it's important to add this route to improve the mobility of the people who live here, especially those who live in the Vienna Park neighborhood. This would continue to support the diversity of the community socioeconomically and in types of residential housing. Please implement this new bus route. Thank you.	
467	I am a member of the Vienna community who would like to see the new 467 service started. I would like to be able to take it to the newly renovated Vienna Community Center or the Patrick Henry Library with my kids. I would also take it to the Dunn Loring or Tysons Corner Metro stations or take it to Tysons Corner Center mall for shopping and dining. I also feel it is important that all people have to access to transportation to get jobs, grocery stores, doctors, etc. and this would do just that. It can also give kids and senior adults independence. It's also better for the environment to use public transit. Please implement this route.	
467	Important to help restore commuting access to Vienna Park neighborhood. TOV needs this to better serve their lower SES families.	
467	I am a strong proponent of this new route to allow access to public transportation in my neighborhood. I think it is very important that we all are able to access mass transit to go about our everyday lives. Additionally, I look forward to giving my child the independence next summer of being able to take the bus to the Vienna Community Center and to the Library (and maybe even to get an ice cream cone!). I am very supportive of this route.	
467	As long as ridership justifies expansion	
467	I live in Vienna and wish to add my support for the proposed implementation of Route 467. There are many people in our community who depend on this bus for work and many of us who would appreciate the added service envisioned through the neighborhood. My family would definitely make use of the bus to travel to the community center, library, Tysons and the Mosaic District on a regular basis. We should be encouraging public transit to	

	<p>reduce our impact on the environment and to relieve congestion and parking issues in busy corridors such as Tysons and Mosaic. This line does all that and makes our Vienna neighborhood more accessible, particularly for our young people, seniors and those without vehicles. Thank you for considering these changes.</p>	
467	<p>I Live in Vienna, VA and support this bus service. I would use the service to get to the Tyson's Corner mall. I also like how this service would support the vulnerable communities in our neighborhood get to work, school, and the grocery store. Public transportation is important to me.</p>	
467	<p>I live in Vienna and support this 100%. People in this area need service to the Vienna Community Center and the library and grocery store during the day and evening. It's a long walk for young kids but many neighbors do it when they have no choice. Those who are unable to walk and can't afford uber or other options, and that includes some senior citizens, they just stay home. They don't get to shop, volunteer, work...things they can do if this new route is approved. There are so many people in Vienna Park who don't have cars. It makes so much sense to provide expanded public transportation for people who want to go out in the community but face hardships. Please implement this plan! It's a good investment for the community. Signed, a Fairfax County taxpayer</p>	
467	<p>Please implement this route! My family lives in Dunn Loring Woods and we have several neighbors who need this public transportation to get to work each day. We also support energy efficient modes of transportation such as bus service. I hope you will help the members of our community by implementing this route.</p>	
467	<p>We would be able to use this bus route often and would vastly improve the quality of life for many. Especially for those in the Vienna park neighborhood. I look forward to taking my daughter on trips on the new bus route.</p>	
467	<p>I am a resident of Vienna and would be grateful for an additional bus route to serve our community, to assist local residents and businesses. People should have access to transportation to go about their daily</p>	

	business/personal needs, in order for any neighborhood to thrive. Public transportation gives senior adults independence -- the lack of it keeps them behind the wheel of their own vehicles even when it's a danger to others. Low cost transportation keeps living standards in the suburbs a little more affordable and we need to continue to promote socioeconomic diversity.	
467	This will be so helpful to the Vienna community who can use it to travel from residential areas to Maple Ave, Mosaic, Tyson's metro. Many residents do not drive, this is essential local public transportation for them. Please!!	
467	This route through our community is very valuable. Citizens can go to the library, community center, grocery store, metro, Tyson's and many places of employment. With this route those without cars won't be isolated and even those with cars will leave them at home, saving energy and reducing pollution and traffic. On Saturdays passengers, can even go to the farmer's market for fresh produce. I fully support this new route for our community.	
467	Can you get more runs on this route if you make it a loop that includes using Gallows Rd between Metro stations?	
467	This would be very useful to the community in Vienna and cannot or does not drive.	
467	I live off cedar lane and I would regularly use this!	
467	I am a member of the Vienna community who would like to see the new 467 service started. My husband and I would like to take our children to the newly renovated Vienna Community Center, Patrick Henry Library, Dunn Loring or Tysons Corner Metro stations, grocery shopping at Giant/H-Mart, Mosaic, or Tysons Corner Center mall. I feel it's important that all people have to access to transportation to get jobs, grocery stores, doctors, etc. It can also give kids and senior adults independence. It's also better for the environment to use public transit, etc. Please implement this route.	
467	This bus route is desperately needed for the citizens in the Vienna Park Neighborhood. They need to get to jobs, grocery shop, training classes, I would be able to take the bus to Maple Ave and take care of my	

	personal business and save gas. I hope you will vote to approve this much-needed bus route.	
467	The new route would bring a lot of value to the residents of the neighborhood.	
467	This is a great option - please keep this route going for our neighborhood! We will use it to go to the library and community center.	
467	This bus route is very welcome! As a commuter, I don't have options for getting home outside of rush hour, and this route will give me greater options for getting to and from work outside of rush hour. I know that my neighbors in the Vienna Park neighborhood without vehicles will appreciate it.	
467	As a member of the Vienna community I have been affected by the lack of a bus close to where I live. I need a bus that will take me to Dun Loring Metro. I would need a bus close to the cedar lane shopping area. I hope that the new route is implemented very soon as it would help me get to the metro so I can get to work. Thank you.	
467	I live along the area of this Route 462 and see that the limitations in bus service that occurred when the 2T was canceled have severely curtailed the functionality of my life. I would definitely use it a lot and the fares I would pay would alleviate the cost of the increase in service. Not having the bus service outside Rush Hours means that no fares are collected outside Rush Hours.	
467	I personally believe that this route should be applied, as I use 462 every day and recognize that not only myself but a lot of people are shift-worker. It means administration hours of 462 were not really appropriate. I can only use 462 when having early morning shift only. Otherwise, I need to walk 45 min to Dun Loring Station and take the 401 bus from there to Tysons. In addition, Tysons Corner Mall is a huge mall with high demands. I strongly believe that there will be a lot of people using the new bus	
467	Very good but needs a stop for public parks	
467	Does this follow the same exact route as Route 462? I attended a community meeting on this and I thought the 467 route would also go through downtown Vienna via	Routes 462 and 467 use Hilltop Road to Cedar Lane toward Vienna. From there, Route 462 uses Electric Avenue and Follin

	Cottage Street and then North on Maple Avenue. If this is not the case this would of much less use to me. We need a route that mostly mirrors the old 2T Metro bus route through Vienna. When the 2T was cancelled, my husband (who is blind) had to switch to taking Metro Access to get to downtown Vienna.	Lane to Maple Avenue. Route 467 uses Park Street to Maple Avenue. Neither route uses Cottage Street.
467	Great idea	
467	I can't say enough good things about this proposed new route. Outstanding!! With the elimination of the 2T and previous FFX connector, this will really help access to this community. 5 star+ for FFX County responding to the needs of this community.	
467	I would VERY MUCH use a bus line that runs from Tysons metro to Vienna Metro, straight on 123. Currently the buses that go from Tysons to Vienna go through Jones Branch Road, and it takes upwards of 30 minutes to get around the block or two during rush hour. Even the bus that leaves Tysons Metro doesn't go directly onto Rt 123, but rather, a circuitous route to Jones Branch. Please have a bus on 123. Note that any bus I have taken (within the last 5 months) to or from the Spring Hill or Tysons stations has at most had 5 people. Usually it is myself and one other person. If it helps traffic and increases the possibility of having more service, smaller buses are fine with me. Furthermore, these buses are welcome additions to the Vienna / Dunn Loring / Tysons areas. Complementary will be very useful to residents!!	
467	Sounds fine.	
467	This bus is essential for connecting families without their own transportation to the vital services they need, especially grocery stores. My 7-year-old has noticed that her classmates who live in the Vienna Park apartments tend to have junk food snacks instead of fruit. Then she noticed that the same junk foods her friends eat are all at the Dollar Store, and that the Dollar Store does not sell fruit. If a 7-year-old can figure this out, I am hopeful the grown-up can too.	
467	I support this plan	
467	I'm ok with this	
467	I would use this!!!!	
467	Good idea	
467	Not for me	

467	Great news	
467	As someone who lives on the 462 route, this would be very welcome. I work from home but often have to go into DC for a meeting just in the morning or afternoon. So right now, if I need to leave/get home at lunchtime, I end driving into DC, which I'd rather not do since Metro is more convenient. A Saturday bus to Tysons would also be great - doesn't need to be that frequent to still be very useful	
467	I support this!	
467	Very good idea. Be sure to promote this to the students at the schools along the route! (Thoreau M.S.)	
467	I would recommend this route for implementation.	
467	Would like this route to service Park St between Cedar and Maple like the old route did. Glad this will be more frequent.	
467	A great expansion of this service	
467	This route is greatly needed since WMATA cancelled the 2T metrobus. It should run more frequently than every 75 minutes though.	
467	Good move	
467	Would use bus for library, church worship and classes, and English classes.	
467	Everythings—church library, shops, etc.	
467	I'm living in Vienna. And I would love to have 467 new route bus to start in my neighbor. That would be very convenience for us as a Bowling Green Dr. area. Thanks.	
467	I would take to the library + community center.	
467	It is important to keep/restore the 467 bus line. The bus provides independence to kids, seniors & members of the community. Public transportation is valuable for the environment and assisting the local Tysons business community.	
467	I want the 467 bus—I want to take the bus to library.	
467	This would be convenient in increasing public options to get to work.	
467	We are residents of Vienna (and have been for about 15 yrs) and we support restarting the 467 service. We frequent the many stores & other organizations in Vienna including the library which is a significant resource for our entire family (of 4).	

	Restarting the service and changing the route to go into Vienna would be extremely beneficial for all members of our family—my daughters especially who will be of working age this year and could use the bus to get to and from work (both my husband and I work & we can't always drive her to & from). We are all interested in decreasing our driving so a bus would be a great option.	
467	I would like the 467 for transportation, I would be saving on gas!	
467	I support the 467 because it gives everyone the ability to get transportation.	
467	I would like the 467 bus started. All people should have access to public transportation.	
467	I live in Vienna, VA and I'd like to see the 467 bus started ASAP. Important to have public transportation to keep kids & commuters safe.	
467	I live in Vienna and I would like to see the 467 Bus started. I think everyone should have access to public transportation.	
467	Please reinstate the bus because I see so many residents walking in rain/snow/dark along my street (Park St). I know they are trying to go to work or run to the nearest grocery store.	
467	I am a member of the Vienna community and I'd like to see public bus service 467 started. My son would take the bus, something I did as a kid for independence. I think everyone should have access to public transfer and it was how my employees got to work at LastPass when we had offices here. Thanks for your consideration.	
467	I am a member of the Vienna community who would like the 467 service started. It would be good for kids to have another safe way to get places around town.	
467	I live in Vienna and would like to see the 467 bus service started because I believe all members of our community should have access to public transportation	
467	We live in Vienna & would like the 467 bus service to provide transportation options within our town for our residents and to reduce congestion	
467	I live in Vienna and would like to see the 467 bus service started as it is important to the neighborhood. I would take it to the metro, downtown, etc.	

467	The 467 bus service is essential route for our community to help families, lower pollution and congestion.	
467	I'm a member of Vienna Community who would like the 467 service started. I would be able to go to lots of necessary places for my daily life. I would go to Vienna library, H-Mart. I believe it is really important to have mass transit in my neighborhood for people with less means. Also, we can teach kids how to use it so they can be more independent.	
467	Public bus important for Vienna residents to quickly access the metro, Tysons & spots in downtown Vienna especially when weather is not great.	
467	We need more public transportation.	
467	I'm a member of the Vienna community who'd like Rt. 467 service. I would take the bus to Tyson's Corner and H-Mart. I feel it is important to have a bus available to take to the market, doctor, etc. It is important to have public transportation. Please start this route.	
467	As a family in Vienna we would like to see the 467 Bus restored in Vienna. We utilize the bus to go to the grocery store and as my children get a little bit older they will be using the service for the library. My husband works in Tysons so this is also a great means of transportation for him to contribute on cutting down on traffic in the area. Thank you.	
467	We are residents of Vienna and would like to see the 467 bus service started. Public bus service to metros, malls, libraries, and the Giant is so important to families in our community. This opportunity would allow our children to get to the library independently. Please consider implementing this route to make Vienna and surrounding areas further accessible to all!	
467	My neighbors need route 467 to get to and from work and to the grocery store and to other important places in the area where we live (and beyond!) On numerous occasions and in all weather (cold! wind! snow! rain!), I have seen my neighbors walking – well beyond their homes. The bus route will help them, I know... because I've spoken to some of them. I've also given rides to some of my neighbors in weather situations that I would not ever want to walk. I'm happy to talk	

	further with anyone, if desired. Please reinstate Bus 467.	
467	Good for community	
467	I think bus 467 is important because everyone need access to public transportation. It's a great way for kids to learn independence as well because the route goes through downtown Vienna where they can access the public library.	
467	I am a member of the Vienna community and would like to see the 467 service started. I will use the bus when I go to Giant, Metro, and the library. The bus service is important to me because of the impact on the environment, the possibilities of independence for kids and the easy way to get to public places.	
467	The bus is needed to give seniors and kids independent. Please bring it back!	
467	I want the 467 bus back! It helps out community!	
467	I am a resident of Vienna and would like to see the 467 service started so that residents can take the bus to the library, to work, and the community center.	
467	As a member of the Vienna community, I would like to see bus service on 467 to begin. It is critical that all members of our community have access to affordable transportation to help them be fully contributing citizens. Adequate public transportation helps people get to work, doctors' appointments, shopping, community meetings, etc. Furthermore, public transportation decreases traffic congestion and is better for the environment. Please start 467 service.	
467	I'm a member of the Vienna community. We would like to see the 467 service started. My husband and I are excited it will stop at the library, Metro, Giant + H-Mart, community center, and Tysons Corner Mall. It's important to us because all people need access to public transportation for jobs, doctors, grocery stores + school + after-school activities. It gives senior adults and children + teens independence. We are senior citizens. Bus transportation lessens the need for cars + is better for the environment – cleaner air + lessens the impact of climate changes + global warming. For the sake of all the members of the	

	Vienna community, please implement the route 467 service.	
467	As a member of the Vienna Community I would like the 467 service started. I feel that it's important for all people to have reliable transportation for work, to grocery stores, doctors, etc, and know that the absence of the 467 means that a big part of our community is underserved. Please start the 467.	
467	My family and I are members of the Vienna community supporting the 467 service. We believe it's important for everyone in the community to have access to transportation for jobs and regular family needs and community engagement. We think being able to get to metro, the library, and the community center is important for us and all our neighbors. Thank you for your attention, please consider this request and implement this route.	
467	I would like to see the 467 bus route continued. It's very important to those who need the service to get to work and continue to support their families financially.	
467	I am a member of the Vienna Community and would like the 467 bus service started. I feel it is important for my neighbors and all people to have access to public transportation to work, shopping, and medical care. In addition, it gives children/teens and seniors who are unable to drive independence. Please consider implementing this necessary route in our community.	
467	I am a member of the Vienna community who would like to have the 467 bus service started. People, all people, need to have access to reasonably convenient transportation to get to jobs, school, shopping, and other necessities of modern live. Not everyone has access to a car. Please start this service. Thank you.	
467	I'm a member of the Vienna community who would like to see bus service on the 467 route restored. I feel it is enormously important for ALL of our neighbors to get able to get to work, grocery stores, the doctor, and community centers. Thank you for your attention and considering the request to restore service to 467.	

467	I am a member of the Vienna community who would like the 467 service started. I feel it is important that all members of our community have access to transportation so that they can get to jobs, grocery stores, and appointments. I respectfully ask that you implement this much needed bus route.	
467	I am a member of the Vienna community who would like the 467 bus service started again. I would ride the bus to the store and library. I would use this stop at the library and Tyson's Corner Mall. I believe it is important for all citizens, including those without drivers licenses, to have public transportation in a community that is NOT conducive to access of public facilities by foot. Senior citizens and kids would be well served by this service. Please implement the 467 route!	
467	We need this bus to serve those without public transportation working in Vienna. Public transportation is essential for their livelihood.	
467	Please restore the 467 bus service which goes by the Vienna Park Apartments. This line serves a large and hard-working community which sorely needs this service. Conversely – the bus which runs on Beulah road is hardly used. In addition, bus will give children and senior adults independence. I have lived in Virginia since 1981.	
467	Definitely want the 467 service reinstated to help improve transportation, and reduce traffic for all to get access to all services including work, food, and care.	
467	Please bring back the bus to help the people in the Vienna Park Apts be able to get places better and easier. It will make Vienna a better community.	
467	A bus is essential for those who cannot drive. They need to get groceries, or to work or to Tysons etc. No bus has drastically affected the quality of life for many residents of Vienna Park apartments. Please bring back the 467.	
467	As an FCPS teacher, I see inequity every day in obvious and subtle ways. Lack of transportation is an obvious and pervasive inequity. It limits economic independence, education, and participating in our community, impoverishing us all. This proposed new line is a step in the right	

	direction and a sign that Fairfax cares about all of its citizens. I fully support this proposal.	
467	Please bring the 467 line into service. People need access to groceries, doctors, jobs, etc. and this line has been purposely conceived to maximize this access & solve this need. This is especially important to those who are most vulnerable in Vienna. Please implement Route 467!	
467	Residents of Vienna, as residents of Fairfax County certainly deserve transportation to service to keep their families fed, to be able to get to medical appointments, library resources and work assignments. As a deacon, I have ministered to family whose mother was blind (legally) and depended on public transportation to take her three young boys to the grocery store, dental and doctor appointments, and to get to schools for teacher appointments. These are all situations that require the resource of available transportation. I personally trade in many Vienna shops and am grateful to catch a bus when my car is in the shop.	
467	I'm a member of Vienna Baptist Church and support reinstating the 467 bus service. I feel it is very important to provide public mass transit access for under-served communities.	
467	I definitely believe this route 467 should be reinstated for the community that needs the way of transportation to work, shopping, and other needs.	
467	I believe that public transportation should not only be supported for morning and evening work commutes but all day long and on weekends for those that can't afford transportation of their own. Public transportation should be focused on serving the needs of the whole community.	
467	I live off Cottage St just a few blocks from Cedar Lane Apartments. I know the need for replacement for the 2T bus. There is no other way for the people in this neighborhood without cars to get to the grocery store, doctor appointments & work.	
467	All best for the efforts to get the bus back.	
467	I support the 467 bus service being started. I would love to take it to work, H-Mart, the metro, library, and the community center. I believe this would help a lot of people who need to go to those places. Please consider	

	implementing the 467 route. Thank you for your consideration.	
467	As a former user of the 2T bus, I miss having it as an option to commute. Although I only used it on occasion, its lost has made me turn to Lyft when I do need transportation. I am glad that you are considering a replacement route and know the impact it will have on the local community.	
467	I support the restoration of the 467 bus near Vienna Park Apartments.	
467	As a user of the Fairfax Connector – I have a convenient stop to and from the Vienna Metro, I know how important it is to have a close bus stop to my home. The residents of Vienna Park have had the benefits of those taken from them. These residents need the route. Thank you for your consideration.	
467	Please replace the route of the 2T bus in Vienna, VA. This route is critical for lower income families living in this area to travel between home and work, run errands, and provide a method for their middle school children to safely travel to the library and community center. Thank you for your consideration.	
467	This service is very much needed for those in the community without cars. The County should strive to look out for all its residents by providing for everyone.	
467	Please implement the replacement bus #467.	
467	I support the Fairfax Connector change proposal, especially to help the underserved residents of Vienna Park Apartments.	
467	I support the new bus line.	
467	I support the 467 bus route.	
467	I support the implementation of the replacement of the 2T bus line.	
467	As a member of Vienna Baptist Church, I am aware of the dire need of public transportation for residents along the old 2T bus line that formerly was routed through Vienna. We need desperately for residents to have safe reliable transportation to get to work, shopping, medical appointments, etc. Please institute a replacement bus line for the old 2T bus. Thank you.	
467	Customer called at 4:59PM to show support for the purposed winter changes. Customer mentioned new route 467.	

467	Customer called at 10:43AM to show support for the purposed winter changes. Customer mention new route 467.	
467	I need to mobilize myself to get to work, I am 57 years old. And my job is to walk all day and it would hardly be done in walking to my job and this route of this bus I would take. Thank you.	This comment was translated from Spanish.
467	I need the bus to go to work. It's very important.	This comment was translated from Spanish.
467	There are people who need the bus and the transport is very important.	This comment was translated from Spanish.
467	The bus is important in the Community of Vienna, to go to the mall, to the library, and to the supermarket.	This comment was translated from Spanish.
467	I use the bus for my job.	This comment was translated from Spanish.
467	The bus has affected me to go to the market.	This comment was translated from Spanish.
467	I need the bus to go to the supermarket.	This comment was translated from Spanish.
467	I need the bus to go to the supermarket.	This comment was translated from Spanish.
467	I'm a member of the Vienna Community I use the bus to go buy food, for my job, and to get to the shopping center. I take the bus in front of 711. It is important that everyone has public transportation to get to the market, the doctor, etc. And it's good for the elderly who do not drive and for the poor people and please put them the service. Thank you.	This comment was translated from Spanish.
467	I am a member of the Vienna Community and I would like you to put the 467 for our service, because it is very important for us to go to work, super, the doctor and many more. Thank you. I ask that you please implement the route.	This comment was translated from Spanish.
467	I want you to extend the 467 to buy food, take my children to the pediatrician and the dentist. The most important stop for me is that of Park Apartment.	This comment was translated from Spanish.
467	I need the 467 bus to go to the market, to the doctor. Please implement it as soon as possible.	This comment was translated from Spanish.
467	The bus is always needed for anything or an emergency. We need it daily and soon.	This comment was translated from Spanish.
467	I use the public transportation for the market and to take my children to the doctor. It would be very important to have the bus. All day.	This comment was translated from Spanish.

467	We need the bus in the community to go to the doctor. All day.	This comment was translated from Spanish.
467	We need the bus here in the community to make purchases, to go to the doctor.	This comment was translated from Spanish.
467	I need the 467 bus to go to work, to the store. I am a member of the Vienna Community. We urgently need this.	This comment was translated from Spanish.
467	My family needs to get to work, to go to the store, to take the girls to the doctor or for any other emergency. We need you to put it because it is important. Many people need it.	This comment was translated from Spanish.

Title VI Service Equity Analysis – Proposed January 2019 Fairfax Connector Service Changes

Summary of Analysis Results

The service changes proposed for implementation in January 2019 were reviewed as mandated by the Federal Transit Administration (FTA) in *Circular C-4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients*. Routes 698, 924, and 926 are involved in these changes. Of those three routes, only Route 698 is qualified as experiencing a major service change. Further analysis suggested this route would not create a disparate impact on minority riders or a disproportionate burden on low-income riders. The proposed service changes will have a positive impact on Fairfax Connector riders, including the communities along the routes.

Relevant Fairfax County Title VI Program Elements

A service equity analysis may require the evaluation of as many as four items depending on the route's nature, proposed changes, and served environment. The policies listed in this section are contained in the County's Title VI Program, as approved by the Board of Supervisors on July 25, 2017.

A major service change is defined as either an increase or decrease of 25 percent or more in either daily revenue service hours, revenue service miles, or both for the individual route being modified.

A disparate impact occurs when the difference between minority riders and non-minority riders affected by a proposed service change or fare change is 10 percent or greater.

A disproportionate burden occurs when the difference between low-income riders and non-low-income riders affected by a proposed service change or fare change is 10 percent or greater.

An adverse effect occurs when the proposed service change meets any of the following criteria for minority or low-income populations:

- *New or additional service*: if other service was eliminated to release resources
- *Headway change*: if headway increased by at least 20 percent
- *Alignment change*: if at least 15 percent of the alignment is eliminated or modified
- *Span of service change*: if the span of service decreases by at least 10 percent
- *Elimination of entire route*

"If a transit provider chooses not to alter the proposed service changes despite the potential disparate impact on minority populations, or if the transit provider finds, even

after the revisions, that minority riders will continue to bear a disproportionate share of the proposed service change, the transit provider may implement the service change *only* if:

- “the transit provider has a substantial legitimate justification for the proposed service change; **and**
- “the transit provider can show that there are no alternatives that would have a less disparate impact on minority riders but would still accomplish the transit provider’s legitimate program goals.” (*Circular C-4702.1B*, page IV-16; emphasis in original.)

FCDOT measured the minority population living within the service area of the affected route alignment and compared the percentage of minority population within that area to the percentage of non-minorities living in that area to determine whether the service change would cause a disparate impact. Additionally, the percentage of low-income households within the service area of the affected route alignment is measured and compared to the percentage of non-low-income households in that area to determine whether a service change would cause a disproportionate burden.

Overview

The routes included in the January 2019 service changes are 698, 924, and 926.

Route 698: Vienna - Pentagon

- The new express Route 698 will serve the Pentagon via I-66, operating ten inbound morning trips and ten outbound afternoon trips during peak traffic hours on weekdays.

Routes 924 and 926: Herndon - Dranesville Road

- The service times for Routes 924 and 926 will be aligned with the Herndon High School dismissal bell schedule to provide better access to students.

Each of the three routes included in the service changes was first evaluated against the major service change threshold defined in the County’s Title VI Program. Table 1 shows that Route 698 met the major service change threshold.

Table 1: Service Changes Proposed

Route	Proposed Service Change	Percent Change in Revenue Hours			Percent Change in Revenue Miles		
		Weekday	Sat.	Sun.	Weekday	Sat.	Sun.
698	Add new express route	100%	n/a	n/a	100%	n/a	n/a
924/926	Schedule adjustment	2%	n/a	n/a	n/a	n/a	n/a

Route 698

FCDOT plans to add new Route 698 weekday peak service to the Pentagon. Route 698 was examined to determine whether the new route would create a disparate impact and/or disproportionate burden. If such an impact was identified, then further justification for the service change would be needed.

Disparate Impact: The minority population living within the service area¹ of Route 698 in Fairfax County is 44 percent, and the non-minority population living in that area is 56 percent (see Table 2). The difference between the minority population and non-minority population affected by the proposed service change is -12 percent, which does not exceed the disparate impact threshold of positive 10 percent. Also, implementation of the route will not result in a reduction of service to other minority populations within the County. Instead, the service change will increase access to jobs for minority populations and all populations throughout the region. Therefore, the proposed new route will not create a disparate impact.

Table 2: Route 698 Disparate Impact

Route	Total Route Households	Minority Households	Non-minority Households	Percent Minority	Percent Non-minority	Difference	Disparate Impact
698	166,485	72,593	93,892	44%	56%	-12%	No

¹ The demographic information for this route was pulled from a 6.7-mile buffer around the Vienna Metrorail Station. 6.7 miles is the average distance traveled to this facility according to a license plate survey conducted in 2007.

Figure 1 shows the proposed route alignment in relation to predominantly minority census block groups.

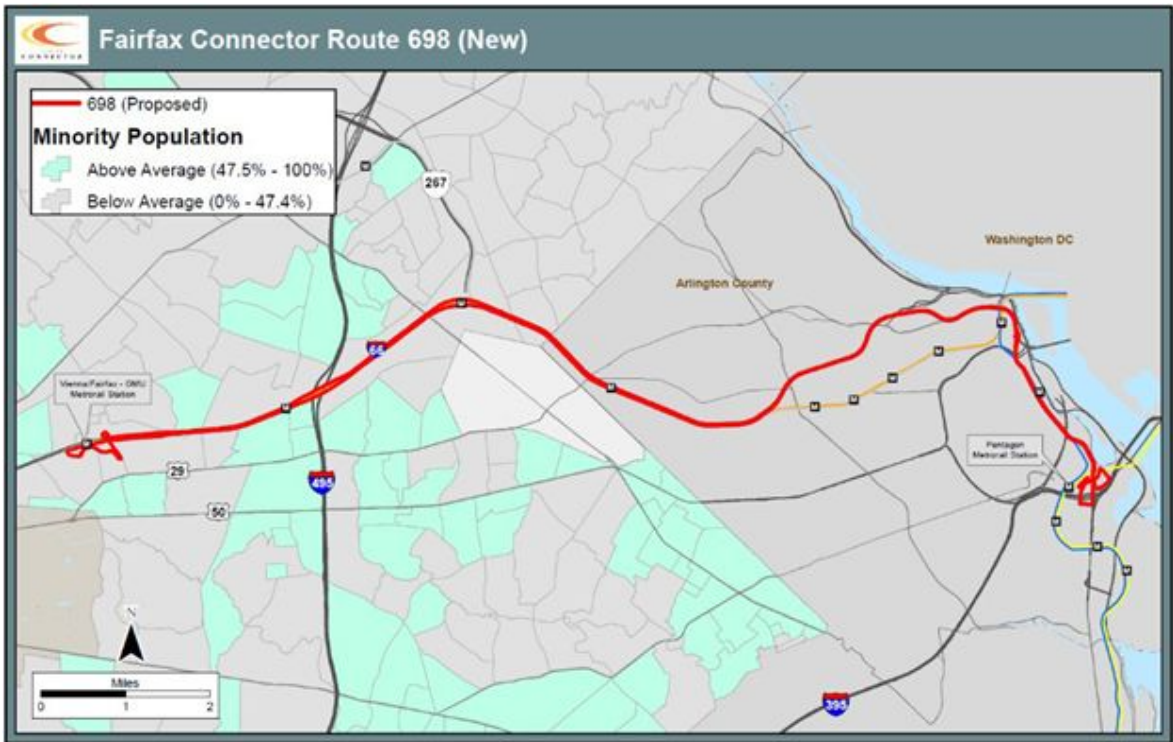


Figure 1: Route 698 Minority Population Map

Disproportionate Burden: The low-income households living within the service area of Route 698 in Fairfax County is 17 percent. This is 66 percent less than the percentage of non-low-income households (see Table 3). The difference between the low-income households and non-low-income households does not exceed the disproportionate burden threshold of a positive 10 percent. Therefore, implementing the proposed new route will not create a disproportionate burden on low-income households.

Table 3: Route 698 Disproportionate Burden

Route	Total Route Households	Low-income Households	Non-low-income Households	Percent Low-income	Percent Non-low-income	Difference	Disproportionate Burden
698	166,485	28,262	138,223	17%	83%	-66%	No

Figure 2 shows the proposed route alignment in relation to predominantly low-income census block groups.

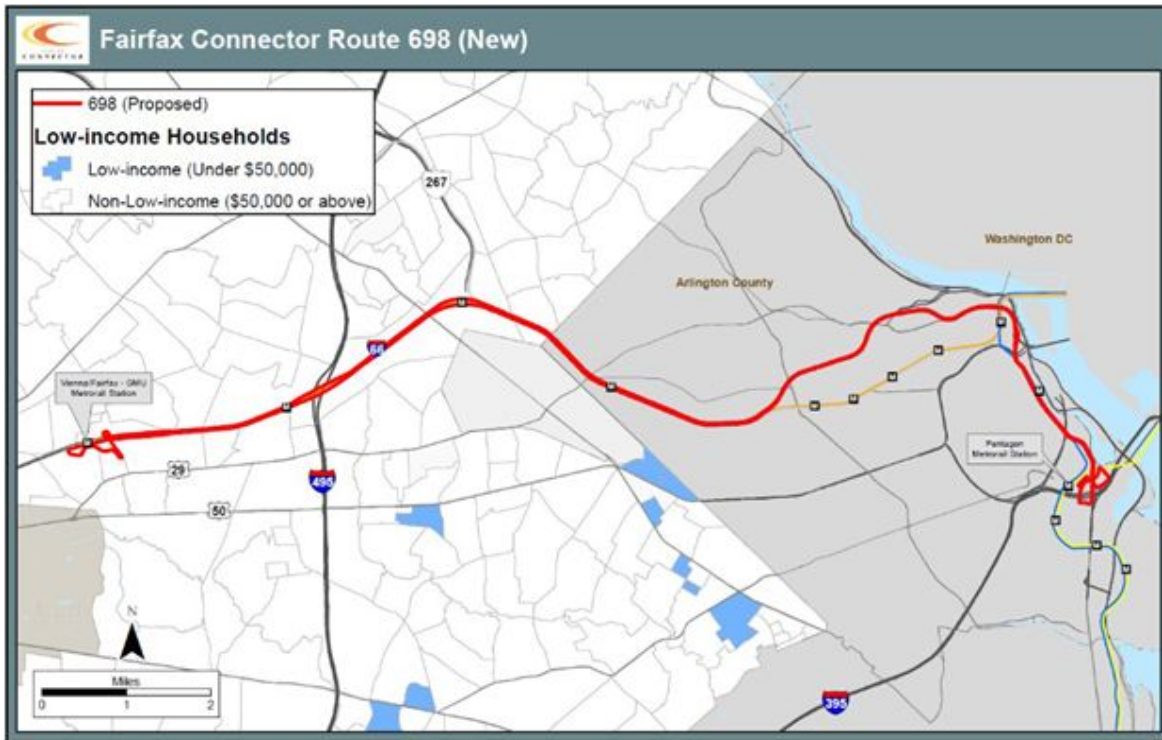


Figure 2: Route 698 Low-income Households Map

Conclusion

The service changes proposed for implementation in January 2019 were reviewed as mandated by the Federal Transit Administration (FTA) in *Circular C-4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients*. The analysis showed that the proposed service changes to Routes 924 and 926 will not meet the major service change threshold; therefore, no disparate impact or disproportionate burden analysis was needed for these routes. The proposed service changes to new Route 698 will meet the major service change threshold, so disparate impact and disproportionate burden analyses were performed for this route. Route 698 will not result in a disparate impact to minority populations or a disproportionate burden to low-income populations. Overall, the proposed service changes for January 2019 will improve service for Fairfax Connector riders and the serviced communities.

ACTION – 2

Approval of Head Start Transportation Waiver Request for the Continuation of Fairfax County Public Schools 2018-2019 Transportation Services

ISSUE:

Board approval of the Head Start Transportation Waiver Request for the Continuation of Fairfax County Public Schools 2018-2019 Transportation Services for Head Start children.

RECOMMENDATION:

The County Executive recommends that the Board approve the Head Start Transportation Waiver Request for the Continuation of Fairfax County Public Schools 2018-2019 Transportation Services for Head Start children.

TIMING:

Board action is requested on November 20, 2018 to meet federal Head Start Performance Standards.

BACKGROUND:

The Fairfax County Board of Supervisors, as the grantee, has received a waiver from the federal Office of Head Start for the continuation of Fairfax County Public School Transportation Services since the Head Start Transportation Regulations were enacted in 2006. This request was most recently submitted and approved with the County's five-year grant application in 2016 and at yearly renewals. However, the Office of Head Start has indicated that prior to the waiver request submission this year, the Board of Supervisors must review and approve the request.

The Fairfax County Head Start Program is requesting a waiver to Head Start Transportation Regulations 45 CFR 1310.11 (a) Child Safety Restraint Systems Requirement and 45 CFR 1310.15 (c) (1) Bus Monitor Requirement, for the program year 2018-2019. This waiver request has been granted since 2006, based upon the exceptional safety record of the FCPS Transportation Services. The FCPS transportation fleet of more than 1,500 buses provides transportation daily for over 114,000 students, including approximately 200 buses that transport 242 Head Start children.

FISCAL IMPACT:

None

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ENCLOSED DOCUMENTS:

Attachment 1 – Head Start 45 CFR Part 1310 (Transportation Waiver Request)

STAFF:

Tisha Deeghan, Deputy County Executive

Nannette M. Bowler, Director, Department of Family Services

Anne-Marie D. Twohie, Director, Office for Children, Department of Family Services

**HEAD START 45 CFR PART 1310 - TRANSPORTATION WAIVER REQUEST
DATA COLLECTION FORM**

Grant Number: 03CH0270/22 **Legal Name of Grantee:** Fairfax County Board of Supervisors

Name, Title and Signature of Authorized Official Requesting Waiver:

Jennifer B Branch, Head Start Division Director

Signature

Phone Number : (703) 324 - 8087 **Fax Number:** (703) 324 - 8200

Email Address: Jennifer.Branch@Fairfaxcounty.gov

1. Number of Children Served:

Head Start: 242 Early Head Start: N/A

2. Number of Children Provided Transportation Services:

Head Start: 242 Early Head Start: N/A

A. Using Grantee Owned or Leased Vehicles: N/A

B. Through Grantee Contracted Transportation Services: N/A

C. Through Arrangement at No Cost to Grantee: N/A

3. Proposed Number of Children Who Will be Covered by Waiver:

Head Start: 242 Early Head Start: N/A

4. Requesting Waiver Of:

☒ **Child Safety Restraint Systems Requirement (45CFR 1310.11 (a))**

☒ **Bus Monitor Requirement (45CFR 1310.15 (c)(1))**

5. Waiver Request Applies to the Following:

☐ **Grantee**

☒ **Delegate(s) (please list):** Fairfax County Public Schools

6. Grantee's Justification for Requesting a Waiver (attach no more than five pages):

Please explain fully as each request will be considered separately and waivers will not receive automatic approval.

If requesting waivers of both 45CFR1310.11 (a), child safety restraint systems requirement, and 45CFR 1310.15(c)(1), bus monitor requirement, you must provide justification for each requirement.

Fairfax County Board of Supervisors Justification for Requesting a Waiver:

The Fairfax County Head Start Program is requesting a waiver to Head Start Transportation Regulations 45 CFR 1310.11 (a) Child Safety Restraint Systems Requirement and 45 CFR 1310.15 (c) (1) Bus Monitor Requirement, for the program year 2018-2019. This request is based on the size of the Fairfax County Public Schools transportation fleet; more than 1,500 school buses provide transportation daily for over 114,000 students, including approximately 200 buses that transport 242 Head Start children. Transportation for Head Start students is a coordinated system of transportation for all students and it allows family-friendly support to Head Start children who may be riding with their older siblings to school and home.

The Fairfax County Public Schools Office for Transportation Services has an outstanding safety record, meeting and/or exceeding National Highway Traffic Safety Administration (NHTSA) standards. Fairfax County Public Schools Office of Transportation Services has been safely transporting children in Head Start for over 30 years.

The Transportation Regulation requiring restraints and monitors for children in Fairfax County continues to be problematic. There is no seat belt designed for all ages and sizes and to retrofit the current school buses would impact bus capacity and be cost prohibitive; in addition, this process invalidates the warranty under which they were originally purchased. The FCPS Office of Transportation Services does not have the capacity to provide the number of monitors for such a large fleet of buses; the cost of placing a monitor on each bus would be prohibitive. FCPS provides insurance for all staff and children transported; therefore, volunteers cannot be placed on the buses as bus monitors because it presents a liability.

Without the support of the FCPS Office of Transportation Services, many families that depend on them for transportation would not be able to participate in the Head Start program. Fairfax County public transportation is limited and not accessible in all neighborhoods without families having to walk children long distances to reach their destinations. If FCPS transportation were not available, enrollment in Head Start would decline, leaving families in need without services.

The Fairfax County Board of Supervisors, as the grantee, has received a waiver for continuation of Fairfax County Public School Transportation Services since the Head Start Transportation Regulations were enacted in 2006.

ACTION - 3

Endorsement of Alternative for the Balls Hill Road and Old Dominion Drive Roadway Spot Improvement Project (Dranesville District)

ISSUE:

Board endorsement of Alternative A.1 – T-Intersection Improved for the Balls Hill Road and Old Dominion Drive Roadway Spot Improvement project. This project will provide congestion relief, safety, and mobility improvements for all modes of transportation at the intersection.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors endorse Alternative A.1 T-Intersection Improved for the Balls Hill Road and Old Dominion Drive intersection. This recommendation is based on the conclusions and recommendations in the Balls Hill Road and Old Dominion Drive Roadway Spot Improvement Report (See Attachment 1).

TIMING:

The Board should take action on November 20, 2018, to advance the Balls Hill Road and Old Dominion Drive Roadway Spot Improvement project to the design and construction phases.

BACKGROUND:

In April 2016, Fairfax County Department of Transportation (FCDOT) initiated a study for the intersection of Balls Hill Road and Old Dominion Drive to identify potential solutions to address recurring congestion at the intersection. The study evaluated solutions that have minimal property impacts and addressed the anticipated traffic growth within the study area.

The existing intersection is located in a residential area and is subject to significant peak hour commuter traffic on weekdays. The intersection is signalized with an inefficient four-way split phase operation, due to its severely skewed roadway geometry. The current intersection operates with a level of service (LOS) F in both the AM and PM peak hours.

Several conceptual alternatives with various operational configurations were developed and screened to address the intersection's operational and capacity issues. Five alternatives were selected and analyzed.

Based on the analysis methodology, Alternative A.1 – T-Intersection Improved is recommended as the Preferred Alternative for further consideration of design and implementation (See Attachment 2: Map of Alternative A.1 T-Intersection Improved). This alternative offers significant LOS improvements in the study area. The alternative effectively splits the existing heavily congested, skewed study intersection into two smaller signalized intersections with improved signal phasing, and geometry. Therefore, the congestion is better managed during peak hours, and the alternative minimizes unnecessary vehicle stops/delays. The turn lane geometry is also improved for greater roadway safety.

Additionally, there are two properties (Mehr Farms east of the intersection and Summerstone south of the intersection) that are in different phases of by-right development at or near the intersection. Specifically, the Summerstone property is located within the right-of-way needed for Alternative A.1 – T-Intersection Improved. Summerstone's site plan was approved by the County in April 2018. Due to the rapid development of the Summerstone property and limited options in the alternatives within this study, the County has worked with the developer to acquire the Summerstone property on October 19, 2018.

Public Outreach Activities

On June 28, 2018, FCDOT conducted a citizen information meeting (CIM) for the project. The meeting provided a forum to inform the public of the project's purpose, study methodologies, alternatives analyzed, and preliminary results, as well as to answer citizens' questions and receive input and feedback. The CIM was advertised using email distribution lists available through the community as well as through the FCDOT's website. Graphics illustrating existing conditions and the alternatives analyzed were on display for citizens to review.

Additionally, the project schedule was also addressed at the CIM and is estimated to be as follows:

- | | |
|-----------------------------|----------------------------------|
| • Fall 2018 | Finalize Study with Public Input |
| • Spring 2019 – Spring 2023 | Preliminary Engineering Design |
| • Spring 2021 – Spring 2023 | Right-of-Way Acquisition |
| • Spring 2023 – Fall 2024 | Construction |

General comments received from the June 28th meeting are as follows:

- Many would like an improvement for congestion at this intersection
- Improvement will ease cross-neighborhood access for residents
- Providing different modes of transportation or accessibility such as pedestrian facilities will reduce vehicular traffic at the intersection
- Alternative A.1 T-Intersection Improved provides an open space opportunity

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Finally, on November 15, 2018, FCDOT conducted another CIM to follow up with citizens on the project. The meeting provided a forum of the project's purpose, study methodologies, alternatives analyzed, and to identify the preferred alternative, Alternative A.1 T-Intersection Improved. In addition to this, the meeting also addressed citizens' questions from the June 28 CIM. The CIM was advertised using email distribution lists available through the community as well as through the FCDOT's website. Graphics illustrating existing conditions and the alternatives analyzed were on display for citizens to review.

FISCAL IMPACT:

The Board of Supervisors approved \$20.5 million of local funding for the Balls Hill Road at Old Dominion Drive intersection improvement on May 15, 2018. These funds are provided in Fund 40010 (County and Regional Transportation Projects).

ENCLOSED DOCUMENTS:

Attachment 1: Excerpt from Draft Final Report, Section 1 - Introduction and Summary
Attachment 2: Map of Alternative A.1 T-Intersection Improved
Attachment 3: Summary Evaluation Matrix

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, PE, Capital Projects and Operations Division, FCDOT
Karyn L. Moreland, PE, Chief, Capital Projects Section, FCDOT
William P. Harrell, Transportation Planner, FCDOT
Audra K. Bandy, PE, Transportation Planner, FCDOT
Gibran Abifadel, Transportation Planner, FCDOT

1. INTRODUCTION AND SUMMARY

1.1 PURPOSE AND STUDY OBJECTIVES

This report presents the results of a traffic study for Fairfax County Department of Transportation (FCDOT) for the intersection of Balls Hill Road and Old Dominion Drive. This study was initiated by FCDOT to identify potential solutions to recurring weekday peak hour commuter congestion at the study intersection. The intersection is located in the Dranesville District of Fairfax County, Virginia. The purpose of this study is to determine possible solutions that have minimal property impacts and account for the anticipated traffic growth within the study area.

1.2 EXECUTIVE SUMMARY

The existing intersection is located in a residential area (with schools to the north) and is subject to significant peak hour commuter traffic on weekdays. The intersection is signalized with inefficient 4-way split phase operation. The intersection is severely skewed and currently operates with level of service (LOS) F in both the AM and PM peak hours, with significant queuing (greater than 2,000 feet) on the heaviest approach during each peak. There were 28 crashes recorded in the 5-year period evaluated for this study; fixed object off-road, angle, and rear-end crashes were the most frequent type. There are no bicycle or pedestrian facilities and currently there are no programmed improvements from them at this intersection. The projected 2040 No Build AM/PM peak hour conditions are expected to deteriorate to even more severe LOS F with worsened queuing. Additionally, there are two properties that are in different phases of a by-right development that are currently occurring at or near the intersection. Based on the scope of work for this study, the following scenarios were identified to be studied in this report:

- 2016 Existing Conditions
- 2040 No-Build Conditions
- 2040 Analyze up to Three (3) Conceptual Alternatives (later an additional fourth alternative)

Several conceptual alternatives with various operational configurations, such as signalization, roundabouts, and a mix of both, were developed and screened in order to address the intersection's operational and capacity issues. Four alternatives were carried forward for a more detailed evaluation (along with the No Build option) in the study horizon year. The conclusions of this study are summarized in the Summary Evaluation Matrix (Table 17 in Section 12). The Summary Evaluation Matrix compiles the relevant traffic operations (LOS and queuing), property impacts, right-of-way needs, planning level costs, and overall positives (pros) and negatives (cons) for the following alternatives evaluated herein under projected 2040 horizon year AM/PM peak hour conditions:

- No-Build
- Alternative A – T-Intersection
- Alternative B – Roundabout
- Alternative C – Addition of Dedicated Left Turn Lanes

- Alternate A.1 – T-Intersection Improved

The contents of the Summary Evaluation Matrix were utilized by JMT and FCDOT to identify Alternative A.1 - T-Intersection Improved ([Attachment 3 in BOS] Section 6.3, Figure 12 of Report) as the Preferred Alternative. Based on the analysis methodology, Alternative A.1– T-Intersection Improved is recommended as the Preferred Alternative for further consideration of design/implementation. This Preferred Alternative offers significant level of service improvements in the study area under projected 2040 Build year AM and PM peak hours. The alternative effectively splits the existing heavily congested, skewed study intersection into two smaller signalized intersections with improved signal phasing, and geometry, therefore the congestion is better managed during peak hours and minimizes unnecessary vehicle stops/delays. The turn lane geometry is also improved for greater roadway safety. This report will also provide additional details and discussion all of the alternatives analyzed and the technical methodologies to reach the conclusion.

Attachment 3

Balls Hill Rd and Old Dominion Dr Roadway Spot Improvement Summary Evaluation Matrix												
SCENARIO	AM Level of Service & Overall Intersection Delay ⁽¹⁾	PM Level of Service & Overall Intersection Delay ⁽¹⁾	AM/PM 95 th % Queue ⁽⁴⁾	Estimated # of Property Impacts*	Estimated # of Property Takes	Stormwater Management Facilities	Preliminary Estimated Right-of-Way Needed**		Cost Estimate ⁽⁴⁾⁽⁷⁾	Pros	Cons	
						S.F./Acres/ LF of 60" U.G. Pipe	S.F.	Acres	Revised July 2017, w/ New Right-of-Way Costs, Mehr's Farm Overlay and New Concept C(8)			
No-Build - 2040	F 221.1	F 210.5	WB - 3,909'	0	0	N/A	0	0	N/A	<ul style="list-style-type: none">Keeps historic lookNo ConstructionNo Cost (retaining effort by VDOT)No Right-of-Way acquisition or easements	<ul style="list-style-type: none">Increased aggravation for residents and through trafficDoes not solve delay/queuing issue	
Alternative A - T-Intersection ⁽⁵⁾	North Intersection B 14.5 South Intersection C 28.9	North Intersection C 21.4 South Intersection C 20.5	WBT/R - 328' EBT - 394'	20 (15 Partial Right-of-Way + 5 Easements)	1***	0 ⁽⁵⁾	50,000	1.15	\$13,413,000	<ul style="list-style-type: none">Solves delay/queuing issuesDoes relatively better job keeping historic lookSmall Right-of-Way footprint compared to Alternative BCounty gains > 1.5 miles of 5' bike lanesCounty gains approximately 3,000 LF of walkways	<ul style="list-style-type: none">Impacts estimated 21 parcelsVery tight design radiiPuts major intersection in front of Korean Pres ChurchRequires SWM basin outside of Right-of-Way, complicated by Mehrs FarmIntroduces unconventional intersection geometry @ Balls Hill/Dulaney intersection	
Alternative B - Roundabout ⁽²⁾⁽⁵⁾	C 31.6	C 23.0	EB - 784'	9 (9 Partial Right-of-Way)	4	0 ⁽⁵⁾	79,000	1.81	\$12,071,000	<ul style="list-style-type: none">Improves LOS to C / C in 2040 AM / PMReduced queuingMaintains VDOT design standard (horiz. curvature)Can be landscaped to keep historic look, be an area amenityTraffic calming effectLowest CostCounty gains approximately 2,000 LF of walkwaysImproves alignment at southern Old Dominion/Balls Hill intersection	<ul style="list-style-type: none">Impacts estimated 13 parcelsDriver roundabout learning curve?May have significant grading issues due to topo, particularly for approach realignments	
Alternative C - Addition of Dedicated Left-turn Lanes ⁽⁵⁾	D 46.5	E 55.8	WB - 2,969'	21 (20 Partial Right-of-Way + 1 Easement)	1***	0 ⁽⁵⁾	48,000	1.10	\$12,610,000	<ul style="list-style-type: none">Improves LOS to D / E in 2040 AM / PMNo major road link realignments (widens along existing alignment)Does relatively better job keeping historic lookSmaller Right-of-Way footprint compared to Alternative BCounty gains approximately 1 mile of 5' bike lanesLower Cost (relative to Alt. A)County gains approximately 3,000 LF of walkways	<ul style="list-style-type: none">Impacts estimated 22 parcelsDoes not eliminate inefficient left-turn (quasi u-turn) for the Old Dominion Dr. approachesMay have significant impact to church frontageRequires SWM basin outside of Right-of-Way, complicated by Mehrs Farm	
Alternative A.1 T-Intersection ⁽⁶⁾	North Intersection B 14.5 South Intersection C 28.9	North Intersection C 21.4 South Intersection C 20.5	WBT/R - 328' EBT - 394'	19 (14 Partial Right-of-Way + 5 Easements)	2***	500 LF	61,000	1.40	\$14,959,000	<ul style="list-style-type: none">Solves delay/queuing issuesDoes relatively better job keeping historic lookSmall Right-of-Way footprint compared to Alternative BCounty gains > 1.5 miles of 5' bike lanesCounty gains approximately 2,700 LF of walkwaysImproves alignment at southern Old Dominion/Balls Hill intersectionSouthern Balls Hill Rd. stub connecting to Dulaney Dr. allows for possible driveway connection to potential future new development (R. Mudd property), across from Mehr's Farm	<ul style="list-style-type: none">Impacts estimated 21 parcelsVery tight design radius (northern section of project)Puts major intersection in front of Korean Pres ChurchHighest Cost	

Notes:

- (1) LOS E or better is considered acceptable.
- (2) For roundabouts, v/c <= 0.85 is considered acceptable (Per FHWA guidance).
- (3) Per VDOT TOSAM, 2040 roundabout environmental factor input = 1.05.
- (4) Only the longest queue from either AM or PM of the intersection approaches is reported. Reported queues may be the sum of the nodes for the subject approach.
- (5) For Concepts A and C, Storm Water Management (SWM) quantities shown as zero b/c location has yet to be determined; however, a placeholder SWM cost estimate is still included in both Concept A and C costs above.
For Concept B, the SWM area is assumed to fit within the gore areas immediately north and south of the roundabout, within existing Right-of-Way. These estimates are preliminary and are subject to change when SWM facilities are advanced further in the design phase.
- (6) Cost estimates do not include the re-configuration of Greyson Woods Lane at Old Dominion Dr.
- (7) The Right-of-Way element of the cost estimate does not include unanticipated damages to the property as well as to any improvements that have not been constructed.
- (8) No additional traffic analysis was conducted per Amendment #1.
- (9) Additional revisions in December 2017 per county request for alternatives A.1 Alternatives 1 and 2, with updated cost including unground detention and Right-of-Way acreage update that's incorporates Mehr's Farm survey and other roadway alignment changes.

* "Property Impacts" defined as parcels from which right-of-way and/or easements are anticipated to be needed.
 ** Does not include estimated easements or areas for Storm water Management Facilities which lie outside of Right-of-Way footprint.
 *** Indicates no total property takes from Mehr's Farm development.

ACTION - 4

Approval of Project Agreements Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Fiscal Year (FY) 2019 Transit Assistance Grant Funds

ISSUE:

Approval for the Director of the Department of Transportation to sign seven Project Agreements with DRPT to enable the County's receipt of FY 2019 transit operating and capital assistance.

RECOMMENDATION:

The County Executive recommends that the Board authorize the Director of the Department of Transportation to sign seven Project Agreements between DRPT and Fairfax County, in substantial form as those attached, for FY 2019 transit operating and capital assistance (Attachments 1 through 7).

TIMING:

The Board of Supervisors should act on this item on November 20, 2018, so that DRPT can release FY 2019 transit funding to Fairfax County.

BACKGROUND:

For more than 30 years, the state disbursed state transit assistance to the Northern Virginia jurisdictions through the Northern Virginia Transportation Commission (NVTC). Pursuant to the Code of Virginia, NVTC uses a Subsidy Allocation Model (SAM) to distribute regional transit funding among the jurisdictions.

Prior to 2013, NVTC processed three main funding agreements between Fairfax County and DRPT: two for Washington Metropolitan Area Transit Authority (WMATA) regional projects and one for Fairfax County local projects. In 2012, Fairfax County and DRPT entered into a Master Agreement for the Use of Commonwealth Transportation Funds (the Master Agreement), which provides the basis for which the County receives numerous transportation project grant funds.

NVTC acts as Fairfax County's agent for WMATA regional agreements. This procedural action reduces the number of project agreements that Fairfax County is required to process. As mentioned above, in FY 2019, Fairfax County is seeking approval for seven agreements in this Board Item. Two remaining capital project agreements are still being negotiated. Staff will bring those agreements to the Board at a later date.

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FISCAL IMPACT:

The following seven attached agreements provide the County with \$3,831,800 for approved Fairfax County Transit Capital Projects and \$15,398,399 for operating assistance. Capital funding from the Commonwealth is provided on a reimbursement basis after the purchase and/or project is complete. These revenues are included in Fund 30000 (Metro Operations and Construction) and Fund 40000 (County Transit Systems). There is no General Fund impact.

ENCLOSED DOCUMENTS:

Attachment 1 – Project Grant # 72019-25: FY 2019 Operating Assistance
Attachment 2 – Project Grant # 73019-40: Purchase of Three Support Vehicles
Attachment 3 – Project Grant # 73019-41: Rehabilitation/Rebuilding Buses
Attachment 4 – Project Grant # 73019-44: Purchase of Passenger Shelters
Attachment 5 – Project Grant # 73019-45: Purchase of Spare Parts Associated with Capital Maintenance
Attachment 6 – Project Grant # 73019-46: Purchase of Shop Equipment
Attachment 7 – Project Grant # 73019-47: Purchase of Fare Boxes for Buses

STAFF:

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

ASSIGNED COUNSEL:

Joanna Faust, Assistant County Attorney

**Project Agreement for Use of
Commonwealth Transportation Funds
Fiscal Year 2019
Six Year Improvement Program Approved Project
Grant Number 72019-25**

This Project Agreement (“Agreement”), effective July 1, 2018, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively the “Parties”), is for the provision of funding for Fiscal Year 2019 operating assistance for the Grantee’s transit operations (“Project”).

WHEREAS, on February 1, 2018, the Northern Virginia Transportation Commission, on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2019 Six Year Improvement Program from the State Aid Operating Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 20, 2018, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of each Party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project.

NOW, THEREFORE, in consideration of the covenants and agreements set forth, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET

1. The Work to be performed by the Grantee under the terms of this Agreement is as follows:
 - a. Provide Fiscal Year 2019 transit operations.
2. The Department agrees to provide funding as detailed below:
 - a. State grant funding in the amount of \$15,398,399 for the Project approved in the Fiscal Year 2019 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to

appropriation by the General Assembly of Virginia and allocation by the CTB.

**ARTICLE 2. INCORPORATION OF MASTER AGREEMENT
FOR USE OF COMMONWEALTH FUNDS**

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

This space intentionally left blank

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Director

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

Appendix 1

Grantee: Fairfax County

**Project: Fiscal Year 2019 Operating Assistance for the
Grantee's Transit Operations**

State Project Agreement

Project Number: 72019-25

Project Start Date: July 1, 2018

Project Expiration Date: June 30, 2019

Operating Assistance Payment Schedule

Payment No.	Estimated Payment Date	Payment Amount
1	August 15, 2018	\$ 3,849,600
2	November 15, 2018	\$ 3,849,600
3	February 15, 2019	\$ 3,849,600
4	May 15, 2019	\$ 3,849,599
TOTAL GRANT AMOUNT		\$15,398,399

In no event shall this grant exceed \$15,398,399.

**Project Agreement for Use of
Commonwealth Transportation Funds
Fiscal Year 2019
Six Year Improvement Program Approved Project
Grant Number 73019-40**

This Project Agreement (“Agreement”), effective July 1, 2018, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding the purchase of three support vehicles (“Project”).

WHEREAS, on February 1, 2018, the Northern Virginia Transportation Commission, on behalf of the Grantee, submitted an application to the Department for funding for the Project in the Fiscal Year 2019 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 20, 2018, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of each Party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project.

NOW, THEREFORE, in consideration of the covenants and agreements set forth, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET

1. The Work to be performed by the Grantee under the terms of this Agreement is as follows:
 - a. Purchase three support vehicles.
2. The Department agrees to provide funding as detailed below:
 - a. State grant funding in the amount of \$15,300 for the Project approved in the Fiscal Year 2019 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

**ARTICLE 2. INCORPORATION OF MASTER AGREEMENT
FOR USE OF COMMONWEALTH FUNDS**

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

This space intentionally left blank

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Director

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

Appendix 1

Grantee: Fairfax County

Project: Purchase Three Support Vehicles

Capital Assistance Program Project Agreement

Project Number: 73019-40

Project Start Date: July 1, 2018

Project Expiration Date: December 31, 2019

Fund Code		Item Amount
477	Grant Amount (State share of Project cost - 17%)	\$15,300
1400	Local expense (share of Project cost - 83%)	\$74,700
	Total Project Expense	\$90,000

In no event shall this grant exceed \$15,300.

**Project Agreement for Use of
Commonwealth Transportation Funds
Fiscal Year 2019
Six Year Improvement Program Approved Project
Grant Number 73019-41**

This Project Agreement (“Agreement”), effective July 1, 2018, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding the rehabilitation and rebuild of buses (“Project”).

WHEREAS, on February 1, 2018, the Northern Virginia Transportation Commission, on behalf of the Grantee, submitted an application to the Department for funding for the Project in the Fiscal Year 2019 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 20, 2018, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of each Party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project.

NOW, THEREFORE, in consideration of the covenants and agreements set forth, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET

1. The Work to be performed by the Grantee under the terms of this Agreement is as follows:
 - a. Rehabilitate and rebuild buses.
2. The Department agrees to provide funding as detailed below:
 - a. State grant funding in the amount of \$2,210,000 for the Project approved in the Fiscal Year 2019 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

**ARTICLE 2. INCORPORATION OF MASTER AGREEMENT
FOR USE OF COMMONWEALTH FUNDS**

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

This space intentionally left blank

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Director

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

Appendix 1

Grantee: Fairfax County

Project: Rehabilitate and Rebuild Buses

Capital Assistance Program Project Agreement

Project Number: 73019-41

Project Start Date: July 1, 2018

Project Expiration Date: June 30, 2020

Fund Code		Item Amount
478	Grant Amount (State share of Project cost - 68%)	\$2,210,000
1400	Local expense (share of Project cost - 32%)	\$1,040,000
	Total Project Expense	\$3,250,000

In no event shall this grant exceed \$2,210,000.

**Project Agreement for Use of
Commonwealth Transportation Funds
Fiscal Year 2019
Six Year Improvement Program Approved Project
Grant Number 73019-44**

This Project Agreement (“Agreement”), effective July 1, 2018, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding the purchase of passenger shelters (“Project”).

WHEREAS, on February 1, 2018, the Northern Virginia Transportation Commission, on behalf of the Grantee, submitted an application to the Department for funding for the Project in the Fiscal Year 2019 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 20, 2018, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of each Party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project.

NOW, THEREFORE, in consideration of the covenants and agreements set forth, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET

1. The Work to be performed by the Grantee under the terms of this Agreement is as follows:
 - a. Purchase passenger shelters.
2. The Department agrees to provide funding as detailed below:
 - a. State grant funding in the amount of \$408,000 for the Project approved in the Fiscal Year 2019 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

**ARTICLE 2. INCORPORATION OF MASTER AGREEMENT
FOR USE OF COMMONWEALTH FUNDS**

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

This space intentionally left blank

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Director

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

Appendix 1

Grantee: Fairfax County

Project: Purchase Passenger Shelters

Capital Assistance Program Project Agreement

Project Number: 73019-44

Project Start Date: July 1, 2018

Project Expiration Date: June 30, 2020

Fund Code		Item Amount
477	Grant Amount (State share of Project cost - 34%)	\$ 408,000
1400	Local expense (share of Project cost - 66%)	\$ 792,000
	Total Project Expense	\$1,200,000

In no event shall this grant exceed \$408,000.

**Project Agreement for Use of
Commonwealth Transportation Funds
Fiscal Year 2019
Six Year Improvement Program Approved Project
Grant Number 73019-45**

This Project Agreement (“Agreement”), effective July 1, 2018, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding the purchase of spare parts and associated capital maintenance items (“Project”).

WHEREAS, on February 1, 2018, the Northern Virginia Transportation Commission, on behalf of the Grantee, submitted an application to the Department for funding for the Project in the Fiscal Year 2019 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 20, 2018, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of each Party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project.

NOW, THEREFORE, in consideration of the covenants and agreements set forth, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET

1. The Work to be performed by the Grantee under the terms of this Agreement is as follows:
 - a. Purchase spare parts and associated capital maintenance items.
2. The Department agrees to provide funding as detailed below:
 - a. State grant funding in the amount of \$76,500 for the Project approved in the Fiscal Year 2019 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

**ARTICLE 2. INCORPORATION OF MASTER AGREEMENT
FOR USE OF COMMONWEALTH FUNDS**

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

This space intentionally left blank

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Director

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

Appendix 1

Grantee: Fairfax County

Project: Purchase Spare Parts and Associated Capital Maintenance Items

Capital Assistance Program Project Agreement

Project Number: 73019-45

Project Start Date: July 1, 2018

Project Expiration Date: June 30, 2020

Fund Code		Item Amount
477	Grant Amount (State share of Project cost - 17%)	\$ 76,500
1400	Local expense (share of Project cost - 83%)	\$373,500
	Total Project Expense	\$450,000

In no event shall this grant exceed \$76,500.

**Project Agreement for Use of
Commonwealth Transportation Funds
Fiscal Year 2019
Six Year Improvement Program Approved Project
Grant Number 73019-46**

This Project Agreement (“Agreement”), effective July 1, 2018, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding the purchase of shop equipment (“Project”).

WHEREAS, on February 1, 2018, the Northern Virginia Transportation Commission, on behalf of the Grantee, submitted an application to the Department for funding for the Project in the Fiscal Year 2019 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 20, 2018, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of each Party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project.

NOW, THEREFORE, in consideration of the covenants and agreements set forth, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET

1. The Work to be performed by the Grantee under the terms of this Agreement is as follows:
 - a. Purchase shop equipment.
2. The Department agrees to provide funding as detailed below:
 - a. State grant funding in the amount of \$102,000 for the Project approved in the Fiscal Year 2019 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

**ARTICLE 2. INCORPORATION OF MASTER AGREEMENT
FOR USE OF COMMONWEALTH FUNDS**

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

This space intentionally left blank

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Director

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

Appendix 1

Grantee: Fairfax County

Project: Purchase Shop Equipment

Capital Assistance Program Project Agreement

Project Number: 73019-46

Project Start Date: July 1, 2018

Project Expiration Date: June 30, 2020

Fund Code		Item Amount
477	Grant Amount (State share of Project cost - 17%)	\$102,000
1400	Local expense (share of Project cost - 83%)	\$498,000
	Total Project Expense	\$600,000

In no event shall this grant exceed \$102,000.

**Project Agreement for Use of
Commonwealth Transportation Funds
Fiscal Year 2019
Six Year Improvement Program Approved Project
Grant Number 73019-47**

This Project Agreement (“Agreement”), effective July 1, 2018, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding the purchase of fareboxes for buses (“Project”).

WHEREAS, on February 1, 2018, the Northern Virginia Transportation Commission, on behalf of the Grantee, submitted an application to the Department for funding for the Project in the Fiscal Year 2019 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 20, 2018, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of each Party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project.

NOW, THEREFORE, in consideration of the covenants and agreements set forth, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET

1. The Work to be performed by the Grantee under the terms of this Agreement is as follows:
 - a. Purchase fareboxes for buses.
2. The Department agrees to provide funding as detailed below:
 - a. State grant funding in the amount of \$1,020,000 for the Project approved in the Fiscal Year 2019 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

**ARTICLE 2. INCORPORATION OF MASTER AGREEMENT
FOR USE OF COMMONWEALTH FUNDS**

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

This space intentionally left blank

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Director

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

Appendix 1

Grantee: Fairfax County

Project: Purchase Fareboxes for Buses

Capital Assistance Program Project Agreement

Project Number: 73019-47

Project Start Date: July 1, 2018

Project Expiration Date: June 30, 2020

Fund Code		Item Amount
477	Grant Amount (State share of Project cost - 68%)	\$1,020,000
1400	Local expense (share of Project cost - 32%)	\$ 480,000
	Total Project Expense	\$1,500,000

In no event shall this grant exceed \$1,020,000.

ACTION – 5

Approval of a Resolution to Add a Section of Pohick Road (Route 641) into the Secondary System of State Highways and Concur with the Abandonment of a Portion of the Former Alignment (Mount Vernon District)

ISSUE:

Board adoption of the attached resolution requesting the addition of a section of Pohick Road (Route 641) to the Secondary System of State Highways (Secondary System) and concurring with the abandonment of a portion of the former alignment of Pohick Road under Virginia Code § 33.2-912.

RECOMMENDATION:

The County Executive recommends that the Board adopt the attached resolution (Attachment III) requesting the Virginia Department of Transportation (VDOT) to add the new alignment of Pohick Road to the Secondary System and concurring with the abandonment of a portion of the former alignment, subject to the protection of Fairfax Water's facilities.

TIMING:

Routine.

BACKGROUND:

As part of Project Number 0641-29-282, RW201, C501, VDOT is undertaking the acceptance of the new alignment into the Secondary System and the abandonment of a portion of the former alignment under Virginia Code § 33.2-912 (Attachment II). This Code Section authorizes the Commissioner of Highways, in certain circumstances, to abandon rights of way under its own initiative, in this case as part of a construction project for the new alignment. VDOT requests that the Board concur with the abandonment action (Attachment I).

In turn, VDOT has also asked that the Board request the inclusion of the new alignment of Pohick Road in the Secondary System. Other parts of the new alignment of Pohick Road are currently included in the Secondary System (Route 641).

The new alignment may be found on Tax Map 98-4, northwest of Interstate 95. The former alignment may be found on Tax Map 107-2, immediately to the west of Interstate 95. Attachment IV shows the physical locations of these segments and Attachment V shows the area of abandonment more precisely.

Board Agenda Item
November 20, 2018

Staff has verified that VDOT holds the fee title to the right-of-way proposed for abandonment and this action would not alienate any right held by the Park Authority.

Traffic Circulation and Access

The abandonment will have no long-term impact on pedestrian, transit, or vehicle circulation and access. The former Pohick Road has already been removed and the new roadway is in service.

Easements

Fairfax Water has identified facilities within the right-of-way that VDOT intends to abandon. The resolution of support for the abandonment conditions this support on the preservation of Fairfax Water's facilities.

The proposal to abandon this right-of-way was also circulated to the following public agencies that have a potential interest in the land: Department of Public Works and Environmental Services, Fairfax County Department of Transportation, Department of Planning and Zoning, Fairfax County Park Authority, and the Fairfax County Fire and Rescue Department. None of these indicate any opposition to the proposal.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I: VDOT Letter
Attachment II: Virginia Code § 33.2-912
Attachment III: Resolution
Attachment IV: VDOT supplied segment map
Attachment V: Markup of area of abandonment

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Gregg Steverson, Chief, Site Analysis and Transportation Planning Division, FCDOT
Donald Stephens, FCDOT
Michelle Guthrie, FCDOT



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

4975 Alliance Drive
Fairfax, VA 22030

CHARLES A. KILPATRICK, P.E.
COMMISSIONER

November 27, 2017

Mr. Donald Stephens
Site Analysis Section
Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, Virginia 22033-2895

**Subject: Project # 0641-029-282, RW201, C-501
Pohick Road Re-Alignment and Abandonment (Portion of)**

Dear Mr. Stephens:

Pohick Road was re-aligned by VDOT Project# 0641-029-282, C-501 as depicted on attached sketch dated October 26, 2017. Accordingly the new alignment would be added to the state system and a portion of the old alignment would be abandoned. The project plan sheets and an exhibit for the proposed abandonment are attached for your reference.

We would appreciate your assistance in obtaining a resolution from Fairfax County Board of Supervisors regarding the subject changes; attached is a draft for the resolution language. The abandonment provision is proposed on the draft resolution; but if that wouldn't be feasible; then a Letter of Support would be sufficient for the abandonment; a draft for that is attached as well.

Since the right-of-way is owned by the Commonwealth of Virginia as recorded in Deed Book 2400 Pages 330-333 and Deed Book 5654 Pages 732-735; after the abandonment approval the land ownership would revert to the state.

Should you have any questions or need more information, please contact our office.

Sincerely,

A handwritten signature in blue ink that reads "Nadia N. Alphonse".

Nadia N. Alphonse
Street Acceptance Program
NOVA District – Fairfax/Arlington Permits
Office: 703-259-2934 - Nadia.Alphonse@VDOT.Virginia.gov

Attachments

VirginiaDot.org
WE KEEP VIRGINIA MOVING

Code of Virginia

Title 33.2. Highways and Other Surface Transportation Systems

Chapter 9. Abandonment and Discontinuance of Highways and Roads

§ 33.2-912. Alternative procedure for abandonment of old highway or crossing to extent of alteration

The Commissioner of Highways may declare any highway in the secondary state highway system or any highway in the secondary state highway system containing a highway-rail grade crossing abandoned when (i) it has been or is altered and a new highway that serves the same users as the old highway is constructed as a replacement and approved by the Commissioner of Highways or (ii) the Chief Engineer of the Department recommends that it is appropriate in connection with the completion of a construction or maintenance project. The old highway or the public crossing may be abandoned to the extent of such alteration, but no further, by the entry by the Commissioner of Highways of such abandonment upon the records of the Department.

Code 1950, § 33-76.12; 1950, p. 734; 1952, c. 127; 1970, c. 322, § 33.1-155; 2011, cc. [36](#), [152](#); 2014, c. [805](#).

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

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Fairfax County Government Center at Fairfax, Virginia, on November 20, 2018, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, the Virginia Department of Transportation has provided this Board with a sketch, dated October 26, 2017; depicting the changes required in the secondary system of state highways as a result of Project # 0641-029-282, RW201, C-501; which sketch is hereby incorporated by reference.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby requests, pursuant to Virginia Code Section 33.2-705, that the Virginia Department of Transportation add as part of the secondary system of state highways the portion of Pohick Road (Route 641) from 0.08 miles east of Creekside View Lane (Route 10647) to existing Pohick Road; centerline distance of (0.17 miles), and

BE IT FURTHER RESOLVED, that the Board hereby supports the abandonment of a portion of Pohick Road's old alignment (0.06 miles) between the end terminus of Creekside View Lane (Route 10647) and the end terminus of Wadebrook Terrace (Route 6444), pursuant to Virginia Code Section 33.2-912, provided that the facilities owned by Fairfax Water are protected.

A Copy Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors



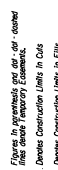
**Office of Land Use
October 26, 2017**

**Pohick Road (Route 641)
Re-Alignment & Abandonment (Portion of)**

Segment of Secondary Road to be Re-Numbered

Segment of Secondary Road to be Abandoned

Segment of Secondary Road to be Added



ACTION - 6

Approval of Letter of Agreement with National Capital Region Transportation Planning Board for Implementation of Certain Provisions of the Federal Performance-Based Planning and Programming Process

ISSUE:

Board of Supervisors' authorization for the Director of the Department of Transportation, acting as the agent for Fairfax County, a provider of public transportation, to execute a Letter of Agreement (LOA) with the National Capital Region Transportation Planning Board (TPB), substantially in the form of Attachment 1, to cooperatively develop and share information related to specific transportation performance and safety data as it relates to public transportation.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (Board) approve the Letter of Agreement, as required by federal law, substantially in the form of Attachment 1, and authorizes the Director of the Department of Transportation to sign it.

TIMING:

The Board should act on this item on November 20, 2018, so that the County is in compliance with the federal regulations.

BACKGROUND:

Fairfax County is a provider of public transportation; and, therefore, must adhere to the following federal regulations described.

The [Moving Ahead for Progress in the 21st Century](#) (MAP-21) Act of 2012 directs the U.S. Department of Transportation to establish a set of performance measures through the rulemaking process to increase the accountability and transparency of the federal highway and transit programs and improve project decision-making using performance-based planning and programming (PBPP). With the national performance measures established, state Departments of Transportation (State DOTs) and Providers of Public Transportation must:

- Establish performance targets that reflect the measures
- Report on progress towards achieving those targets
- Develop performance based plans for safety and asset management
- Implement a performance based approach to planning and programming

MAP-21 transformed federal transportation grants programs by establishing new requirements for performance management and performance-based planning and programming to ensure the most efficient investment of federal transportation funds. The Fixing America's Surface Transportation Act (FAST Act) of 2015 continued the performance management and performance-based planning and programming requirements of MAP-21 with minor changes.

The PBPP process calls for the State DOTs, Metropolitan Planning Organizations (MPOs), and Providers of Public Transportation to transition to a performance-driven, outcome-based program that provides for a greater level of transparency and accountability, improved project decision-making, and more efficient investment of federal transportation funds, as part of the cooperative, comprehensive and continuing (3C) performance-based multimodal transportation planning and programming process for the metropolitan planning area.

On May 27, 2016, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) jointly published the final Statewide and Non-Metropolitan Transportation Planning and Metropolitan Transportation Planning regulations. This final rule updated the regulations governing the development of metropolitan transportation plans and programs for urbanized areas, long-range statewide transportation plans and programs, and the congestion management process. The rule also included revisions related to the use of and reliance on planning products developed during the planning process for project development and the environmental review process. The update makes the regulations consistent with current statutory planning requirements, including the new mandate for a PBPP process. The Planning Rule requires the MPOs, State DOTs, and Providers of Public Transportation to cooperatively determine and clearly identify in written agreements the mutual responsibilities necessary to carry out the metropolitan transportation planning process.

The TPB is a MPO under the PBPP. TPB staff has developed a Performance-Based Planning and Programming Letter of Agreement (PBPP LOA) to provide the administrative framework for documenting roles and responsibilities in meeting PBPP requirements which is the subject of this action.

FISCAL IMPACT:

Funding for the PBPP requirement has been included in Fund 40000, County Transit Systems.

Board Agenda Item
November 20, 2018

ENCLOSED DOCUMENTS:

Attachment 1: Performance-Based Planning and Programming Letter of Agreement with the National Capital Region Transportation Planning Board

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Dwayne Pelfrey, Chief, Transit Operations Division, FCDOT
Michael Lake, Senior Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Joanna Faust, Assistant County Attorney

November 20, 2018

Tom Biesiadny
Director
Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 22033

Subject: Documentation of Responsibilities for Federal Transportation Performance-Based Planning and Programming

Dear Mr. Biesiadny:

This Letter of Agreement ("LOA") between the National Capital Region Transportation Planning Board ("TPB") and the Board of Supervisors of Fairfax County, acting through the Fairfax County Department of Transportation ("AGENCY") sets forth the agreement between the parties to implement the metropolitan transportation planning provisions of the federal Performance-Based Planning and Programming ("PBPP") process.

First legislated in 2012 in the Moving Ahead for Progress in the 21st Century Act (MAP-21) and, subsequently expanded in the Fixing America's Surface Transportation (FAST) Act of December 2015, the PBPP process calls for the State departments of transportation ("States"), Metropolitan Planning Organizations ("MPOs"); and Providers of Public Transportation to transition to a performance-driven, outcome-based program that provides for a greater level of transparency and accountability, improved project decision-making, and more efficient investment of federal transportation funds, as part of the cooperative, comprehensive and continuing ("3C") performance-based multimodal transportation planning and programming process for the metropolitan planning area. The TPB is a MPO under the PBPP. The AGENCY is a Provider of Public Transportation under the PBPP through its operation of the Fairfax County Connector bus.

MPOs and States and Providers of Public Transportation must link investment priorities to the achievement of performance targets in:

1. Highway Safety
2. Highway Assets: Pavement and Bridge Condition
3. System Performance (National Highway System Congestion, Freight, CMAQ Program)
4. Transit Asset Management
5. Transit Safety

On May 27, 2016, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) jointly published the final Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning regulations (23 CFR Parts 450, 771 and 49 CFR Part 613; "Planning Rule"). This final rule updated the regulations governing the development of metropolitan transportation plans and programs for urbanized areas, long-range statewide transportation plans and programs, and the congestion management process, as well as revisions related to the use of and reliance on planning products developed during the planning process for project development and the environmental review process. The update makes the regulations

consistent with current statutory planning requirements, including the new mandate for a Performance-Based Planning and Programming process.

Regulation 23.CFR §450.314(a) requires that the TPB, the State(s) and Providers of Public Transportation

“shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO, the State(s), and the providers of public transportation”.

With regard to the FAST Act provisions of PBPP, the updated regulation for Metropolitan Planning Agreements (23 CFR §450.314(h)), notes that the TPB, State(s) and Providers of Public Transportation

“shall jointly agree upon and develop specific written provisions for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region”.

Consistent with the above regulation and in consideration of the mutual promises contained herein, TPB and the AGENCY agree to the following:

The TPB shall perform PBPP tasks as outlined in Article A – General Agreement on Performance Based Planning and Programming and Metropolitan Transportation Planning, and Articles E and F – PBPP Areas. The AGENCY shall perform PBPP tasks related to the Fairfax County Connector bus as a Provider of Public Transportation as outlined in Article A – General Agreement on Performance Based Planning and Programming and Metropolitan Transportation Planning, and Articles E and F – PBPP Areas.

Articles B, C, and D are intentionally omitted from this LOA.

The communication outlined in these provisions between the AGENCY and TPB will generally be through the State Technical Working Group, the TPB Technical Committee, and the TPB board.

The AGENCY’s financial obligations under this LOA are subject to appropriations by the Fairfax County Board of Supervisors.

Nothing herein shall be considered as a waiver of the sovereign immunity of the County of Fairfax.

Nothing herein shall be considered to create any rights in any third parties.

Nothing herein shall be considered to create any personal liability on behalf of any official, employee, agent, or representative of the County of Fairfax.

This Letter Agreement shall be construed in all respects in accordance with the laws of the Commonwealth of Virginia.

Mr. Biesiadny, Fairfax Co.
November 20, 2018

IN WITNESS WHEREOF, the parties hereto have caused this LOA to be executed by their proper and duly authorized officers, on the day and year first written above.

National Capital Region
Transportation Planning Board

BY: _____
Kanti Srikanth
Director, Department of Transportation Planning
Metropolitan Washington Council of Governments
Administrative Agent for the TPB

The Board of Supervisors of Fairfax County

BY: _____
Tom Biesiadny
Director of the Fairfax County Department of Transportation

Article A

General Agreement on Performance Based Planning And Programming (PBPP) and Metropolitan Transportation Planning

Under the LOA and this article, the TPB, the States and the Providers of Public Transportation recognize and agree that they will conduct a cooperative, comprehensive and continuing transportation planning and programming process for the National Capital Region (Region) in accordance with the **Planning Rule** and as described in the **Planning Agreement on Performance Based Metropolitan Transportation Planning Responsibilities** (“3C” Agreement/Agreement) signed by the States and the TPB.

The following articles for performance based planning and programming establish the general mutual responsibilities for carrying out this planning process in the Region. The remaining articles (B through F) document specific provisions for each performance area for cooperatively developing and sharing information related to the requirements for transportation performance data, the selection of performance targets, the reporting of performance targets, and the reporting of performance, as well as programming and projects.

Article 1

Cooperative, Comprehensive, and Continuing Process for Metropolitan Transportation Planning

The TPB uses the committee structures and meeting schedules for the metropolitan transportation process, as needed and as described in Article 1 of the “3C” Agreement. The TPB coordinates with numerous planning processes at the local and state levels to help determine the content of the long-range metropolitan transportation plan (Plan). The TPB is guided by its own vision and priorities which in turn reflect federal policy guidance.

Signatories to the LOA participate as stakeholders in the metropolitan planning process, which provides a forum for cooperative transportation planning and decision-making. There is also a Public Participation Plan (PPP) to provide citizens, affected public agencies, and all interested parties with reasonable opportunities to be involved in the performance-driven metropolitan transportation planning process and to review and comment at key decision points, as described in Article 6 of the “3C” Agreement.

Article 2

Performance Based Planning and Programming

The performance based planning and programming process will be conducted for the National Capital Region, the metropolitan planning area for the TPB, as described in the “3C” Agreement, Articles 1, 5, 9, and 10. The remaining articles of this LOA specify the roles and responsibilities for each signatory for specific PBPP performance areas, as applicable. In general, these include collecting data, cooperatively establishing all federally required performance targets for the metropolitan planning area (or urbanized area), sharing performance data, and supporting preparation of the system performance report.

The TPB will prepare and submit the system performance report, CMAQ performance plan, TIP assessment, and other reports as required by the federal performance rules.

Article A: General Agreement on PBPP and Metropolitan Planning, continued

**Article 3
Performance Inputs to the Metropolitan Transportation Plan**

As described in Article 9 of the “3C” Agreement, as amended or at least every four (4) years, the TPB shall develop an integrated multimodal performance-based long-range metropolitan transportation plan (Plan) that includes both long-range and short-range strategies and actions to facilitate the safe and efficient movement of people and goods in addressing current and future transportation trends and demands as specified in 23 CFR 450.324. This Plan shall be approved by the TPB and submitted for information purposes to the States and Providers of Public Transportation, and copies of updated and/or revised Plans shall be made available to the FHWA and FTA.

When updating the Plan, the TPB will coordinate with State DOTs, Providers of Public Transportation, and other stakeholders to conduct a cooperative, comprehensive, and continuing process to develop inputs on performance of the region’s highway and transit systems for inclusion in the Plan.

**Article 4
Performance Inputs to the Transportation Improvement Program**

As described in Article 10 of the “3C” Agreement, the TPB will develop a Transportation Improvement Program (“TIP”) for the Region that reflects the investment priorities established in the current Plan and shall cover a period of no less than four (4) years. The TIP will be approved by the TPB and transmitted to the States for their approval and inclusion in their State Transportation Improvement Programs (STIP).

The TIP will provide a notice to the public that the public participation process used for its development meets the public participation requirements for the program of projects prepared by Providers of Public Transportation under 49 U.S.C. 5307.

The TIP will be designed such that, once implemented, it makes progress toward achieving the performance-driven, outcome-based targets established under 23 CFR §450.306 (c) and (d). The TIP will include, at minimum, the elements listed under 23 CFR 450.326 (e) through (h).

State DOTs and Providers of Public Transportation, and other stakeholders will conduct a cooperative, comprehensive and continuing process to develop project inputs in order to improve the performance of the Region’s highway and transit systems.

Article E

Performance Based Planning and Programming Responsibilities for Transit Asset Management

The final Transit Asset Management rule was published in the Federal Register on July 26, 2016, and became effective October 1, 2016.¹ Transit asset management (TAM) is “a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively through the life cycle of such assets.” Under the final TAM rule, Providers of Public Transportation must collect and report data for four (4) performance measures, covering rolling stock, equipment, infrastructure, and facility condition. For these measures, providers of public transportation have to annually set targets for the fiscal year, develop a four-year TAM plan for managing capital assets, and use a decision support tool and analytical process to develop a prioritized list of investments. Small providers can be reported for by a Group Sponsor. Subsequently, the TPB must adopt transit asset targets for the metropolitan planning area to comply with requirements, when the TPB updates its long-range plan or TIP.

1) Transportation performance data

- a. Each Provider of Public Transportation is responsible for collecting its own transit asset data and reporting it in the National Transit Database (NTD), or of providing it to a Group Sponsor that reports the data on its behalf. When required to submit transit asset targets and data to the NTD (annually by October 31 for providers with fiscal year of July 1 to June 30), each Provider of Public Transportation or Group Sponsor will provide the TPB with the performance data and methodology used in developing the annual targets, and will also provide the TPB with any additional available data for the TPB’s planning area.
- b. The TPB will provide each Provider of Public Transportation with any data developed or supplemental data utilized in the performance process by the TPB.

2) Selection of performance targets

- a. The TPB will develop draft metropolitan planning area performance targets in coordination with the Providers of Public Transportation or Group Sponsors. Coordination may include in-person meetings, web meetings, conference calls, and/or email communication. Providers of Public Transportation or Group Sponsors shall be given an opportunity to provide comments on the TPB targets before final targets are adopted.
- b. The TPB board will be presented with the set of draft targets for consideration, and adopt the final targets at a subsequent meeting.

3) Reporting of performance targets

- a. When final transit asset management targets are adopted, each Provider of Public Transportation or Group Sponsor will transmit a copy to the TPB.
- b. The targets approved by the TPB will be reported to each Provider of Public Transportation or Group Sponsor. For each target, when the TPB approves a long range plan or TIP, the TPB will provide the following information to each Provider of Public Transportation or Group Sponsor.
 1. A determination of whether the TPB is 1) agreeing to plan and program projects that contribute toward the accomplishment of the provider of public transportation performance target, or 2) setting a quantifiable target for that performance measure for the TPB’s planning area.

¹ <https://www.gpo.gov/fdsys/pkg/FR-2016-07-26/pdf/2016-16883.pdf>

Article E: Transit Asset, continued

2. When any quantifiable target is set for the TPB planning area, the TPB will provide any supplemental data used in determining any such target to each Provider of Public Transportation or Group Sponsor.
3. Documentation of the TPB's target or support of the public transportation provider target will be provided in the form of a resolution or meeting minutes.

4) Reporting of performance to be used in tracking progress toward attainment of critical outcomes for the TPB region

- a. Each Provider of Public Transportation or Group Sponsor will provide the TPB with the performance data used in developing targets, and will also provide the TPB with subsets of any data based on the TPB planning area boundaries. Updates of this data will include prior performance data.
- b. Each Provider of Public Transportation or Group Sponsor will provide its adopted performance reports and Transit Asset Management Plans to the TPB.
- c. As part of the long-range plan, the TPB will prepare a System Performance Report on the Region's transportation performance. Providers of Public Transportation or Group Sponsors will be given an opportunity to provide comments on the report before the report is finalized. The final report will be transmitted to the Providers of Public Transportation and Group Sponsors.

5) Programming and projects

- a. Each Provider of Public Transportation or Group Sponsor will provide to the TPB:
 1. A list of projects that affect transit asset performance and use federal transit or other funds planned for the TPB metropolitan planning area as part of their input to the metropolitan TIP.
 2. The annual obligation listing of federal transit funds expended on transit asset projects and programs in the past year that includes funds expended for the TPB metropolitan planning area by December 30 of each year.
 3. Any published or publicly available report or analysis that reviews transit asset performance relevant to transit asset performance in the TPB metropolitan planning area.
- b. The TPB will provide to each Provider of Public Transportation or Group Sponsor:
 1. Technical support for the TIP database to facilitate the integration of transit asset performance into the project programming process.

Article F

Performance Based Planning and Programming Responsibilities for Transit Safety

The final National Public Transportation Safety Plan rule was published on January 18, 2017, finalizing the transit safety performance measures.² The Public Transportation Agency Safety Plan was published on July 19, 2018.³ Under the final rules, Providers of Public Transportation must collect and report data for four (4) performance measures, covering fatalities injuries, safety events (derailments, collisions, fires, and evacuations) and system reliability (mean distance between major and other mechanical system failures). For these measures, providers of public transportation will have to annually set targets for the fiscal year. A Group Sponsor can report for small providers. Subsequently, the TPB must adopt transit safety targets for the metropolitan planning area to comply with requirements, when the TPB updates its long-range plan or TIP.

1) Transportation performance data

- a. Each Provider of Public Transportation is responsible for collecting its own transit safety data and reporting it in the National Transit Database (NTD), or of providing it to a Group Sponsor that reports the data on its behalf. When required to submit transit safety targets and data to the NTD, each Provider of Public Transportation or Group Sponsor will provide the TPB with the performance data and methodology used in developing the annual targets, and will also provide the TPB with subsets of the data based on the TPB's planning area boundaries.
- b. The TPB will provide each Provider of Public Transportation with any data developed or supplemental data utilized in the performance process by the TPB.

2) Selection of performance targets

- a. The TPB will develop draft metropolitan planning area performance targets in coordination with the Providers of Public Transportation or Group Sponsors. Coordination may include in-person meetings, web meetings, conference calls, and/or email communication. Providers of Public Transportation or Group Sponsors shall be given an opportunity to provide comments on the TPB targets before final targets are adopted.
- b. The TPB board will be presented with the set of draft targets for consideration, and adopt the final targets at a subsequent meeting.

3) Reporting of performance targets

- a. When final transit safety targets are adopted, each Provider of Public Transportation or Group Sponsor will transmit a copy to the TPB.
- b. The targets approved by the TPB will be reported to each Provider of Public Transportation or Group Sponsor. For each target, when the TPB approves a long range plan or TIP, the TPB will provide the following information to each Provider of Public Transportation or Group Sponsor.
 1. A determination of whether the TPB is 1) agreeing to plan and program projects that contribute toward the accomplishment of the provider of public transportation performance target, or 2) setting a quantifiable target for that performance measure for the TPB's planning area.

² <https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00678.pdf>

³ <https://www.gpo.gov/fdsys/pkg/FR-2018-07-19/pdf/2018-15167.pdf>

Article F: Transit Safety, continued

2. When any quantifiable target is set for the TPB planning area, the TPB will provide any supplemental data used in determining any such target to each Provider of Public Transportation or Group Sponsor.
3. Documentation of the TPB's target or support of the public transportation provider target will be provided in the form of a resolution or meeting minutes.

4) Reporting of performance to be used in tracking progress toward attainment of critical outcomes for the TPB region

- a. Each Provider of Public Transportation or Group Sponsor will provide the TPB with the performance data used in developing targets, and will also provide the TPB with subsets of any data based on the TPB planning area boundaries. Updates of this data will include prior performance data.
- b. Each Provider of Public Transportation or Group Sponsor will provide any performance report to the TPB.
- c. As part of the long-range plan, the TPB will prepare a System Performance Report on the Region's transportation performance. Providers of Public Transportation or Group Sponsors will be given an opportunity to provide comments on the report before the report is finalized. The final report will be transmitted to the Providers of Public Transportation and Group Sponsors.

5) Programming and projects

- c. Each Provider of Public Transportation or Group Sponsor will provide to the TPB:
 1. A list of projects that affect transit safety performance and use federal transit or other funds planned for the TPB metropolitan planning area as part of their input to the metropolitan TIP.
 2. The annual obligation listing of federal transit funds expended on transit safety projects and programs in the past year that includes funds expended for the TPB metropolitan planning area by December 30 of each year.
 3. Any published or publicly available report or analysis that reviews transit safety performance relevant to transit safety performance in the TPB metropolitan planning area.
- d. The TPB will provide to each Provider of Public Transportation or Group Sponsor:
 1. Technical support for the TIP database to facilitate the integration of transit safety performance into the project programming process.

ACTION - 7

Authorization to Use Economic Development Support Funding to Invest in an Innovation Hub

ISSUE:

Board of Supervisors' authorization of \$1,000,000 from the Economic Development Support Fund (EDSF) to invest in Refraction, Inc (Refraction). The funds will be donated to support Refraction's innovation hub and ensure this facility will remain in Fairfax County.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (Board) use a portion of the EDSF for this donation.

TIMING:

Board action is requested on November 20, 2018, because the innovation hub is currently at capacity and at risk of having some member organizations relocate to other jurisdictions due to space limitations.

The Board previously encumbered \$1,000,000 in funding from the EDSF for an Innovation Hub Initiative on July 31, 2018.

BACKGROUND:

On October 24, 2017, the Board authorized the evaluation of the use of the EDSF to support the creation of an Innovation Hub. On July 24, 2018, the broader purpose and function of the Refraction innovation hub was reviewed by the Board at its Budget Committee meeting. The Board subsequently encumbered \$1,000,000 of EDSF funds on July 31, 2018, for the purpose of promoting an innovation hub and directed staff to work with Refraction to develop a detailed phase proposal. The detailed phase proposal for supporting the Refraction innovation hub was reviewed by the Board at its Budget Committee meeting on October 23, 2018.

To leverage the resources Fairfax County has within our key technology sectors, the Board's Economic Success Strategic Plan (ESSP) recognized a need to strengthen and grow the innovation ecosystem through the creation of an Innovation Hub in Fairfax that will provide a relatively affordable, community-focused space for new companies to co-locate and grow (Goal 1 and Goal 5).

Refraction is a nonprofit charitable organization whose central mission is to provide educational resources and entrepreneurial expertise to promote jobs and a stronger innovation ecosystem in Fairfax County. Working in collaboration with other nonprofit organizations, local universities, and the Fairfax County Public Schools, it assists students from all social and economic backgrounds to reach their potential and achieve economic success.

Refraction and the Northern Virginia Community College are jointly designing, developing, and launching an apprenticeship program for tech startups and high-growth companies. This is critically important for growing and attracting the companies that will fuel economic growth in the 21st century. Virginia recently reported its lowest unemployment rate in 11 years, and many high growth companies cannot find enough employees with the skills they need. The apprenticeship program will attract, prepare, and retain qualified workers to work in high-growth companies and will match apprentices to companies as an alternative career pathway to traditional two- or four-year degrees. The launch of the program is made possible in part by the Tech Talent Pipeline Go Virginia Grant.

Refraction has committed to working with Fairfax County's Chief Equity Officer and other partners to recruit and train apprentices from underrepresented and economically disadvantaged communities.

This project is an expansion of space, as well as an expansion in the level of programming provided to the community. Refraction is committed and motivated to stay in Reston and in Fairfax County, despite being approached by other jurisdictions to consider relocating.

Because of this donation, the County will be supporting Refraction's efforts with the following:

1. **Expanded location space:** Create a vibrant space and community for entrepreneurs, technologists, mentors, and investors to connect and collaborate.
2. **Opportunities for funding:** Create opportunities and incentives for organizations and individuals to contribute funds toward the community services promoted by Refraction.
3. **Programming Events:** Present reverse pitch events, capital showcases, hackathons, and information sharing.
4. **Individual Mentorship:** Vet and manage "best of breed" mentorship and advice from individuals with relevant expertise.
5. **Corporate Partnership Engagement:** Collaborate with corporate partners in workforce development, mentoring startups, and promoting business development with locally sourced technology companies.
6. **Workforce development:** Train and grow current and future technology workforce (in partnership with universities) across the County.

7. **Equity commitment:** Provide training, internship, and apprenticeship opportunities for underrepresented students from Fairfax County Public Schools and local universities.
8. **Community outreach:** Organize educational events on innovation and entrepreneurship, open to the public.
9. **Nonprofit partnership:** Provide free space and services to nonprofit organizations.

This EDSF donation will be conditioned by Fairfax County upon the following:

- Refraction shall be a IRS certified 501(c)(3) organization,
- Refraction will submit audited profit-and-loss statements to the County on an annual basis, and,
- Refraction will remain in Fairfax County

In addition, the EDSF donation is made with the following expectations for Refraction:

- Refraction will partner with FCPS and other community stakeholders to provide educational events targeted at underrepresented students and communities
- Refraction will report on activities and metrics on an annual basis to the Economic Advisory Commission.

Refraction has developed the following metrics for its first five years to gauge its success and the value of the EDSF investment. Staff believes these proposed measures are reasonable and attainable based upon Refraction's track record and business plan.

Refraction Success Metrics	Year 1	Year 2	Year 3	Year 4	Year 5	5-Year Total
Member Companies	25	35	45	65	80	250
Jobs	70	110	150	210	260	800
Capital Raised	\$0	\$25,000,000	\$50,000,000	\$50,000,000	\$75,000,000	\$200,000,000
Tech Workers Trained	250	450	550	600	650	2,500
% of Companies To Remain in Ffx	50%	60%	70%	75%	80%	80%

FISCAL IMPACT:

Total funding contribution from Fairfax County would be \$1,000,000 from the EDSF. It is anticipated that this would be distributed over a six-month period, allowing for Refraction to receive its IRS 501(c)(3) organization status.

In addition to the County contribution, Refraction will also bring matching cash and in-kind funds of over \$2,000,000 from local corporate partners.

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ENCLOSED DOCUMENTS:

Attachment 1 - EDSF Nominations to Date and Fund Summary

STAFF:

Robert A. Stalzer, Deputy County Executive

Joe Mondoro, Department of Management and Budget

Eta Nahapetian, Economic Initiatives Coordinator, Office of the County Executive

Scott Sizer, P3/Joint-Ventures Policy Coordinator, Office of the County Executive

ASSIGNED COUNSEL:

Alan Weiss, Assistant County Attorney, Office of the County Attorney

Economic Development Support Fund (EDSF) Summary to Date

11/5/2018

ATTACHMENT 1

EDSF Funding Allocations	Amount
FY 2016 Carryover	\$5,000,000
FY 2018 Carryover	\$2,000,000
Total EDSF Fund Allocations	\$7,000,000

Project Requests	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	9/25/2018	\$100,000
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	6/19/2018	\$1,200,000
ESSP Implementation	Foust	9/26/2017	1/30/2018	\$200,000	2/20/2018	\$200,000	5/1/2018	\$200,000
Greater Washington Export Center	Bulova / Foust	9/26/2017	-	\$450,000				
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: Tech Talent Pipeline - Local Match ¹	Bulova / Foust	9/26/2017	10/17/2017	\$175,000	9/26/2017	\$175,000	1/23/2018	\$175,000
Innovation Hub Initiative	Foust	10/24/2017	7/24/2018	\$1,000,000	7/31/2018	\$1,000,000		
Go Virginia: MACH37 - Local Match	Foust	10/24/2017	-	\$25,000				
Springfield Gateway Projects	McKay	11/21/2017	1/30/2018	\$100,000	2/20/2018	\$100,000	5/1/2018	\$100,000
Go Virginia: Security University	Foust	12/5/2017	1/30/2018	\$100,000				
Turning Point Suffragist Memorial ²	Foust	2/6/2018	-	\$0		\$0		\$0
MVLE - Culinary Arts and Training Program	McKay / Storck	2/20/2018	-	\$100,000				
Richmond Hwy Marketing and Branding Plan	Storck / McKay	5/15/2018	-	TBD				
Korean Community Center ³	Bulova	7/10/2018	-	\$0		\$0		\$0
Total Requests				\$3,975,000		\$3,300,000		\$1,900,000
Total Funding Less Total Requests				\$3,025,000		\$3,700,000		\$5,100,000

¹ Encumbrance on 9/26/17 for \$200,000. Encumbrance changed to \$175,000 based upon 1/23/18 appropriation approval.

² Board directed staff to cease review on 6/5/18. Turning Point Suffragist Memorial funding of \$200,000 was included in FY 2018 Third Quarter Review (approved on 4/24/2018).

³ Board allocated \$500,000 for the Korean Community Center as part of the FY 2018 Carryover Review (approved on 9/25/18).

INFORMATION - 1

Endorsement of Volume I Urban Design Guidelines for Fairfax County Commercial Revitalization Districts and Areas (Dranesville, Lee, Mason, Mount Vernon, and Providence Districts) and Volume II District Design Guidelines for Baileys Crossroads and Seven Corners (Mason District)

Excellence in urban design is critical to the achievement of the visions established in the Comprehensive Plan for Commercial Revitalization Districts (CRDs) and Commercial Revitalization Areas (CRAs). The purpose of Urban Design Guidelines (Guidelines) for the CRDs and CRAs is to provide site design and streetscape suggestions using modern techniques, best practices, and sustainable solutions to produce a high quality urban environment. The Guidelines are organized into two Volumes. The Volume I Guidelines apply to all of the CRDs and CRAs (except Lake Anne) and the Volume II District Guidelines apply to an individual CRD or CRA. Volume II Guidelines will be created or updated to this new format for each area.

The Guidelines are not regulatory and are not intended to control or dictate a particular architectural style or site design solution. They are intended to be used by land owners and their consultants as they envision their projects and by staff and the community in the evaluation of such projects. They are a companion document to the Comprehensive Plan and the Zoning Ordinance, providing detailed recommendations for elements such as streetscapes, hardscape elements, planting strategies, building mass, and architectural form that emphasize high quality design concepts while allowing the flexibility for applicants to create their own distinct character within their projects.

The Volume I and Volume II: District Guidelines for Baileys Crossroads and Seven Corners were developed by the Office of Community Revitalization (OCR) in coordination with the various affected county departments and agencies, including but not limited to the Department of Planning and Zoning (DPZ), the Department of Transportation (DOT), the Department of Public Works and Environmental Services (DPWES), Land Development Services (LDS) and Urban Forest Management. Significant community outreach and engagement on drafts of both volumes was conducted. The outreach process to inform the community and to solicit feedback included direct emails to over 250 individuals; announcements sent to community organizations, listservs, newsletters; postings on NextDoor; presentations and small group discussions at meetings of revitalization partner groups; open meetings at libraries; presentations to the Lee District and Mason District Land Use Committees; an online survey; and, phone conferences with developers and community representatives. OCR received a substantial amount of feedback on both volumes. These comments were incorporated, as appropriate, to produce the final documents.

Unless otherwise directed by the Board, staff will use the Volume I Urban Design Guidelines for Fairfax County Commercial Revitalization Districts and Areas and Volume II District Design Guidelines for Baileys Crossroads and Seven Corners in its review of development applications and will provide them to interested parties as a

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resource for addressing the Comprehensive Plan's design guidance and streetscape standards in these areas.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:

Attachment 1 – Volume I: Urban Design Guidelines for Fairfax County Commercial Revitalization Districts and Areas is available online at:

http://www.fcrevite.org/programs/UDGupdate_vol1.html

Attachment 2 – Volume II: District Design Guidelines for Baileys Crossroads and Seven Corners is available online at: <http://www.fcrevite.org/baileys/designguides.html>

STAFF:

Robert A. Stalzer, Deputy County Executive

Barbara Byron, Director, Office of Community Revitalization (OCR)

Elizabeth Hagg, Deputy Director, OCR

JoAnne Fiebe, Revitalization Program Manager, OCR

INFORMATION – 2

Contract Awards – Comprehensive Primary Care Services

The Health Department's Community Health Care Network (CHCN) program, since its inception, has contracted for providers of primary medical care services. Currently Inova Health System operates three CHCN clinics located throughout the county providing primary care services to approximately 16,000 patients per year (Merrifield Center in Fairfax, the South County Government Center in Alexandria, and the North County CHCN location in Reston). At the time CHCN was created in 1990, safety net health care providers with capacity to serve low income residents regardless of their ability to pay or their insurance status were extremely limited in Fairfax County and the CHCN program was created by the county to fill the gap in available primary care services for Fairfax County residents with incomes at or below 200% of the federal poverty level and who were uninsured. Today, CHCN's contracted primary care services are largely limited to adults meeting the CHCN program eligibility criteria who receive primary care services through the program as Inova patients.

The health care landscape in Fairfax County has changed since CHCN was first implemented. In recent years, these changes have precipitated the consideration of a new approach to health safety net services that includes comprehensive primary care among other integrated health and social services. Trends identified include:

- The existence of sustainable and robust primary care providers in the community that offer access to comprehensive health care regardless of an individual's age or ability to pay for services;
- Growing evidence of improved health outcomes for individuals and families, and reduced costs for providers and payers, when comprehensive primary care and integrated behavioral health care are coupled with traditional social services that address the economic and social conditions that impact an individual's and a family's health like housing assistance and basic needs supports;
- Opportunities to build and leverage existing relationships with federally qualified health centers with existing locations in the County and to potentially draw down a variety of funding sources to maximize economies of scale and expand access.

With Inova Health System and other stakeholders, the County has identified an opportunity to support today's existing health safety net system in the County and leverage available resources and funding with the goal of improving overall community health and expanding access to whole-person and whole-family care.

The geographic boundaries of Fairfax County currently include two Federally Qualified Health Centers (FQHCs) with multiple locations. These community-based primary care providers are required, by their federal designation, to provide comprehensive primary care services to individuals regardless of their ability to pay. The FQHCs collectively serve approximately 30,000 patients annually in their centers across Northern Virginia and Fairfax County with 38% of their patients being Fairfax County residents (approximately 12,000). FQHCs are the only health care entities designated by the federal government to receive enhanced Medicaid and Medicare reimbursements for the care they provide.

With these contract awards, the County will shift from contracting for primary care services provided through the CHCN program to supporting the community's existing safety net system for primary care through contracts with each of the FQHCs currently located in Fairfax County: Neighborhood Health and HealthWorks for Northern Virginia. These new contracts are designed to support FQHC capacity in the Fairfax County community and establish coordination with the County's non-medical social services that address economic and social issues that can impact an individual's and family's health, like housing and basic needs supports. With these contracts, all Fairfax County residents, especially those who are low-income or without insurance, will have access to quality primary care that includes access to specialty care, dental, and behavioral health services, as well as a full spectrum of the county's integrated social services to efficiently address whole person/whole family care.

The Department of Tax Administration has verified that both Neighborhood Health and HealthWorks for Northern Virginia possess the appropriate Fairfax County Business, Professional and Occupational Licenses.

Unless otherwise directed by the Board of Supervisors, the Purchasing Agent will proceed to award contracts to Neighborhood Health and HealthWorks for Northern Virginia to best meet the needs of the County's health safety net system. Each contract will be ten years in length and the total estimated amount of both contracts in Year 1 is \$6.8 million. In addition, one-time transition funding of approximately \$560,000 will be provided prior to July 1, 2019.

FISCAL IMPACT:

The total estimated amount of both contracts combined will not exceed \$7.3 million to include both transition costs and the first year of operations. Funds in the amount of \$7.3 million are budgeted for this new model of safety net support and coordination in the Health Department budget.

Board Agenda Item
November 20, 2018

ENCLOSED DOCUMENTS:

None

STAFF:

Joe Mondoro, Chief Financial Officer

Tisha Deeghan, Deputy County Executive

Cathy Muse, Director, Department of Purchasing and Material Management

Board Agenda Item
November 20, 2018

10:30 a.m.

Matters Presented by Board Members

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. *Virginia Alcoholic Beverage Control Board v. Board of Supervisors of Fairfax County, Virginia*, Record No. 0265-18-4 (Va. Ct. of App.) (Springfield District)
 - 2. *Andrew Cooper, Rebecca Cooper, Blake Ratcliff, Sara Ratcliff, Cecilia Gonzalez, Cindy Reese, Donald Walker, Debra Walker, Carmen Giselle Huamani Ober, Amjad Arnous, John A. McEwan, Mary Lou McEwan, Kevin Holley, Laura Quirk Niswander, Lori Marsengill, Gary Marsengill, Margaret Wiegenstein, Melinda Norton, Nagla Abelhalim, Nhung Nina Luong, Quan Nguyen, Robert Ross, Helen Ross, Sanjeev Anand, Anju Anand, Sarah Teagle, Sofia Zapata, Svetla Borisova, Nickolas Ploutis, Melinda Galey, Travis Galey, and Victoria Spellman v. Board of Supervisors of Fairfax County, Virginia*, Case No. CL-2018-0012818 (Fx. Co. Cir. Ct.)
 - 3. *Steven Collado v. Fairfax County Government*, JCN VA00001079971 (Va. Workers' Comp. Comm'n)
 - 4. *Eileen M. McLane, Fairfax County Zoning Administrator v. Yun Su Sheue and Hao Kang Chen*, Case No. CL-2009-0014559 (Fx. Co. Cir. Ct.) (Braddock District)
 - 5. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Benjamin K. Canty and Judith M. Canty*, Case No. CL-2017-0012652 (Fx. Co. Cir. Ct.) (Braddock District)
 - 6. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia, and Leslie B. Johnson, Fairfax County Zoning Administrator v. John Jongki Lee and Eun Hee Lee*, Case No. CL-2017-0015187 (Fx. Co. Cir. Ct.) (Braddock District)
 - 7. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Hector Medrano*, Case No. GV18-024895 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)

8. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Bruce A. Blackerby*, Case Nos. GV18-005577 and GV18-021645 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)
9. *Elizabeth Perry, Property Maintenance Code Official v. Catjen, LLC*, Case No. GV18-017881 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)
10. *David L. Clayton v. Board of Supervisors of Fairfax County, Virginia; County of Fairfax, Virginia; and White Horse Four, LLC*, Case No. CL-2018-0012862 (Fx. Co. Cir. Ct.) (Lee District)
11. *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)
12. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County v. Martina Simpkins and Anthony Simpkins*, Case No. CL-2018-0002496 (Fx. Co. Cir. Ct.) (Lee District)
13. *Elizabeth Perry, Property Maintenance Code Official v. Lahoussaine Amajoud and Fatima Amajoud*, Case No. GV18-024825 (Fx. Co. Gen. Dist. Ct.) (Lee District)
14. *Leslie B. Johnson, Fairfax County Zoning Administrator v. George M. Yaworsky and Zenia M. Yaworsky*, Case No. CL-2018-0014854 (Fx. Co. Cir. Ct.) (Mason District)
15. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Elsa Campos*, Case No. CL-2018-0015005 (Fx. Co. Cir. Ct.) (Mason District)
16. *Leslie B. Johnson, Fairfax County Zoning Administrator v. John A. Williams*, Case No. CL-2018-0015006 (Fx. Co. Cir. Ct.) (Mason District)
17. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Kenneth E. Reppart and Edna M. Reppart*, Case No. CL-2015-0000262 (Fx. Co. Cir. Ct.) (Mason District)
18. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Stella G. Tsentas Trust, George C. Tsentas, Trustee of the Stella G. Tsentas Trust, and Woine Inc. d/b/a Skyline Ethiopian Cuisine*, Case No. CL-2018-0015113 (Fx. Co. Cir. Ct.) (Mason District)
19. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Annette W. Baker*, Case No. CL-2018-0015211 (Fx. Co. Cir. Ct.) (Mason District)
20. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Francis A. Headley, Grace F. Headley, and Jerome E. Headley*, Case No. CL-2018-0015210 (Fx. Co. Cir. Ct.) (Mason District)

21. *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)
22. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Jonathan Clark and Carolyn Clark*, Case No. CL-2017-0016073 (Fx. Co. Cir. Ct.) (Mason District)
23. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County v. Cathy Bishop and Thomas W. Bishop*, Case No. GV18-023444 (Fx. Co. Gen. Dist. Ct.) (Mt. Vernon District)
24. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Amy Junhong Long*, Case No. CL-2013-0005065 (Fx. Co. Cir. Ct.) (Providence District)
25. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Julio M. Dominguez and Rina J. Espinoza*, Case No. GV18-023159 (Fx. Co. Gen. Dist. Ct.) (Providence District)
26. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County v. Aminullah Abbasi*, Case No. GV18-024827 (Fx. Co. Gen. Dist. Ct.) (Providence District)
27. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County v. Yung Chi Yung*, Case No. CL-2017-0004961 (Fx. Co. Cir. Ct.) (Springfield District)
28. *Leslie B. Johnson, Fairfax County Zoning Administrator v. David Edward Cusin Kettner and Rafaela Da Conceicao Otoni*, Case No. GV18-010761 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
29. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Fernando Vargas and Graciela Vargas*, Case No. CL-2009-0017350 (Fx. Co. Cir. Ct.) (Sully District)
30. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. John W. Gordon, IV*, Case No. GV18-023561 (Fx. Co. Gen. Dist. Ct.) (Sully District)
31. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Francis X. Lambert*, Case No. GV18-023560 (Fx. Co. Gen. Dist. Ct.) (Sully District)
32. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Ernest K. Ralston*, Case No. GV18-023717 (Fx. Co. Gen. Dist. Ct.) (Sully District)

33. *Board of Supervisors of Fairfax County v. Jose R. Osorio Renderos*, Case No. CL 2018-0015213 (Fx. Co. Cir. Ct.) (Lee, Mason, Mount Vernon, and Providence Districts)
34. *Board of Supervisors of Fairfax County v. HANDSONREI, LLC*, Case No. GV18-024826 (Fx. Co. Gen. Dist. Ct.) (Sully District)

Board Action Item
November 20, 2018



3:00 p.m.
Action 8

Minor Variation Request for RZ 1997-BR-025 by Virendra Bery, Surendra Berry, and Shashi Berry to Modify the Architectural Treatments Approved by Proffer 1(c) on Proposed Single Family Detached Dwellings (Braddock District)

ISSUE:

Board consideration of a minor variation request to modify the permitted architectural treatments approved by Proffer 1(c) for RZ 1997-BR-025, pursuant to the provisions of Sect. 18-204 of the Zoning Ordinance.

RECOMMENDATION:

In accordance with Zoning Ordinance Sect. 18-204(5) and Virginia Code §15.2-2302, the County Executive recommends that the Board waive the requirement of a public hearing and approve the addition of cementitious facing and/or stone, as architectural treatments permitted by Proffer 1(c) for RZ 1997-BR-025.

TIMING:

Routine.

BACKGROUND:

Under Par. 5 of Sect. 18-204 of the Zoning Ordinance, the Board may approve certain requests for minor variations to proffered conditions when the requests do not materially affect proffered conditions of use, density, or intensity. Specifically, Par. 5(A)(6) permits a request to modify architectural design, character, color, features, or materials for buildings and signs, if the modifications are of equivalent quality and would not have a materially adverse impact on adjacent properties.

On January 11, 1999, the Board of Supervisors approved RZ 1997-BR-025, subject to proffers dated November 17, 1998. The application rezoned the subject property from the R-1 to the R-2 district to permit subdivision of the 2.99-acre site into four residential lots. This minor variation request to modify Proffer 1(c) of RZ 1997-BR-025 by permitting cementitious facing and/or stone as possible siding materials for the front of the homes. Proffer 1(c) requires that "[t]he Applicant shall construct the proposed single-family detached units with brick fronts."

Board Action Item
November 20, 2018

The subject properties are located on Charles Lawrence Court, on the south side of Maury Road, on approximately 2.99 acres of land, Braddock District, as identified by Tax Map Nos. 69-3 ((24)) 1-4 and A-D. (See Attachment 1, Locator Map.)

The approved proffers and Generalized Development Plan for RZ 1997-BR-025 are available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ZAPSMain.aspx?cde=RZ&seq=4001225>

On June 12, 2017, the Department of Planning and Zoning (DPZ) received a letter from Surendra Berry, a representative for Bery Homes, requesting an interpretation of Proffer 1(c) of RZ 1997-BR-025 asking whether the homes could be built without any brick on the front. Since the proffer does not permit the elimination of brick on the front, Bery Homes was informed that while an interpretation could not alter the proffered requirements, they may wish to consider a request for a minor variation. The interpretation was held in abeyance while the Zoning Ordinance amendment establishing the minor variation process was considered and ultimately approved. On August 15, 2018, Virendra Bery, Surendra Berry, and Shashi Berry, represented by Johanna Devon, requested a minor variation to Proffer 1(c) of RZ 1997-BR-025. (See Attachment 3, (Revised) Letter dated October 4, 2018.) Specifically, the applicant requested to modify Proffer 1(c) to permit cementitious facing and/or stone as possible siding materials in addition to or instead of the permitted architectural treatment (brick) for the four single family detached dwellings approved by the rezoning.

The Applicants have provided a Minor Variation Statement to permit the addition of cementitious facing and/or stone to the permitted architectural treatment (brick) outlined in Proffer 1(c) of RZ 1997-BR-025, and commit that the proposed residential units will be developed otherwise in substantial conformance with the governing proffers dated November 17, 2018. (See Attachment 2, Minor Variation Statement.)

The minor variation request letter argues that allowing a mixture of materials such as stone and/or hardi-plank (cementitious siding), to include the possibility of the elimination of brick, would allow the developer to stay current with today's market trends. The minor variation request included an elevation example depicting a possible residential façade if the minor variation were approved. The sample elevation shows a dwelling frontage of predominantly horizontal cementitious facing with stone facing along the bottom portion of the residential frontage. (See Attachment 4, Elevation Example.)

Staff has reviewed RZ 1997-BR-025 and the request to add cementitious facing and/or stone as permitted siding materials and has determined that permitting these materials will not have a materially adverse impact on the adjacent properties. Staff believes that approval of this minor variation request meets the requirements of the Zoning Ordinance

Board Action Item
November 20, 2018

and recommends its approval.

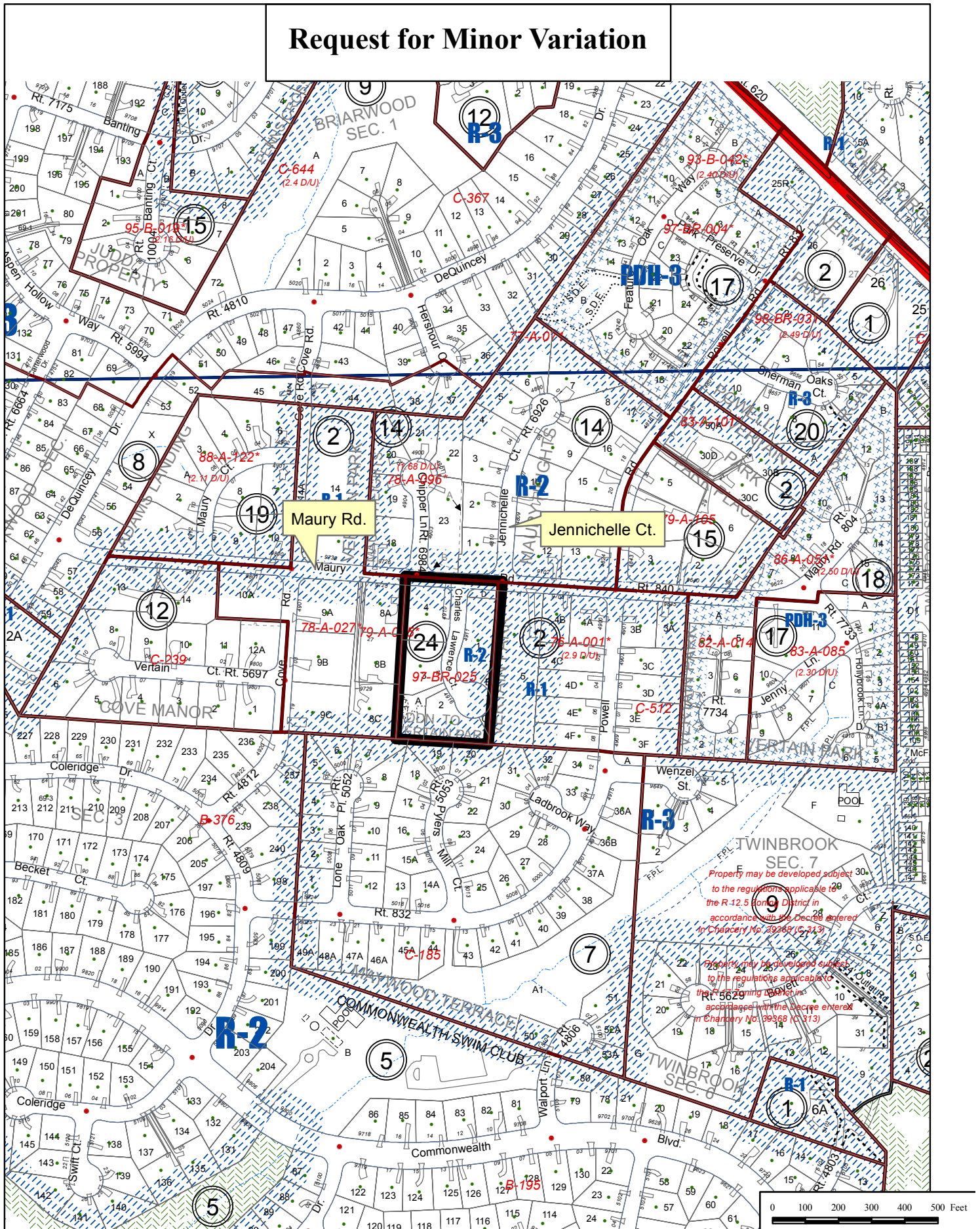
FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1: Locator Map
Attachment 2: Minor Variation Statement
Attachment 3: Request Letter dated October 4, 2018
Attachment 4: Proposed Elevations
Attachment 5: Affidavit available online at:
<https://www.fairfaxcounty.gov/planning-zoning/sites/planning-zoning/files/assets/documents/zoning/minorvariations/2018minorvariations.pdf>

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPZ
Suzanne Wright, Chief, Special Projects/Applications/Management Branch, ZED, DPZ
Bob Katai, Staff Coordinator, ZED, DPZ

ASSIGNED COUNSEL:
Chris Sigler, Assistant County Attorney, Office of the County Attorney

Request for Minor Variation



MINOR VARIATION STATEMENT
RZ-1997-BR-025

Owners:

Virendra Bery
Surendra Berry
Shashi Berry
 6095 Clifton Road
 Clifton, VA 20124

Planning and Zoning

12055 Government Center Parkway, Suite 801
 Fairfax, VA 22035

Property Address:

4910 Charles Lawrence Ct, Fairfax, VA 22032	TAX MAP No. 0693-((24))-0004
4911 Charles Lawrence Ct, Fairfax, VA 22032	TAX MAP No. 0693-((24))-0001
4912 Charles Lawrence Ct, Fairfax, VA 22032	TAX MAP No. 0693-((24))-0003
4916 Charles Lawrence Ct, Fairfax, VA 22032	TAX MAP No. 0693-((24))-0002

Under Section 18-204(A)(6) of the Zoning Ordinance, the property owner, Virendra Bery, Surendra Berry and Shashi Berry, hereby requests approval of a Minor Variation of the proffers governing TAX MAP: 0693-24-001, 0693-24-002, 0693-24-0003, 0693-24-0004 to permit the addition of a mixture of products to the front of the homes. These products include cementitious facing and/or stone. This is in addition to the permitted architectural treatment (brick) as outlined in 1c (*Generalized Development Plan*) of RZ 1997-BR-025, and commits that the proposed residential units will be developed otherwise in substantial conformance with the governing proffers dated November 17, 1998.

Title Owners of Tax Map: 0693-24-001, 0693-24-002, 0693-24-0003, 0693-24-0004

Virendra Bery Date 10/4/18
 Virendra Bery/Owner

Surendra Berry Date 10-4-18
 Surendra Berry/Owner

Shashi Berry Date 10-4-18
 Shashi Berry/Owner

RECEIVED
 Department of Planning

OCT 10 2018

Zoning Evaluation

ATTACHMENT 3

Virendra Berry
Surendra Berry
Shashi Berry
6095 Clifton Road
Clifton, VA 20124

RECEIVED
Department of Planning & Zoning

OCT 04 2018

Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, VA 22035

Zoning Evaluation Division

Previous Property Address:

9723 Maury Road, Fairfax, VA 22032 OWNERS: Surendra Berry, Shashi Berry
9717 Maury Road, Fairfax, VA 22032 OWNERS: Surendra Berry, Virendra Berry

To Whom it May Concern,

The above mentioned properties have been rezoned from two lots to four lots.

ADDRESS	TMM	OWNERS
4910 Charles Lawrence Ct, Fairfax, VA 22032	0693-24-0004	Surendra Berry, Virendra Berry, Shashi Berry
4911 Charles Lawrence Ct, Fairfax, VA 22032	0693-24-0001	Surendra Berry, Virendra Berry, Shashi Berry
4912 Charles Lawrence Ct, Fairfax, VA 22032	0693-24-0003	Surendra Berry, Virendra Berry, Shashi Berry
4916 Charles Lawrence Ct, Fairfax, VA 22032	0693-24-0002	Surendra Berry, Virendra Berry, Shashi Berry

The original proffer, RZ 1997-BR-025, required the proposed single family, detached homes to have brick fronts.

We respectfully request the proffer be amended to allow a mixture of products to the front of the homes. These products include cementitious facing and/or stone. This will allow the new homes to better conform to today's market. Newly constructed homes have moved away from all brick fronts and into the various hard-surface fronts as mentioned above.

Respectfully,

Virendra Berry Owner Date: 10/4/18
Virendra Berry

Surendra Berry Owner Date: 10.4.18
Surendra Berry

Shashi Berry Owner Date: 10.4.18
Shashi Berry

**Example of
Craftsman Style home
with
Stone
and
Hardiplank Siding**



Board Agenda Item
November 20, 2018

3:00 p.m.

Public Hearing to Receive Comment from Citizens on the Proposed Legislative Program to be Presented to the 2019 Virginia General Assembly

ENCLOSED DOCUMENTS:

Attachment I – Draft Fairfax County Legislative Program for the 2019 Virginia General Assembly

Attachment II – Draft Human Services Issue Paper

The proposed Legislative Program and Human Services Issue Paper will be made available online under Board Reports by close of business November 15, 2018 at:

<https://www.fairfaxcounty.gov/boardofsupervisors/>

STAFF:

Bryan J. Hill, County Executive

Claudia Arko, Legislative Director

Board Agenda Item
November 20, 2018

3:30 p.m.

Decision Only on RZ 2017-DR-023 (Tradition Homes, LLC) to Rezone from R-1 to R-3 to Permit Residential Development with a Total Density of 2.26 Dwelling Units Per Acre, Located on Approximately 5.76 Acres of Land (Dranesville District)

This property is located on the E. side of Dranesville Road approximately 960 feet S. of its intersection with Wiehle Avenue. Tax Map 10-2 ((1)) 5.

The Board of Supervisors deferred decision only on the public hearing at the October 30, 2018 meeting until November 20, 2018, at 3:30 p.m.

PLANNING COMMISSION RECOMMENDATION:

On September 20, 2018, the Planning Commission voted 10-0-1 (Commissioner Niedzielski-Eichner abstained from the vote and Commissioner Strandlie was absent from the meeting) to recommend to the Board of Supervisors approval of RZ 2017-DR-023 subject to the execution of proffered conditions consistent with those dated September 10, 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
November 20, 2018

3:30 p.m.

Public Hearing on PRC B-846-05 (Woodfield Acquisitions, LLC) to Amend the PRC Plan Associated with RZ-B-846 to Permit High Density Residential Development on a Portion of the Site with Existing Office to Remain at a Density of 46.9 Dwelling Units Per Acre and an Overall Floor Area Ratio of 1.30. Located on Approximately 6.56 Acres of Land Zoned PRC (Hunter Mill District) (Concurrent with PCA-B-846-04 and DPA-HM-117-03)

and

Public Hearing on PCA-B-846-04 (Woodfield Acquisitions, LLC) to Amend the Proffers for RZ-B-846 Previously Approved for Office to Permit Residential Development on a Portion of the Site with the Existing Office to Remain at a Density of 46.9 Dwelling Units Per Acre and an Overall Floor Area Ratio of 1.30 and Associated Modifications to Proffers and Site Design, Located on Approximately 6.56 Acres of Land Zoned PRC (Hunter Mill District (Concurrent with DPA-HM-117-03 and PRC-B-846-05)

and

Public Hearing on DPA-HM-117-03 (Woodfield Acquisitions, LLC) to Permit the Third Amendment of the Development Plan for DP-117 to Permit Residential Development on a Portion of the Site and Office to Remain at a Density of 46.9 Dwelling Units Per Acre and Overall Floor Area Ratio of 1.30 and Associated Modifications to Site Design, Located on Approximately 6.56 Acres of Land Zoned PRC (Hunter Mill District) (Concurrent with PCA-B-846-04 and PRC-B-846-05

This property is located on the S. side of Dulles Airport Access and Toll Road at the terminus of Roland Clarke Place approximately 336 feet N. of its intersection with Sunrise Valley Drive. Tax Map 17-4 ((14)) (1A) 2 and 3.

This property is located on the S. side of Dulles Airport Access and Toll Road at the terminus of Roland Clarke Place approximately 336 feet N. of its intersection with Sunrise Valley Drive. Tax Map 17-4 ((14)) (1A) 2 and 3.

This property is located on the S. side of Dulles Airport Access and Toll Road at the terminus of Roland Clarke Place approximately 336 feet N. of its intersection with Sunrise Valley Drive. Tax Map 17-4 ((14)) (1A) 2 and 3.

Board Agenda Item
November 20, 2018

The Board of Supervisors deferred these public hearings from their October 30, 2018 meeting until November 20, 2018, at 3:30 p.m.

PLANNING COMMISSION RECOMMENDATION:

On November 1, 2018, the Planning Commission voted 11-0 (Commissioner Hart was absent from the public hearing) to defer the decision only to a date certain of November 15, 2018. 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)
Mary Ann Tsai, Planner, DPZ

To be Indefinitely Deferred
--

Board Agenda Item
November 20, 2018

3:30 p.m.

Public Hearing on RZ 2018-MV-007 (Lafayette Building, LLC) to Rezone from C-2 to C-5 to Permit Commercial Uses, Waiver of Minimum Lot Size, Width, Setback and Increase in Office Percentage in Accordance with Sections 9-515 and 9-610 of the Zoning Ordinance with an Overall Floor Area Ratio of 0.27, Located on Approximately 20,322 Square Feet of Land (Mount Vernon District)

This property is located on the Northwest corner of the intersection of Lafayette Drive and Fort Hunt Road. Tax Map 102-2 ((2)) (1) 605 and 606.

The Board of Supervisors deferred this public hearing from October 16, 2018, to November 20, 2018, at 3:30 p.m.

PLANNING COMMISSION RECOMMENDATION:

On October 25, 2018, the Planning Commission voted 5-0-5 (Commissioners Carter and Tanner were absent from the meeting and Commissioners Migliaccio, Ulfelder, Hurley, Sargeant, and Strandlie abstained from the vote) to recommend to the Board of Supervisors denial of RZ 2018-MV-007.

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
November 20, 2018

3:30 p.m.

Public Hearing on RZ 2016-DR-027 (Pomeroy/Clark I, LLC) to Rezone from I-5 and PDC to PDH-20 to Permit Mixed-Use Development with an Overall Floor Area Ratio of 1.09 and a Density of 25.62 Dwelling Units Per Acre Including Bonus Density Associated with ADU/WDU and Approval of the Conceptual Development Plan, Located on Approximately 43.76 Acres of Land (Dranesville District) (Concurrent with PCA-C-637-4)

and

Public Hearing on PCA-C-637-4 (Pomeroy/Clark I, LLC) to Delete Land Area from RZ-C-637, Located on Approximately 37.70 Acres of Land (Dranesville District) (Concurrent with RZ 2016-DR-027)

This property is located in the N.W. quadrant of the intersection of Sunrise Valley Drive and Frying Pan Road, Tax Map 15-4 ((1)) 25 and 26A.

This property is located in the N.W. quadrant of the intersection of Sunrise Valley Drive and Frying Pan Road, Tax Map 15-4 ((1)) 26A.

PLANNING COMMISSION RECOMMENDATION:

On November 1, 2018 the Planning Commission voted 11-0 (Commissioner Hart was absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2016-DR-027 and the associated Conceptual Development Plan, subject to the execution of proffered conditions dated October 12, 2018;
- Approval of PCA-C-637-04;
- Modification of Par. 2 of Sect. 6-407 of the Zoning Ordinance (ZO) to allow a privacy yard less than 200 square feet for single family attached dwellings in favor of that shown on the Conceptual/Final Development Plan (CDP/FDP);
- Modification of Par. 4 of Sect. 11-202 of the ZO to permit a reduction in the minimum required distance of 40-feet for a loading space in proximity to a drive aisle for multi-family dwellings in favor of that shown on the CDP/FDP;

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- Modification of Par. 4 of Section 11-203 of the ZO of the required multi-family dwelling loading space requirement to that shown on the CDP/FDP;
- Modification of Par. 2 of Sect. 11-302 of the ZO to allow private streets to exceed 600-foot maximum length in favor of that shown on the CDP/FDP;
- Modification of Par. 10 of Sect. 11-102 of the Fairfax County ZO to permit driveway parking in front of garage parking (i.e, tandem parking) for multifamily 2-over-2 stacked dwellings as shown on the CDP/FDP;
- Modification of Par. 1 of Sect. 13-305 of the ZO to waive internal transitional yard screening and barrier requirements within PDH District in favor of that shown on the CDP/FDP;
- Waiver of Par. 3B of Sect. 17-201 of the ZO requiring inter-parcel access to adjacent parcels in favor of that shown on the CDP/FDP;
- Modification of Par. 4 of Sect. 17-201 of the ZO requiring further dedication, construction or widening of existing roads in favor of that shown on the CDP/FDP; and
- Modification of Par. 2 of Sect. 17-201 of the ZO to modify the requirement of on-road Bicycle Lane on Sunrise Valley Drive and Frying Pan Road in favor of the 10-foot wide shared use path as shown on the CDP/FDP.

In a related action, the Planning Commission voted 11-0 (Commissioner Hart was absent from the meeting) to approve FDP 2016-DR-027, subject to the development conditions dated October 17, 2018 and subject to the approval of RZ 2016-DR-027 by the Board of Supervisors.

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)
Kelly Atkinson, Planner, DPZ

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3:30 p.m.

Public Hearing on RZ 2017-DR-028 (W-MRP LP Owner A VIII, LLC) to Rezone from I-4 to PDC to Permit Mixed-Use Development with an Overall Floor Area Ratio of 1.70 to Include Bonus Density Associated with ADUs and WDUs, Located on Approximately 33.65 Acres of Land (Dranesville District) (Concurrent with PCA 79-C-037-08 and PCA-C-696-12)

and

Public Hearing on PCA 79-C-037-08 (W-MRP LP Owner A VIII, LLC) to Amend the Proffers for RZ 79-C-037 Previously Approved for Industrial Uses to Permit Deletions of Land Area Associated with RZ 79-C-037, Located on Approximately 33.65 Acres of Land Zone I-4 (Dranesville District) (Concurrent with RZ 2017-DR-028 and PCA-C-696-12)

and

Public Hearing on PCA C-696-12 (W-MRP LP Owner A VIII, LLC) to Amend the Proffers and Conceptual Development Plan for RZ C-696 Previously Approved for Commercial Development to Permit Construction of a Roadway and Associated Modification to Proffers and Site Design with an Overall Floor Area Ratio of 0.00. Located on Approximately 11.72 Acres of Land Zoned PDC (Dranesville District) (Concurrent with RZ 2017-DR-028 and PCA 79-C-037-08)

This property is located in the S.W. quadrant of the intersection of Sunrise Valley Drive and Dulles Technology Drive, Tax Map 15-4 ((1)) 34B and 16-3 ((1)) 4D, 32D and 40.

This property is located in the S.W. quadrant of the intersection of Sunrise Valley Drive and Dulles Technology Drive, Tax Map 15-4 ((1)) 34B and 16-3 ((1)) 4D, 32D and 40.

This property is located S.E. of the intersection of Sayward Boulevard and Dulles Station Boulevard, Tax Map 15-4 ((5)) 3B.

PLANNING COMMISSION RECOMMENDATION:

On November 8, 2018, the Planning Commission voted 11-0 (Commissioner Clarke was absent from the meeting) to recommend the following actions to the Board of Supervisors:

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- Approval of RZ 2017-DR-028 and the associated Conceptual Development Plan, subject to the execution of proffered conditions consistent with those dated November 7, 2018;
- Approval of PCA C-696-12, subject to the execution of proffered conditions consistent with those dated October 16, 2018;
- Approval of PCA 79-C-037-08;
- Approval of a modification of Paragraph 2 of Section 6-107 of the Zoning Ordinance (ZO) to modify the minimum 200 square foot privacy yard for each single-family attached dwelling as shown on the CDP/FDP;
- Approval of a modification of Section 6-206 of the ZO to allow the maximum 50 percent of GFA for secondary use (residential area) permitted in the PDC District to increase to 70.16 percent of the development in accordance with the uses shown on the CDP/FDP and the Proffers;
- Approval of a modification of Section 11-103 of the ZO requiring loading spaces to permit 16 loading spaces in lieu of the 24 required spaces;
- Approval of a modification of Section 11-302 of the ZO to modify the length and geometric design requirement for private streets to permit that shown on the CDP/FDP;
- Approval of a modification of Paragraph 4 of Section 17-201 of the ZO for the dedication and construction of widening for existing roads on new alignments, and proposed roads indicated on the adopted Comprehensive Plan to permit dedication and construction of roads as shown on the CDP/FDP;
- Approval of a modification of Section 2-506 of the ZO 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 CDP/FDP; and
- Approval of a waiver of Section 10-0306 of the Fairfax County Public Facilities Manual to allow trash and recycling collection to be picked up curbside for the multifamily stacked units in lieu of an on-site dumpster pad.

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In a related action, the Planning Commission voted 11-0 (Commissioner Clarke was absent from the meeting) to approve FDP 2017-DR-028, subject to the development conditions dated October 16, 2018, and subject to the Board of Supervisors' approval of the concurrent rezoning application.

Also, in a related action, the Planning Commission voted 11-0 (Commissioner Clarke was absent from the meeting) to approve FDPA C-696-05, subject to the development conditions dated October 16, 2018, and subject to the Board of Supervisors' approval of the concurrent PCA application.

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

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4:00 p.m.

Public Hearing on Proposed Plan Amendment 2017-III-P1, Located at 9901 and 9801 Braddock Road (Braddock District)

ISSUE:

Plan Amendment (PA) 2017-III-P1 proposes to amend the Comprehensive Plan guidance for Tax Map Parcels 69-1 ((1)) 34 and 69-1 ((1)) 34A, an approximately 91-acre area located at 9901 and 9801 Braddock Road. The subject area's Comprehensive Plan recommendation is primarily for Public Facilities, Governmental and Institutional uses. An area in the southwest portion of the site is within the Rabbit Branch Steam Valley and associated Environmental Quality Corridor (EQC) and is planned for Public Parks. The amendment considers residential use at a density up to 2-3 dwelling units per acre and options for a continuing care facility and public park uses.

PLANNING COMMISSION RECOMMENDATION:

On October 25, 2018, the Planning Commission voted 9-0-1 (Commissioners Carter and Tanner were absent from the Public Hearing and Commissioner Niedzielski-Eichner abstained from the vote) to recommend to the Board of Supervisors approval of the staff recommendation for Comprehensive Plan Amendment 2017-III-P1 for residential use at a density up to 2-3 dwelling units per acre and options for a continuing care facility and public park uses as described on Page 20 of the staff report dated October 4, 2018, with modifications. These modifications include: the planned intensity is not inclusive of bonus intensity; there should be no non-emergency vehicular access to the south; building heights should be limited to 65 feet with some flexibility up to 75 feet; tree preservation should occur in consultation with the Fairfax County Urban Forest Management Division; and provision of affordable accommodation should be consistent with policies that may be adopted relating to Continuing Care Facilities.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors adopt the Planning Commission alternative.

TIMING:

Planning Commission public hearing – October 18, 2018
Board of Supervisors' public hearing – November 20, 2018

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BACKGROUND:

On October 24, 2017, the Board of Supervisors authorized Plan Amendment 2017-III-P1 for Tax Map Parcels 69-1 ((1)) 34 and 69-1 ((1)) 34A to consider all potential uses and consider the impacts of such uses on transportation and other infrastructure. The Board authorization further directed staff to engage the community in a planning process to identify future land uses for the site. During the course of this Plan amendment, the community and the Training Center Site Task Force narrowed the focus to consideration of residential uses, a continuing care facility and public park uses.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

The Planning Commission Verbatim and Recommendation is available at:

<https://www.fairfaxcounty.gov/planningcommission/sites/planningcommission/files/assets/documents/pdf/2018%20verbatims/verbatim102518pa2017-iii-p1comprehensiveplanamendment-novatrainig-deconly.pdf>

The Staff Report for 2017-III-P1 has been previously furnished and is available online at:

www.fairfaxcounty.gov/planning-zoning/sites/planning-zoning/files/assets/documents/compplanamend/trainingcentersite/nvtc-staff-report.pdf

STAFF:

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

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

Clara Quintero Johnson, Branch Chief, (PD), DPZ

Roger Dindyal, Planner II, Policy and Plan Development Branch, PD, DPZ

Board Agenda Item
November 20, 2018

4:00 p.m.

Public Hearing on Proposed Plan Amendment 2018-II-F1, Located in the Northeast
Quadrant of the Intersection of Braddock Road and Roberts Road (Braddock District)

ISSUE:

Plan Amendment (PA) 2018-II-F1 proposes to amend the Comprehensive Plan (Plan) guidance for Tax Map Parcels 68-2 ((1)) 21-25. The subject area is currently planned for residential use at a density of 1-2 dwelling units per acre (du/ac), with conditions for the upper end of the range. The amendment considers development options up to 6 du/ac.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing for PA 2018-II-F1 occurred on October 25, 2018. On November 1, 2018, the Planning Commission voted 7-1, with two abstentions, to approve a motion by Commissioner Hurley to recommend the Board of Supervisors adopt PA 2018-II-F1 with three changes to the staff recommendation relating to tree preservation, park access, and maximum density.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors adopt the Planning Commission recommendation.

TIMING:

Planning Commission public hearing – October 25, 2018
Board of Supervisors' public hearing – November 20, 2018

BACKGROUND:

On January 23, 2018, the Board of Supervisors authorized Plan Amendment 2018-II-F1 to consider an amendment to the adopted Plan for single-family detached residential, commercial, and/or institutional uses on the subject parcels.

FISCAL IMPACT:

None

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ENCLOSED DOCUMENTS:

The Planning Commission Verbatim Excerpt is available at:

<https://www.fairfaxcounty.gov/planningcommission/sites/planningcommission/files/assets/documents/pdf/2018%20verbatim/verbatim110118pa2018-ii-f1robertsroadcompplandeonly.pdf>

The Staff Report for PA 2018-II-F1 has been previously furnished and is available online at: <https://www.fairfaxcounty.gov/planning-zoning/sites/planning-zoning/files/assets/documents/compplanamend/robertsroad/2018-ii-f1.pdf>

STAFF:

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

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

Jonathan Buono, Planner III, Planning & Development Division, Park Authority

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4:00 p.m.

Public Hearing to Convey Board-Owned Property on South Van Dorn Street (Oakwood Property) to the Redevelopment and Housing Authority (Lee District)

ISSUE:

Public hearing to convey Board-owned property located along South Van Dorn Street to the Fairfax County Redevelopment and Housing Authority (FCRHA).

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to convey Board-owned property along South Van Dorn Street to the FCRHA.

TIMING:

On October 16, 2018, the Board authorized the advertisement of a public hearing to convey Board-owned property along South Van Dorn Street to FCRHA.

BACKGROUND:

The Board of Supervisors is the owner of four parcels located near the intersection of South Van Dorn Street and Oakwood Road and identified by Tax Map Nos. 0812 01 Parcel 0017C and 0814 01 Parcels 0032, 0033 and 0034 (Oakwood Property). These parcels were originally acquired by the County in an eminent domain action and transferred to the Virginia Department of Transportation (VDOT) for the South Van Dorn Street widening project. VDOT returned the approximately 6.2 acres of surplus land to the County in 1988. The property is currently vacant except for a fenced regional stormwater pond maintained by the Department of Public Works and Environmental Services.

FCRHA has received an unsolicited proposal from a developer to construct 150 affordable senior housing units on the Oakwood Property. Pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) requirements, FCRHA has issued a request for competing proposals to the unsolicited offer. Two development proposals were received on August 1, 2018 and are currently being evaluated by FCRHA.

To allow the developer selected through the PPEA process to initiate the rezoning process for the affordable senior housing project (Project), it is necessary for the Board to transfer fee simple ownership of the Oakwood Property to FCRHA, which would in turn grant agency to the selected developer for the limited purpose of rezoning and obtaining other necessary governmental approvals for the site. The rezoning process

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would include applications for a Comprehensive Plan Amendment and a Special Exception that must be approved by both the Planning Commission and the Board. The public will be afforded several opportunities to comment on the design of the Project and its possible impacts on the surrounding communities. The public outreach efforts have started with the first community meeting held on October 1, 2018, and is expected to continue throughout the design process.

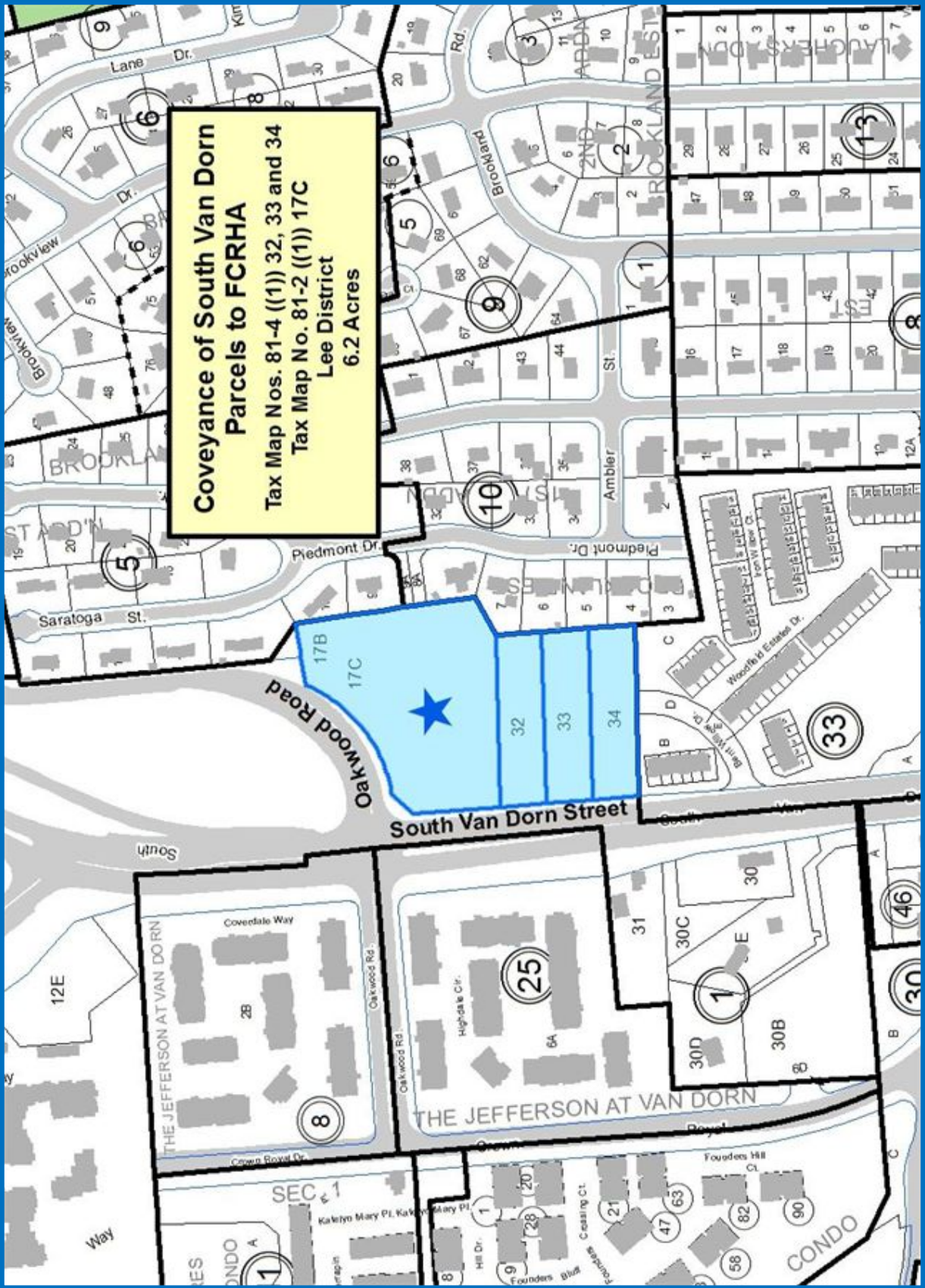
Staff recommends that the conveyance of the Oakwood Property to FCRHA be subject to the condition that the parcels must be used for affordable senior housing. In the event the FCHRA no longer pursues the Project, the Authority will transfer ownership of the property back to the Board. Staff further recommends that the conveyances 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 and stormwater management facilities and structures, be addressed in a fashion that is acceptable to the County.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1 - Location Map
Attachment 2 - Resolution

STAFF:
Joseph M. Mondoro, Chief Financial Officer
Tisha Deeghan, Deputy County Executive
Thomas E. Fleetwood, Director, Housing and Community Development
José A. Comayagua, Director, Facilities Management Department
Mike Lambert, Assistant Director, Facilities Management Department

ASSIGNED COUNSEL:
Alan M. Weiss, Assistant County Attorney



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, November 20, 2018, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, the Board of Supervisors owns approximately 6.2 acres of land in Lee District near the intersection of South Van Dorn Street and Oakwood Road, identified as Tax Map Parcel No. 0812 01 0017C and Parcel Nos. 0814 01 0032, 0033 and 0034 (collectively, the Oakwood Property),

WHEREAS, the Fairfax County Redevelopment and Housing Authority has asked the Board of Supervisors to transfer the Oakwood Property to FCRHA to construct an affordable senior housing development,

WHEREAS, the Board has no current or planned use for the Oakwood Property,

WHEREAS, the Board finds that it would be in the best interest of the residents of Fairfax County to convey the real property as described above to FCRHA.

NOW, THEREFORE, upon public hearing duly advertised according to law, it is **RESOLVED** that the County Executive is hereby authorized to execute all necessary documents to convey the real property described above to FCRHA.

A Copy Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors

4:30 p.m.

Public Hearing on Waiver of Public Street Frontage for 1016 Union Church Road
(Dranesville District)

ISSUE:

Board of Supervisors' (Board) approval of a waiver, #1131-WPSF-001-1, of the minimum requirements of § 101-2-2(3)(C) of the Subdivision Ordinance, that "All lots for single-family detached dwellings shall have frontage on existing Virginia Department of Transportation (VDOT) maintained public streets or standard streets for which construction is to be provided in accordance with this subsection." The waiver will permit 1016 Union Church Road, Tax Map #019-2 ((9)) lot 3C, to be subdivided into two lots. One lot will have public street frontage along Union Church Road and a second lot will have access via an existing private street, Cedrus Lane.

PLANNING COMMISSION RECOMMENDATION:

On October 18, 2018, the Planning Commission voted 11-0-1 (Commissioner Strandlie abstained from the vote) to recommend to the Board of Supervisors that the Board approve a waiver, #1131-WPSF-001-1, of § 101-2-2(3)(C) of the Subdivision Ordinance to permit subdivision of 1016 Union Church Road into two lots, without the required public street frontage, subject to the conditions recommended by staff on pages two and three of the Staff Report dated September 27, 2018.

RECOMMENDATION:

The County Executive recommends that the subject application be considered for approval. If it is the intent of the Board to approve the waiver, staff recommends that the approval be subject to the conditions listed below, as recommended by the Planning Commission. Conditions No. 2, 5, and 6 are specific requirements of the Subdivision Ordinance for approval of a public street frontage waiver.

- 1) The waiver is granted for and runs with the land, Tax Map #019-2 ((9)) lot 3C, and is not transferable to any other land.
- 2) No more than one additional lot may be created.
- 3) Any plan or plat submitted pursuant to this waiver approval must be in substantial conformance with the plat entitled, "Public Street Frontage Waiver Plat of

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Peacock Station, Dranesville District, 1016 Union Church Road, McLean, Virginia 22102" dated September 19, 2018, prepared by GeoEnv Engineers.

- 4) The grading plan for the proposed residence must limit site disturbance and conform to the existing topography to the extent possible.
- 5) The record plat and deed of subdivision must be annotated with a statement that the street is privately maintained and that the owners and their respective successors in interest will not petition Fairfax County or the State for maintenance of the private street.
- 6) The record plat and deed of subdivision must be annotated with a statement that further division of the property by waiver of the public street frontage requirement pursuant to § 101-2-2 of the Subdivision Ordinance is precluded.
- 7) The waiver approval will automatically expire, without notice, if the final subdivision plat has not been recorded within 12 months after the date of approval unless extended by the Board prior to its expiration.

This approval, contingent on the above noted conditions, does not relieve the applicant from compliance with the provisions of any applicable federal, state or county ordinances, regulations, or adopted standards. The applicant will be responsible for obtaining the approval of any required plans and permits in accordance with established procedures.

TIMING:

Board action is requested on November 20, 2018. The Planning Commission held a public hearing on October 11, 2018, and deferred decision to October 18, 2018.

BACKGROUND:

Peacock Station Subdivision:

The application property, 1016 Union Church Road (lot 3C), is part of the Peacock Station Subdivision. The Peacock Station Subdivision was created in March of 1974 from three large parcels of land. Parcels A and B were subdivided as a conventional subdivision through the Subdivision Ordinance with public streets providing access to the lots. Parcel C was subdivided as a large-lot subdivision outside of the Subdivision Ordinance with a private street providing access to the lots. The private street extends from a cul-de-sac at the end of Cedrus Lane, a public street constructed with the

conventional subdivision, through all six of the lots created from Parcel C. The private street is also named Cedrus Lane. The private street has an 11-foot wide asphalt pavement in good condition within a 50-foot wide access easement. The street is maintained under an informal agreement among the property owners. Because of the original shape of Parcel C, two of the six lots have public street frontage although only the applicant's lot uses the public street for access to an existing dwelling. There are existing dwellings on all six lots. The applicant's lot has conventional subdivision lots on either side of it along Union Church Road. The underlying zoning district, in 1974 and currently, is R-E (Residential Estate) which permits a density of one dwelling unit per two acres. The developer could have extended the public street portion of Cedrus Lane at the time of the original subdivision in 1974 to create the additional lot currently proposed.

Proposed subdivision:

The applicant purchased lot 3C in 1983 and the existing dwelling was built in 1988. Lot 3C is 5.0 acres in size. The proposed lots are 2.56 acres and 2.44 acres in size with a density of 0.4 dwelling units per acre based on the gross area of the lot. However, for density computations, the density is closer to 0.43 dwelling units per acre after accounting for the reduction in density under § 2-308 of the Zoning Ordinance due to the considerable area of floodplain and adjacent slopes greater than 15% on the property. The comprehensive plan density is 0.2 – 0.5 dwelling units per acre. The proposed residence will be served by a well and septic system. A percolation rate and location of a septic field for the proposed residence were approved by the Fairfax County Health Department in 1991. Staff has confirmed with the Health Department that this approval is still valid. Lot 3C is forested and bisected by Sharpers Run with an associated major floodplain and Resource Protection Area (RPA). The waiver plat depicts a 10-foot high retaining wall approximately seven feet from the rear property line to create a building pad for the proposed residence. The waiver plat also depicts minor encroachments in the RPA for a driveway and a well. Because the existing private road that provides access to the proposed rear lot is in the RPA and because the well is required to be a minimum distance of 50 feet from the house, the encroachments are unavoidable. Both encroachments are permitted under the County's Chesapeake Bay Preservation Ordinance. All of the surrounding properties are developed within the range of 0.2 – 0.5 dwelling units per acre.

DISCUSSION:

A review of the ordinance criteria and the Board's policies applicable to public street frontage waivers are discussed below.

Ordinance criteria:

- 1) *The private street which provides access to the application property has been built and recorded in the land records on or before June 28, 1993.*

This is not strictly applicable because the lot to be subdivided has public street frontage. However, it is noted that the private street was constructed prior to 1983.

- 2) *The waiver is in conformance with the applicable recommendations of the Comprehensive Plan.*

The Comprehensive Plan recommends a density of 1 dwelling unit per 2 – 5 acres. The property is zoned R-E. The proposed density based on the gross area of the lot is 1 dwelling unit per 2.5 acres. However, because more than 30% of the gross lot area is composed of floodplains and adjacent slopes steeper than 15%, the allowable density is reduced (see Section 2-308 of the Zoning Ordinance). The applicant's density computations showing that there is adequate area to subdivide this property are shown on the waiver plat. The areas of floodplain and adjacent steep slopes would typically be considered an Environmental Quality Corridor under the Comprehensive Plan. The Department of Planning and Zoning recommends that the applicant should consider a design that limits site disturbance, conforms to the existing topography to the extent possible, and provides a usable rear yard for the future house. The waiver plat depicts a 20-foot rear yard from the back of the house to a retaining wall approximately 10 feet in height. Creating a more usable 40-foot rear yard would result in land disturbance in the RPA and require an exception under the Chesapeake Bay Preservation Ordinance. Therefore, staff has not included providing a usable rear yard in the recommended conditions. No other Comprehensive Plan issues were identified.

- 3) *The requirements of the Subdivision Ordinance pose an unusual hardship not generally shared by other landowners.*

The applicant's claimed hardship:

- The property is bisected by Sharpers Run with an associated RPA and floodplain and a private road creating a natural division of the property.
- Crossing the stream through the floodplain and RPA to access the rear of the property from Union Church Road represents a hardship.

- Providing the required public street frontage on Union Church Road would require a special exception for waiver of the minimum lot width and the proposed rear lot would still be accessed by the private road.
- Extension of the public road, Cedrus Lane, along the 50-foot wide easement of the private street is not feasible because the extension would pass through lots 26, 27, and Parcels C-1 and C-2 of the Peacock Station Subdivision. The applicant would need the other lot owners to agree to the construction and dedicate the land currently in the 50-foot wide easement.

In the supplemental information provided by the applicant, the applicant argues that the hardship justification is supported by three other public street frontage waivers (#017372, #4711-WPSF-001-1 and #4711-WPSF-002-1) granted by the Board because the justification for the three prior waivers is similar to the current requested waiver.

“(1) that the unsubdivided properties were well under the maximum density permitted and oversized compared to the density of neighboring properties; and
(2) widening of the private road or extension of the public road would not be feasible given these options would require significant impacts to neighboring properties.”

Waivers #4711-WPSF-001-1 and #4711-WPSF-002-1 were approved by the Board in 2006. The two-lot property, 10+ acres in size, was zoned R-2 and could have been developed with up to 20 lots if frontage on a VDOT maintained public street could be provided. However, the property fronts on East Boulevard Drive, which is owned and maintained by the federal government. Even if the applicant had constructed a stub street with a cul-de-sac to VDOT standards to serve the lots, the street would not have been eligible for acceptance by VDOT because it would not be continuous with the VDOT road system. The large difference between the proposed density and the underlying zoning, along with the impossibility of street acceptance by VDOT, is a fundamentally different situation from the current application

Waiver #017372 was approved by the Board in 1999. The property, 1.3 acres in size, was Zoned R-3. It was a through lot with a private road on one side (Dunford Drive) and a county maintained road on the other side (Rudyard Street). Both roads predate the County's first subdivision ordinance in 1929 and have substandard and irregular width right-of-ways. The applicant would have needed to acquire right-of-way on both roads and construct the roads to VDOT standards to meet the Subdivision Ordinance requirement for frontage on a VDOT maintained road. The applicant did dedicate right-of-way along Rudyard Street

for a possible future upgrade of the road. The circumstances and rationale for this waiver are somewhat similar to the current application in that the two lots would be accessed by different roads and the applicant would have difficulty acquiring right-of-way.

- 4) *The waiver will result in a lot or lots that will be harmonious with and will not adversely affect the neighboring properties.*

The proposed subdivision is consistent with the density of the surrounding properties. However, as previously noted, the proposed residence includes a retaining wall approximately seven feet from the rear property line which could create visual impacts on adjoining properties. Property owners along the private and public portions of Cedrus Lane have generally expressed support for the proposed subdivision.

- 5) *The waiver will not adversely affect the adequacy of provisions for the minimum requirements set forth in § 101-2-2 of the Subdivision Ordinance.*

The proposed subdivision would qualify as a simple subdivision, where public improvements are not required because they have already been constructed or are waived. The only requirement that would likely need to be met is water quality controls, which could be handled with the grading plan for the new residence or by the purchase of nutrient credits. There are minor encroachments into the RPA for a well and part of the driveway that are permitted under the Chesapeake Bay Preservation Ordinance.

Board policy for evaluating the condition of the private street:

In addition to the requirements in the Subdivision Ordinance, on June 28, 1993, the Board adopted a policy for use in evaluating the condition of private streets proposed for access under public street frontage waiver requests. The elements to be considered are:

- length of private street
- width of private street
- accessibility by Fire and Rescue vehicles
- terrain
- maintenance responsibilities
- photographs in each direction from the subject property showing the private street.

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The private street is in good condition and was last repaired in April and May of 2016. The pavement is hard surfaced with asphalt and averages 11 feet in width within a 50-foot wide easement. The pavement is not wide enough for two cars to pass without edging off the pavement. The private street is approximately 1400 feet long. The center of the application property is approximately 750 feet from the beginning of the street. The Fire Marshall has signed off on the condition of the existing road for fire and rescue access. There is no formal agreement among the property owners or language in the deed of subdivision for maintenance of the road. Staff has some reservations about the lack of any formal agreement among the property owners for maintenance of the private road, but maintenance seems not to have been a problem up to this point in time.

General ordinance considerations:

The Subdivision Ordinance does not allow waivers of public street frontage for the subdivision of lots (this refers to the parent lot) zoned R-E, R-A, R-P, or R-C created on private streets. However, because this lot has public street frontage, it is eligible for a waiver of the public street frontage requirement even though it is zoned R-E.

In addition to a public street frontage waiver, the owner has the option of requesting a special exception for a reduction in minimum lot width that would allow subdivision of the property such that both lots would have frontage on Union Church Road, although the second lot would use the private street for access to the rear lot. The owner also has the option of requesting a special permit to build an accessory dwelling unit, albeit one smaller than proposed with either the street frontage waiver or a special exception.

Based on the Subdivision Ordinance language, specifically the requirement that “the private street which provides access to the application property has been built and recorded in the land records on or before June 28, 1993,” the Subdivision Ordinance provisions do not appear to have been written with the possibility that waivers of public street frontage would be used to subdivide lots with existing public street frontage. Staff is not aware of any public street frontage waiver having been granted by the Board for a property with public street frontage. Lots with public street frontage but insufficient lot width to subdivide typically have used the special exception process or, prior to 2007, a variance to subdivide.

Board policy on subdivision of lots within large lot developments via public street frontage waivers:

On July 12, 1993, the Board adopted a policy that “although lots located on private streets in five acres or larger lot developments may be the subject of a specific waiver request, it is likely that the Board may determine that further subdivision of lots within

Board Agenda Item
November 20, 2018

large lot developments, which have been platted and recorded in the land records and have been planned to be developed as five-acre, large lot neighborhoods, would be inharmonious with and would adversely affect neighboring properties.”

ENCLOSED DOCUMENTS:

Attachment 1 – Planning Commission Verbatim Excerpt

Attachment 2 – Staff Report Dated September 27, 2018

STAFF:

Robert A. Stalzer, Deputy County Executive

William D. Hicks, P.E., Director, Land Development Services

ASSIGNED COUNSEL:

Marc Gori, Assistant County Attorney

**County of Fairfax, Virginia
Planning Commission Meeting
October 18, 2018
Verbatim Excerpt**

SUBDIVISION ORDINANCE – STREET WAIVER FOR 1016 UNION CHURCH ROAD
(Dranesville District)

Decision only During Commission Matters
(Public Hearing held on October 11, 2018)

Commissioner Ulfelder: Thank you, Mr. Chairman. Before I – we have a case tonight involving a decision only on the waiver of public street frontage for a property in McLean. But before I begin a short statement and go to the motion, there were some materials that were submitted since the public hearing last week – a letter from the applicant's attorney and a memorandum from Mr. Friedman, the County engineer, not planner – I guess in connection with this application. And I just wanted to ask if any of the Commissioners have any questions based the material that was that they received in the intervening time. Okay. With that, Mr. Chairman, we are scheduled this evening to decide whether or not to recommend to the Board of Supervisors that it grant a waiver of the public street frontage requirement in Section 101-2-2(3)(C) of the Fairfax County Subdivision Ordinance for a property at 1016 Union Church Road in McLean. The Subdivision Ordinance allows such waivers if they meet certain ordinance criteria and Board policies. The waiver, if granted, would allow the existing lot at 1016 Union Church Road to be subdivided into two lots. One lot would have – still have public street frontage on Union Church Road and the second lot would have access via an existing private street, Cedrus Lane. Key – a key consideration in such waiver requests is whether the requirements of the Subdivision Ordinance pose an unusual hardship not generally shared by other landowners. The term "unusual hardship" is not defined and, frankly, is difficult to pin down. Rather, it is dependent more on the circumstances of the particular application and the property in question. In this case, the applicant has cited several property and site-specific factors that he argues meet this particular requirement. While I might not agree with all of the factors cited by the applicant, I do think that there are certain circumstances in this case that pose an unusual hardship not generally shared by other landowners. The property to be subdivided is five acres in size and, if subdivided, would result in two two-and-a-half acre lots. The neighboring properties are generally two to three acres in size consistent with the underlying RE zoning. Thus, the current property is well under the maximum permissible density and almost double the size of the neighboring properties. If the waiver is approved and the existing lot is subdivided, it would result in two lots that are consistent in size and harmonious with the neighboring properties. The current five-acre property is bisected by Sharpers Run and a 250-foot-wide Resource Protection Area that makes it extremely difficult, as well as unwise, to attempt to access the rear of the existing lot from Union Church Road. In any event, the new rear lot can be accessed by way of Cedrus Lane. Any extension of the public road portion of Cedrus Lane along the 50-foot-wide private road easement, however, would require the agreement of all the neighboring property owners, including the dedication of their land within the easement in order to meet all public road requirements. In my opinion, such an extension is not reasonable or feasible. Based on these factors, I believe that the requirements of the Subdivision Ordinance pose an unusual hardship for this applicant not generally shared by other landowners. Further, based on the information contained in the September 27, 2018 staff report, the October 11, 2018 public hearing, and the written material submitted for the record since the closure of the public hearing, I believe that the applicable ordinance criteria and Board policies have been met and that the proposed waiver is in conformance with the recommendations of the Comprehensive Plan. Therefore, Mr. Chairman, I

SUBDIVISION ORDINANCE –
STREET WAIVER FOR 1016 UNION CHURCH ROAD

ATTACHMENT 1
Page 2

MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD APPROVE A WAIVER, NUMBER 1131-WPSF-001-1 OF SECTION 101-2-2(3)(C), OF THE SUBDIVISION ORDINANCE TO PERMIT SUBDIVISION OF 1016 UNION CHURCH ROAD INTO 2 LOTS, WITHOUT THE REQUIRED PUBLIC STREET FRONTAGE, SUBJECT TO THE CONDITIONS RECOMMENDED BY STAFF ON PAGES 2 AND 3 OF THE STAFF REPORT DATED SEPTEMBER 27TH, 2018.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt the Subdivision Ordinance regarding the waiver for a street on 16 – 1016 Union Church Road, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Strandlie: Abstain.

Chairman Murphy: Ms. Strandlie abstains. Not present – not present for the public hearing.

Commissioner Ulfelder: Thank you.

Chairman Murphy: Thank you very much.

The motion carried by a vote of 11-0-1. Commissioner Strandlie abstained from the vote.

SL



LAND DEVELOPMENT SERVICES
September 27, 2018

STAFF REPORT

1131-WPSF-001-1

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

Waiver of Public Street Frontage for 1016 Union Church Road (Dranesville District)

Authorization to Advertise	<u>N/A</u>
Planning Commission Hearing	<u>October 11, 2018 at 7:30 p.m.</u>
Board of Supervisors Hearing	<u>November 20, 2018 at 4:30 p.m.</u>
Prepared by:	<u>Code Development and Compliance Division JAF (703) 324-1780</u>

STAFF REPORT

ISSUE

Board of Supervisors' (Board) approval of a waiver, #1131-WPSF-001-1, of the minimum requirements of § 101-2-2(3)(C) of the Subdivision Ordinance, that "All lots for single-family detached dwellings shall have frontage on existing Virginia Department of Transportation (VDOT) maintained public streets or standard streets for which construction is to be provided in accordance with this subsection."

The waiver will permit 1016 Union Church Road, Tax Map #019-2 ((9)) lot 3C, to be subdivided into two lots. One lot will have public street frontage along Union Church Road and a second lot will have access via an existing private street, Cedrus Lane. The applicant's waiver request is included as Attachments A and B.

STAFF RECOMMENDATION

If it is the intent of the Board to approve the waiver, staff recommends that the approval be subject to the following conditions:

1. The waiver is granted for and runs with the land, Tax Map #019-2 ((9)) lot 3C, and is not transferable to any other land.
2. No more than one additional lot may be created.
3. Any plan or plat submitted pursuant to this waiver approval must be in substantial conformance with the plat entitled, "Public Street Frontage Waiver Plat of Peacock Station, Dranesville District, 1016 Union Church Road, McLean, Virginia 22102" dated September 19, 2018, prepared by GeoEnv Engineers, included as Attachment C.
4. The grading plan for the proposed residence must limit site disturbance and conform to the existing topography to the extent possible.
5. The record plat and deed of subdivision must be annotated with a statement that the street is privately maintained and that the owners and their respective successors in interest will not petition Fairfax County or the State for maintenance of the private street.
6. The record plat and deed of subdivision must be annotated with a statement that further division of the property by waiver of the public street frontage requirement pursuant to § 101-2-2 of the Subdivision Ordinance is precluded.

7. The waiver approval will automatically expire, without notice, if the final subdivision plat has not been recorded within 12 months after the date of approval unless extended by the Board prior to its expiration.

The approval, contingent on the above noted conditions, does not relieve the applicant from compliance with the provisions of any applicable federal, state or county ordinances, regulations, or adopted standards. The applicant will be responsible for obtaining the approval of any required plans and permits in accordance with established procedures.

BACKGROUND

Peacock Station Subdivision:

The application property, 1016 Union Church Road (lot 3C), is part of the Peacock Station Subdivision. The Peacock Station Subdivision was created in March of 1974 from three large parcels of land. Parcels A and B were subdivided as a conventional subdivision through the Subdivision Ordinance with public streets providing access to the lots. Parcel C was subdivided as a large-lot subdivision outside of the Subdivision Ordinance with a private street providing access to the lots. The private street extends from a cul-de-sac at the end of Cedrus Lane, a public street constructed with the conventional subdivision, through all six of the lots created from Parcel C. The private street is also named Cedrus Lane. The private street has an eleven foot wide asphalt pavement in good condition within a 50 foot wide access easement. The street is maintained under an informal agreement among the property owners. Because of the original shape of Parcel C, two of the six lots have public street frontage although only the applicant's lot uses the public street for access to an existing dwelling. There are existing dwellings on all six lots. The applicant's lot has conventional subdivision lots on either side of it along Union Church Road. The underlying zoning district, in 1974 and currently, is R-E (Residential Estate) which permits a density of one dwelling unit per two acres. The developer could have extended the public street portion of Cedrus Lane at the time of the original subdivision in 1974 to create the additional lot currently proposed. A vicinity map, a map showing the proposed subdivision, a map showing the 1974 large lot subdivision, and a map showing the 1974 conventional subdivision are included as Attachments D - G.

Proposed Subdivision:

The applicant purchased lot 3C in 1983 and the existing dwelling was built in 1988. Lot 3C is 5.0 acres in size. The proposed lots are 2.56 acres and 2.44 acres in size with a density of 0.4 dwelling units per acre based on the gross area of the lot. However, for density computations, the density is closer to 0.43 dwelling units per acre after accounting for the reduction in density under § 2-308 of the Zoning Ordinance due to the considerable area of floodplain and adjacent slopes greater than 15% on the property. See the discussion of the allowable density later in this report. The comprehensive plan density is 0.2 – 0.5 dwelling units per acre. The proposed

residence will be served by a well and septic system. A percolation rate and location of a septic field for the proposed residence were approved by the Fairfax County Health Department in 1991, Attachment H. Staff has confirmed with the Health Department that this approval is still valid. Lot 3C is forested and bisected by Sharpers Run with an associated major floodplain and Resource Protection Area (RPA). The waiver plat depicts a 10-foot high retaining wall approximately 7 feet from the rear property line to create a building pad for the proposed residence. The waiver plat also depicts minor encroachments in the RPA for a driveway and a well. Because the existing private road that provides access to the proposed rear lot is in the RPA and because the well is required to be a minimum distance of 50 feet from the house, the encroachments are unavoidable. Both encroachments are permitted under the County's Chesapeake Bay Preservation Ordinance. All of the surrounding properties are developed within the range of 0.2 – 0.5 dwelling units per acre.

DISCUSSION

A review of the ordinance criteria and the Board's policies applicable to public street frontage waivers are discussed below.

Ordinance criteria:

1) The private street which provides access to the application property has been built and recorded in the land records on or before June 28, 1993.

This is not strictly applicable because the lot to be subdivided has public street frontage. However, it is noted that the private street was constructed prior to 1983.

2) The waiver is in conformance with the applicable recommendations of the Comprehensive Plan.

The Comprehensive Plan recommends a density of 1 dwelling unit per 2 – 5 acres. The property is zoned R-E. The proposed density based on the gross area of the lot is 1 dwelling unit per 2.5 acres. However, because more than 30% of the gross lot area is composed of floodplains and adjacent slopes steeper than 15%, the allowable density is reduced (see Section 2-308 of the Zoning Ordinance). Attachment C contains the applicant's density computations showing that there is adequate area to subdivide this property. The areas of floodplain and adjacent steep slopes would typically be considered an Environmental Quality Corridor under the Comprehensive Plan. The Department of Planning and Zoning (DPZ) recommends that the applicant should consider a design that limits site disturbance, conforms to the existing topography to the extent possible, and provides a usable rear yard for the future house. The waiver plat depicts a 20-foot rear yard from the back of the house to a retaining wall approximately 10 feet in height. Creating a more usable 40-foot rear yard would result in land disturbance in the RPA and require an exception under the Chesapeake Bay Preservation Ordinance. Therefore, staff has not included providing a usable rear yard in the recommended conditions. No other Comprehensive Plan issues were identified.

3) The requirements of the Subdivision Ordinance pose an unusual hardship not generally shared by other landowners.

The applicant's claimed hardship:

- The property is bisected by Sharpers Run with an associated RPA and floodplain and a private road creating a natural division of the property.
- Crossing the stream through the floodplain and RPA to access the rear of the property from Union Church Road represents a hardship.
- Providing the required public street frontage on Union Church Road would require a Special Exception for waiver of the minimum lot width and the proposed rear lot would still be accessed by the private road.
- Extension of the public road, Cedrus Lane, along the 50-foot wide easement of the private street is not feasible because the extension would pass through lots 26, 27, and Parcels C-1 and C-2 of the Peacock Station Subdivision. The applicant would need the other lot owners to agree to the construction and dedicate the land currently in the 50 foot wide easement.

In the supplemental information provided by the applicant, the applicant argues that the hardship justification is supported by three other public street frontage waivers (#017372, #4711-WPSF-001-1 and #4711-WPSF-002-1) granted by the Board because the justification for the three prior waivers is similar to the current requested waiver:

“(1) that the unsubdivided properties were well under the maximum density permitted and oversized compared to the density of neighboring properties; and (2) widening of the private road or extension of the public road would not be feasible given these options would require significant impacts to neighboring properties.”

Waivers #4711-WPSF-001-1 and #4711-WPSF-002-1 were approved by the Board in 2006. The two-lot property, 10+ acres in size, was zoned R-2 and could have been developed with up to 20 lots if frontage on a VDOT maintained public street could be provided. However, the property fronts on East Boulevard Drive, which is owned and maintained by the federal government. Even if the applicant had constructed a stub street with a cul-de-sac to VDOT standards to serve the lots, the street would not have been eligible for acceptance by VDOT because it would not be continuous with the VDOT road system. The large difference between the proposed density and the underlying zoning, along with the impossibility of street acceptance by VDOT, is a fundamentally different situation from the current application.

Waiver #017372 was approved by the Board in 1999. The property, 1.3 acres in size, was Zoned R-3. It was a through lot with a private road on one side (Dunford Drive) and a county maintained road on the other side (Rudyard Street). Both roads predate the County's first subdivision ordinance in 1929 and have substandard and irregular width right-of-ways. The applicant would have needed to acquire right-of-way on both

roads and construct the roads to VDOT standards to meet the Subdivision Ordinance requirement for frontage on a VDOT maintained road. The applicant did dedicate right-of-way along Rudyard Street for a possible future upgrade of the road. The circumstances and rationale for this waiver are somewhat similar to the current application in that the two lots would be accessed by different roads and the applicant would have difficulty acquiring right-of-way.

4) The waiver will result in a lot or lots that will be harmonious with and will not adversely affect the neighboring properties.

The proposed subdivision is consistent with the density of the surrounding properties. However, as previously noted, the proposed residence includes a retaining wall approximately seven feet from the rear property line which could create visual impacts on adjoining properties. Property owners along the private and public portions of Cedrus Lane have generally expressed support for the proposed subdivision, Attachment I.

5) The waiver will not adversely affect the adequacy of provisions for the minimum requirements set forth in § 101-2-2 of the Subdivision Ordinance.

The proposed subdivision would qualify as a simple subdivision, where public improvements are not required because they have already been constructed or are waived. The only requirement that would likely need to be met is water quality controls, which could be handled with the grading plan for the new residence or by the purchase of nutrient credits. There are minor encroachments into the RPA for a well and part of the driveway that are permitted under the Chesapeake Bay Preservation Ordinance.

Board policy for evaluating the condition of the private street:

In addition to the requirements in the Subdivision Ordinance, on June 28, 1993, the Board adopted a policy for use in evaluating the condition of private streets proposed for access under public street frontage waiver requests. The elements to be considered are:

- length of private street
- width of private street
- accessibility by Fire and Rescue vehicles
- terrain
- maintenance responsibilities
- photographs in each direction from the subject property showing the private street.

The private street is in good condition and was last repaired in April and May of 2016. The pavement is hard surfaced with asphalt and averages eleven feet in width within a 50-foot wide easement. The pavement is not wide enough for two cars to pass without edging off the pavement. The private street is approximately 1400 feet long. The

center of the application property is approximately 750 feet from the beginning of the street. The Fire Marshall has signed off on the condition of the existing road for fire and rescue access. There is no formal agreement among the property owners or language in the deed of subdivision for maintenance of the road. Staff has some reservations about the lack of any formal agreement among the property owners for maintenance of the private road, but maintenance seems not to have been a problem up to this point in time.

General ordinance considerations:

The Subdivision Ordinance does not allow waivers of public street frontage for the subdivision of lots (this refers to the parent lot) zoned R-E, R-A, R-P, or R-C created on private streets. However, because this lot has public street frontage, it is eligible for a waiver of the public street frontage requirement even though it is zoned R-E.

In addition to a public street frontage waiver, the owner has the option of requesting a Special Exception for a reduction in minimum lot width that would allow subdivision of the property such that both lots would have frontage on Union Church Road, although the second lot would use the private street for access to the rear lot. The owner also has the option of requesting a Special Permit to build an accessory dwelling unit, albeit one smaller than proposed with either the street frontage waiver or a special exception.

Based on the Subdivision Ordinance language, specifically the requirement that “the private street which provides access to the application property has been built and recorded in the land records on or before June 28, 1993,” the Subdivision Ordinance provisions do not appear to have been written with the possibility that waivers of public street frontage would be used to subdivide lots with existing public street frontage. Staff is not aware of any public street frontage waiver having been granted by the Board for a property with public street frontage. Lots with public street frontage but insufficient lot width to subdivide typically have used the special exception process or, prior to 2007, a variance to subdivide.

Board policy on subdivision of lots within large lot developments via public street frontage waivers:

On July 12, 1993, the Board adopted a policy that “although lots located on private streets in five acres or larger lot developments may be the subject of a specific waiver request, it is likely that the Board may determine that further subdivision of lots within large lot developments, which have been platted and recorded in the land records and have been planned to be developed as five-acre, large lot neighborhoods, would be inharmonious with and would adversely affect neighboring properties.”

ENCLOSED DOCUMENTS

Attachment A – Applicant’s Letter of Request with Plan Attachment for #1131-WPSF-01-1 dated July 24, 2017

- Attachment B – Applicant's Supplemental Justification for #1131-WPSF-01-1 dated March 5, 2018
- Attachment C – Public Street Frontage Waiver Plat with density computations dated September 19, 2018 (Full size plan available in the Office of the Clerk to the Planning Commission and Clerk to the Board prior to the hearing)
- Attachment D – Vicinity Map
- Attachment E – Map showing the proposed subdivision
- Attachment F – Map showing the 1974 large lot subdivision
- Attachment G – Map showing the 1974 conventional subdivision
- Attachment H – Health Department approval of septic field (1991)
- Attachment I – Support from adjoining property owners
- Attachment J – Coordination Memo from the Fairfax County Department of Transportation
- Attachment K – Coordination Memos from the Fairfax County Department of Planning and Zoning
- Attachment L – Coordination email from Fairfax County Fire and Rescue Department



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Zachary G. Williams
Admitted: VA, DC, and MD
zwilliams@beankinney.com

July 24, 2017

Thakur Dhakal
Engineer, LDS-CDCD-SCRD
Fairfax County Land Development Services
12055 Government Center Parkway
Fairfax, VA 22035

Re: 1016 Union Church Road (Tax Map # 0192 09 C3)
Waiver of Public Street Frontage
Statement of Justification

Dear Mr. Dhakal:

On behalf of Inder J. Bhambri and Prabha K. Bhambri (the "Applicant"), please accept this letter as a statement of justification in support of the Applicant's request for a waiver of public street frontage for the above-referenced property, pursuant to Section 101-2-2 of the Fairfax County Subdivision Ordinance. This application package includes the following materials and documents:

1. Subdivision Plans
2. WQIA related to work in the RPA
3. 1973 Deed of Dedication and Declaration of Covenants, Conditions and Restrictions
4. Photographs of the subject property and Cedrus Lane
5. Google satellite image with proposed and neighboring properties and roads labeled
6. Application check

Overview and Background of the Property

The subject property is located at 1016 Union Church Road (Tax Map # 0192 09 C3) (hereinafter referred to as the "Property"). The Property is approximately five acres in size and is zoned R-E. The Property was originally created as Lot C-3 as part of the Peacock Station Subdivision in 1973 (see enclosed Deed of Dedication and Declaration of Covenants, Conditions and Restrictions). The Property is improved with a single family home with frontage along Union Church Road, a public street. Mr. and Mrs. Bhambri currently live in the house on the Property. The Property is bisected by Shapers Run and an approximately 250-foot wide Resource Protection Area (RPA), and private road called Cedrus Lane.

00974984-1

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The Proposed Subdivision

In this application, the Applicant proposes to subdivide the Property into two separate lots. (See enclosed Subdivision Plat). The existing lot, on which the current house sits, would be reduced to approximately 111,521 square feet (2.56 acres). The new lot (Lot 2) would comprise the remaining 106,281 square feet (2.44 acres) of the Property. The purpose of the subdivision is to allow a single-family home to be built on the new lot (Lot 2), where the Bhambris' daughter will reside.

Waiver of Public Street Frontage

Both proposed lots would meet R-E zone requirements and all subdivision requirements, with the exception of the required public street frontage for the new lot (Lot 2). The Applicant requests a waiver for Lot 2 of the public street frontage requirement in the Fairfax County Subdivision Ordinance, pursuant to Section 101-2-2. Under the Applicant's proposal, the proposed new lot (Lot 2) would be accessed by the existing paved private road, Cedrus Lane, which currently serves five other neighboring properties. Cedrus Lane has been in use since at least prior to 1983 pursuant to an ingress & egress easement that applies to the application Property and neighboring properties. That easement is depicted on the plats accompanying the 1973 Deed of Dedication and Declaration of Covenants, Conditions and Restrictions, which is enclosed with this application. The easement was created for access to parcels C-1, C-2, C-3, C-4, C-5, and C-6 in the Peacock Station Subdivision. Cedrus Lane has an average width of 11 feet and is informally maintained by the owners of the properties that use this road for access. Cedrus Lane was last repaired in April and May of 2016.

Section 101-2-2 of the Subdivision Ordinance states that the Board of Supervisors may grant a waiver of the public street frontage requirement under certain conditions, which are addressed below:

1. The requirements of the Subdivision Ordinance pose an unusual hardship not generally shared by other landowners.

The requirements of the Subdivision Ordinance pose an unusual hardship for the Property given its orientation, Sharpers Run, and the RPA and private road that bisect the Property. Sharpers Run and the associated RPA provide a natural division of the Property into two lots. As discussed above and shown on the attached plans, an RPA and Cedrus Lane bisect and occupy a considerable portion of the Property. Therefore, access to Union Church Road from the new lot (Lot 2) would require the owner of Lot 2 to cross the Sharpers Run creek, the RPA, and the private road. This presents an unusual and unique hardship not generally shared by other landowners in the County. As an alternative, the Applicant considered the possibility of creating a pipestem gift lot with legal access to Union Church Road. Even with this alternative orientation, which itself would require approval of a special exception by the Board of Supervisors, the owner of Lot 2 would still use the private road (Cedrus Lane) for actual access to the new lot given the difficulty in crossing the creek and the RPA. Extension of the public road is not feasible because the extension would pass through lots 26, 27 and parcels C-1 and C-2 of the Peacock Subdivision, which are properties owned by other neighbors. Therefore, the



proposed subdivision in this Application is the best option available given the unusual features of the Property.

2. The waiver will result in a lot or lots that will be harmonious with and will not adversely affect neighboring properties.

The waiver will allow the creation of new lots that are harmonious with and will not adversely affect neighboring properties. These neighboring properties, parcels C-1, C-2, C-4, C-5, and C-6, all of which contain single family homes nestled within a wooded area, all use Cedrus Lane for access. The plat, attached to the 1973 Deed of Dedication and Declaration of Covenants, Conditions and Restrictions, shows the neighboring lots. The Applicant has spoken with neighboring property owners about the proposed plan. The neighbors are in agreement that the Applicant's plan is appropriate. Thus, the proposed new lots on the Property will be harmonious with and will not adversely affect neighboring properties.

Proposed Driveway in the RPA

As part of this application, the Applicant proposes to construct a driveway from Cedrus Lane to the proposed new home after the Property is subdivided. A portion of this driveway will cross the RPA on the Property. Therefore, included in this application package is a WQIA letter of justification related to the proposed driveway within the RPA.

Conclusion

Thank you for consideration of this application. You may contact me by telephone at 703-526-4712 or by e-mail at zwilliams@beankinney.com. I look forward to working with you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Zwilliams', with a stylized flourish at the end.

Zachary G. Williams



DATE: JULY 13, 2017

OFFICE OF SITE DEVELOPMENT SERVICES
DEPARTMENT OF PUBLIC WORKS & ENVIRONMENTAL SERVICES
12055 GOVERNMENT CENTER PARKWAY
FAIRFAX, VA 22035-5503

RE: **WATER QUALITY IMPACT ASSESSMENT (WQIA) - LETTER OF JUSTIFICATION**
PEACOCK STATION
1016 UNION CHURCH ROAD
MCLEAN, DRANESVILLE DISTRICT, FAIRFAX COUNTY, VIRGINIA 22102
TAX MAP NO. 20-1-((9))-C-3; ZONE: RE; WATERSHED: DIFFICULT RUN
GEE PROJECT NO. 2017-3778

On behalf of our client, Dr. Bhambri, **GeoEnv Engineers & Consultants, LLC (GEE)** prepared this Waiver of Resource Protection Area (WRPA) encroachment into the mapped Resources Protection Area (RPA). This Water Quality Impact Assessment (WQIA) - Letter of Justification is required by Fairfax County Department of Public Works and Environmental Management (DPWES) in compliance with Section 118-2-1 (d) for Roads and Driveways not exempted under Article 5 of this chapter, resulting in disturbance within the RPA limits, on a Lot or parcel recorded prior to November 18, 2003, and where the proposed disturbances will encroach into the 100-ft of the RPA buffer, but will not extend into the 50-ft RPA buffer.

The subject site is zoned RE (Residential) and contains 5.0 acres of land currently improved by an existing dwelling, an access road, and private utilities. As a part of the proposed simple subdivision, the existing dwelling and asphalt access road (Cedrus Lane- a private road) will remain, and a new dwelling with an associated driveway, a septic drainfield, and a private well will be constructed within the northern part (rear) of the property as shown on the attached plan. A part of the proposed driveway will be located within the 100-ft RPA limits. No improvement is planned within the 50-RPA limit. The existing and proposed improvements are shown on the attached plan. Also the county mapped 100-yr Flood Plain and RPA limits, as well as the field surveyed RPA limit are depicted on the attached plan.

In accordance with proposed improvements as depicted on the attach plan, the proposed driveway will result in the disturbances (encroachment) of approximately 2,560 square feet or 0.058 acres of land within a mapped RPA limits(PFM Section 118-5-4-(a4)), as shown on the attached plan. The proposed improvements will also result in a total of 1,125 square feet or 0.026 acres of impervious areas (PFM Section 118-5-4-(5a)), as indicated by the attached plan. The existing and proposed residential dwellings and septic drainfields are located outside the mapped RPA limits, and no construction activities are being performed on the existing dwelling. As a result of the proposed disturbed area within the RPA limits, a vegetated buffer will be installed as required by this WQIA.

The attached plan shows the reforestation of approximately 2,625 square feet within the site. This exceeds the proposed disturbed area of 2,560 square feet of land area within the RPA limit. A supper silt fence (SSF) shall be installed and maintained around the proposed disturbances so that no further disturbances will occur beyond the limit of the proposed driveway. This WQIA is intended to mitigate negative impacts on the existing tributary stream by planting adequate numbers of native

trees and shrubs in accordance with Section 118-303(f) of the county code and standing regulations and requirements.

Based on the existing conditions plan (attached), the site contains 5.0 acres of land area. The property is mostly wooded and currently improved with an existing residential dwelling and associated driveway, a septic drainfield site and an asphalt drive, as shown on the attached plans. The existing and proposed structures are located outside established RPA limits and will not be impacted by this WQIA.

As per the attached plan, the proposed impervious area within the RPA is 1,125 square feet which is less than the 5,000 square feet, as allowed by 118-5-4a (5). The proposed **disturbed** area within the RPA limit is calculated at 2,560 square feet of land which is less than the 10,000 square feet allowed by PFM Section 118.5-4. a(4). The proposed vegetated buffer, being provided as a part of this RPA waiver is 2,625 square feet, which is equal or greater than the proposed disturbed area within the RPA limits.

Therefore, the owner is providing a reforested area that is larger than the disturbed area within the RPA limits. The limits of reforestation area and the proposed planting schedule are shown on the attached plan. During construction, a silt fence (SSF) will be installed and maintained along the lower limits of the disturbed area in order to prevent further disturbances or migration of silt outside the disturbed areas. This SSF will remain operable until the site has been fully stabilized, and approved by the county inspector. Upon completion of this remedial action, no further disturbances are anticipated as a part of this project.

This WQIA letter demonstrates compliance with the Ordinance and substantiates that the water quality will not be negatively impacted by the planned activities, and the site will have a net increase in vegetated buffer at the completion of this project. The new vegetated area will consist of a mixture of over-story trees, under-story trees, shrubs, and ground covers at a density required by Ordinance Section 118-3-3(f). The narrative below addresses each element of consideration for evaluating the subject WQIA:

I. Component of Water Quality Assessment Under Section 118-4-3

A. The RPA Boundary

The RPA Boundary was field established per letter to industry 08-12.

B. RPA Impacts

The proposed driveway will result in approximately 2,560 square feet of disturbed areas located within the mapped RPA limits. A buffer area of 2,625 square feet (0.06 acre) of new planting will be provided as shown. The buffer area is established in order to minimize adverse affects of the RPA encroachment. As shown, the proposed buffer will be a contiguous area and will contain a mix of overstory trees, understory trees, shrubs, and ground covers. Also, two (2) tree will be planted for each tree that was removed. As per the PFM Chapter 118-3-3(d) and Chapter 118-3-3(f), an area equal or greater than the disturbed will be planted to compensate for occurred disturbances. This is calculated at 100 overstory tree per acre, 200 understory tree per acre, and 1089 shrubs in a mulch bed. Based on the

size of the proposed vegetative buffer, and in accordance with Section 118-3-3(f), six (6) overstory trees, 12 understory trees, 60 shrubs, and as needed ground covers will be planted in the designated buffer area (refer to attached plan). These will be planted manually in order to minimize further disturbances into the RPA. As stated above, a SSF will be installed and maintained along the lower limits of the disturbed areas in order to prevent sediment transfer into the downstream shoreline or non-disturbed areas. The planting schedule will as follow:

TABLE I - PROPOSED PLANTING SCHEDULE

PLANTING TYPE	NAME	NUMBER	COMMENT
Overstory Trees (@ 100 per acre)	Acer Rubrum/Red Maple	2	Total of 6 Overstory trees will be planted
	Fagus Americana/American Beech	2	
	Platanus Occidentalis /Sycamore	2	
Understory Trees (@ 200 per acre)	Magnolia Virginiana/Sweetbay Magnolia	3	Total of 12 new Understory Trees will be planted.
	Ilex Opaca/American Holly	3	
	Betula Nigra/River Birch	3	
	Nyssa Sylvatica/Black Gum	3	
Shrubs/Seedlings (Shrubs @ 1089 of shrubs per acre.	Ilex Decidua/Decidious	20	Total of 60 shrubs will be planted
	Ilex Galbra/Inkberry	20	
	Armonia Melannocapa/Black Chokeberry	20	

In compliance with this WQIA report, the owner shall perform the following mitigation activities:

1. Except for the proposed driveway necessary to get to the new dwelling, no further disturbances shall occur within the 100-ft RPA Buffer and 100-year Flood Plain limits, without an approved plan.
2. Work shall not extend beyond the proposed LOD limits depicted on the attached plan.
3. The owner shall insure that none of the areas that has been disturbed within RPA limits is used for any unauthorized activities.
4. The new planting, per this approved WQIA report, shall be done as depicted.
5. 100-Year flood plain limit shall be accurately delineated and staked.
6. The RPA limits (100-ft from the high water level) shall be field verified and depicted on the plans.

Based on the current residential use of the subject property, we believe that the negative impacts on the RPA and the Chesapeake Bay will be mitigated by planting with native species in order to create vegetative buffer, as shown on the attached plan. Planting will be done manually in order

to minimize further disturbances of the site. The Supper Silt Fence will be retained along the lower part of the disturbed area until the site has been fully stabilized and inspected by the county in order to minimize impacts during the site disturbance activities.

C. Justification

The work will be limited to constructing a residential driveway through the mapped RPA for the proposed dwelling, as shown on the attached plan. Only vegetation located within the limits of the proposed disturbance will be impacted by the construction activities. Except as shown and noted on the attached plan, no other disturbances within the mapped RPA area. The proposed vegetated buffer will be aesthetically pleasing, and will blend in well with existing topography and rural setting of the site. Given the above facts, we believe that the proposed RPA encroachment is fully justified.

D. Wetland and Water of the United States (WOUS)

The RPA encroachment is not located within a known mapped wetland and Water of the United States. No known negative impacts on jurisdictional wetlands/WOUS will result.

E. BMPs

The proposed impervious area is less than 18% of the total lot area. Therefore, No BMP waiver is required as per the Fairfax County Public Facility Manual (PFM). If a BMP facility becomes required, then this will be designed in accordance with the requirements of the PFM and Northern Virginia Storm Water Management Handbook.

F. Compliance with Applicable Performance Criteria for Resources Protection Areas

Analysis of compliance relative to section 118-3-2 of the Ordinance, General Performance Criteria:

- a. Comply. No more lands than is necessary to perform the remedial action is anticipated. The limits of the disturbed area will be depicted on the attached site plan.
- b. Comply. To the maximum practicable, indigenous vegetation within the RPA area will be protected.
- c. Comply. No BMP facility will be required. If a BMP facility or SWM facility will become required, then a maintenance agreement, if warranted, will be executed upon approval of the site plan.
- d. Comply. Adequate tree cover will be provided as shown on the attached plan.
- e. Comply. The remedial plans will comply with all requirements of Chapter 104 of the Fairfax County Code and PFM.
- f. Comply. If a BMP facility is required, then it will be designed and constructed in compliance with DPWES.
- g. Comply. As previously noted, no known impacts to Jurisdictional Wetland/WOUS will result from the remedial measures at the site. No wetland Permit is required. However, the Site Grading Plan shall include a statement signed by the owner that all wetland permits, if required, will be obtained by the owner prior to the commencement of land disturbance activities.

- h. Comply. The proposed drainfield is located outside the RPA limits. The proposed private well is considered a utility which is allowed to be installed in the RPA limits.
- i. Not Applicable. This is not an agricultural land.

Analysis of Compliance Relative to Section 118-3-3 of the Ordinance, *Additional Performance Criteria for RPAs.*

- a. Comply. This WQIA is submitted under Section 118-5-4 (a), where a vegetated buffer area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal or greater than the area of encroachment into the RPA buffer area. The vegetated buffer is shown on the attached plan.
- b. Comply. The subject project is in harmony with the purpose and intent of the ordinance.
- c. Comply. The subject project is in harmony with the purpose and intent of the ordinance.
- d. Comply. The RPA encroachment will be replaced by an equal or greater area of new forested area. The proposed vegetated buffer is planned as shown by the attached plan. This vegetated buffer area is designed to minimize the adverse effects of human activities on the other components of the RPA, state water, and aquatic life.
- e. Not Applicable. This is not an agricultural land.
- f. Comply. The planting technique will be in accordance with the county approved plans and the PFM.

G. Other Information

This WQIA is considered complete and contains all known applicable information to support the subject General RPA Encroachment Request.

II. Conclusion:

After considering the evaluation criteria outlined in this letter report and analyzing the applicable performance criteria, it is our opinion that the value of the natural processes and ecological relationships associated with the RPA on the site are minimally impacted. The proposed disturbance is considered the minimum necessary to install a residential driveway for the new dwelling. The restoration of a greater area than disturbed should mitigate the overall negative impacts created by the noted RPA encroachment.

We believe that this WQIA demonstrates general compliance with the ordinance and substantiates that overall water quality will not be negatively impacted by the proposed residential development project. Adequate sediment and erosion control measures will be utilized during the site stabilization phase and will be maintained until the site has been fully stabilized. If you have any questions, please contact the undersigned engineer at 703-593-8090.

Very truly yours,

Ibrahim (Abe) Chehab, P.E.
Principal Engineer

Attachment: Site Plans

4010 PAC-230

11261

THIS DEED OF DEDICATION AND DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

made this 22th day of March, 1974, by and between RONALD W. TYDINGS and KENNON W. BRYAN, TRUSTEES, sometimes hereinafter referred to as the Owners; and JAMES KEITH, HENRY C. MACKALL, E. A. PRICHARD, and F. S. McCANDLISH, TRUSTEES, sometimes hereinafter referred to as the Trustees; and E. MORTON FRELIGH, JR., BARBARA B. FRELIGH, BEATRICE K. MCCLINTOCK, and CLIVE L. DUVAL 2d, sometimes hereinafter referred to as the Beneficiaries;

W I T N E S S E T H :

WHEREAS, the Owners are the sole owners in fee simple of a certain parcel of property acquired by Deed dated March 20, 1973 from Beatrice K. McClintock, et al to Ronald W. Tydings, et al, Trustees, recorded in Deed Book 3806 at Page 391, among the land records of Fairfax County, Virginia, consisting of two certain parcels of land identified therein as Parcel 1 containing 83.971 acres and Parcel 2 containing 8.014 acres, more particularly described therein by metes and bounds, which description is incorporated herein by reference, and

WHEREAS, the Owners desire to dedicate and subdivide a portion of said property and to divide the remaining portion of said property in accordance with the plats attached hereto, and

WHEREAS, the Owners further desire to impress upon said property certain protective covenants and restrictions; and do further desire to dedicate to public use certain streets as shown on said plat; and do further desire to establish certain sanitary sewer, storm drainage, and flood plain easements as shown on said plat; and

WHEREAS, James Keith and Henry C. Mackall, Trustees, are the trustees named in a deed of trust dated July 17, 1959, and recorded in Deed Book 1791 at Page 142, wherein a portion of the hereinafter described property was conveyed to secure the payment of the original principal sum of \$109,600.00 to E. Morton Freligh,

11261

Return to: Ronald W. Tydings
Kennon W. Tydings & Bryan

Tax Map Ref. Nos.

0192 01 0032
0192 01 0050

F44
REL
495/1755

FULL REL
4389/669

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Jr., and Barbara B. Freligh; and

WHEREAS, E. A. Prichard and F. S. McCandlish, Trustees, are the trustees named in a deed of trust dated March 21, 1973 and recorded in Deed Book 3806 at Page 396, wherein the herein-after described property was conveyed to secure the payment of the original principal sum of \$315,000.00 to Beatrice K. McClintock and Clive L. Duval 2d; and

WHEREAS, the Trustees and the Beneficiaries have consented to this subdivision and dedication of a portion of the property and a division of the remaining property, as evidenced by their signatures affixed hereto; and

WHEREAS, no other person has an interest of record in and to the aforesaid parcel of land;

NOW, THEREFORE, the OWNERS do hereby SUBDIVIDE a certain portion of that certain tract or parcel of land situated in Fairfax County, Virginia, and DIVIDE the remaining portion of said land, more particularly described by metes and bounds prepared by Matthews & Wheatley, C.E., annexed hereto and incorporated herein by reference as Schedule "A" into lots in accordance with that certain plat made by Matthews & Wheatley, C.E., and approved by the appropriate officials of Fairfax County, Virginia, as shown by their endorsement on the plat annexed hereto and made a part hereof; said subdivision to be known as Lots 1 through 3~~8~~ inclusive, "PEACOCK STATION SUB-DIVISION," and said division to be known as Lots C-1 through C-6 inclusive, PEACOCK STATION; and

The said Owners do further hereby dedicate to public use all streets shown on said plat and to further establish all sanitary sewer, storm drainage and flood plain easements as shown on said plat; and


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The Owners do hereby subject Lots 1 through 30 inclusive, PEACOCK STATION SUBDIVISION and Lots C-1 through C-6 inclusive, PEACOCK STATION to all those certain protective covenants and restrictions as more particularly set forth in that certain document entitled "PEACOCK STATION DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS" annexed hereto as Schedule "B" and incorporated herein by reference; and

The Trustees and the Beneficiaries join in this deed merely to indicate their consent to the subdivision, dedication, impression of covenants and restrictions, and establishment of easements; and in no way to alter or amend the terms of the afore-said deeds of trust.

WITNESS the following signatures and seals:


 (SEAL)
RONALD W. TYDINGS, TRUSTEE


 (SEAL)
KENNON W. BRYAN, TRUSTEE


 (SEAL)
JAMES KEITH, TRUSTEE

 (SEAL)
HENRY C. MACKALL, TRUSTEE


 (SEAL)
E. A. PRICHARD, TRUSTEE

 (SEAL)
F. S. MCCANDLISH, TRUSTEE

 (SEAL)
E. MORTON FRELIGH, JR.

 (SEAL)
BARBARA B. FRELIGH

 (SEAL)
BEATRICE K. MCCLINTOCK

 (SEAL)
CLIVE L. DUVAL 2d

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~~BEATRICE K. MCCLINTOCK (SEAL)~~

Clive L. Duval 2d (SEAL)
Clive L. Duval 2d

STATE OF _____
COUNTY OF _____, to-wit:

I, the undersigned, a Notary Public in and for the said State and County, whose commission as such will expire on the _____ day of _____, 19____, do hereby certify that this day personally appeared before me in my said State and County BEATRICE K. MCCLINTOCK, whose name is signed to the foregoing instrument dated the _____ day of March, 1974, and acknowledged the same before me.

Given under my hand this _____ day of March, 1974.

NOTARY PUBLIC

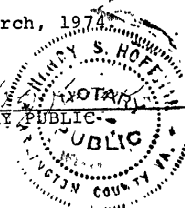
STATE OF VIRGINIA

COUNTY OF Wilmington, to-wit:

I, the undersigned, a Notary Public in and for the said State and County, whose commission as such will expire on the 27th day of February, 1977, do hereby certify that this day personally appeared before me in my said State and County CLIVE L. DUVAL 2d, whose name is signed to the foregoing instrument dated the 27th day of March, 1974, and acknowledged the same before me.

Given under my hand this 27th day of March, 1974.

Nancy S. Hoff
NOTARY PUBLIC



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STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

I, the undersigned, a Notary Public in and for the said State and County, whose commission as such will expire on the 19th day of June, 1974, do hereby certify that this day personally appeared before me in my said State and County RONALD W. TYDINGS and KENNON W. BRYAN, TRUSTEES, whose names are signed to the foregoing instrument dated the 22 day of March, 1974, and acknowledged the same before me.

Given under my hand this 22 day of March,

Sharon C. Ziegler
Notary Public

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

I, the undersigned, a Notary Public in and for the said State and County, whose commission as such will expire on the 14th day of December, 1975, do hereby certify that this day personally appeared before me ~~WAMES XXXXX~~ and HENRY C. MACKALL, TRUSTEES, whose names are signed to the foregoing instrument dated the 1st day of ~~March~~ April, 1974, and acknowledged the same before me.

Given under my hand this 1st day of ~~March~~ April, 1974.

Sandra June Kudry
Notary Public

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

I, the undersigned, a Notary Public in and for the said State and County, whose commission as such will expire on the 1st day of July, 1974, do hereby certify that this day personally appeared before me E. A. PRICHARD and F. S. MCCANDLISH, TRUSTEES, whose names are signed to the foregoing instrument dated the 1st day of March, 1974, and acknowledged the same before me.

Given under my hand this 1st day of ~~March~~ April, 1974.

Spencer Louise Pruett
Notary Public

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

I, the undersigned, a Notary Public in and for the said State and County, whose commission as such will expire on the 7th day of February, 1975, do hereby certify that this day personally appeared before me E. MORTON FRELIGH, JR. and BARBARA E. FRELIGH, whose names are signed to the foregoing instrument dated the 22nd day of March, 1974, and acknowledged the same before me.

Given under my hand this 1st day of ~~March~~ April, 1974.

Lorene T. Shewbridge
Notary Public

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STATE OF MarylandCOUNTY OF Montgomery, to-wit:

I, the undersigned, a Notary Public in and for the said State and County, whose commission as such will expire on the 1st day of July, 1974, do hereby certify that this day personally appeared before me in my said State and County BEATRICE K. MCCLINTOCK, whose name is signed to the foregoing instrument dated the 22nd day of March, 1974, and acknowledged the same before me.

Given under my hand this 29th day of March, 1974.

Dorothy J. O'Neill
Notary Public

STATE OF VIRGINIA

COUNTY OF _____, to-wit:

I, the undersigned, a Notary Public in and for the said State and County, whose commission as such will expire on the _____ day of _____, 1974, do hereby certify that this day personally appeared before me in my said State and County CLIVE L. DUVAL 2d, whose name is signed to the foregoing instrument dated the _____ day of March, 1974, and acknowledged the same before me.

Given under my hand this _____ day of March, 1974.

Notary Public

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

I, the undersigned, a Notary Public in and for the said State and County, whose commission as such will expire on the 2nd day of July, 1977, do hereby certify that this day personally appeared before me in my said State and County, JAMES KEITH, whose name is signed to the foregoing instrument dated the 22nd day of March, 1974 and acknowledged the same before me.

Given under my hand this 1st day of April, 1974

James L. Allison
Notary Public

SCHEDULE "A"

DESCRIPTION

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OF PEACOCK STATION
BEING A SUBDIVISION
OF PARCELS "A", "B" & "C"
OF THE PROPERTY OF
RONALD W. TYDINGS & KENNON W. BRYAN, TRUSTEES
DRANESVILLE DISTRICT
FAIRFAX COUNTY, VIRGINIA

BEGINNING at an iron pipe in a northerly right-of-way line of Bellview Road, State Route 683, (variable width right-of-way) said point being further described as being the southeasterly corner of now or formerly E. M. Freligh, Jr.;

THENCE with an easterly line of said E. M. Freligh, Jr. the following courses:

1. N 11° 38' 19" E, 586.79 feet to an iron pipe,
2. N 12° 02' 22" E, 277.94 feet to an iron pipe,
3. N 20° 32' 42" W, 257.66 feet to an iron pipe,
4. N 33° 21' 34" W, 369.81 feet to an iron pipe;

THENCE with an easterly line of now or formerly H. S. De Schmertzig the following courses:

1. N 08° 58' 38" W, 273.05 feet to an iron pipe,
2. N 88° 14' 27" W, 345.38 feet to an iron pipe,
3. N 08° 58' 22" W, 473.86 feet to an iron pipe in the southerly right-of-way line of Towlston Road, State Route 676, (variable width right-

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of-way;

THENCE with said southerly right-of-way line of Towlston Road

N 77° 55' 29" E, 678.04 feet to an iron pipe;

THENCE with the property line of now or formerly F. A. Bryan the following courses:

1. S 01° 52' 26" W, 628.18 feet to an iron pipe,
2. S 88° 08' 10" E, 1084.29 feet to an iron pipe,
3. N 06° 51' 51" E, 427.71 feet to an iron pipe;

THENCE with a southerly line of now or formerly D. P. Salvatore

N 81° 44' 20" E, 766.10 feet to an iron pipe in the westerly right-of-way

line of Old Dominion Drive, State Route 738, (variable width right-of-way);

THENCE with said westerly right-of-way line of Old Dominion Drive

S 28° 44' 21" E, 288.70 feet to an iron pipe;

THENCE with a westerly line of now or formerly J. E. Scott S 03° 45' 49" E, 448.78 feet to an iron pipe;

THENCE with a northerly line of now or formerly G. A. Kidwell

S 70° 24' 04" W, 113.17 feet to an iron pipe;

THENCE with a westerly line of said G. A. Kidwell and now or formerly

F. Hazera, M. B. Dawkins and W. C. Howlett S 02° 41' 44" E, 1386.65 feet to an iron pipe;

THENCE with a northerly line of now or formerly D. R. Chandler, W. C.

Browning, T. N. White, Jr. and T. F. Lindsey N 86° 01' 22" W, 1382.20 feet to an iron pipe;

THENCE with a westerly line of said T. F. Lindsey S 13° 37' 46" W,

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247. 31 feet to an iron pipe;

THENCE with a northerly line of now or formerly H. E. Watkins

N 82° 06' 03" W, 307.19 feet to an iron pipe in the aforementioned

northerly right-of-way line of Bellview Road;


THENCE with said northerly line of Bellview Road the following

courses:

1. N 69° 44' 38" W, 37.96 feet to an iron pipe,
2. N 79° 01' 29" W, 265.05 feet to an iron pipe,
3. N 84° 50' 11" W, 46.14 feet to the point of beginning,

containing 91.73827 acres of land being further described on plats being prepared by Matthews & Wheatley entitled, "Peacock Station Being a Subdivision of Parcels "A" & "B" of the property of Ronald W. Tydings & Kennon W. Bryan, Trustees, Dranesville District, Fairfax County, Virginia," dated August 30, 1973 and another plat entitled, "Peacock Station Being a Division of Parcel "C" of the property of Ronald W. Tydings & Kennon W. Bryan, Trustees, Dranesville District, Fairfax County, Virginia," dated March 26, 1974. Said plat hereby becomes a part of this description.

Given under my hand this 26th day of March, 1974.


William L. Matthews
Certified Land Surveyor #768
MATTHEWS & WHEATLEY

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SCHEDULE "B"

PEACOCK STATION
DECLARATION OF PROTECTIVE
COVENANTS AND RESTRICTIONS

This subdivision is hereby made subject to protective covenants and restrictions declared for the purpose of insuring the best use and most appropriate development of each building site in the subdivision; to protect the owners of the building sites against such improper use of surrounding building sites as will depreciate the value of the property of each; to preserve, so far as practical, the natural beauty of said property; to guard against the erection thereon of undesirably designed or proportioned structures, and structures built of undesirable or unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon; with appropriate locations thereof on building sites; to secure and maintain proper set-backs from streets, and adequate free space between structures and in general, to provide adequately for a high type and quality of improvements on said property, and thereby to enhance the values of investments made by purchasers of building sites therein.

1. In order to insure that the intent and purposes of these protective covenants and restrictions are complied with an Architectural Control Committee (hereinafter called "The Committee") is hereby established which shall have full authority in enforcing same.

2. The Architectural Control Committee shall be composed of three (3) members. The initial members shall be: Melvin Greenberg, R. E. Adkins and Jack Geller. The permanent address of the committee shall be Swayze, Tydings and Bryan, 4085 Chain Bridge Road, Fairfax, Virginia, until changed by action of the Committee after notice to the lot owners. Any two of the three members may act for the Committee. The membership term of the Committee shall be indefinite, unless terminated as hereinafter provided. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. After January 1, 1976, the then record owners of a majority of the lots shall have the power to change the membership of the Committee and remove or elect its members. The members of the Committee shall not be entitled to any compensation for services performed hereunder.

3. No building, structure, fence, utility yard, screen planting or other improvements shall be erected, placed or altered on any premises until the building plans, specifications and plot plans showing the location of

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such improvements on the site have been approved in writing as to the conformity and harmony of the external design and external materials. The Committee, in approving or disapproving such plans, shall take into consideration the location of such buildings, etc. with respect to topography, finish ground elevation and neighboring structures.

4. In the event the Committee fails to approve or disapprove such plans, designs, specifications or location within 30 days after such have been submitted, or, in any event, if no suit to enjoin the erection of such building, improvement or making of alterations has been commenced prior to the completion thereof, such approval will not be required and covenant (3) shall be deemed to have been fully complied with.

5. The lots of this Subdivision shall be used for residential purposes only. No purchaser of a lot in this subdivision shall be allowed to subdivide a lot so as to produce a greater number of smaller lots. More than one lot, however, may be used for the erection or placement of a residential structure provided that the location of such structure is approved in writing by the Committee. The operation of this particular covenant shall cease after January 1, 2000.

6. No structure shall be erected, altered, placed or permitted to remain on any building site, other than one detached single family dwelling not to exceed 2 1/2 stories in height, and a private garage for not more than four cars, and a stable for the keeping of horses as allowed in numbered paragraph 11 hereinbelow, said stable to be in conformity with all state laws and local ordinances, if any, pertaining to same. It is expressly provided, however, that an efficiency apartment of not more than three rooms may also be constructed on any lot provided it is accompanied by a main dwelling as herein provided, which apartment may be occupied by domestic servants employed at the residence on the same lot or may be used as a guest house. Such apartment shall not be used otherwise, and in no event shall such apartment be rented. Such efficiency apartment may not be constructed unless the main dwelling has first been constructed or unless they are constructed at the same time.

7. Except with the prior written approval of the Committee no building of any kind, including garages, shall be located on any lot less than 50 feet from the front lot line, or less than 50 feet from any rear lot line, or less than 20 feet from any side lot line.

8. All residential structures, shall have a finished, heated living area, exclusive of porches, breezeways, and garages, of not less than 2,000 square feet.

- 2 -

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9. No obnoxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which, in the judgment of the Committee, may be or become an annoyance or nuisance to the neighborhood. No signs, or billboards shall be erected or maintained on the premises unless approved in advance by the Committee. No trade materials or inventories may be stored upon the premises and no trucks, tractors or equipment may be stored or regularly parked on the premises except in garages.

10. No trailer, basement (unless said basement is a part of a residence erected at the same time), tent, shack, other out buildings or any temporary structure shall be erected or placed on any lot covered by these covenants, except as specifically permitted herein, and in no event shall such be used as a residence.

11. No animals or poultry of any kind, other than pets and horses, shall be kept or maintained on any lot. Such allowable pets or horses may not be kept for boarding, breeding, or maintained for any commercial purposes whatever.

12. Adequate off-street parking shall be provided by the owner of each lot for the parking of motor vehicles owned by such owner. Owners of lots agree not to park their motor vehicles on the streets in the development.

13. Each lot owner shall keep his lot free of tall grass, undergrowth, dead trees, trash and rubbish, and properly maintain it so as to present a pleasing appearance, and shall maintain the proper contour of the land in order to prevent erosion. In the event a lot owner does not properly maintain his lot as above provided, in the opinion of the Committee herein above mentioned, then the Committee may have the required work done and the cost thus incurred by the Committee shall be paid by the owner.

14. Each lot shall have thereon one or more utility yards and at least one such utility yard shall be constructed at the same time the main residence is constructed, unless provisions are made for the housing of the items set forth below either in the main residence or garage. Plans for such utility yards shall be submitted with plans for the main residence. Each utility yard shall be screened by fencing or shrubbery with the height, design and materials to be approved by the Committee. The following buildings, structures and objects may be erected and maintained and allowed to remain on the lot only if the same are located wholly within the main residence or wholly

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within a utility yard: pens, yards, and houses for pets, (exclusive of horses) above ground storage of construction materials, wood, fuel oil tanks, clothes racks and clothes lines, clothes washing and drying equipment, laundry rooms, tool shops, work shops, garbage and trash cans, boats and boat trailers, campers and trailers.

15. All telephones, electric and other utility lines and connections between the main utility lines and the residences or other buildings on each lot shall be concealed and located underground so as not to be visible.

16. The discharge of firearms of any size and caliber is hereby prohibited within this Subdivision.

17. The construction and fencing of swimming pools and tennis courts shall be subject to the approval of the Committee and shall be located in a manner so as not to detract from the general appearance of the lot or subdivision.

18. All boundary fences on the lots shall be approved by the Committee, and shall be constructed of wood, stone, or shrubbery. Such fences shall be limited to 4 1/2 feet in height.

19. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2000 at which time said covenants shall be automatically extended for successive periods of ten years, unless by a vote of two-thirds of the then record owners of the lots in the Subdivision it is agreed to change said covenants in whole or in part.

20. Invalidity of any of these covenants or any part thereof by judgments or court orders shall not otherwise affect the other provisions which shall remain in full force and effect.

21. The Subdivider shall have the right to approve reasonable modifications or exceptions to the reservations and covenants contained herein where such modifications or exceptions will not defeat the overall purpose of said reservations and covenants.

In the Clerk's Office of the Circuit Court of
Fairfax County, Virginia APR 3 1974 at 2:00 PM
This instrument was received and, with the
certificate annexed, admitted to record with plat attached
Teste: Clerk

Frederick J. Ford

4010 PAGE 252

CURVE DATA

No.	Radius	Delta	Arc	Tangent	Chord	Bearing
1	106.44'	55°10'40"	102.51'	55.62'	98.59'	N 72°51'50" E
2	136.44'	09°32'47"	22.73'	11.39'	22.71'	N 84°19'11" W
3A	159.03'	02°22'01"	6.57'	3.29'	6.57'	S 78°21'47" W
3B	159.03'	50°00'13"	138.79'	74.16'	134.43'	S 52°10'39" W
4	189.03'	12°15'47"	40.46'	20.31'	40.38'	N 57°34'16" W
5	25.00'	87°39'51"	38.25'	24.00'	34.63'	S 56°37'15" W
6	25.00'	76°29'23"	33.38'	19.71'	30.95'	N 25°27'23" W
7	230.75'	47°26'23"	191.06'	101.39'	185.65'	N 36°30'31" E
8	255.75'	47°26'23"	211.76'	112.38'	205.78'	S 36°30'31" W
9	205.75'	47°26'23"	170.36'	90.41'	165.55'	N 36°30'31" E
10A	750.00'	07°54'41"	103.56'	51.86'	103.48'	N 56°16'21" E
10B	750.00'	08°13'45"	107.72'	53.95'	107.63'	N 48°12'10" E
11	725.00'	16°08'24"	204.23'	102.80'	203.56'	N 52°09'31" E
12A	775.00'	04°19'40"	58.54'	29.29'	58.53'	N 58°03'52" E
12B	775.00'	04°38'44"	62.84'	31.44'	62.82'	N 46°24'41" E
13	250.00'	51°55'31"	226.57'	121.73'	218.89'	N 70°03'04" E
14	275.00'	51°55'31"	249.22'	133.91'	240.78'	N 70°03'04" E
15	225.00'	51°55'31"	203.91'	109.56'	197.00'	S 70°03'04" W
16	25.00'	48°11'22"	21.03'	11.18'	20.41'	N 71°55'09" E
17	50.00'	276°22'36"	241.18'	44.72'	66.67'	S 06°00'50" W
18	25.00'	48°11'22"	21.03'	11.18'	20.41'	N 59°53'27" E
19	25.00'	86°25'00"	37.71'	23.48'	34.23'	N 08°31'32" E
20	25.00'	86°25'00"	37.71'	23.48'	34.23'	S 80°53'27" E
21	550.44'	48°31'06"	466.12'	248.06'	452.31'	S 61°56'30" E
22	525.44'	48°31'06"	444.95'	236.80'	431.77'	N 61°56'30" W
23	575.44'	48°31'06"	487.29'	259.33'	472.86'	S 61°56'30" E
24	25.00'	48°11'22"	21.03'	11.18'	20.41'	S 69°42'14" W
25	50.00'	276°22'36"	241.18'	44.72'	66.67'	N 03°47'56" W
26	25.00'	48°11'22"	21.03'	11.18'	20.41'	S 62°06'20" E
27	25.00'	90°00'00"	39.27'	25.00'	35.36'	N 32°55'29" E
28	25.00'	90°00'00"	39.27'	25.00'	35.36'	S 57°04'31" E
29	1121.17'	07°39'14"	149.78'	75.00'	149.67'	S 15°54'08" E
30	1096.17'	07°39'14"	146.44'	73.33'	146.33'	N 15°54'08" W
31	1146.17'	07°39'14"	153.12'	76.67'	153.00'	S 15°54'08" E
32	215.00'	42°15'49"	158.59'	83.10'	155.02'	S 40°51'41" E
33	190.00'	42°15'49"	140.15'	73.44'	137.00'	N 40°51'41" W
34	240.00'	42°15'49"	177.03'	92.76'	173.05'	N 40°51'41" W
35	25.00'	48°11'19"	21.03'	11.18'	20.41'	N 86°05'25" W
36	50.00'	276°22'39"	241.19'	44.72'	66.67'	S 28°00'25" W
37	25.00'	48°11'19"	21.03'	11.18'	20.41'	N 57°53'43" W

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AREA TABULATIONS:

1. 30 LOTS	2,615,214 S.F.
2. DEDICATED STREET AREA	249,632 S.F.
3. TOTAL AREA	2,864,846 S.F.
	OR 65.76781 Ac.
4. AVERAGE LOT AREA	87,174 S.F.

Not
1

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Fairfax County Health Department Notes:

1. Lot 21 is restricted to the construction of a three bed-room dwelling
2. Lots 6, 8, 28, 29, and 31 are restricted to the construction of dwellings not to exceed four bedrooms

Flood

bc
int

SURVEYOR'S CERTIFICATE

I, William L. Matthews, a duly certified Land Surveyor in the Commonwealth of Virginia, do hereby certify that the land shown hereon is now in the name of Ronald W. Tydings and Kannon W. Bryan, Trustees, and was acquired by them from Beatrice K. McClintock, widow, Clive L. Duval, 2nd, and Susan B. Duval, his wife, Deed dated March 20, 1973, and recorded in Deed Book 3806 at page 391 among the Land Records of Fairfax County, Virginia. This plat prepared without the benefit of a Title Report.



I, further certify that this subdivision is completely within the boundary of the original tract and that all bearings shown hereon refer to the True Meridian.

Given under my hand this ^{Tydings & Bryan, Trustees, are Trustees for Dominion Joint Venture, a limited partnership} 31st day of August, 1973.

William L. Matthews
William L. Matthews
Certified Land Surveyor #768

OWNER'S DEDICATION

Ronald W. Tydings and Kannon W. Bryan, Trustees, owners of the land shown hereon and described in the Surveyor's Certificate hereby adopts this plan of subdivision, dedicates the streets to public use, and reserved the right of way as indicated for the construction, operation, and maintenance for storm sewers.

Agreement is hereby made that concrete monuments will be set at all points indicated thus , and all iron pipe will be set at all points indicated thus , all in accordance with the Fairfax County Subdivision Ordinance under the supervision of a certified engineer or surveyor.

Responsibility is hereby accepted to furnish the certified engineer or surveyor with a Title Report.

Ronald W. Tydings, Trustee *Sharon J. Zwart*
Ronald W. Tydings, trustee Witness

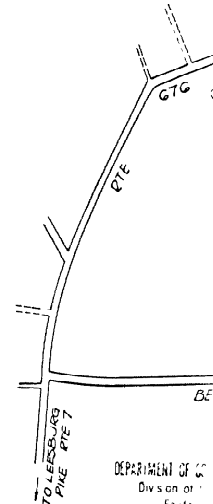
Kannon W. Bryan, Trustee *Sharon J. Zwart*
Kannon W. Bryan, trustee Witness

Notes:

- 1 The property delineated on this plat is located on Fairfax County Assessment Map Nos. 19-2 & 20-1, ((1)), Parcels 50 & 32, and is zoned RE-2 as of the date of its approval.

Flood Plain Restriction Note.

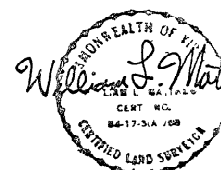
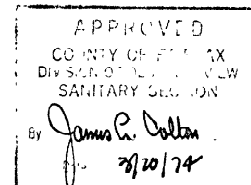
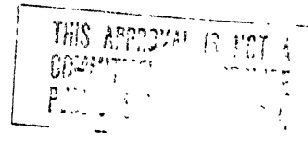
No use shall be made of nor any improvements be made in this easement which would in any way interfere with the natural drainage.



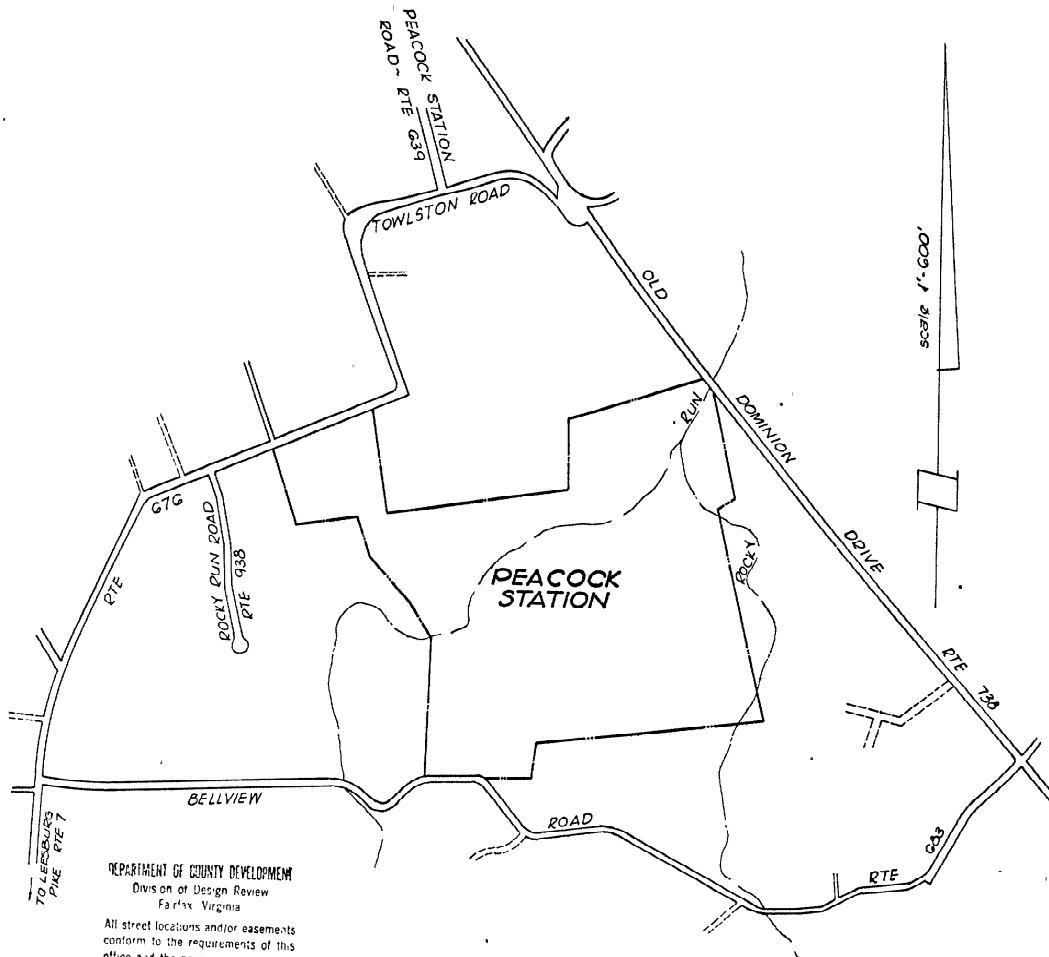
DEPARTMENT OF
Division of
Fairfax

All street locations
conform to the
office a street
of bonus paid

By *John R. Dalton*
JRD



4010 PAGE 254



DEPARTMENT OF COUNTY DEVELOPMENT
Division of Design Review
Fairfax, Virginia

All street locations and/or easements
conform to the requirements of this
office and the necessary agreements
or bonds have been received.

By *DPK* Date *3-20-74*
3/25/74

VICINITY MAP
Scale 1" = 600'

ALL IS NOT A
SECTION

VED
FAIRFAX
COUNTY
SECTION
Dolan
10/74

FINAL PLAT
RECOMMENDED FOR APPROVAL
FAIRFAX COUNTY
DIRECTOR OF COUNTY DEVELOPMENT
3/26/74 *Arthur L. L...*
DATE AGENT

APPROVED
FOR
BOARD OF SUPERVISORS
FAIRFAX COUNTY, VIRGINIA
3/27/74 *...*
DATE CHIEF ENGINEER

APPROVED IF PLAT IS NOT
CORRECTED OR REFILED WITHIN 90
DAYS AFTER DATE THEREOF.

3-18-74 *...*

PLAT PEACOCK STATION

Being a Subdivision of
PARCELS 'A' & 'B'
of the property of

RONALD W. TYDINGS & KENNON W. BRYAN, TRUSTEES

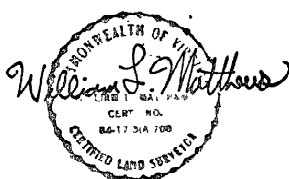
Dranesville District
Fairfax County, Virginia

Scale 1" = 100'

August 30, 1973

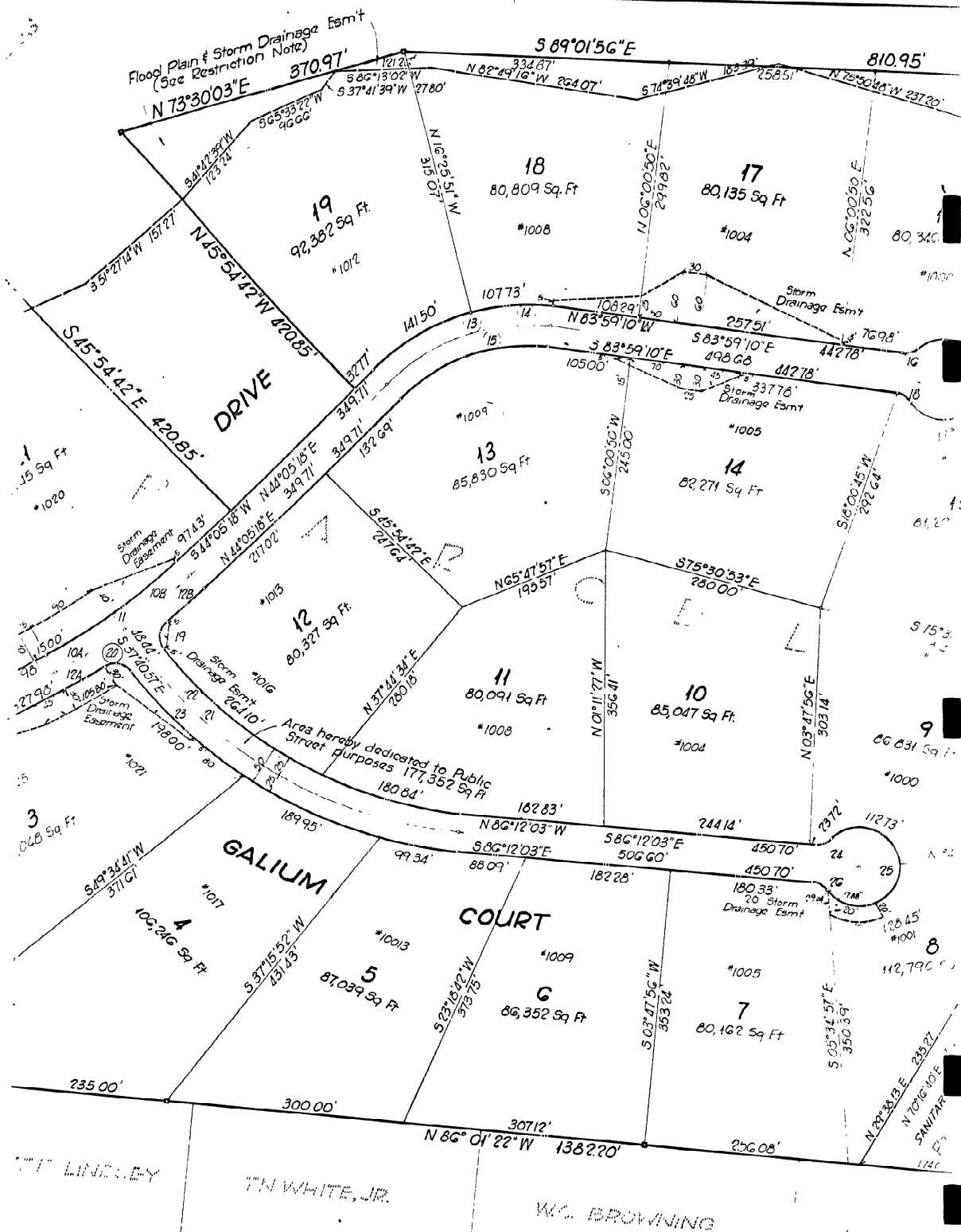
MATTHEWS & WHEATLEY

Civil Engineering - Land Planning - Land Surveying
4085 Chain Bridge Road, Fairfax, Virginia, (703) 591-4344



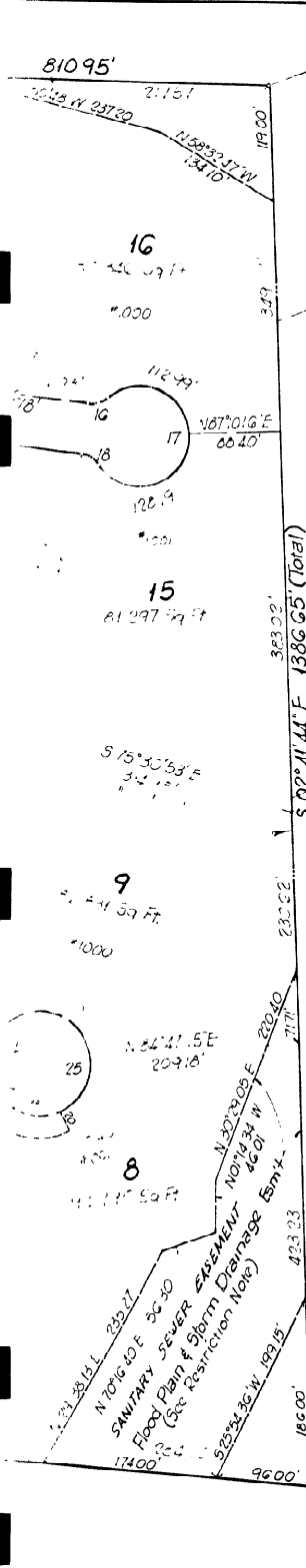


4010 PAGE 256



Note:
S. Covington, Jr., Assistant Fx. Co. Zoning Administrator, has hereby determined that lot 1 is an interior lot and should not be treated as a corner lot.

S. Covington, Jr.,
Assistant Fx. Co. Zoning Administrator



Notes:

- The property delineated on this plat is located on Fairfax County Assessment Map Nos 19-2 & 20-1, ((1)), Parcels 50 & 32, and is zoned RE-2 as of the date of its approval.

Flood Plain Restriction Note:

No use shall be made of nor any improvements be made in this easement which would in any way interfere with the natural drainage.

DEPARTMENT OF COUNTY DEVELOPMENT
Division of Design Review
Fairfax County, Virginia

All street layout, easements, and other improvements conform to the requirements of the Fairfax County Code, Chapter 22-1, and the Fairfax County Zoning Ordinance, Chapter 22-2.

APPROVED Date 3-20-74
Filed 3-25-74

FINAL PLAT	
RECOMMENDED FOR APPROVAL	DATE 3/21/74
FAIRFAX COUNTY	BY [Signature]
DIRECTOR OF COUNTY DEVELOPMENT	
APPROVED FOR	
BOARD OF SUPERVISORS	DATE 3/27/74
FAIRFAX COUNTY	BY [Signature]
APPROVED FOR RECORDING	
OFFICE OF THE CLERK OF COURTS	
DATE 3/27/74	

APPROVED
[Signature]
3/20/74

THIS APPROVAL IS NOT A
COMMITMENT TO THE
PUBLIC SAFETY CENTER.

PLAT PEACOCK STATION

Being a Subdivision of
PARCELS "A" & "B"
of the property of

RONALD W. TYDINGS & KENNON W. BRYAN, TRUSTEES
Dranesville District
Fairfax County, Virginia

Scale: 1" = 100'

August 30, 1973

MATTHEWS & WHEATLEY

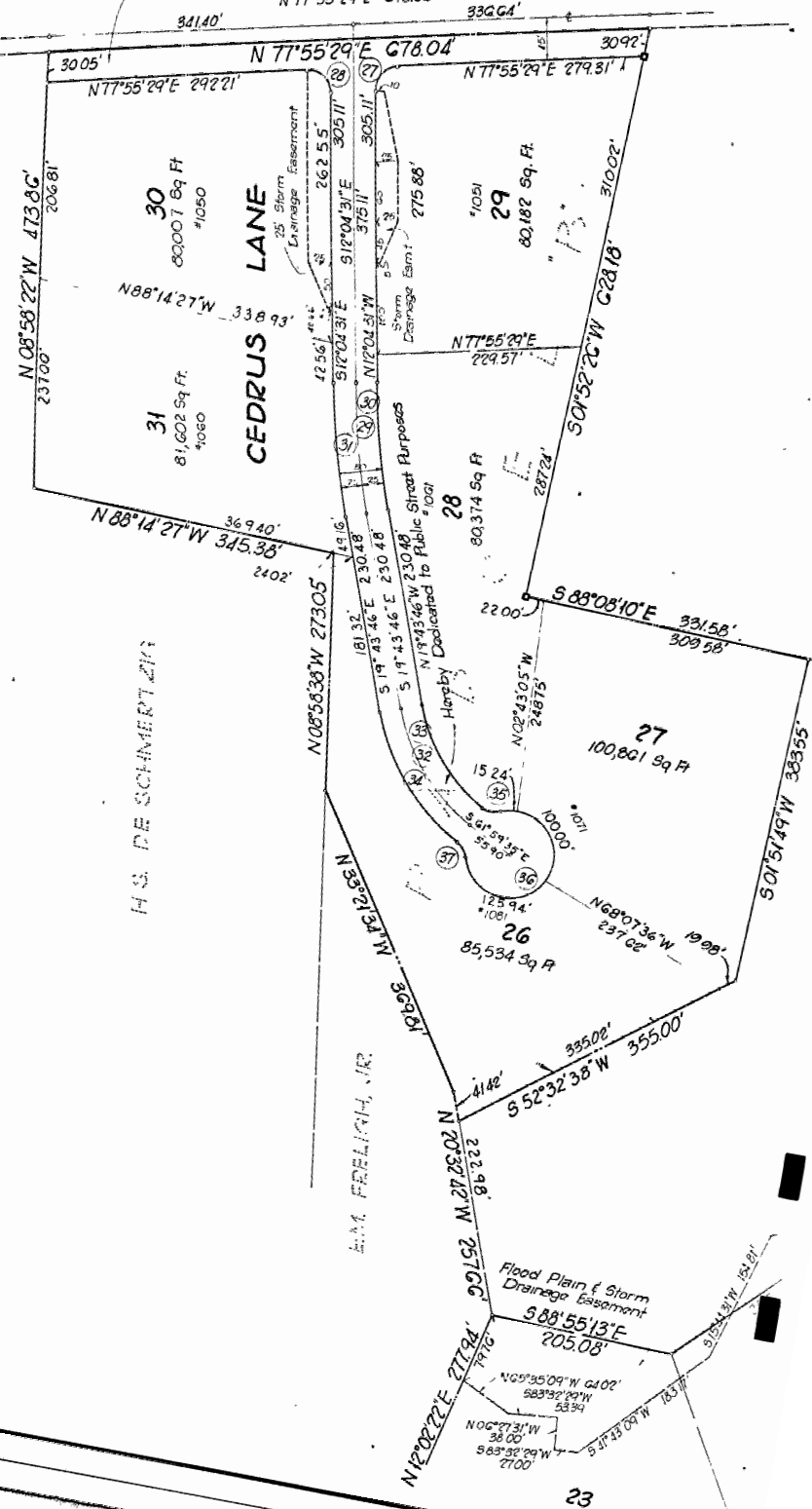
Civil Engineering - Land Planning - Land Surveying
4085 Chain Bridge Road, Fairfax, Virginia (703) 591-4344



Page 4010 PAGE 258

**TOWLSTON ROAD
STATE ROUTE 676
(VARIABLE R/W)**

Area hereby dedicated to Public street purposes - 71,021 Sq. Ft.
N 77°55'29"E 678.04'



No use shall be made of, nor any improvements be made in this easement which would in any way interfere with the natural drainage.

1 The property delineated on this plat is located on Fairfax County Assessment Map Nos. 19-2 & 20-1, ((1)), Parcels 50 & 32 and is zoned RE-2 as of the date of its approval.

THIS APPROVAL IS NOT A
COMMITMENT TO PROVIDE
PUBLIC SANITARY SEWER.

FINAL PLAT

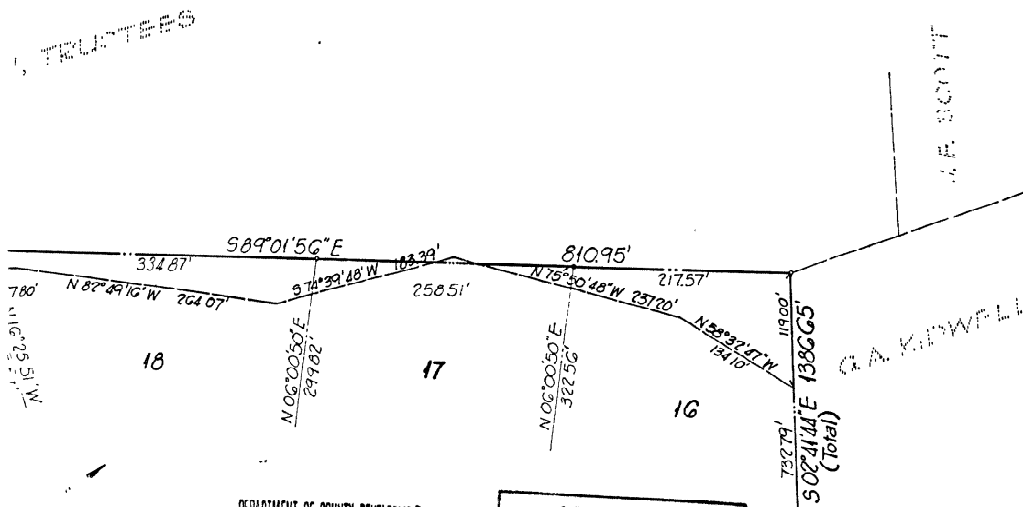
RECOMMENDED FOR APPROVAL
FULTON COUNTY
DIRECTOR OF COUNTY DEVELOPMENT

3/24/79 - BY *[Signature]* L. R. R.
DATE J. W. AUST

APPROVED
FOR
BOARD OF SUPERVISORS
FULTON COUNTY, VIRGINIA

3/21/79 - *[Signature]*
DATE J. W. AUST

APPROVAL VOID IF PLAT IS NOT
OFFERED FOR RECORD WITHIN 90
DAYS AFTER DATE OF DEED



By WJK Date 3-20-79
John 3-25-79

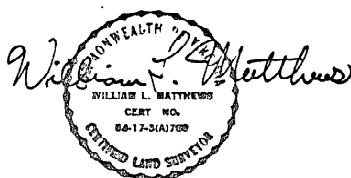
APPROVED
COUNTY OF HENRY
DIVISION OF GENERAL LAW
SANITARY SECTION
By J. R. Colton
Date 2/10/74

Being a Subdivision of
PARCELS "A" & "B"
of the property of

Dranesville District
Fairfax County, Virginia

August 30, 1973

Civil Engineering - Land Planning - Land Surveying
4085 Chain Bridge Road, Fairfax, Virginia, (703) 591-4344



SURVEYOR'S CERTIFICATE

I, William L. Matthews a duly certified Land Surveyor in the Commonwealth of Virginia do hereby certify that the land shown hereon is now in the name of Ronald W. Tydings and Kennon W. Bryan, Trustees, and was acquired by them from Beatrice K. McClintock, widow, Clive L. Duval, 2nd, and Susan B. Duval, his wife. Deed dated March 20, 1973, and recorded in Deed Book 3806 at page 391 among the Land Records of Fairfax County, Virginia. This plat prepared without the benefit of a Title Report.

I further certify that this division is completely within the boundary of the original tract and that all bearings shown hereon refer to the True Meridian.

Given under my hand this the 28th day of March, 1974.

Tydings & Bryan, Trustees, are
 Trustees for Dominion Joint Venture,
 a limited partnership.

William L. Matthews
 William L. Matthews
 Certified Land Surveyor #768

No:
 1

OWNER'S DEDICATION

Ronald W. Tydings and Kennon W. Bryan, Trustees, owners of the land shown hereon and described in the Surveyor's Certificate hereby adopts this plan of division and reserves the Flood Plain Easement and easements for the purpose of ingress and egress as shown hereon.

Responsibility is hereby accepted to furnish the certified engineer or surveyor with a Title Report.

Ronald W. Tydings, Trustee
 Ronald W. Tydings, Trustee

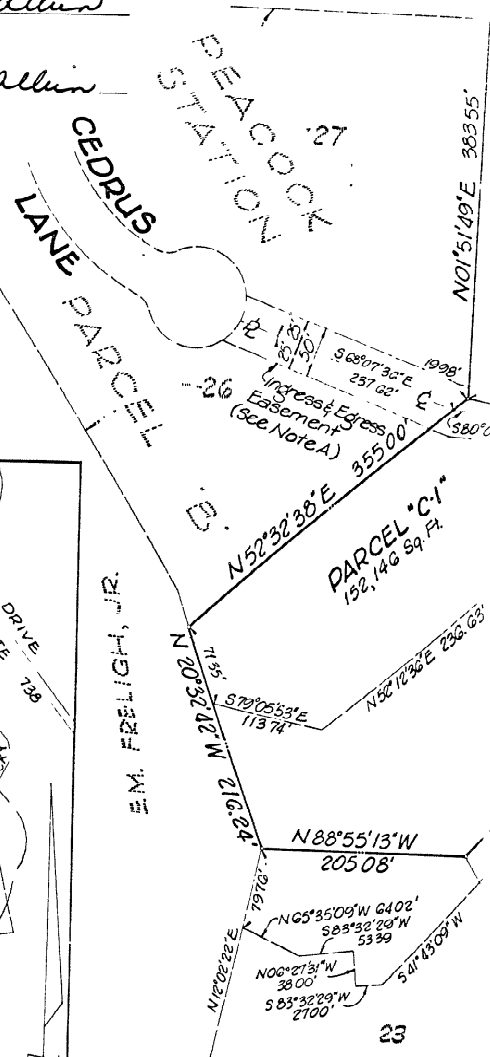
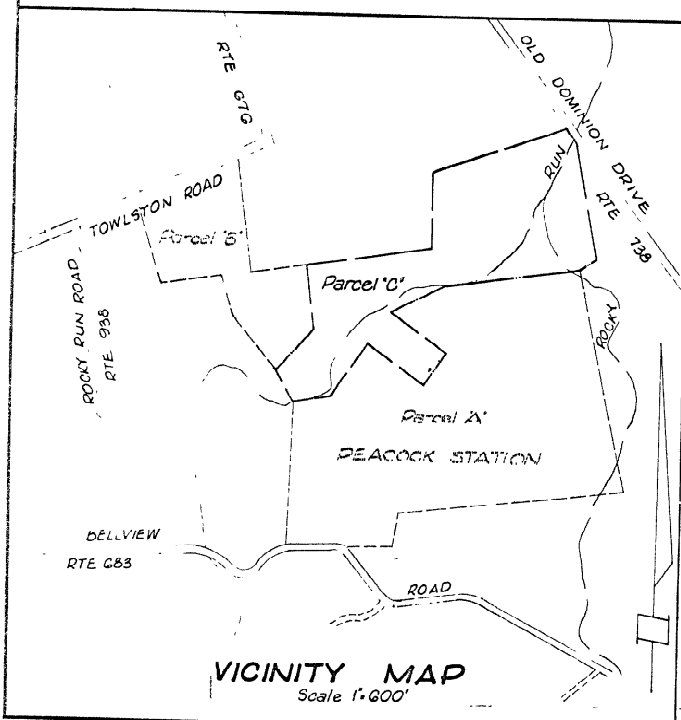
Suzanne Allin
 Witness

Kennon W. Bryan, Trustee
 Kennon W. Bryan, Trustee

Suzanne Allin
 Witness

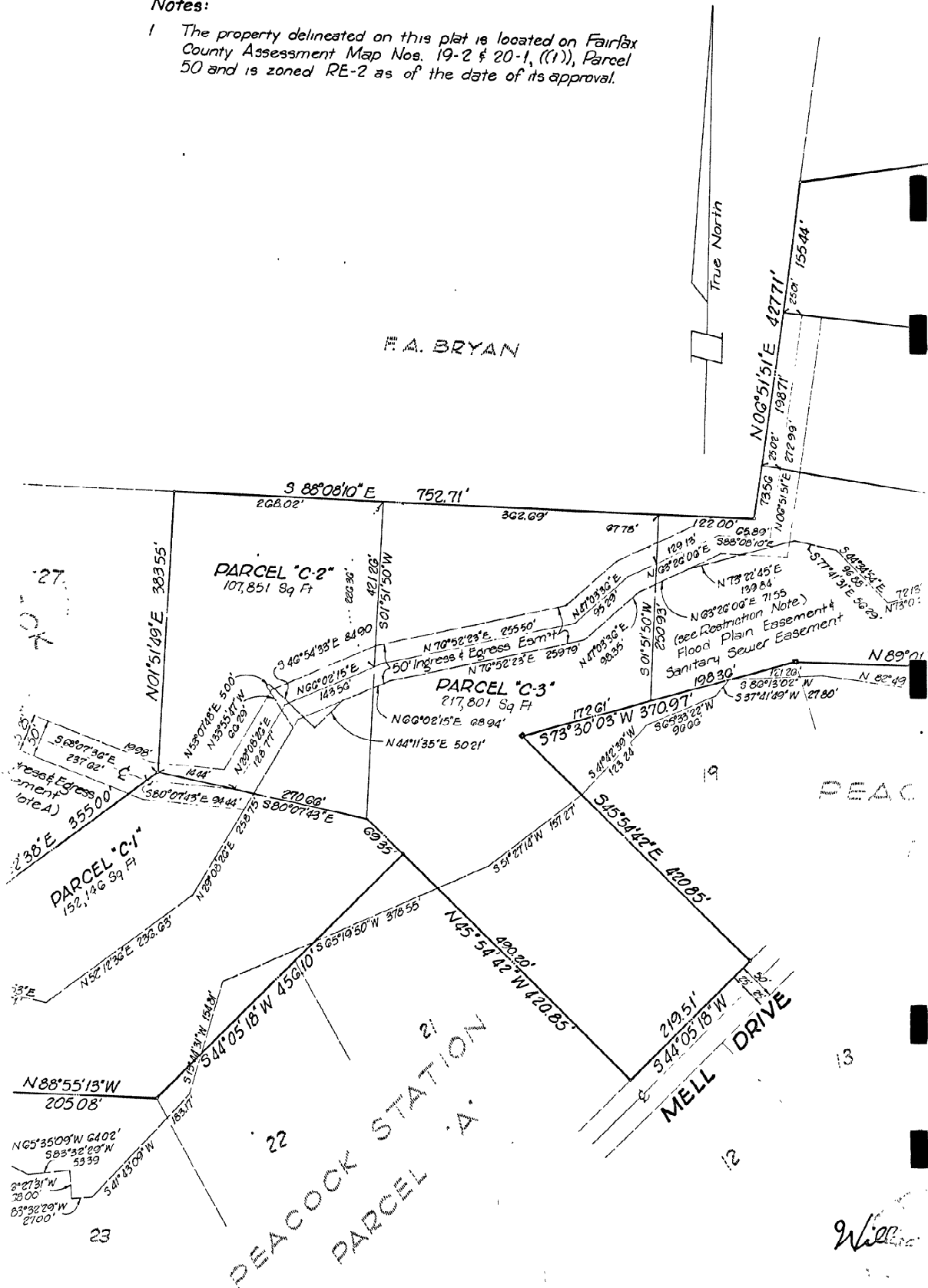
Note A:

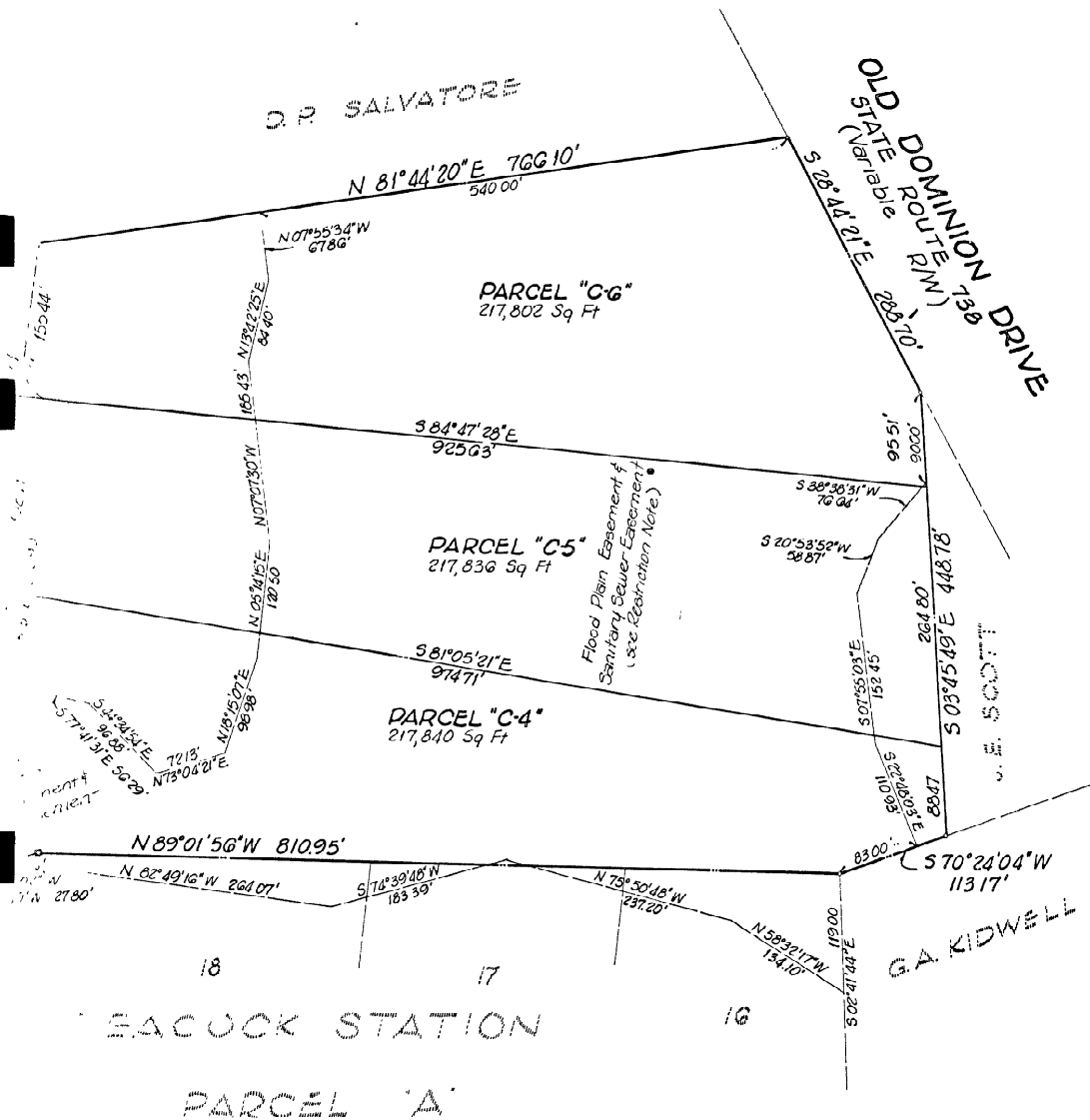
50' Ingress & Egress Easement
 hereby dedicated thru Lots 26 & 27
 Peacock Station for access to Parcels
 C-1, C-2, C-3, C-4, C-5 and C-6.



Notes:

- 1 The property delineated on this plat is located on Fairfax County Assessment Map Nos. 19-2 & 20-1, ((1)), Parcel 50 and is zoned RE-2 as of the date of its approval.



**Flood Plain Easement Note:**

No use shall be made of, nor any improvements be made in this easement which would in any interfere with the natural drainage.

TOTAL AREA OF THIS DIVISION
1,131,276 SQ.FT. OR 25.97052 AC.

PLAT
PEACOCK STATION

Being a Division of
PARCEL "C"
of the property of

RONALD W. TYDINGS & KENNON W. BRYAN, TRUSTEES

Dranesville District
Fairfax County, Virginia

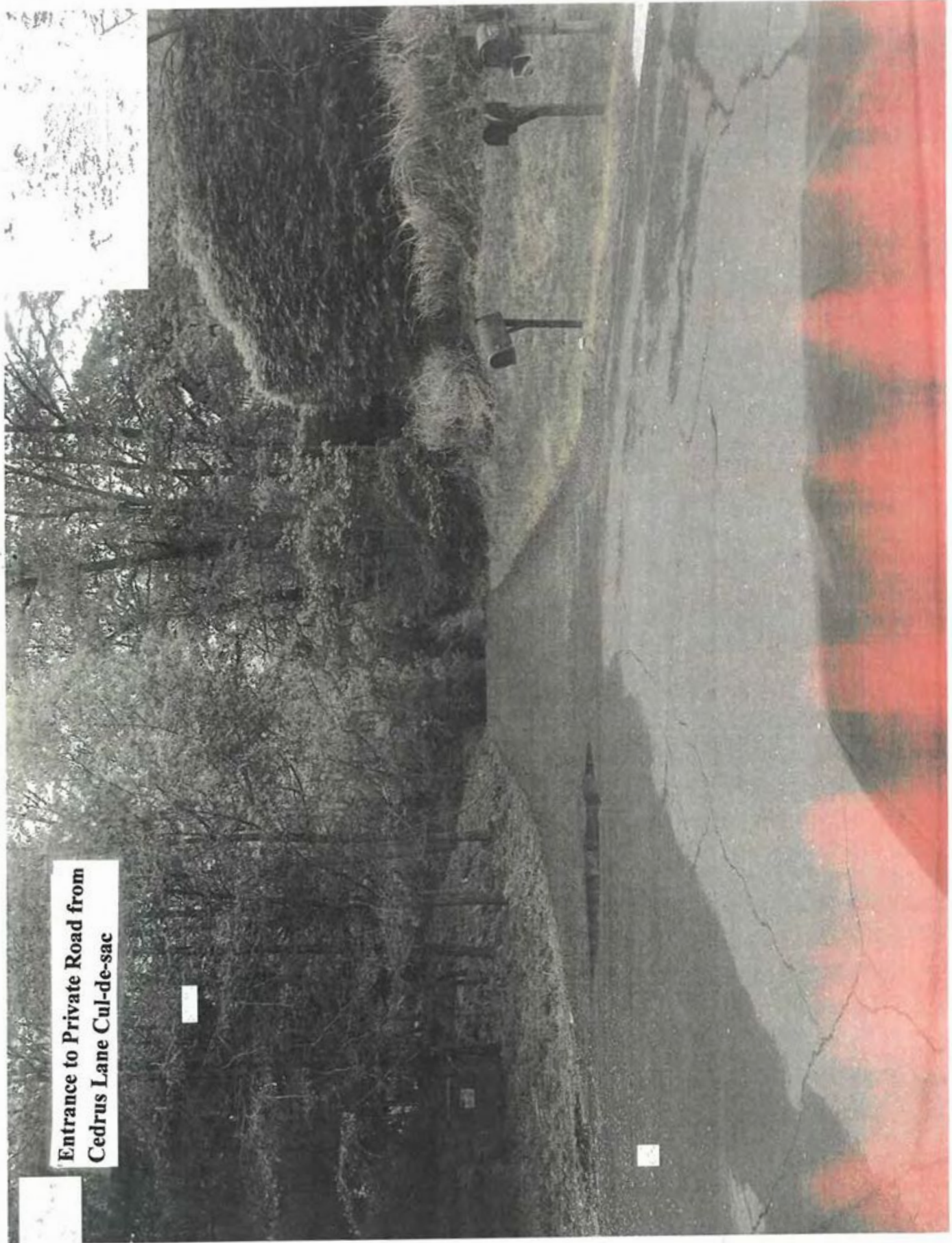
Scale 1" = 100'

March 27, 1974

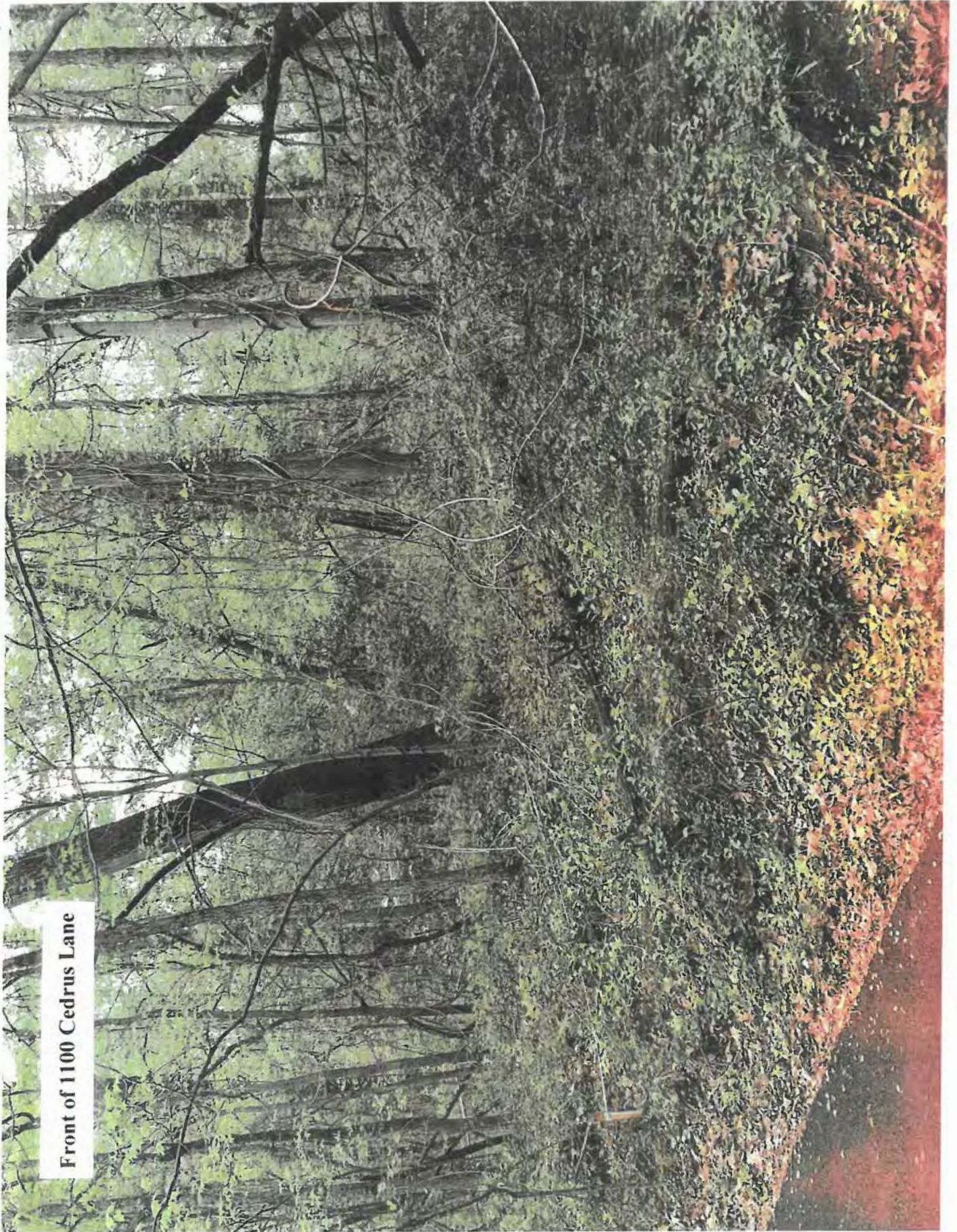
MATTHEWS & WHEATLEY

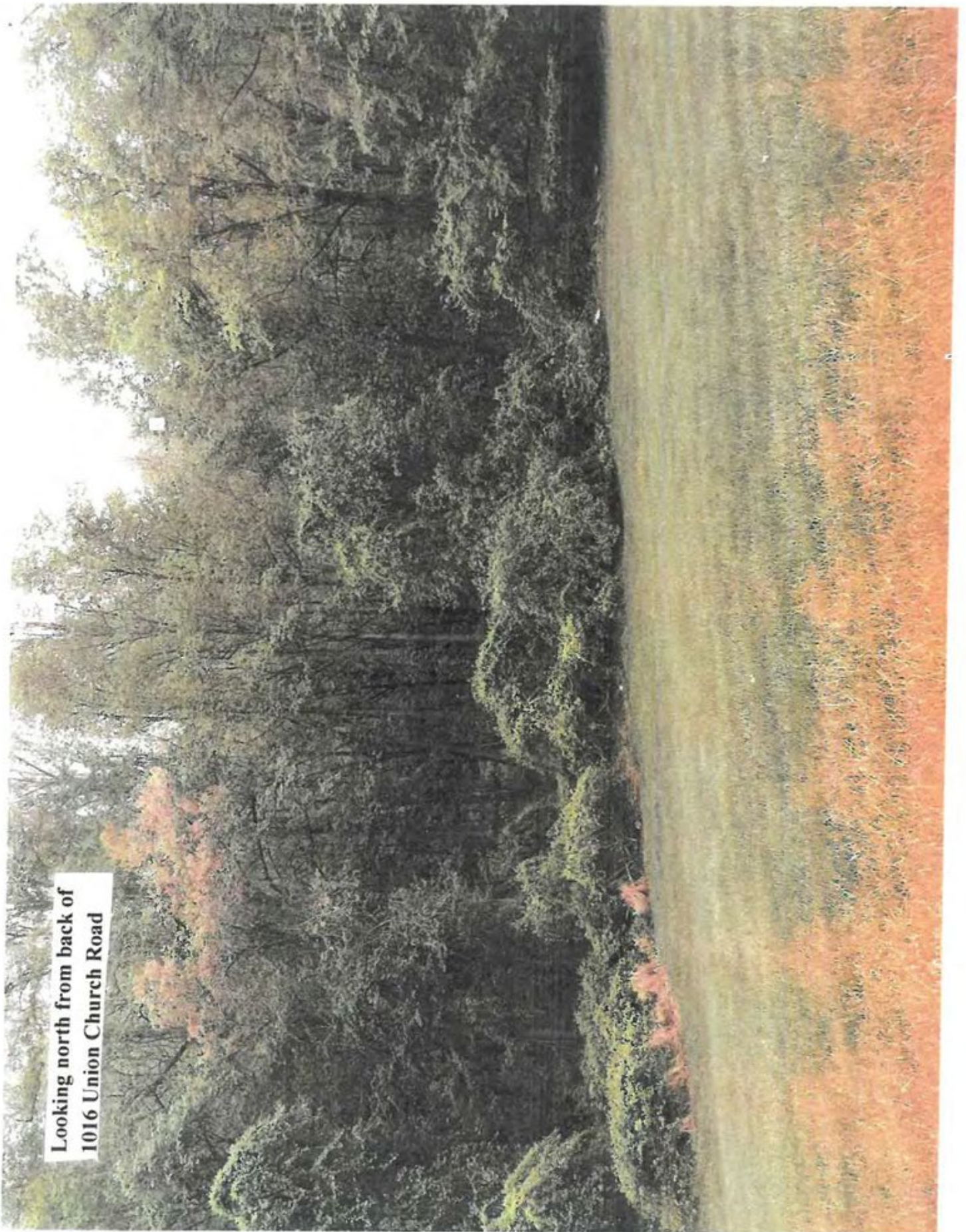
Civil Engineering Land Planning Land Surveying
4085 Chain Bridge Road, Fairfax, Virginia (703) 591-4344

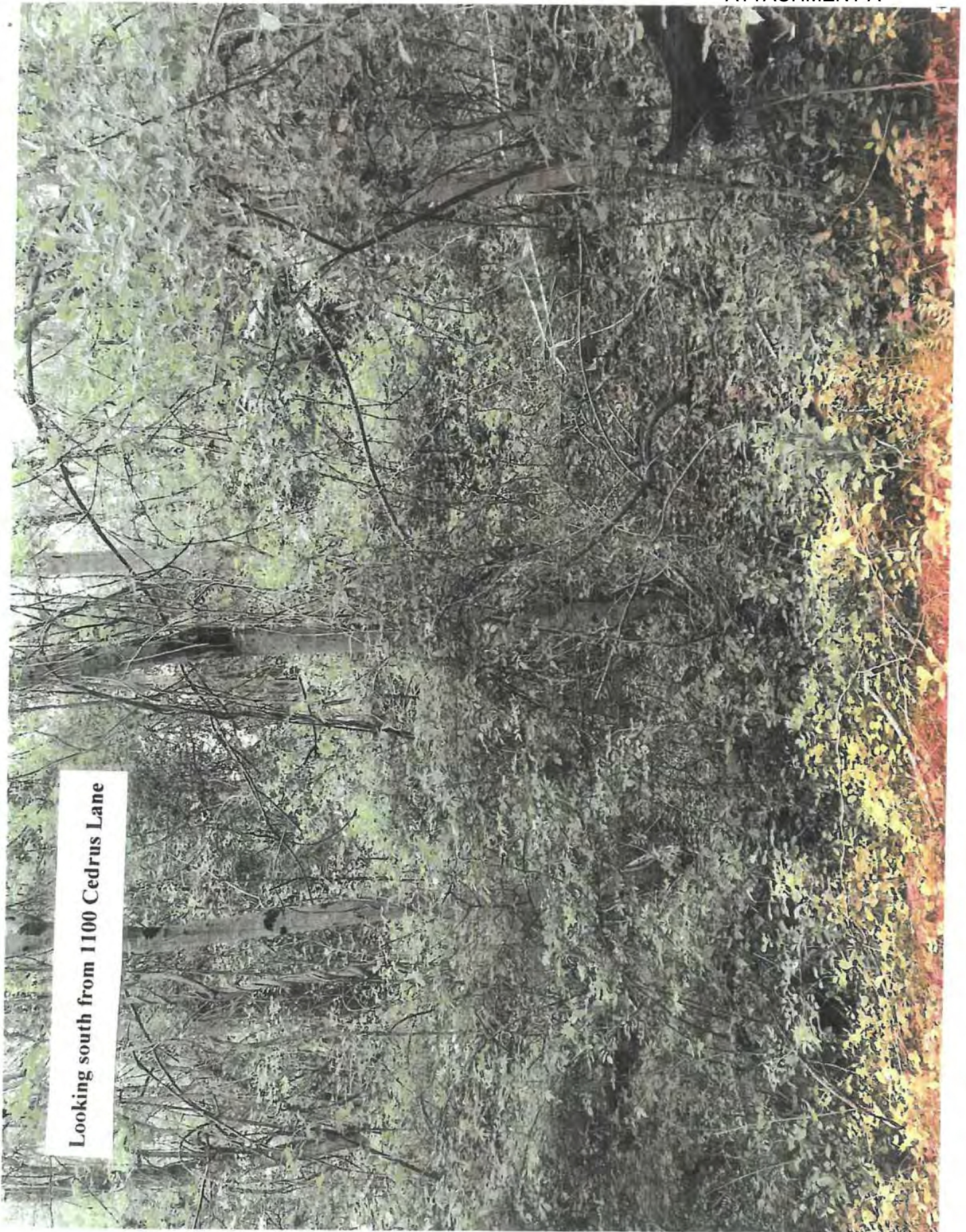




Entrance to Private Road from
Cedrus Lane Cul-de-sac



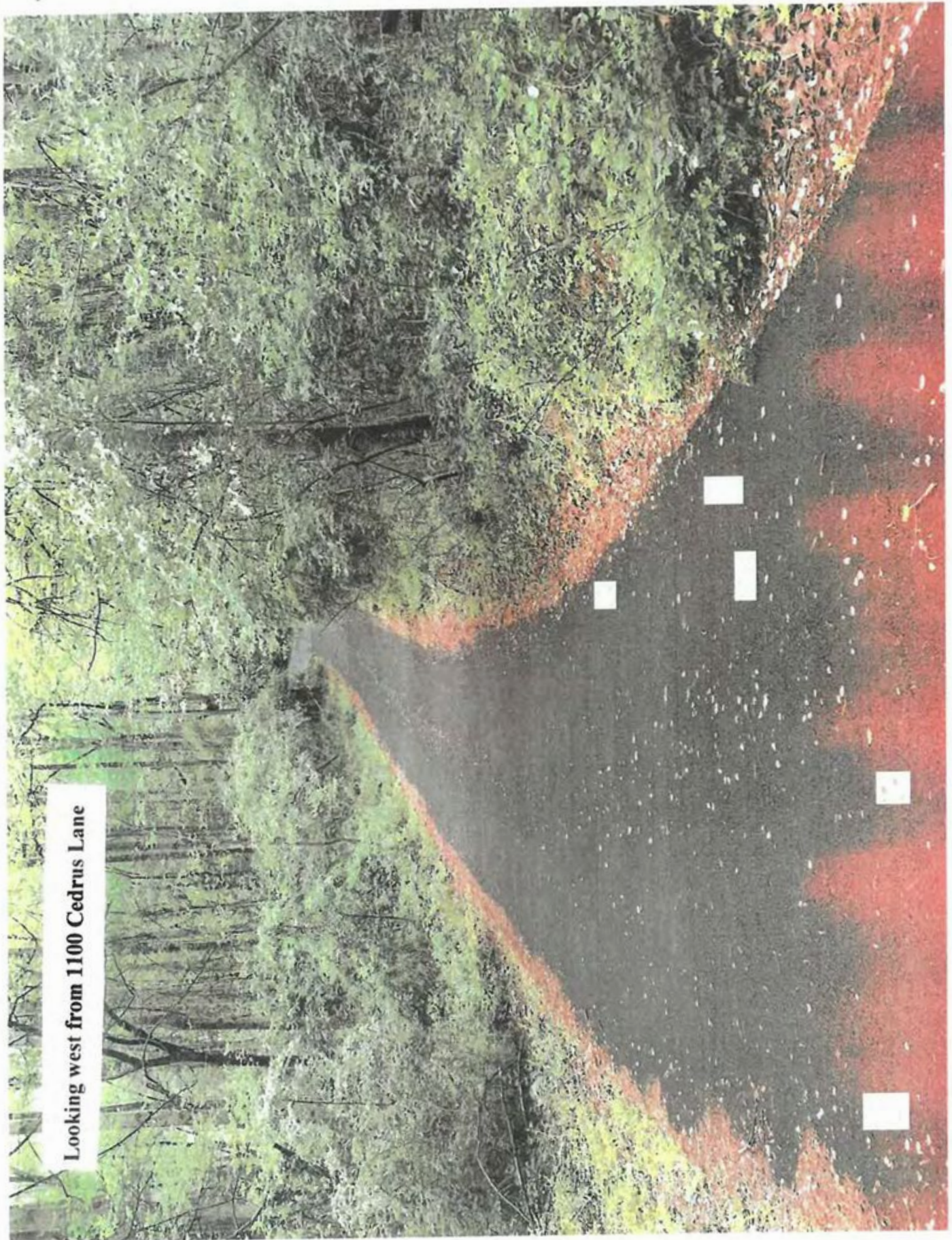




Looking south from 1100 Cedrus Lane

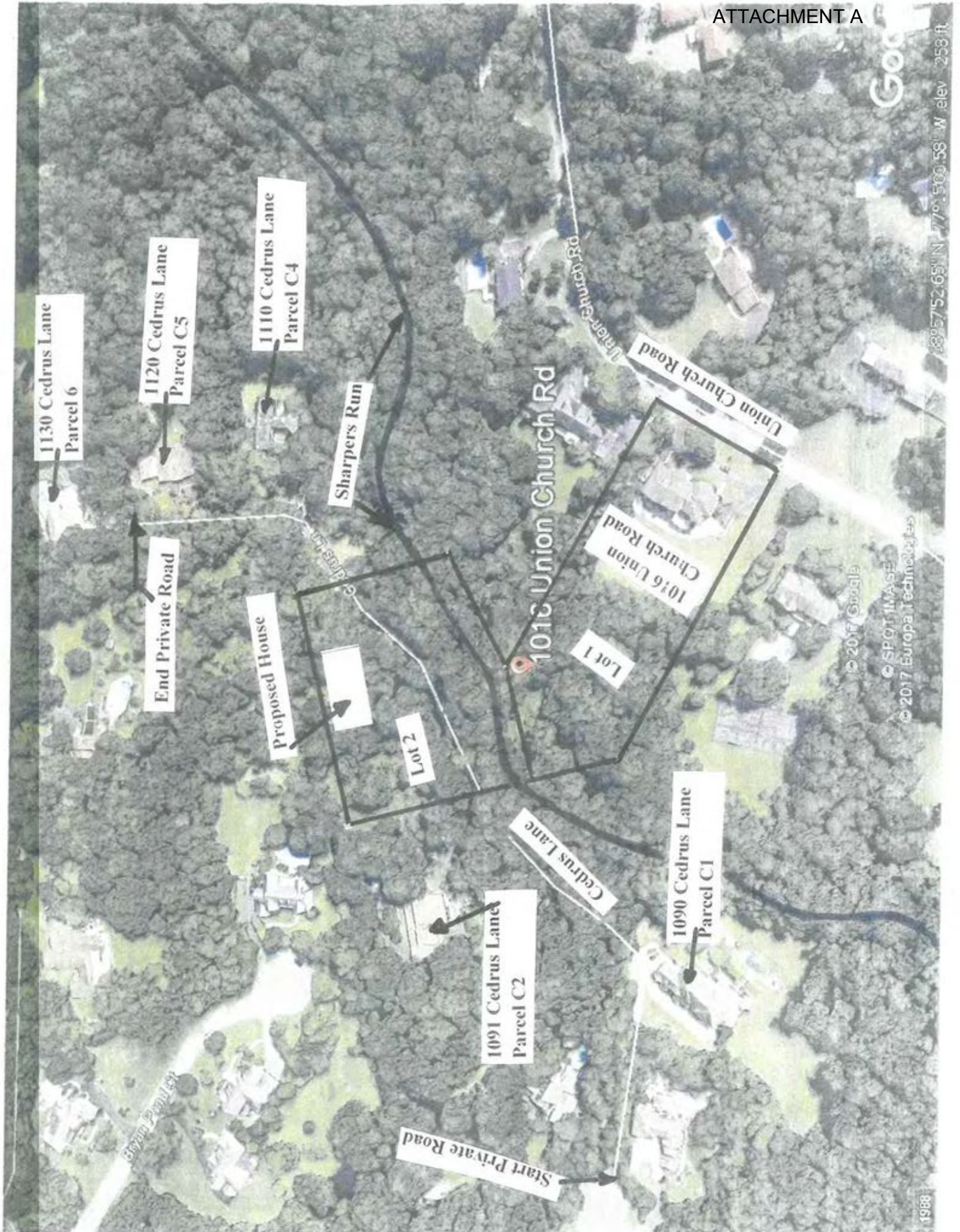


Looking east from 1100 Cedrus Lane



Looking west from 1100 Cedrus Lane

Sharper's Run
Looking from 1100 Cedrus Lane





2300 WILSON BOULEVARD
7TH FLOOR
ARLINGTON, VA 22201
PHONE 703.525.4000
FAX 703.525.2207

Mark M. Viani
Zachary G. Williams
Admitted: VA, DC, and MD
mviani@beankinney.com
zwilliams@beankinney.com

March 5, 2018

John A. Friedman, P.E.
Code Development and Compliance Division
Land Development Services
Department of Public Works and Environmental Services
12055 Government Center Parkway
Fairfax, Virginia 22035-5503

Re: 1016 Union Church Road (Tax Map # 0192 09 C3)
Application for Waiver of Public Street Frontage
Supplemental Justification for Waiver

Dear John:

On behalf of our clients, Inder J. Bhambri and Prabha K. Bhambri (the "Applicant"), please accept this letter as supplemental justification for the waiver that the Applicant is requesting in the above-referenced Application. As we discussed, the Bhambris seek to subdivide their property to create a second residential lot where their daughter and son-in-law can live, thereby allowing the family to live in close proximity.

Section 101-2-2 of the Subdivision Ordinance states that the Board of Supervisors may grant a waiver of the public street frontage requirement if the property involved meets the following requirements:

1. The requirements of the Subdivision Ordinance pose an unusual hardship not generally shared by other landowners, and
2. The waiver will result in a lot or lots that will be harmonious with and will not adversely affect neighboring properties.

As to requirement #2, the Applicant has provided sufficient information to satisfy this requirement. Furthermore, since filing the Application, the Applicant has been able to obtain written support and consent from all property owners on Cedrus Lane and from three neighbors on Union Church Road. We provided this updated information to you by e-mail on February 12, 2018. In addition, the Application was favorably received by the McLean Citizens Association at its meeting of February 27, 2018.



As to requirement #1, we understand that you are seeking additional justification regarding the unusual hardship posed on this property by the street frontage requirements. As we stated in our original statement of justification submitted with the Application, the requirements of the Subdivision Ordinance pose an unusual hardship for the Property given its orientation, Sharpers Run, and the RPA and private road that bisect the Property. As we noted, these geographical characteristics make it very difficult to subdivide the property with public street frontage on both lots.

In addition, to deny the waiver requested in this Application would result in an unreasonable restriction on development of the property. Neighboring residential properties are approximately 2-3 acres in size and are regularly shaped. By comparison, the subject property is 5 acres in size and very oddly shaped. The maximum density permitted in the R-E zoning district is 1 dwelling unit per 2 acres. Thus, absent the requested waiver, the Applicant's property will remain well under the permitted density and out of character with the surrounding properties in the neighborhood. By contrast, approval of the Application would result in two lots, which would be harmonious with nearby properties on Cedrus Lane and Union Church Road.

Furthermore, conversion of Cedrus Lane to a public road would require significant dedication from all of the five neighboring properties that use this private road for access. At this time, Cedrus Lane has an average width of 11 feet. Widening this road to comply with public road requirements would likely require width of 25 feet or more. Likewise, extension of the public portion of Cedrus Lane is not feasible because the extension would pass through lots 26A, 27A and parcels C-4 and C-2 of the Peacock Station Subdivision, which are properties owned by other neighbors. The owners on Cedrus Lane are not in favor of dedicating their properties to create a new public road.

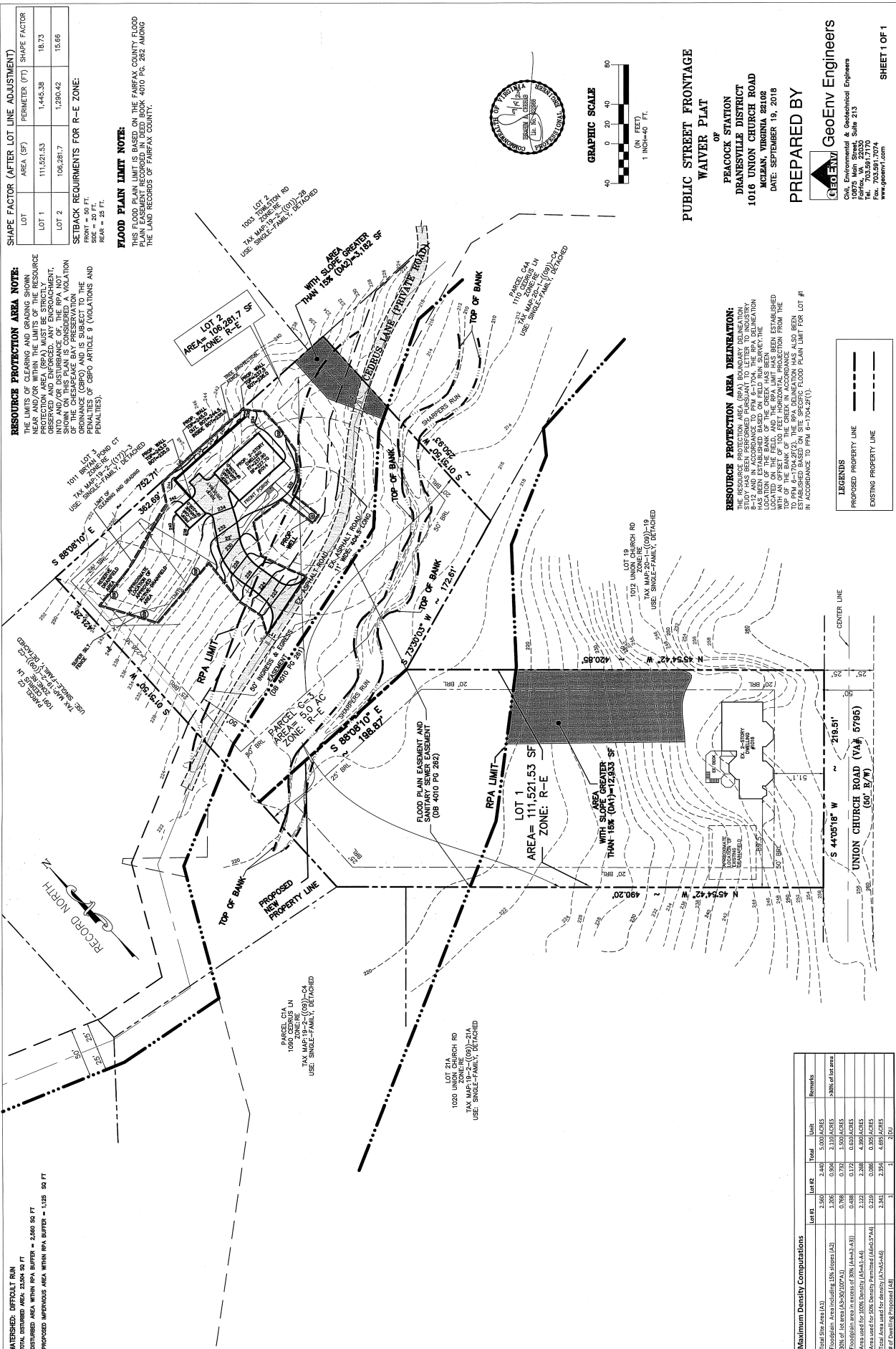
The Applicant's hardship justification above is supported by at least two other public street frontage waivers that have been granted by the Board of Supervisors in recent years (Waivers #4711-WPSF-001-1/#4711-WPSF-002-1, and Waiver #017372). In both of these applications, the applicants presented similar hardship justifications, i.e., (1) that the unsubdivided properties were well under the maximum density permitted and oversized compared to the density of neighboring properties; and (2) widening of the private road or extension of the public road would not be feasible given these options would require significant impacts to neighboring properties.

We hope this information is helpful and responsive to your needs. Please let us know if you would like additional information or documentation related to this Application. We look forward to continuing to work together. Please let us know when the hearings before the Planning Commission and Board are ready to be scheduled.

Sincerely,

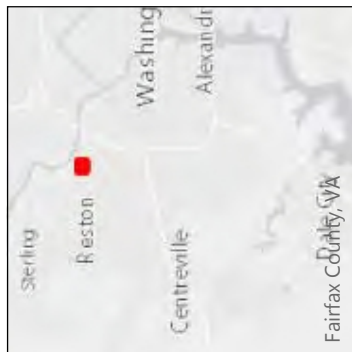
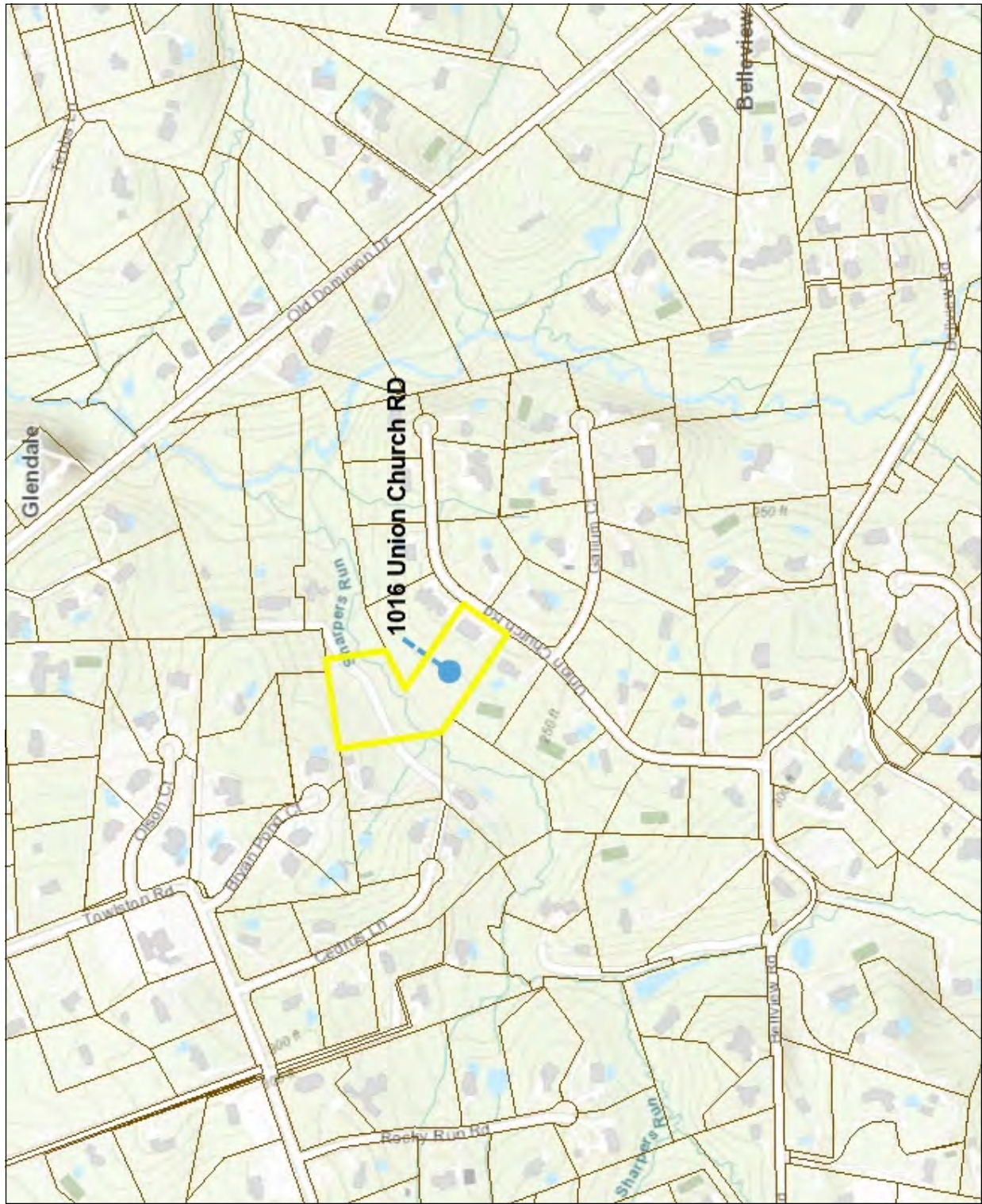
A handwritten signature in black ink, appearing to read 'Mark M. Viani', enclosed within a large, loopy oval shape.

Mark M. Viani





Vicinity Map - 1016 Union Church Road



Legend

Parcels



Fairfax County Border



ATTACHMENT D

Notes:

This map is intended for reference purposes only. Fairfax County does not provide any guarantee of the accuracy or completeness regarding the map information.

0.6 Miles

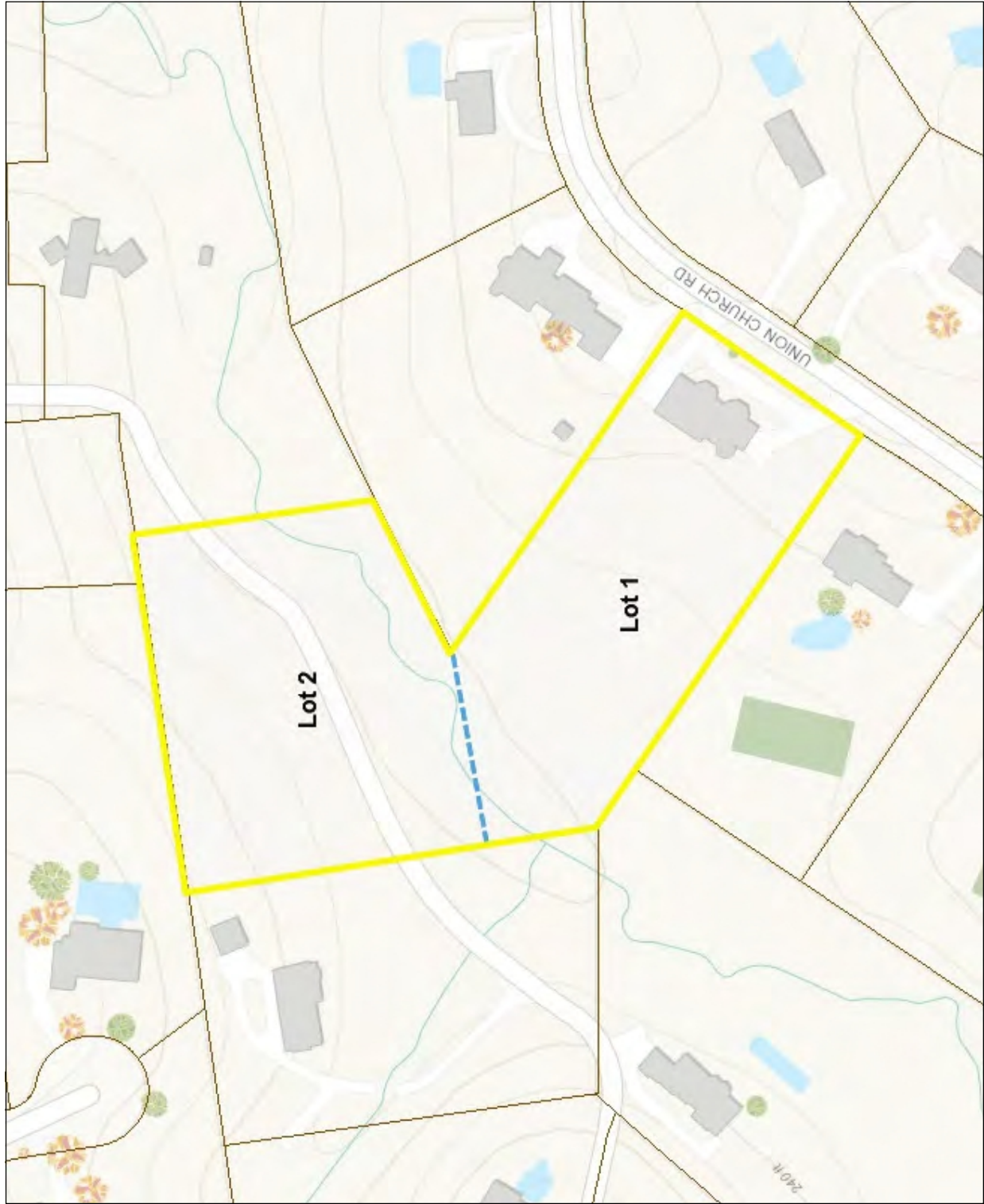
0.28

0

Map produced: 7/11/2018



Proposed Subdivision 1016 Union Church Road

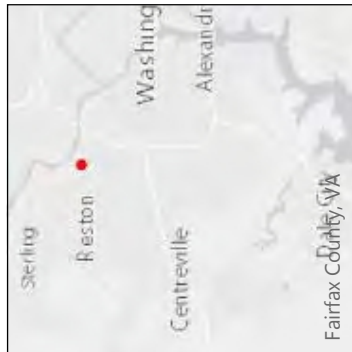


0

0.07

0.1 Miles

This map is intended for reference purposes only. Fairfax County does not provide any guarantee of the accuracy or completeness regarding the map information.



Legend

Parcels

Fairfax County Border

ATTACHMENT E

Notes:

TM: 19-2 (09) C3
Dranesville District

Map produced: 7/11/2018

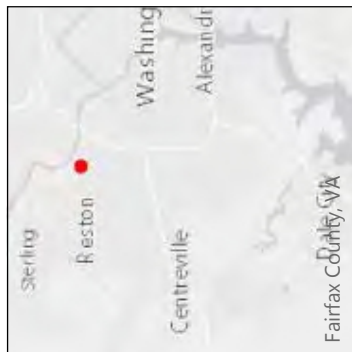


Peacock Station Large Lot Subdivision 1974



This map is intended for reference purposes only. Fairfax County does not provide any guarantee of the accuracy or completeness regarding the map information.

0 0.14 0.3 Miles



Legend

Parcels

Fairfax County Border

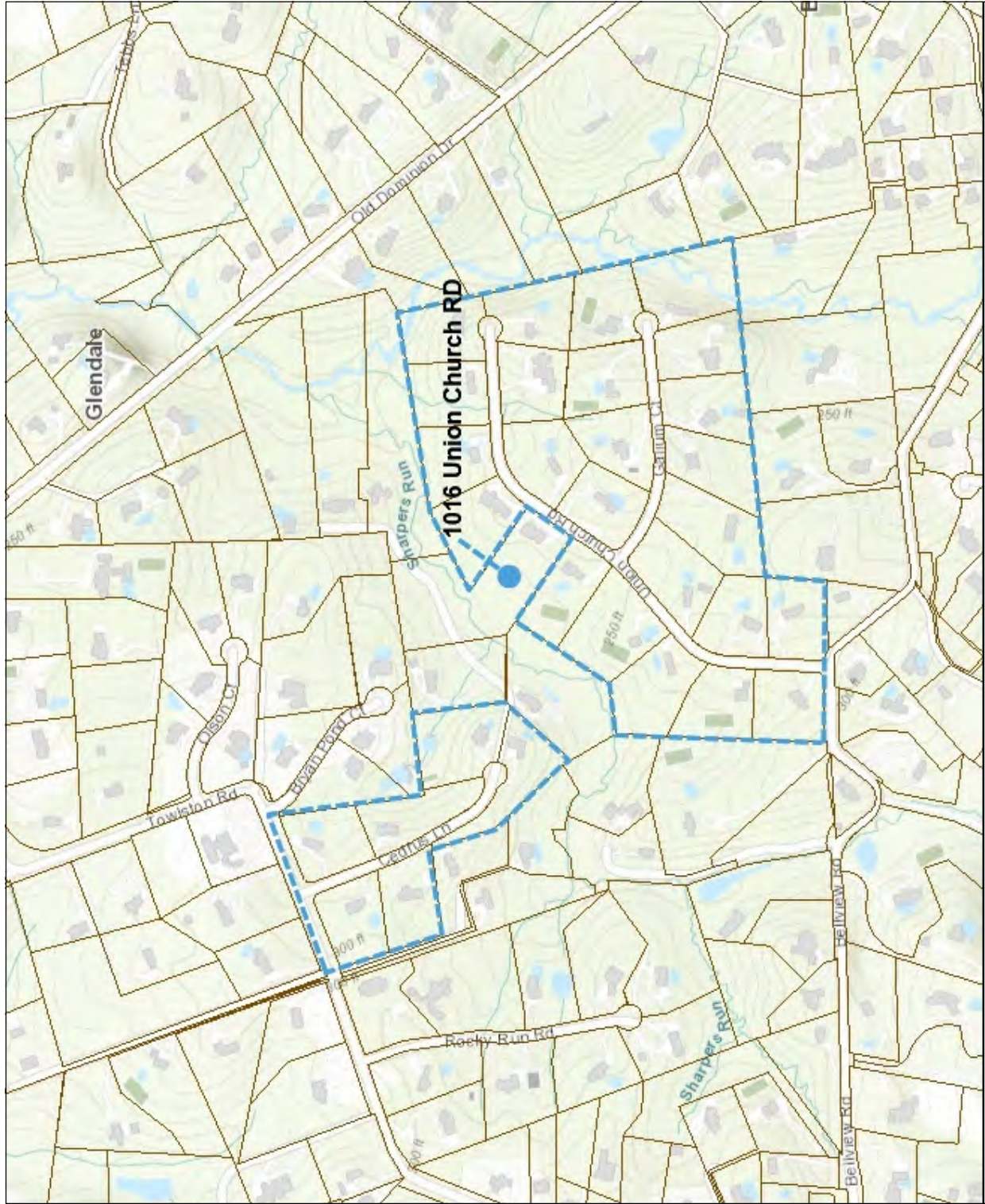
ATTACHMENT F

Notes:

Map produced: 7/11/2018

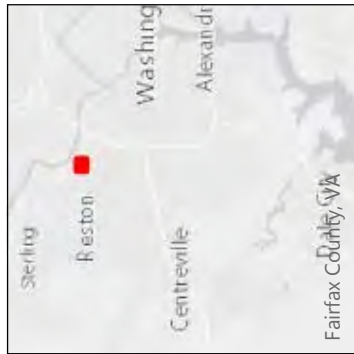


Peacock Station Conventional Subdivision 1974



This map is intended for reference purposes only. Fairfax County does not provide any guarantee of the accuracy or completeness regarding the map information.

0 0.28 0.6 Miles



Legend

- Parcels
- Fairfax County Border

ATTACHMENT G

Notes:

Map produced: 7/11/2018



COMMONWEALTH of VIRGINIA

IN COOPERATION WITH THE
STATE DEPARTMENT OF HEALTH
FAX NO. 278-8157
TDD 591-6435

Fairfax County Health Department
DIVISION OF ENVIRONMENTAL HEALTH
ENVIRONMENTAL SERVICES SECTION
10777 Main Street, Suite 102B
Fairfax, Virginia 22030

PHONE
246-2201

February 6, 1991

I.J. Bhambri
1016 Union Church Road
McLean, VA 22102

RE: Soil Evaluation for Subsurface Sewage Disposal at Peacock Station Subdivision,
TM: 19-2-009-C3A

Dear Mr. Bhambri:

Soil percolation tests and other soil studies on the above referenced lot were satisfactory with a rate of 15 at 48 inch depth. Issuance of a Sewage Disposal System Construction Permit is subject to the following requirements:

1. Sufficient land area available in the approved area for the required individual sewage disposal system.
2. An approved reserve area equal to 50% of the area required for the initial system.
3. Dimensional plot plan showing the house location and all required information.
4. Review and approval of the building permit application.
5. Any grading or physical alterations of the property may invalidate the approval for an individual sewage disposal system.
6. Where public water is not available, approval is subject to proper location of a well in accordance with applicable State and County Regulations.
7. Final (record) plat must be submitted (Mylar corrected and 4 copies).

Due to the variations in soil, in some instances it may be necessary to reappraise a particular lot.

If further information is desired, please let us know.

Very truly yours,

DAH cy

Dennis A. Hill, R.E.H.S.,
Program Manager

DAH:COJ:hr

ENCL: Record Plat

4A.FML



ANDREW P. DUNN
LAND SURVEYING - PLANNING
P.O. BOX 1279
HERNDON, VIRGINIA 22070
703-457-1166

RECEIVED PROSECUTOR GENERAL
OF THE DISTRICT OF COLUMBIA
JAN 21 1963
U.S. DEPT. OF JUSTICE
WASHINGTON, D.C. 20535

OFFICE OF THE ATTORNEY GENERAL
STATE OF CALIFORNIA
SACRAMENTO, CALIFORNIA

2-7-91
DATE

CO Jones

LEGAL OFFICIAL

APPROVED SUBJECT TO ANOTHER SIGNATURE
 UNITED STATES HEALTH SERVICE
 HEALTH COUNTY HEALTH SERVICE
 LIMITS 50% PAT
 48% PAT
 60% PAT
 OF
 27-41
 DATE

HEALTH DEPARTMENT COPY

UNION CHURCH ROAD
ROUTE # 5795
B.E.P.D.
1/15/95

PEACOCK STATION 21A

PROPOSED
PARCEL C3-A

PROPOSED
PARCEL C3-B
111 523676

PANGEL 01

NOTES:

- 1) TAX MAP REFERENCE: 17-2 (91) PARCEL C-3, ZONED R-E
- 2) PROPERTY INFORMATION FROM THE RECORDS
- 3) TOPOGRAPHY BY OTHERS

○ = CERTIFIED PROFILE HAVE LOCATIONS
● = CERTIFIED SEXC HAVE LOCATIONS

COMMONWEALTH OF VIRGINIA
ANDREW P. CUNEO
NO. 1072-B
CERTIFIED CORRECT
LAND SURVEYOR

We, the undersigned, are neighbors of Mr. & Mrs. Inder J. & Prabha Bhambri, 1016 Union Church Road, McLean, VA (Tax map: 0192-09-C3) and it is our understanding that they plan to subdivide their property for the purpose of gift lot for their daughter. We support the possible subdivision of their property *under the current zoning for the property.* TBM

William Haer
1090 CEDRUS LANE
McLean VA 22102

JERRY MANN
1091 CEDARS LN
MCLEAN VA 22102

DREW & SHECHINAH LADNER
1110 CEDRUS LANE
MCLEAN, VA 22102

KIRIT & JYOTI ANJARIA
1120 CEDRUS LN
MCLEAN VA 22102

Kirit Anjari

Cindy Zhang & Jianyi Lin
1130 Cedrus Ln
McLean. VA 22102

[Signature]

ATTACHMENT I

We, the undersigned, are neighbors of Dr. & Mrs. Inder J. Bhambri, 1016 Union Church Road, McLean, VA (Tax map: 0192-09-C3) and it is our understanding that they plan to give part of their property as gift lot to their daughter.. We endorse possible subdivision of their property.

Rose Mortenson

1081 CEDRUS LN

McLEAN VA 22102



Taesuk YUN

1061 CEDRUS LANE

McLean VA 22102

(4703 - 898 - 4821

(6703 - 258 - 3090

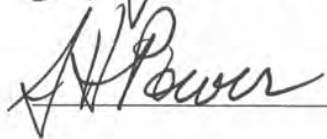
Edward A. Caine

Susan H. Power

1011 Towiston Rd.

McLean VA 22102





TOM & TREACY KRISTINX2

1060 CEDRUS LN

McLean VA 22102



Lisa Lubick. Daniel + Daniel Daniel

1071 Cedrus Ln

McLean VA 22102



We, the undersigned, are neighbors of Mr. & Mrs. Inder J. & Prabha Bhambri, 1016 Union Church Road, McLean, VA (Tax map: 0192-09-C3) and it is our understanding that they plan to subdivide their property for the purpose of gift lot for their daughter. We support the possible subdivision of their property.

LILLIAN GAVRILOVICH

1009 UNION CHURCH RD.

McLEAN, VA 22102

Lillian Gavrilovich

NAN DING

1012 UNION CHURCH ROAD

McLEAN, VA 22102

Nan Ding

YEN SHU

1020 Union Church Rd.

McLean, VA 22102

Yen Shu



County of Fairfax, Virginia

MEMORANDUM

DATE: August 11, 2017

TO: Bruce McGranahan, Director
Site Development & Inspections Division
Land Development Services

FROM: Jeff Hermann, Chief *JCH*
Site Analysis Section
Department of Transportation

FILE: Waiver #1311-WPSF-001-1

SUBJECT: Public Street Frontage Waiver

REFERENCE: 1016 Union Church Road, McLean, VA
Land Identification Map: 19-2 ((9)) C3

This department has reviewed the proposed waiver of public street frontage. After reviewing the background and context of this waiver we recommend granting this waiver subject to the caveat below.

The applicant has asserted that the other users of Cedrus Lane, the private street serving the new lot, approve of the addition of the new lot to the use of and maintenance responsibility for Cedrus Lane. Our recommendation for approval is conditioned on this assertion being supported with evidence.

JCH/ds

Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 22033-2895
Phone: (703) 877-5600 TTY: 711
Fax: (703) 877-5723
www.fairfaxcounty.gov/fcdot





County of Fairfax, Virginia

MEMORANDUM

DATE: September 4, 2018

TO: John Friedman, Land Development Services

FROM: Erin Haley, Planning Division, Department of Planning and Zoning *EHL*

SUBJECT: Public Street Frontage Waiver 1131-WVPSF-001-1
 1016 Union Church Rd.
 Peacock Station, Parcel C3
 Tax Map Ref: 19-2 ((9)) C3
 Zoning District: R-E
 Comprehensive Plan Map: .2-.5 DU/AC
 Magisterial District: Dranesville

This memorandum, prepared by Erin Haley, includes citations from the Comprehensive Plan that provide guidance for the evaluation of the Public Street Frontage Waiver Plat dated July 14, 2017. The extent to which the proposed use, intensity and development plan are consistent with the land use guidance contained in the Comprehensive Plan, is noted. Possible solutions to remedy identified issues are suggested. Other solutions may be acceptable, provided that they achieve the desired degree of mitigation and are also compatible with Plan policies.

DESCRIPTION OF THE APPLICATION

This is in response to your request for determinations of planning and zoning compliance regarding the above-referenced Public Street Frontage Waiver, which has been requested to facilitate the subdivision of the subject 5-acre parcel into 2 lots and the subsequent construction of a new single-family detached dwelling. The lot is currently developed with an existing dwelling that takes access from Union Church Road. A private road, which is an extension of Cedrus Lane, runs across the rear portion of the property and the property is also bisected by Sharpers Run which is a perennial stream. Most of the lot remains undeveloped and is covered by mature vegetation and is encumbered by Resource Protection Area (RPA), steep slopes, and flood plain. The proposed second dwelling would be accessed by the private Cedrus Lane and would have no public street frontage. A proposed well and a portion of the new driveway would extend into the RPA while the rest of the disturbance would occur outside of the RPA limits in the northern corner of the lot.

Excellence * Innovation * Stewardship
 Integrity * Teamwork * Public Service

Department of Planning and Zoning
 Planning Division
 12055 Government Center Parkway, Suite 730
 Fairfax, Virginia 22035-5509
 Phone 703-324-1380
 Fax 703-653-9447
www.fairfaxcounty.gov/dpz/



John Friedman
September 4, 2018
Page 2

ANALYSIS

The subject property is located within the Spring Hill Sector of the McLean Planning District. The Plan states that the subject property and the surrounding properties be developed with residential uses at .2-.5 du/ac. The existing single-family dwelling and proposed single-family dwelling are both uses that are allowed in this zoning district with approval of subdivision of the lot. The Plan contains language specific to this sector that recommends that low density residential development should be continued in this sector with large-lot (2 acres) or estate (5 acres or more) development. The proposal would create two lots that are each over 2 acres in size, which is consistent with the Plan recommendation.

The Comprehensive Plan also contains recommendations about future development and environmental protection in the Policy Plan and provides guidance and residential design criteria by which all new residential development should be evaluated. The criteria includes recommendations for site design, layout, open space, and neighborhood context, among other categories. The property is characterized by steep slopes, RPA, flood plain, and mature vegetation. The proposed development would be located in an area of steep slopes adjacent to flood plain, include approximately 2,560 square feet of disturbance in the RPA, and would not preserve existing site features or the existing tree canopy in the areas of disturbance. The Policy Plan calls for the identification, protection, and restoration of these areas as Environmental Quality Corridor (EQC) in order to provide protection to the county's stream valleys. Clearing and grading in this area could create impacts on the existing Sharpers Run stream valley that runs through the middle of the property. The proposed design would also call for a retaining wall approximately 10 feet in height to be located along much of the rear lot line of and directly adjacent to the residential property to the north. This retaining wall would create visual impacts and would constrict the rear yard as well as create the need for future maintenance of the wall. The house is also proposed to be located right at the required rear yard setback which would not provide much room for a usable rear yard and would constrict the future addition of accessory structures such as patios or play equipment, or for additions to the house itself.

The applicant should consider a design that:

- conforms to, and/or retains more of, the existing topography onsite as much as possible;
- limits site disturbance;
- and provides an adequate, usable rear yard for the future house.

Limiting the site disturbance would also lessen impacts on the RPA and Sharpers Run.

The Comprehensive Plan is one of the bases for the evaluation of this request. The assessment of the proposal for conformity with the recommendations of the Comprehensive Plan is guided by the following citations from the Plan:

COMPREHENSIVE PLAN CITATIONS:

The Comprehensive Plan Areawide Recommendations for the McLean Planning District may be accessed at:

John Friedman
 September 4, 2018
 Page 3

<https://www.fairfaxcounty.gov/planning-zoning/sites/planning-zoning/files/assets/compplan/area2/mclean.pdf>

FAIRFAX COUNTY COMPREHENSIVE PLAN, 2017 Edition, AREA II, McLean Planning District, Amended through 3-14-2017, M6-Spring Hill Community Planning Sector, Page 122.

Land Use Recommendations

"The Spring Hill sector is largely developed as stable residential neighborhoods. Infill development in this sector should be of a compatible use, type and intensity in accordance with the guidance provided by the Policy Plan under Land Use Objectives 8 and 14 ...

1. *Low density residential development should be continued in this sector. Large-lot (2 acres) or estate (5 acres or more) development in the western portions of the sector and extending into the Upper Potomac Planning District is partly in the Difficult Run headwaters and is recommended as a means of achieving the low density development sought in the Difficult Run Environmental Quality Corridor..."*

Fairfax County Comprehensive Plan, 2017 Edition, Area II, McLean Planning District, Amended through 2-20-2018, Overview, Pages 3-8.

Environment

"The McLean Planning District has a variety of environmental contrasts. It has unique features such as the Potomac Palisades and contains within its boundaries all of five small watersheds: Bull Neck Run, Scotts Run, Dead Run, Turkey Run, and Pimmit Run. Despite the rapid development of Tysons, the area remains ecologically significant, with extensive stream valleys and related steep slopes, large areas of undisturbed forestland, wetlands, and rugged terrain. The westernmost watersheds remain unsewered.

Policies for the McLean Planning District should account for the contrasts between intense urban development and the remaining open space. A two-fold approach is recommended: environmental mitigation and containment for Tysons and environmental preservation and reclamation of natural areas outside Tysons. The former approach will focus on ways to mitigate the impacts of intense development on the environment through structural means, such as innovative stormwater management controls. The latter approach will focus on land use measures, such as low density development, to preserve and reclaim ecological resources.

*...
 Water pollution is due primarily to nonpoint sources in the form of runoff which contains high levels of fertilizers, pesticides, sediment, and hydrocarbons. Sediment from highly erodible soils finds its way into the stream valleys during construction, especially if these soils are located on steep slopes next to streams.*

The McLean Planning District contains an extensive array of environmental resources. The predominant features include the Potomac Palisades and the Georgetown Pike. Outside the Tysons area, development is heavily constrained by rugged terrain associated with the Potomac

John Friedman
 September 4, 2018
 Page 4

River, extensive EQCs, highly erodible soils, and areas of hardwood forests. Low density development and innovative subdivision designs should be used to maximize the preservation of these features. Policies should be addressed to maintaining these areas for the valuable habitat they support.

FAIRFAX COUNTY COMPREHENSIVE PLAN, 2017 Edition, POLICY PLAN, Land Use, Amended through 12-5-2017, Pages 5-6.

“COUNTYWIDE OBJECTIVES AND POLICIES

LAND USE PATTERN

...

Objective 8: Fairfax County should encourage a land use pattern that protects, enhances and/or maintains stability in established residential neighborhoods.

Policy a. Protect and enhance existing neighborhoods by ensuring that infill development is of compatible use, and density/intensity, and that adverse impacts on public facility and transportation systems, the environment and the surrounding community will not occur.”

...

Objective 14: Fairfax County should seek to achieve a harmonious and attractive development pattern which minimizes undesirable visual, auditory, environmental and other impacts created by potentially incompatible uses.

Policy a. Locate land uses in accordance with the adopted guidelines contained in the Land Use Appendix.

Policy b. Encourage infill development in established areas that is compatible with existing and/or planned land use and that is at a compatible scale with the surrounding area and that can be supported by adequate public facilities and transportation systems.

Policy c. Achieve compatible transitions between adjoining land uses through the control of height and the use of appropriate buffering and screening.”

FAIRFAX COUNTY COMPREHENSIVE PLAN, 2017 Edition, POLICY PLAN, Land Use – Appendix 9, Residential Development Criteria, Amended through 12-5-2017, pages 24-30:

“1. Site Design:

All rezoning applications for residential development should be characterized by high quality site design. Rezoning proposals for residential development, regardless of the proposed density, will be evaluated based upon the following principles, although not all of the principles may be applicable for all developments. ...

b) *Layout:* The layout should:

John Friedman
September 4, 2018
Page 5

- provide logical, functional and appropriate relationships among the various parts (e. g. dwelling units, yards, streets, open space, stormwater management facilities, existing vegetation, noise mitigation measures, sidewalks and fences);
- provide dwelling units that are oriented appropriately to adjacent streets and homes;
- include usable yard areas within the individual lots that accommodate the future construction of decks, sunrooms, porches, and/or accessory structures in the layout of the lots, and that provide space for landscaping to thrive and for maintenance activities;
- provide logical and appropriate relationships among the proposed lots including the relationships of yards, the orientation of the dwelling units, and the use of pipestem lots;

...

c) *Open Space*: Developments should provide usable, accessible, and well-integrated open space. This principle is applicable to all projects where open space is required by the Zoning Ordinance and should be considered, where appropriate, in other circumstances.

2. Neighborhood Context:

All rezoning applications for residential development, regardless of the proposed density, should be designed to fit into the community within which the development is to be located.

Developments should fit into the fabric of their adjacent neighborhoods, as evidenced by an evaluation of:

- transitions to abutting and adjacent uses;
- lot sizes, particularly along the periphery;
- bulk/mass of the proposed dwelling units;
- setbacks (front, side and rear);
- orientation of the proposed dwelling units to adjacent streets and homes;
- architectural elevations and materials;
- pedestrian, bicycle and vehicular connections to off-site trails, roadways, transit facilities and land uses;
- existing topography and vegetative cover and proposed changes to them as a result of clearing and grading. ...

FAIRFAX COUNTY COMPREHENSIVE PLAN, 2017 Edition, POLICY PLAN, Environment, Amended through 3-14-2017, Pages 14-15.

Objective 9: Identify, protect and enhance an integrated network of ecologically valuable land and surface waters for present and future residents of Fairfax County.

Policy a: Identify, protect and restore an Environmental Quality Corridor system (EQC). (See Figure 4.) Lands may be included within the EQC system if they can achieve any of the following purposes:

...

- **Hydrology/Stream Buffering/Stream Protection:** The land provides, or could provide, protection to one or more streams through: the provision of shade; vegetative stabilization of stream banks; moderation of sheet flow stormwater runoff velocities and volumes; trapping of pollutants from stormwater runoff

John Friedman
September 4, 2018
Page 6

and/or flood waters; flood control through temporary storage of flood waters and dissipation of stream energy; separation of potential pollution sources from streams; accommodation of stream channel evolution/migration; and protection of steeply sloping areas near streams from denudation.

...

The core of the EQC system will be the county's stream valleys. Additions to the stream valleys should be selected to augment the habitats and buffers provided by the stream valleys, and to add representative elements of the landscapes that are not represented within stream valleys. The stream valley component of the EQC system shall include the following elements:

...

- All 100 year flood plains as defined by the Zoning Ordinance;
- All areas of 15% or greater slopes adjacent to the flood plain, or if no flood plain is present, 15% or greater slopes that begin within 50 feet of the stream channel;
- All wetlands connected to the stream valleys; and
- All the land within a corridor defined by a boundary line which is 50 feet plus 4 additional feet for each % slope measured perpendicular to the stream bank. The % slope used in the calculation will be the average slope measured within 110 feet of a stream channel or, if a flood plain is present, between the flood plain boundary and a point fifty feet up slope from the flood plain. This measurement should be taken at fifty foot intervals beginning at the downstream boundary of any stream valley on or adjacent to a property under evaluation.

DMJ/EMH



County of Fairfax, Virginia

ATTACHMENT K

MEMORANDUM

DATE: September 20, 2018

TO: John Friedman, Land Development Services

FROM: Ryan Johnson, Zoning Administration Division, Department of Planning and Zoning

SUBJECT: Public Street Frontage Waiver 1131-WVPSF-001-1
1016 Union Church Rd.
Peacock Station, Parcel C3
Tax Map Ref: 19-2 ((9)) C3
Zoning District: R-E
Magisterial District: Dranesville

This is in response to your request for a determination of zoning compliance regarding the above-referenced Public Street Frontage Waiver, which has been requested to facilitate the subdivision of the subject parcel into 2 lots and the subsequent construction of a new single-family detached dwelling.

Determination from the Zoning Administration Division, Department of Planning and Zoning:

- **Parcel C3 may be subdivided into 2 lots, in accordance with Sects. 2-401 and 2-308 of the Zoning Ordinance:**
 - There is sufficient land area (5 acres) to accommodate the subdivision of Parcel C3 into 2 lots that do not exceed the maximum allowable density of 1 dwelling unit per 2 acres in the R-E District.
 - There is sufficient lot area (approx. 217,800 square feet) to accommodate the subdivision of Parcel C3 into 2 lots that meet or exceed the minimum required lot area of 75,000 square feet for interior lots in the R-E District.
 - The proposed lots, "Lot 1" and "Lot 2" as shown on the "Public Street Frontage Waiver Plat", prepared by GeoEnv Engineers and dated July 14, 2017, exceed the minimum required lot width of 200 feet for interior lots in the R-E District.
 - The overall proposed density of the Peacock Station Subdivision will not exceed the maximum allowable density of 1 dwelling unit per 2 acres in the R-E District as a result of the subdivision of Parcel C3 into 2 lots. Currently, the Peacock Station subdivision is developed at a density of 0.78 dwelling unit per 2 acres. The additional lot will increase the density of the overall subdivision to 0.80 dwelling unit per 2 acres.



- The subdivision is also subject to the density limitations of Sect. 2-308 given the amount of floodplain and adjacent steep slopes that exist on the lot. The applicant must be able to demonstrate that the proposed subdivision does not exceed the allowable density.
- **A new single-family detached dwelling may be constructed on “Lot 2”, provided it is constructed in accordance with the following:**
 - The proposed dwelling is subject to all bulk regulations (height, setback, etc.) of the R-E District, pursuant to Sect. 3-E07 of the Zoning Ordinance.
 - There is a minimum required setback of 15 feet from the edge of floodplain, pursuant to Sect. 2-415 of the Zoning Ordinance.
 - There is a minimum required front yard of 50 feet from the edge of pavement of the private access road.



Ryan Johnson, Assistant to the Zoning Administrator
Zoning Administration Division
Department of Planning & Zoning

From: Walser, John
Sent: Thursday, August 24, 2017 4:29 PM
To: Dhakal, Thakur P. <Thakur.Dhakal@fairfaxcounty.gov>
Cc: Leavitt, Jan Shaw <Jan.Leavitt@fairfaxcounty.gov>
Subject: Requet for comments - 1016 Union Church Road, McLean

Good afternoon Thakur,
We have reviewed the waiver request and have no objection.

Let me know if you need any additional information.

Thanks, John

John L. Walser

*Battalion Chief
Fairfax County Fire and Rescue Department
Fire Prevention Services*

(office) 703-246-4753
(cell) 571-355-1993
(fax) 703-246-6040

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4:30 p.m.

Public Hearing to Lease County-Owned Property (Building W-2 and W-2A) at 9528 Workhouse Way to the Workhouse Arts Foundation (Mount Vernon District)

ISSUE:

Public Hearing to lease County-owned Property (Building W-2 and W-2A) at 9528 Workhouse Way to the Workhouse Arts Foundation, Inc.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to lease County-owned Property (Building W-2 and W-2A) at 9528 Workhouse Way to the Workhouse Arts Foundation.

TIMING:

On October 30, 2018, the Board authorized the advertisement of a public hearing on November 20, 2018 at 4:30 p.m. to lease County-owned property (Building W-2 and W-2A) at 9528 Workhouse Way to the Workhouse Arts Foundation.

BACKGROUND:

The Workhouse Arts Center is a 56-acre, historically important County landmark, owned by Fairfax County and the site of the former Lorton prison operated by the District of Columbia Department of Corrections. Originally constructed in the early 1900's, the former Workhouse is listed on the National Park Service's Register of Historic Places, and was the site for imprisonment of the suffragists who were imprisoned at the Workhouse for picketing the White House in support of women's right to vote. The prison facility closed in 2001 and the following year was part of a 2,440-acre purchase by Fairfax County from the federal government. As reflected in the purchase price of \$4.235 million, the federal sale of the total acreage set aside much of the land to parks and open space, and required the County to develop an adaptive re-use plan for the associated buildings.

The County leased 56-acres of the site to the then Lorton Arts Foundation (LAF) which began implementation of the adaptive re-use plan on the Workhouse portion of this property in accordance with zoning proffers and other restrictions, restoring ten historic buildings on the campus resulting in the activation of approximately 84,000 improved square feet.

Following a financial and legal restructuring that occurred in 2014 with the County, LAF was reorganized as the Workhouse Arts Foundation (WAF) but maintained its status as

a 501(c)(3) not-for-profit entity. WAF recently solicited private donations through a capital fundraising campaign for the renovation and construction of Building W-2 and W-2A for use as the Lucy Burns Museum. This museum contains exhibits about the 91 years of the history of the site as a correctional facility as well as the history of the American suffragist movement, an important role that this site and Fairfax County played in history.

The total cost for the Lucy Burns Museum project was \$2.1 million with substantial completion in early 2018. Because of these private investments in the rehabilitation of the historic structure as a museum, WAF is now eligible to apply for revenues through the sale of tax credits with the State of Virginia Department of Historic Resources (VDHR). Tax credits have previously been awarded to the campus for similar prior capital improvements, and estimates indicate that WAF is eligible for approximately \$400,000 for the improvements to the museum.

Per the terms of the legal restructuring that occurred in January 2014, the County holds a license agreement with WAF for the eleven buildings that are currently in operation. The State of Virginia requires a minimum leasehold period of 5 years. WAF's tax credit investor has advised that the lease term be at least six years to assure compliance with the minimum statutory requirements. Staff is supportive of a six-year lease term. As such, a public hearing is required for the County to enter a leasehold agreement for a six-year term for this building with WAF.

The County will continue to maintain ownership of the entire campus and oversight on all activities, operations, and maintenance. County staff and the WAF Board of Directors have agreed that WAF will establish a formal policy for the use of these funds and that those funds will primarily be deposited into an operating reserve account and managed in similar fashion to the County's Managed Reserve and Revenue Stabilization Fund. WAF's use of these funds would be subject to approval from their Board of Directors.

The request for revenue from the sale of tax credits must occur in the same calendar year in which the project became operational. The museum became operational in early 2018, thus the deadline for WAF to apply for and close on the tax credits is December 31, 2018. Staff proposes the public hearing on the lease to be held on November 20, 2018 at 4:30 p.m. to allow sufficient time for review and coordination with WAF of all necessary tax credit documents for timely financial closing.

FISCAL IMPACT:

Upon successful award of a lease for W-2, WAF anticipates to receive approximately \$400,000 in revenue via the sale of tax credits through VDHR. These revenues will go directly to WAF and be used as approved by the County.

Board Agenda Item
November 20, 2018

ENCLOSED DOCUMENTS:

Attachment 1: Workhouse Arts Center Campus Map

Attachment 2: Lease agreement for Building W-2 and W-2A

STAFF:

Joseph Mondoro, Chief Financial Officer

Joseph LaHait, Debt Manager, Department of Management and Budget

Regina Coyle, Special Projects Coordinator, Department of Planning and Zoning

ASSIGNED COUNSEL:

Alan Weiss, Assistant County Attorney

Open to Public

W-2 Museum
W-3 Youth Arts Center/W-3 Theatre
W-4 Artist Studios - Visual Arts
W-5 Artist Studios - Visual Arts
W-6 Artist Studios - Visual Arts
W-7 Artist Studios - Glass Program
W-7A Glass Hot Shop
W-8 Artist Studios - Ceramics Program
W-9 Artist Studios - Visual Arts
W-9A Art Supply Store
W-10 Artist Studios - Visual Arts
W-11 Art of Movement/Performing Arts Studios
W-16 McGuireWoods Gallery, Vulcan Gallery and Artist Gift Shop
Amphitheater

Future Renovation

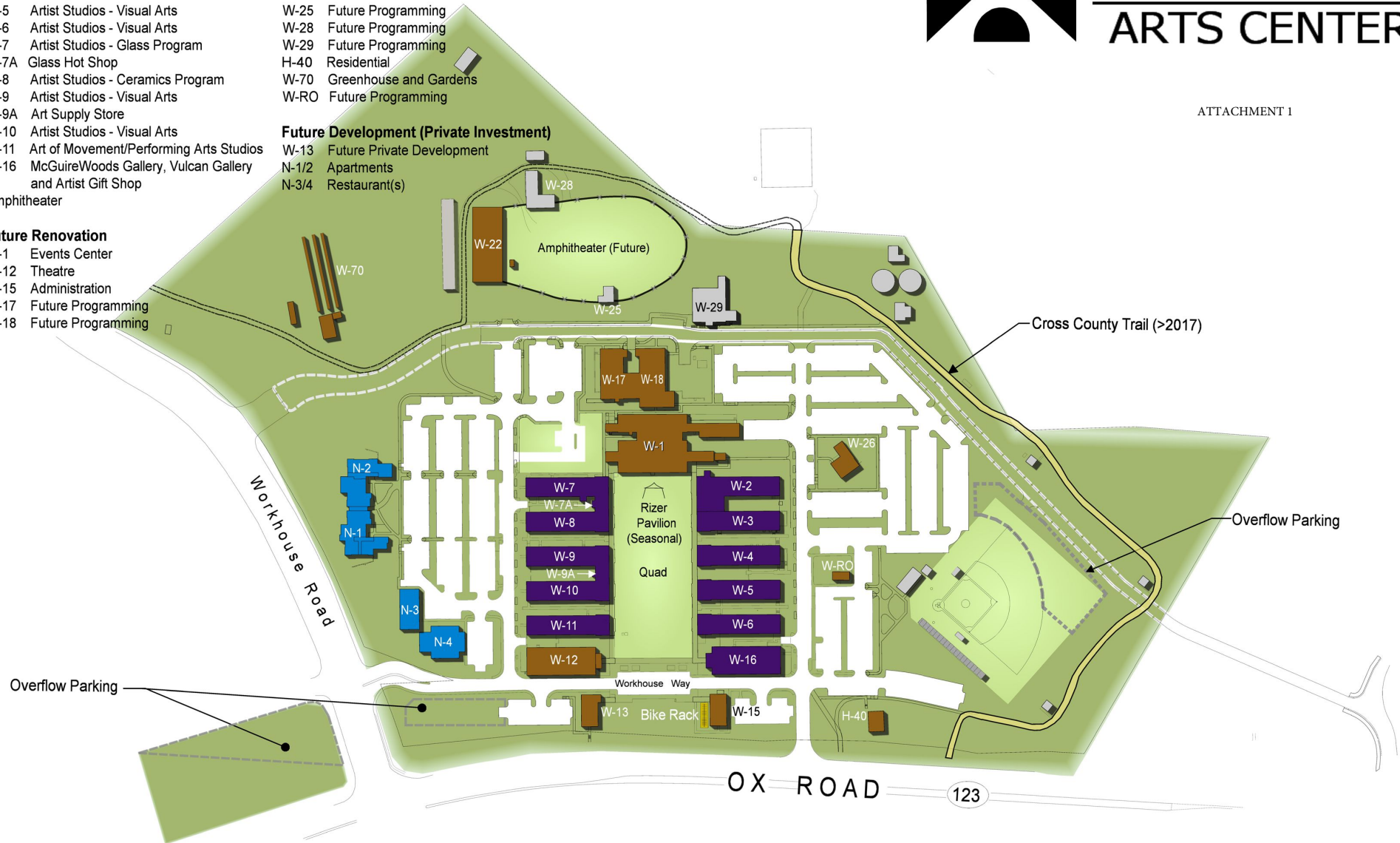
W-1 Events Center
W-12 Theatre
W-15 Administration
W-17 Future Programming
W-18 Future Programming

Future Renovation (continued)

W-20 Future Programming
W-22 Music Barn
W-25 Future Programming
W-28 Future Programming
W-29 Future Programming
H-40 Residential
W-70 Greenhouse and Gardens
W-RO Future Programming

Future Development (Private Investment)

W-13 Future Private Development
N-1/2 Apartments
N-3/4 Restaurant(s)



ATTACHMENT 2

CA DRAFT 10-17-18

Workhouse Arts Foundation Lease

LANDLORD: Board of Supervisors of Fairfax County, Virginia

TENANT: Workhouse Museum Development, LLC, a Virginia Limited Liability Company

List of Exhibits

Exhibit A - Property
Exhibit B – Premises
Exhibit C – Deed Restrictions
Exhibit D – Proffers and Development Conditions

LEASE AGREEMENT

This **LEASE AGREEMENT** (“Lease”) is made as of the ____ day of December, 2018 (“**Effective Date**”), by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a body corporate and politic, in its proprietary capacity (“Landlord”) as the owner of certain land in Fairfax County, Virginia and not in its governmental or regulatory capacity, and **WORKHOUSE MUSEUM DEVELOPMENT, LLC**, a Virginia limited liability company whose sole member is The Workhouse Arts Foundation, Inc., a charitable 501(c)(3) non-stock corporation organized in the Commonwealth of Virginia, formerly known as The Lorton Arts Foundation, Inc. (“Tenant”).

Recitals

R-1. Landlord is the legal owner of approximately 55.6912 acres of land in Fairfax County, Virginia as described on Exhibit A attached hereto, together with all the improvements thereon

and adjacent property thereto that was formerly known as the Lorton Correctional Complex (“Property”).

R-2. Landlord, as licensor, and Tenant, as licensee, entered into a Temporary, Non-Exclusive, Revocable Agreement dated as of the 30th day of January, 2014, as amended (“License Agreement”), pursuant to which Landlord licensed a portion of the Property to Tenant on a temporary, non-exclusive basis. Tenant (as licensee) is currently using a portion of the Property for activities in furtherance of the corporate purposes of The Workhouse Arts Foundation, Inc. (the “Foundation”) in accordance with the permitted uses under License Agreement..

R-3. Pursuant to the License Agreement, Tenant (as licensee), has converted into the Lucy Burns Museum and now operates Building W-2 and W-2A on the Property (“Building W-2 and W-2A” are depicted on Exhibit B attached hereto and will be referred to herein as the “Premises”).

R-4. Tenant (as licensee) paid for the renovations to the Premises and is eligible for Commonwealth of Virginia historic tax credits which will enable Tenant receive approximately \$400,000 related to qualification for the tax credits (“Tax Credit Proceeds”).

R-5. Landlord is prepared to lease the Premises to Tenant under the terms of this Lease in order to enable Tenant to qualify for the historic tax credits on behalf of Workhouse Museum, L.P., in a transaction that the parties anticipate will close at the time Tenant is entering into this Lease.

NOW, THEREFORE, in consideration of the Premises, the foregoing recitals which are hereby incorporated into this Lease, the mutual promises of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Landlord leases to Tenant, the Premises.

TO HAVE AND TO HOLD the Premises on the terms and conditions set forth herein.

The foregoing Lease rights are made subject to the following:

(a) All restrictions, regulations and statutes, and amendments and additions thereto, of any and all federal, state, county and municipal authorities having jurisdiction thereof;

(b) All covenants, restrictions, easements, reservations and agreements recorded prior to the date of execution of this Lease, including without limitation the deed restrictions set forth on Exhibit C (“Deed Restrictions”) attached hereto, which Deed Restrictions include an obligation for the Premises to comply with the Fairfax County Reuse Plan adopted July 26, 1999 (“Reuse Plan”);

(c) All conditions of the proffers and development conditions applicable to the Premises, a copy of which proffers and development conditions is attached hereto as Exhibit D (collectively, the “Proffers”);

(d) Any state of facts which an accurate survey may show;

(e) Building restrictions and regulations, zoning ordinances and regulations and any amendments thereto now or hereafter in force and effect;

(f) The lien of all taxes, assessments, water charges and sewer rents, if any;
and

(g) The condition and state of repair of the improvements on the Premises (the “Improvements”).

ARTICLE ONE

Term of the Lease

Section 1.01. The term (“Term”) of this Lease shall be for six years beginning January 1,

2019, terminating on December 31, 2025, plus the partial month between the Effective Date and December 31, 2018.

Section 1.02. Upon expiration or earlier termination of this Lease, Tenant's interest in the Premises shall terminate and Landlord shall be entitled to the exclusive rights to the Premises including the Improvements.

Section 1.03. Notwithstanding the expiration or earlier termination of this Lease, Tenant covenants and agrees that it, its successors and its and their affiliates, at its sole expense, shall take and refrain from taking any and all actions and cooperate with Landlord in such manner that may be required or prudent, in the judgment of Landlord, to preserve and protect the historic tax credits received by Tenant and its affiliates from the Commonwealth of Virginia.

ARTICLE TWO

Condition of Premises

Section 2.01. Tenant represents that it has been in possession of the entire Premises pursuant to the License Agreement and is fully informed about the condition of Premises, is satisfied with the physical condition thereof and agrees to accept the same "as is." Tenant further acknowledges that Landlord has not made any representations as to such physical condition or as to any other matter or thing affecting or relating to the Premises. Tenant also hereby acknowledges that the existing improvements on the Premises may contain asbestos, lead-based paint, mercury and other environmental hazards that Tenant shall be required to abate in accordance with the Proffers and all other applicable governmental rules, regulations and laws.

ARTICLE THREE

Use of Premises

Section 3.01. Tenant shall use the Premises for the operation and maintenance of the Lucy Burns Museum and other cultural, educational and arts related activities in furtherance of the Foundation's corporate purposes open to the public (the "Workhouse Arts Center Museum"), but at all times subject to the right of Landlord to prohibit any uses it deems undesirable or unwise for any reason in Landlord's sole and absolute discretion.

Tenant shall not use or occupy, or permit or suffer the Premises, or any part thereof, to be used or occupied, (i) for any unlawful or illegal business, use or purpose, (ii) for any business, use or purpose involving or producing any Hazardous Material as hereinafter defined, (iii) in any such manner to constitute a nuisance of any kind, (iv) for any purpose or in any way in violation of any zoning and/or certificate of occupancy, or of any applicable insurance policies reasonably required to be maintained by Tenant under this Lease, (v) for any purpose inconsistent with the Deed Restrictions, Proffers, or the Reuse Plan, or (vi) for any purpose or in any way in material violation of any applicable governmental laws, ordinances, orders, directives, rules or regulations. Tenant shall indemnify and hold Landlord harmless from and against all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including without limitation attorneys' fees, including the value of legal services provided by the County Attorney's Office, arising out of, by reason of, or in account of, any violation of or default in the covenants of this Section 3.01. For purposes of the foregoing indemnity, Landlord shall include any successor assigns of Landlord's interest in the Premises, and also shall include all agencies, employees, contractors and agents of Landlord. The term "Hazardous Material" as used herein, means: (i) any substance, product, waste or other material of any nature whatsoever that is listed, regulated or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Hazardous Materials

Transportation Act, 49 U.S.C. § 5101, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the Emergency Planning and Community Right of Know Act of 1986, 42 U.S.C. § 11001, *et seq.*, and the Virginia State Water Control Law, Va. Code Ann. § 62.1-44.2, *et seq.*; (ii) any substance, product, waste or other material of any nature whatsoever that may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (iii) petroleum or crude oil or products thereof, other than petroleum and petroleum products that are contained within regularly-operated motor vehicles; and (iv) asbestos.

Section 3.02. Tenant shall observe and comply with all conditions and requirements necessary to preserve and/or extend any and all governmental permits that are necessary for the operation of the Improvements.

Section 3.03. Tenant agrees that if and when any governmental or any other public authority shall require the execution and delivery of any instrument to evidence or consummate the conveyance or dedication of any street adjoining the Premises and/or if and when Fairfax County or the Commonwealth of Virginia or any other public authority or any public utility company or telecommunications service or cable television communications provider shall require the execution and delivery of any rights of way, easements or grants in, over or along any such streets or in, over, under or through the Premises for the purpose of providing water, gas, steam, electricity, telephone, television, internet service, storm and sanitary sewer or any other necessary or desirable service or facility for the benefit of the Premises, or that shall otherwise be reasonably necessary for service to the property in the vicinity of the Premises, then Tenant will

execute, acknowledge and deliver any such instrument or document as may be reasonably required. Tenant shall comply with all governmental regulations and other applicable regulatory agencies regarding mitigation for environmental impacts for wetland impacts and habitat impacts at Tenant's sole cost, expense and liability.

Section 3.04. Landlord shall be entitled to enter on and use the Premises at any time for any reason. Without limiting the foregoing, Landlord hereby reserves unto itself and reserves the right to assign as follows.

Landlord reserves unto itself and reserves the right to assign to public entities, public utilities or telecommunications or cable television providers the right to design, lay out, construct, utilize and maintain, anywhere on the Premises, utility lines, conduits, poles and facilities and other improvements for the purpose of providing for, including but not limited to, sanitary sewer, storm sewer, water, telephone, gas, electric, telecommunications service, cable television service and other utilities; provided, however, that Landlord will use reasonable efforts to avoid interfering with Tenant's operations on the Premises.

Landlord hereby further reserves unto itself and reserves the right to assign to other public entities, public utilities or telecommunications or cable television providers the right to design, lay out, construct, utilize and maintain rights-of-way, including, but not limited to, streets, sidewalks and trails, on any portion of the Premises; provided, however, that Landlord will use reasonable efforts to avoid interfering with Tenant's operations on Premises.

Landlord hereby further reserves unto itself the right to enter, maintain and improve any storm water facilities, including, but not limited to, sewers, ditches, pipes, ponds, spillways and other facilities and any sanitary sewer facilities that Landlord currently maintains or has the legal

obligation to maintain; provided, however, that Landlord will use reasonable efforts to avoid interfering with Tenant's operations on Premises.

ARTICLE FOUR

Requirements of Workhouse Arts Center Museum Operations

Section 4.01. The Workhouse Art Center Museum will be open all year for use, conditions permitting, on a schedule reasonably determined by Tenant and approved by Landlord.

Section 4.02. Tenant shall make the Improvements available for access by members of the general public (with reasonable restrictions regarding such access), with the exception of such space as Landlord may allow Tenant to make available for restricted use.

Section 4.03. It is hereby agreed that representatives of Tenant and Landlord will meet, on a schedule to be developed by the parties, for the purpose of discussing planned programming and other matters requiring direct communication between Tenant and Landlord. In no event shall Tenant perform or allow any programs or activities in the Premises that are objected to by Landlord.

Section 4.04. Tenant shall keep full and accurate accounts, records and books of all rents, income, receipts and revenues received from its use and operation of the Premises in accordance with generally accepted accounting principles applied on a consistent basis, all of which shall be maintained for inspection by Landlord for at least five years after each statement has been delivered to Landlord. Tenant's obligations under this Section 4.04 shall survive expiration or earlier termination of this Lease.

ARTICLE FIVE

Lease Rent

Section 5.01. Tenant covenants and agrees to pay to Landlord, promptly when due, without notice or demand and without deduction or setoff of any amount for any reason whatsoever, as rent for the Premises (“Monthly Rent”) during the term of this Lease a nominal amount of (\$1.00) per month in installments on the Effective Date and the first day of every month after Effective Date.

Section 5.02. All amounts payable under this ARTICLE FIVE, as well as all other amounts payable by Tenant to Landlord under the terms of this Lease, shall be paid at the office of Landlord c/o Facilities Management Division, 12000 Government Center Parkway, Suite 424, Fairfax, Virginia, or at such other places as Landlord shall from time to time designate by notice to Tenant, in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment.

Section 5.03. In addition to the Monthly Rent, Tenant shall also pay without notice or demand and without abatement, deduction or setoff (except as may be expressly provided for herein), all Taxes (as hereinafter defined in Section 6.01) and all other sums of money required to be paid by Tenant under the terms of this Lease (collectively, the “Additional Rent”).

Section 5.04. Any and all Additional Rent which may become due and payable to Landlord under this Lease if not paid timely shall bear interest from the date such Additional Rent shall become due and payable at the rate of 300 basis points above the Prime Rate as published in the *Wall Street Journal* (“Default Rate”).

ARTICLE SIX

Taxes and Other Charges

Section 6.01. Tenant agrees that it will pay and discharge, or cause to be paid and discharged, all federal, state and local taxes and charges (“Taxes”) when such become due and payable as required by applicable law, including, without limitation, all real estate taxes, personal property taxes, water charges, sewer charges and assessments associated with the Premises or Tenant's interest therein, if any.

Section 6.02. Any Taxes relating to a fiscal period of the taxing authority that falls in part within the Term and in part subsequent to the Term, shall, whether or not such Taxes shall be assessed, levied, imposed or become a lien upon the Premises or the Improvements, or shall become payable, during the Term, be apportioned and adjusted between Landlord and Tenant, for the period up to the last day of the Term, so that Tenant shall pay that proportion of such Taxes which that part of such fiscal period falling within the Term bears to such fiscal period and Landlord shall be responsible for the remainder thereof, if any. Tenant is responsible for all Taxes relating to the period prior to the Effective Date of this Lease.

Section 6.03. Tenant covenants to furnish to Landlord if requested by Landlord, within ten (10) days after the last date when any tax must be paid by Tenant as provided in this ARTICLE SIX, official receipts, if such receipts are then available to Tenant, of the appropriate taxing authority, or other proof satisfactory to Landlord, evidencing the payment thereof.

Section 6.04. If Tenant shall fail to pay any Taxes as in this ARTICLE SIX are required to be paid, after the same shall become due, Landlord shall have the right, at its option, to pay the same with all interest and penalties thereon. As provided in ARTICLE FIVE, the amount so paid shall constitute Additional Rent, but shall bear interest from the date of such payment at the Default Rate.

ARTICLE SEVEN

Insurance

Section 7.01. At all times during the Term, at its own cost and expense, Tenant shall keep or cause to be kept on the Improvements, and all equipment, fixtures, motors and machinery owned or leased by Tenant and installed in or used in connection with the Premises, including the Improvements, including all alterations, renovations, replacements, substitutions, changes and additions thereto, insurance against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered) and such other hazards, casualties, risks and contingencies now covered by or that may hereafter be considered as included within the standard form extended coverage insurance endorsement, in an amount equal to the Full Insurable Value thereof, hereinafter defined. The term "Full Insurable Value" shall mean actual replacement cost. Such Full Insurable Value shall be determined from time to time at the request of Landlord but at the expense of Tenant by the fire insurance company carrying the highest amount of fire insurance on the Premises or its agent, or by an appraiser selected by Tenant that is experienced in insurance appraisals who is approved in writing by Landlord. The failure of Landlord to request such appraisal shall not release Tenant from its obligations hereunder.

Section 7.02. At all times during the Term, at its own cost and expense, Tenant shall provide and keep in force comprehensive general liability insurance in standard form, protecting Tenant and Landlord, as an additional insured, against personal injury, including without limitation, bodily injury, death or property damage and elevator and contractual liability on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than Three Million Dollars (\$3,000,000) per occurrence and with an annual aggregate limit of not less than Five Million Dollars (\$5,000,000), subject to adjustment every year to reflect the increase, if any, in the Consumer Price Index for all Urban Consumers (2013=100),

Washington, D.C.-Baltimore MSA, all Items, published by the United States Department of Labor, Bureau of Labor Statistics, or any substitute or successor index published by any successor governmental agency. All such policies shall cover the entire Premises and the Improvements, including parking, common areas, means of access and roadways therein, and streets and sidewalks adjacent thereto.

Section 7.03. At all times during the Term, at its own cost and expense, Tenant shall provide and keep in force for the benefit of Landlord and Tenant flood insurance in an amount satisfactory to Landlord and which otherwise complies with the national flood insurance program as set forth in the “Flood Disaster Protection Act of 1973, as amended” as well as subsequent amendments or successors thereto, provided that such insurance shall be required only if and so long as the Premises are or become included in a United States Department of Housing and Urban Development (or successor agency) designated flood prone area.

Section 7.04. At all times during the Term when Tenant is engaged in the construction or reconstruction of the Improvements, or repairs thereof, at its own cost and expense, Tenant shall provide and keep in force for the benefit of Landlord and Tenant “all risk” builders risk insurance on the Improvements and other improvements on the Premises under construction; provided however that nothing in this Section 7.04 shall be deemed to grant the right to Tenant to perform any construction or reconstruction without the prior written consent of Landlord, which consent may be granted or withheld in Landlord’s sole and absolute discretion.

Section 7.05. At all times during the Term, at its own cost and expense, Tenant shall purchase and keep in force worker's compensation insurance and employer's liability insurance for all employees of Tenant in strict compliance with the laws of the Commonwealth of Virginia.

Section 7.06. At all times during the Term, Tenant shall maintain business interruption insurance in form and substance reasonably acceptable to Landlord.

Section 7.07. All insurance to be provided by Tenant under this ARTICLE SEVEN shall name Tenant and Landlord as insureds as their respective interests may appear.

Section 7.08. All of the policies of insurance required by this Lease shall be (i) in form and substance as reasonably approved by Landlord, (ii) underwritten only by companies licensed in the Commonwealth of Virginia which have a then current Alfred M. Best Company, Inc. (or if it no longer exists, a then comparable rating service) general policyholder's rating of B+ or better (or the equivalent thereof) and a financial rating of VII or better (or the equivalent thereof), (iii) accompanied by evidence of payment of premiums thereon to the insurance companies or their agents, including evidence of current annual payment, if on an installment payment basis, (iv) contain standard waiver of subrogation clauses, and (v) provide that they may not be cancelled by the insurer for non-payment of premiums or otherwise until at least forty-five (45) days after a receipt of the proposed cancellation, and in any event shall not be invalidated, as to the interests of Tenant therein, by any act, omission or neglect of Tenant (other than nonpayment of premiums) which might otherwise result in a forfeiture or suspension of such insurance, including, without limitation, the occupation or use of the Premises including the Improvements for purposes more hazardous than those permitted by the terms of the policy. If requested by Landlord, copies of all insurance policies required by this Lease shall be delivered by Tenant to Landlord. All insurance policies shall be renewed by Tenant and proof of such renewals, accompanied by evidence of the payment of the premiums thereon to the insurance companies or their agents, shall be delivered to Landlord at least twenty (20) days prior to their respective expiration dates.

Section 7.09. If Tenant fails to obtain and maintain insurance as in this Lease provided, Landlord may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor. As provided in ARTICLE FIVE, all premiums so paid by Landlord shall constitute Additional Rent and shall bear interest at the Default Rate from the date of such payment by Landlord. Such Additional Rent shall be payable by Tenant to Landlord by the fifth day of the month following the month in which payment therefor is made by Landlord. In addition thereto, Landlord may recover from Tenant, and Tenant covenants and agrees to pay as Additional Rent to Landlord, any and all damages which Landlord may have sustained by reason of the failure of Tenant to obtain and maintain such insurance, it being expressly declared that any damages of Landlord shall not necessarily be limited to the amount of premiums thereon. Tenant shall make payment to Landlord by the fifth day of the month following the month in which any payments were made by Landlord or in which the amount of such damage was determined. The payment by Landlord of premiums for any such insurance policy shall not be, or be deemed to be, a waiver or release of the default of Tenant with respect thereto or the right of Landlord to pursue any other remedy permitted hereunder or by law as in the case of any other default hereunder or of default in the payment of rent. At the sole discretion of Landlord, Tenant may be deemed to meet certain insurance requirements of this ARTICLE SEVEN if Landlord determines that the risks associated therewith are covered by Landlord's policies of self-insurance. In such event Tenant shall not be required to maintain the insurance otherwise required hereunder provided that Tenant first agrees in writing with Landlord to be responsible for and pay the amount of any deductibles that Landlord would otherwise be required to pay for a claim under Landlord's self-insurance program.

ARTICLE EIGHT

Applicable Laws and Regulations

Section 8.01. Throughout the Term hereof Tenant shall, at its own cost and expense, observe and comply with all laws, rules, orders, ordinances and regulations of the County, state and federal governments and of each and every department, entity, bureau and duly authorized official thereof and of any successor or future governmental authority, department, entity, bureau and duly authorized official thereof having jurisdiction and/or any other corporation, body or organization possessing similar authority and exercising similar functions, which laws, requirements, rules, orders, ordinances and regulations are now operative, or which at any time during the Term of this Lease may be operative and in force and effect and applicable to the Premises, including the Improvements. The foregoing shall include, without limitation, the Deed Restrictions, the Proffers, the Reuse Plan, all zoning requirements, and approvals as shall be necessary from the Fairfax County Architectural Review Board and also shall include such abatement of environmental hazards as shall be required by applicable federal, state and/or local governmental authorities.

ARTICLE NINE

Repairs and Maintenance

Section 9.01. Throughout the Term, Tenant shall, without any cost or expense to Landlord: (i) take good care of and keep in good order and repair, or cause the same to be done, inside and out, the Improvements, all alterations, renovations, replacements, substitutions, changes and additions therein or thereto and the roofs and foundations thereof, all fixtures and appurtenances therein and thereto, all machinery and equipment therein, including without limitation, all machinery, pipes, plumbing, wiring, gas, steam and electrical fittings, sidewalks, water, sewer and gas connections, heating equipment, air conditioning equipment and

machinery, and all other fixtures, machinery and equipment installed in or connected with the Premises including the Improvements or used in their operations; (ii) make all repairs inside and outside, ordinary and extraordinary, structural or otherwise, necessary to preserve the Premises including the Improvements in good order, and promptly pay or cause the payment of the expense of such repairs; (iii) not cause or permit any waste to the Premises; (iv) keep the sidewalks, curbs and parking areas in good repair and reasonably free from snow, ice, dirt and rubbish; (v) give prompt written notice to Landlord of any fire or other casualty that may occur; and (vi) permit Landlord to enter the Improvements, the Premises, or any part thereof, to make repairs to the Improvements, to restore the same after damage or destruction by fire or other casualty or by partial condemnation, to complete repairs commenced but not completed by Tenant, to repair, at or before the end of the Term, all injury done by the installation or removal of Tenant's furniture, trade fixtures and property, and/or to comply with all orders and requirements of any governmental authority applicable to the Improvements and to any occupation thereof, where, in Landlord's judgment, such entry is necessary to prevent waste, physical deterioration, safety hazards and/or other circumstances that threaten the value of the Premises, and where Tenant is in default of its covenants and obligations herein with respect to any of the foregoing matters. When used in this Lease, the term "repairs" shall include routine maintenance, replacements, restoration and/or renewals when necessary, as well as painting and decorating.

If Tenant shall fail to perform its maintenance obligations required hereunder, Landlord, in addition to all other available remedies, may, but shall not be obligated, to enter upon the Premises and perform such failed maintenance obligations of Tenant, using any equipment or materials on the Premises suitable for such purpose. Tenant shall, on demand,

reimburse Landlord for its actual costs so incurred as well as the value of services provided by employees of Landlord, which shall be Additional Rent hereunder.

Section 9.02. If and to the extent deemed advisable by Landlord, Landlord shall provide, at Tenant's sole cost and expense, repair and maintenance services, including capital repairs and replacement as deemed appropriate by Landlord, that Tenant is obligated to perform pursuant to this Article Nine of this Lease. At Landlord's election, these maintenance services (the "Maintenance Services") may include security, custodial services, landscaping, and equipment maintenance, repair and replacement. Landlord shall furnish Tenant from time to time with invoices generally describing such Maintenance Services, which Tenant agrees to pay promptly in accordance with the terms herein. Landlord will provide Tenant with an estimate of the average monthly costs for the Maintenance Services (the "Estimate") which Tenant agrees to pay in equal quarterly installments on the first day of every month. If Landlord determines at any time that actual expenses are materially different from those in the Estimate, Landlord will make an appropriate adjustment therefor in the Estimate (the "Revised Estimate") and subsequent monthly installments will be modified to reflect the Revised Estimate. Within one hundred and twenty days following the expiration or earlier termination of this Lease, Landlord shall prepare a reconciliation of expenses based on the total actual costs for the Maintenance Services during the Term of this Lease. If the actual costs exceed the amounts already paid by Tenant to Landlord, Tenant shall promptly pay to Landlord the difference between the actual costs as determined by Landlord and the amounts previously paid by Tenant. If the actual costs for the Maintenance Services are less than the amounts paid by Tenant to Landlord, Landlord shall paid to Tenant the amount of the overpayment within sixty days of Landlord's determination of such overpayment.

ARTICLE TEN

Public Utilities and Services

Section 10.01. Tenant agrees to pay or cause to be paid all charges for gas, water, sewer, electricity, light, heat, power, steam, air conditioning, telephone or other communication service or other public utility or public service used, rendered or supplied to, upon or in connection with the Premises including the Improvements throughout the Term, and to indemnify Landlord and hold Landlord harmless from and against any liability or damages on such account. Tenant shall also, at its sole cost and expense, procure or cause to be procured any and all necessary permits, licenses or other authorizations required for the lawful and proper use, occupation, operation and management of the Premises including the Improvements, and for the lawful and proper installation and maintenance thereon and therein of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any such service thereto. Tenant expressly agrees that Landlord is not, nor shall it be, required to furnish to Tenant, or any other occupant of the Premises, any water, sewer, gas, heat, electricity, light, power, steam, air conditioning, or any other facilities, equipment, labor, materials or services of any kind whatsoever.

ARTICLE ELEVEN

Alterations and Additions

Section 11.01. Tenant agrees that it will not (i) demolish the Improvements for the purpose of reconstruction, renovation or otherwise, or (ii) make any alterations, renovations, additions, changes or substitutions which would weaken or impair the structural integrity of the Improvements or lessen the market value thereof, without, in the case of each of the foregoing, the prior written consent of Landlord, which consent Landlord may grant or withhold in

Landlord's sole and absolute discretion. All of the foregoing shall be, without limitation, in compliance with the requirements of ARTICLE EIGHT hereof.

Section 11.02. If Landlord permits Tenant to make any alterations, renovations or additions, Tenant shall comply with all of the following:

- (a) The same shall be performed with diligence and in a first-class, workmanlike manner in accordance with all requirements for construction hereunder.
- (b) Tenant shall have delivered to Landlord detailed plans and specifications that are acceptable to Landlord in its sole discretion which detailed plans and specifications shall be prepared in full accordance guidelines as may be established by Landlord and shall have obtained the approval of any and all governmental authorities and departments having jurisdiction over the work, including the Fairfax County Architectural Review Board, if applicable.
- (d) Tenant shall not subject the Premises including the Improvements to any charge, liability, claim or lien of any kind or nature whatsoever by reason thereof.
- (e) Tenant or Tenant's contractor shall provide and maintain, at its own cost and expense, full workmen's compensation insurance with respect to such work as well as any other insurance as may then be required by law, and certificates of any such policies shall be delivered to Landlord on demand.
- (f) If, under the provisions of any insurance policies required to be provided and maintained hereunder, any consent to such demolition, alteration, change or addition by the insurers thereof shall be required to continue and keep such policies in full force and effect, Tenant shall obtain such consents and pay any premiums or charges that may be incurred.

(g) Landlord may inspect the excavation, the construction and all work and materials thereof during the course of construction and upon completion and Tenant shall permit Landlord to examine the plans, drawings and specifications relating thereto or, in the alternative, shall furnish Landlord with copies of same within ten (10) days after receipt of a request therefor. Landlord shall have the right to object to any deviation from such plans and specifications as approved and upon receipt of notice of any such objection, Tenant shall take such steps as shall be necessary to correct such deviation.

(h) Tenant shall comply with all applicable requirements of applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction thereof, including without limitation the requirements as set forth in ARTICLE EIGHT hereof, and the construction, when completed, shall comply with all applicable laws and regulations of any and all governmental authorities having jurisdiction thereof, including the Fairfax County Architectural Review Board.

(i) Tenant shall procure at its own expense all necessary permits required for the work. Upon completion, Tenant shall deliver to Landlord a set of “as built” plans for the work (if such plans exist) including those as set forth in ARTICLE EIGHT hereof.

(j) Tenant shall pay and discharge all costs, expenses, damages and other liabilities which may arise in connection with or by reason of such demolition, alteration, change, addition or construction work.

(k) If requested by Landlord, Tenant shall have furnished Landlord with an irrevocable letter of credit, contractor's performance bond or other surety in form and amount and from a financial institution, all as acceptable to Landlord, to provide Landlord with

assurances that Tenant shall pay for all work performed to avoid any liens on the Premises including the Improvements.

ARTICLE TWELVE

No Financing Liens or other Encumbrances

Section 12.01. It is expressly understood and agreed that by entering into this Lease Landlord is not agreeing to subordinate its fee simple interest in the Premises to any deed of trust or other debt financing incurred by Tenant.

Section 12.02. Tenant shall not suffer or permit any liens to stand against the Premises, including the Improvements, or any part thereof, by reason of any work, labor, services or materials done for, or supplied to, or claimed to have been done for, or supplied to Tenant or anyone holding the Premises including the Improvements, or any part thereof, through or under Tenant. If any such lien against the Premises including the Improvements or any part thereof shall at any time be filed, Tenant shall cause the same to be discharged of record within five (5) business days after the date of filing the same, by either payment, deposit or bond. If Tenant shall fail to discharge any such lien against the Premises including the Improvements or any part thereof within such period, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, procure the discharge of the same after notice to Tenant either by deposit in court, by bonding, or by paying the amount claimed to be due. As provided in ARTICLE FIVE, any amount paid or deposited by Landlord for any of the aforesaid purposes,

and all legal and other expenses of Landlord, including attorneys' fees and the value of legal services if provided by the County Attorney's Office, and all necessary disbursements in connection therewith, in defending any such action or in procuring the discharge of such lien shall constitute Additional Rent, but shall bear interest from the date of payment or deposit at the Default Rate during the period that such payment or deposit is outstanding. Such Additional Rent shall become due and payable forthwith by Tenant to Landlord.

Section 12.03. Nothing in this Lease shall be deemed to be construed in any way as constituting the consent or request of Landlord, expressed or implied, by inference or otherwise, to any person, firm or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Premises including the Improvements, or any part thereof, or as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials which might in any way give rise to the right to file any lien against Landlord's interest in the Premises including the Improvements. Notwithstanding the foregoing provisions of this Section 12.03, if such lien against the Premises including the Improvements or any part thereof is filed, Tenant shall either pay the same and have it discharged of record, or take such action as may be required to legally object to such lien, or to have such lien removed of record within five (5) days after the date of filing the same, and in all events to have such liens against the Premises including the Improvements or any part thereof discharged prior to the foreclosure thereof and the imposition of any penalty upon Landlord.

ARTICLE THIRTEEN

Exculpation and Indemnification

Section 13.01. As a material condition of this Lease, Tenant agrees that Landlord shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Premises including the Improvements or the appurtenances thereto, or for any injury or damage to the Premises including the Improvements, or to any property, whether belonging to Tenant or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part or portion of the Premises including the Improvements or from steam, gas, electricity, water, rain or snow that may leak into, issue or flow from any part of the Premises including the Improvements from the drains, pipes or plumbing work of the same, or from the street, subsurface or any place or quarter, or due to the use, misuse or abuse of all or any of the hatches, openings, installations or hallways of any kind whatsoever, or from any kind of injury which may arise from any other cause whatsoever on the Premises including the Improvements, including defects in construction, latent or otherwise. The provisions of this Lease permitting Landlord the right to use of the Premises and to enter and inspect the same and the Improvements shall in no manner limit Landlord's rights to indemnification from Tenant pursuant to the terms of this ARTICLE THIRTEEN.

Section 13.02. Tenant shall indemnify and hold Landlord harmless from and against all liability, judgments, claims, demands, suits, actions, losses, penalties, fines, damages, costs and expenses, including without limitation attorneys' fees including the value of legal services provided by the County Attorney's Office, of any kind or nature whatsoever, due to or arising out of or from:

(a) Any breach, violation or nonperformance of any covenant, condition, provision or agreement in this Lease set forth and contained on the part of Tenant to be fulfilled, kept, observed and performed, and

(b) Claims of every kind or nature arising out of the use and occupancy of the Premises including the Improvements (and/or the construction and/or alteration thereof) by Tenant, including, without limitation, any damage to property occasioned or arising out of the use and occupancy thereof by Tenant, or any injury to any person, including death resulting at any time therefrom, occurring in or about the Premises including the Improvements.

For purposes of the foregoing indemnity and other indemnities in this Lease, the term “Landlord” shall include any successors or assigns of Landlord’s interest in the Premises, and also shall include all agencies, employees, contractors and agents of Landlord.

Section 13.03. No covenant, obligation or agreement contained in this Lease shall be considered to be a covenant, obligation or agreement of any director, officer, employee or agent of the Tenant or the Foundation in his or her individual capacity, and no person executing this Lease shall be liable personally or be subject to any personal liability or accountability (except for fraud or malfeasance) by reason of anything the Tenant or the Foundation states in or omits from this Lease.

ARTICLE FOURTEEN

Inspection and Access

Section 14.01. Tenant agrees that it shall permit Landlord and its agents to enter the Premises including the Improvements at any for any purpose, including without limitation (i) inspection; and (ii) making repairs that Tenant has neglected or refused to make in accordance with the agreements, terms, covenants and conditions of this Lease.

ARTICLE FIFTEEN

Damage and Destruction

Section 15.01. If, during the Term, the Improvements shall be destroyed or damaged in whole or in part by fire or any other cause, except condemnation, and whether or not such destruction or damage is covered by insurance, Tenant shall give to immediate notice thereof, and, Tenant shall promptly repair, replace and rebuild the same or cause the same to be repaired, replaced or rebuilt, at least to the conditions thereof immediately prior to such occurrence, subject to the requirements as set forth in ARTICLE ELEVEN hereof (“Restoration”). If the damage or destruction is caused by an event for which Tenant is not insured, for whatever reason, Restoration shall be made, at Tenant's sole cost and expense, in accordance with ARTICLE ELEVEN. Landlord shall in no event be called upon to perform or otherwise be held liable for such Restoration; provided however, that at Landlord election, Landlord shall have the right to cause the Restoration to be performed under the direction of Landlord or Landlord’s agents, employees or independent contractors, in which case Tenant shall be responsible for all of costs therefor, including without limitation the reasonable value of services performed by Landlord’s employees assigned to Restoration, all of which shall be deemed Additional Rent hereunder.

Section 15.02. The terms and conditions upon which any Restoration shall be performed by Tenant after any such destruction or damage by fire or any other cause, except by condemnation, and the terms and conditions upon which the proceeds of insurance of the kinds described in ARTICLE SEVEN shall be applied to the cost of such Restoration are as follows:

(a) Tenant shall submit to Landlord, design and development plans which shall be designed to restore the Premises including the Improvements thereon to at least the condition immediately prior to such destruction or damage and as completely similar in character

as is practicable and reasonable. The design and development plans shall be subject to the approval of Landlord.

(b) During such Restoration, Landlord and any architect, engineer or other representative whom Landlord may select to act on its behalf may inspect all work and materials as rendered and installed during the course of such Restoration and upon completion. Tenant shall keep copies of all plans, shop drawings and specifications relating to such Restoration on the building site and permit Landlord or its architect, engineer or other representative to examine them, or, in the alternative, shall furnish Landlord with copies of such plans, drawings and specifications. If during Restoration Landlord, or its architect, engineer or other representative, shall determine that the materials do not substantially conform to the approved plans or that the Restoration is not in accordance with the approved plans, notice in writing shall be given to Tenant, specifying the particular deficiency, omission or other respect in which Landlord determines that the Restoration does not conform with the plans as approved. Upon the receipt of any such notice, Tenant shall take such steps as shall be necessary to cause corrections to be made as to any deficiencies, omissions or otherwise, and, if necessary for the purpose of effectuating such corrections, shall immediately remove such materials, replace such construction and furnish materials in accordance with said plans or with materials equally as good as those provided for in such plans.

(c) All of such Restoration and the performance thereof shall be subject to and shall be performed in accordance with the provisions of ARTICLE EIGHT and ARTICLE ELEVEN, including, without limitation, the provision to the effect that historic structures may be required to be restored to their original condition in conformance with the requirements of the

Fairfax County Architectural Review Board and otherwise in accordance with ARTICLE EIGHT hereof.

(d) Upon the completion of the Restoration, a set of the “as restored” plans shall be delivered by Tenant to Landlord.

Section 15.03. If (i) Tenant shall fail to cause required Restoration to be commenced within sixty (60) days from the date of such damage and destruction in accordance with the provisions of this Lease, or such longer time as Landlord may agree in its sole discretion if the restoration cannot practicably be commenced within such sixty (60) day period because of delays in obtaining insurance proceeds or other causes beyond the control of Tenant, or (ii) having commenced such Restoration, Tenant shall fail to complete it in accordance with such provisions with reasonable diligence, and such failure shall continue for a period of thirty (30) days after notice by Landlord to Tenant, Landlord may, at its option after at least five (5) days prior notice to Tenant that it elects so to do, make and complete such Restoration. In such event, and whether or not this Lease may have theretofore been terminated by reason of any default by Tenant, Landlord shall have the right, as the Restoration progresses, to obtain and apply the insurance proceeds to the cost of such Restoration to the extent that they shall not theretofore have been applied to the payment or reimbursement of costs and expenses of Landlord and/or Tenant as aforesaid.

Section 15.04. If prior to the completion of such Restoration, whether by Tenant or Landlord, this Lease shall terminate or expire for any reason, Landlord shall have the right to receive and retain such insurance proceeds to the extent that they shall not theretofore have been applied to the payment or reimbursement of the costs and expenses of Tenant and/or Landlord, as aforesaid.

ARTICLE SIXTEEN

Condemnation

Section 16.01. If, at any time during the Term of this Lease, the whole or substantially all of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, or by agreement between Landlord, Tenant and those authorized to exercise such right, this Lease shall terminate on the date of such taking and any Monthly Rent provided to be paid by Tenant shall be apportioned and paid to the date of such taking.

Section 16.02. If less than substantially all of the Premises shall be taken, this Lease shall be deemed terminated as to the part so taken as of the date of such taking, but with respect to the part not taken shall continue in full force and effect, without reduction, abatement or effect of any nature whatsoever upon the Term of this Lease or the liability of Tenant to pay all Monthly Rent and Additional Rent and other sums of money and charges herein provided to be paid by Tenant.

Section 16.03. In the event of any taking referred to in Section 16.01 or 16.02, Landlord shall be entitled to all condemnation proceeds.

Section 16.04. For purposes of this ARTICLE SIXTEEN, the Premises or a part thereof, as the case may be, shall be deemed to have been taken or condemned on the date on which actual possession of the Premises or a part thereof, as the case may be, is acquired by any lawful power or authority or the date on which title vests therein, whichever is earlier. Any right of entry which may be granted by Landlord or Tenant to any condemning authority shall not affect the date on which the Premises or a part thereof, as the case may be, shall be deemed to have been taken or condemned.

ARTICLE SEVENTEEN

Landlord's Rights of Consent, Approval and Participation

Section 17.01. In recognition of Landlord's substantial expertise in in all forms of property management, including building maintenance, security services, capital improvements, information technology, and financial management and budget preparation, Landlord and Tenant agree that Landlord shall have the right, upon its election, to maintain oversight over some or all of Tenant's facilities management operations at the Premises, as determined by Landlord, to enable Landlord to provide consultation regarding competent budget management, general building maintenance, security, and office management services. Tenant agrees to permit representatives of Landlord to review all books and records of Tenant and all operations of Tenant at Premises for the purpose of enabling Landlord to recommend cost saving efficiencies in the conduct of Tenant's operations.

Section 17.02. Landlord shall have the right to approve Tenant's annual operating and capital budget. Tenant agrees to cooperate and coordinate with Landlord in the preparation of Tenant's annual budget. Following such consultation, Tenant agrees to provide Landlord with a thorough budget in form acceptable to Landlord, describing in detail all estimated expenses and revenues of Tenant, and reflecting the comments that Landlord may provide to Tenant. Without limiting the foregoing, Tenant agrees that such annual budget shall include line items for the replenishment of reserves for capital systems. The annual budget that Tenant is obligated to furnish to Landlord shall not be deemed final until approved by Landlord. Following approval of the budget, Tenant shall be obligated to carry on its operations at the Premises in full conformance with the approved budget. If at any time Tenant is unable to operate in material conformance with the approved budget, or if Tenant experiences a material change in its

financial condition from that reflected in the approved budget, Tenant shall notify Landlord thereof, and Tenant shall make such revisions to the approved budget as may be necessary for to the budget to reflect the actual financial circumstances of Tenant. Any such revisions to the annual budget shall be subject to the consent of Landlord and such revisions to the budget shall not be deemed approved until Landlord shall have given its written consent. All of Tenant's operations at the Premises shall be in conformance with the approved annual budget, as may be revised in accordance with the terms hereof, with the consent of Landlord.

Section 17.03. To insure that Landlord is fully informed as to the full scope of Tenant operations at the Premises, Landlord shall be entitled to prior written notice of, and the right to attend and participate in all meetings of the board of directors of Tenant and Tenant's sole member, the Workhouse Arts Foundation, and all meetings of the executive committee, management committee, or other committees of the board of directors of Tenant. Landlord shall not be deemed a member of the board of Tenant, or of any of their committees, and shall not have any voting rights at such meetings, but shall be entitled to attend and participate in all such meetings whether open or closed and whether or not confidential information shall be discussed.

ARTICLE EIGHTEEN

Assignment and Subletting

Section 18.01. Tenant shall not sell, assign or in any manner transfer this Lease or any interest therein or the estate of Tenant hereunder, or rent, sublet, sublease or underlet the Premises including the Improvements as an entirety in a single transaction or a series of related transactions, without the prior written consent of Landlord first had and obtained in each case, which consent may be granted or withheld in the sole and absolute discretion of Landlord; provided, however, that Landlord consents to Tenant subletting the Premises to Workhouse

Museum, L.P. pursuant to a sublease (“Approved Sublease”) in form and substance approved in advance by Landlord. The Approved Sublease will be subordinate to this Lease and subject to all of the terms and conditions of the Lease. Landlord understands that the Approved Sublease is required so that the Tax Credits can be claimed by the Tenant under a sublessor-sublessee pass-through arrangement.

Section 18.02. If the Premises or any part thereof be sublet or occupied by anybody other than Landlord or the Approved Subtenant in violation hereof, Landlord may, (i) collect rent from any purchaser, assignee, subtenant or occupant and apply the net amount collected to the rent herein reserved, and (ii) accept any such purchaser, assignee, subtenant or occupant as tenant, without waiving any rights or remedies of Landlord hereunder.

ARTICLE NINETEEN

Annual Statements

Section 19.01. Tenant agrees that, it will deliver or cause to be delivered to Landlord within sixty (60) days after the fiscal year then ended the following items:

- (a) An annual audit of Tenant, containing a balance sheet, income statement and statement of changes in financial condition for such fiscal year, prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by a public accountant firm approved by Landlord in Landlord’s discretion; and
- (b) Other information pertaining to Tenant as Landlord may reasonably request.

ARTICLE TWENTY

Events of Default

Section 20.01. If any one or more of the following events shall occur:

(a) Tenant shall desert or abandon the Premises for a period of ten (10) days;

or

(b) Tenant shall default in making timely payment to Landlord of any Monthly Rent, Additional Rent, or of any money advanced by Landlord or otherwise collectible as Additional Rent; or

(c) Tenant shall fail to pay any tax, assessment, water rent, rate or charge, sewer rent or other governmental imposition, or any other charges or lien against the Premises including the Improvements which Tenant is required to pay under this Lease and the same shall not be paid within ten (10) days after Tenant receives notice of the delinquency; or

(d) Tenant shall default in complying with any other agreement, term, covenant or condition of this Lease and such default in compliance shall continue for a period of ten (10) days after notice by Landlord or such longer period as Landlord may agree if the default cannot reasonably be cured within ten (10) days provided Tenant has commenced curing within such ten (10) days and continues with diligence thereafter to complete the cure and provided further that the Premises is in no manner materially adversely affected by the failure of Tenant to cure the default within the original ten (10) day cure period; or

(e) Tenant shall fail to maintain its status as a 501(c)(3) non-profit entity in good standing and authorized to do business in the Commonwealth of Virginia; or

(f) Except for the Approved Sublease, if any interest of Tenant hereunder shall be transferred, assigned or subleased (in a single transaction or a series of related

transactions) without Landlord's prior written consent, then an "Event of Default" shall be deemed to have occurred in which case, Landlord may immediately cancel and terminate this Lease any other notice to quit required hereunder or by law being expressly waived by Tenant whereupon Tenant shall then quit and surrender to Landlord the Premises including the Improvements and any other improvements on, under or above the Premises, and Landlord may enter into or repossess the same, either by force, summary proceedings or otherwise.

Section 20.02. If this Lease is terminated pursuant to any provision hereof, all of the right, title, estate and interest of Tenant, (i) in and to the Premises including the Improvements, (ii) in and to equipment, fixtures and machinery therein or upon the Premises including the Improvements and other improvements on, under and above the Premises, (iii) in and to all revenue, rents, issues and profits thereof whether then accrued or to accrue, and (iv) in and to all insurance policies and all insurance monies paid or payable thereunder, shall terminate and Landlord, without further action on the part of either party and without cost or charge to Landlord, shall have unlimited and sole title thereto and ownership thereof, free of any claim thereto by Tenant.

ARTICLE TWENTY-ONE

Deed Restrictions

Section 21.01. It is expressly agreed and understood by the parties hereto that the Deed Restrictions as set forth on Exhibit C must be complied with at all times without qualification as determined in the sole discretion of Landlord, it being understood and agreed that such Deed Restrictions could affect other property of Landlord and accordingly Landlord must be afforded the opportunity to ensure absolute compliance.

ARTICLE TWENTY-TWO

Remedies of Landlord

Section 22.01. If an Event of Default shall have occurred with regard to the payment of any Additional Rent, Landlord may, at its election, pay the same for the account and at the expense of Tenant. If Landlord shall incur any expenses, including, without limitation, attorneys' fees (including the value of legal services if provided by the County Attorney's Office), in instituting, prosecuting or defending any action or proceeding instituted by reason of any default by Tenant, Tenant shall reimburse Landlord for the amount of such expenses. As provided in ARTICLE FIVE, should Tenant, pursuant to this Lease, become obligated to reimburse or otherwise pay Landlord one or more sums of money in addition to the Monthly Rent, the amount thereof shall be deemed Additional Rent shall be immediately payable by Tenant to Landlord and subject to interest at the Default Rate. The provisions of this Section 22.01 shall survive the termination of this Lease.

Section 22.02. If an Event of Default shall have occurred, in addition to other rights of Landlord hereunder, Landlord shall have the right of injunction to restrain the same and the right to invoke any remedy allowed hereunder by law or in equity as if specific remedies, indemnity or reimbursement were not herein provided.

Section 22.03. In the event of any termination of this Lease, whether by expiration, forfeiture, cancellation, surrender, operation of law, issuance of a final court order or otherwise, Landlord may enter the Premises including the Improvements and other improvements on, under or above the Premises, to remove therefrom Tenant, its agents, employees, licensees and any subleasees, persons, firms or corporations and all of their respective property, using such force for that purpose as may be necessary without being liable for prosecution or damages therefor,

and thereupon Landlord shall be entitled to retain possession of the Premises including Improvements and other improvements on, under or above the Premises with all additions, alterations and improvements thereon and fixtures and appurtenances thereto, free from any interest of Tenant therein.

Section 22.04. If a judgment is entered for the recovery of possession of the Premises in any action or proceeding, Tenant, for itself and for any and all persons claiming through or under Tenant, hereby waives any right of redemption provided or permitted by any statute, law or decision now or hereafter in force, and does hereby waive, surrender and give up all rights or privileges which it or they may or might have, under and by reason of any present or future law or decision, to redeem the Premises including the Improvements or for a continuation of this Lease for the Term hereby demised after having been dispossessed or ejected therefrom by process of law or otherwise.

Section 22.05. No receipt of monies by Landlord from Tenant after the termination hereof in any lawful manner shall reinstate, continue or extend the Term, or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of any Monthly Rent or Additional Rent then due or thereafter falling due, or operate as a waiver of the right of Landlord to recover exclusive possession of the Premises including the Improvements by proper suit, action, proceedings or other remedy; it being agreed that after the service of notice of termination as herein provided and the expiration of the time therein specified, after the commencement of any suit, action, proceedings or other remedy, or after a final order or judgment for exclusive possession of the Premises, Landlord may demand, receive and collect any monies due, or thereafter falling due, without in any manner affecting such notice, suit, action, proceedings, order or judgment; and any and all such monies so collected

shall be deemed to be payments on account of the use and occupation of the Premises, or, at the election of Landlord, on account of Tenant's liability hereunder. Landlord, at its option, may make such alterations and repairs in or to the Premises including the Improvements and other improvements as in its judgment Landlord considers advisable and necessary, and the making of such alterations and repairs shall not operate or be construed to release Tenant from liability hereunder. Landlord shall in no event be liable in any way whatsoever for failure to re-rent the Premises.

Section 22.06. The rights and remedies given to Landlord in this Lease are distinct, separate and cumulative, and no one of them, whether or not exercised by Landlord, shall be deemed to be in exclusion of any of the others herein, or by law or in equity.

ARTICLE TWENTY-THREE

Lease Contingent on Tax Credit Proceeds

Section 23.01. This Lease is contingent on Tenant closing qualifying for the historic tax credits for the Premises and closing on the tax credit documentation by no later than December 31, 2018. If Tenant does not close the tax credit financing and does not receive the Tax Credit Proceeds by March 31, 2019, this Lease shall automatically terminate effective April 1, 2019, or such earlier date that Landlord determines that Tenant will be unable to close on the tax credit financing by March 31, 2019.

Section 23.02. As a material inducement to Landlord entering into this Lease, Tenant agrees to use the Tax Credit Proceeds for a capital reserve account and/or an operating reserve account and other uses, such as acquisition of exhibits for the Premises, consented to by Landlord. Landlord agrees not to unreasonably withhold its consent to the prudent use of the Tax Credit Proceeds.

ARTICLE TWENTY-FOUR

No Waiver

Section 24.01. Waiver by Landlord of any breach by Tenant of any covenant or condition herein contained, or failure by Landlord to exercise any right or remedy in respect of any such breach, shall not constitute a waiver or relinquishment for the future of any such covenant or condition or of any subsequent breach of any such covenant or condition, or bar any right or remedy of Landlord in respect of any such subsequent breach, nor shall the receipt of any amounts due or portion thereof (regardless of any endorsement on any check or any statement in any letter accompanying any payment) by Landlord, whether the same be reserved and provided for herein as a Monthly Rent or Additional Rent under any of the covenants or provisions herein contained, operate as an accord and satisfaction or a waiver of the right of Landlord to enforce the payment of any kind previously due or as a bar to the termination of this Lease and the recovery of the Premises because of default in the payment of such payments previously due, by any appropriate remedy Landlord may select.

ARTICLE TWENTY-FIVE

Notices

25.01. Any notice or other communication required or permitted hereby, or convenient to Tenant or Landlord in the consummation of the transactions contemplated hereby, shall be deemed delivered upon receipt (i) when sent by registered or certified mail, return receipt requested postage prepaid, (ii) when sent by an expedited courier services, fees prepaid, and addressed to the respective parties and either a receipt is acknowledged therefor, or the courier service certifies that the party refused receipt, or (iii) when sent by electronic mail provided the

party receiving such electronic mail promptly confirms to the other party receipt of such electronic mail.

Notices to Landlord shall be sent to:

Fairfax County Executive
12000 Government Center Parkway, Suite 552
Fairfax, Virginia 22035
Attention: Bryan J. Hill
Email: Susan.Robinson@fairfaxcounty.gov

With copies to:

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035
Attention: County Attorney
Email: Elizabeth.Teare@fairfaxcounty.gov

and:

Fairfax County Risk Management Department
12000 Government Center Parkway, Suite 424
Fairfax, Virginia 22035
Attention: Leasing Department
Email: michael.lambert@fairfaxcounty.gov

Notices to Tenant shall be sent to:

Workhouse Arts Foundation
9518 Workhouse Way
Lorton, Virginia 22079
Attention: Ava Spece
Email: AvaSpece@workhousearts.org

With a copy to:

Michael W. Graff, Jr.
McGuireWoods LLP
1750 Tysons Boulevard, Suite 1800
Tysons, Virginia 22102
Email: mgraфф@mcguirewoods.com

ARTICLE TWENTY-SIX

Captions

Section 26.01. The captions and headings in this Lease are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this Lease or the intent of any provision thereof.

ARTICLE TWENTY-SEVEN

Time of the Essence

Section 27.01. Time is of the essence with regard to each and every term herein to which time is an element.

ARTICLE TWENTY-EIGHT

No Commissions

Section 28.01. Tenant represents to Landlord that no brokerage commissions or other compensation are due or payable to any person, firm, corporation or other entity with respect to or account of any action taken by or on behalf of Tenant with respect to this Lease.

ARTICLE TWENTY-NINE

Integration and Interpretation

Section 29.01. The terms and conditions herein set forth all the promises, agreements, conditions and understandings between Landlord and Tenant pertaining to leasing of the Premises, and there is no promise, agreement, condition or understanding either oral or written, between the parties other than as are herein set forth. This Lease has been negotiated at arm's length with both parties having the opportunity to consult with legal counsel with respect to all

provisions hereof. In the event of any ambiguity in any of the terms or provisions, this Lease shall not be interpreted against or in favor of either Landlord or Tenant, nor shall there be any presumption against or in favor of either Landlord or Tenant. No prior writings, including without limitation, drafts of this Lease and modifications thereto, shall be given any force or effect.

[Signatures Follow]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed as of the date first hereinabove written.

LANDLORD:

**BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA**

By: _____
Bryan J. Hill., County Executive

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX: to-wit:

The foregoing Lease was acknowledged before me this ____ day of December, 2018, by Bryan J. Hill, the County Executive of the Board of Supervisors of Fairfax County, Virginia, the Landlord hereunder.

Notary Public

My Commission expires _____

TENANT:

**WORKHOUSE MUSEUM DEVELOPMENT,
LLC**

By: The Workhouse Arts Foundation, Inc.,
its sole member

By: _____
Ava Spece, President

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

The foregoing Lease was acknowledged before me this ____ day of December, 2018, on behalf of Workhouse Museum Development, LLC, the Tenant hereunder, by Ava Spece, the President of The Workhouse Arts Foundation, Inc., the sole member of Workhouse Museum Development, LLC.

Notary Public

My Commission Expires: _____

EXHIBIT A
Property
LEGAL DESCRIPTION

ALL that certain lot, piece or parcel of land, together with all improvements thereon, situate, lying and being in the Mount Vernon Magisterial District, Fairfax County, Virginia, said lot or parcel being more particularly described as follows:

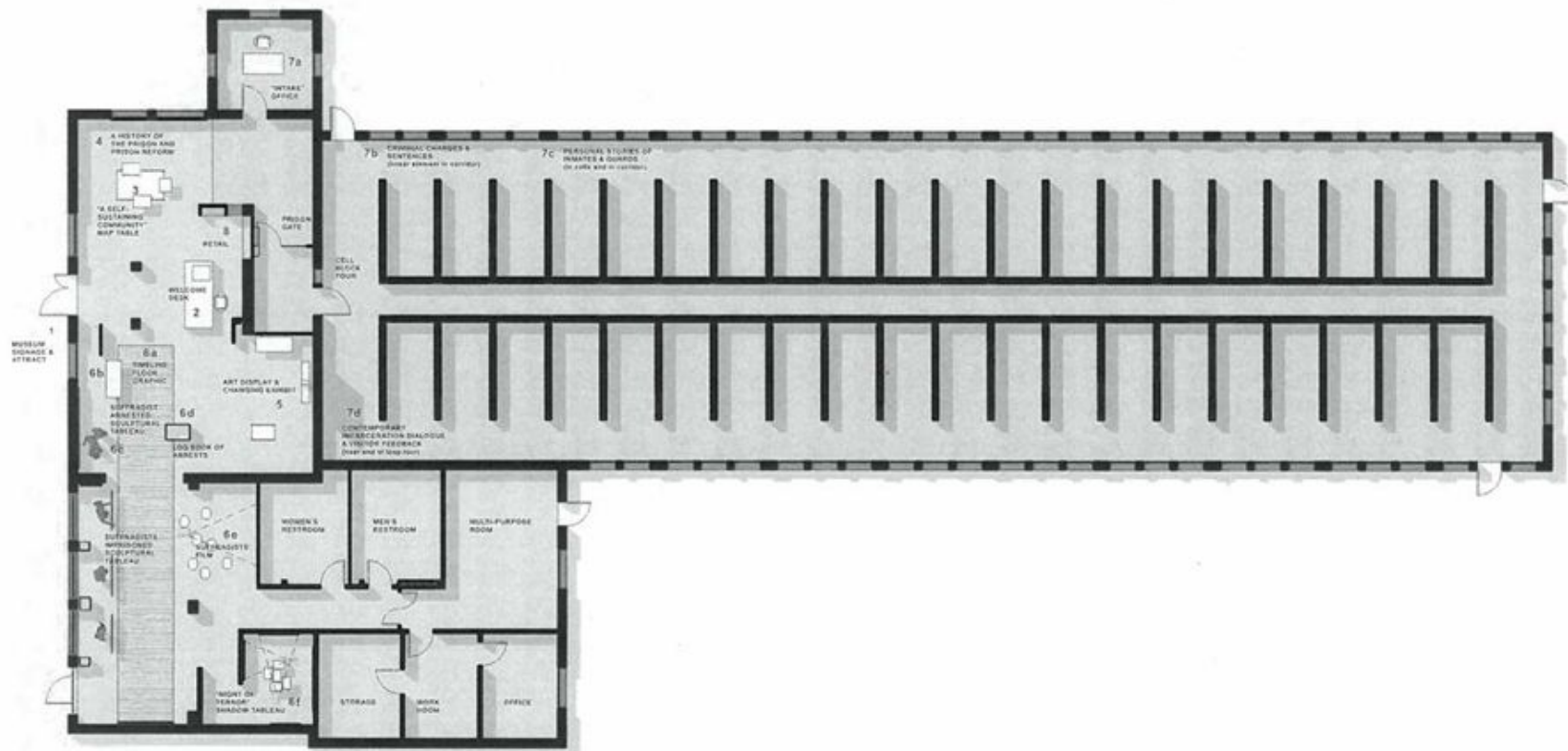
BEGINNING at a point in the centerline of Lorton Road - Virginia State Route #642 - variable width right-of-way and prescriptive right-of-way, and being a corner to Parcel "E" of the Plat of Division; thence departing the centerline of said Lorton Road and with the lands of said Parcel "E" the following two (2) courses: South 47° 04' 06" East, a distance of 1109.10 feet; thence South 37° 55' 10" West, a distance of 703.97 feet to a point, said point being an iron pipe set in a corner of Parcel "H" of the Plat of Division; thence departing said Parcel "E" and with the lands of said Parcel "H" the following four (4) courses and distances: South 01° 42' 33" East, a distance of 445.36 feet; thence, South 55° 15' 02" West, a distance of 486.80 feet; thence, South 06° 53' 35" East, a distance of 261.70 feet; thence, South 00° 29' 44" East, a distance of 290.34 feet to a point, said point being an iron pipe set in a corner of Parcel "I" of the Plat of Division; thence departing said Parcel "H" and with the lands of said Parcel "I" the following two (2) courses and distances: North 64° 43' 24" West, a distance of 923.51 feet; thence, North 77° 50' 42" West, a distance of 33.77 feet to a point in the centerline of Ox Road Virginia State Route #123 - 30' prescriptive right-of-way, and being a corner to the lands of Fairfax County Water Authority - Deed Book 10373 at Page 1122; thence departing said Parcel "I" and with the centerline of said Ox Road and the lands of said Fairfax County Water Authority the following seven (7) courses and distances: North 19° 29' 12" East, a distance of 136.89 feet; thence, North 10° 07' 47" East, a distance of 66.04 feet; thence North 05° 36' 58" East, a distance of 185.21 feet; thence, North 00° 42' 37" East, a distance of 175.05 feet; thence North 04° 08' 21" West, a distance of 799.14 feet; thence North 04° 00' 00" West, a distance of 654.47 feet; thence, North 05° 42' 34" West, a distance of 36.65 feet to a point in the centerline of said Ox Road (formerly Fairfax Courthouse Road); thence departing the lands of said Fairfax County Water Authority and with the centerline of the former Fairfax Courthouse Road, as it formerly existed, the following two (2) courses and distances: South 22° 43' 11" East, a distance of 450.70 feet; thence South 07° 48' 11" East, a distance of 306.00 feet to a point at the centerline intersection of said former Fairfax Courthouse Road and former Telegraph Road as it formerly existed; thence departing said former Fairfax Courthouse Road and with the former centerline of said Telegraph Road the following two (2) courses and distances: North 15° 39' 49" East, a distance of 251.30 feet; thence, North 48° 14' 49" East, a distance of 157.24 feet to a point in the centerline of the aforesaid Lorton Road; thence with the centerline of said Lorton Road the following eleven (11) courses and distances: North 61° 49' 06" East, a distance of 66.67 feet; thence, North 66° 03' 57" East, a distance of 129.41 feet; thence, North 68° 12' 08" East, a distance of 96.50 feet; thence, North 60° 15' 02" East, a distance of 33.98 feet; thence, North 52° 04' 06" East, a distance of 35.13 feet; thence, North 40° 50' 14" East, a distance of 41.74 feet; thence, North 30° 34' 00" East, a distance of 40.94 feet; thence, North 22° 17' 56" East, a distance of 80.73 feet; thence, North 15° 38' 58" East, distance of 154.19 feet; thence, North 18° 28' 01" East, a distance of 43.45 feet; thence, North 25° 52' 32" East, a distance of 27.82 feet to the point of Beginning. Containing 55.6912 acres of land, more or less.

Less and Except those portions dedicated for public street purposes in Deed Book 19655 at Page 1646, in Deed Book 19918 at Page 2006, and Deed Book 22130 at Page 1001, among the said land records.

EXHIBIT B

Premises

Proposed Interpretive Plan



Open to Public

W-2 Museum
W-3 Youth Arts Center/W-3 Theatre
W-4 Artist Studios - Visual Arts
W-5 Artist Studios - Visual Arts
W-6 Artist Studios - Visual Arts
W-7 Artist Studios - Glass Program
W-7A Glass Hot Shop
W-8 Artist Studios - Ceramics Program
W-9 Artist Studios - Visual Arts
W-9A Art Supply Store
W-10 Artist Studios - Visual Arts
W-11 Art of Movement/Performing Arts Studios
W-16 McGuireWoods Gallery, Vulcan Gallery and Artist Gift Shop
Amphitheater

Future Renovation (continued)

W-20 Future Programming
W-22 Music Barn
W-25 Future Programming
W-28 Future Programming
W-29 Future Programming
H-40 Residential
W-70 Greenhouse and Gardens
W-RO Future Programming

Future Development (Private Investment)

W-13 Future Private Development
N-1/2 Apartments
N-3/4 Restaurant(s)

Future Renovation

W-1 Events Center
W-12 Theatre
W-15 Administration
W-17 Future Programming
W-18 Future Programming

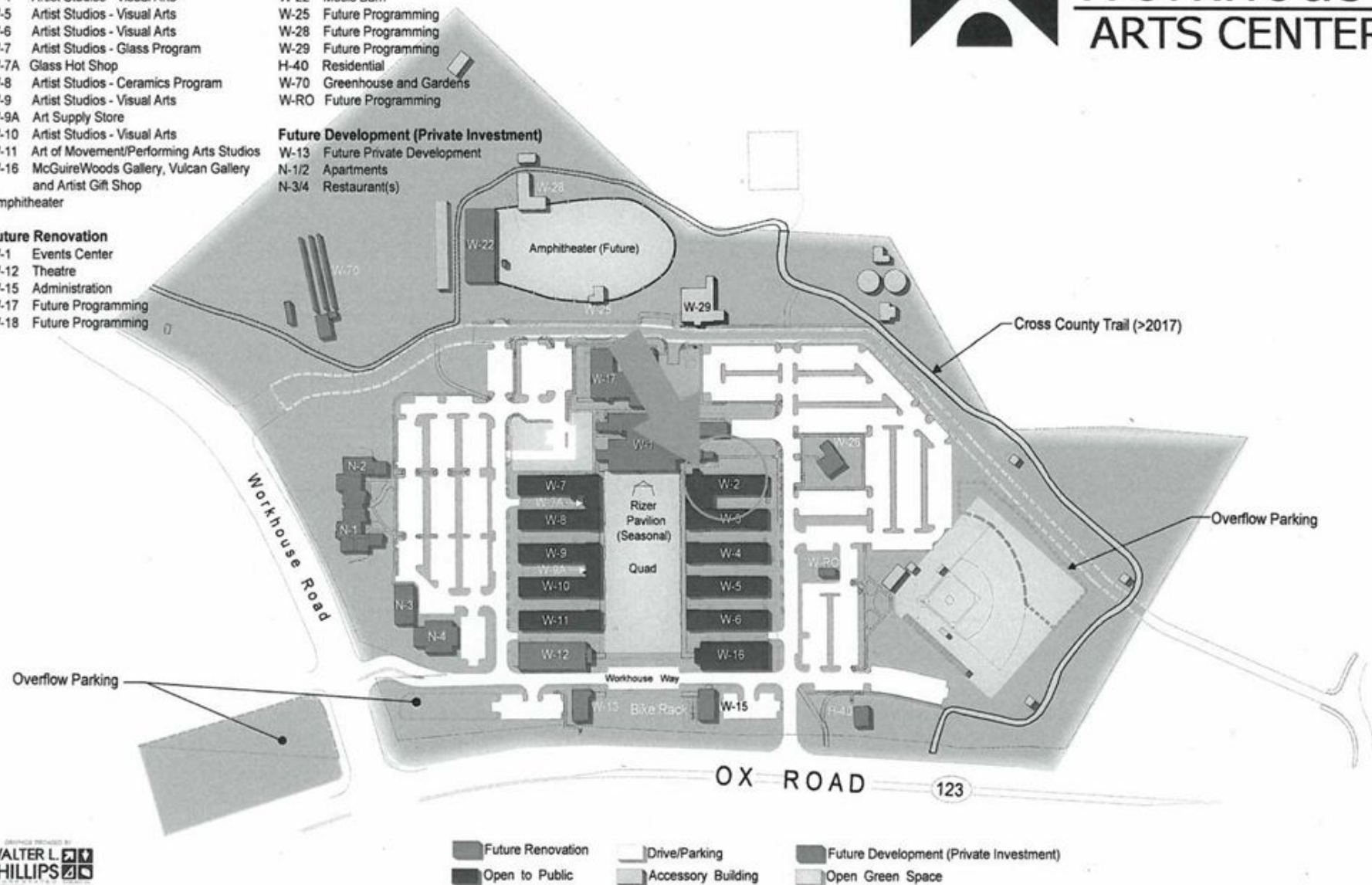


EXHIBIT C

Deed Restrictions

Standalone Cover Sheet Version 1.0

Page 1 of 1

Fairfax County Land Records Cover Sheet - USA TO BOARD

Instrument(s)

DEED

Grantor(s)

UNITED STATES OF AMERICA _I_N

Grantee(s)

BOARD OF SUPERVISORS OF FAIRFAX COUNTY _I_N

Consideration	4235000.00	Consideration %	100
Tax Exemption	811	Amount Not Taxed	
DEM Number		Tax Map Number	106-4- /01/ /0054
Original Book		Original Page	
Title Company	ESCROW ONE LTD	Title Case	4829
Property Descr.	METES & BOUNDS		
Certified	No	Copies	0
		Page Range	



Print

Next Page

Prepared by:

Alan Weiss, esq.

Consideration: \$4,235,000.00

GENERAL SERVICES ADMINISTRATION
LORTON CORRECTIONAL FACILITIES COMPLEX (LCC)
CONTROL NO. 4-G-VA-717

QUITCLAIM DEED

Escrow One, LTD
3937 University Drive
Fairfax, VA 22030-2527

Tax ID# 106-4- /01/ 10054

Box 125

Tax Exempt
Grantor: 58.1-811(A)(2)
Code: 58.1-811(3)
Grantor: 58.1-811(C)
Code:

THIS INDENTURE, made this the 11th day of July, 2002, between the UNITED STATES OF AMERICA, acting by and through the Administrator of General Services, under and pursuant to the powers and authority contained in the provisions of Section 141 of Public Law 105-277, enacted October 21, 1998, and Section 11201 of Public Law 105-33, enacted August 5, 1997, regulations and orders promulgated thereunder, Grantor, also called Government, and the BOARD OF SUPERVISORS OF FAIRFAX COUNTY Virginia, a body corporate and politic, whose mailing address is 12000 Government Center Parkway, Fairfax, Virginia, 22035-0064, Grantee, also called County.

WITNESSETH:

WHEREAS, the Grantor is the owner of certain real property known as the "Lorton Correctional Facilities Complex ("LCC") located in Fairfax County, Virginia, as shown on the plat attached hereto (the "Property"), having acquired the Property by virtue of deeds and eminent domain, all as more fully set forth among the land records of Fairfax County, Virginia (the "Land Records");

WHEREAS, the above-cited sections of the Public Laws state that the property on which the LCC is located shall be transferred from the District of Columbia to the General Services Administration ("GSA");

WHEREAS, the GSA has received the property and complied with applicable environmental and historic preservation laws, including the "Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the Proposed Disposal of the Lorton

Correctional Complex, Fairfax County, Virginia," dated July 20, 2001, with Lead Agency, General Services Administration, Cooperative Agency, the County of Fairfax, Virginia, and a "Memorandum of Agreement," signed by the Advisory Committee on Historic Preservation, June 28, 2001, and the County, May 30, 2001, and the GSA April 9, 2001, among other signatures;

WHEREAS, the County, pursuant to the above cited Section 141 of Public Law 105-277, has submitted a reuse plan that complies with all requisite approvals to the Administrator of General Services, and that maximizes use of the land for open space, park land or recreation;

WHEREAS, the Administrator of General Services has, pursuant to the cited sections, cooperated with the District of Columbia Corrections Trustee to maintain the security of the LCC until its closure, completed the remediation of environmental contamination in compliance with applied Federal and State environmental laws, and incorporated the Fairfax County reuse plan and the Department of the Interior's land transfer reports into a disposition strategy;

WHEREAS, the Administrator of General Services has identified a portion of the property ("recreational property") for use for open space, park land or recreation in the Fairfax County plan and by this conveyance to the County will transfer said recreational property along with other property, and provide that the County and its successors and assigns use the recreational property only for open space, park land or recreation and that the transfer of that recreational property will be at fair market value considering the highest and best use of the property to be open space, park land and recreation;

WHEREAS, the County has obtained permission from the Northern Virginia Regional Park Authority and the Fairfax County Park Authority to be the public entity to obtain the recreational property and transfer portions of the property to those entities subject to the conditions that the recipient use the transferred property only for open space, park land or recreation;

WHEREAS, the Administrator of General Services has also pursuant to Section 141 (g)(4)(B) of the Lorton Technical Corrections Act of 1998 reported on plans to comply with Paragraph (g)(4) of the Act to the required congressional committees;

WHEREAS, the Administrator of General Services has authority under the above-cited Act and the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, to dispose of Government property; and

WHEREAS, the GSA and National Park Service were to ensure that the said transfer complies with all applicable environmental and historic preservation laws and the Grantee has provided additional land descriptions suitable for transferring the Property, and GSA has completed the necessary surveys to determine the presence of any hazardous substances, contaminants or pollutants, and has taken all action necessary to protect human health and the environment and will take any additional response action necessary pursuant to the CERCLA covenant contained herein.

NOW THEREFORE,

That the Grantor, as provided in the Lorton Technical Corrections Act of 1998, Public Law 105-277, for and inconsideration of \$4,235,000.00, has transferred, and does by these presents transfer, remise, release and forever quitclaim "as-is, where-is" without representation or warranty, expressed or implied, except as hereinafter stated, unto the Grantee, its successors and assigns, all right, title, interest, claim and demand which said Grantor has or may have had in and to all that property commonly known as "a portion of the Lorton Correctional Complex," situated within the County of Fairfax, State of Virginia, consisting of 2,323 acres, and being more specifically described in Exhibit "A," which is attached hereto, made a part hereof and consists of ten (10) page(s), together with all appurtenances, rights, privileges, easements, benefits and agreements appurtenant thereto, all water rights and all sewer rights allocated to the property, any land lying in

the bed of any street, road, avenue or right-of-way in front of or adjoining the property, and all rights and entitlements to development of the property granted by governmental or quasi-governmental bodies or entities having jurisdiction or authority over the property.

SUBJECT, to any and all existing easements, restrictions, and rights for streets, public roads, highways, railroads, pipelines, waterlines, drainage and public utilities; if any, recorded in the chain of title among the land records of Fairfax County, Virginia, and subject specifically to the easements, permits, licenses and leases listed in Exhibit "B", which is attached hereto, made a part hereof and consists of one (1) page.

The Grantee covenants for itself and its successors and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that is identified as open space, park land, or recreation (the "recreational property") in the above-referenced Fairfax County reuse plan, being those parcels identified as being those parcels identified as A-1, A-2, E, and I on Exhibit "A," that in accordance with Section 141(b)(4) of the Lorton Technical Corrections Act of 1998 the identified property or any part thereof is hereby conveyed at fair market value considering the highest and best use of the property to be open space, park land, and recreation being the public purpose for which it was conveyed, and shall be used and maintained in perpetuity only for open space, park land, or recreation, even if the plan is amended with respect to the property to permit other uses, subject to the Grantee's right to grant easements for utilities and dedicate portions thereof for public streets consistent with the Fairfax County Reuse Plan as presently set forth. Further, in the event that Grantee, its successors or assigns, or any licensee, lessee, tenant in possession, concessionaire or occupier of the recreational property conveyed herein, seeks to change the use (i) to such that a notice and approval is required pursuant to Va. Code Ann. § 15.2-2232 (Michie Supp.2001) or any successor statute, or (ii) to any significant commercial use for which the

State statute does not require notice (such change in use as described in clauses (i) and (ii) above being referred to hereinafter as a "Change in Use"), then the following shall apply: Grantor shall have the right to object, comment upon, or concur in a Change in Use provided that Grantor delivers to Grantee or its successor written notice of its objection within forty five (45) days after Grantor receives written notice from Grantee or its successors and assigns of the proposed Change in Use. If Grantee or its successors or assigns fails to notify Grantor of a Change in Use, Grantor shall still have the right to reasonably object thereto if a Grantor notifies Grantee or its successor within forty five (45) days after Grantor first learns of such Change in Use. Failure of Grantor to object, comment upon, or concur in a purported Change in Use within forty five (45) days of Grantor's receipt of the notice or, if there is no notice, within forty five (45) days after Grantor first learns of such Change in Use, shall be considered consent that such use is permitted hereunder. If Grantor does timely object to the purported Change in Use in accordance with the terms immediately hereinbefore, Grantor and Grantee or its successor shall enter into discussions with each other in good faith for a period of forty five (45) days after Grantor's timely objection to attempt to resolve the dispute. If the parties are unable to resolve the dispute within such forty five (45) day period, Grantee or its successor may proceed with the purported Change in Use, subject to Grantor's right to enforce this covenant in a timely matter. The Grantor shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction if the conveyed property or portion thereof ceases to be used or maintained for the purpose for which it was conveyed.

GRANTEE ALSO COVENANTS for itself, its successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee and its heirs,

successors and assigns shall not discriminate upon the basis of race, color, religion, national origin, or sex in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed the sole beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein the locality of the property hereby conveyed and shall have sole right to enforce this covenant in any court of competent jurisdiction.

The Grantee, agrees and covenants for itself, its successors and assigns and every successor in interest to the property hereby conveyed, or any part thereof to the following: The property lies in the 100-year flood plain of the Potomac-Shenandoah River Basin (Virginia State River Basin I). The Grantee agrees to comply with all Federal, State, and local regulations pertaining to land use and development of properties subject to flooding. The Grantee and all successors shall, to the extent permitted by Virginia law, save the Grantor harmless in the event of damage to or loss of life or property resulting directly or indirectly from flooding. Further, the conveyed property contains identified wetlands sites as delineated in Exhibit "C". Any use of the property will be subject to compliance with Federal, State, and local regulations governing wetlands, including but not limited to Executive Order 11990, Protection of Wetlands, and Section 404 of the Clean Water Act, as may be appropriate.

The Grantee by acceptance of this deed for itself and its successors or assigns agrees to comply with any conditions and requirements in Exhibit "D", the "Notice of the Presence of Asbestos Warning," which is attached hereto, made a part hereof, and consists of one page; and also agrees to comply with all Federal, State and local laws relating to above-ground and underground

storage tanks and any transformers located on the conveyed property. The Grantee, for itself and any successors and assigns, has been urged, invited and cautioned to inspect the property for asbestos, been furnished listing of storage tanks on the property and has made utility and asbestos surveys of the property and has agreed that in no case will failure to inspect constitute grounds for a claim against the Grantor or for failure to complete performance of the Offer to Purchase and Acceptance.

The Grantee covenants for itself, its successors and assigns, and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee has received information from the Grantor about lead-based paint and lead-based paint hazards, and has been informed of its obligations under 42 U.S.C. 4852d and is aware of its responsibility to ensure compliance thereof.

A portion of the property is located within the boundaries of the National Register-eligible Lorton Correctional Complex Historic Area. Grantee, for itself, its successors and assigns, and every successor in interest to the conveyed property or portion thereof, agrees to comply with the Memorandum of Agreement dated June 29, 2001, and containing covenants to preserve the historic integrity of the property, all as more fully set forth in Exhibit "E" which is attached hereto, made a part hereof, and consists of twenty three (23) pages.

(A) NOTICE Regarding Hazardous Substance Activity. Pursuant to 40 CFR 373.2 and Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(A)(i), and based upon a complete search of agency files, the United States gives notice that Exhibit F provides the following information: (1) the type and quantity of hazardous substances that were known to have been released or disposed of or stored for one year or more on the Property; (2) the time such storage, release or disposal took place; and (3) a description of remedial action taken, if any.

(B) **CERCLA Covenant.** Grantor warrants that all remedial action necessary to protect human health and the environment has been taken before the date of this conveyance. Grantor warrants that it shall take any additional response action found to be necessary after the date of this conveyance regarding hazardous substances located on the Property on the date of this conveyance.

(1) This covenant shall not apply:

(a) in any case in which Grantee, its successor(s) or assign(s), or any successor in interest to the Property or part thereof is a Potentially Responsible Party (PRP) with respect to the Property immediately prior to the date of this conveyance; OR

(b) to the extent but only to the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the Grantee, its successor(s) or assign(s), or any party in possession after the date of this conveyance that either;

(i) results in a release or threatened release of a hazardous substance that was not located on the Property on the date of this conveyance; OR

(ii) causes or exacerbates the release or threatened release of a hazardous substance the existence and location of which was known and identified to the applicable regulatory authority as of the date of this conveyance.

(2) In the event Grantee, its successor(s) or assign(s), seeks to have Grantor conduct or pay for any additional response action, and, as a condition precedent to Grantor incurring any additional cleanup obligation or related expenses, the Grantee, its successor(s) or assign(s), shall provide Grantor at least 45 days written notice of such a claim and provide credible evidence that:

(a) the associated contamination existed prior to the date of this conveyance; and

(b) the need to conduct any additional response action or part thereof was not the result of any act or failure to act by the Grantee, its successor(s) or assign(s), or any party in possession.

(C) ACCESS. Grantor reserves a right of access to all portions of the Property for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to Grantor. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

The property hereby conveyed is presently under the jurisdiction of the General Services Administration, is available for disposal and its disposal has been heretofore authorized by the Administrator of General Services, acting pursuant to the above referred to laws, regulations and orders.

TO HAVE AND TO HOLD the same, together with all and singular the improvements thereon and the appurtenances thereunto belonging or in anywise appertaining, unto the said Grantee, its successors and assigns, forever.

WITNESS the following signature and seal.

UNITED STATES OF AMERICA
Acting by and through the
Administrator of General Services

By: *James Brandon*
JAMES BRANDON
Contracting Officer
Property Disposal Division
General Services Administration
Region IV, Atlanta, Georgia

WITNESSES

Betty L. Jennings
Glenda L. Green

STATE OF GEORGIA)
)
COUNTY OF FULTON)

I, the undersigned, a Notary Public in and for the State of Georgia, do hereby certify that this day personally appeared before me in the state and county aforesaid, JAMES BRANDON, Contracting Officer, Property Disposal Division, General Services Administration, Region IV, Atlanta, Georgia, for and on behalf of the UNITED STATES OF AMERICA, whose name is signed to the foregoing document dated the 11th day of July, 2002, and acknowledged the same.

Given under my hand and seal this 11th day of July, 2002.




Glenda L. Green
Glenda L. Green
Notary Public
State of Georgia

My Commission Expires 3/4/2006

This instrument prepared by Gabriel N. Steinberg, Attorney, GSA, 77 Forsyth Street, Suite 600, Atlanta, Georgia 30303.

Accepted on behalf of the Board of Supervisors of Fairfax County, Virginia, by authority granted by the said Board.

APPROVED AS TO FORM:

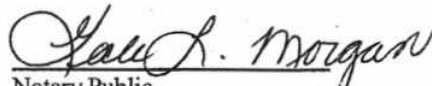

County Attorney

Accepted by:


Anthony H. Griffin, County Executive

COMMONWEALTH OF VIRGINIA)
)
COUNTY OF FAIRFAX) to-wit

The foregoing instrument was acknowledged before me this 12 day of July 2002 by Anthony H. Griffin, County Executive, on behalf of the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA.


Notary Public

My Commission expires: 12-31-03

GSA Revised: 04/02/02

EXHIBIT A

DESCRIPTION OF PROPERTY

See attached legal description for: A-1, A-2, D, E, F, G, H, I, J, Q. as identified in Lorton
Correctional Complexes(LLC) Plat of Division Based on the Boundary Survey (provided by Fairfax
County) Performed by Greenhorne & O'Mara, Inc, dated December 14, 2001

EXHIBIT A
Page 1 of 10



GENERAL CIVIL
TRANSPORTATION
ENVIRONMENTAL
GEOGRAPHIC SCIENCES

December 21, 2001

**METES AND BOUNDS DESCRIPTION OF
PARCEL A-1
PART OF THE LORTON CORRECTIONAL COMPLEXES (LCC)
PLAT OF DIVISION
BASED ON THE BOUNDARY SURVEY PERFORMED BY
GREENHORNE & O'MARA, INC.
DECEMBER 21, 2001
MOUNT VERNON DISTRICT
FAIRFAX COUNTY, VIRGINIA**

Beginning at a point in the centerline of Pohick Road ~ Virginia State Route #641 ~ variable width and prescriptive right-of-way, said point being North 36°11'16" East, 51.65 feet from the easternmost corner of Section 19 ~ Newington Forest ~ Deed Book.5426 at Page 1053, and North 35°50'10" West, 18.27 feet from a found concrete monument stamped "1914"; thence with the centerline of said Pohick Road the following nine (9) courses:

South 19°00'58" East, a distance of 571.49 feet; thence,
South 14°49'05" East, a distance of 121.15 feet; thence,
South 09°42'26" East, a distance of 175.40 feet; thence,
South 12°43'50" East, a distance of 111.71 feet; thence,
South 22°55'29" East, a distance of 112.60 feet; thence,
South 39°53'36" East, a distance of 108.31 feet; thence,
South 47°39'33" East, a distance of 149.45 feet; thence,
South 41°04'53" East, a distance of 95.90 feet; thence,

South 28°31'43" East, a distance of 25.40 feet to a point in the most northerly corner of Parcel L, the property of Pulte Homes, Inc.; thence departing Pohick Road and running along and with the line of said Parcel L the following 32 (thirty two) courses:

South 05°28'03" East, a distance of 146.22 feet; thence,
South 14°43'09" West, a distance of 186.03 feet; thence,
South 28°30'17" West, a distance of 260.58 feet; thence,
South 61°22'58" West, a distance of 214.41 feet; thence,
South 32°50'34" East, a distance of 220.33 feet; thence,
South 66°48'46" East, a distance of 112.97 feet; thence,
South 25°01'49" East, a distance of 181.43 feet; thence,
South 00°00'17" West, a distance of 292.03 feet; thence,

**EXHIBIT A
Page 2 of 10**

11211 Waples Mill Road • Fairfax, Virginia 22030 • Phone: 703.385.9800 • Fax: 703.385.5721
www.G-and-O.com

13

Page 2
Parcel A-1
Lorton Correctional Complexes
December 21, 2001

South 22°16'16" East, a distance of 171.67 feet; thence,
South 61°46'41" East, a distance of 119.75 feet; thence,
South 82°42'22" East, a distance of 176.34 feet; thence,
South 27°17'05" East, a distance of 143.85 feet; thence,
South 37°12'27" West, a distance of 157.64 feet; thence,
South 00°20'54" West, a distance of 367.14 feet; thence,
South 79°57'04" East, a distance of 47.49 feet; thence,
South 06°57'10" East, a distance of 87.47 feet; thence,
South 22°27'13" East, a distance of 210.82 feet; thence,
South 81°34'28" East, a distance of 57.85 feet; thence,
North 34°27'59" East, a distance of 258.13 feet; thence,
South 80°22'01" East, a distance of 80.42 feet; thence,
South 53°54'47" East, a distance of 57.73 feet; thence,
North 82°49'11" East, a distance of 133.86 feet; thence,
South 22°43'32" East, a distance of 98.73 feet; thence,
South 75°58'12" East, a distance of 34.95 feet; thence,
South 20°34'00" East, a distance of 38.07 feet; thence,
South 89°32'32" East, a distance of 155.98 feet; thence,
South 55°14'11" East, a distance of 56.30 feet; thence,
South 14°11'30" East, a distance of 21.23 feet; thence,
South 72°42'00" East, a distance of 63.33 feet; thence,
North 72°57'40" East, a distance of 55.11 feet; thence,
North 53°31'36" East, a distance of 131.19 feet; thence,

North 06°09'21" East, a distance of 59.44 feet to a point in the centerline of the aforesaid Pohick Road; thence running along and with the centerline of said Pohick Road the following six (6) courses:

South 41°42'07" East, a distance of 52.46 feet; thence,
South 30°08'58" East, a distance of 72.88 feet; thence,
South 25°35'05" East, a distance of 188.90 feet; thence,
South 29°06'13" East, a distance of 92.10 feet; thence,
South 39°07'42" East, a distance of 90.53 feet; thence,
South 46°46'02" East, a distance of 365.79 feet; thence

Departing the centerline of Pohick Road South 44°44'02" East, a distance of 128.21 feet to a set concrete monument on a northern line of the lands of Ruth Jackley Cranford, et al ~ Deed Book 5803 at Page 839; thence with the lands of said Cranford et al the following three (3) courses:

South 64°13'24" West, a distance of 70.80 feet; thence,
South 68°11'24" West, a distance of 321.36 feet; thence,

Page 3
 Parcel A-1
 Lorton Correctional Complexes
 December 21, 2001

South 62°53'14" West, a distance of 27.05 feet to a point in the center of Pohick Creek, said point also being the southeasternmost corner of another parcel of the lands of Ruth Jackley Cranford et al ~ Deed Book 5803 at Page 839; thence running along and with said Pohick Creek, said Cranford and then with the lands of Dorothy R. Brodie, et al ~ Deed Book 2608 at Page 324 the following 24 (twenty four) courses:

North 10°50'59" West, a distance of 234.20 feet; thence,
 North 38°35'12" West, a distance of 156.06 feet; thence,
 North 29°39'11" West, a distance of 151.61 feet; thence,
 North 56°00'54" West, a distance of 63.27 feet; thence,
 North 86°04'33" West, a distance of 39.71 feet; thence,
 North 69°35'27" West, a distance of 108.15 feet; thence,
 North 77°38'47" West, a distance of 431.52 feet; thence,
 South 77°36'34" West, a distance of 99.63 feet; thence,
 South 11°46'38" East, a distance of 61.89 feet; thence,
 South 18°44'53" East, a distance of 328.21 feet; thence,
 South 19°07'15" West, a distance of 48.67 feet; thence,
 South 43°08'48" West, a distance of 82.66 feet; thence,
 South 16°08'22" West, a distance of 68.73 feet; thence,
 South 32°48'16" East, a distance of 147.66 feet; thence,
 South 17°52'18" East, a distance of 220.47 feet; thence,
 South 00°36'02" East, a distance of 113.10 feet; thence,
 South 30°51'30" West, a distance of 191.34 feet; thence,
 South 06°40'05" West, a distance of 189.19 feet; thence,
 South 19°52'27" West, a distance of 258.59 feet; thence,
 South 21°57'57" West, a distance of 237.34 feet; thence,
 South 37°19'53" West, a distance of 211.69 feet; thence,
 South 17°04'25" West, a distance of 59.15 feet; thence,
 South 22°30'20" East, a distance of 41.39 feet; thence,

South 12°04'56" East, a distance of 121.13 feet to a point in the western right-of-way of Interstate Route #95 ~ variable width right-of-way; thence departing Pohick Creek and the lands of Brodie, et al and running along and with the line of said Interstate Route #95 the following two (2) courses:

12.81 feet along the arc of a curve deflecting to the left having a radius of 11416.11 feet, a delta of 00°03'52", a tangent of 6.41 feet and a chord bearing and distance of South 43°45'25" West, 12.81 feet; thence,

South 50°04'25" West, a distance of 263.44 feet to a point in the most easterly corner of Parcel K, the lands of Pulte Homes, Inc.; thence departing Interstate Route #95 and running along and with the line of said Parcel K the following 111 (one hundred and eleven) courses:

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North 69°00'21" West, a distance of 220.94 feet; thence,
North 44°32'36" West, a distance of 116.53 feet; thence,
North 14°53'22" West, a distance of 111.32 feet; thence,
North 20°23'29" East, a distance of 30.91 feet; thence,
South 67°11'54" East, a distance of 115.71 feet; thence,
North 46°19'34" East, a distance of 96.24 feet; thence,
North 00°09'23" East, a distance of 75.70 feet; thence,
North 79°57'59" East, a distance of 26.23 feet; thence,
South 49°23'33" East, a distance of 122.89 feet; thence,
North 26°51'29" East, a distance of 68.70 feet; thence,
North 09°57'26" East, a distance of 165.66 feet; thence,
North 24°39'43" West, a distance of 42.22 feet; thence,
North 52°57'44" West, a distance of 104.59 feet; thence,
North 68°15'15" West, a distance of 244.60 feet; thence,
North 53°29'15" East, a distance of 138.30 feet; thence,
North 22°02'53" East, a distance of 42.17 feet; thence,
North 16°26'53" West, a distance of 49.97 feet; thence,
North 05°11'49" East, a distance of 153.28 feet; thence,
North 11°51'26" West, a distance of 68.18 feet; thence,
North 37°53'10" West, a distance of 63.57 feet; thence,
North 75°27'25" West, a distance of 45.51 feet; thence,
South 54°03'02" West, a distance of 106.36 feet; thence,
South 15°46'22" West, a distance of 50.84 feet; thence,
South 45°24'35" West, a distance of 155.77 feet; thence,
South 70°00'04" West, a distance of 173.02 feet; thence,
South 36°26'25" West, a distance of 31.02 feet; thence,
South 79°30'56" West, a distance of 65.54 feet; thence,
North 19°31'17" West, a distance of 76.75 feet; thence,
North 08°09'18" East, a distance of 118.63 feet; thence,
North 65°26'21" West, a distance of 38.52 feet; thence,
South 62°40'45" West, a distance of 335.80 feet; thence,
South 56°25'43" West, a distance of 557.30 feet; thence,
South 80°19'47" West, a distance of 73.53 feet; thence,
North 67°04'53" West, a distance of 117.81 feet; thence,
North 84°35'09" West, a distance of 115.93 feet; thence,
North 35°02'17" East, a distance of 143.69 feet; thence,
North 06°32'01" West, a distance of 87.01 feet; thence,
North 58°11'52" East, a distance of 47.42 feet; thence,
North 19°22'39" East, a distance of 116.33 feet; thence,
North 22°22'04" West, a distance of 124.18 feet; thence,
North 46°55'41" West, a distance of 102.27 feet; thence,

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North 16°05'30" East, a distance of 61.61 feet; thence,
North 75°31'41" East, a distance of 111.49 feet; thence,
South 75°40'09" East, a distance of 70.21 feet; thence,
North 85°16'11" East, a distance of 467.50 feet; thence,
South 47°43'44" East, a distance of 29.07 feet; thence,
North 78°58'46" East, a distance of 26.32 feet; thence,
North 33°47'14" East, a distance of 91.97 feet; thence,
North 80°50'24" East, a distance of 55.92 feet; thence,
North 41°43'17" East, a distance of 86.78 feet; thence,
North 04°20'03" West, a distance of 100.57 feet; thence,
North 35°39'58" West, a distance of 31.25 feet; thence,
North 06°23'09" East, a distance of 248.58 feet; thence,
South 56°04'25" East, a distance of 99.67 feet; thence,
North 41°50'29" East, a distance of 95.43 feet; thence,
North 08°27'45" East, a distance of 192.11 feet; thence,
North 89°20'26" West, a distance of 332.01 feet; thence,
South 67°16'03" West, a distance of 93.35 feet; thence,
South 07°39'58" East, a distance of 92.12 feet; thence,
South 43°45'10" West, a distance of 45.58 feet; thence,
South 81°06'27" West, a distance of 91.20 feet; thence,
South 63°40'02" West, a distance of 191.47 feet; thence,
North 88°10'23" West, a distance of 406.66 feet; thence,
North 21°02'04" West, a distance of 196.32 feet; thence,
South 60°07'51" West, a distance of 31.63 feet; thence,
North 49°13'51" West, a distance of 105.08 feet; thence,
South 49°53'13" West, a distance of 284.40 feet; thence,
South 58°30'43" West, a distance of 222.24 feet; thence,
North 01°59'40" West, a distance of 498.14 feet; thence,
South 77°41'09" West, a distance of 101.65 feet; thence,
North 69°14'29" West, a distance of 114.12 feet; thence,
South 68°22'20" West, a distance of 133.54 feet; thence,
South 77°56'41" West, a distance of 318.99 feet; thence,
North 54°53'19" West, a distance of 270.20 feet; thence,
North 64°21'33" West, a distance of 638.71 feet; thence,
South 52°57'14" West, a distance of 321.87 feet; thence,
South 00°37'57" West, a distance of 43.86 feet; thence,
South 88°24'46" West, a distance of 81.29 feet; thence,
South 25°30'17" West, a distance of 141.54 feet; thence,
South 54°29'15" East, a distance of 52.48 feet; thence,
South 36°37'56" East, a distance of 43.65 feet; thence,
South 14°35'37" East, a distance of 43.88 feet; thence,

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South 06°26'57" West, a distance of 53.37 feet; thence,
 South 03°59'39" East, a distance of 340.51 feet; thence,
 South 16°59'54" West, a distance of 74.19 feet; thence,
 South 33°11'56" West, a distance of 136.72 feet; thence,
 South 58°20'38" West, a distance of 121.88 feet; thence,
 South 86°21'23" West, a distance of 81.72 feet; thence,
 North 49°03'44" West, a distance of 182.35 feet; thence,
 North 20°32'06" West, a distance of 60.59 feet; thence,
 North 20°59'02" West, a distance of 46.36 feet; thence,
 North 07°21'04" West, a distance of 256.88 feet; thence,
 North 27°09'04" West, a distance of 96.00 feet; thence,
 North 05°17'00" West, a distance of 130.01 feet; thence,
 North 22°34'39" East, a distance of 75.91 feet; thence,
 North 62°20'42" East, a distance of 172.31 feet; thence,
 North 29°07'54" East, a distance of 251.98 feet; thence,
 North 40°50'29" East, a distance of 58.35 feet; thence,
 North 64°36'24" East, a distance of 57.61 feet; thence,
 North 28°33'52" East, a distance of 204.83 feet; thence,
 South 66°50'23" West, a distance of 131.76 feet; thence,
 North 87°46'54" West, a distance of 391.33 feet; thence,
 North 76°29'36" West, a distance of 192.32 feet; thence,
 South 75°30'45" West, a distance of 145.59 feet; thence,
 South 37°31'28" West, a distance of 73.14 feet; thence,
 North 12°27'53" West, a distance of 225.81 feet; thence,
 North 76°50'11" West, a distance of 449.79 feet; thence,
 North 54°18'13" West, a distance of 58.50 feet; thence,
 North 85°53'27" West, a distance of 236.31 feet; thence,

South 71°29'43" West, a distance of 350.76 feet to a common easterly corner of Parcel C and Parcel E, part of the aggregate lands of United States Of America, said point also being in the centerline of Silverbrook Road ~ State Route #600 ~ variable and prescriptive Right-of-way; thence departing Parcel K and Parcel C and running along and with the line of said Parcel E and the centerline of Silverbrook Road,

North 35°10'09" West, a distance of 138.19 feet to a point in the southwesterly corner of Parcel J, Section 3, Newington Heights; thence departing Parcel E and the centerline of Silverbrook Road and running along and with the line of said Newington Heights, Section 3, Section 2 and Section 1 the following 48 (forty eight) courses:

North 70°41'50" East, a distance of 211.24 feet; thence,
 North 35°38'50" East, a distance of 110.00 feet; thence,
 North 88°25'50" East, a distance of 710.10 feet; thence,

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South 18°55'10" East, a distance of 152.10 feet; thence,
 South 64°04'10" East, a distance of 300.62 feet; thence,
 South 50°55'33" East, a distance of 77.78 feet; thence,
 South 73°39'14" East, a distance of 18.81 feet; thence,
 North 68°07'54" East, a distance of 90.12 feet; thence,
 North 25°41'37" East, a distance of 30.00 feet; thence,
 North 78°00'18" East, a distance of 51.67 feet; thence,
 South 30°33'16" East, a distance of 43.90 feet; thence,
 South 83°03'18" East, a distance of 67.53 feet; thence,
 South 55°35'54" East, a distance of 55.15 feet; thence,
 North 53°22'43" East, a distance of 12.58 feet; thence,
 North 78°27'03" East, a distance of 26.17 feet; thence,
 South 72°23'50" East, a distance of 80.90 feet; thence,
 North 80°05'00" East, a distance of 85.22 feet; thence,
 South 64°06'03" East, a distance of 27.51 feet; thence,
 North 72°28'32" East, a distance of 36.22 feet; thence,
 North 36°41'12" East, a distance of 17.79 feet; thence,
 North 89°23'23" East, a distance of 10.68 feet; thence,
 South 26°03'27" East, a distance of 28.94 feet; thence,
 North 71°10'16" East, a distance of 63.89 feet; thence,
 South 65°15'05" East, a distance of 40.93 feet; thence,
 North 51°04'13" East, a distance of 23.20 feet; thence,
 North 07°56'45" East, a distance of 12.95 feet; thence,
 North 68°58'42" East, a distance of 68.66 feet; thence,
 South 79°21'21" East, a distance of 22.67 feet; thence,
 South 37°29'34" East, a distance of 33.61 feet; thence,
 North 73°34'13" East, a distance of 34.48 feet; thence,
 North 47°53'12" East, a distance of 25.06 feet; thence,
 South 51°57'35" East, a distance of 40.59 feet; thence,
 North 83°40'44" East, a distance of 18.33 feet; thence,
 South 64°37'56" East, a distance of 26.87 feet; thence,
 North 82°06'00" East, a distance of 20.76 feet; thence,
 South 54°52'52" East, a distance of 68.49 feet; thence,
 South 35°46'41" East, a distance of 46.95 feet; thence,
 South 51°17'34" East, a distance of 54.23 feet; thence,
 South 58°48'50" West, a distance of 41.88 feet; thence,
 South 19°28'10" East, a distance of 44.16 feet; thence,
 South 89°25'20" East, a distance of 12.37 feet; thence,
 South 53°34'14" East, a distance of 105.77 feet; thence,
 North 47°28'07" East, a distance of 27.89 feet; thence,
 South 47°51'48" East, a distance of 65.76 feet; thence,

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North 53°33'17" East, a distance of 23.57 feet; thence,
North 14°24'29" East, a distance of 65.88 feet; thence,
South 89°03'20" East, a distance of 89.00 feet; thence,

South 68°08'48" East, a distance of 65.31 feet to a point in the southwesterly corner of Section 24,
Newington Forest; thence departing Section 1, Newington Heights and running along and with the line of
said Newington Forest, Section 24, Section 15, Section 25 and Section 19,

North 36°11'16" East, a distance of 4596.05 feet to the Point of Beginning.

Containing 300.9493 ACRES of land, more or less.

DD/em

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2d

GSA Revised: 04/02/02

EXHIBIT A

SURVEY

**Reference Lorton Correctional Complexes (LCC) Plat of Division Based on the boundary Survey
(provided by Fairfax County) performed by Greenhorne & O'Mara, Inc. dated December 14, 2001**

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The foregoing legal description is further identified on a plat showing a boundary survey prepared by Greenhorne & O'Mara, Inc. filed with the Survey Branch of the Fairfax County Department of Public Works and Environmental Services; ~~_____~~

GSA Revised: 04/02/02

EXHIBIT B

Permits, Easements, Licenses, Leases

<u>TYPE</u>	<u>PURPOSE</u>	<u>DATE</u>
<u>Permit</u>		
Virginia Electric & Power Company	Construction of 230,000 volt transmission line; 10,500 linear feet of overhead lines to service the Energy/Resource Recovery Center.	6/23/89
<u>Easements</u>		
Fairfax County Water Authority	Waterline (15") along Furnace Road.	6/28/99
Fairfax County Board of Supervisors.	Sewer line (10") along Hooes Road	1/20/00
Fairfax County Water Authority	Waterline (42") from Silverbrook Road to Ox Road.	10/12/00
<u>Licenses</u>		
Fairfax County Board of Supervisors	Installation and maintenance of an antennae for public safety purposes.	1/18/00
D.C. Department of Corrections	Use of former Nike Site and Sewage Treatment Plant (Demolition purposes)	Pending
<u>Leases</u>		
Fairfax County Board of Supervisors	Design and construct, operate and maintain an energy/resource recovery facility.	1985
Northern Virginia Regional Park	Plan, administer, operate and maintain a recreational complex within the Lorton Authority Reformatory Tract.	6/20/78

EXHIBIT B
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GSA Revised: 04/02/02

EXHIBIT D

NOTICE OF THE PRESENCE OF ASBESTOS

- (a) The Purchaser is warned that the property offered for sale contains asbestos-containing material. Asbestos is a hazardous material. Unprotected exposure to asbestos fibers has been determined to significantly increase the risk of cancer mesothelioma, and asbestosis. These diseases can cause serious bodily harm resulting in disability or death.
- (b) Bidders (Offerors) are invited, urged and cautioned to inspect the property to be sold prior to submitting a bid (offer). More particularly, bidders (offerors) are invited, urged and cautioned to inspect the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. GSA will assist bidders (offerors) in obtaining any authorization(s) which may be required in order to carry out any such inspection(s). Bidders (Offerors) shall be deemed to have relied solely on their own judgment in assessing the overall conditions of all or any portion of the property, including without limitation, any asbestos hazards or concerns.
- (c) No warranties either express or implied are given with regard to the condition of the property including, without limitations, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of any bidder (offeror) to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid or offer after its opening or tender.
- (d) The description of the property set forth in the Invitation for Bids (Offer to Purchase) and any other information provided therein with respect to said property is based on the best information available to the GSA sales office and is believed to be correct, but any error or omission, including but not limited to the omission of any information available to the agency having custody over the property and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the contract of sale, or any claim by the Purchaser against the Government including, without limitation, any claim for allowance, refund, or deduction from the purchase price.
- (e) The Government assumes no liability for damages for personal injury, illness, disability or death, to the Purchaser, or to the Purchaser's successors, assigns, employees, invitees, or any other person subject to Purchaser's control or directions, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property which is the subject of this sale, whether the Purchaser, its successors or assigns has or have properly warned or failed to properly warn the individual(s) injured.
- (f) The Purchaser further agrees that in its use and occupancy of the property, it will comply with all Federal, state, and local laws relating to asbestos.

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Exhibit E

MEMORANDUM OF AGREEMENT

BETWEEN THE GENERAL SERVICES ADMINISTRATION (GSA), THE BUREAU OF LAND MANAGEMENT (BLM), THE COUNTY OF FAIRFAX, VIRGINIA (THE COUNTY), THE FAIRFAX COUNTY PARK AUTHORITY (FCPA), THE FAIRFAX COUNTY PUBLIC SCHOOLS (FCPS), THE FEDERATION OF LORTON COMMUNITIES (FOLC), THE LORTON HERITAGE SOCIETY (LHS), THE NORTHERN VIRGINIA REGIONAL PARK AUTHORITY (NVRPA), THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES (VDHR), AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (THE COUNCIL).

PURSUANT TO 36 CFR SECTION 800.6
REGARDING THE TRANSFER OF THE LORTON CORRECTIONAL
COMPLEX OUT OF FEDERAL OWNERSHIP

WHEREAS, the General Services Administration (GSA) proposes the transfer of the Lorton Correctional Complex, a property of approximately 2,700 acres, out of Federal ownership in accordance with the *Lorton Technical Corrections Act* of 1998, and

WHEREAS, the General Services Administration plans to transfer portions of the Lorton Correctional Complex to the following parties: the County of Fairfax, Virginia, the Fairfax County Park Authority, the Fairfax County Public Schools, the Northern Virginia Regional Park Authority, and the Bureau of Land Management (BLM), and

WHEREAS, BLM may exchange the portion called the Lorton Exchange Tract (in excess of 200 acres north of Silverbrook Road identified in the Fairfax County Reuse Plan, dated July 26, 1999 as land available for residential development in Land Units 1 and 2) for Meadowood Farm (in excess of 800 acres) on Mason Neck; and

WHEREAS, the BLM has conducted Phase IA and B studies on the Lorton Exchange Tract and determined that the exchange may have an adverse effect on the following potentially-eligible archaeological sites: 44 FX 2485 and 44 FX 2487; and

WHEREAS, the BLM has completed Phase IA studies for Meadowood Farm and will conduct additional studies needed to comply with Section 106 of the National Historic Preservation Act after the BLM has acquired the property and identified the proposed undertakings associated with management of the farm, and these compliance activities will be covered under separate Memorandum of Agreement documents; and

WHEREAS, GSA has determined that future development may have an adverse effect on yet unidentified archaeological resources in areas that have a high potential for disturbance and have a moderate or high sensitivity for the presence of archaeological sites (see Attachment C); and

WHEREAS, consultation by GSA with VDHR has resulted in the determination that the Lorton Correctional Complex contains a National Register-eligible Historic District of approximately 552

acres with 136 contributing resources and 106 non-contributing resources (hereinafter "Eligible District"); and

WHEREAS, a specific delineation of the boundaries of the Area of Potential Effect to historic structures, the Eligible District and the contributing resources within has been made in the January, 2000 *Final Historic Structures Determination of Eligibility Report*, prepared by GSA and concurred with by the Virginia Department of Historic Resources. (Report located in the files of VDHR, site number 029-947)

WHEREAS, GSA has determined that the property transfer will have an adverse effect upon the Eligible District, has consulted with the Virginia State Historic Preservation Officer (VDHR), and the Advisory Council on Historic Preservation (the Council) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and has entered into this MOA in order to mitigate this adverse effect; and

WHEREAS, GSA and VDHR have also invited the Bureau of Land Management (BLM), the County of Fairfax Virginia, the Fairfax County Park Authority, the Fairfax County Public Schools, the Federation of Lorton Communities, the Lorton Heritage Society, and the Northern Virginia Regional Park Authority to participate in the consultation and to concur in this Memorandum of Agreement.

NOW THEREFORE, if GSA decides to proceed with the property transfer in a manner consistent with the terms that have been the subject of consultation to date, and summarized in the foregoing, upon the execution of this MOA GSA and the entities to whom GSA transfers the property in whole or in part shall ensure that the following stipulations are carried out.

Stipulations

GENERAL STIPULATIONS

- 1) **Enforcement of Compliance with the Stipulations of this MOA:** All parties to this agreement who accept title from GSA to property which is the subject of this MOA agree to enforce the terms of this MOA as a condition of the transfer. GSA and BLM, if BLM ultimately consummates the exchange and transfers title to the Lorton Exchange Tract, shall in any deed conveying any of the Lorton Correctional Complex property place a covenant on the property which requires compliance with the provisions of this MOA and specifies that such covenant shall run with the land. The County, GSA and BLM, if BLM ultimately consummates the exchange and transfers title to the Lorton Exchange Tract, shall each have the authority to enforce, and responsibility for enforcing, the provisions of this MOA.

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- 2) **Archival documentation:** GSA shall turn over survey materials from GSA's Determination of Eligibility Report, and other related archival material housed with the D.C. Department of Corrections or District of Columbia Archives that enters into GSA custody and control, to the Virginia Room of the Fairfax Public Library, and/or another repository located within Fairfax City or County designated by the Fairfax Public Library. The materials include, at a minimum, any plans and drawings, 35mm photographic negatives, and a complete set of 3 1/2" x 5" prints, along with a written photo log and photographic contact sheets.
- 3) **Creation of museum/display:** One or more building(s)— to be identified by the County after consultation with LHS and FCPA—will be used for the creation of a permanent display or museum dedicated to the history of the Prison, the D.C. Department of Corrections, and/or the surrounding community. The museum may be operated by the FCPA or the County or LHS. However, there is no requirement to operate the museum unless funding is available. In the event that an organization such as the American Correctional Association (ACA) establishes a museum at Lorton, this requirement may be assigned to that organization as part of the conditions upon their use of the Lorton property. This would have to be coordinated with that organization. Coordination with the organization establishing a museum would be the responsibility of the County or the FCPA, whichever organization is in possession of the structure(s) proposed for museum use. If both possess the structure(s), coordination will be required with both.
- 4) **Stabilizing Contributing Resources:** While GSA has custody and control of the Lorton property, GSA will follow the procedures outlined in Preservation Brief 31, *Mothballing Historic Buildings*, to secure and stabilize all contributing resources within the Eligible District until the property is transferred out of Federal ownership.

Resources that are unlikely to be adaptively re-used may be excluded from this requirement by mutual agreement of the County, FCPA, LHS, GSA, and VDHR.

NEW CONSTRUCTION, ALTERATION, DEMOLITION, AND ADAPTIVE USE OF STRUCTURES WITHIN THE ELIGIBLE DISTRICT

- 5) **Rehabilitations according to Secretary of the Interior's Standards:** All exterior rehabilitations or exterior alterations of contributing structures within the Eligible District shall be performed in keeping with the *Secretary of the Interior's Standards for Rehabilitating Historic Buildings*, U.S. Department of the Interior, National Park Service, 1995. Ordinary and necessary repairs and routine maintenance that do not materially affect the external visual appearance of historic features shall not be considered alterations under this stipulation.
- 6) **Designation as a historic overlay district and review of undertakings within the Eligible District:**

If the Eligible District is a locally-designated historic overlay district, all parties to this MOA agree that any undertaking within the Eligible District shall be reviewed according to the following process:

An "undertaking" shall be defined for the purposes of this MOA as a project, activity, or program which alters structures or grounds within the Eligible District funded in whole or in part under the direct or indirect jurisdiction of a signatory to this MOA, including those actions carried out by or on behalf of a signatory to this MOA; those carried out with the financial assistance of a signatory to this MOA; and those requiring a permit, license or approval of a signatory to this MOA. The following shall not be considered an "undertaking:" Alterations to interiors of contributing structures, unless the specific interior feature is listed in Attachment A; demolition of non-contributing structures within the Eligible District, and alterations to the interior of non-contributing structures within the Eligible District.

Examples of an undertaking include, but are not limited to: alteration of the exterior of a contributing structure, demolition of a contributing structure, new construction within the Eligible District, re-grading or landscaping of 2,500 square feet or more, and road construction of roads that have not been identified in the approved reuse plan.

Should the Fairfax County Board of Supervisors designate the Eligible District as a historic overlay district, the laws and regulations of Fairfax County shall apply to the review of undertakings within the Eligible District. (Fairfax County Zoning Ordinance, Overlay and Commercial Revitalization District Regulations, Part 2, 7-200, et seq., Historic Overlay Districts), with the following additions:

- a) Undertakings that may affect structures with contributing interior features, as identified by Attachment A, shall also be subject to Fairfax County Architectural Review Board (ARB) review. (Note: The interiors of the buildings of the Central and Maximum Security facilities will be surveyed by GSA for potential historic significance following the release of care & custody of those facilities to GSA by the D.C. Department of Corrections.)
- b) The party proposing the undertaking shall submit plans, photographs and other pertinent documentation to the ARB. The documentation submitted shall meet or exceed the minimum standards required by the ARB for review of a project within a locally-designated Fairfax County historic overlay district. Copies of the documentation shall be simultaneously forwarded by the ARB to the LHS and VDHR. LHS and VDHR shall have thirty (30) days prior to the meeting of the ARB to provide comment in writing on the proposed undertaking to the ARB. Upon expiration of the thirty (30) day period, or receipt of comments from both VDHR and LHS, the undertaking may be placed on the agenda of the ARB for review according to the procedures and regulations of the ARB.
- c) Should changes be made to the proposed undertaking as a result of the meeting and decisions of the ARB, the record of the changes and the ARB meeting at which the decision was made shall be forwarded to both VDHR and the LHS.
- d) Any signatory to this MOA shall have the same rights granted to persons aggrieved by any decision of the ARB in 7-204.9 of the Fairfax County Zoning Ordinance, except as limited by Administrative Condition B5, to wit:

7-204.9: "Any person aggrieved by any decision of the ARB may appeal such decision to the Board of Supervisors, provided such appeal, which specifies the grounds for appeal, is filed in

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writing with the Clerk to the Board of Supervisors within thirty (30) days of the ARB's decision."

Any signatory to this MOA shall also have the right, if aggrieved by the decision of the Board of Supervisors, to appeal such decision to the Circuit Court of Fairfax County as outlined in 7-204.11 of the Fairfax County Zoning Ordinance.

The procedure described under this stipulation shall take effect upon transfer of the Eligible District out of Federal ownership. Should a portion of the Eligible District be transferred out of Federal ownership while the Federal government retains ownership of the remainder of the Eligible District, the requirements of this stipulation shall apply to only those portions that have been transferred out of Federal ownership.

7) Review of undertakings within the Eligible District if the Eligible District is not a Fairfax County historic overlay district

If the Eligible District is not designated as a local historic overlay district, all parties to this MOA agree that any undertaking within the Eligible District shall be reviewed according to the following process:

- a) For the purposes of this MOA, the ARB shall have those powers and responsibilities granted to it over the Eligible District that it has over a locally-designated Fairfax County historic overlay district, as defined in the Fairfax County Zoning Ordinance, Overlay and Commercial Revitalization District Regulations, Part 2, 7-200, et seq., Historic Overlay Districts. Undertakings that may affect structures with contributing interior features, as identified by Attachment A, shall also be subject to ARB review.
- b) The party proposing the undertaking shall submit plans, photographs and other pertinent documentation to the ARB. The documentation submitted shall meet or exceed the minimum standards required by the ARB for review of a project within a locally-designated Fairfax County historic overlay district. Copies of the documentation shall be simultaneously forwarded by the ARB to the LHS and VDHR.
- c) LHS and VDHR shall then have thirty (30) days to provide comment in writing on the proposed undertaking to the ARB. Upon expiration of the thirty (30) day period, or receipt of comments from both VDHR and LHS, the undertaking may be placed on the agenda of the ARB for review according to the procedures and regulations of the ARB.
- d) Should changes be made to the proposed undertaking as a result of the meeting and decisions of the ARB, the record of the changes and the ARB meeting at which the decision was made shall be forwarded to both VDHR and the LHS.
- e) If the LHS or VDHR should object to the decision of the ARB, the LHS or VDHR or both may formally protest the decision in writing to the Clerk to the Fairfax County Board of Supervisors within fifteen (15) calendar days of the decision. Upon expiration of this fifteen (15) day period, if no written comment from VDHR or LHS has been recorded formally objecting to the ARB's decision, the undertaking may be approved or implemented by the Fairfax County Board of Supervisors with no further opportunity for objection under the procedures of this MOA granted to either the VDHR or LHS.

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- f) Upon receipt of any such objection from VDHR or LHS, a thirty (30) day moratorium period shall be placed on the execution of the undertaking. During this thirty (30) day period, a historic preservation issues meeting or conference call shall be held with representatives of the objecting party (VDHR, LHS or both), the party proposing the undertaking, Fairfax County, and the Council. Other parties may attend this meeting and provide comment during a designated comment period within the meeting. Failure of the objecting party to make themselves available for such a meeting within the thirty (30) day period shall render their objection void at the expiration of the thirty (30) days. An extension of fifteen (15) days may be requested in writing to the Clerk of the Fairfax County Board of Supervisors prior to the expiration of the thirty (30) day period by the objecting party. If representatives of the party proposing the undertaking fail to make themselves available during this thirty (30) day period, the moratorium period shall be extended until the meeting is held.
- g) During this meeting, the parties shall negotiate regarding specific objections to the undertaking. The Council shall act as mediator of the process, suggesting preservation treatments and processes that may serve to provide a compromise between the party proposing the undertaking and the objecting party (ies). Within fifteen (15) calendar days of the historic preservation issues meeting, the following shall be forwarded to the Fairfax County Board of Supervisors:
 - 1. If the proposed undertaking is a demolition, the results of the adaptive use study undertaken as per stipulation 8.
 - 2. The written objection of the objecting parties.
 - 3. Minutes from the meeting between the objecting party (ies) and the party proposing the undertaking that have been prepared by the Council.
 - 4. A written response from the party proposing the undertaking to the objecting party.
 - 5. The comments of the Council.
- h) The Fairfax County Board of Supervisors shall then act to approve or disapprove the decision of the ARB according to the procedures stated in the laws and regulations pertaining to a Fairfax County historic overlay district.
- i) The procedure described under this stipulation shall take effect upon transfer of the Eligible District out of Federal ownership. Should a portion of the Eligible District be transferred out of Federal ownership while the Federal government retains ownership of the remainder of the Eligible District, the requirements of this stipulation shall apply to only those portions that have been transferred out of Federal ownership.
- 8) **Adaptive use studies of contributing resources:** If any contributing resources are proposed for demolition within the Eligible District, other than those listed in Attachment B, such resources shall be examined for the feasibility of adaptive use. The performance of such studies shall be the responsibility of the party proposing the demolition.

There is no requirement to perform feasibility studies for the contributing resources listed in Attachment B, if proposed for demolition.

- a) Within 6 months of the date of the execution of the agreement, the County shall have prepared a proposed scope and format for the feasibility study. The proposed scope and format for the study shall be circulated to VDHR, the LHS, and the Council. LHS and VDHR shall then have thirty (30) days to object to the scope or format for the study. Should VDHR or the LHS

- object to the scope or format for the study, they may register in writing a formal objection to the Clerk of the Fairfax County Board of Supervisors. Should neither VDHR nor LHS object to the proposed scope or format within the thirty (30) day period, the Fairfax County Board of Supervisors shall act to approve or disapprove the scope and format for the study.
- b) Upon receipt of any such objection from VDHR or LHS, a meeting or conference call shall be held with representatives of the objecting party (VDHR, LHS or both), the Fairfax County Board of Supervisors, and the Council. Other parties may attend this meeting and provide comment during a designated comment period within the meeting. Failure of the objecting party to make themselves available for such a meeting within a thirty (30) day period shall render their objection void at the expiration of the thirty (30) days. An extension of fifteen (15) days may be requested in writing to the Clerk of the Fairfax County Board of Supervisors prior to the expiration of the thirty (30) day period by the objecting party. If representatives of the party proposing the undertaking fail to make themselves available during this thirty (30) day period, the moratorium period shall be extended until the meeting is held.
 - c) Within fifteen (15) calendar days of the meeting, the following shall be forwarded to the Fairfax County Board of Supervisors:
 - 1. The written objection of the objecting parties.
 - 2. Minutes from the meeting, that have been prepared by the Council, between the objecting party (ies) and the party proposing the scope and format of the feasibility study.
 - 3. The comments of the Council.
 - d) The Fairfax County Board of Supervisors shall then act to approve or disapprove the proposed scope and format for the feasibility studies. Once the scope and format have been approved by the Fairfax County Board of Supervisors, it shall be used for all future studies. Any changes to the scope or format shall require a new circulation of the proposed scope or format to LHS and VDHR, with an opportunity for objection granted to LHS and VDHR and approval of the new scope or format by the Fairfax County Board of Supervisors.
 - e) The feasibility study shall be included with the documentation provided to the Fairfax County ARB under stipulation 6 or 7, whichever is applicable.
 - f) If it is found by the party proposing demolition that it is not feasible to reuse the contributing buildings, and this finding is concurred with by the Fairfax County Board of Supervisors, then demolition may proceed following the completion of the photographic documentation required in stipulation number 9. If the party proposing demolition states that it is not feasible to reuse the buildings, but the Fairfax County Board of Supervisors does not agree, the Fairfax County Board of Supervisors shall be empowered to place a moratorium on demolition for a period of a minimum of three months, to require that the property be offered on the open market at fair market value to persons or entities who are willing to adaptively reuse the contributing resource. The precise length of the moratorium period will be determined according to the Fairfax County Zoning Ordinance, Overlay and Commercial Revitalization District Regulations, Historic Overlay Districts, 7-204.12(C). If the contributing resource is the property of Fairfax County, the moratorium period shall be for a minimum of six months. If a suitable purchaser cannot be found within the moratorium period, the party proposing the demolition may proceed to demolish the contributing resource after complying with stipulation number 9.
 - g) The procedure described under this stipulation shall take effect upon transfer of the Eligible District out of Federal ownership. Should a portion of the Eligible District be transferred out

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of Federal ownership while the Federal government retains ownership of the remainder of the Eligible District, the requirements of this stipulation shall apply to only those portions that have been transferred out of Federal ownership.

- 9) **Photographic documentation:** Any contributing buildings that are to be demolished shall be photographed with a large format (4" x 5" minimum negative) camera using black & white film prior to their demolition. Photographic recordation shall be done to the standards of the Historic American Buildings Survey (HABS). The number and angle of views shall be coordinated with FCPA prior to the taking of the photographs and completed photos shall be approved by FCPA prior to demolition. Such photographs shall be submitted to the Virginia Room of the Fairfax County Public Library, the District of Columbia Archives, and VDHR. The negatives shall be submitted to VDHR. The photographic documentation shall be the responsibility of the party proposing the demolition.
- 10) **Development of redevelopment or adaptive use strategies:** All parties to this MOA agree that they shall invite LHS, FOLC, VDHR, the ARB, the Fairfax County Economic Development Authority (EDA), Fairfax County Redevelopment and Housing Authority, and the Fairfax County History Commission to participate in the development of any redevelopment or adaptive use strategies for private development within the Eligible District. Such participation shall include, at a minimum, a period of thirty (30) calendar days prior to the release of any Requests for Proposal (RFPs) related to redevelopment or adaptive use for the LHS, ARB and VDHR to comment on the proposed RFP.

ARCHAEOLOGICAL STUDIES

The prehistoric and historic archaeological resources shall be identified and evaluated and treatment plans shall be developed for National Register-eligible properties in accordance with the procedures outlined below before approval of any ground-disturbing activities at the Lorton Correctional Complex. The specific procedures are outlined below.

11) Phase I Studies (Identification):

- a) GSA has conducted a Phase IA study of the entire Lorton Correctional Complex property. The BLM has completed a Phase IB of the Lorton Exchange Tract.
- b) GSA shall perform Phase IB testing at the Lorton Correctional Complex property, excluding the Lorton Exchange Tract. The testing shall encompass those areas that have a high potential for disturbance from implementation of the Fairfax County Land Use Plan and have a moderate or high sensitivity for the presence of archaeological resources. This totals approximately 224 acres, and is delineated in Attachment C to this MOA. GSA shall submit a report meeting the federal standards entitled Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (48 FR 44716-44742, September 29, 1983), VDHR's Guidelines for Preparing Identification and Evaluation Reports for Submission Pursuant to Sections 106 and 110, National Historic Preservation Act, Environmental Impact Reports of State Agencies, Virginia Appropriations Act, 1992 Session Amendments (June 1992) to VDHR for review and comment. If no comments are received within 30 days, GSA can assume concurrence with the recommendations on eligibility made in the report.

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- c) If, in the future, ground disturbing activities are proposed by the future owners of the Lorton property in areas of moderate or high sensitivity that have yet to undergo Phase IB testing (approximately 436 acres), the party proposing the ground-disturbing activity shall perform Phase IB field testing for archaeological resources and shall consult with VDHR and the County on the need for Phase II testing. If Phase II testing is determined to be required by the County in consultation with VDHR, then the party shall perform the Phase II testing and any required Phase III Treatment.
- d) All field testing shall be performed according to the published standards of VDHR for archaeological investigations within the Commonwealth of Virginia. To wit: Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (48 FR 44716-44742, September 29, 1983), VDHR's Guidelines for Preparing Identification and Evaluation Reports for Submission Pursuant to Sections 106 and 110, National Historic Preservation Act, Environmental Impact Reports of State Agencies, Virginia Appropriations Act, 1992 Session Amendments (June 1992).

12) Phase II studies (Evaluation):

Avoidance of potentially eligible archaeological sites is considered by VDHR to be the preferred treatment of identified sites. Avoidance of archaeological sites would obviate the need for Phase II investigations, reducing the cost of the undertaking and protecting the site.

- a) In areas where GSA conducts Phase IB testing, GSA in consultation with the VDHR and the County of Fairfax will identify the potentially-eligible archaeological resources and determine the need for Phase II-level studies.
- b) The owner of a property containing archaeological sites shall conduct Phase II archaeological studies prior to undertaking ground-disturbing activities that may adversely affect archaeological sites 44 FX 2485, 44 FX 2487, or any sites identified as per stipulation 11.
- c) Phase II-level studies shall be conducted in accordance with "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines" and the "Virginia Department of Historic Resources Guidelines for Archaeological Investigations."
- d) Based on the results of the Phase II studies, the County of Fairfax shall determine, in consultation with the VDHR, if the sites meet the National Register criteria for eligibility (36 CFR Part 60.4). If the VDHR does not object to the County's recommendation on eligibility within thirty (30) days of receiving the recommendation and supporting documentation, then the County will assume concurrence. If a site is not eligible for listing in the National Register, then the proposed activities may proceed.

13) Phase III (Treatment of Archaeological Resources):

- a) If an archaeological site is determined to be eligible for listing in the National Register, then a treatment plan shall be prepared by the owner of the potentially impacted site in consultation with the County and VDHR. The preferred treatments are avoidance, preservation in situ, or incorporation into protected areas. Avoidance, preservation in situ, and incorporation into protected areas shall all be explored before data recovery is selected as a treatment option. If a preferred treatment is not implemented, then the treatment plan will involve data recovery and, if appropriate, curation of artifacts and public interpretation.

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- b) The County shall submit the treatment plan to the VDHR for review and comment prior to its implementation. The VDHR will have thirty (30) days to review the plan and comment. Any comments received within thirty (30) days of VDHR's receipt of the plan shall be addressed in the final treatment plan. If the VDHR does not comment within thirty (30) days, then the County will assume concurrence and proceed with implementing the plan.

14) Dispute Resolution for Archaeological Resources:

- a) If the County of Fairfax and the VDHR disagree on the National Register eligibility of a site, then VDHR will refer the eligibility issue to the Council and the Council will obtain an opinion from the Keeper of the National Register.
- b) If the County and VDHR disagree regarding the impacts of the project or the appropriate treatment plan, then VDHR will obtain the comments of the Council. The Council will provide comments within thirty (30) days of receiving the request for comment and the supporting documentation.
- c) If after receiving the comments of the Council or the Keeper, the County and VDHR still cannot agree on an issue of National Register eligibility, anticipated effects on eligible properties, or treatment, then the County, in cooperation with the VDHR, will submit the issue to the Board of Supervisors for resolution.

Administrative Conditions

A. Amendments

Any party to this MOA may propose to GSA that the MOA be amended, whereupon GSA shall consult with the other parties to this MOA to consider such an amendment in accordance with 36 CFR Part 800.6.

B. Resolving Objections

- 1. Should any party to this MOA object in writing to GSA regarding any action carried out or proposed with respect to the implementation of this MOA, GSA shall consult with the objecting party to resolve the objection. If after initiating such consultation GSA determines that the objection cannot be resolved through consultation, GSA shall forward all documentation relevant to the objection to the Council including GSA's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, the Council shall exercise one of the following options:
 - a) Advise GSA that the Council concurs in GSA's proposed response to the objection, whereupon GSA shall respond to the objection accordingly;
 - b) Provide GSA with recommendations, which GSA shall take into account in reaching a final decision regarding its response to the objection; or
 - c) Notify GSA that the objection will be referred for comment, and proceed to refer the objection and comment.

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2. Should the Council not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, GSA may assume the Council's concurrence in its proposed response to the objection.
3. GSA shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; GSA's responsibility to carry out all actions under this MOA that are not the subjects of the objection shall remain unchanged.
4. At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to any such measure or its manner of implementation be raised by a member of the public, GSA shall notify the parties to this MOA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this MOA to resolve the objection.
5. Nothing in this agreement shall prevent a party to this agreement from seeking redress in a court of law to enforce the terms of this agreement, except in the case where any party to this Memorandum of Agreement is given the opportunity to raise objections and does not raise any objections in a timely manner. Such party shall not be permitted to seek redress in a court of law to enforce the terms of this Memorandum of Agreement with respect to the matter to which it raised no timely objections. If a court of law should find that the process outlined in either stipulation 6 or 7, whichever is applicable, was not followed, the party proposing the undertaking agrees to an immediate moratorium on the undertaking that shall continue until the process is completed.

C. Review of Implementation

If the stipulations have not been implemented within two years after execution of this MOA, the parties to this agreement shall review the MOA to determine whether revisions are needed. If revisions are needed, the parties to this MOA shall consult in accordance with 36 CFR Part 800.6 to make such revisions.

D. Termination

1. If the BLM discontinues its role in the proposed exchange or if the exchange proposal is suspended, then the BLM will cease to be a party to this MOA as it relates to the Lorton Exchange Tract. If the BLM discontinues its role, then GSA shall assume the BLM's responsibilities as delineated in this MOA.
2. If GSA determines that it cannot implement the terms of this MOA, or if the Council or the VDHR determines that the MOA is not being properly implemented, GSA or the Council or the VDHR may propose to the other parties to this MOA that it be terminated.

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3. The party proposing to terminate this MOA shall so notify all parties to this MOA, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.
4. Should such consultation fail, GSA or the Council or VDHR may terminate the MOA by so notifying all parties.
5. Should this MOA be terminated, GSA shall either:
 - a) Consult in accordance with 36 CFR Part 800.6 to develop a new MOA; or
 - b) Request the comments of the Council pursuant to 36 CFR Part 800.7.

Execution of this Memorandum of Agreement by GSA, the Council, and VDHR, and implementation of its terms, evidence that GSA has afforded the Council an opportunity to comment on the property transfer and its effects on historic properties, and that GSA has taken into account the effects of the undertaking on historic properties.

GENERAL SERVICES ADMINISTRATION

By: Gordon S. Creed Date: April 9, 2001
 Name
 Gordon S. Creed
 Deputy Assistant Commissioner
 Office of Property Disposal
 Name/Title (printed)

VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

By: [Signature] Date: 4/9/01
 Name
Kathleen S. Kilpatrick, Director
 Name/Title (printed)

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 6/28/01
 John M. Fowler, Executive Director

CONCUR:

BUREAU OF LAND MANAGEMENT

By: _____ Date: _____
Name

Name/Title (printed)

EXHIBIT E

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AHG



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Eastern States
7450 Boston Boulevard
Springfield, Virginia 22153
<http://www.blm.gov/eso>



2200 (9100)

JUN 26 2001

Mr. Phil Youngberg
Environmental Manager
General Services Administration
77 Forsyth Street, Suite 450
Atlanta, Georgia 30303

Dear Mr. Youngberg:

The purpose of this correspondence is to provide official notification that, having discontinued its role in the Lorton exchange proposal, the Bureau of Land Management (BLM) declines the offer to be a signatory to the Memorandum of Agreement, regarding the transfer of the Lorton Correctional Complex out of Federal ownership. BLM assumes that per Section D.1 of the proposed MOA, GSA shall assume any responsibilities in the proposed agreement which would otherwise have been assigned to BLM. Should you have questions concerning this matter, you may contact Charles Bush, Meadowood Project Manager, on (703) 440-1745.

Sincerely,

Acting State Director
Eastern States



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PAGE 02

GSA

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CONCUR:

COUNTY OF FAIRFAX

By: ATHG Date: 5/30/01
Name

ANTHONY H. GRIFFIN, COUNTY EXECUTIVE
Name/Title (printed)

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ATHG

CONCUR:

FAIRFAX COUNTY PARK AUTHORITY

By: Paul L. Balding Date: 5/14/01
Name

PAUL L. BALDING, DIRECTOR
Name/Title (printed)

CONCUR:

FAIRFAX COUNTY PUBLIC SCHOOLS

By: Jane K. Strauss Date: 6/15/01
Name

Jane K. Strauss, Chairman, Fairfax School Board
Name/Title (printed)

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CONCUR:

FEDERATION OF LORTON COMMUNITIES

By: *Linnwood Gorchum* Date: *June 18, 2000*
Name

Linnwood Gorchum - President Lorton Federation
Name/Title (printed)

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CONCUR:

LORTON HERITAGE SOCIETY

By: Harry Lattimore Date: 6-18-01
Name

Harry Lattimore, President
Name/Title (printed)

By: Irena G. Clayton Date: 6-18-01
Name

Irena A. Clayton, Project Manager
Name/Title (printed)

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CONCUR:

NORTHERN VIRGINIA REGIONAL PARK AUTHORITY

By:  Date: May 15, 2021
Name

Walter L. Mess, Chairman
Name/Title (printed)

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**Attachment A: Structures with contributing interior features,
Eligible District**

Occoquan Workhouse, Residences, Farm Buildings & Miscellaneous:

- H-40: Intact original woodwork and interior doors.
- H-41: Laurel Hill home, not comprehensively surveyed, but original features known to exist.
- H-42: Intact original fireplace, front door, woodwork & interior doors.
- H-43: Intact original fireplace, woodwork and interior doors.
- H-49: Intact original fireplace, woodwork, and interior doors.
- H-51: Intact original fireplace, woodwork and interior doors
- H-53: Intact original fireplace, woodwork, built-in bookcases and interior doors.
- H-63: Intact original fireplace, front door, woodwork and interior doors.
- W-12: Gymnasium/Assembly Hall. The proscenium, stage, and undivided interior space.
- W-22: Livestock Barn: Intact livestock stalls

Central Facility (Reformatory & Penitentiary)

There are no architecturally significant interior features in the open-plan Central Facility buildings that set them apart for special preservation. However, one of the dormitories, survey No. R-20, retains its open, visible timber framing which may remain behind the ceilings of the other dormitory structures. This framing system contributes visually to the historic character of the dormitories and should be considered for preservation in any re-use plan for these buildings.

Attachment B: Contributing structures that do not require Feasibility Studies for Adaptive Use, prior to demolition, Eligible District

(The structures identified as not requiring feasibility studies for adaptive reuse fall into one of two categories:

- 1) Structures of a unique construction or unusual function that are unlikely to be adaptable.*
- 2) Structures that are small and of a simple construction and floor plan--usually a single open space.)*

Additional contributing structures may be added to or removed from this list by the County. LHS and VDHR shall be given 30 days to review and comment on revisions to the list.

	Key Number/Name	Building Name
1	W-29	Former Heating Plant
2	W-30	Equipment Storage - Farm
3	W-37	Building "H", by former sewage tanks
4	W-66	Storage Shed (Farm)
5	W-68	Farm Barn
6	W-70	Greenhouse (Farm)
7	W-86	Building by former sewage tanks
8	W-98	Former Slaughterhouse Building
9	W-Conc. Pad Tank Cover	Underground water tank associated with former sewage tanks
10	W-Corn Crib	
11	W-Farm Shed #1	Apple Barn Storage Shed
12	W-Farm Shed #2	Smoke House
13	W-Feed Barn #1	
14	W-Feed Barn #2	
15	W-Garage/Storage	Former Poultry Incubator
16	W-Guard Shack #1	
17	W-Guard Shack #2	
18	W-Guard Shack #3	
19	W-Guard Shack #4	
20	W-Sewage Tank #1	
21	W-Sewage Tank #2	
22	W-Steam Tunnels	Underground utility tunnels
23	W-Storage Barn #1	
24	Former Sewage Plant Bldg. #01	
25	Former Sewage Plant Bldg. #02	
26	Former Sewage Plant Bldg. #03	
27	Former Sewage Plant Bldg. #04	
28	Stoney Lonesome	Cemetery
29	R-38	OFACM Shops
30	R-56	Tower # 3
31	R-61	Tower # 8
32	R-76	OFACM (Storage Shed)
33	R-85	OFACM (Paint Shop)
34	R-86	Security & Storage
35	Boxing Area	
36	Storage	Small shed directly south of R-30 (Steam Heating Plant)
37	R-Steam Tunnels	Underground utility tunnels

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Attachment C: Overlay Map dated June 9, 2000
Levels of Potential Land Disturbance and Archaeological Sensitivity.

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EXHIBIT F

Pursuant to the legislation, Congress provided that the U.S. General Services Administration (GSA) take custody and control of the Property, remediate it, and transfer it out of federal ownership. The District of Columbia, Department of Corrections (DOC) and its predecessors have operated the facility since 1910. The information below reflects a complete search of GSA files and includes all information shared by DOC. GSA excavated and removed soils contaminated with hazardous substances and wastes and petroleum products for proper characterization and off-site disposal in regulated and permitted facilities. GSA remediated soils and groundwater to the residential standard. All remedial action has been documented and is on file with the Virginia Department of Environmental Quality.

The following hazardous substances and petroleum products are known to have been released or disposed of on the Property:

Hazardous Substance	Lead	Ash	Paint/Sediment	Petroleum Fuels	CS/CN Tear Gas
Quantity lbs (kg) ²	4,980,000 lbs (2,258,928 kg)	15,728,100 lbs (7,134,266 kg)	31,999,840 lbs (14,515,127 kg)	143,847,400 lbs (65,249,181 kg)	100 lbs ³ (45 kg)
Dates of Release ⁴	1950 to 1984	1950 to 1972	1960 to 1975	1950 to 1975	1960 to 1984
CASRN	7439-92-1	7439-92-1	7439-92-1; 7440-47-3	68334-30-5; 8006-61-9	532-27-4; 3811-04-9; 564-93-0; 81-88-9; 001-309-484; 7631-86-9;
Regulatory Synonym	Lead	Lead	Lead Based Paint; Lead; Chromium	Diesel; Gasoline	Chloroacetophenone; Potassium chlorate; Magnesium carbonate; o-Chlorobenzalmononitrile; Magnesium Oxide; Fumed Silica; Tear gas; Mace; CS/CN;
RCRA Hazardous Waste Classification	D008	D008	D007, D008	N/A ⁵	N/A ⁶

Note 1: Soils were contaminated with Diesel Fuel #2, with small amounts of gasoline (less than 1%).

Note 2: The quantity listed is that of the contaminated soil affected by the release of the substance. The actual quantity of substance released is unknown.

Note 3: Some areas of the Property are known training grounds for riot control. The actual amount of substance released is unknown, but most was dispersed into the air. The amount of residues collected in canisters found on the Property total approximately 100 lbs.

Note 4: Release of hazardous substances took place over a period of time. These times spans are approximated to the best of GSA's knowledge.

Note 5: Petroleum substances are regulated separately under RCRA, not as a hazardous waste and not as a hazardous substance under CERCLA. The contaminated soil did not exhibit the characteristic for the constituents of gasoline including benzene, toluene, ethylbenzene, or xylenes.

Note 6: These specific compounds are not listed as a RCRA hazardous waste.

Exhibit F
Page 1 of 1

50

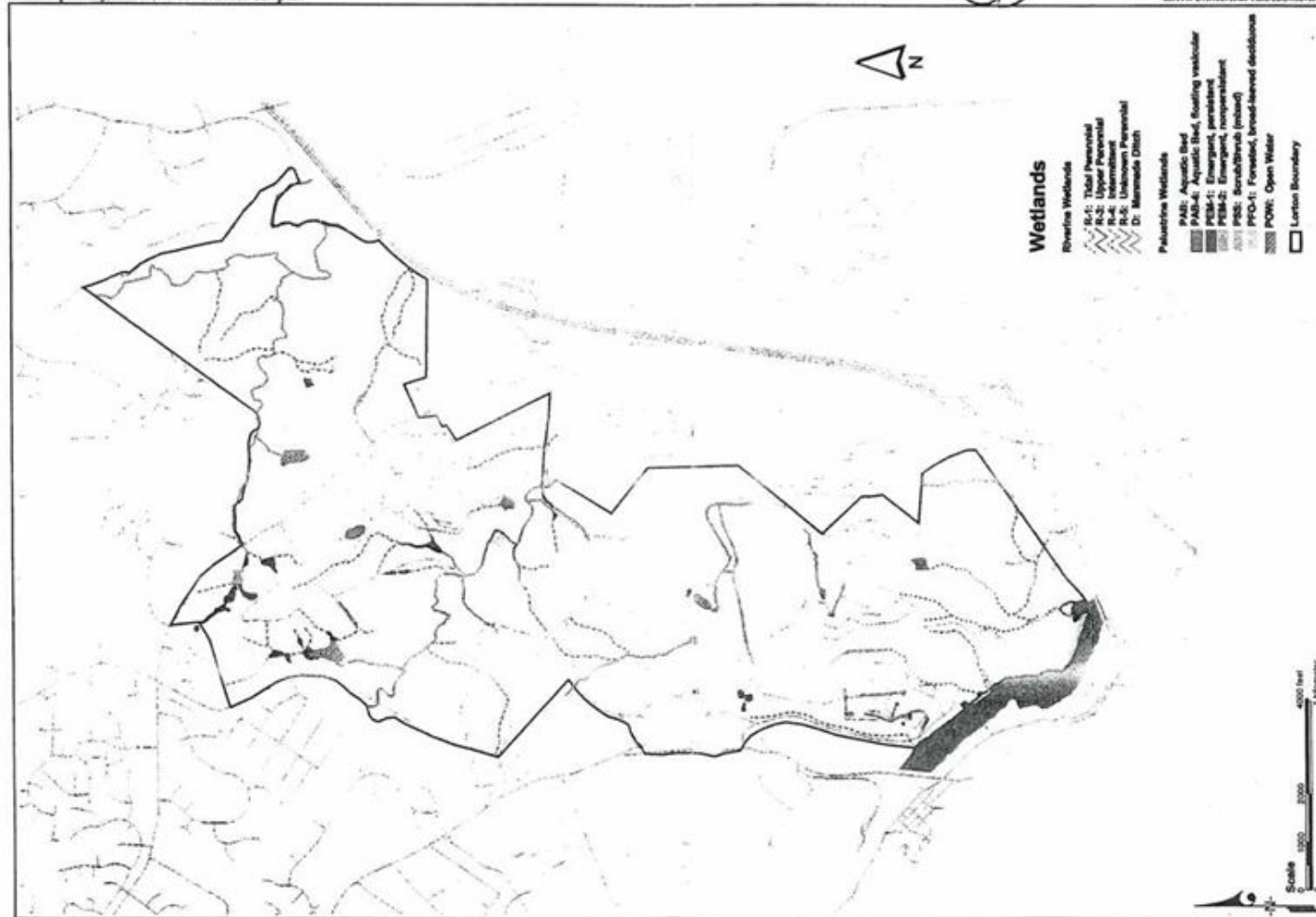
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Plat Attached

EXHIBIT C

GSA Disposal of the Lorton Correctional Complex

Environmental Assessment



3.0 Affected Environment

EXHIBIT C
Page 1 of 1

Figure 3-3: Wetlands and Surface Waters

Greenhorn & O'Mara, Inc.
9001 Edmonson Road
Greenbelt, Maryland 20770

3-11

EXHIBIT D

Proffers and Development Conditions



County of Fairfax, Virginia

2010
Planning Commission

February 1, 2010

Peter F. Murphy, Jr.
Chairman
Springfield District

Walter L. Alcorn
Vice Chairman
At-Large

Suzanne F. Harsel
Secretary
Braddock District

Frank de la Fe
Parliamentarian
HunterMill District

Jay Donahue
Dranesville District

Earl Flanagan
Mount Vernon District

Janet R. Hall
Mason District

James R. Hart
At-Large

Kenneth A. Lawrence
Providence District

John L. Litzenger
Sully District

Rodney L. Lusk
Lee District

Timothy J. Sargeant
At-Large

Barbara J. Lippa
Executive Director

Sara Robin Hardy
Assistant Director

Lori Greenlief, Land Use Planner
McGuire Woods LLP
1750 Tysons Blvd.; Suite 1800
McLean, VA 22102

RE: FDPA 2003-MV-033-02
Lorton Arts Foundation, Inc.
Mount Vernon District

Dear Ms. Greenlief:

The purpose of this letter is to formally advise you, as the agent for the applicant on the above referenced case, that on Thursday, January 28, 2010, the Planning Commission voted unanimously (Commissioners Hall and Harsel absent from the meeting) to approve FDPA 2003-MV-033-02, subject to the Development Plan Conditions dated January 28, 2010, as attached.

Also enclosed for your information is a copy of the verbatim excerpts from the Commission's action on this application. If you need additional information, please let me know.

Sincerely,

Barbara J. Lippa
Executive Director

Attachments (a/s)

cc: Gerald Hyland, Supervisor, Mount Vernon District
Earl Flanagan, Commissioner, Mount Vernon District
Suzanne Lin, Staff Coordinator, ZED, DPZ
January 28, 2010 Date File
O-8c File

Fairfax County Planning Commission
12000 Government Center Parkway, Suite 330
Fairfax, VA 22035-0001
703-324-2865, TTY 703-324-7951, FAX 703-324-3948
www.fairfaxcounty.gov/planning



PROPOSED DEVELOPMENT CONDITIONS

January 28, 2010

FDPA 2003-MV-033-02

If it is the intent of the Planning Commission to approve Final Development Plan Amendment FDPA 2003-MV-033-02 to allow an arts center on property located at Sub-Parcel G of Tax Map 106-4 ((1)) 58, staff recommends that the Planning Commission condition the approval by requiring conformance with the following development conditions. These development conditions supercede those previously approved. Those conditions marked with the asterisk represent conditions brought forward from the previously approved Final Development Plan. (*) These conditions are in addition to the proffered commitments approved with PCA 2003-MV-033.

1. The northern façade of each of the two artists' residences (Buildings N-1 and N-2) (the façade that faces toward Lorton Road) shall be no higher than forty-five (45) feet as measured from the grade along that façade to the mid-point of the roof, if a peaked roof is proposed, or to the top of the roof, if a flat roof is proposed.*
2. Bike racks, benches, picnic areas and a place to obtain water shall be provided within the Arts Center in one or more locations along the Laurel Hill Greenway trail subject to the approval of the Fairfax County Park Authority. *
3. A sidewalk shall be provided at the westernmost entrance along Lorton Road. The sidewalk shall extend from the trail along Lorton Road to connect to the internal pedestrian network.*
4. The left turn lanes from Ox Road (Rt. 123) to the Regional Park Entrance (opposite the Quarry Entrance) and/or to Lorton Road (Rt. 642) shall be lengthened upon demand of either the County or the Virginia Department of Transportation when it is determined that longer turn lanes are warranted by the amount of traffic generated by Lorton Arts Foundation turning left onto Lorton Road or the Regional Park Entrance.*
5. If it is determined by the applicant and the Fairfax County Department of Transportation (FCDOT) that a one-way traffic circulation pattern is needed, such change in pattern shall be coordinated with and approved by FCDOT. A one-way circulation pattern may be implemented without the need for a Proffered Condition Amendment or a Final Development Plan amendment so long as the overall site layout is in substantial conformance with the plan as may be approved by the Board of Supervisors. *
6. Contrary to access geometrics as delineated on the Ox Road (Route 123) joint access with the Northern Virginia Regional Park Authority, the regional park access shall "T" into the access roadway serving the Lorton Arts Federation site (the subject site) unless an alternative design is approved by the Fairfax County Department of Transportation (FCDOT). The final design shall be subject to FCDOT review and approval.*

7. Prior to site plan submission, engineering techniques designed to preserve existing vegetation on the north side of the proposed residences shall be diligently pursued and these efforts shall be documented and coordinated with Urban Forest Management in order to maximize the survivability of trees in that area.*
8. The proffers approved with PCA 2003-MV-033 shall remain in effect.
9. All resources identified as contributing to the National Register D.C. Workhouse and Reformatory Historic District on the subject property [Sub-Parcel G of Tax Map 106-4 ((1)) 58] shall be retained and maintained. Each resource shall be maintained sufficiently in order to protect said resource from demolition by neglect. Joint inspections of these resources by the County and the applicant shall take place at least once per calendar year to ensure sufficient protection. In addition, an initial inspection to determine the benchmark condition of the contributing resources shall be conducted by the County and the Applicant within 60 days of the approval of this FDPA. Inspections should include coordination with agencies such as the Cultural Resources Management and Protection Section (CRMPS) of the Fairfax County Park Authority (FCPA), the Department of Planning and Zoning (Historic Resources, Historic Preservation Planner), and may also include coordination with other officials such as the Zoning Administrator, Building Official or other permitting officials. Should it be determined by the County that the resources are found not to be sufficiently protected, corrective compliance measures shall be implemented to ensure the resources remain in substantially the same condition as the established benchmark. This condition shall not apply to those contributing resources previously specifically identified in RZ/FDP 2003-MV-033 for removal.
10. Buildings WB-12 and WB-13 shall be identified on the property with an appropriate plaque, marker or similar identification. The Fairfax County History Commission (FCHC) shall be consulted regarding the text of the identification and the site it is to be located. In addition, the text shall be subject to the review and approval of the FCHC. Depictions of the architecture, design, use, history and relationship to the overall workhouse of buildings WB-12 and WB-13 shall be displayed within the prison museum proposed to be located within the Workhouse.
11. Although Sheet 8 of the FDPA depicts a rectangular athletic field instead of a baseball field, the field shall only be used as a little league baseball field.
12. Fill placed in the infield and outfield areas of the ballfield, S-08, (including the debris mound near Route 123) shall be removed and restored to its original condition (as depicted on Exhibit 1) and topography as determined by the Zoning Administrator in accordance with the following schedule:
 - No later than April 30, 2010 the applicant shall prepare and submit a grading plan, (if determined necessary by DPWES and Zoning Enforcement officials) with erosion and sediment controls, as necessary, to Fairfax County for approval.

- All corrections to the plan shall be made by the applicant within 14 days of the receipt of the County comments.
- Within 90 days of the approval of the grading plan, the applicant shall begin the restoration of the site as depicted on Exhibit 1.
- Within 130 days from the initiation of the grading activity, the applicant shall excavate and complete the removal of all excavated materials to a lawful location. Additional time for excavation and removal may be sought upon a showing to the Zoning Administrator that, although diligently pursued, the excavation and removal cannot be complete within 130 days. However, in no event shall the restoration period extend past December 31, 2010.

The entire site shall be stabilized and seeded within 15 days of completion of the grading activities and the area of the removal shall be inspected by County staff, to include Zoning Enforcement officials, both before and after the fill removal.

13. The historic bleachers identified as WT-12 on the FDPA and as listed in the National Register Historic District, shall be restored to their original condition in consultation with County Historic Resources staff and the VDHR within 45 days of the removal of fill and debris on the ballfield and bleacher area as described in Condition 12. Removal of the fill and debris on the bleachers shall be conducted in a manner which allows the bleachers to be uncovered without damage to the historic resource and this work shall be conducted by an archaeological consultant with extensive experience in deeply buried urban sites, and with the engineering capability to evaluate the structural stability of the bleachers once uncovered. Once the deep fill and debris is removed, the surface of the bleachers (if they are stable) shall be flat shoveled by archaeologists to remove any additional soil from the surface. All aspects of this work (the scope of work, the consultant to be used, equipment, and methods) shall be coordinated with the Cultural Resources Management and Protection Section (CRMPS) of the Fairfax County Park Authority (FCPA) prior to commencement.
14. All necessary permits shall be obtained prior to conducting any construction, renovation, or demolition work onsite.
15. Written notification shall be provided to the District Supervisor and the Department of Planning and Zoning, (Historic Resources, Historic Preservation Planner) for review and comment prior to submitting a request for a demolition permit.
16. At the end of each calendar year, a written report shall be provided to the District Supervisor and the Department of Planning and Zoning, (Historic Resources, Historic Preservation Planner) regarding any construction and demolition activities that have taken place onsite for the previous year. This report shall also include any applicable permits and/or required documentation.
17. ARB approval shall be obtained prior to the relocation of W0-04, the message board structure near the music barn. Should ARB approval not be granted for this relocation, then the music barn driveway access may need to be redesigned in substantial conformance with the approved FDPA or another revision to the FDPA shall be required.

18. This FDPA is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to the FDPA shall be in substantial conformance with the approved FDPA entitled "Lorton Workhouse Arts Center", prepared by Walter L. Phillips, Inc. and dated November 13, 2009 as revised through January 12, 2010. Minor modifications to the approved FDPA may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.

Planning Commission Meeting
January 28, 2010
Verbatim Excerpt

FDPA 2003-MV-033-02 – LORTON ARTS FOUNDATION, INC.

After Close of the Public Hearing

Chairman Murphy: The public hearing is closed; recognize Mr. Flanagan.

Commissioner Flanagan: Thank you, Mr. Chairman. First of all, I'd like to say that I was aware of Commissioner Sargeant's request, and I agree with it. So, I was hoping to make it a separate friendly amendment rather than voting on the amendment.

Chairman Murphy: Okay.

Commissioner Flanagan: I MOVE THAT THE PLANNING COMMISSION APPROVE FDPA 2003-MV-033-02, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED JANUARY 25, 2010, WITH THE FOLLOWING LANGUAGE ADDED AS CONDITION 18: "THIS FDPA IS SUBJECT TO THE PROVISIONS OF ARTICLE 17, SITE PLANS, AS MAY BE DETERMINED BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES. ANY PLANS SUBMITTED PURSUANT TO THIS FDPA SHALL BE IN SUBSTANTIAL CONFORMANCE WITH THE APPROVED FDPA ENTITLED LORTON WORKHOUSE ARTS CENTER, PREPARED BY WALTER L. PHILLIPS, INC., AND DATED NOVEMBER 13, 2009, AS REVISED THROUGH JANUARY 12, 2010. MINOR MODIFICATIONS TO THE APPROVED SPECIAL EXCEPTION (*sic*) MAY BE PERMITTED, PURSUANT TO PARAGRAPH 4 OF SECTION 9-004 OF THE ZONING ORDINANCE – "

Suzanne Lin, Zoning Evaluation Division, Department of Planning and Zoning: Commissioner – I'm sorry. Commissioner Flanagan, I made a mistake there. The last sentence says, to the approved Special Exception. It should be TO THE APPROVED FDPA.

Commissioner Flanagan: – after –

Ms. Lin: – MINOR MODIFICATION TO THE APPROVED FDPA MAY BE PERMITTED, PURSUANT TO PARAGRAPH 4, instead of Special Exception.

Commissioner Flanagan: Yes.

Ms. Lin: Thank you.

Commissioner Flanagan: So it should be – insert to the FDPA for special exception?

Kristen Abrahamson, ZED, DPZ: Just replace the words Special Exception with FDPA.

Commissioner Flanagan: All right.

Ms. Abrahamson: It was an error. We apologize.

Commissioner Flanagan: And also, I'd like to accept currently the amendment suggested by Commissioner –

Chairman Murphy: Hold on. Let's vote on this first, okay. Are you finished with the motion?

Commissioner Sargeant: Mr. Chairman, doesn't he need a second that I offered a friendly amendment?

Chairman Murphy: Yes, okay. Seconded by Mr. Sargeant. Discussion of the motion? Mr. Sargeant.

Commissioner Sargeant: Thank you, Mr. Chairman. I would like to offer A FRIENDLY AMENDMENT WITH REGARD TO DEVELOPMENT CONDITION NUMBER 9 TO INSERT THE FOLLOWING WORDS, "WITHIN THE SUBJECT PROPERTY," AFTER THE WORDS "REFORMATORY HISTORIC DISTRICT," SO THAT THE SENTENCE WOULD READ: "ALL RESOURCES IDENTIFIED AS CONTRIBUTING TO THE NATIONAL REGISTER, DC WORKHOUSE AND REFORMATORY HISTORIC DISTRICT WITHIN THE SUBJECT PROPERTY SHALL BE RETAINED AND MAINTAINED."

Commissioner Flanagan: I agree wholeheartedly with that amendment.

Chairman Murphy: Okay. Mr. Flanagan agrees. And I presume the seconder agrees with what he just said.

Commissioner Sargeant: Yes, thank you.

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Just for the record. Mr. Hart.

Commissioner Hart: Germane to the friendly amendment, I'd just like to ask staff if it would be more precise to refer to a specific Tax Map number. Because the phrase "the subject property" might be construed as referring to the historic district property rather than the instant application, which I think could be defined with a specific objective Tax Map number. I mean, like, I would ask staff wouldn't it be better with the Tax Map number.

Ms. Abrahamson: It's really clear to us "subject property" is subject to the development conditions. But we can put the Tax Map reference in too. That's not a problem.

Chairman Murphy: Okay.

Commissioner Sargeant: Mr. Chairman, I think the specificity is a good idea.

Chairman Murphy: Okay.

Commissioner Flanagan: I'll accept that.

Chairman Murphy: Wow, this should have been last week.

Commissioner Hart: Or even earlier.

Chairman Murphy: All right. Further discussion of the motion? All those in favor of the motion to approve FDPA 2003-MV-033-2, subject to the conditions as amended this evening by Mr. Sargeant and Mr. Flanagan, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

//

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

JN



County of Fairfax, Virginia

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

August 4, 2009

Lori Greenlief
McGuire Woods LLP
1750 Tysons Boulevard, Suite 1800
McLean, Virginia 22102

RE: Proffered Condition Amendment Application PCA 2003-MV-033

Dear Ms. Greenlief:

Enclosed you will find a copy of an Ordinance adopted by the Board of Supervisors at a regular meeting held on August 3, 2009, approving Proffered Condition Amendment Application PCA 2003-MV-033 in the name of Lorton Arts Foundation, Incorporated. The Board's action amends the proffers for Rezoning Application RZ 2003-MV-033, previously approved for mixed use development to permit modifications to proffers and site design with an overall Floor Area Ratio (FAR) of 0.22. The subject property is located on the east side of Ox Road and south of its intersection with Lorton Road on approximately 53.08 acres of land zoned PDC [Tax Map 106-4 ((1)) 58], in the Mount Vernon District and is subject to the proffers dated July 29, 2009.

The Board also:

- Modified the transitional screening and barrier requirement along the northern and western property lines to that shown on the CDPA/FDPA.

Did not say

- Modified the barrier requirement along the northern boundary and between the artist's residences and the workhouse in favor of that shown on the CDPA/FDPA and referenced in the proffers.

(NOTE: At its public hearing on July 15, 2009, the Planning Commission approved Final Development Plan Amendment FDPA 2003-MV-033, subject to development conditions dated July 13, 2009, and to the Board of Supervisors approval of PCA 2003-MV-033.).

Sincerely,

Nancy Velts
Clerk to the Board of Supervisors
NV/dms
Enclosure

Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903
Email: clerktothebos@fairfaxcounty.gov
<http://www.fairfaxcounty.gov/bosclerk>

Cc: Chairman Sharon Bulova
Supervisor Gerald Hyland, Mount Vernon District
Janet Coldsmith, Director, Real Estate Division. Dept. of Tax Administration
Regina Coyle, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Angela K. Rodeheaver, Section Chief, Transportation. Planning Division
Ellen Gallagher, Capital Projects and Operations Div., Dept. of Transportation
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
District Planning Commissioner
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at Fairfax, Virginia, on the 3rd day of August, 2009, the following ordinance was adopted.

**AN ORDINANCE AMENDING THE ZONING ORDINANCE
PROFFERED CONDITION AMENDMENT PCA 2003-MV-033**

WHEREAS, Lorton Arts Foundation, Incorporated, filed in the proper form an application to amend the proffers for RZ 2003-MV-033 hereinafter described, by amending conditions proffered and accepted pursuant to Virginia Code Ann. 15.2-2303(a), and

WHEREAS, at a duly called public hearing the Planning Commission considered the application and the propriety of amending the Zoning Ordinance in accordance therewith, and thereafter did submit to this Board its recommendation, and

WHEREAS, this Board has today held a duly called public hearing and after due consideration of the reports, recommendation, testimony and facts pertinent to the proposed amendment, the Board is of the opinion that the Ordinance should be amended,

NOW, THEREFORE, BE IT ORDAINED, that that certain parcel of land situated in the Mount Vernon District, and more particularly described as follows (see attached legal description):

Be, and hereby is further restricted by the amended conditions proffered and accepted pursuant to Virginia Code Ann., 15.2-2303(a), which conditions are incorporated into the Zoning Ordinance as it affects said parcel, and

BE IT FURTHER ENACTED, that the boundaries of the Zoning Map heretofore adopted as a part of the Zoning Ordinance be, and they hereby are, amended in accordance with this enactment, and that said zoning map shall annotate and incorporate by reference the additional conditions governing said parcels.

GIVEN under my hand this 3rd day of August, 2009.



Nancy Vehrs
Clerk to the Board of Supervisors



PLEASE TYPE
OR PRINT IN BLACK INK

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
APPLICATION FOR ZONING MAP AMENDMENT

RECEIVED
Department of Planning & Zoning

JUL 17 2008

Zoning Evaluation Division

APPLICATION NO. PCA/FDPA 2003-MV-033

(Assigned by _____)

TITION

TO: THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

I (We), Lorton Arts Foundation, Inc., the applicant(s),
petition you to adopt an ordinance amending the Zoning Map of Fairfax County, Virginia, by
reclassifying from the PDC District to the PDC
District the property described below and outlined in red on the Zoning Section Sheet(s)
accompanying and made a part of this application.

PROPERTY DESCRIPTION

1. LEGAL DESCRIPTION:
Laurel Property Division 13116 2200

Parcel G	Block(s)	Subdivision	Deed Book	Page No.
Lot(s)				

2. TAX MAP DESCRIPTION:
106-4 (1) 58 53.08

Map No.	Double Circle No.	Single Circle No.	Parcel(s)/Lot(s) No.	Total Area(Ac. or Sq. Ft.)
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3. POSTAL ADDRESS OF PROPERTY: (If any)
9601 Ox Road New Address 5717 WORKHOUSE WAY VB 2/12/09
Lorton, VA 22079 LORTON, VA 22079

4. ADVERTISING DESCRIPTION: (Ex. South of Rt. 236, 1000 feet west of Rt. 274)
East side of Ox Road south of its intersection with Lorton Road

5. PRESENT USE: See attached

6. PROPOSED USE: See attached

7. SUPERVISOR DISTRICT: Mount Vernon

The name(s) and address(es) of owner(s) of record shall be provided on the affidavit form attached and made part of this application.

The undersigned has the power to authorize and does hereby authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

Gregory A. Riegle, Esq. / Lori R. Greenlief, Land Use Planner

Type or Print Name of Applicant or Agent

Signature of Applicant or Agent

McGuireWoods LLP, 1750 Tysons Boulevard, Suite 1800, McLean, VA 22102

Address

(703) 712-5433 (Lori)

Telephone No.

Home

Work

Please provide name and telephone number of contact person if different from above.

DO NOT WRITE IN THIS SPACE

Date application received: _____ Application Fee Paid: \$4,410.00

Date application accepted: 9/4/08 Virginia Ruffin Form RZ (10/89)

PCA 2003-0204 / FDPA 2003-0205
9/4/08 JS

PROPOSED DEVELOPMENT CONDITIONS

July 13, 2009

FDPA 2003-MV-033

If it is the intent of the Planning Commission to approve Final Development Plan Amendment FDPA 2003-MV-033 to allow an arts center on property located at Sub-Parcel G of Tax Maps 106-4 ((1)) 54, staff recommends that the Planning Commission condition the approval by requiring conformance with the following development conditions. These development conditions supercede those previously approved. Those conditions marked with the asterisk represent conditions brought forward from the previously approved Final Development Plan. (*)

1. The northern façade of each of the two artists' residences (Buildings N-1 and N-2) (the façade that faces toward Lorton Road) shall be no higher than forty-five (45) feet as measured from the grade along that façade to the mid-point of the roof, if a peaked roof is proposed, or to the top of the roof, if a flat roof is proposed.*
2. Bike racks, benches, picnic areas and a place to obtain water shall be provided within the Arts Center in one or more locations along the Laurel Hill Greenway trail subject to the approval of the Fairfax County Park Authority. *
3. A sidewalk shall be provided at the westernmost entrance along Lorton Road. The sidewalk shall extend from the trail along Lorton Road to connect to the internal pedestrian network.*
4. The left turn lanes from Ox Road (Rt. 123) to the Regional Park Entrance (opposite the Quarry Entrance) and/or to Lorton Road (Rt. 642) shall be lengthened upon demand of either the County or the Virginia Department of Transportation when it is determined that longer turn lanes are warranted by the amount of traffic generated by Lorton Arts Foundation turning left onto Lorton Road or the Regional Park Entrance.
5. If it is determined by the applicant and the Fairfax County Department of Transportation (FCDOT) that a one-way traffic circulation pattern is needed, such change in pattern shall be coordinated with and approved by FCDOT. A one-way circulation pattern may be implemented without the need for a Proffered Condition Amendment or a Final Development Plan amendment so long as the overall site layout is in substantial conformance with the plan as may be approved by the Board of Supervisors.
6. Contrary to access geometrics as delineated on the Ox Road (Route 123) joint access with the Northern Virginia Regional Park Authority, the regional park access shall "T" into the access roadway serving the Lorton Arts Federation site (the subject site) unless an alternative design is approved by the Fairfax County Department of Transportation (FCDOT). The final design shall be subject to FCDOT review and approval.

-
7. Prior to site plan submission, engineering techniques designed to preserve existing vegetation on the north side of the proposed residences shall be diligently pursued and these efforts shall be documented and coordinated with Urban Forest Management in order to maximize the survivability of trees in that area.

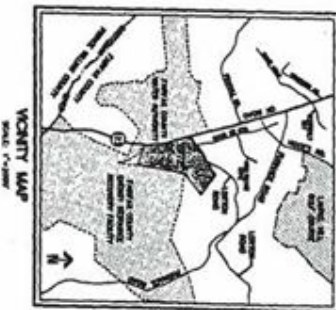
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ZONING TABULATION

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TOTAL FARMING INCOME

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EXP. DATE	EXP. TIME
EXP. DATE 1 + EXP. TIME 1	(EXP. DATE 1) (EXP. TIME 1)
EXP. DATE 2 + EXP. TIME 2	(EXP. DATE 2) (EXP. TIME 2)
EXP. DATE 3 + EXP. TIME 3	(EXP. DATE 3) (EXP. TIME 3)
EXP. DATE 4 + EXP. TIME 4	(EXP. DATE 4) (EXP. TIME 4)

② based on actual sales of products & services.
③ Thus, pricing determined by an objective and not
purely based on actual experience.

THESE RESULTS ARE IN ACCORD WITH THE FINDINGS OF OTHER STUDIES THAT HAVE SHOWN THAT THE USE OF A SINGLE-STEP PROCESS CAN BE EFFECTIVE IN IMPROVING THE QUALITY OF THE WORK.

PLANNING ACTIVITIES

For simplicity, the model protocol for activity 11 has been written for only one product. A Planning Worksheet (Appendix 11.1) is also included. This is a summary of information required for the problem. It can be used for a number of exercises by following the instructions in Table 11.1. Each product has its own Planning Worksheet. The instructions for Table 11.1 are given on the next page.

COVER SHEET

CDPA/FDPA

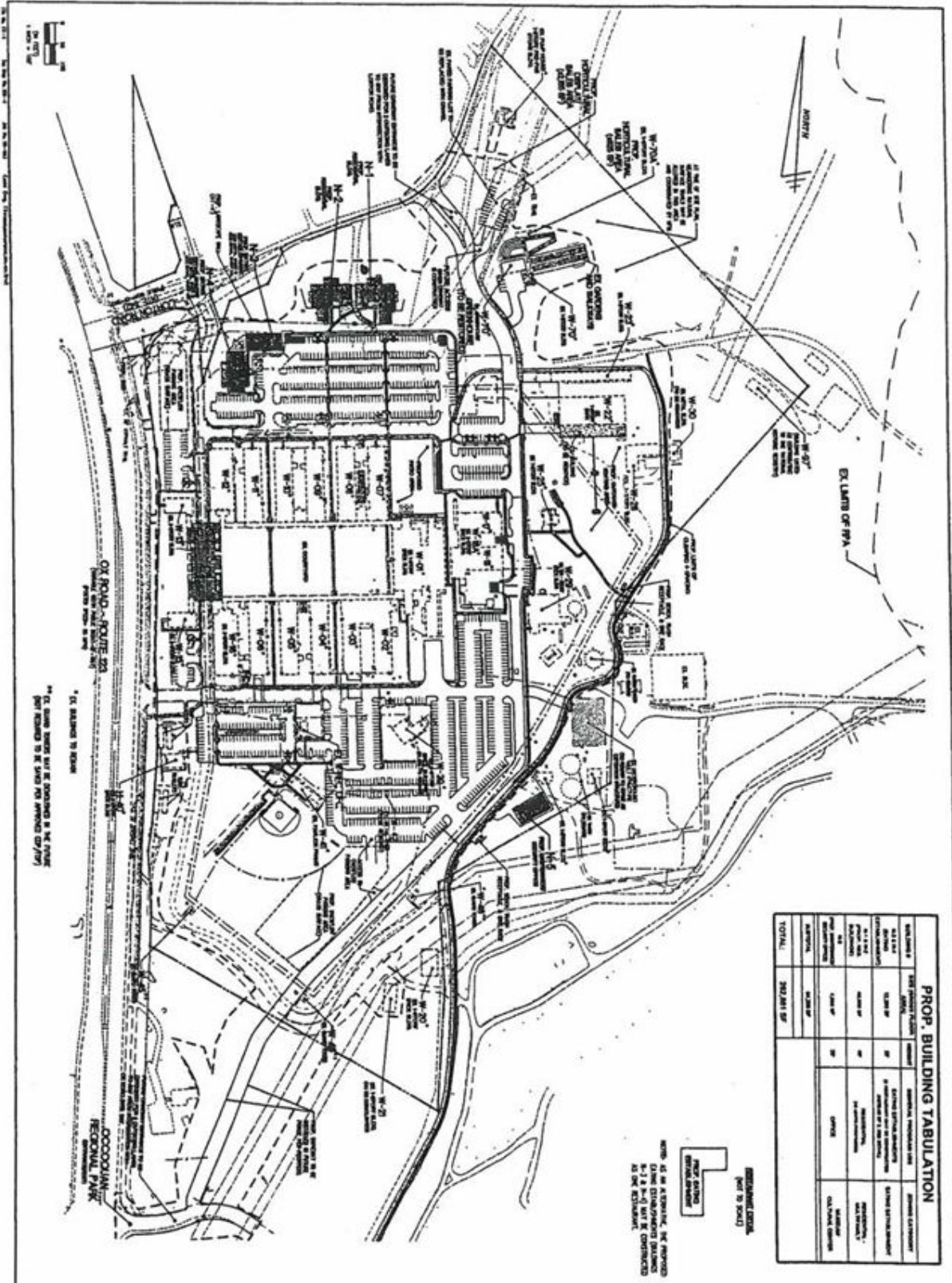
LORTON WORKHOUSE ARTS CENTER
MOUNT VERNON DISTRICT
FAIRFAX COUNTY, VIRGINIA

REVISION APPROVED BY:



WALTER L. PHILLIPS

Civil Engineers and Surveyors Planners Landscape Architects
307 PAUL AVENUE FALLS CHURCH, VIRGINIA 22046
703 532-4160 FAX 703 532-0001 WWW.HFMC.COM



PROP. BUILDING TABULATION

NO.	DESCRIPTION	AREA (SQ. FT.)	TYPE	REMARKS
1	NEW ARTS CENTER BUILDING	10,000	NEW	
2	EXISTING BUILDING	5,000	EXIST.	
3	PARKING LOT	20,000	PARKING	
4	LANDSCAPE	5,000	LANDSCAPE	
5	WALKWAY	1,000	WALKWAY	
6	TOTAL	41,000		

DEVELOPMENT PLAN

CDPA/FDPA

LORTON WORKHOUSE ARTS CENTER

FOUNT VERNON DISTRICT

FAIRFAX COUNTY, VIRGINIA

REVISION APPROVED BY

NO.	DESCRIPTION	DATE	BY	APPROVED
1				

WALTER L. PHILLIPS

INCORPORATED

ONE ENGINEERS LANE SUITE 100 FARMERS MARKET

1000 PARK AVENUE FALLS CHURCH, VIRGINIA 22046

PH: 571-261-1111 FAX: 571-261-1112

WWW.WLP.COM

40'

1" = 40'

SCALE

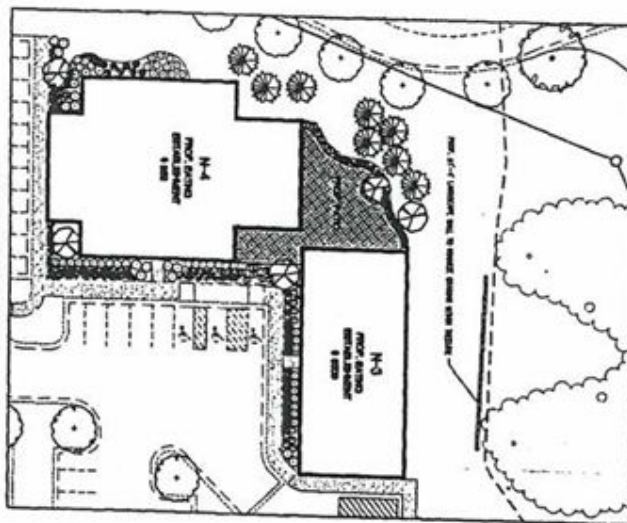
THE COSTS CALCULATION

ITEM	QUANTITY	UNIT	PRICE	TOTAL
1. LAYOUT	1	HR	150.00	150.00
2. DESIGN	1	HR	150.00	150.00
3. PERMIT	1	HR	150.00	150.00
4. CONSTRUCTION	1	HR	150.00	150.00
5. MAINTENANCE	1	HR	150.00	150.00
6. TOTAL				600.00

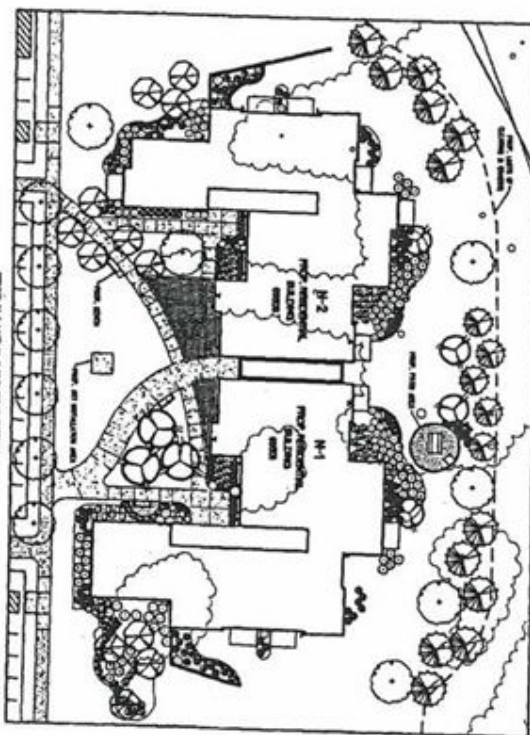
THESE FIGURES ARE NOT TO BE USED FOR ANY OTHER PROJECTS

ITEM	QUANTITY	UNIT	PRICE	TOTAL
1. LAYOUT	1	HR	150.00	150.00
2. DESIGN	1	HR	150.00	150.00
3. PERMIT	1	HR	150.00	150.00
4. CONSTRUCTION	1	HR	150.00	150.00
5. MAINTENANCE	1	HR	150.00	150.00
6. TOTAL				600.00

THESE FIGURES ARE NOT TO BE USED FOR ANY OTHER PROJECTS



FRONT AND REAR BUILDING DETAILS
(SCALE: 1"=20')



MAIN BUILDING DETAIL
(SCALE: 1"=20')

NO.	DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL
1	Planting of trees and shrubs	10	each	10.00	100.00
2	Planting of grass	100	sq. ft.	1.00	100.00
3	Planting of rocks	10	each	10.00	100.00
4	Planting of trees and shrubs	10	each	10.00	100.00
5	Planting of grass	100	sq. ft.	1.00	100.00
6	Planting of rocks	10	each	10.00	100.00
7	Planting of trees and shrubs	10	each	10.00	100.00
8	Planting of grass	100	sq. ft.	1.00	100.00
9	Planting of rocks	10	each	10.00	100.00
10	Planting of trees and shrubs	10	each	10.00	100.00
11	Planting of grass	100	sq. ft.	1.00	100.00
12	Planting of rocks	10	each	10.00	100.00
13	Planting of trees and shrubs	10	each	10.00	100.00
14	Planting of grass	100	sq. ft.	1.00	100.00
15	Planting of rocks	10	each	10.00	100.00

LANDSCAPE NOTES AND DETAILS

CDPA/FDPA
LORTON WORKHOUSE ARTS CENTER
MOUNT VERNON DISTRICT
FAIRFAX COUNTY, VIRGINIA

REVISION APPROVED BY

NO.	DESCRIPTION	DATE	BY	APPROVED	DATE
1					
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WALTER L. PHILLIPS
INCORPORATED

ONE ENGINEERS LAND SURVEYORS PLANNERS LANDSCAPE ARCHITECTS
307 PARK AVENUE FALLS CHURCH, VIRGINIA 22044
(703) 555-5555 FAX (703) 555-5555
WWW.WLPINC.COM

BMP FACILITY DESIGN CALCULATIONS

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WATER QUALITY IMPACT ASSESSMENT PLAN

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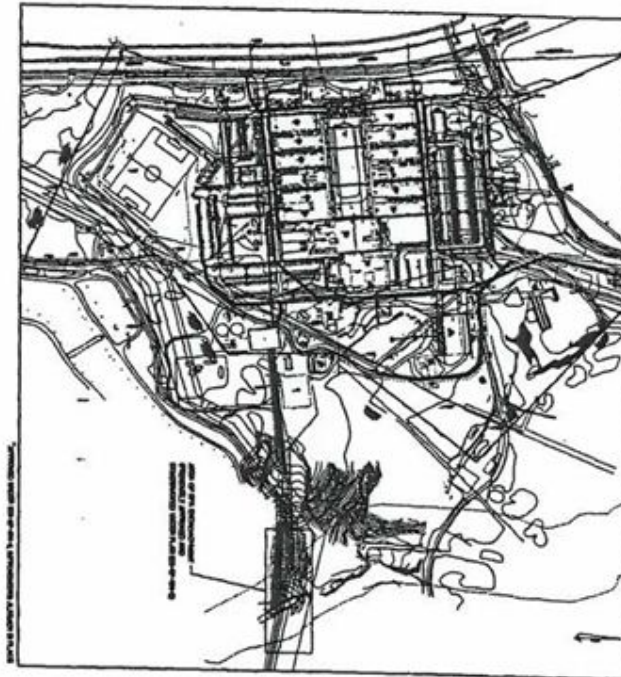
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STORMWATER MANAGEMENT CHECKLIST

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CONSTRUCTED AND APPROVED AS PART OF SITE PLAN 1183-SP-014-2

BMP NARRATIVE

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PRELIMINARY SWM/BMP PLAN

CDPA/FDPA
LORTON WORKHOUSE ARTS CENTER
MOUNT VERNON DISTRICT
FAIRFAX COUNTY, VIRGINIA

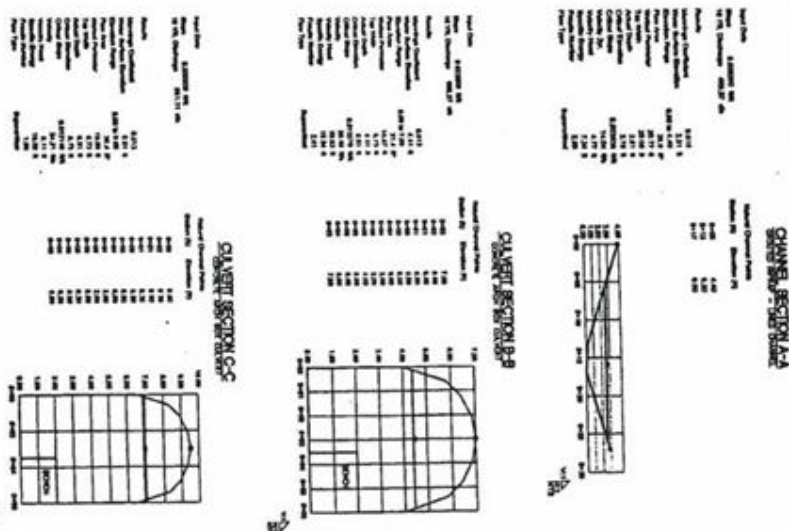
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WALTER L. PHILLIPS
INCORPORATED
CIVIL ENGINEERS LAND SURVEYORS PLANNERS LANDSCAPE ARCHITECTS
307 PARK AVENUE FALLS CHURCH, VIRGINIA 22044
703-261-1100 FAX 703-261-1101
WWW.WLPHILLIPS.COM



OUTFALL ANALYSIS

CONSTRUCTED AND APPROVED AS PART OF SITE PLAN 183-SP-014-2



OUTFALL ANALYSIS			
CDPA/FDPA			
LORTON WORKHOUSE ARTS CENTER			
MOUNT VERNON DISTRICT			
FAIRFAX COUNTY, VIRGINIA			
REVISION APPROVED BY			
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ZAPS USER GENERATED REPORTS
ZONING APPLICATION SUMMARY REPORT
APPLICATION NUMBER: PCA 2003-MV-033

DECISION DATE: 8-3-2009

HEARING BODY: BOS

CRD: NO

MAGISTERIAL DISTRICT:

APPLICANT NAME LORTON ARTS FOUNDATION, INC.

STAFF COORDINATOR: SLIN00

ACTION: APPROVE

DECISION SUMMARY:

ON AUGUST 3, 2009, THE BOARD UNANIMOUSLY APPROVED PCA
2003-MV-033, ON A MOTION BY SUPERVISOR HYLAND, SUBJECT
TO PROFFERS DATED JULY 29, 2009.

ZONING INFORMATION**EXISTING ZONING**

<u>DISTRICT</u>	<u>AREA</u>
PDC	53.08 ACRES
TOTAL	53.08 ACRES

APPROVED AREA

<u>DISTRICT</u>	<u>AREA</u>
PDC	53.08 ACRES
TOTAL	53.08 ACRES

TAX MAP NUMBERS

106-4- /01/ /0058-

APPROVED ZONING DISTRICT DATA

ZONING DISTRICT: PDC

APPROVED RESIDENTIAL DEVELOPMENT

<u>LAND USE</u>	<u>DWELLING</u> <u>UNITS</u>	<u>LAND</u> <u>AREA</u>	<u>UNIT OF</u> <u>MEASURE</u>	<u>NO.</u> <u>OF</u> <u>ADJUTS</u>
EATING/EST				
MFD	40	53.08	ACRES	
MUSEUM/CTR				
RETAIL/EST				
TOTAL				
TOTAL	40	53.08	ACRES	

APPROVED NON-RESIDENTIAL DEVELOPMENT

<u>FLOOR AREA</u>	<u>UNIT OF</u> <u>MEASURE</u>	<u>LAND</u> <u>AREA</u>	<u>UNIT OF</u> <u>MEASURE</u>	<u>FAR</u>
262,881.00	SQ FEET	53.08	ACRES	0.11
262,881.00	SQ FEET	53.08	ACRES	0.12

PROFFER INFORMATION

PROFFER STATEMENT DATE: 07-29-2009

<u>ITEM</u>	<u>DUE DATE</u>	<u>TRIGGER NO.</u>	<u>TRIGGER EVENT</u>	<u>CONTRIB AMT</u>	<u>EXPIRATION DATE</u>
ARCHITECTURAL REVIEW (ARB)	01-01-0001	0	N/A	\$	01-01-0001
ARCHITECTURE / BUILDING MATERIALS	01-01-0001	0	N/A	\$	01-01-0001
ARCHITECTURE / GREEN BUILDING / LEE	01-01-0001	0	N/A	\$	01-01-0001
BEST MANAGEMENT PRACTICES (BMP)	01-01-0001	0	N/A	\$	01-01-0001
DRAINAGE	01-01-0001	0	N/A	\$	01-01-0001
HISTORIC STRUCTURE / SITE PRESERV/	01-01-0001	0	N/A	\$	01-01-0001
HOURS OF OPERATION	01-01-0001	0	N/A	\$	01-01-0001
LANDSCAPING - ENVIRONMENT	01-01-0001	0	N/A	\$	01-01-0001

PROFFER INFORMATION

PROFFER STATEMENT DATE: 07-29-2009

<u>ITEM</u>	<u>DUE DATE</u>	<u>TRIGGER NO.</u>	<u>TRIGGER EVENT</u>	<u>CONTRIB AMT</u>	<u>EXPIRATION DATE</u>
LIGHTING / GLARE	01-01-0001	0	N/A	\$	01-01-0001
LIMITS OF CLEARING AND GRADING	01-01-0001	0	N/A	\$	01-01-0001
LOW IMPACT DESIGN (LID) / RAINGARDE	01-01-0001	0	N/A	\$	01-01-0001
NOISE ATTENUATION (STUDY / WALL)	01-01-0001	0	N/A	\$	01-01-0001
NOTIFICATION - HOUSING	01-01-0001	0	N/A	\$	01-01-0001
OTHER - GENERAL	01-01-0001	0	N/A	\$	01-01-0001
OTHER - LAND USE	01-01-0001	0	N/A	\$	01-01-0001
PARKING	01-01-0001	0	N/A	\$	01-01-0001
PHASING - LAND USE	01-01-0001	0	N/A	\$	01-01-0001
PHOTOGRAPHIC DOCUMENTATION	01-01-0001	0	N/A	\$	01-01-0001
PROFFERED PLANS	01-01-0001	0	N/A	\$	01-01-0001
RECREATION - TRAILS	01-01-0001	0	N/A	\$	01-01-0001
RECREATION FACILITIES	01-01-0001	0	N/A	\$	01-01-0001
ROAD PHASING	01-01-0001	0	N/A	\$	01-01-0001
SCREEN MECHANICAL EQUIPMENT	01-01-0001	0	N/A	\$	01-01-0001
SIDEWALK / TRAIL	01-01-0001	0	N/A	\$	01-01-0001
SIGNAGE	01-01-0001	0	N/A	\$	01-01-0001
TREE PRESERVATION / SURVEY	01-01-0001	0	N/A	\$	01-01-0001
TREE SAVE FENCING	01-01-0001	0	N/A	\$	01-01-0001
TURN LANE(S) (INCLUDES ACCEL AND D	01-01-0001	0	N/A	\$	01-01-0001
URBAN FORESTRY REVIEW	01-01-0001	0	N/A	\$	01-01-0001
USE RESTRICTIONS	01-01-0001	0	N/A	\$	01-01-0001
	01-01-0001	0	N/A	\$	01-01-0001
ARCHEOLOGY	01-01-0001	0	N/A	\$	01-01-0001

WAIVERS/MODIFICATIONS

APPROVED WAIVERS/MODIFICATIONS

MODIFY BARRIER REQUIREMENT

MODIFY TRANSITIONAL SCREENING REQUIREMENT

SUPPLEMENTAL MOTIONS

SUPPLEMENTAL MOTIONS APPROVED

**ZAPS USER GENERATED REPORTS
ZONING APPLICATION SUMMARY REPORT
APPLICATION NUMBER: FDPA 2003-MV-033**

DECISION DATE: 7-15-2009

HEARING BODY: PC

CRD: NO

MAGISTERIAL DISTRICT:

APPLICANT NAME LORTON ARTS FOUNDATION, INC.

STAFF COORDINATOR: SLIN00

ACTION: APPROVE

DECISION SUMMARY:

ON JULY 15, 2009, THE PLANNING COMMISSION UNANIMOUSLY APPROVED CDPA/FDPA 2003-MV-033, ON A MOTION BY COMMISSIONER FLANAGAN; SUBJECT TO DEVELOPMENT CONDITIONS DATED JULY 13, 2009 AND TO THE BOARD'S APPROVAL OF THE PCA.

ZONING INFORMATION**EXISTING ZONING**

<u>DISTRICT</u>	<u>AREA</u>
PDC	53.08 ACRES
TOTAL	53.08 ACRES

APPROVED AREA

<u>DISTRICT</u>	<u>AREA</u>
PDC	53.08 ACRES
TOTAL	53.08 ACRES

TAX MAP NUMBERS

106-4- /01/ /0058-

APPROVED ZONING DISTRICT DATA

ZONING DISTRICT: PDC

APPROVED RESIDENTIAL DEVELOPMENT

<u>LAND USE</u>	<u>DWELLING</u> <u>UNITS</u>	<u>LAND</u> <u>AREA</u>	<u>UNIT OF</u> <u>MEASURE</u>	<u>NO.</u> <u>OF</u> <u>ADU'S</u>
EATING/EST				
MFD	40	53.08	ACRES	
MUSEUM/CTR				
RETAIL/EST				
TOTAL				
TOTAL	40	53.08	ACRES	

APPROVED NON-RESIDENTIAL DEVELOPMENT

<u>FLOOR AREA</u>	<u>UNIT OF</u> <u>MEASURE</u>	<u>LAND</u> <u>AREA</u>	<u>UNIT OF</u> <u>MEASURE</u>	<u>FAR</u>
262,881.00	SQ FEET	53.08	ACRES	0.11
262,881.00	SQ FEET	53.08	ACRES	0.12

DEVELOPMENT CONDITION INFORMATION

DEVELOPMENT CONDITION STATEMENT DATE: 07-13-2009

<u>ITEM</u>	<u>DUE DATE</u>	<u>TRIGGER NO.</u>	<u>TRIGGER EVENT</u>	<u>CONTRIB AMT</u>	<u>EXPIRATION DATE</u>
BICYCLE RELATED FACILITIES	01-01-0001	0	N/A	\$	01-01-0001
DRIVEWAY AND DRIVEWAY ENTRANCES	01-01-0001	0	N/A	\$	01-01-0001
HEIGHT - BUILDING / STRUCTURE	01-01-0001	0	N/A	\$	01-01-0001
SIDEWALK / TRAIL	01-01-0001	0	N/A	\$	01-01-0001
TURN LANE(S) (INCLUDES ACCEL AND D	01-01-0001	0	N/A	\$	01-01-0001
URBAN FORESTRY REVIEW	01-01-0001	0	N/A	\$	01-01-0001
	01-01-0001	0	N/A	\$	01-01-0001

DEVELOPMENT CONDITION INFORMATION

DEVELOPMENT CONDITION STATEMENT DATE: 07-13-2009

<u>ITEM</u>	<u>DUE DATE</u>	<u>TRIGGER NO.</u>	<u>TRIGGER EVENT</u>	<u>CONTRIB AMT</u>	<u>EXPIRATION DATE</u>
ADVANCED DENSITY CREDIT	01-01-0001	0	N/A	\$	01-01-0001

WAIVERS/MODIFICATIONS

APPROVED WAIVERS/MODIFICATIONS

MODIFY BARRIER REQUIREMENT

MODIFY TRANSITIONAL SCREENING REQUIREMENT

SUPPLEMENTAL MOTIONS

SUPPLEMENTAL MOTIONS APPROVED

LEGAL DESCRIPTION:

**PROPERTY OF FAIRFAX COUNTY BOARD OF SUPERVISORS;
PARCEL 'G' LORTON CORRECTIONAL COMPLEXES**

ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND, TOGETHER WITH ALL IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE MOUNT VERNON MAGISTERIAL DISTRICT FAIRFAX COUNTY, VIRGINIA, SAID LOT OR PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTERLINE OF LORTON ROAD (STATE ROUTE #642 - VARIABLE WIDTH RIGHT-OF-WAY) AND PRESCRIPTIVE RIGHT-OF-WAY, AND BEING A CORNER COMMON TO PARCEL 'E', (TM 107-3((1))0019) (DB 14553 PG 0791); THENCE DEPARTING THE CENTERLINE OF SAID LORTON ROAD AND WITH THE LANDS OF SAID PARCEL 'E' THE FOLLOWING TWO (2) COURSES AND DISTANCES:

SOUTH 47 DEGREES 04 MINUTES 06 SECONDS EAST, 1,109.10 FEET TO AN IRON PIPE SET;
SOUTH 37 DEGREES 55 MINUTES 10 SECONDS WEST, 703.97 FEET TO AN IRON ROD WITH CAP FOUND, A CORNER COMMON TO PARCEL 'H' (TM 113-1((1))0014) (DB 13116 PG 2200); THENCE DEPARTING SAID PARCEL 'E' AND WITH THE LANDS OF SAID PARCEL 'H' THE FOLLOWING FOUR (4) COURSES AND DISTANCES:

SOUTH 01 DEGREE 42 MINUTES 33 SECONDS EAST, 445.36 FEET TO AN IRON PIPE SET;
SOUTH 55 DEGREES 15 MINUTES 02 SECONDS WEST, 486.80 FEET TO AN IRON PIPE SET;
SOUTH 06 DEGREES 53 MINUTES 35 SECONDS EAST, 261.70 FEET TO AN IRON PIPE SET;
SOUTH 00 DEGREES 29 MINUTES 44 SECONDS EAST, 290.34 FEET TO AN IRON PIPE SET, SAID POINT BEING A CORNER COMMON TO PARCEL 'I' (TM 113-1((1))0015) (DB 13116 PG 2200); THENCE DEPARTING SAID PARCEL 'H' AND WITH THE LANDS OF SAID PARCEL 'I' THE FOLLOWING TWO (2) COURSES AND DISTANCES:

NORTH 64 DEGREES 43 MINUTES 24 SECONDS WEST, 923.51 FEET, TO A POINT;
NORTH 77 DEGREES 50 MINUTES 42 SECONDS WEST, 33.77 FEET, TO A POINT IN THE CENTERLINE OF OX ROAD (STATE ROUTE #123 - 30 FOOT PRESCRIPTIVE RIGHT-OF-WAY), AND A CORNER COMMON TO THE LANDS OF THE FAIRFAX COUNTY WATER AUTHORITY OF FAIRFAX VIRGINIA (FCWA) (TM 106-4((1))0056) (DB 1073 PG 1122); THENCE DEPARTING SAID PARCEL 'I' AND WITH THE CENTERLINE OF SAID OX ROAD AND THE LANDS OF SAID FCWA THE FOLLOWING SEVEN (7) COURSES AND DISTANCES:

NORTH 19 DEGREES 29 MINUTES 12 SECONDS EAST, 136.89 FEET, TO A POINT;
NORTH 10 DEGREES 07 MINUTES 47 SECONDS EAST, 66.04 FEET, TO A POINT;
NORTH 05 DEGREES 36 MINUTES 58 SECONDS EAST, 185.21 FEET, TO A POINT;
NORTH 00 DEGREES 42 MINUTES 37 SECONDS EAST, 175.05 FEET, TO A POINT;
NORTH 04 DEGREES 08 MINUTES 21 SECONDS WEST, 799.14 FEET, TO A POINT;
NORTH 04 DEGREES 00 MINUTES 00 SECONDS WEST, 654.47 FEET, TO A POINT;
NORTH 05 DEGREES 42 MINUTES 34 SECONDS WEST, 36.65 FEET, TO A POINT IN THE CENTERLINE OF SAID OX ROAD (FORMERLY FAIRFAX COURTHOUSE ROAD); THENCE DEPARTING THE LANDS OF SAID FCWA AND WITH THE CENTERLINE OF THE FORMER FAIRFAX COURTHOUSE ROAD, AS IT FORMERLY EXISTED, THE FOLLOWING TWO (2) COURSES AND DISTANCES:

SOUTH 22 DEGREES 43 MINUTES 11 SECONDS EAST, 450.70 FEET;
SOUTH 07 DEGREES 48 MINUTES 11 SECONDS EAST, 306.00 FEET TO AN IRON PIPE SET AT THE CENTERLINE INTERSECTION OF SAID FORMER FAIRFAX COURTHOUSE ROAD AND FORMER TELEGRAPH ROAD, AS IT FORMERLY EXISTED; THENCE DEPARTING SAID FORMER

RECEIVED
Department of Planning & Zoning

JUL 17 2008

Zoning Evaluation Division

FAIRFAX COURTHOUSE ROAD AND WITH THE CENTERLINE OF SAID TELEGRAPH ROAD THE FOLLOWING TWO (2) COURSES AND DISTANCES:

NORTH 15 DEGREES 39 MINUTES 49 SECONDS EAST, 251.30 FEET, TO AN IRON PIPE SET;
NORTH 48 DEGREES 14 MINUTES 49 SECONDS EAST, 157.24 FEET, TO A POINT IN THE CENTERLINE OF THE AFORESAID LORTON ROAD; THENCE WITH THE CENTERLINE OF SAID LORTON ROAD THE FOLLOWING ELEVEN (11) COURSES AND DISTANCES:

NORTH 61 DEGREES 49 MINUTES 06 SECONDS EAST, 66.67 FEET, TO A POINT;
NORTH 66 DEGREES 03 MINUTES 57 SECONDS EAST, 129.41 FEET, TO A POINT;
NORTH 68 DEGREES 12 MINUTES 07 SECONDS EAST, 96.50 FEET, TO A POINT;
NORTH 60 DEGREES 15 MINUTES 02 SECONDS EAST, 33.98 FEET, TO A POINT;
NORTH 52 DEGREES 04 MINUTES 06 SECONDS EAST, 35.13 FEET, TO A POINT;
NORTH 40 DEGREES 50 MINUTES 14 SECONDS EAST, 41.74 FEET, TO A POINT;
NORTH 30 DEGREES 34 MINUTES 00 SECONDS EAST, 40.94 FEET, TO A POINT;
NORTH 22 DEGREES 17 MINUTES 56 SECONDS EAST, 80.73 FEET, TO A POINT;
NORTH 15 DEGREES 38 MINUTES 58 SECONDS EAST, 154.19 FEET, TO A POINT;
NORTH 18 DEGREES 28 MINUTES 01 SECONDS EAST, 43.45 FEET, TO A POINT;
NORTH 25 DEGREES 52 MINUTES 32 SECONDS EAST, 27.82 FEET TO THE POINT OF BEGINNING, CONTAINING 55.69168 ACRES OF LAND, MORE OR LESS.

SAVE AND EXCEPT

BEGINNING AT A POINT IN THE CENTERLINE OF LORTON ROAD (STATE ROUTE #642 - VARIABLE WIDTH RIGHT-OF-WAY) AND PRESCRIPTIVE RIGHT-OF-WAY, AND BEING A CORNER COMMON TO PARCEL 'E', (DB 14553 PG 0791); THENCE DEPARTING THE CENTERLINE OF SAID LORTON ROAD AND WITH THE LANDS OF SAID PARCEL 'E' (TM 107-3((1))0019) (DB 14553 PG 0791) THE FOLLOWING TWO (2) COURSES AND DISTANCES:

SOUTH 47 DEGREES 04 MINUTES 06 SECONDS EAST, 1109.10 FEET, TO AN IRON PIPE SET;
SOUTH 37 DEGREES 55 MINUTES 10 SECONDS WEST, 703.97 FEET, TO AN IRON ROD WITH CAP FOUND, A CORNER COMMON TO PARCEL 'H' (TM 113-1((1))0014) (DB 13116 PG 2200);

THENCE DEPARTING SAID PARCEL 'E' AND WITH THE LANDS OF SAID PARCEL 'H' THE FOLLOWING FOUR (4) COURSES AND DISTANCES:

SOUTH 01 DEGREE 42 MINUTES 33 SECONDS EAST, 445.36 FEET, TO AN IRON PIPE SET;
SOUTH 55 DEGREES 15 MINUTES 02 SECONDS WEST, 486.80 FEET, TO AN IRON PIPE SET;
SOUTH 06 DEGREES 53 MINUTES 35 SECONDS EAST, 261.70 FEET, TO AN IRON PIPE SET;
SOUTH 00 DEGREES 29 MINUTES 44 SECONDS EAST, 290.34 FEET, TO AN IRON PIPE SET, SAID POINT BEING A CORNER COMMON TO PARCEL 'I' (TM 113-1((1))0015) (DB 13116 PG 2200);

THENCE DEPARTING SAID PARCEL 'H' AND WITH THE LANDS OF SAID PARCEL 'I', NORTH 64 DEGREES 43 MINUTES 24 SECONDS WEST, 796.52 FEET, TO A POINT IN THE EASTERLY RIGHT-OF-WAY OF OX ROAD (STATE ROUTE #123 - VARIABLE WIDTH PRESCRIPTIVE RIGHT-OF-WAY);

THENCE DEPARTING SAID PARCEL 'I' AND WITH SAID OX ROAD THE FOLLOWING NINE (9) COURSES AND DISTANCES:

NORTH 01 DEGREES 39 MINUTES 48 SECONDS EAST, 81.24 FEET, TO A CONCRETE MONUMENT FOUND;
NORTH 06 DEGREES 37 MINUTES 59 SECONDS WEST, 151.49 FEET, TO A CONCRETE MONUMENT FOUND;

NORTH 05 DEGREES 07 MINUTES 32 SECONDS EAST, 69.38 FEET, TO A CONCRETE MONUMENT FOUND;
NORTH 00 DEGREES 13 MINUTES 52 SECONDS EAST, 65.64 FEET, TO A POINT;
NORTH 00 DEGREES 11 MINUTES 03 SECONDS EAST, 101.76 FEET, TO A CONCRETE MONUMENT FOUND;
NORTH 04 DEGREES 00 MINUTES 02 SECONDS WEST, 160.90 FEET, TO A CONCRETE MONUMENT FOUND;
NORTH 07 DEGREES 24 MINUTES 47 SECONDS WEST, 66.21 FEET, TO A CONCRETE MONUMENT FOUND;
NORTH 01 DEGREES 59 MINUTES 45 SECONDS WEST, 433.29 FEET, TO A POINT;
NORTH 10 DEGREES 36 MINUTES 52 SECONDS WEST, 357.29 FEET, TO A CONCRETE MONUMENT FOUND IN THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID LORTON ROAD;

THENCE WITH SAID LORTON ROAD THE FOLLOWING SEVEN (7) COURSES AND DISTANCES:

ALONG AN ARC 144.73 FEET TO THE LEFT, HAVING A RADIUS OF 1381.39 FEET, THE CHORD OF WHICH IS NORTH 64 DEGREES 55 MINUTES 49 SECONDS EAST, 144.66 FEET, TO A POINT;
SOUTH 07 DEGREES 48 MINUTES 11 SECONDS EAST, 159.08 FEET, TO AN IRON PIPE SET;
NORTH 15 DEGREES 39 MINUTES 49 SECONDS EAST, 207.68 FEET, TO A POINT;
NORTH 61 DEGREES 20 MINUTES 44 SECONDS EAST, 104.83 FEET, TO A POINT;
NORTH 21 DEGREES 04 MINUTES 03 SECONDS EAST, 83.15 FEET, TO A CONCRETE MONUMENT FOUND;
NORTH 27 DEGREES 51 MINUTES 13 SECONDS WEST, 9.54 FEET, TO A POINT;
NORTH 48 DEGREES 14 MINUTES 49 SECONDS EAST, 15.63 FEET, TO A POINT IN THE CENTERLINE OF SAID LORTON ROAD;

THENCE WITH SAID LORTON ROAD THE FOLLOWING ELEVEN (11) COURSES AND DISTANCES:

NORTH 61 DEGREES 49 MINUTES 06 SECONDS EAST, 66.67 FEET, TO A POINT;
NORTH 66 DEGREES 03 MINUTES 57 SECONDS EAST, 129.41 FEET, TO A POINT;
NORTH 68 DEGREES 12 MINUTES 07 SECONDS EAST, 96.50 FEET, TO A POINT;
NORTH 60 DEGREES 15 MINUTES 02 SECONDS EAST, 33.98 FEET, TO A POINT;
NORTH 52 DEGREES 04 MINUTES 06 SECONDS EAST, 35.13 FEET, TO A POINT;
NORTH 40 DEGREES 50 MINUTES 14 SECONDS EAST, 41.74 FEET, TO A POINT;
NORTH 30 DEGREES 34 MINUTES 00 SECONDS EAST, 40.94 FEET, TO A POINT;
NORTH 22 DEGREES 17 MINUTES 56 SECONDS EAST, 80.73 FEET, TO A POINT;
NORTH 15 DEGREES 38 MINUTES 58 SECONDS EAST, 154.19 FEET, TO A POINT;
NORTH 18 DEGREES 28 MINUTES 01 SECONDS EAST, 43.45 FEET, TO A POINT;
NORTH 25 DEGREES 52 MINUTES 32 SECONDS EAST, 27.82 FEET, TO THE POINT OF BEGINNING, CONTAINING 52.31107 ACRES OF LAND, MORE OR LESS.

SAVE AND EXCEPT

COMMENCING AT A POINT, SAID POINT BEING NORTH 12 DEGREES 54 MINUTES 49 SECONDS WEST, 118.14 FEET FROM A CONCRETE MONUMENT FOUND IN THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY OF LORTON ROAD (STATE ROUTE #642 – VARIABLE WIDTH AND 30-FOOT PRESCRIPTIVE RIGHT-OF-WAY), AND THE EASTERLY RIGHT-OF-WAY OF OX ROAD (STATE ROUTE #123 – VARIABLE WIDTH PRESCRIPTIVE RIGHT-OF-WAY), TO THE TRUE POINT OF BEGINNING; THENCE WITH THE CENTERLINE OF SAID OX ROAD AND EASTERLY LINE OF THE LANDS OF THE FAIRFAX COUNTY WATER AUTHORITY OF FAIRFAX, VIRGINIA (TM 106-4((1))0056) (DB 10373, PG 1122) THE FOLLOWING TWO (2) COURSES AND DISTANCES:

NORTH 04 DEGREES 00 MINUTES 00 SECONDS WEST, 472.13 FEET, TO A POINT;

NORTH 05 DEGREES 42 MINUTES 34 SECONDS WEST, 36.65 FEET, TO A POINT IN THE CENTERLINE OF SAID OX ROAD (FORMERLY FAIRFAX COURTHOUSE ROAD);

THENCE DEPARTING THE LANDS OF SAID FAIRFAX COUNTY WATER AUTHORITY OF FAIRFAX, VIRGINIA AND WITH THE CENTERLINE OF THE FORMER FAIRFAX COURTHOUSE ROAD, AS IT FORMERLY EXISTED, SOUTH 22 DEGREES 43 MINUTES 11 SECONDS EAST, 322.99 FEET, TO A POINT IN THE WESTERLY RIGHT-OF-WAY OF SAID OX ROAD;

THENCE DEPARTING SAID CENTERLINE OF OX ROAD AND WITH THE RIGHT-OF-WAY OF SAID OX ROAD THE FOLLOWING FOUR (4) COURSES AND DISTANCES:

SOUTH 66 DEGREES 33 MINUTES 52 SECONDS WEST, 10.00 FEET, TO A CONCRETE MONUMENT FOUND;

SOUTH 07 DEGREES 15 MINUTES 56 SECONDS WEST, 38.10 FEET, TO A CONCRETE MONUMENT FOUND;

SOUTH 19 DEGREES 56 MINUTES 32 SECONDS EAST, 95.76 FEET, TO A POINT;

SOUTH 19 DEGREES 00 MINUTES 46 SECONDS WEST, 31.75 FEET, TO A CONCRETE MONUMENT FOUND IN SAID LORTON ROAD;

THENCE DEPARTING THE AFORESAID OX ROAD AND WITH SAID LORTON ROAD, SOUTH 63 DEGREES 41 MINUTES 02 SECONDS WEST, 107.65 FEET, TO THE POINT OF BEGINNING, CONTAINING 0.76755 ACRES OF LAND, MORE OR LESS.

PROFFERED CONDITIONS FOR PROFFER CONDITION AMENDMENT
BY

LORTON ARTS FOUNDATION, INC.

PCA/FDPA 2003-MV-033

July 29, 2009

Pursuant to Section 15.2-2303(a) of the Code of Virginia, 1950, as amended, the property owner and Applicant in this proffer condition amendment proffer that the development of the parcels under consideration and shown on the Fairfax County Tax Maps as Tax Map Reference 106-4-((1))-58 (hereinafter referred to as the "Property") will be in accordance with the following conditions if, and only if, said proffer condition amendment application is granted. In the event said application request is denied, these proffers shall be null and void. The Owner and the Applicant ("Applicant"), for themselves, their successors and assigns, agree that these proffers shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with applicable County and State statutory procedures. The following proffered conditions supersede those associated with RZ 2003-MV-033. The proffer conditions are:

1. CONCEPTUAL DEVELOPMENT PLAN//FINAL DEVELOPMENT PLAN

(a) Substantial Conformance. Subject to the provisions of Article 16 of the Zoning Ordinance, under which minor modifications to an approved development plan are permitted and any additional requirements of these proffered conditions, the development shall be in substantial conformance with the Conceptual Development Plan Amendment/Final Development Plan Amendment (CDPA/FDPA), containing ten (10) sheets prepared by Walter L. Phillips, Inc. dated August 25, 2008 and revised through

July 13, 2009. For the purpose of these proffers, the structures and uses on the Property may be collectively referred to as "the Workhouse."

(b). Amendment to CDPA/FDPA. Notwithstanding the above, it shall be understood that the Applicant has the right to request a Final Development Plan Amendment (FDPA) for elements other than CDPA elements for all or a portion of the CDPA/FDPA in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance. For the purpose of this Proffer, CDPA elements shall include those principal and secondary uses permitted by these proffers, the maximum floor area ratio, the general layout and the general orientation of access points to public roads, parking, and open space areas.

2. PHASING

(a) Phasing of New Construction. The approval of PCA 2003-MV-033 shall constitute the ability to construct any of the proposed renovations/new construction shown on the CDPA/FDPA pursuant to the approval of the required site plan and provided conditions contained in the following proffers 2(b) and 2(c) are satisfied.

(b) Parking Requirements and Phasing of Parking. Minimum parking requirements shall be fulfilled at all times by providing the number of spaces required by the applicable provision of Article 11 of the Zoning Ordinance for each use as the site plan is approved for each use. A parking reduction or shared parking agreement per the Zoning Ordinance shall be requested at such time as it is determined that the minimum parking requirements cannot be met as a cumulative total on the Property. The parking reduction shall be approved prior to the approval of a site plan for the specific use. If the parking reduction is not approved, either a proffered condition amendment shall be sought to add parking or

currently approved uses will be reduced in size/scale to meet current parking requirements. Minimum parking may be fulfilled through a combination of "permanent" and overflow spaces in the location general identified on the CDPA/FDPA. It is intended that a waiver of the dustless surface requirement will be requested at the time of site plan for the spaces shown as such on the CDPA/FDPA.

(c) Phasing of Infrastructure. The Applicant shall demonstrate to the satisfaction of DPWES prior to each site plan approval that supportive utility infrastructure (i.e. sanitary sewer, water, etc.) is available to service the development and uses reflected on any individual site plan. If necessary, an additional sewer pump station and/or related infrastructure shall be provided.

(d) Trails. The Laurel Hill Greenway shall be provided as outlined in Proffer 9 below. The connecting trails shall be provided at the same time as the Laurel Hill Greenway, as generally shown on the CDPA/FDPA.

(e) Road Improvements. Entrance improvements, road widening and associated pedestrian facilities shall be provided in accordance with Proffer 10 below.

3. ARCHITECTURAL REVIEW

(a) Architectural Approval for New Structures. All construction and development shall be subject to review by the Architectural Review Board to the extent required by Article 7 of the Zoning Ordinance for Historic Overlay Districts and/or the Memorandum of Agreement executed by the Advisory Council for Historic Preservation on June 28, 2001 ("MOA"), as may be applicable.

(b) Signage. Notwithstanding the locations for signs and entry features shown on the CDPA/FDPA, all signs shall comply with Article 12 of the Zoning Ordinance. The Applicant further reserves the right to pursue a Comprehensive Sign Plan in accordance with Section 12-205. All signs shall be further identified and reviewed as part of plans forwarded to the ARB in accordance with Section (a) above and the sign permits shall be forwarded as required by Part 2 of Article 7, Historic Overlay Districts.

(c) Notification of Requirements for Architectural Review Board Approval. Separate notation shall be placed on all site plan submissions reading "all development actions for this rezoning are subject to Architectural Review Board review and approval," or similar text.

(e) Architecture of Artists Colony (N-1, N-2). Building materials associated with this use shall be compatible to those associated with the historic structures on the Property as approved by the ARB. All facades and fenestration (the arrangement, proportioning, and design of windows and doors in a building) of the Artists Colony shall be architecturally treated with elements in order to add variety to the façade, subject to ARB approval in accordance with the Historic Overlay District Provisions as required by the MOA.

(f) Screening of Service Areas. All dumpsters shall be screened using materials that are compatible to the approved architecture as approved by the ARB. All dumpsters and their screening shall be further identified and reviewed as part of plans forwarded to the ARB in accordance with Section (a) above.

4. DOCUMENTATION OF HISTORIC STRUCTURES TO BE DEMOLISHED

(a) Documentation of Contributing Buildings to be demolished. Prior to any demolition of a contributing building (W21A, W21, H42, H43 and W40 and possibly W-29), each structure shall be photographed with a large format camera (4"x 5" minimum negative) using black and white film. Photographic recordation shall be done to the standards of the Historic American Buildings Survey (HABS). The number and angle of views shall be coordinated with the Fairfax County Park Authority (FCPA) prior to the taking of photographs and the completed photos shall be approved by the FCPA prior to demolition of the buildings. Such photographs shall be submitted to the Virginia Room of the Fairfax County Public Library, the District of Columbia Archives, and the Virginia Department of Historic Resources (VDHR). A copy of the photos shall be kept at the Prison Museum in Buildings W-02 and W-03. The negatives shall be submitted to VDHR. The construction, occupants and significant events associated with each building to be demolished shall be documented in writing by qualified professional in consultation with Fairfax County DPZ and the Cultural Resource Management and Protection Section of the FCPA. Where applicable, such photographic and written documentation shall be done to a standard as required for determination for National Register eligibility based on the "VDHR Preliminary Information Form".

(b) Incorporation of Demolished Buildings at the Prison Museum. Depictions of the architecture, design, use, history and relationship to the overall workhouse of the contributing buildings to be demolished shall be displayed within the Prison Museum proposed to be located within the Workhouse.

(c) Historical Identification of Contributing Buildings. Any contributing building to be demolished shall be identified on the property with an appropriate plaque, marker or similar identification. The Applicant shall consult with the Fairfax County History Commission in determining the specific site and text of such identification and the site and text shall be subject to the review and approval of the Fairfax County History Commission.

5. PROTECTION OF HISTORIC STRUCTURES

(a) All renovation of existing structures shall be subject to review by the ARB to the extent required by Article 7 of the Zoning Ordinance for Historic Districts and/or the MOA as may be applicable. On-site development and demolition activity in proximity to the historic structures to remain shall be done in substantial conformance with the procedures that follow:

(i) Around each historic structure or group of historic structures, an area of land not less than ten (10) feet from the structure(s) will be enclosed with chain link fencing (one (1) opening per side permitted), consisting of at least six (6)-foot steel posts driven 18 inches into the ground and placed no further than ten (10) feet apart, so as to prevent accidental damage by heavy construction equipment during on-site demolition and earth moving activities. Steel posts and fencing may be removed once such activities are completed, to provide necessary access to the structure and the land adjacent to it. Nothing herein shall preclude activity within this area as long as such activities do not harm the building or its foundation, as described in 5(a)ii below.

(ii) For each protected building or structure, a line of foundation protection shall be delineated from the base of the foundation, with such line to be shown on all grading and/or site plans (e.g. a plan section or profile), including rough grading plans. If the building foundation is concrete, a line of protection shall be drawn at a 45-degree angle from the base of the foundation projecting downward. If the building foundation consists of rock or rubble, the Applicant's structural engineer will determine if a wider line of protection is necessary to the satisfaction of DPWES. If activities such as excavation, installation of utilities, stabilization/development activities related to the Greenway, or building restoration/modification are necessary within this area of protection, measures will be taken to insure the stability of the building foundation per current structural engineering standards and to the satisfaction of DPWES. A wider area may be required where deemed necessary by the County. Nothing herein shall preclude surface grading around the buildings to a depth of 6 to 12 inches, landscaping, or other activities that will not harm the building foundation.

(b) Archeological Investigation. Prior to the first site plan approval, the Property shall be subject to a Phase I archeological survey conducted in conformance with the MOA. If warranted by the initial Phase I survey, as determined by Fairfax County, subsequent Phase II archeological evaluation and/or Phase III archeological data recovery excavations shall occur with the scope of work of such potential Phase II and Phase III analyses and any associated recovery of artifacts being consistent with the requirements of the MOA and subject to review and approval by the Cultural Resource Management and Protection Section (the Section) of the Fairfax County Park Authority. Prior to the

design of any Phase I, II or III archaeological study, the Applicant or consultant shall consult with the Manager of the Section as to the scope and schedule of the studies.

6. PERMITTED USES/HOURS OF OPERATION

(a) Permitted Uses. As described on the CDPA/FDPA, the Property may be developed with the following permitted principal and secondary uses.

- Museum/Cultural Center and Similar Facilities to include Gallery, Demonstration and Exhibit Areas (generally, W-2 – W-11, W-16 and W-29 if retained)*
- Theater (W-12),
- Music Barn (W-22) with outdoor grassed seating area
- Performing Arts Center (W-17, W-18, W-18A)
- Events Center (W-01)
- Office uses in support of or affiliated with Workhouse functions or activities
- Residential-multifamily (N-1, N-2)
- Eating Establishments, (N-3, N-4, W-13)
- Commercial Recreational Use (Events Center, W-01) to consist of meetings, receptions, exhibitions and similar functions/uses
- Ballfields
- School of Special Education to include classes in the visual, performing, movement, and culinary arts and which may include select college level courses (to be restricted per Proffer 6g)

- Accessory retail and other accessory services uses limited to 20% of total gross square footage on site (Gross square footage of gallery space shall not be included in the 20% calculation.).
- Outdoor retail display in the horticultural area, limited to a total of 2,700 square feet

This proffer shall not preclude establishment of accessory and accessory service uses. Such accessory uses may include, but shall not be limited to the incorporation of certain food service and eating establishments within otherwise permitted uses.

(b) Location of Certain Uses. The Artists Colony, Freestanding Eating Establishments, Music Barn, Theater, Events Center and Performing Arts Center shall be located in the buildings so designated on the CDPA/FDPA. Other permitted uses may be located within varying locations, subject to conformance with these proffered conditions.

(c) Occupancy of Artists Colony. Occupancy of those residential units identified as the "Artists Colony" (N-1, N-2) shall be limited to persons directly involved with an activity of the Workhouse, including, but not limited to, artists, producers, directors, interns, fellowship recipients, educators, apprentices, paid and volunteer staff of the Workhouse, enrollees in Workhouse classes and other members of the Lorton Arts Foundation. Preference in leasing shall be given to visual and performing artists. The units in N-1 and N-2 shall be designed as live/work apartments to include all the elements of a dwelling unit as defined by the Zoning Ordinance in addition to studio workspace. The first floor shall be designed to include gallery/exhibition space. Additionally, twice a year, the Artist Colony (N-1 and N-2) shall be open to the public as part of a program to educate the community about the live/work apartment concept.

(d) Hours of Operation. The hours of operation at the Museum/Cultural Center, Theater, Events Center, Music Barn and Eating Establishments shall be limited to the following:

(i) Museum/Cultural Center

Attendance by outside visitors at the Museum/Cultural Center (W-02, W-03) and associated artist studio(s) shall be limited to the hours between 8:00 a.m. and midnight seven days per week.

(ii) Theater

Performances at the Theater (Building W-12) shall be permitted between the hours of 8:00 a.m. and midnight seven days per week.

(iii) Performing Arts Center.

The hours of operation at the Performing Arts Center (W-17, W-18, W-18A) shall be between the hours of 8:00 a.m. and 1:00 a.m. seven days per week. Performances and events shall end no later than 11:00 pm. The remaining hours between 11:00 p.m. and 1 a.m. shall be for breakdown of performances and events.

(iv) Events Center

The hours of operation at the Events Center (Building W-01) shall be from 7:00 a.m. to 2:00 a.m. seven days a week. Events shall end no later than midnight, except for New Year's Eve and five (5) other similar events falling on a Friday,

Saturday, or holiday. The remaining hours between midnight and 2 a.m. shall be for breakdown of performances and events.

(v) Music Barn

The hours of operation at the Music Barn (Building W-22) shall be 8:00 a.m. to 1:00 a.m. seven days per week. Performances shall end by 11:00 pm. The hours of performances at the Music Barn may be further restricted based on the noise study in Proffer Number 8 (k). The remaining hours between 11:00 p.m. and 1 a.m. shall be for breakdown of performances and events

(vi) Free-Standing Eating Establishments

Any free-standing Eating Establishments shall be permitted to operate within the hours of 11:00 a.m. to 11:00 p.m. from Sunday through Thursday and 11:00 a.m. to 1:00 a.m. on Friday and Saturday. Other eating establishments or food sales activities shall be limited by the hours of the building in which they are located.

There shall be no "hourly" restrictions on the use and occupancy of structures and facilities by the individual artists and/or staff/employees of the Workhouse.

- (e) Culinary Arts Program. The classes associated with the culinary arts program shall be a part of the school of special education and part of the total enrollment of 450 students. The areas devoted to the culinary arts programs shall include elements such as brewery/wine-making, bakery, creamery and the like. Activities to take place in such areas shall include demonstration and exhibition, classes and accessory sales of produced goods to visitors of the Workhouse. The areas shall not have the characteristics to be deemed an eating establishment or food

production facility and any area devoted to accessory retail sales associated with the culinary arts program shall be limited to 10% of the square footage of the culinary arts area.

- (f) School of Special Education. The school of special education may be located within any building on the property. The maximum daily enrollment of the School of Special Education shall be 450 students with no more than 450 on site at any one time. The Applicant, in association with a University(s), may offer college or university level accredited classes provided the classes are reasonably related to the visual, performing, culinary or literary arts and/or other programming or activity occurring at the Workhouse from time to time. There will be no dorms, dining facilities or similar elements specifically for the university students on the property.
- (g) Energy Star. The appliances utilized in the Artist's Residences (N-1 and N-2), including dishwashers, refrigerators and freezers, and clothes washers shall be Energy Star Certified or an equivalent rating.

7. SCHEDULING OF EVENTS.

(a) Limitations for Certain Venues.

- (i) Except as provided for in Paragraph (b) below, at no time shall scheduled events having a combined total projected attendance or ticket sales of more than 1200 Outside Guests be concurrently scheduled at either the Music Barn (W-22), Theater (W-12), Performing Arts Center (W-17, W-18, W-18B), Events Center (W-01) and/or

common/lawn areas of the Workhouse. For the purpose of these proffers, a scheduled event shall mean a performance, concert, social gathering, conference or similar function whereby attending of an amount or duration above and beyond that associated with other permitted uses is expected. For the purpose of these proffers, "Outside Guests" shall mean those persons attending scheduled events based on tickets available or permitted seating capacity and/or persons "guaranteed" for catering purposes that are not employees, vendors or contractors of the Workhouse, its assigns, or affiliated franchise facilities, or individuals otherwise engaged in technical or production elements of any such scheduled event. The term "concurrently scheduled" shall mean such scheduled events having a published starting or projected ending time within 44 minutes of one another.

(ii) Peak Hour Restrictions. Irrespective 7(a)(i) above and 7(b)(i) below, during weekday (Monday-Friday) peak hour (5:00 pm-7:00 pm) periods, the term "concurrently scheduled" shall mean scheduled events having a published starting or ending time within 119 minutes of one another.

(iii) Monitoring. To confirm compliance with these occupancy requirements, the schedule of starting or ending times for any scheduled events and projected attendance based on tickets sold/distributed, persons "guaranteed" for catering purposes or other similar information shall be furnished to DPZ on request.

(iv) Use of Non-Paved Parking. Any time a total projected attendance of 700 Outside Guests is anticipated, staff shall be available to direct guests and visitors to designated overflow parking areas on the site.

The restrictions above shall not preclude occupancy by any Workhouse facility staff and/or technical professionals for set up, rehearsals and similar purposes.

(b) Special Events.

(i) For the purpose of these proffers, a "Special Event" shall be an event associated with an otherwise Permitted Use that has a number of Outside Guests that exceed the occupancy limitation in 7(a) above. Such events are anticipated to involve numbers of artists, exhibitors, performers and Outside Guests beyond that associated with day to day operation of the Workhouse. A Special Event may also occur over the course of a multi-day period, which shall not exceed three (3) consecutive days.

(ii) During the first five (5) years of operation following the issuance of the first NonRUP, the Applicant reserves the right to schedule up to six (6) so-called "Special Events" per year. The initial Special Event shall be limited to up to 600 outside guests above that otherwise allowed by Proffer 7(a).

(iii) Following the first five (5) years of operation, the number of Special Events may be increased to allow a total of twelve (12) Special Events per year, subject to approval by the County upon a determination that the special events met the applicable County codes, regulations and ordinances, complied with the terms of the agreements in (d) below and that in the judgment of the County, traffic associated with the special event did not result in an unacceptable level of congestion.

(c) Sanitation for Special Events. All such Special Events shall require the provision of additional temporary bathroom facilities or similar sanitation measures as may be required by the Fairfax County Health Department. It shall be the responsibility of the

Applicant to obtain any and all necessary Health Department approvals prior to all such Special Event.

(d) Off-Site Parking for Special Events.

(i) Special Events shall require the provision of off-site parking arrangements sufficient to accommodate those vehicular trips reasonably projected to occur as a result of the Special Event and any regularly scheduled or permitted uses and activities at the Workhouse. Prior to the first Special Event, the Applicant shall provide documentation to the Department of Planning and Zoning, Zoning Administration Division and shall identify: (1) areas reserved, rented or leased for off-site parking, and (2) the nature and/or form of the associated agreement with the off-site land owner, and (3) a description of any proposed shuttle operation to/from the same (collectively, the "Parking Plan"). The amount of off-site parking shall be based, at a minimum, on the number of Outside Guests expected at the first Special Event and may reflect a greater number of Outside Guests, based on anticipated attendance at future events. Such off-site parking arrangements shall be subject to review and approval to confirm the general sufficiency of available on and off-site parking by DPZ in consultation with Fairfax County Department of Public Works and Environmental Services based on historic operational characteristics of the Workhouse, similar local events, or other similar objective and professionally accepted methodology.

(ii) To the extent the number of Outside Guests at future Special Events does not exceed that described in the Parking Plan, no further review of off-site parking shall be required in connection with future Special Events after the approval of the Parking

Plan. In the event subsequent Special Events propose greater numbers of persons than reflected in the Parking Plan, the Parking Plan shall be revised and reviewed as generally outlined in item 7(d)(i) above. Regardless of the need for further parking review, DPZ and FCDOT shall receive thirty (30) days written notice of all scheduled Special Event.

(iii) In the event following any Special Event, the County identifies objective problems concerning the adequacy or availability of off-site parking, additional review in accordance with item 7(d)(i) above shall occur prior to the next scheduled Special Event.

(e) Use of Tents

Tents for outdoor performances or events may be used on the property provided that any one tent is not erected for more than six (6) months or exceeds 5,000 square feet. Fire Marshall approval shall be obtained for the tent(s), if required, and attendance limits as otherwise stated in these proffers shall apply.

8. ENVIRONMENTAL

(a) Stormwater Management.

(i) Stormwater management and associated BMP measures shall be provided in accordance with the Public Facilities Manual (PFM) as determined by DPWES, unless requirements for the same are waived or modified under the appropriate authority given to DPWES. Any required structural detention facilities shall be located in substantial conformance with the locations of water features or areas reserved for the same on the CDPA/FDPA. The Applicant shall locate, design and construct any off-site stormwater

facilities and other adequate outfall improvements for the Property in accordance with the requirements of DPWES.

(ii) The Applicant intends to seek the necessary waivers to provide portions of the required stormwater management on the adjacent FCPA property as generally shown on the CDPA/FDPA. The Applicant shall coordinate the location, design, and construction of those portions of any off-site SWM/BMP facility with the FCPA prior to site plan submission for the facility, and the same shall be subject to review and approval by the FCPA in conjunction with site plan approval. Offsite SWM/BMP facilities constructed by the Applicant shall include any landscaping screening of the facility in addition to that shown on the CDPA/FDPA, maintenance access to the facility, location/screening of proposed outfall structures, and combined outfall as required by the FCPA and DPWES. Such features shall be identified on the appropriate site plan involving any such SWM/BMP facilities submitted to the County and the FCPA. The Applicant further agrees that any excess capacity associated with the proposed off-site facility may be utilized by the FCPA in connection with the development of its property. If for any reason, arrangements for off-site stormwater management area not available, the Applicant reserves the right to locate all of the required stormwater management on-site in substantial conformance with the CDPA/FDPA. Maintenance of any off-site SWM/BMP facility shall be the responsibility of the Applicant.

(iii) Low Impact Development Techniques. The Applicant shall pursue incorporation of low impact development techniques subject to approval by DPWES. Such measures may include, but shall not be limited to, (i) infiltration trenches, (ii) rain gardens, (iii) rain cisterns, (iv) permeable paving or gravel in select locations. To

increase public awareness of such measures, a narrative and/or pictorial description of any approved low impact development techniques shall be displayed within the Prison Museum or other alternative location suitable for public viewing.

(b) Landscaping.

Landscaping of the parking areas, internal streets, the SWM ponds, and the periphery of the property shall be provided in substantial conformance with the landscaping concepts generally shown on the CDPA/FDPA, subject to changes to reflect Low Impact Development Techniques if such changes are in substantial conformance with landscaping shown on the CDPA/FDPA and shall be subject to review and approval of the Urban Forestry Management Division (UFMD).

(c) Adherence to Limits of Clearing and Grading.

The limits of clearing and grading shall be generally consistent with that shown on the CDPA/FDPA. The Site/subdivision plan shall clearly identify these areas as shown on the CDPA/FDPA. As part of future site plans, the applicant shall provide management practices for the protection of understory plant materials, leaf litter and soil conditions found in areas to be left undisturbed, subject to the approval of the UFMD. The applicant shall actively monitor the site to ensure that inappropriate activities such as the storage of construction materials, dumping of construction debris, and traffic by construction equipment and personnel do not occur within these areas. The applicant shall restore understory plant materials, leaf litter and soil conditions to the satisfaction of UFMD if these are found to be damaged, removed or altered in manner not allowed in writing by the UFMD.

If it becomes necessary to install utilities determined necessary by DPWES within areas to be left undisturbed, they shall be located and installed in the least disruptive manner possible as determined by UFMD in coordination with the Environmental and Site Review Division, DPWES. In addition, the applicant shall develop and implement a replanting plan for the portions of protected areas disturbed for utility installation taking into account planting restrictions imposed by utility easement agreements.

Any work occurring in or adjacent to the areas to be left undisturbed, such as root pruning, installation of tree protection fencing and silt control devices, removal of trash, or plant debris, or extraction of trees designated to be removed shall be performed in a manner that minimizes damage to any tree, shrub, herbaceous, or vine plant species that grows in the lower canopy environment; and minimizes impacts to the existing top soil and leaf litter layers that provide nourishment and protection to that vegetation, all as approved by UFMD. The use of power equipment in these areas shall be limited to small hand-operated equipment such as chainsaws. Any work that requires the use of larger motorized equipment such as, but not limited to, tree transplanting spades, skid loaders, tractors, trucks, stump-grinders, or any accessory or attachment connected to such equipment shall not occur unless reviewed and approved in writing by UFMD.

(d) Root Pruning and Mulching.

The applicant shall (1) root prune the roots of trees to be preserved that may be damaged during clearing, demolition, grade changes, utility installation and/or the

installation of retaining walls; (2) mulch to a minimum depth of 3 inches within the areas to be left undisturbed where soil conditions are poor, lacking leaf litter or prone to soil erosion; and then (3) provide tree protection fencing approved by the UFMD, where deemed necessary by UFMD. The areas that will be root pruned and mulched shall be clearly identified on the Tree Preservation Plan. All treatments for such trees and vegetation shall be clearly specified, labeled, and detailed on any erosion and sediment control sheets and demolition plan sheets of the site plan submission. The details for these treatments shall be included in the Tree Preservation Plan and shall be subject to the review and approved of UFMD.

All root pruning and mulching work shall be performed in a manner that protects adjacent trees and vegetation that are required to be preserved and may include, but not be limited to, the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- Root pruning shall take place prior to any clearing and grading and/or demolition of structures.
- Root pruning shall not sever or significantly damage structural or compression roots in a manner that may compromise the structural integrity of trees or the ability of the root system to provide anchorage for the above ground portions of the trees.
- Root pruning shall be conducted with the on-site supervision of a certified arborist.
- Tree protection fencing shall be installed immediately after root pruning, and shall be positioned directly in the root pruning trench and backfilled for stability, or just outside the trench within the disturbed area.

- Immediately after the phase II E&S activities are complete, mulch shall be applied at a depth of 3 inches within designated areas without the use of motorized equipment
- Mulch shall consist of (specify mulch type) wood chips, shredded hardwood and/or pine bark mulch. Hay or straw mulch shall not be used within tree preservation areas. UFMD, DPWES shall be informed in writing when all root pruning and tree protection fence installation is complete.

(e) Tree Protection Fencing.

All individual trees to be preserved/conserved and all areas designated to be left undisturbed shall be protected by tree protection fencing and signage as set forth below. Tree protection fencing shall be erected at the drip line of individual trees to be preserved and at the limits of clearing and grading, and shall be shown on the demolition and phase II erosion and sediment control sheets. Tree protection fencing may consist of four foot high, 14 gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and placed no further than 10 feet apart (see attached detail); or, super silt fence as may be approved by UFMD to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees.

All tree protection fencing shall be installed prior to Phase II clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist or landscape architect and accomplished in a manner that does not harm existing vegetation that is required to be preserved/conserved. At least three days prior to the

commencement of any clearing, grading, or demolition activities and prior to the installation of tree protection fencing, UFMD and the District Supervisor shall be notified in writing and given the opportunity to inspect the site to assure that all individual trees to be preserved and all areas to be left undisturbed have been correctly delineated. UFMD shall provide written notice to the applicant as to whether or not the areas have been delineated correctly. If it is determined by UFMD that the areas are not delineated correctly, no grading or construction activities shall occur on the subject property until the delineation is corrected and field verified by UFMD.

The applicant shall provide signs that identify and help protect all areas to be left undisturbed. These signs will be highly visible, posted in appropriate locations along the limits of clearing and grading, and attached to the tree protection fencing. Under no circumstances will the signs be nailed or in any manner attached to the trees or vegetation within the areas to be left undisturbed.

(f) Tree Preservation Walk-Through

The applicant shall retain the services of a certified arborist or landscape architect and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the pre-construction meeting. Prior to commencement of any land disturbing activities, the applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with a representative from the UFMD, to determine where adjustments to the clearing limits can be made to increase the size of the area to be left undisturbed, and to increase the survivability of trees to be conserved or preserved that occur along the edge of the limits of clearing and grading, and/or identify hazardous trees

that need to be removed. Any adjustments agreed to by the applicant and UFMD shall be agreed upon and memorialized in writing by both the applicant and UFMD before any such adjustments are implemented, and such adjustments shall be implemented. Trees to be removed shall be tagged in the field. Trees that are identified in writing by an authorized representative of UFMD as dead or dying may be removed as part of the clearing operation. Any tree that is so identified shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump grinding machine in a manner causing as little disturbance as possible to the adjacent trees and associated understory vegetation and soil conditions.

(g) Site Monitoring

At all times during the installation of tree protection fencing and during any clearing or removal of trees, vegetation, or structures, or transplanting of trees or vegetation on the site, or other similar activities, a representative of the applicant who is a certified arborist or landscape architect shall be present to monitor the process and ensure that the activities are conducted in accordance with the proffers and as approved by the UFMD. The monitoring schedule shall be described and detailed in the Tree Preservation Plan and shall be reviewed and approved in writing by UFMD.

(h) Tree Preservation

At the time of site plan review for the respective portions of the site, the applicant shall submit a tree survey that identifies the trunk location, species, size, crown spread and condition analysis rating for all individual and groups of trees shown on the CDPA/FDPA to be preserved, as well as all on and off-site trees, living or dead with

trunks 6 inches in diameter and greater (measured at 4 ½ feet from the base of the trunk or as otherwise allowed in the 9th edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) located within 25 feet of the approved limits of clearing and grading shall also be submitted for review by the UFMD.

(i) Protection and Preservation of White Oaks

Safeguards, as depicted on the CDPA/FDPA, shall be implemented during construction of the restaurant(s) in order to avoid or minimize disturbance to the two specimen white oak trees on the north side of the water line easement near the location of the restaurants. The grading plan shall reflect no future grading within the dripline of those trees beyond that shown on the CDPA/FDPA.

(j) Lighting.

All light fixtures shall be in conformance with the provisions of Part 9 of Article 14, Outdoor Lighting Standards. The maximum height of light standards used in the parking lots shall be 24 feet. The types and locations of all light fixtures shall be subject to the review and approval of the ARB. The location and type of all light fixtures shall be identified on the plans forwarded to the ARB in accordance with Proffer 3, Architectural Review, Paragraph (a).

(k) Noise Mitigation for Music Barn.

(i) Prior to the issuance of a Building Permit for the Music Barn (W-22), the Applicant shall demonstrate through a noise impact study reviewed and approved by DPWES and DPZ (herein the Noise Study) that noise impacts, at the periphery of the property, generated by the indoor and outdoor events at the Music Barn, based on the

nature, type and size of events proposed, can be mitigated to the levels prescribed by the Zoning Ordinance, the Comprehensive Plan and/or the County Code through the appropriate combination of structural and operational requirements. Once the Noise Study is approved, the Applicant shall adhere to the operational and mitigation requirements of the same. Nothing herein shall preclude the Applicant from preparing a subsequent Noise Study to reflect changes to the nature, type and size of events and proposed mitigation measures from that reflected in the approved Noise Study. Any subsequent Noise Study shall also be subject to review and approval by DPWES and DPZ.

(ii) Interior Noise Mitigation for Residential Uses. In order to mitigate interior noise to DNL 45dBA, each dwelling shall have the following acoustical attributes: (1) exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39; (2) doors (excluding garage doors) and windows shall have an STC rating of at least 28. If glazing (excluding garage doors) constitutes more than 30% of any facade, then such windows shall have the same STC rating as the facade; and (3) materials to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission. Any units requiring mitigation shall be identified on the site plan. Compliance with these building material standards will be demonstrated by the Applicant, to the satisfaction of DPWES, prior to the issuance of building permits for the units.

(l) The Applicant shall include a LEED®-accredited professional as a member of the design team who will work with the team to explore and potentially incorporate sustainable design elements and innovative technologies into the construction of building

N-3, N-4 and N-5. At the time of site plan submission, the Applicant will provide documentation to the Environment and Development Review Branch of DPZ demonstrating compliance with the commitment to engage such a professional. The Applicant will include, as part of the site plan submission and building plan submission for the restaurants (N-3 and N-4) and the maintenance office (N-5), a summary report of such elements and technologies which may include, but shall not be limited to: construction waste diversion, use of recycled materials, use of regional materials, outdoor air delivery monitoring and controllability of systems, use of low emitting materials such as sealants, paints, carpets, etc., use of native and drought-tolerant plants for landscaping around the buildings, and provision of bicycle racks.

9. RECREATION

(a) Parks and Recreation Contribution. The Applicant shall expend the sum of nine hundred fifty-five dollars (\$955.00) per approved dwelling unit within the Artists Colony for onsite recreation facilities. Such recreational facilities (e.g. gazebos, croquet lawns, bocce courts, badminton courts, sitting areas or similar amenities, and trails providing connections to the Greenway and to County-Wide trails) that do not require fully enclosed structures may be provided within any open space area that is proximate to the Artists Colony without the requirement of a CDPA/FDPA or a proffered condition amendment provided that such are determined to be in substantial conformance with the CDPA/FDPA and are subject to the approval of the ARB as required by these proffers. The balance of any funds not expended onsite, if any, or on the construction of offsite

trails (excluding the Laurel Hill Greenway), shall be provided to the FCPA for recreation facilities in the vicinity.

(b) Use of Ballfield.

(i) The ballfield identified on the CDPA/FDPA shall be the subject of a "sublease" or similar arrangement whereby the FCPA, or its designee is given, rights for access to and programming of the ballfield for practice and routinely scheduled games, along with proportional maintenance obligations based on the amount and nature of use by the FCPA or its designee. Other than these maintenance obligations, such rights shall be given to the FCPA at no cost.

(ii) No "tournament type" activity may be scheduled without permission from the Applicant.

(iii) To prevent conflict with Workhouse activities and special events, specific timing and days of use shall be coordinated between the Applicant and the FCPA or its designee on a semi-annual basis, or more frequently if warranted.

(iv) During Special Events, which are to be identified on a semi-annual basis, the Applicant reserves the right to limit use of the ballfield.

(v) To the extent possible, the ballfield shall remain open for play during construction activity.

(c) Laurel Hill Greenway.

(i) The Applicant shall design, permit and construct, or cause to be constructed, the Laurel Hill Greenway and trail as generally shown on the CDPA/FDPA. The trail shall ultimately be field located in consultation with FCPA Staff and as a result, minor modifications from the configuration shown on the CDPA/FDPA may occur as needed to address topographic or other functional considerations.

(ii) The Laurel Hill Greenway improvements shall coincide with the construction by others of the adjacent portion or portions of the Greenway not addressed in this proffer as obligations of the Applicant, but in no event shall the improvements be constructed later than June 30, 2015.

(iii) The Applicant shall coordinate with the FCPA on the design of the trail in the Laurel Hill Greenway prior to site plan submission for areas of the property involving the trail. The trail shall be typically fourteen (14) feet. As a guideline, approximately ten (10) feet of the trail width is to be surfaced with asphalt, and approximately four (4) feet of the trail width is to be surfaced with stone dust as may be modified as a more detailed plan is designed by the FCPA. The landscaping, trail width, surface materials, and location shall be shown on the Site Plan associated with Phase 3 or such earlier version as may be necessitated by the phasing requirements of these proffer conditions.. The trail is to be maintained by others.

(iv) All improvements to the site within seventy-five (75) feet of the Greenway shall be reviewed and approved by the FCPA, which approval shall not preclude the improvements shown on the CDPA/FDPA.

10. TRANSPORTATION

(a) Interim Lorton Road Improvements. If the eastern (or second) Lorton Road entrance is constructed prior to the improvement of Lorton Road to a four-lane divided facility, the Applicant shall construct interim left and right turn lanes at the easternmost entrance and shall design the entrance in consultation with FCDOT in such a way as to minimize future changes once the final vertical elevation of Lorton Road is determined. The design and configuration of such turn lanes shall be subject to review and approval by VDOT and DPWES.

(b) Access to Non-Paved Parking. Vehicular access to the parking areas labeled as "unpaved parking" and located south and east of the ball field may be provided via a gravel driveway or similar "pervious" material to include grasscrete or similar products from paved travel ways. The location of the access is subject to approval by DPWES. The Applicant further reserves the right to install walkways to provide pedestrian access from on-site overflow areas to the Workhouse.

(c) Access to Northern Virginia Regional Park to the south. Prior to the issuance of the Non-RUP for any venue or combination of venues for which seating or capacity exceeds 620 persons, an additional access point connecting to the entrance road to Occoquan Regional Park shall be constructed, provided that any necessary approvals are obtained from the property owner. It is noted that notwithstanding that shown on the CDPA/FDPA, the intersection shall be designed with the park entrance aligning as a T-intersection into the Lorton Arts driveway unless a different alignment is determined to be appropriate per FCDOT and VDOT. The Applicant shall coordinate with the UFMD to ensure the least amount of vegetative disturbance as possible.

(d) Easternmost Access Point to Lorton Road. Prior to the issuance of the Non-RUP for any venue or combination of venues for which seating or capacity exceeds 1000 persons, the easternmost access point to Lorton Road, as shown on the CDPA/FDPA, shall be constructed. At this time, the westernmost entrance on Lorton Road shall be converted to right-in, right-out only.

11. WATER LINE

Lorton Arts Foundation shall continue to dialogue with the Fairfax County Water Authority (FCWA) regarding the relocation of the water line on site. Either Lorton Arts Foundation shall move the water line or shall fund the relocation to be completed by FCWA, unless a different resolution is agreed upon by FCWA. If relocating the water line is the resolution, no building permits for new construction shall be issued until either relocation of the water line has commenced or funds have been transmitted to FCWA for such relocation. New construction shall not be construed to mean renovations to existing buildings. Lorton Arts Foundation shall vacate the existing water line easement, if necessary.

Signatures to follow on next page

LORTON ARTS FOUNDATION, INC.
(Applicant/Lessee of Tax Map No. 106-4-((1)) 58

By: Sharon L. Mason
Name: Sharon L. Mason
Title: Executive Director

FAIRFAX COUNTY BOARD OF SUPERVISORS,
a body corporate and politic
(Title Owner/Lessor of Tax Map No. 106-4-((1)) 58.

By: Anthony H. Griffin
Name: ANTHONY H. GRIFFIN
Title: COUNTY EXECUTIVE

Board Agenda Item
November 20, 2018

4:30 p.m.

Public Hearing to Consider Proposed Amendments to the Ordinances for the Fairfax County Employees', Uniformed and Police Officers Retirement Systems

ISSUE:

Public Hearing on proposed amendments to Articles 2, 3, and 7 of Chapter 3 of the Code of the County of Fairfax, which set forth the ordinances for the Fairfax County Employees', Uniformed and Police Officers Retirement Systems, respectively. These proposed amendments revise certain benefit provisions only with respect to employees hired on or after July 1, 2019.

RECOMMENDATION:

The County Executive recommends that the Board consider proposed amendments to the Fairfax County Employees', Uniformed and Police Officers Retirement Systems for the purpose of changing certain benefit provisions with respect to employees hired on or after July 1, 2019. The Boards of Trustees for the three Retirement Systems have reviewed the actuary's assessment of the impact of these proposed amendments, if approved, and agree with it.

TIMING:

On October 16, 2018, the Board authorized advertisement of a public hearing to consider the matter on November 20, 2018, at 4:30 p.m.

BACKGROUND:

The Board requested a thorough reexamination of the County's retirement benefits and consideration of changes to the benefits provided to new employees to improve the Systems' long-term sustainability. In response to this request, staff returned to the Board with detailed information on hiring and retirement trends, the Virginia Retirement System (VRS) mandate, and benefit levels. The Board discussed potential changes to benefit provisions for new employees at several meetings of its Personnel Committee and established a working group of Board members, employees, and retirees to discuss proposed changes.

At the June 26, 2018, meeting of the Personnel Committee, the Board narrowed the range of potential changes to be considered and directed staff to advertise a public hearing on

these options in order to solicit community input and determine which changes should be enacted. It is important to note that the proposed amendments would apply only to new employees hired on or after July 1, 2019, and would not impact current employees and retirees.

PROPOSED AMENDMENTS:

The proposed amendments to the Employees' Retirement System ordinance, effective for new employees hired on or after July 1, 2019, will:

- increase the minimum retirement age from 55 to 60;
- require age and years of service to total 90 to be eligible for normal retirement;
- increase the period used to calculate average final compensation from 3 to 5 years;
- eliminate the pre-social security supplement; and
- repeal the provision that increases the calculated retirement annuity by 3%.

The proposed amendments to the Uniformed Retirement System ordinance, effective for new employees hired on or after July 1, 2019, will:

- increase the period used to calculate average final compensation from 3 to 5 years;
- eliminate the pre-social security supplement; and
- repeal the provision that increases the calculated retirement annuity by 3%.

The proposed amendments to the Police Officers Retirement System ordinance, effective for new employees hired on or after July 1, 2019, will:

- increase the period used to calculate average final compensation from 3 to 5 years; and
- repeal the provision that increases the calculated retirement annuity by 3%.

FISCAL IMPACT:

If all of the proposed amendments detailed above are enacted, the actuary has estimated that the employer normal cost for employees hired on or after July 1, 2019, would be reduced from 7.70% to 6.35% (a 1.35% decrease) for the Employees' Retirement System, from 16.12% to 13.82% (a 2.30% decrease) for the Uniformed Retirement System, and from 17.98% to 16.56% (a 1.42% decrease) for the Police Officers Retirement System. These estimates are presented as Option A in the letters prepared by Cheiron for the Systems (Attachment 4). Per the Personnel Committee's request, the actuarial impact for other combinations of amendments are also included for each System in the letters.

The Board has committed not to reduce the County's contribution to each System until it is fully funded. Therefore, there will be no budgetary savings from any of the proposed amendments until the Systems are fully funded. The actuary currently estimates that all

Board Agenda Item
November 20, 2018

three Systems will reach 100% funding by FY 2033 based on a set of assumptions, which include a projected annual rate of return of 7.25%.

ENCLOSED DOCUMENTS:

Attachment 1: Amendments to Chapter 3, Article 2
Attachment 2: Amendments to Chapter 3, Article 3
Attachment 3: Amendments to Chapter 3, Article 7
Attachment 4: Actuarial Impact Letters from Cheiron

STAFF:

Joseph Mondoro, Chief Financial Officer
Jeffrey Weiler, Executive Director, Fairfax County Retirement Systems
Christina Jackson, Deputy Director, Department of Management and Budget
Philip Hagen, Budget Services Coordinator, Department of Management and Budget

ASSIGNED COUNSEL:

Benjamin R. Jacewicz, Assistant County Attorney

ARTICLE 2. - Fairfax County Employees' Retirement System.

Footnotes:

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7. Editor's note— Ord. No. 20-81-3 amended Art. 2 to read as set forth in §§ 3-2-1—3-2-50. Formerly, Art. 2 consisted of §§ 3-2-1—3-2-47, and was derived from the following legislation:

Ord. Nos. 6-15-55, §§ 1—20, 22—40; 5-8-63; 6-23-65; and 10-21-70; 1961 code, §§ 9-22—9-68; and Ord. No. 10-74-9.

Division 1. - Generally.

Section 3-2-1. - Fairfax County Employees' Retirement System established.

Under the authority of Section 51.1-801 of the *Virginia Code*, there is hereby established a retirement system for employees, formerly known as the Fairfax County Supplemental Retirement System, to be known henceforth as the "Fairfax County Employees' Retirement System," by and in which name it shall, pursuant to the provisions of this Article, transact all of the System's business. The Fairfax County Employees' Retirement System is intended to satisfy the requirements of Sections 401(a) and 414(d) of the Internal Revenue Code for qualified governmental pension plans. (20-81-3; 10-01-3; 50-13-3; 2-16-3.)

Section 3-2-2. - Definitions.

Unless provided otherwise in another Section, the following definitions shall apply to this Article:

(a) *Accrued sick leave credit* shall mean:

- (1) ~~(1)~~— For employees ~~whose County or School Board employment commenced by reporting for work before January 1, 2013 (who are~~ members of Plans A or B), the credit allowed a member with more than five years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof.
- (2) ~~(2)~~— For employees ~~whose County or School Board employment commenced by reporting for work on or after January 1, 2013 (who are~~ members of Plans C ~~or~~ D), ~~or E~~, the credit allowed a member with more than five years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof; however, for employees whose County or School Board employment commenced by reporting to work on or after January 1, 2013, notwithstanding the amount of the employee's accrued sick leave balance, the maximum amount of accrued sick leave credit that may be used for determining retirement eligibility and for computing the member's retirement allowances and benefits shall be the employee's accrued sick leave balance or 2,080 hours, whichever is less.

(b) *Accumulated contributions* shall mean the sum of all amounts deducted or picked up from the compensation of a member and credited to his or her individual account in the members' contribution account, any amounts transferred from another retirement plan pursuant to Section 3-2-24.1, together with interest credited on such amounts and any other amounts he or she shall have contributed, or transferred thereto, as provided in Section 3-2-28(c).

(c) *Actuarial equivalent* shall mean a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board.

(d) *Average final compensation* shall mean the average annual creditable compensation of a member during the 36 consecutive months (78 consecutive pay periods for members who are paid on a biweekly basis) ~~for a member of Plan A, B, C or D, or 60 consecutive months (130 consecutive pay periods for members who are paid on a biweekly basis) for a member of Plan E,~~ in which the member received his or her highest creditable compensation.

- (1) In the event that a ~~member's~~ member's creditable service is less than 36 months (78 pay periods), ~~for a member of Plan A, B, C or D, or less than 60 months (130 pay periods) for a member of Plan E,~~ his or her average final compensation shall be his or her average monthly

creditable compensation received during the entire period of creditable service multiplied by 12 (average biweekly creditable compensation multiplied by 26 for biweekly paid members).

- (2) In determining average final compensation for members who retire after July 1, 1988, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his or her final salary during the period of his or her accrued unused sick leave; provided, that in determining the average final compensation for members who became members of the System on or after January 1, 2013 (members of Plans C, D or D, E), no more than 2,080 hours of the member's accrued unused sick leave may be used for this purpose.
- (3) For purposes of computing a service-connected disability retirement allowance under Section 3-2-36, a member's average final compensation shall be computed as if a member had received compensation (including salary increases which the Board determines would have been awarded to the member) for any period prior to retirement during which the member ceased employment on account of a disability for which he or she received compensation benefits under the Virginia Workers' Compensation Act.
- (4) Notwithstanding the foregoing, whenever the Director of the Department of Human Resources, at the request of the Board, the member, or the member's beneficiary, determines that the member's receipt of a merit increment was delayed as a result of either or both of the amendments to Section 4.3-2 of the Personnel Regulations, effective July 13, 1991, and July 11, 1992, respectively, and that the member would otherwise have been entitled to such merit increment under the Personnel Regulations, based upon the Human Resources Director's review of the member's County personnel and payroll records, the Board shall calculate the member's average final compensation in a manner which approximates the average final compensation the member would have if the member had received the merit increment at the time he or she would have been entitled to receive such merit increment but for the aforesaid amendments to Section 4.3-2 of the Personnel Regulations. In performing such calculation, the Board shall utilize the following assumptions:
 - (A) If the employee was scheduled to receive a merit increment in fiscal years 1992 and/or 1993, then it was delayed.
 - (B) The employee received no promotions, demotions, reclassifications or regrades from the date of the delayed merit increment(s).
 - (C) The employee moved through the steps of the pay grade as quickly as possible according to his or her respective pay plan.
 - (D) The delayed merit increments and all future merit increments occurred on the day and the month which is the same day and month when the employee retires.
 - (E) The employee is in full employment each year if in full employment at the time of the delayed merit increment and also at the time of retirement.

A factor shall be derived utilizing these assumptions, and then used to calculate the increase, if any, in the member's final average compensation. If at the time of retirement, the employee has service credit for three years or more at the longevity step of the pay grade in which his or her position falls, then there shall be no adjustment to the member's average final compensation. This rule shall apply to all applications for allowances and benefits filed with the Board on or after July 13, 1991. The Board shall make any necessary retroactive adjustments to allowances and benefits.

- (5) Notwithstanding the foregoing, in the case of any SESRP member, creditable compensation for each year after the effective date of the agreement referenced in Subsection (~~eedd~~) shall equal 1.05634 times the SESRP member's unadjusted compensation.

- (6) Periods of leave without pay under the federal Family and Medical Leave Act of 1993 (FMLA) shall be disregarded in determining periods of consecutive months or pay periods in calculating average final compensation.
- (e) *Beneficiary* shall mean any person, other than a member, entitled to receive benefits as provided by the System. The Board shall provide a member with a form on which to designate in writing one or more beneficiaries of the member's benefits upon the member's death. The Board shall maintain any such written designation on file. A designated beneficiary may be changed from time to time by written notice by the member filed with the Board.
- (f) *Board* shall mean the Board of Trustees of the System, as provided for in this Article.
- (g) *Creditable compensation* shall mean the full compensation, including pick-up contributions, holiday hours worked, administrative emergency leave worked, shift differential paid and civilian roll call hours paid, but excluding all overtime pay except roll call hours paid, earned on or after July 1, 1993, and excluding performance bonuses, and amounts paid upon separation from employment which represent the unused portion of the employee's accrued annual leave. In cases where the compensation includes maintenance and other prerequisites, the Board shall fix the value of that portion of the compensation not paid in money. Effective for plan years after December 31, 1988, compensation in excess of \$200,000.00, as indexed under Section 415(d) of the Internal Revenue Code, shall be disregarded. Notwithstanding the foregoing, effective for members whose County or School Board employment commenced by reporting for work on or after July 1, 1996, compensation in excess of the limit set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. In determining the compensation of an employee under this definition, the rules of Section 415(c)(3) of the Internal Revenue Code shall apply. Effective for plan years on or after January 1, 2001, an employee's compensation shall include amounts not includible in gross income by reason of Section 132(f)(4) of the Internal Revenue Code.
- (h) *Creditable service* shall mean the sum of membership service credit, plus prior service credit, plus portability service credit purchased pursuant to Section 3-2-24.1, plus accrued sick leave credit.
- (i) *DROP* shall mean the Deferred Retirement Option Program, as provided for by Section 3-2-56.
- (j) *Employee* shall mean any person regularly employed in rendering service to the County whose compensation is fully or partially paid directly or indirectly by the County. It shall also include all officers and other persons regularly employed by the School Board who are not eligible for membership in the Virginia Retirement System (VRS).
- (k) *Employer* shall mean the School Board or an authority in the general County having the power to appoint an employee to office or employment paid directly or indirectly by the County and/or the Board of Trustees of the System.
- (l) *Executive Director* shall mean the Executive Director of the Fairfax County Retirement Administration Agency.
- (m) *Internal Revenue Code* shall mean the federal income tax statutes, as they may be amended or superseded from time to time in the future.
- (n) *Medical Examining Board* shall mean the physician or physicians provided for by Section 3-2-9.
- (o) *Member* shall mean any person included in the membership of the System as provided for by Section 3-2-19.
- (p) *Membership service credit* shall mean credit for service rendered while a member of the System, or as otherwise provided in Section 3-2-23. Service rendered while a member of SESRP shall be treated without duplication as service rendered while a member of the System.
- (q) *Normal retirement date* shall mean:
 - (1) For employees whose County or School Board employment commenced by reporting for work before January 1, 2013 (members of Plans A and B),

- (A) The date on which a member in service attains the age of 50 years, provided said member's age while in service, combined with the years of his or her creditable service, equals at least the sum of 80 years; or
 - (B) The date on which a member attains the age of 65 years.
- (2) For employees whose County or School Board employment commenced by reporting for work on or after January 1, 2013 and before July 1, 2019 (members of Plans C and D),
 - (A) The date on which a member in service attains the age of 55 years, provided said member's age while in service, combined with the years of his or her creditable service, equals at least the sum of 85 years; or
 - (B) The date on which a member attains the age of 65 years.
- (3) For employees whose County or School Board employment commenced by reporting for work on or after July 1, 2019 (members of Plan E),
 - (A) The date on which a member in service attains the age of 60 years, provided said member's age while in service, combined with the years of his or her creditable service, equals at least the sum of 90 years; or
 - (B) The date on which a member attains the age of 65 years.
- (r) *Pick-up contributions* shall mean a member's regular contributions which is picked up, through a salary reduction by the County from the member's compensation for service rendered on or after December 22, 1984.
- (s) *Plan A* shall mean the option effective July 1, 1981, available to employees whose County or School Board employment commenced by reporting for work on or before December 31, 2012, providing for current and new members to:
 - (1) Contribute four percent of compensation up to the taxable wage base and five and one-third percent of compensation in excess of the taxable wage base; and
 - (2) Receive normal (and early) service retirement benefits based on one and eight-tenths percent of average final compensation up to the social security breakpoint plus two percent of average final compensation in excess of the social security breakpoint times years of service.
- (t) *Plan B* shall mean the option effective July 1, 1981, available to employees whose County or School Board employment commenced by reporting for work on or before December 31, 2012, providing for current and new members to:
 - (1) Contribute five and one-third percent of all compensation; and
 - (2) Receive normal (and early) service retirement benefits based on two percent of the average final compensation times years of service.
- (u) *Plan C* shall mean the option effective ~~beginning on~~ January 1, 2013, available to employees whose County or School Board employment commenced by reporting for work on or after January 1, 2013, and before July 1, 2019, providing for current and new members to:
 - (1) Contribute four percent of compensation up to the taxable wage base and five and one-third percent of compensation in excess of the taxable wage base; and
 - (2) Receive normal (and early) service retirement benefits based on one and eight-tenths percent of average final compensation up to the social security breakpoint plus two percent of average final compensation in excess of the social security breakpoint times years of service; subject to the definitions, terms and conditions applicable to Plan C set forth herein.
- (v) *Plan D* shall mean the option effective ~~beginning on~~ January 1, 2013, available to employees whose County or School Board employment commenced by reporting for work on or after January 1, 2013, and before July 1, 2019, providing for current and new members to:

- (1) Contribute five and one-third percent of all compensation; and
- (2) Receive normal (and early) retirement benefits based on two percent of the average final compensation times years of service; subject to the definitions, terms and conditions applicable to Plan D set forth herein.

~~(w)(w)~~ Plan E shall mean the plan effective July 1, 2019, available to employees whose County or School Board employment commenced by reporting for work on or after July 1, 2019, providing for current and new members to:

- (1) Contribute five and one-third percent of all compensation; and
- (2) Receive normal (and early) retirement benefits based on two percent of the average final compensation times years of service; subject to the definitions, terms and conditions applicable to Plan E set forth herein.

~~(x)~~ Primary social security benefit shall mean the primary insurance amount to which the member is entitled, for old age or disability, as the case may be, pursuant to the federal Social Security Act as in effect at his or her date of retirement, under the provisions of this Chapter, except as otherwise specifically provided.

~~(xy)~~ Prior service credit shall mean credit for service rendered prior to the establishment of the Fairfax County Supplemental Retirement System (the predecessor of this System) on July 1, 1955, as provided in Section 3-2-24.

~~(yz)~~ Retirement allowance shall mean the retirement payments to which a member is entitled as provided in this Article.

~~(zaa)~~ School Board shall mean the Fairfax County School Board, a political subdivision of the Commonwealth of Virginia.

~~(aabb)~~ Service shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.

~~(bbcc)~~ SESRP shall mean the former Fairfax County Senior Executive Service Retirement Plan.

~~(eedd)~~ SESRP member shall mean an individual who entered into an agreement with the County to participate in SESRP in lieu of further participation in the System and who was either still an active participant in SESRP or still receiving benefits under SESRP on January 1, 1996.

~~(edee)~~ Social security shall mean the federal Social Security Act and its programs for old age, survivors and disability insurance and benefits, as applicable.

~~(eeff)~~ Social security breakpoint shall mean the average of the taxable wage base for the 35 calendar years ending with the year in which the member attains social security normal retirement age. In determining a member's social security breakpoint during any particular plan year, it is assumed that the taxable wage in effect at the beginning of the plan year shall remain the same for all future years.

~~(#ggg)~~ System shall mean the Fairfax County Employees' Retirement System. When any part of this Article refers to multiple retirement systems, the Employees' Retirement System shall be referred to as "this System," rather than "the System."

~~(gghh)~~ Taxable wage base shall mean the maximum amount of wages received during the calendar year on which social security taxes are payable by a member and by the employer, as such amount is defined in Section 3121(a) of the Internal Revenue Code. (20-81-3; 5-85-3; 28-89-3; 27-90-3, § 1; 15-93-3; 22-93-3; 37-94-3; 25-95-3; 27-97-3; 14-00-3; 10-01-3; 18-01-3; 8-03-3; 8-04-3; 26-12-3; 2-16-3.)

Section 3-2-2.1. - Definitions elsewhere in County Code and in County Personnel Regulations.

Unless this Article provides otherwise, the definitions provided in Sections 1-1-2, 3-3-1, and 3-3-12 of the Code of the County of Fairfax, and Chapter 2 of the Fairfax County Personnel Regulations shall apply herein.(2-16-3.)

Section 3-2-3. - Duties of the employer.

The employer shall keep all necessary records relating to the hiring and employment of members and from time to time shall furnish such information as the Board may require in the discharge of its duties. Upon employment of a member, the employer shall inform the member of his or her duties and obligations in connection with the System as a condition of employment. (20-81-3; 2-16-3.)

Section 3-2-4. - Consent to provisions of Article required for employment.

By and upon acceptance of employment, every member shall be deemed to consent and agree to any deductions or employer pick-up of amounts from his or her compensation required by this Article and to all other provisions thereof. (20-81-3; 5-85-3; 2-16-3.)

Section 3-2-5. - Protection against fraud.

- (a) In addition to any other provisions of law, any person who shall knowingly make any false statement, or shall falsify or permit to be falsified, any record or records of the System in any attempt to defraud the System shall be guilty of a misdemeanor and shall be punished accordingly.
- (b) Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the System in an attempt to defraud the System shall forfeit all rights to the retirement allowance or benefit obtained by such misrepresentation. Making a false statement or falsifying or permitting to be falsified any record of the System, in an attempt to defraud the System shall constitute grounds for dismissal from service.
- (c) Whenever the Board shall find, after notice and hearing, that a person has obtained a retirement allowance or benefit from the System by false statement or falsification of record, it shall immediately terminate the allowance or benefit if the entire allowance or benefit was obtained by such misrepresentation or the additional amount of the allowance or benefit so obtained by such misrepresentation. Any allowance or benefit or additional amount of an allowance or benefit obtained by false statement or falsification of a record shall be deemed to be an overpayment, and the Board shall take all necessary legal and administrative steps to recover the overpayment.
- (d) The Board shall adopt rules and regulations pursuant to Section 3-2-15 to implement the provisions of this Section; provided, that the failure of the Board to do so shall not prevent the implementation of the sanctions called for by this Section. A final judgment of conviction by a court of competent jurisdiction in a prosecution under Subsection (a) of this Section shall be prima facie evidence of fraud under Subsections (b) and (c) of this Section; provided, that a conviction under Subsection (a) of this Section shall not be a prerequisite for action by the Board under Subsections (b) or (c) of this Section. The remedies provided the System under this Section are in addition and supplemental to any other remedies it may have under law. (20-81-3; 27-90-3, §1; 2-16-3.)

Section 3-2-6. - Benefits unassignable; non-attachable.

The right of any member to a retirement allowance, to the return of accumulated contributions or any other right accrued or accruing to any person under this Article and the money covered by this Article shall not be subject to execution, garnishment or attachment, and to the extent permitted by law, the operation of bankruptcy or insolvency law or any other process of law whatsoever except for administrative actions pursuant to Section 63.2-1900 et seq. of the *Virginia Code* or any court process to enforce a child or child and spousal support obligation, and shall be unassignable except as specifically provided in this Article. However, retirement benefits and assets created under this Article which are deemed to be marital property pursuant to Section 20-89.1 et seq. of the *Virginia Code* may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Virginia Code*. (20-81-3; 5-85-3; 13-92-3; 1-93-3; 2-16-3.)

Section 3-2-7. - Errors resulting in over or under-payment.

- (a) Should any change or error in the records or in the computation of a member's or beneficiary's benefit or refund result in any member or beneficiary receiving from the System an amount more (overpayment) or less than he or she would have been entitled to receive had the records or computation error been correct, the Board shall have the power to correct such error and, as far as practicable, to adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

- (b) An overpayment shall constitute a debt owed by the recipient to the System and the Board is authorized to use any and all legal action to collect the overpayment and any accrued interest.
- (c) The Board is authorized to enter into written agreements with recipients of overpayments to provide for installment payments to recover the overpayment, the amount of accrued interest, and interest on any unpaid balance.
- (d) The Board is authorized to compromise any disputed overpayment.
- (e) Interest shall accrue on overpayments at the rate or rates established by the Board; provided, that no interest shall accrue if the Board has exercised its adjustment authority under Subsection (a) of this Section or under any other circumstances in which the Board, in its discretion, determines that interest shall not accrue. (20-81-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-8. - Amendment of article.

The Board of Supervisors shall have the continuing right and power to amend or supplement this Article at any time, which right and power is hereby expressly reserved. But no amendment shall be made unless an actuarial report has been filed with the Board of Supervisors as to its effect upon the System and no amendment shall be adopted which shall reduce the then accrued benefits of members or beneficiaries below the extent they are then covered by accumulated reserves, which reserves shall constitute a trust fund for the payment of such benefits. At least 30 days prior to the public hearing before the Board of Supervisors on any proposed amendment, the Board of Trustees of the System shall be provided with the text of the proposed amendment to provide it the opportunity to submit its comments on the proposed amendment to the Board of Supervisors; provided, this limitation shall not prevent the Board of Supervisors from adopting an emergency amendment under Section 15.2-504 of the *Virginia Code*. (20-81-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-9. - Medical examining board.

The Medical Examining Board shall consist of the Director of the Health Department (or his or her designee) and, in the discretion of the Board, one or two other physicians designated by the Board. The duties of the Medical Examining Board shall be to arrange for and pass upon all medical examinations required under this Article or requested by the Board and to investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement. The members of the Medical Examining Board, who may act individually or collectively, shall report in writing to the Board their conclusions and recommendations upon all matters referred to it. (20-81-3; 27-97-3; 2-16-3.)

Division 2. - Board of Trustees.

Section 3-2-10. - Administration of system vested in Board of Trustees.

The general administration and the responsibility for the proper operation of the System and for making effective the provisions of this Article are hereby vested in the Board. The Board in its discretion, may, by rule or regulation adopted under Section 3-2-15(a), delegate authority to the Executive Director to perform certain duties and administrative responsibilities. (20-81-3; 27-90-3, § 12-16-3.)

Section 3-2-11. - Membership; term of office.

(a) The Board of Trustees of the System shall consist of the following members:

- Director of the Department of Finance, who shall be the Treasurer of the Board, or his or her permanent designee, sitting ex officio;
- Director of the Department of Human Resources, or his or her permanent designee, sitting ex officio;
- Assistant Superintendent for Human Resources for the Fairfax County Public Schools, or his or her permanent designee, sitting ex officio;
- Four persons appointed by the Board of Supervisors;
- One School Board employee elected by the members of the System;
- One County employee elected by members of the System who are County employees; and

- One retired member elected by retired members of the System.

Responsibility for the conduct of said elections shall rest with the County Executive.

- (b) With the exception of the Director of the Department of Finance, the Director of the Department of Human Resources, and the Assistant Superintendent for Human Resources the term of office of the trustees shall be four years. The only persons eligible to be elected by County or School Board employees to the Board are County or School Board employees who are members of the System, respectively. The office of such trustees shall be vacated should such trustees separate from County or School Board service prior to completion of their term. (20-81-3; 27-90-3, § 1; 9-91-3; 2-93-3; 2-16-3.)

Section 3-2-12. - Vacancies in office.

If a vacancy occurs in the office of a trustee of the System, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. (20-81-3; 2-16-3.)

Section 3-2-13. - Compensation of trustees.

Those trustees eligible for compensation under County policy may receive compensation at a rate set by the Board of Supervisors. (20-81-3; 2-16-3.)

Section 3-2-14. - Accountable to the Board of Supervisors.

The Board of Trustees of the System shall be accountable to the Board of Supervisors. (20-81-3; 2-16-3.)

Section 3-2-15. - Functions of the Board.

- (a) Subject to the limitations of this Article, the Board shall, from time to time, establish rules and regulations for the administration of the System and for the transaction of its business, copies of which shall be made available to interested parties.
- (b) The Board may employ and pay out of the System funds for all services as shall be required.
- (c) The Board shall keep in convenient form such data as shall be necessary for an actuarial valuation of the System and for checking the experience of the System.
- (d) The Board shall keep minutes of all its proceedings. These minutes shall be open to the public for inspection, unless applicable law provides otherwise.
- (e) The Board shall submit to the Board of Supervisors annually an independent audit showing the fiscal transactions of the System for the preceding fiscal year, the amount of accumulated cash and securities of the System, and the last balance sheet indicating the financial condition of the System.
- (f) Beginning on July 1, 1990, the Board shall cause an actuarial valuation to be made of the System annually.
- (g) The Board shall review adverse decisions as provided by Section 3-2-48. (20-81-3; 27-90-3, § 1; 2-16-3.)

Division 3. - Management of Funds.

Section 3-2-16. - Board trustee of funds; investment of same.

- (a) The Board shall be the trustees of funds created by this Article and shall have full power to invest and re-invest such funds. Such investments and re-investments shall be conducted with bona fide discretion and in accordance with the laws of the Commonwealth of Virginia as such laws apply to fiduciaries investing such funds. The Board may, upon the exercise of bona fide discretion, employ investment counsel, who shall be subject to the same limitations herein provided for the Board. Subject to such limitations, the Board shall have full power to hold, purchase, sell, assign, transfer or otherwise dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as the proceeds of such investments and any money belonging to such funds.
- (b) No trustee shall be personally liable for losses suffered by the System on investments made under the authority of and in compliance with this Section. (20-81-3; 2-16-3.)

Section 3-2-17. - Treasurer fiscal officer of the Board.

The Treasurer of the Board shall be the custodian of all of its funds and securities or evidences of such when in the custody of a fiduciary agent. He or she shall give bond as a condition for the faithful performance of his or her duties and the proper accounting of all funds and securities coming into his or her hands. He or she shall deposit all money in the name of the Board and disburse the same only on vouchers signed by such person as is designated for the purpose by the Board. (20-81-3; 2-16-3.)

Section 3-2-18. - Prohibited interest of member or employee of Board.

- (a) The State and Local Government Conflict of Interests Act, Section 2.2-3100 et seq., of the *Virginia Code*, shall apply to members and employees of the Board.
- (b) No member or employee of the Board shall, directly or indirectly, for himself or herself or as an agent in any manner use the funds of the System, except to make such current and necessary payments as are authorized by the Board. (20-81-3; 2-16-3.)

Division 4. - Membership in System.

Section 3-2-19. - Membership composition.

- (a) Membership shall be composed of the following:

- (1) All persons who were members of the System on the effective date of this Article and all SESRP members; provided, that benefits under the System in the case of SESRP members shall be in lieu of, and not in addition to, benefits under SESRP.
- (2) Future employees as hereinafter identified, except those listed in Subparagraphs (A) and (B) of this Subsection.
 - (A) Employees who are members of the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System of Fairfax County (ERFC), the Fairfax County Police Officers Retirement System, or the Fairfax County Uniformed Retirement System and employees who are eligible to become members of those systems, are not eligible for membership in this System; provided, that an employee who is a member of such a system shall be eligible for membership in this System if he or she elects in writing to withdraw from such system, pursuant to the rules and regulations of this System and of the system of which he or she was previously a member. If the withdrawal from the other system occurs due to being employed in a different position by the same appointing authority, the employee shall be required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-2-23.

If the withdrawal from the other system occurs due to being employed by a different appointing authority, the employee shall be permitted but not required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-2-23. Exempt benefits eligible and exempt temporary employees are not eligible for membership in this System; provided, that any such employee who became a member of this System under the provisions of this Article in effect at the time he or she commenced his or her service with the County shall continue to be a member.

The following employees who elect, in writing at the time of their initial eligibility not to become members of the System, shall be exempted from the System: elected officials, including constitutional officers and persons appointed to fill vacancies in elective offices, and their appointed deputies or assistants.

- (B) School Board employees who are members of the Virginia Retirement System (VRS) are not eligible for membership in this System. Substitute employees, food service employees whose assigned employment is less than three hours per day, and temporary employees are not eligible for membership in this System.
- (3) Any employee, otherwise qualified, who elected not to or was unable to become a member of the System pursuant to any ordinance then in effect; provided, he or she pays into this System all contributions which would have been due from him or her had he or she been a member of the System during the period of his or her employment, plus interest on such contributions at the

rate or rates established by the Board, for each of the years for which membership service credit is sought. Any election to purchase membership service credit under this Subsection through the payment of contributions for a prior period of employment shall be made within one year after the employee is first eligible to make such an election or by six months from the effective date of this amendment [September 17, 1990], whichever is later.

- (b) Uniformed employees of the Department of Animal Control transferring to the Fairfax County Uniformed Retirement System.
 - (1) Members of this System who were uniformed employees of the Department of Animal Control, including the Director, on or after October 1, 1985, except those eligible to remain in this System pursuant to Subsection (db)(2) of this Section, are hereby transferred to membership in the Fairfax County Uniformed Retirement System effective the latter of October 1, 1985, or the date of their appointment.
 - (2) Those members subject to transfer to the Uniformed Retirement System pursuant to Subsection (db)(1) of this Section who as of the date of adoption of this Subsection [December 16, 1985] have attained normal retirement age under this System shall continue as members of this System unless within 30 days after the adoption of this Subsection they make an irrevocable election in writing to transfer into the Uniformed Retirement System pursuant to this Subsection.
 - (3) Members of this System being transferred to the Uniformed Retirement System pursuant to this Subsection shall, within 30 days of the adoption of this Subsection [December 16, 1985], make an irrevocable election in writing to either waive membership service credit in the Uniformed Retirement System based upon their service in this System or to purchase membership service credit in the Uniformed Retirement System based on their service in this System pursuant to the provisions of Section 3-3-24. Members who fail to make an election shall be deemed to have elected to waive membership service credit.
 - (4) Members with five or more creditable years of service with this System who elected to waive membership service credit in the Uniformed Retirement System pursuant to Subsection (db)(3) of this Section shall make at the same time an irrevocable election in writing whether to receive a refund of their accumulated contributions (with interest), reduced by the amount of any retirement allowances previously received by them under this Article, or to receive a deferred vested benefit from this System mutatis mutandis, under Section 3-2-38(b). Members who fail to make an election shall be deemed to have elected a refund. Members with less than five years of creditable service with this System who elect to waive membership service credit in the Uniformed Retirement System pursuant to Subsection (db)(3) of this Section shall be refunded their accumulated contributions (with interest) reduced by the amount of any retirement allowances previously received by them under this Article.
 - (5) With respect to each member electing to purchase membership service credit in the Uniformed Retirement System pursuant to Subsection (db)(3) of this Section, the Board shall transfer the funds in the member's contribution account as well as those funds in the retirement allowance account attributable to the member's service to the Board of Trustees of the Uniformed Retirement System, who shall credit such funds to the appropriate accounts of the Uniformed Retirement System.
 - (6) The Board shall transfer to the Board of Trustees of the Uniformed Retirement System any employee or employer contributions received by it attributable to members transferring to the Uniformed Retirement System pursuant to Subsection (db)(1) or (2) of this Section for service rendered after the effective date of the members' transfer. The Board of Trustees of the Uniformed Retirement System shall credit such funds to the appropriate accounts of the Uniformed Retirement System.
- (c) Certain employees of the Department of Public Safety Communications-~~Center~~ in the job classes of Public Safety Communications Squad Supervisor, Public Safety Communications Assistant Squad Supervisor, Public Safety Communicator III, Public Safety Communicator II, or Public Safety Communicator I transferring to the Fairfax County Uniformed Retirement System.

- (1) Members of this System who are in one of the job classes identified in this Subsection, on or before June 30, 2005, shall have the opportunity to transfer to membership in the Fairfax County Uniformed Retirement System, effective the start of the first pay period beginning on or about October 1, 2005.
- (2) Members of this System who are eligible for transfer to the Uniformed Retirement System pursuant to Subsection (ec)(1) of this Section may elect to maintain their membership in this System and not transfer to the Uniformed Retirement System.
- (3) Members of this System who are eligible for transfer to the Uniformed Retirement System pursuant to Subsection (ec)(1) of this Section and elect to do so, shall, after the adoption of Subsection (ec) of this Section, on or before September 1, 2005, make an irrevocable election in writing to transfer to the Uniformed Retirement System. Members electing to transfer to the Uniformed Retirement System may elect to transfer to the Uniformed Retirement System but not purchase membership service credit in the Uniformed Retirement System based upon their service in this System, or may elect to purchase membership service credit in the Uniformed Retirement System based on their service in this System pursuant to the provisions of Section 3-3-24. Transferring members who fail to make an election shall be deemed to have elected to waive the opportunity to purchase membership service credit in the Uniformed Retirement System.
- (4) Members with five or more creditable years of service with this System who elect to waive membership service credit in the Uniformed Retirement System shall make at the same time an irrevocable election in writing whether to receive a refund of their accumulated contributions with interest reduced by the amount of any retirement allowance previously received by them under this Article, or to receive a deferred vested benefit from this System mutatis mutandis, under the provisions of Section 3-2-38(b). Members who fail to make an election shall be deemed to have elected not to receive a deferred vested benefit. Members with less than five years of creditable service with this System who elect to waive membership service credit in the Uniformed Retirement System ~~pursuant to Subsection (ec)(3) of this Section~~ shall be refunded their accumulated contributions (with interest) reduced by the amount of any retirement allowances previously received by them under this Article.
- (5) With respect to each member electing to purchase membership service credit in the Uniformed Retirement System pursuant to Subsection (ec)(3) of this Section, the Board shall transfer the funds in the member's contribution account as well as those funds in the retirement allowance account attributable to the member's service to the Board of Trustees of the Uniformed Retirement System, who shall credit such funds to the appropriate accounts of the Uniformed Retirement System. Members electing to purchase membership service credit in the Uniformed Retirement System shall have the option of paying to the Board of Trustees of the Uniformed Retirement System the difference between the employee contributions that would have been required under the Uniformed Retirement System plus interest, and their employee contributions plus interest to this System for the period for which membership service credit is sought. Members who elect to pay the difference between the employee contributions plus interest that would have been required under the Uniformed Retirement System and their employee contributions plus interest to this System, shall not be eligible to enter the DROP under the Uniformed Retirement System until the entire amount of the difference in employee contributions plus interest has been paid to the Uniformed Retirement System and the member otherwise meets the eligibility requirements to enter the DROP under the Uniformed Retirement System. In lieu of paying the difference between the employee contributions that would have been required under the Uniformed Retirement System plus interest and their employee contributions plus interest to this System, a member may elect to have the amount of membership service credit transferred to the Uniformed Retirement System actuarially reduced based on the amount that would have been required.
- (6) The Board shall transfer to the Board of Trustees of the Uniformed Retirement System any employee or employer contributions received by it attributable to member's transfer to the Uniformed Retirement System pursuant to Subsection (ec)(1) or (2) of this Section for service rendered after the effective date of the member's transfer. The Board of Trustees of the Uniformed

Retirement System shall credit such funds to the appropriate accounts of the Uniformed Retirement System.

- (7) Members of this System in one of the job classes identified in this Subsection who elect to enter the DROP on or before September 1, 2005, are not eligible for transfer to the Uniformed Retirement System.
- (d) Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of either the Fairfax County Uniformed Retirement System or the Fairfax County Police Officers Retirement System who has more than five years of creditable service in such system and who is appointed to serve as a Deputy County Executive shall remain a member of the system to which he or she belonged, whether the Uniformed Retirement System or the Police Officers Retirement System, prior to his or her appointment as a Deputy County Executive, and shall not become a member of this System as a result of such appointment.
- (e) Persons receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or Fairfax County Police Officers Retirement System are eligible for membership only under the terms and conditions set forth in Section 3-2-43. (20-81-3; 34-81-3; 23-85-3; 36-86-3; 14-87-3; 27-90-3, § 1; 45-93-3; 23-05-3; 26-12-3; 2-16-3.)

Section 3-2-19.1. - Interest rates for purchases for membership service credit.

The Board may at any time and from time to time, establish a new interest rate or rates which shall be applicable to purchases of membership service credit under Subsection ~~(ae)~~(3) of Section 3-2-19. (2-16-3.)

Section 3-2-20. - Cessation of membership.

The membership of any person in the System shall cease:

- (a) If he or she ceases to be an employee for a period of five years, having had less than five years of creditable service on his or her date of separation from the County or School Board; or
- (b) Upon separation and withdrawal of his or her accumulated contributions; or
- (c) If a member, as defined in Section 3-2-19(b)(1), gives the Board written notice of his or her withdrawal from the System; or
- (d) Upon death. (20-81-3; 4-81-3; 2-16-3.)

Division 5. - Service Credit.

Section 3-2-21. - Statement to be filed with Board.

Under such rules and regulations as are adopted by the Board, each member or someone on his or her behalf shall file with the Board in such form as the Board may prescribe, a statement of the facts pertaining to his or her status as a member, which shall include a statement of all service rendered as an employee and such other information as the Board may require. Until such statement is filed, no member or his or her beneficiary shall be eligible to receive any benefits under this Article. (20-81-3; 2-16-3.)

Section 3-2-22. - Year of service.

The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow credit for more than one year of service for all service rendered in any period of 12 consecutive months. (20-81-3; 2-16-3.)

Section 3-2-23. - Membership service credit.

~~(a) (a)~~ Each member shall receive membership service credit for periods in which he or she received compensation and was a member of the System, provided that any former member of the System who ceased his or her County or School Board employment and withdrew his or her accumulated member contributions from the System may purchase membership service credit by paying into the System all accumulated contributions that would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; a member may not purchase credit for only a portion of any prior period of service, but may only purchase credit for an entire prior period of service.

- (1) In the event that a member of either Plan A or Plan B who ceased his or her County or School Board employment and withdrew his or her accumulated member contributions from the System seeks, on or after January 1, 2013, and before July 1, 2019, to purchase credit for periods during which he or she received compensation as a member of the System, he or she may only become a member of, and purchase membership service credit in, either Plan C or Plan D, by paying into the System all accumulated contributions which would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; ~~however, notwithstanding,~~
- (2) In the event that a member of Plan A, Plan B, Plan C, Plan D, or Plan E, who ceased his or her County or School Board employment and withdrew his or her accumulated member contributions from the System seeks, on or after July 1, 2019, to purchase credit for periods during which he or she received compensation as a member of the System, he or she may only become a member of, and purchase membership service credit in Plan E, by paying into the System all accumulated contributions which would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought.
- (4)(3) Notwithstanding the foregoing, a member of any of the ~~four~~five Plans (A, B, C, D or DE) that are part of the System who ceased his or her County or School Board employment, but who left his or her accumulated member contributions in the System, shall, upon his or her return to County or School Board employment, rejoin the Plan to which he or she formerly belonged. Such member may satisfy some or all of the amount due from him or her for the purchase of such service through a rollover from an individual retirement account if the entire amount in that account is attributable to a rollover from the System. Such member may also satisfy some or all of the amount due from him or her for the purchase of such service through a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), or through a direct trustee-to-trustee transfer from an annuity contract described in Section 403(b) of the Internal Revenue Code.
- (b) Members in service shall also receive membership service credit for periods of service-connected disability retirement from the System.
- (c) Members whose service is terminated to enter into the armed forces of the United States and who subsequently return to service shall be granted membership service credit for the period of their service in the armed forces of the United States to the extent required under federal and state law.
- (d) A member who transfers from a position in the service of the Fairfax County Public Schools (FCPS) in which he or she was a member of the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System of Fairfax County (ERFC) to a position in the County service shall receive membership service credit for periods that he or she had been employed by FCPS and was a member of VRS and ERFC, if such service shall not be considered in the calculation of any retirement allowance or benefit from VRS or ERFC, and if such member pays into this System all contributions that would have been due from him or her had he or she been a member of this System, plus interest at the rate or rates established by the Board, for each of the years for which membership service credit is sought.
- (e) The Board may at any time, and from time to time, establish a new interest rate or rates which shall be applicable to Subsections (a) and (d) of this Section. Any election to purchase membership service credit under Subsections (a) or (d) of this Section may be made at any time by a member of the System while in service. The Board may enter into agreements with members purchasing membership service credit under the provisions of Subsections (a) and (d) of this Section to pay the member contributions due from them in installments, provided that such members shall not be entitled to such membership service credit until all payments under such agreements have been made.
- (f) (1) Under such rules and regulations as are adopted by the Board, any employee who has been a member of the Virginia Retirement System (VRS) and the Educational Employees' Supplemental

Retirement System of Fairfax County (ERFC), the Fairfax County Police Officers Retirement System, or the Fairfax County Uniformed Retirement System, and who withdraws therefrom and becomes a member of this System, may purchase membership service credit for service rendered while a member of such other system by paying into this System all contributions that would have been due from him or her had he or she been a member of this System for each of the years for which membership service credit is sought. (A member may purchase membership service credit for prior service while a member of VRS only for service due to employment by the Fairfax County Public Schools (FCPS).)

- (2) The amount due from a member for such purchase of membership service credit shall be satisfied, to the extent possible, (a) by directing the trustees of the system from which he or she is withdrawing to transfer his or her accumulated member contributions in such system directly to this System, without distribution to such employee, if such transfers are available under such system, or (b) through (i) a rollover from the system from which he or she is withdrawing (if the member would be eligible for a refund from such system), (ii) a rollover from an individual retirement account in which all contributions were derived from a rollover from such system, or (iii) a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), or through a direct trustee-to-trustee transfer from an annuity contract described in Section 403(b) of the Internal Revenue Code. To the extent that a rollover or direct transfer permitted under this Subsection is insufficient to purchase the necessary membership service credit, other arrangements permitted by the rules and regulations adopted by the Board shall be made for purchasing such membership service credit. (20-81-3; 5-85-3; 27-90-3, § 1; 45-93-3; 36-94-3; 7-00-3; 10-01-3; 8-03-3; 26-12-3; 2-16-3.)

Section 3-2-24. - Prior service credit.

- (a) Prior service credit may be granted to persons who were members of the Fairfax County Supplemental Retirement System on July 1, 1955, or who were employees who previously left service to enter directly into the armed forces of the United States and who were still in the armed forces on or after that date as provided in Subsection (b) of this Section.
- (b) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within 90 days of discharge and such discharge is other than dishonorable. This Subsection shall be applied retroactively to January 1, 2003. (20-81-3; 27-90-3, § 1; 30-09-3; 2-16-3.)

Section 3-2-24.1. - Portability service credit.

- (a) Definitions.
 - (1) *Accepting plan* shall mean the retirement plan or system which is receiving membership assets from another retirement plan or system in order to permit a current member to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.
 - (2) *Portability service credit* shall mean service credit purchased in an accepting plan by the transfer of membership assets from the transferring plan.
 - (3) *Transferring plan* shall mean the retirement plan or system which is transferring membership assets to an accepting plan to enable a former employee of the transferring plan to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.
- (b) The Board of Supervisors may enter into agreements with the Virginia Retirement System (VRS) or with any political subdivision of the Commonwealth of Virginia to permit any vested member of VRS or any vested member of a retirement plan or system of a political subdivision of the Commonwealth of Virginia to purchase portability service credit in this System; provided, that the Board of Supervisors may only enter into such agreements with political subdivisions of the Commonwealth of Virginia whose retirement plans or systems constitute defined benefit plans, or eligible deferred compensation plans described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A).

- (c) The purchase of portability service credit in the System pursuant to this Section may only be made within 18 months of the date when a member commences employment in a position covered by the System, or, for employees who are members of the System on March 24, 2003, within 18 months of this date.
- (d) In order to purchase portability service credit in the System, the member shall be a vested member of the transferring plan and the transferring plan shall be holding member contributions that are subject to transfer. A member desiring to purchase portability service credit shall make written application for the purchase of such credit to the System. The System shall determine from the transferring plan the amount of the member's assets that would be subject to transfer to the System. Based upon the amount subject to transfer, the Board shall determine the amount of portability service credit that would be actuarially equivalent to the amount of the assets to be transferred to the System; this amount shall represent the maximum amount of portability service credit that can be purchased. The Board shall communicate the amount of portability service credit that can be purchased to the member in writing; however, in no event shall the amount of portability service credit that can be purchased exceed the duration of the member's employment in a position that was covered by the transferring plan. The member shall have 30 days from the date of the letter advising him or her of the amount of portability service credit that can be purchased to determine whether to proceed with the purchase or to withdraw his or her application for the purchase of portability service credit.
- (e) In the event that the assets transferred are not sufficient to purchase portability service credit in the System equivalent to five years of service, the member shall not become vested in the System until his or her creditable service equals five years.
- (f) The purchase of portability service credit in the System shall be accomplished upon the transfer of assets from the transferring plan to the System. Upon the completion of such transfer, the member shall lose all rights to any allowances and benefits from the transferring plan, and shall only be entitled to receive allowances and benefits from the System.
- (g) When a vested member of this System leaves his or her covered employment and enters a position covered by the Virginia Retirement System (VRS) or by a defined benefit retirement plan of a political subdivision of the Commonwealth of Virginia with which the Board of Supervisors has entered into a portability agreement, the former member of this System may purchase portability service credit in VRS or the retirement system of the political subdivision of the Commonwealth for whom he or she shall then work. In order to purchase such portability service credit, the member must make application in writing to this System, requesting that his or her membership assets be transferred to the accepting plan. The amount of assets subject to transfer shall be an amount equal to the greater of (i) the member's accumulated member contributions with interest thereon, or (ii) an amount representing the present value of the member's accrued benefits with this System. Upon the transfer of membership assets from this System to the accepting plan, the member shall lose all rights to any allowances or benefits from this System based upon the service giving rise to the assets transferred to the accepting plan by this System. Should such a person resume service in a position covered by this System in the future, he or she may purchase service credit for such prior service or purchase portability service credit, if eligible to do so, in accordance with the provisions of this Article at the time he or she again becomes a member of this System. (18-01-3; 8-03-3; 2-16-3.)

Division 6. - Contributions.

Section 3-2-25. - Member contributions.

- (a) There shall be picked up from the compensation of each member for each and every payroll period ending subsequent to December 22, 1984, the contribution payable by such member as provided in this Section; provided, that no contributions shall be required or permitted of any SESRP member. The Board of Supervisors may, from time to time, revise the rates of member contributions to the System.
- (b) Except as provided in Subsection (a) of this Section, ~~allevery~~ present and future ~~membersmember,~~ otherwise qualified, who, on or before December 31, 1981, and upon approval of the Board, or within 30 days of appointment as ~~employeesan employee~~:
 - (1) ~~(1) — DeDoes~~ not agree in writing to the terms set forth in Subsection (b)(2) of this Section and Section 3-2-32(a)(2) shall be considered ~~participantea participant~~ in Plan A or Plan C, as

applicable, and contributions a contribution shall be made for each pay period for which he or she received compensation equal to four percent of his or her creditable compensation until his or her annual creditable compensation during the calendar year exceeds the taxable wage base. When such a member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions shall be made equal to five and one-third percent of his or her creditable compensation.

~~(2) (2)~~ AgreeAgrees in writing to the terms set forth in this Subsection and Section 3-2-32(a)(2) shall be considered ~~participantsa participant~~ in Plan B or Plan D, as applicable, and ~~contributionsa contribution~~ shall be made for each pay period for which he or she receives compensation subsequent to the election of Plan B or Plan D equal to five and one-third percent of his or her creditable compensation.

~~(2)(3)~~ Shall, for employees whose County or School Board employment commenced by reporting for work on or after July 1, 2019, be a participant in Plan E and a contribution shall be made for each pay period for which he or she receives compensation equal to five and one-third percent of his or her creditable compensation.

- (c) Notwithstanding any other provision of this Section, no pick-up shall be made from any member's compensation if the employer's contribution required hereunder is in default.
- (d) The Board may modify the method of collecting the pick-up contributions of members so that the employers, departments, institutions, and agencies required to remit to the Treasurer of the Board as provided in Subsection (b) of this Section may retain the amounts picked up by them with respect to members' salaries and have a corresponding amount deducted from County funds otherwise payable to them.
- (e) The Board may approve written requests to change the offered optional plan selected under Subsection (b) of this Section when such requests are made not later than December 31, 1981.
- (f) All contributions required to be made under Subsections (b) and (c) of this Section with respect to current services rendered by an active member on or after December 22, 1984, shall be picked up by the County, and shall be treated as the employer's contribution in determining tax treatment under Section 414(h)(2) of the Internal Revenue Code. For all other purposes under this Chapter and otherwise, such pick-up contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to December 22, 1984. All picked-up amounts shall be included in compensation for purposes of calculating member benefits under Division 8. The County shall pay such picked-up amounts from the same source of funds which is used in paying earnings to the employee. (20-81-3; 34-81-3; 36-83-3; 5-85-3; 2-16-3.)

Section 3-2-26. - Employer contributions.

- (a) Each employer shall contribute at an annual rate to be fixed by the Board of Supervisors.
- (b) The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future employee contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost plus an expense rate, as long as the System's funding ratio (actuarial value of the System's assets divided by actuarial accrued liability of the System) remains within a corridor, the lower measurement of which is described below and the upper measurement of which is 120 percent. The employer normal cost and System actuarial accrued liability are to be measured using the entry age normal funding method.
 - To the extent that the System's funding ratio exceeds 120 percent, a credit shall be established equal to the amount of assets in excess of 120 percent of the actuarial accrued liability.
 - To the extent that the System's funding ratio is lower than the lower measure of the corridor, a charge shall be established equal to the difference between the lower measure plus the actuarial accrued liability and the assets.

The employer contribution shall be adjusted by a 15 year amortization of the credit or charge described in this Subsection, to be paid until the funding ratio re-enters the corridor, at which time it shall cease.

Effective with the fiscal year 2016 County contribution rate, the lower measure of the corridor shall be established at 95 percent. The 95 percent threshold shall be increased until it reaches 100 percent, no later than by the year 2020. Once the lower measurement of the corridor reaches 100 percent, the 15 year amortization described above shall be over a fixed 15 years with additional 15 year amortization layers created annually. Once the System's funding ratio reaches 100 percent, such amortizations shall cease.

In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there shall be an additional component to the employer cost equal to the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below 120 percent shall be excluded from this component. (20-81-3; 27-90-3; 16-02-3; 28-15-3, § 1; 2-16-3.)

Division 7. - Assets of System.

Section 3-2-27. - Assets to be credited to one of two accounts.

All of the assets of the System shall be credited, according to the purpose for which they are held, to one of two accounts, namely, the members' contribution account, and the retirement allowance account. (20-81-3; 2-16-3.)

Section 3-2-28. - Members' contribution account.

- (a) The members' contribution account shall be the account to which all members' contributions, pick-up contributions and interest allowances as provided in this Article shall be credited. In the case of any SESRP member, the member's contribution account shall consist of the amount in the Severance Account as defined in the provisions of SESRP effective on January 1, 1996, and the member's accumulated contributions to the System in existence at the time the member elected to participate in the SESRP. After January 1, 1996, the member's contribution account of any SESRP member shall annually be credited with the difference between the SESRP member's creditable compensation and the member's unadjusted compensation. From this account shall be paid the accumulated contributions of a member required to be returned to him or her upon withdrawal or paid in the event of his or her death before retirement.
- (b) Each member's contribution and pick-up contributions provided for in Section 3-2-25 shall be credited to the individual account of that member.
- (c) Each individual account of the members' contribution account shall be credited annually with interest at a rate or rates established by the Board; provided, that interest shall accrue on any such contribution beginning at the end of the calendar year in which each such contribution was made, and further provided that interest shall not be accredited or accumulated to the individual accounts of members who have ceased to be employees for a period of more than five years. The Board may at any time, and from time to time, establish a new interest rate or rates which shall be applicable under this Section.
- (d) Upon the retirement of a member, his or her accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account.
- (e) Upon receipt of a completed application, the Board shall refund the individual accounts of members who have ceased to be employees after completing fewer than five years of creditable service. The completed application shall include an election by the member directing the System to refund the individual account directly to the member or to directly transfer the account to another plan as permitted under the Internal Revenue Code. (20-81-3; 5-85-3; 27-90-3; 40-08-3; 2-16-3.)

Section 3-2-29. - Retirement allowance account.

- (a) The retirement allowance account shall be the account in which shall be accumulated all employer contributions, amounts transferred from the members' contribution account, and to which all income from the invested assets of the System after all expenses for required services shall be credited. This account shall pay retirement allowances, other benefits payable after a member's retirement, and necessary expenses of the System.

- (b) The amount of interest allowances provided for in Section 3-2-28 shall be transferred each year from the retirement allowance account to the members' contribution account. (20-81-3; 2-16-3.)

Section 3-2-30. - Deposits.

For the purpose of meeting disbursements the Board shall maintain sufficient cash equivalents. (20-81-3; 2-16-3.)

Division 8. - Benefits.

Section 3-2-31. - Service retirement.

- (a) Normal service retirement. Any member, in service at his or her normal retirement date or within 90 days prior thereto, and who has completed five years of creditable service, may retire at his or her normal retirement date or thereafter upon written notice to the Board, made by the member or his or her duly appointed agent, and stating the time the retirement is to become effective. However, such effective date shall be subsequent to the filing of such notice.
- (b) Early service retirement. Any member who has completed 25 years of creditable service and attained the age of 50 years, or any member who has completed at least ten years of creditable service and whose age, when combined with the years of his or her creditable service equals at least the sum of 75 years, may retire pursuant to the procedures set forth in Subsection (a) of this Section. (20-81-3; 14-87-3; 2-16-3.)

Section 3-2-32. - Service retirement allowance and other benefits.

(a) Normal service retirement.

- (1) ~~(1)~~ Upon normal service retirement after July 1, 1981, a member participating in either Plan A or Plan C shall receive an annual retirement allowance payable monthly for life consisting of an amount equal to one and eight-tenths percent of his or her average final compensation not in excess of his or her social security breakpoint plus two percent of the average final compensation in excess of his or her social security breakpoint, said sum multiplied by the number of years of creditable service.
- (2) ~~(2)~~ Upon normal service retirement after July 1, 1981, and after undergoing the additional cost deductions through December 31, 1981, a member participating in either Plan B, Plan D or Plan ~~DE~~ shall receive an annual retirement allowance payable monthly for life consisting of an amount equal to two percent of his or her average final compensation, said amount multiplied by the number of years of creditable service. In the event a participant in Plan B retires before December 31, 1981, the accumulated additional deductions in excess of four percent of pay not in excess of the taxable wage base shall be refunded and the member's retirement allowance shall be determined in accordance with Subsection (a)(1) of this Section.
- (3) ~~(3)~~ Pre-62 compensating benefit. In addition to the allowance provided in Subsections (a)(1) and (2) of this Section, any member who had retired prior to the age of 62 years and before July 1, 2000, shall receive, except as provided in Subsection (a)(4) or (a)(5) of this Section, an additional monthly benefit equal to one percent of the average final compensation not in excess of his or her social security breakpoint times years of service until such member attains the age of 62 years.
- (4) ~~(4)~~ Pre-social security benefit. In addition to the allowance provided in Subsections (a)(1) and (2) of this Section, any member in Plan A, Plan B, Plan C or Plan D who retires on or after July 1, 2000, or any member who had retired prior to the age of 62 years, before July 1, 2000 and who had not attained the age of 62 years as of July 1, 2000, shall receive an additional monthly benefit equal to one percent of the average final compensation not in excess of his or her social security breakpoint times years of service until the first month after such member is entitled to an unreduced social security benefit. Any member who retired on or after July 1, 2000, and before February 26, 2001, and was at least 62 years of age but not yet entitled to an unreduced social security benefit as of the date of his or her retirement, shall receive the pre-social security benefit, without interest, retroactive to the effective date of his or her retirement. However, the pre-social security benefit provided herein shall not be credited to the DROP accounts of members of Plans C or D who elect to participate in the DROP; however, upon the completion of the member's DROP

period, the member shall be entitled to receive the pre-social security benefit provided herein if he or she is not then entitled to an unreduced social security benefit until the first month after such member is entitled to an unreduced social security benefit. The term *unreduced social security benefit* shall mean a social security benefit not reduced as a result its receipt before the normal retirement age for receiving social security benefits, as defined by applicable federal statute and regulation.

(5) Early Age Option. Any member in Plan E who retires prior to his or her full retirement age under social security, shall be eligible to receive an additional monthly benefit equal to 0.5 percent of his or her average final compensation, not to exceed his or her social security breakpoint times years of service, until the first month after such member becomes entitled to an unreduced social security benefit. Upon reaching the full retirement age under social security, the member's monthly benefit shall be reduced for life by an amount determined to result in a lifetime benefit under this option that is actuarially equivalent to the lifetime benefit that would be received without this option.

- (b) Early service retirement. Upon early service retirement, a member shall receive an amount which shall be determined in the same manner as for retirement at his or her normal retirement date under Subsections (a)(1) and (a)(2) of this Section, with years of creditable service and average final compensation being determined as of the date of his or her actual retirement and the amount of the retirement allowance so determined being reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the date the member shall attain the age of 65 years.
- (c) Joint and last survivor option. A member may elect to receive a decreased retirement allowance during his or her lifetime and to have such retirement allowance, or a specified fraction thereof, continue after his or her death to his or her spouse, for his or her spouse's lifetime. Such election may be made or changed at any time up to the member's actual retirement date. After the member's actual retirement date, such election may not be changed except as permitted in Subdivisions (1) and (2) of this Subsection. The amount of any retirement allowance for a spouse provided by this Subsection shall be determined on an actuarial equivalent basis and shall be calculated at the member's actual retirement date using the actuarial adjustment factors in Table 1.
 - (1) In the event a retired member has elected a reduced retirement allowance in consideration of a continued allowance to his or her spouse after the member's death, and the member and such spouse are divorced after the retirement date, the member may discontinue the allowance to the spouse, and the member's retirement allowance may be increased to that amount to which the member would have been entitled had no election been made, if the spouse's right to the allowance has been extinguished pursuant to a final decree of divorce or a final property order entered in connection with a divorce case. The increase in the member's retirement allowance shall take effect as of the date of the final decree of divorce or final property order or July 1, 1988, whichever is later.
 - (2) In the event a retired member has elected a reduced retirement allowance in consideration of a continued allowance to his or her spouse after the member's death, and such spouse predeceases the member, such member's retirement allowance shall be increased to that amount to which the member would have been entitled had no election been made. The increase in the member's retirement allowance shall take effect as of the day following the date of the spouse's death.

TABLE 1

FAIRFAX COUNTY EMPLOYEES' RETIREMENT SYSTEM

Actuarial Adjustment Factors That Would Apply to Members with a
Normal or Early Service Retirement Allowance Determined Under Section 3-2-32
Who Elect a Joint and Last Survivor Option.

Percent of Allowance Continued to Spouse Upon Member's Death	Factor for Equal Ages	Increase/Decrease For Each Full Year Beneficiary is Older (Younger) Than Employee	Maximum Factor
100%	85%	0.7%	96%
75%	89%	0.6%	97%
66.67%	90%	0.5%	98%
50%	92%	0.4%	99%

(d) Minimum benefit.

- (1) In no event shall the annual retirement allowances for a member retiring after December 31, 1970, be less than that determined under the System as in effect prior to such date nor shall any member's annual retirement allowance be less than \$300.00.
- (2) If the retirement allowance of any member who retires during a calendar year beginning on or after January 1, 1979, to December 31, 1981, inclusive, would have been larger if computed as of December 31 of the calendar year preceding the member's retirement, the member shall be entitled to the larger retirement allowance. A member who elects to receive such an allowance shall also be eligible for a refund of his or her contributions accumulated from January 1 of the year of his or her retirement through the date of his or her actual retirement. (20-81-3; 34-81-3; 36-88-3; 11-00-3; 10-01-3; 26-12-3; 50-13-3; 2-16-3.)

Section 3-2-33. - Ordinary disability retirement.

- (a) Any member who is in service or who is within one year of the date that he or she ceased being in service and who has five or more years of creditable service may retire on account of disability, not compensable under the provisions of Section 3-2-35, upon written application to the Board, made by the member or his or her employer, setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service, but shall not be more than 90 days prior to the execution and filing of such application; and provided further, that the Medical Examining Board, after a medical examination of such member, shall certify that such member is, and has been continuously since such effective date if prior to the filing of the application, mentally or physically incapacitated for further employment by the employer, that such incapacity is likely to continue into the indefinite future, and that such member should be retired.
- (b) Any member who has not been in service for more than a year at the time of application who is otherwise eligible for ordinary disability retirement may be granted an ordinary disability retirement if:
 - (1) Written application is made containing a justification for the failure to apply within one year of ceasing service; and
 - (2) The Board finds:
 - (A) The disability arose in the course of the member's service;
 - (B) The disability was the proximate cause of the member's ceasing to be in service; and
 - (C) There was good cause for the member not to have filed an application while in service or within one year after the date that he or she ceased to be in service.
- (c) In the event that a member is granted an ordinary disability retirement pursuant to Subsection (b) of this Section, the Board shall establish an effective date which considering all the circumstances of the individual case is just; provided, such date shall be no more than 90 days prior to the execution and filing of his or her application. (20-81-3; 34-81-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-34. - Ordinary disability retirement allowance.

Upon ordinary disability retirement, as provided for in Section 3-2-33, a member shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to two percent of his or her average final compensation multiplied by the number of years of creditable service. However, said retirement allowance shall not be greater than 60 percent of the member's average final compensation or less than \$300.00 per annum. (20-81-3; 2-16-3.)

Section 3-2-35. - Service-connected disability retirement.

- (a) Any member who is in service, or within one year of the date that he or she ceased to be in service may retire on account of disability which is due to injury by accident and/or disease(s) which arose out of and in the course of the member's service; provided, that the Medical Examining Board, after a medical examination of such member shall certify that such member is, and has been continuously since the date such retirement is to be effective, mentally or physically incapacitated for further employment by the employer as a result of such injury by accident and/or disease(s), that such incapacity is likely to continue into the indefinite future, and that such member should be retired. The Board shall determine whether a member is disabled due to injury by accident and/or disease(s) which arose out of and in the course of a member's service. In making this determination, the Board shall consult the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia which have applied or construed similar language under the Virginia Workers' Compensation Act.
- (b) The member or his or her employer shall submit a written application setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service but shall not be more than 90 days prior to the date of such application. Prior to submitting such application, the member shall report his or her injury by accident and/or disease(s) and make a claim for workers' compensation benefits to his or her employer in accordance with the policies and procedures established by the County or the School Board and other authority. He or she shall cooperate in the investigation of his or her workers' compensation claim by the employer or its agent. The member shall submit copies of the dispositions as made of his or her workers' compensation claim and any subsequent awards or other documents reflecting any modification or termination of such benefits. In making its determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act; and the Board may modify its prior determination of eligibility under this Section in light of any such decision within 90 days after the date that such decision becomes final.
- (c) Any member otherwise eligible for ordinary disability retirement under Section 3-2-33, who applies for retirement pursuant to this Section, and whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to Section 3-2-33.
- (d) Any member who has not been in service for over one year at the time of his or her application who is otherwise eligible for service-connected disability retirement under this Section may be granted a service-connected disability retirement under this Section if:
 - (1) Written application is made containing a justification for the failure to apply within one year of ceasing to be in service; and
 - (2) The Board finds:
 - (A) The disability arose in the course of the member's service;
 - (B) The disability was the proximate cause of the member's ceasing to be in service; and
 - (C) There was good cause for the member not to have filed an application while in service or within one year after the date that he or she ceased to be in service. (20-81-3; 24-85-3; 14-87-3; 27-90-3, §1; 2-16-3.)

Section 3-2-36. - Service-connected disability retirement allowance.

- (a) Upon service-connected disability retirement under Section 3-2-35, a member shall receive an annual retirement allowance, payable monthly and during his or her lifetime and continued disability, consisting of an amount equal to 66 ⅔ percent of his or her average final compensation. However, the

allowance shall be reduced by the amount of any compensation paid to the member under the Virginia Workers' Compensation Act for temporary total or partial incapacity.

- (b) The amount of the reduction shall be increased by an award of a cost-of-living increase to a member's compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act). When the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation the amount of such payments shall no longer be used to reduce the retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without the reduction for such payments.
- (c) If a member receives his or her compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act) in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, neither a lump sum payment or portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act, nor a lump sum payment or portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under Section 3-2-35, shall be offset against the member's allowance under this Section; and provided further, that in the event that a member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the lump sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its judgment represents compensation for such benefits. (20-81-3; 4-83-3; 1-93-3; 23-07-3; 47-08-3; 23-11-3; 66-13-3, § 1.; 2-16-3; 36-17-3.)

Section 3-2-37. - Service-connected accidental death benefit.

If death of a member is caused by an accident occurring prior to retirement, and such death is compensable under the Virginia Workers' Compensation Act, there shall be paid, in addition to any other benefits of this Article or other legislation, the following:

- (a) For a member whose death occurs before retirement:
 - (1) The member's accumulated contributions as provided in Section 3-2-28(ea) to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-2-38 or under Section 3-2-42; and
 - (2) The sum of \$10,000.00 to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate.
- (b) For a member whose death occurs after retirement:
 - (1) The member's accumulated contributions as provided in Section 3-2-28(ea) less the amount of any retirement allowances previously received by the member, such sum to be paid to his or her designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-2-32(c) or under Section 3-2-38; and
 - (2) The sum of \$10,000.00 to his or her designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the member's estate. (20-81-3; 34-81-3; 5-85-3; 2-16-3.)

Section 3-2-38. - Refund of contributions upon withdrawal or death; deferred vested benefit.

- (a) Refund of contributions.
 - (1) If a member has ceased to be an employee, otherwise than by death or by retirement under this Article, and has fewer than five years of creditable service on his or her date of separation, he or she shall be eligible for a refund of the total of his or her accumulated contributions (with interest) which have been reduced by the amount of any retirement allowances previously received by him or her under this Article. The member shall file a written application with the Board for such refund,

and the application shall include an election by the member directing the System to have the refund paid directly to the member or to transfer the refund amount to another plan identified by the member as permitted under the Internal Revenue Code.

- (2) Should death occur to a member in service who has completed less than 15 years of creditable service or to a member on retirement, the amount of his or her accumulated contributions, reduced by the amount of any retirement allowances previously received by him or her under any of the provisions of this Article, shall then be payable in a lump sum to a designated beneficiary on file with the System, or in the absence of a designated beneficiary, to his or her estate; provided, no benefit is payable under Section 3-2-32(c).
 - (3) Should death occur to a member in service who has completed 15 years of creditable service and if the member's designated beneficiary on file with the System, is not the member's spouse, a lump sum payment equaling the amount of the member's accumulated contributions, as provided in Section 3-2-28(ea), shall be paid to the designated beneficiary.
 - (4) Should death occur to a member in service who has completed 15 years of creditable service and has no designated beneficiary, a lump sum payment equaling the member's contributions shall be paid to the member's estate; provided, that if such member's spouse is the sole person entitled under the laws of the Commonwealth of Virginia to the benefits provided hereunder then said spouse shall have the same right to elect benefits as is provided to spouses in Section 3-2-42.
 - (5) All refunds shall be mailed to the last address on record with the Board. Refunds that have not been claimed within six months shall become the property of the System.
 - (6) A member who becomes eligible for membership in either the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System of Fairfax County (ERFC), the Fairfax County Police Officers Retirement System, or the Fairfax County Uniformed Retirement System prior to receipt of any refund amount to which he or she is entitled may elect in writing to transfer the amount of his or her refund directly from this System to the system for which he or she has become eligible for membership, under such rules and regulations as are adopted by the Board and by the board of the system for which he or she has become eligible for membership. In the alternative, to the extent that a refund is an "eligible rollover distribution" within the meaning of Section 402(f)(2)(A) of the Internal Revenue Code, such a member may (a) pursuant to the rules and regulations of the system of which he or she is eligible to become a member, elect in writing to roll over the portion of his or her refund which represents such an eligible rollover distribution directly from this System to the system for which he or she has become eligible for membership or (b) elect in writing to roll over the portion of his or her refund which is such an eligible rollover distribution directly to an individual retirement account.
 - (7) Effective on and after January 1, 2007, if a member dies while performing "qualified military service," as defined in Section 414(u) of the Internal Revenue Code, any additional benefits that would have been provided under the System if the member had resumed employment on the day prior to his or her death and then terminated employment due to death shall be paid to such member's designated beneficiary or, if applicable, estate. This provision shall also apply to Section 3-2-42 regarding spouse retirement allowances.
 - (8) In lieu of electing deferred vested benefit pursuant to Subsection (b) of this Section, a member with five or more years of creditable service may elect to receive a refund of his or her accumulated contributions made to the System (with interest) reduced by the amount of any retirement allowances previously received under this Article. The member shall file a written application with the Board on separation, or at any time thereafter, so long as he or she has not yet begun to receive a deferred vested benefit. The application shall include an election by the member directing the System to pay the refund paid directly to the member or to transfer the refund to another plan identified by the member as permitted under the Internal Revenue Code. The refund shall be made not later than 90 days after the receipt of the application.
- (b) Deferred vested benefit. If a member has five or more years of creditable service on his or her date of separation, the member may leave his or her accumulated contributions in the System and receive

a deferred vested benefit payable beginning on the date the member attains 65 years of age, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article. (20-81-3; 34-81-3; 5-85-3; 27-90-3; 45-93-3; 10-01-3; 40-08-3; 01-11-3; 2-16-3.)

Section 3-2-39. - Medical reevaluation of disabled members; penalty for unjustified refusal to accept medical attention, vocational rehabilitation or selective employment, or to submit to medical examination.

- (a) At least once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board shall require any such member prior to his or her normal retirement date to undergo a medical examination by the Medical Examining Board; provided, that said medical examination requirement shall not be applicable to a member on a disability retirement allowance during the period such member is receiving benefits under the Virginia Workers' Compensation Act. On recommendation of the Medical Examining Board, the Board may waive the medical examination requirement as to any such member. Should such a member refuse to submit to any such medical examination, his or her disability retirement allowance shall be discontinued until his or her withdrawal of such refusal; and should his or her refusal continue for one year, all his or her rights to any further disability retirement allowance shall cease.
- (b) Members who are receiving service-connected disability retirement allowances pursuant to Section 3-2-35, and who are receiving periodic payments from their employers pursuant to the Virginia Workers' Compensation Act (Act) which are required to be offset against the allowances pursuant to Section 3-2-36, shall cooperate with and accept medical examinations, vocational rehabilitation, and selective employment provided by the employer pursuant to the Act. In the event that such a member's periodic payments are suspended by the Virginia Workers' Compensation Commission (Commission) for unjustified refusal to accept medical examinations, vocational rehabilitation, and/or selective employment, the Board may, if in its determination such refusal was unjustified, direct that the allowance pursuant to Section 3-2-36 shall be computed as if the member received the suspended payments; and should such member's unjustified refusal continue for one year, all his or her rights to any future disability retirement allowance shall cease. The Board shall make appropriate adjustment to the member's allowance if the suspension by the Commission is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection. For purposes of this Subsection, an order of the Commission suspending compensation for unjustified refusal creates a rebuttable presumption that the member unjustifiably refused medical examinations, vocational rehabilitation, and/or selective employment. (20-81-3; 36-88-3; 11-98-3; 2-16-3.)

Section 3-2-40. - Reduction of service-connected disability retirement allowance.

- (a) Whenever the Board ascertains that any member receiving a service-connected disability retirement allowance is, prior to his or her normal retirement date, engaged in work paying more than the difference between his or her allowance and the current salary of the position from which he or she retired, the Board shall reduce such allowance to an amount which, together with the amount earned by him or her, equals the amount of the current salary of the position from which he or she retired. A member receiving a service-connected disability retirement allowance shall submit a copy of that portion of his or her federal income tax return showing the amount of his or her earned income, and he or she shall also be required to submit copies of all W-2 forms (wage statements) provided him or her by his or her employer(s) to the Board by May 30 of each year. Should such member refuse to submit copies of his or her federal income tax return or W-2 forms to the Board, his or her allowance shall be discontinued until his or her withdrawal of such refusal; and should his or her refusal continue for one year, all his or her rights to any further service-connected disability retirement allowance shall cease. The Board shall have the power to reduce the member's service-connected disability allowance to an amount less than that provided in the first sentence of this Subsection, but not less than \$25.00 a month, to recoup the amount of any overpayment from the System to the member on account of the member's earnings in excess of the maximum amount allowed under this Section.
- (b) The Board shall adopt written regulations governing the administration of this Section, providing for, among other things, the notification to the members deemed appropriate, and allowing for late submission of required documentation for good cause shown.

- (c) Should the Medical Examining Board report and certify to the Board at any time that any member receiving a service-connected disability retirement allowance is able to engage in gainful occupation or work paying more than the difference between his or her retirement allowance and the current salary of the position from which he or she retired, and should the Board find that such member shall have refused an offer of employment considered by the Board suitable to his or her capacity, he or she shall not be entitled to any such allowance during the continuance of such refusal, unless in the opinion of the Board such refusal was justified. (20-81-3; 36-88-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-41. - Cessation of disability retirement allowance.

- (a) Should a member receiving a disability retirement allowance return to service at any time prior to his or her normal retirement date, his or her disability retirement allowance shall cease, and he or she shall again become a contributing member. Upon his or her return to service, he or she shall be given membership service credit for all creditable service that he or she had accumulated as of the effective date of his or her disability retirement. In addition, any member returning to service after a period of service-connected disability retirement shall be given membership service credit for the period of his or her service-connected disability retirement.
- (b) When a member returns to service under the circumstances described in Subsection (a) of this Section, any excess accumulated contributions of such member over the disability retirement allowances received by him or her shall be transferred from the retirement allowance account to the member's contribution account.
- (c) Should the Board at any time determine that a member who is receiving an ordinary disability retirement allowance is no longer incapacitated, the Board shall promptly terminate his or her allowance and notify the member in writing at his or her address as shown in the System's records.
 - (1) Such member may appeal the action of the Board under Section 3-2-48.
 - (2) Within 30 days of receipt of such notice, or within 30 days of his or her receipt of the Board's denial of his or her appeal of the termination of his or her ordinary disability retirement allowance, if appealed, such member, if eligible, may apply in writing for a normal or early service retirement allowance. Such members shall be deemed to be in service during this 30 day period solely for the purpose of applying for a service retirement and shall not be granted creditable service for this 30 day period. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their ordinary disability retirement. The effective date of such member's normal or early service retirement pursuant to this Subsection shall be the effective date of termination of his or her ordinary disability retirement allowance.
- (d) Should the Board at any time determine that a member who is receiving a service-connected disability retirement allowance is (i) no longer incapacitated or (ii) no longer incapacitated due to an injury by accident and/or disease(s) which arose out of and in the course of his or her service, the Board shall promptly terminate his or her service-connected disability retirement allowance and notify the member in writing at his or her address as shown in the System's records.
 - (1) If at that time such member has five or more years of creditable service and the Board determines that such member is presently incapacitated from further employment with his or her employer due to injury by an accident and/or disease(s) which did not arise out of and in the course of his or her service and such incapacity is likely to continue indefinitely, the Board shall grant such member an ordinary disability retirement allowance effective as of the date of termination of his or her service-connected disability retirement allowance. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their service-connected disability retirement and shall receive membership service credit for the period of their service-connected disability retirement.
 - (2) Any member whose service-connected disability retirement allowance has been terminated by the Board under this Section may appeal the action of the Board under Section 3-2-48.

- (3) Within 30 days of receipt of such notice, or within 30 days of his or her receipt of the Board's denial of his or her appeal of the termination of his or her service-connected disability retirement allowance, if appealed, such member, if eligible, may apply in writing for a normal or early service retirement allowance. Members whose service-connected disability retirement had been changed by the Board to ordinary disability pursuant to Subsection (d)(1) of this Section may apply for a normal or early service retirement allowance in lieu of the ordinary disability retirement allowance. Members shall be deemed to be in service during this 30 day period solely for the purpose of applying for a service retirement and shall not be granted creditable service for this 30 day period. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their service-connected disability retirement. The effective date of such member's normal or early service retirement pursuant to this Subsection shall be the effective date of termination of his or her service-connected disability retirement allowance. (20-81-3; 27-90-3, § 1; 6-95-3; 14-98-3; 2-16-3.)

Section 3-2-42. - Spouse retirement allowance.

Should death occur to a member in service who has completed five years of creditable service, a retirement allowance shall be payable to the member's spouse if said spouse is the member's designated beneficiary duly approved, acknowledged and filed with the Board. The annual retirement allowance payable monthly for life shall be 50 percent of the annual retirement allowance provided in Sections 3-2-32(a)(1) or 3-2-32(a)(2), with creditable service and average final compensation being determined as of the date of the member's death. Said spouse shall elect in writing within 180 days of the member's death, or within 90 days of receiving notice from the Board, whichever comes first, to receive the benefits outlined above in this Section or a lump sum payment of the member's contributions, plus interest as provided in Section 3-2-28(c); in the event no election is made, said spouse shall receive benefits in the form of a lump sum. If a death is due to a service-connected accident as defined in Section 3-2-37 and the designated beneficiary under Section 3-2-37(a)(1) and (a)(2) is the member's spouse, the spouse shall elect in writing within 180 days of the member's death, or within 90 days of receiving notice from the Board, whichever comes first, to receive either the benefits contained in this Section or those contained in Section 3-2-37(a)(4). In the event of the spouse's death prior to receiving allowances under this Section equaling the sum of the member's contributions to the System, plus interest, said sum, reduced by the amount of any retirement allowances previously paid under this Section, shall be paid to the spouse's designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the spouse's estate. (20-81-3; 5-85-3; 20-87-3; 29-09-3; 2-16-3.)

Section 3-2-43. - Cessation of normal or early service retirement allowance.

- (a) Subsection (b) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System and who submitted their application for such allowance to the Board of such system on or before July 21, 1986. Subsection (c) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Uniformed Retirement System, or the Police Officers Retirement System and who submitted their application for such allowance to the Board of such system after July 21, 1986. Personnel Regulation Section 9-2-4 shall apply to persons covered by either Subsection (b) or (c) of this Section.
- (b) Should a person receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System (retiree) return to regular service in a permanent position in any office or employment paid directly or indirectly by the County, he or she shall elect to receive such retirement allowance under one of the following two options:
- (1) Such allowance shall not commence or, if already commenced, shall cease while the retiree is so employed. His or her allowance shall commence or resume upon application or reapplication by the retiree after he or she has ceased permanent employment in such a position. The allowance of a retiree of this System who is appointed to a position covered by the Uniformed Retirement System or Police Officers Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section 3-2-44 which would have been payable had the retiree continued to receive his or her allowance without interruption. A retiree who elects in

writing at the time of reappointment to a position covered by this Article not to become a member shall be exempted from this System. A retiree who elects in writing at the time of reappointment to a position covered by this Article to become a member shall be eligible:

- (A) For recomputation of his or her allowance to take into account compensation and creditable service attributable to the period of reemployment resulting in a deferral or cessation of his or her allowance under this Subsection;
- (B) To make a new election for any optional benefit to which he or she is entitled; and
- (C) For a retirement allowance for a service-connected disability arising out of and in the course of his or her reemployment.

A retiree of the Uniformed Retirement System or Police Officers Retirement System who is appointed to a position covered by this Article and elects in writing within 30 days of such appointment may be excluded from membership in this System.

- (2) Such allowance shall commence or shall not cease while the retiree is so employed. A retiree electing this option shall be excluded from membership in this System or any system covering the position, service in which results in the application of this Subsection.
- (c) A person receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System (retiree) may return to employment for which compensation is paid directly or indirectly by the County, subject to the following conditions:
 - (1) A retiree shall not receive in combined compensation and retirement allowance, computed monthly, any more than 115 percent of the then current maximum monthly salary for a Deputy County Executive in the County's Compensation Plan. The appropriate Retirement System Board of Trustees shall reduce the retiree's allowance as necessary to keep the combined salary and allowance at this limit. For purposes of this Subsection, a retiree's allowance shall be deemed to be the allowance that he or she would receive if he or she had not elected a joint and last survivor option which results in an actuarially reduced allowance. Employers under all three systems shall report salaries paid to retirees to the retiree's Board of Trustees.
 - (2) A retiree who is employed in a position service in which would otherwise make him or her eligible for membership in this System, the Uniformed Retirement System, or the Police Officers Retirement System, shall not be eligible for membership in that system.
- (d) Notwithstanding any other provision of this Article or any other Article of this Chapter, a person receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System (retiree) may be employed in a position under his or her former appointing authority subject to the following terms and conditions:
 - (1) If the retiree is a member of this System and service in the position to which he or she is to be re-appointed ordinarily would result in membership in this System, his or her normal or early service retirement allowance shall be suspended for the duration of his or her new employment. During his or her new employment, he or she shall make member contributions to this System. At the time of his or her new employment, he or she shall be entitled to make all elections available to new members of this System, and if otherwise eligible, during his or her employment, he or she may apply for ordinary or service-connected disability retirement. In such case, his or her combined years of service and his or her average final compensation based on his or her new employment shall be used in calculating the disability retirement allowance. On re-application for service retirement from his or her new employment, the retiree shall receive as his or her service retirement allowance the higher of (i) his or her initial service retirement allowance increased by any cost-of-living increases that were granted by the Board to service retirements during the period of his or her new employment or (ii) a service retirement allowance calculated on the basis of his or her combined years of creditable service in his or her initial and new employment and his or her average final compensation calculated on the basis of the creditable compensation that

he or she received during both his or her initial and new employment as if there had been no break in service.

- (2) A retiree who is a member of this System and who is to be re-appointed to a position service in which would result in membership in either the Fairfax County Uniformed Retirement System or the Fairfax County Police Officers Retirement System but for his or her membership in this System, shall be subject to the provisions of either Subsection (a) or (b) of this Section, whichever is applicable.
- (3) If the retiree is a member of either the Uniformed Retirement System or Police Officers Retirement System and service in the position to which he or she is to be appointed would result in membership in this System but for his or her membership in the other system, the retiree shall be subject to the provisions of either Subsection (b) or (c) of this Section, whichever is applicable.
- (4) This Subsection shall apply to all persons appointed to positions on or after March 1, 1990, service in which would ordinarily make them members of this System, the Uniformed Retirement System, or the Police Officers Retirement System. (20-81-3; 35-81-3; 36-86-3; 27-90-3, § 1; 10-01-3; 11-05-3; 2-16-3.)

Section 3-2-44. - Cost-of-living adjustments.

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of the benefit commencement; provided, that such adjustments shall not affect the amount of the ~~social security~~-benefit ~~allowance~~ payable pursuant to Section 3-2-32(a)(3), Section 3-2-32(a)(4) or Section 3-2-32(a)(5); and, provided further, that allowances for service-connected disability retirement shall be subject to Subsection (d) of this Section. The monthly benefit allowance to be effective July 1 of any such year shall be the benefit in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection (a) of this Section and the supplemental cost-of-living increase, if any, provided for in Subsection (b) of this Section with such increase reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than 12 months.

- (a) The basic cost-of-living increase shall be the lesser of four percent and the percentage corresponding to the percentage increase in the Consumer Price Index during the 12 calendar month period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, Consumer Price Index shall mean the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the appropriate Standard Metropolitan Statistical Area (SMSA) that includes the County.
- (b) As part of each annual actuarial valuation, the actuary shall determine the percentage supplemental cost-of-living increase (not greater than one percent that can be provided on the following July 1 based upon the available actuarial surplus). The Board then may, but shall not be required to, increase the benefits of all retirement allowances in pay status on each July 1 by such actuarially determined percentage. For the purpose of this Section, available actuarial surplus shall mean the excess of the actuarial value of the assets of the System over the actuarial accrued liabilities of the System as disclosed in the annual actuarial valuation of the System.
- (c) In the event a member has not been in pay status for 12 full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be determined as the percentage of the full increase determined in Subsections (a) and (b) of this Section as follows:

Number of Complete Months Member Has Been in Pay Status	Percentage of Full Increase
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• Less than 3 0%

• 3, 4 or 5 25%

- 6, 7 or 8 50%
- 9, 10 or 11 75%

- (d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-2-36 have been made. The member's allowance after the adjustments of cost of living provided by this Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-2-36.
- (e) The Board of Supervisors reserves the right to amend, terminate or modify the post-retirement increases described in Subsection (b) of this Section. Upon termination, no further increases to benefits shall be due or payable to any member or beneficiary. However, any such amendment, termination or modification shall not reduce the amount of benefits then being paid to any member or beneficiary who received benefits payments as of the date of the amendment, termination or modification. Furthermore, no amendment, termination or modification shall reduce the rights of any member as of June 30, 1981, to increases such member was entitled to based upon the terms of the plan in effect on June 30, 1981. (20-81-3; 27-90-3, § 1; 1-93-3; 11-00-3; 26-10-3; 2-16-3.)

Section 3-2-45. - Retention rights.

Participation in the System does not convey the right to be retained in service or any right or claim to any assets of, or benefit from, the System unless such right has specifically accrued under this Article. (20-81-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-46. - Vesting on termination of System; non-reversion of funds.

Upon termination of the System or upon complete discontinuance of contributions to the System, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, are non-forfeitable. No portion of the assets of the System shall be used for, or diverted to, purposes other than for the exclusive benefit of the members and their beneficiaries prior to the satisfaction of all liabilities with respect to members and their beneficiaries. (20-81-3; 2-16-3.)

Section 3-2-47. - Non-retroactivity to employees retired or terminated prior to July 1, 1981.

With the exception of the benefit adjustment provided under Section 3-2-32(d)(2), the benefits provided by this Article, and Section 3-2-43, shall not apply to members retired or terminated prior to July 1, 1981. Benefits for such members shall be in accordance with the ordinance in effect prior to July 1, 1981. However, retirement allowances determined thereunder shall be subject to the cost-of-living adjustments provided in Section 3-2-44. (20-81-3; 2-16-3.)

Section 3-2-48 - Review of adverse decisions.

- (a) Any member adversely affected by a decision of the Board shall receive written notice of said decision and may, within 30 days of receipt of said notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board.
- (b) Notwithstanding Subsection (a) of this Section, upon written application of a member adversely affected by a decision of the Board and for good cause shown, the Board may reconsider such previous decision. This Subsection is to apply retroactively. (20-81-3; 36-83-3; 2-16-3.)

Section 3-2-49. - Transfer to Senior Executive Service Plan.

Repealed by 01-96-3.

Section 3-2-50. - Masculine usage includes the feminine.

Repealed by 2-16-3.

Section 3-2-51. - Limitation on annual retirement allowance.

Notwithstanding any other provision of this Article, the annual retirement allowance to which any member may be entitled shall not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code and any regulations issued by the U.S. Department of the Treasury thereunder, and in calculating such limits a member's compensation shall include any differential wage payments for military

service as defined under Section 3401(h)(2) of the Internal Revenue Code and paid on or after January 1, 2009. Notwithstanding any provision of the Internal Revenue Code to the contrary, the limitations imposed by this Section apply only to retirement allowances granted under this Article, and not to any retirement allowance provided to any employee under any other Article of this Chapter. Such limits shall be applied annually for the 12-month period commencing each July 1 and ending the following June 30. A benefit payable other than in the form of an annuity shall not exceed the amount which, when converted to an actuarial equivalent annual benefit, does not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code. Effective June 30, 2000, the mortality tables prescribed by the Uruguay Round Agreement Acts (GATT), as set forth in Internal Revenue Service Revenue Ruling 2001-62 (superseding and modifying Revenue Ruling 95-29), or as further updated or modified by the Internal Revenue Service, shall be used in determining the actuarial equivalent amount of such benefit. (27-90-3, § 2; 10-91-3; 21-96-3; 8-03-3; 01-11-3; 2-16-3.)

Section 3-2-52. - Distribution of benefits.

Notwithstanding any other provision of this Article, effective for plan years beginning after December 31, 1986, the entire interest of each member shall be distributed to such member not later than the required beginning date specified below, or shall be distributed, beginning not later than the required beginning date, over the life of such member or over the lives of such member and a beneficiary or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a beneficiary. For this purpose, the term *required beginning date* shall mean April 1 of the calendar year following the later of the calendar year in which the member attains 70½ years of age, or the calendar year in which the member retires. If a member dies after distribution of the member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a member dies before the distribution of the member's interest has begun, any death benefit shall be distributed within five years after the death of such member, unless (1) any portion of the member's interest is payable to (or for the benefit of) a designated beneficiary, (2) such portion shall be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary, and (3) if the beneficiary is someone other than the member's surviving spouse, such distributions shall begin not later than one year after the date of the member's death or such later date as the U.S. Secretary of the Treasury may by regulations prescribe. If the beneficiary is the surviving spouse of the member, (1) distribution shall begin on or before the latest of one year after the date of the member's death, such later date as the U.S. Secretary of the Treasury may by regulations prescribe, or the date on which the member would have attained 70½ years of age and (2) if the surviving spouse dies before the distributions to such spouse begin, the distribution rules specified in this Section shall be applied as if the surviving spouse were the member. Distributions from the System shall be made in accordance with the requirements of Section 401(a)(9) Internal Revenue Code, including the rules for incidental death distributions set forth at Section 401(a)(9)(G). (27-90-3, § 2; 26-12-3; 50-13-3; 2-16-3.)

Section 3-2-53. - Direct rollovers to other plans.

(a) General. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the System to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, to the extent that any portion of the amount of the rollover is comprised of after-tax contributions, the distribution may only be rolled over to an eligible retirement plan that separately accounts for after-tax contributions.

(b) Definitions.

- (1) *Eligible rollover distribution* shall mean any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.

- (2) *Eligible retirement plan* shall mean any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal Revenue Code; a qualified trust described in Section 401 (a) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; or effective for distributions made after December 31, 2007, a Roth IRA described in Section 408A of the Internal Revenue Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e). However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan shall be an individual retirement account or individual retirement annuity.
- (3) *Distributee* shall mean a member or former member. In addition, the member's or former member's surviving spouse, and the member's or former member's spouse or former spouse who is entitled to receive benefits from the System, shall be distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee also shall include a non-spouse beneficiary of a deceased member or former member who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.
- (4) *Direct rollover* shall mean a payment by the System to the eligible retirement plan specified by the distributee. (45-93-3; 21-96-3; 8-03-3; 01-11-3; 2-16-3)

Section 3-2-54. - Additional retirement allowance.

(a) Definitions.

- (1) *Active member* shall mean a member of the System who is an employee on July 1, 1995, or who becomes an employee thereafter, and whose membership in the System has not ceased at any time from either July 1, 1995, or from when he or she became an employee (whichever is later) until the effective date of his or her subsequent retirement.
- (2) *Retired member* shall mean a member of the System who is receiving a retirement allowance on July 1, 1995, or whose effective date of retirement is on or before July 1, 1995. A member of the System who is receiving a retirement allowance shall include any member whose effective date of retirement is on or before July 1, 1995.
- (3) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, an ordinary disability retirement allowance, a deferred vested benefit, or a spouse retirement allowance.
- (4) *Base annual retirement allowance* shall mean the initial calculation of a member's or spouse's annual retirement allowance without regard for any deductions for withholding or other benefit elections or adjustments under Section 3-2-7. For a member taking normal service retirement under Section 3-2-31(a), this is the allowance calculated under Section 3-2-32(a)(1) for a member in Plan A or **Plan C**, or under Section 3-2-32(a)(2) for a member in Plan B, **Plan D or Plan E**; for a member taking early service retirement under Section 3-2-32(b), this is the allowance calculated under Section 3-2-32(b); for a member retired on account of ordinary disability under Section 3-2-33, this is the allowance calculated under Section 3-2-~~33(b);34~~; and for a spouse receiving a spouse retirement allowance, this is the allowance calculated under Section 3-2-42.
- (5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance of a retired member or of the spouse of a member receiving the base spouse annual retirement allowance under Section 3-2-42, as increased by any cost-of-living adjustments applied to the member's or spouse's retirement allowance from the effective date of his or her retirement or election of the spouse retirement allowance through July 1, 1995.
- (6) *Member in service* shall mean a member of the System.

- (b) The adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance on July 1, 1995, shall be increased by three percent, effective July 1, 1995 (modified adjusted base annual retirement allowance). Adjustments to the retired member's or spouse's retirement allowance made under this Article after July 1, 1995, shall be computed on the basis of the modified adjusted base annual retirement allowance.
- (c) When an active member retires, or the eligible spouse of an active member elects to receive the spouse retirement allowance after July 1, 1995, after his or her base annual retirement allowance has been computed under the applicable Section of this Article, the resulting base annual retirement allowance shall be increased by three percent (initial base annual retirement allowance). Adjustments to the member's or spouse's retirement allowance under this Article after July 1, 1995, shall be computed on the basis of the initial base annual retirement allowance.
- (d) If a member is entitled to the three percent increase provided for by either Subsection (b) or (c) of this Section, and if at the time he or she is entitled to such increase, he or she is also eligible to receive the pre-62 compensating benefit under Section 3-2-32(a)(3) or the pre-social security benefit under Section 3-2-32(a)(4), his or her pre-62 compensating benefit or pre-social security benefit shall also be increased by three percent.
- (e) Separation from service.
 - (1) A member who:
 - (A) Separated from service other than by death or retirement with five or more years of creditable service in the System prior to July 1, 1995, and
 - (B) Has not withdrawn his or her accumulated contributions as of July 1, 1995, and
 - (C) Subsequently applies for and is determined to be eligible for a deferred vested benefit after July 1, 1995, shall have his or her or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
 - (2) A member in service on or after July 1, 1995, who:
 - (A) Subsequently separates from service other than by death or retirement with five or more years of creditable service in the System, and
 - (B) Does not withdraw his or her or her accumulated contributions, and
 - (C) Subsequently applies for and is determined to be eligible for a deferred vested benefit, shall have his or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
 - (3) A member in service on or after July 1, 1995, who,
 - (A) Subsequently separates from service other than by death or retirement with five or more years of creditable service in the System, and
 - (B) Does not withdraw his or her accumulated contributions, and
 - (C) Thereafter, returns to service and again becomes a member of the System, and
 - (D) Subsequently applies for and is determined to be eligible for a normal service, early service or ordinary disability retirement allowance, or a deferred vested benefit, shall have his or her allowance or deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
 - (4) A member in service on or after July 1, 1995, who
 - (A) Thereafter separates from service, and
 - (B) Withdraws his or her accumulated members' contributions, and
 - (C) Subsequently returns to service and again becomes a member of the System, and

- (D) At that time makes arrangements to purchase credit for all of his or her previous service in the System under this Article, and
- (E) Thereafter applies for and is determined to be eligible for a normal service, early service or ordinary disability retirement, or for a deferred vested benefit, shall have his or her allowance or deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
- (f) A member's spouse who is receiving an allowance under the joint and last survivor option provided by Section 3-2-32(c), on July 1, 1995, shall have such allowance increased by three percent, effective July 1, 1995. Adjustments to such allowance under this Article after July 1, 1995, shall be computed on the basis of this increased allowance.
- (g) Notwithstanding the 60 percent of average final compensation limit contained in Section 3-2-34, the initial base annual retirement allowance of an active member who becomes eligible to receive an ordinary disability retirement allowance and who is entitled to the increase provided by Subsection (c) of this Section, may exceed 60 percent, but shall not exceed 61.8 percent of his or her average final compensation.
- (h) Notwithstanding any provision of this Section to the contrary, no adjustment under this Section shall be made which would violate the limitations provided by Section 3-2-51 concerning the limitations imposed by Section 415 of the Internal Revenue Code and any U.S. Treasury regulations issued thereunder; provided, that any adjustment under this Section may be made up to those limitations. (12-95-3; 11-00-3; 2-16-3.)
- (i) This Section shall not be applicable to members of Plan E.

Section 3-2-55. - Spousal acknowledgment.

Any application for service or disability retirement allowance under this Article shall include a statement made by the spouse of the member, if any, acknowledging, in the presence of a notary public, that the spouse has read and understands the provisions of this Article concerning allowance and payment options and the allowance and payment options, if any, the member has elected to receive. (12-98-3; 2-16-3.)

Section 3-2-56. - Deferred retirement option program.

Effective July 1, 2005, there is hereby established a Deferred Retirement Option Program (DROP) for eligible members of the System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

- (a) Definitions.
 - (1) *DROP period* shall mean the three-year period immediately following the commencement of the member's participation in the DROP.
 - (2) *Eligible member* shall mean any member who has reached, or will reach within 60 days, his or her normal retirement date as defined in Section 3-2-4~~(n)~~2(g).
- (b) Election to participate.
 - (1) An eligible member may participate in the DROP only once. An eligible member who desires to participate in the DROP shall file an application with the Fairfax County Retirement Administration Agency not less than 60 days prior to the date of the commencement of the member's participation in the DROP.
 - (2) A member's election to participate in the DROP is irrevocable, with the exception that a member who elects to participate in the DROP may revoke that election prior to the commencement of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least 12 months from the date of his or her revocation.
 - (3) At the time of an eligible member's election to participate in the DROP, he or she shall make an election in writing pursuant to Section 3-2-32(c) as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse after the member's death.
 - (4) An eligible member who elects to participate in the DROP shall agree to do so for a period of three years.

- (5) Subject to any limitation on the number of accrued sick leave hours that may be converted to creditable service as provided in Section 3-2-~~12~~ (a)~~(2)~~, an eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her available accrued sick leave to creditable service or to convert all but 40 hours of his or her accrued sick leave to creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.
- (c) Continued employment.
- (1) A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County or School Board in the position he or she held before the effective date of his or her election to participate in the DROP. Thereafter, the participating DROP member shall perform the services of that position or any other position to which he or she is promoted or transferred.
 - (2) A participating DROP member shall continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member shall receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case shall a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.
 - (3) A participating DROP member shall continue to remain eligible for health and life insurance benefits provided by the County or the School Board to its employees and shall remain eligible to participate in the County's or School Board's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance benefits shall be the same deductions that would have been taken had the participating DROP member been an active County or School Board employee, not the deductions that would be taken from the retirement benefits and allowances of a retiree.
 - (4) All County or School Board personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member shall remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period shall not be included in the computation of the member's average final compensation. A participating DROP member shall also be subject to the County's disciplinary policies and regulations.
 - (5) If a participating DROP member's continued employment with the County or the School Board is interrupted by military service, there shall be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement benefits and allowances shall continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance shall be paid to the member whether or not he or she has returned to his or her former County or School Board position, and the member shall begin to receive his or her normal retirement benefits.
 - (6) Except as otherwise set forth herein, a participating DROP member's continued service shall be deemed to be normal service retirement and shall not count as creditable service with the System.
 - (7) Upon commencement of a participating DROP member's DROP period, the County or the School Board shall cease to withhold contributions to the System from the participating DROP member's salary.
 - (8) The salary received by a participating DROP member during his or her DROP period shall not be included by the County or the School Board in the base that is used to determine the amount of the County's or the School Board's employer contributions to the System.
- (d) DROP account.
- (1) Upon commencement of the participation of a member of either Plan A or Plan B, ~~whose County or School Board employment commenced by reporting for work before January 1, 2013,~~ in the DROP, the member's service retirement allowance pursuant to Section 3-2-32(a)(1) or (2) and the additional retirement allowance pursuant to Section 3-2-32(a)(3) or (4) shall be paid into the member's DROP account.
- ____ Upon commencement of the participation of a member of either Plan C, Plan D or Plan ~~D~~, ~~whose County or School Board employment commenced by reporting for work on or after January 1, 2013,~~ E in the DROP, the member's service retirement allowance pursuant to Section 3-2-32(a)(1) or (2) shall be paid into the member's DROP account; the additional retirement benefits provided for in Section 3-2-32(a)(3), ~~(4)~~ (4) and (5) shall not be credited to the DROP accounts of members of Plans C, D and ~~DE~~, although members of those Plans shall remain eligible to receive the additional retirement benefits provided for in Section 3-2-32(a) upon

the completion of their DROP period, if they then meet the requirements for eligibility for such benefits set forth in Section 3-2-32(a)(~~3-and~~), (~~4-~~) or (5), as applicable. The initial amount credited to a member's DROP account shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.

- (2) The initial monthly amount shall be increased each July 1 based upon the annual cost-of-living adjustment provided to retirees pursuant to Section 3-2-44. Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement allowances and benefits if he or she were retired shall also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.
 - (3) The participating DROP member's DROP account shall be credited with interest at an annual rate of five percent, compounded monthly. Interest shall not be pro-rated for any period less than a full month.
 - (4) Contributions by the County or the School Board and the participating DROP member into the System for the participating DROP member shall cease.
 - (5) Amounts credited to a participating DROP member's DROP account shall not constitute annual additions under Section 415 of the Internal Revenue Code.
 - (6) A participating DROP member's DROP account shall not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance shall remain part of the assets of the System.
- (e) Cessation of County or School Board employment.
- (1) At the conclusion of a participating DROP member's three-year DROP period, the member's County or School Board employment shall automatically cease. The participating DROP member shall then begin to receive normal service retirement allowances and benefits computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost-of-living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least 60 days prior to the conclusion of a participating DROP member's DROP period, the member shall make one of the following elections concerning payment of his or her DROP account balance:
 - (A) The member may receive payment of his or her DROP account balance as a lump sum.
 - (B) The member may elect to roll over his or her DROP account balance into a qualified retirement plan, such as an IRA.
 - (C) The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.
 - (D) The member may elect to use his or her DROP account balance to increase his or her monthly retirement allowances and benefits. The amount of the increase shall be determined based on the actuarial equivalent of the member's DROP account balance.
 - (E) The member may divide his or her DROP account balance in half, and may then elect to use 50 percent of his or her DROP account balance to increase his or her monthly retirement allowances and benefits, and to receive the remainder in any manner listed in Subparagraphs (A), (B) and (C) above. In the event that the participating DROP member does not make the election required by this Subsection, the DROP account balance shall be used to increase his or her monthly retirement allowances and benefits. The amount of the increase shall be determined based on the actuarial equivalent of the member's DROP account balance.
 - (2) A participating DROP member may terminate his or her County or School Board employment at any time, in which case the effective date of the member's termination of his or her County or School Board employment shall be treated as the end of the DROP period for all purposes of this Section.
 - (3) In the event that the employment of a participating DROP member is terminated by the County or the School Board during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.
- (f) Death or disability during DROP period.

- (1) If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of Section 3-2-32(c), the participating DROP member's surviving spouse shall receive payment of the participating DROP member's DROP account balance and shall begin to receive retirement allowances and benefits pursuant to the joint and last survivor option election of the participating DROP member.
- (2) If a participating DROP member becomes disabled during the DROP period, the participating DROP member shall receive:
 - (A) In the case that a participating DROP member suffers a disability that would be considered an ordinary disability as defined in Sections 3-2-33 and ~~3-2-35~~, the effective date of the member's disability shall be treated as the end of the participating DROP member's DROP period.
 - (B) In the case that a participating DROP member suffers a service-connected disability as set forth in Section 3-2-~~36~~35, the participating DROP member may elect either (i) to receive the service-connected disability retirement allowances and benefits to which he or she would otherwise be entitled or (ii) to receive the normal service retirement allowances and benefits to which he or she would be entitled plus his or her DROP account balance. An election to receive service-connected disability retirement allowances and benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.
- (g) Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board is also authorized to adopt rules and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (20-05-3; 40-08-3; 41-08-3; 27-10-3; 26-12-3; 2-16-3.)

Division 9. - Benefit Restoration Plan.

Section 3-2-57. - Benefit restoration plan.

- (a) There is hereby established a Benefit Restoration Plan for the System.
- (b) Purpose and intent; rule of construction.
 - (1) In establishing this Benefit Restoration Plan, the Board of Supervisors intends to establish and maintain a "qualified governmental excess benefit arrangement," as defined and authorized by Section 415(m) of the Internal Revenue Code, and as is permitted by Section 51.1-1302 of the *Virginia Code*. The purpose of this Benefit Restoration Plan is to restore, through a non-qualified arrangement, the benefits lost by the application of the limitation on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans. This Benefit Restoration Plan shall exist in addition to all other retirement, pension, or other benefits available to participants, including the benefits established by the System.
 - (2) This Section shall be construed to ensure compliance with federal and state law, and any regulations promulgated thereunder, governing such qualified governmental excess benefit arrangements, including, but not limited to Section 415(m) of the Internal Revenue Code, and Sections 51.1-1302, 51.1-1303, and 51.1-1304 of the *Virginia Code*, as in effect at the time of the adoption of this Section and as subsequently amended.
- (c) Definitions.
 - (1) *Administrator or Plan Administrator* shall mean the Board, which is responsible for the general administration and operation of the Benefit Restoration Plan and for making effective the provisions of this Section. Under the oversight of the Board, the Executive Director shall be responsible for the day-to-day operation and administration of the Benefit Restoration Plan.
 - (2) *Beneficiary* shall mean the person or persons entitled under this Article to receive any benefits payable after the participant's death.
 - (3) *Benefit Restoration Plan* or *Plan* shall mean the Benefit Restoration Plan for the System established by this Section.
 - (4) *Effective date* shall mean the date of this Section's adoption [June 5, 2006].

- (5) *Eligible member* shall mean a retired member of the System whose benefits thereunder are reduced by the application of the limitations on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans.
 - (6) *Enabling statute* shall mean Chapter 13 of Title 51.1 of the *Virginia Code*, as amended.
 - (7) *Grantor trust* shall mean the trust fund described in Subsection (i)(3) of this Section and established and maintained for the Benefit Restoration Plan.
 - (8) *Participant* shall mean an eligible member qualified to participate in the Benefit Restoration Plan.
 - (9) *Plan sponsor* shall mean the Board of Supervisors.
 - (10) *Plan year* shall mean the 12-month period beginning on July 1.
 - (11) *Restoration death benefit* shall mean the benefit due the beneficiary of a participant under the Benefit Restoration Plan as determined under this Section.
 - (12) *Restoration retirement benefit* shall mean the benefit due a participant or his or her beneficiary under the Benefit Restoration Plan determined under this Section.
- (d) Eligibility and participation.
- (1) Eligibility and date of participation. Each eligible member shall be a participant in the Benefit Restoration Plan commencing with the date he or she first becomes, or again becomes, an eligible member.
 - (2) Length of participation. Each eligible member who becomes a participant shall be or remain a participant for so long as he or she is entitled to future benefits under the terms of the Benefit Restoration Plan.
- (e) Restoration retirement benefit. Subject to the terms and conditions set forth in this Section, a participant who retires or is retired under the System and who is entitled to the payment of benefits under the System shall be entitled to a restoration retirement benefit, generally expressed as a benefit payable monthly for the life of the participant and commencing at the applicable time provided under this Article, equal to the excess, if any, of:
- (1) The amount of the participant's retirement allowance under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
 - (2) The amount of the participant's retirement allowance under the System.
- To the extent that the participant's retirement allowance payable under the System is increased at any time due to increases in limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U.S. Secretary of the Treasury or his or her delegate or otherwise, the participant's restoration retirement benefit shall be reduced correspondingly.
- (f) Death benefit.
- (1) Death after benefit commencement. If a participant dies after his or her restoration retirement benefit commences to be paid, the only benefits payable under the Benefit Restoration Plan to his or her beneficiary after his or her death shall be those, if any, provided under the form of payment being made to him or her at his or her death.
 - (2) Death before benefit commencement. If a participant dies before his or her restoration retirement benefit commences to be paid, the only benefit payable under the Benefit Restoration Plan with respect to him or her shall be the restoration death benefit, if any, provided in Subsection (f)(3) of this Section.
 - (3) Restoration death benefit. Subject to the terms and conditions set forth herein, if a participant dies on or after the effective date and before his or her restoration retirement benefit commences to be paid, his or her beneficiary shall be entitled to a restoration death benefit as follows:

- (A) If his or her beneficiary is entitled to receive any death benefit under the System, such beneficiary shall be entitled to receive as a restoration death benefit under the Benefit Restoration Plan an amount equal to the excess, if any, of:
 - (i) The amount of such death benefit under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
 - (ii) The actual amount of such death benefit under the System.

To the extent that the participant's accrued benefit or any death benefit payable under the System is increased at any time due to increases in the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U.S. Secretary of the Treasury or his or her delegate or otherwise, the participant's restoration death benefit shall be reduced correspondingly.

- (g) Vesting. A participant's restoration retirement benefit or restoration death benefit, as the case may be, shall be vested at the time of his or her retirement under the System or death, but only to the extent, and determined in the manner, that such participant has a vested and non-forfeitable right to his or her retirement allowance under the System.
- (h) Payment of benefits.
 - (1) Timing and manner for payment of benefits. A participant's restoration retirement benefit, or the restoration death benefit, shall be payable at the same time and in the same manner as the participant's retirement allowance or comparable death benefit (other than his or her accumulated contributions or contribution refund death benefit) is paid under the System, whether as elected by the participant or otherwise payable. For a member who is receiving a retirement allowance under the System on the effective date, and who would immediately be an eligible member upon the effective date, such member shall immediately commence receiving a restoration retirement benefit on a prospective basis.
 - (2) Discretionary use of other methods of payment. In the sole discretion of the Administrator, monthly payment amounts of less than \$100.00, or such amount as the Administrator may from time to time determine, may be paid on an annual or semi-annual basis, in arrears and without interest.
 - (3) Benefit determination and payment procedure. The Administrator shall make all determinations concerning eligibility for benefits under the Benefit Restoration Plan, the time or terms of payment, and the form or manner of payment to the participant (or the participant's beneficiary in the event of the death of the participant). The Administrator shall promptly notify the employer and, where payments are to be made from a grantor trust, the trustee thereof, of each such determination that benefit payments are due and provide to the employer or trustee such other information necessary to allow the employer or trustee to carry out said determination, whereupon the employer or trustee shall pay such benefits in accordance with the Administrator's determination.
 - (4) Payments to minors and incompetents. If a participant or beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits shall be paid to such person as the Administrator may designate for the benefit of such participant or beneficiary. Such payments shall be considered a payment to such participant or beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Benefit Restoration Plan.
 - (5) Distribution of benefit when distributee cannot be located. The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a participant or his or her beneficiary entitled to benefits under the Benefit Restoration Plan, including the mailing by certified mail of a notice to the last known address shown on the employer's or the Administrator's records. If the Administrator is unable to locate such person entitled to benefits hereunder, or if there has been no such claim made for such benefits, the employer shall continue to hold the benefit due such person, subject to any applicable statute of escheats.

- (i) Funding.
 - (1) The undertaking to pay the benefits hereunder shall be unfunded obligations payable solely from the general assets of the employer and subject to the claims of the employer's creditors.
 - (2) Except as provided in a grantor trust established as permitted under Subsection (i)(3) of this Section, nothing contained in the Benefit Restoration Plan and no action taken pursuant to this Section shall create or be construed to create a trust of any kind of a fiduciary relationship between the employer and the participant or his or her beneficiary or any other person or to give any participant or beneficiary any right, title, or interest in any specific asset or assets of the employer. To the extent that any person acquires a right to receive payments from the employer under the Benefit Restoration Plan, such rights shall be no greater than the right of any unsecured general creditor of the employer.
 - (3) Use of grantor trust permitted. Notwithstanding any provision of this Section to the contrary, the Benefit Restoration Plan Sponsor may in its sole discretion elect to establish and fund a grantor trust for the purpose of providing benefits under the Benefit Restoration Plan.
- (j) Plan administrator.
 - (1) The Plan Administrator shall have full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Benefit Restoration Plan pursuant to this Section and the enabling statute. The Administrator shall have any and all powers as may be necessary or advisable to discharge its duties under the Benefit Restoration Plan including the power and authority to interpret the terms of the Benefit Restoration Plan.
 - (2) The Plan Administrator shall be responsible for performing the duties required for the operation of the Benefit Restoration Plan, and shall be responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities under this Section and the enabling statute.
 - (3) To enable the Plan Administrator to perform its responsibilities, employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Benefit Restoration Plan. The Plan Administrator shall rely upon this information supplied by the employer, and shall have no duty or responsibility to verify this information.
 - (4) Except as prohibited by law or by this Section, the Plan Administrator may delegate any of its duties to the Executive Director. The Plan Administrator may contract with any person to provide services to assist in the administration of the Benefit Restoration Plan. The Plan Administrator shall make such contracts in compliance with all applicable state and local laws and regulations. Any person other than the Plan Administrator who performs services regarding the Benefit Restoration Plan shall be subject to the supervision and direction of the Plan Administrator and shall not have the authority to control the operation of the Plan.
- (k) Termination and amendment of Benefit Restoration Plan.
 - (1) Termination. The Board of Supervisors hereby reserves the right to terminate this Benefit Restoration Plan at any time; provided, that no such termination shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such termination.
 - (2) Amendment. The Board of Supervisors hereby reserves the right to amend this Benefit Restoration Plan at any time; provided, that no such amendment shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such amendment.
- (l) Non-assignability. The interests of each participant hereunder in the Benefit Restoration Plan are not subject to the claims of the participant's creditors; and neither the participant nor his or her beneficiary, shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Benefit Restoration Plan, which payments and interest are expressly declared to be non-assignable and non-transferable. Notwithstanding the foregoing, the

Plan Administrator shall honor any process for a debt to the employer who has employed the participant and any administrative actions pursuant to Section 63.2-1900 et seq. of the *Virginia Code*, or any court process to enforce a child or spousal support obligation, in the manner as described in Section 3-2-6 mutatis mutandi. Restoration retirement benefits and/or restoration death benefits created under this Section which are deemed to be marital property pursuant to Section 20-89.1 et seq. of the *Virginia Code* may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Virginia Code*. Under no circumstances shall a payment under this Subsection take place before the participant's benefit under the System is actually paid. (12-06-3; 2-16-3.)

ARTICLE 3. - Fairfax County Uniformed Retirement System.

Division 1. - Generally.

Section 3-3-1. - Fairfax County Uniformed Retirement System established.

Under the authority of Section 51.1-801 of the *Virginia Code*, there is hereby established a retirement system for employees, to be known as the "Fairfax County Uniformed Retirement System," by and in which name it shall, pursuant to the provisions of this Article, transact all of its business. The Fairfax County Uniformed Retirement System is intended to satisfy the requirements of Sections 401(a) and 414(d) of the Internal Revenue Code for qualified governmental pension plans. (1961 Code, § 9-73; 11-74-9; 28-77-3; 51-13-3; 3-16-3.)

Section 3-3-2. - Definitions.

Unless provided otherwise in another Section, the following definitions shall apply to this Article:

(a) *Accrued sick leave credit* shall mean:

- (1) For employees ~~whose County employment commenced by reporting for work before January 1, 2013~~ who are (members of Plans A, B, C, or D); the credit allowed a member with more than five years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof.
- (2) For employees ~~whose County employment commenced by reporting for work on or after January 1, 2013 (who are~~ members of Plans E or F) ~~and for employees whose County employment commenced by reporting for work on or after July 1, 2019 (Plan F)~~, the credit allowed a member with more than five (5) years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof; however, for employees whose County employment commenced by reporting to work on or after January 1, 2013, notwithstanding the amount of the employee's accrued sick leave balance, the maximum amount of accrued sick leave credit that may be used for determining retirement eligibility and for computing the member's retirement allowances and benefits shall be the employee's accrued sick leave balance or 2,080 hours, whichever is less.

(b) *Accumulated contributions* shall mean the sum of all amounts deducted or picked up from the compensation of a member and credited to his or her individual account in the members' contribution account, any amounts transferred from another retirement plan pursuant to Section 3-3-25.1, together with interest credited on such amounts and any other amounts he or she shall have contributed or transferred thereto as provided in Section 3-3-29(c).(c) *Actuarial equivalent* shall mean a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board.(d) *Average final compensation* shall mean the average annual creditable compensation of a member during the three consecutive years (78 consecutive pay periods) of creditable service in which such compensation was at its greatest amount, or during the entire period of his or her creditable service if less than three years, for a member of Plan A, B, C, ~~or D, or E,~~ or 60 consecutive months (130 consecutive pay periods for members who are paid on a biweekly basis) for a member of Plan F, or during the entire period of his or her creditable service if less than five years. In determining creditable compensation, premium payments such as overtime pay shall not be included.

- (1) In determining average final compensation for members who retire on or after January 1, 1988, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the

member had continued to work at his or her final salary during the period of his or her accrued unused sick leave; provided, that in determining the average final compensation for members who became members of the System on or after January 1, 2013 (members of Plans E and F,) ~~and for members who became members of the System on or after July 1, 2013 (members of Plan F),~~ no more than 2,080 hours of the member's accrued unused sick leave may be used for this purpose.

- (2) If a member ordered or called to active duty with the armed forces of the United States on or after August 2, 1990, with or without his or her consent, other than for training at the request of the member, is entitled to service credit as a result of such military service pursuant to Section 3-3-25(b) and he or she otherwise would have no creditable compensation attributable to some portion or all of such period of service, his or her average final compensation shall be calculated as if he or she had continued to receive the creditable compensation as defined in this Article and approved and established for his or her position by the County Compensation Plan, including pick-up contributions, during the period of military service for which he or she is receiving service credit. A member shall be entitled to the benefit of the application of this rule for up to a cumulative total of four years of military service commencing on or after August 2, 1990. The Board shall make any and all necessary retroactive adjustments to members' allowances as a result of this rule.
- (3) Notwithstanding the foregoing, whenever the Director of the Department of Human Resources, at the request of the Board, the member, or the member's beneficiary, determines that the member's receipt of a merit increment was delayed as a result of either or both of the amendments to Section 4.3-2 of the Personnel Regulations, effective July 13, 1991, and July 11, 1992, and that the member would otherwise have been entitled to such merit increment under the Personnel Regulations, based upon the Human Resources Director's review of the member's personnel and payroll records, the Board shall calculate the member's average final compensation as if the member had received the merit increment at the time he or she would have but for the aforesaid amendments to Section 4.3-2 of the Personnel Regulations. This rule shall apply to all applications for allowances and benefits filed with the Board on or after July 13, 1991. The Board shall make any necessary retroactive adjustments to allowances and benefits.
- (4) Periods of leave without pay under the federal Family and Medical Leave Act of 1993 (FMLA) shall be disregarded in determining periods of consecutive months or pay periods in calculating average final compensation.
- (e) *Beneficiary* shall mean any person entitled to receive benefits as provided by the System. The Board shall provide a member with a form on which to designate in writing one or more beneficiaries of the member's benefits upon the member's death. The Board shall maintain any such written designation on file. A designated beneficiary may be changed from time to time by written notice by the member filed with the Board.
- (f) *Board* shall mean the Board of Trustees of the System, as provided for in this Article.
- (g) *Creditable compensation* shall mean the full compensation, including pick-up contributions, holiday hours worked, administrative emergency leave worked, shift differential paid and regularly scheduled hours paid, credited at the base rate of pay but excluding premium pay such as all overtime, including Fair Labor Standards Act (FLSA) overtime and excluding performance bonuses. Effective for plan years after December 31, 1988, compensation in excess of \$200,000.00, as indexed under Section 415(d) of the Internal Revenue Code, shall be disregarded. Notwithstanding the foregoing, effective for members whose County employment commenced by reporting for work on or after July 1, 1996, compensation in excess of the limit set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. In determining the compensation of an employee under this definition, the rules of Section 415(c)(3) of the Internal Revenue Code shall apply. Effective for plan years on or after January 1, 2001 an employee's compensation shall include amounts not includible in gross income by reason of Section 132(f)(4) of the Internal Revenue Code.

- (h) *Creditable service* shall mean the sum of membership service credit, plus prior service credit, plus portability service credit purchased pursuant to Section 3-3-25.1, plus accrued sick leave credit.
- (i) *DROP* shall mean the Deferred Retirement Option Program, as provided in Section 3-3-573-3-56.
- (j) *Early retirement* shall mean the retirement upon completion of 20 years of service with an actuarial reduction of the normal retirement allowance accrued.
- (k) *Employee* shall mean any person regularly employed within the Fire and Rescue Department, the Sheriff's Department, and the Department of Animal Control, with the exception of clerical personnel in these departments, or as a park police officer or helicopter pilot, rendering service to the County, and any person regularly employed within the Department of Public Safety Communications who transferred into the System pursuant to Section 3-2-19(e) or who was appointed to a position in the classes identified in Section 3-3-20(a)(4) on or after July 1, 2005, whose compensation is fully or partially paid directly or indirectly by the County.
- (l) *Employer* shall mean an authority in the general County having the power to appoint an employee to office or employment paid directly or indirectly by the County and the Board of Trustees of the System.
- (m) *Executive Director* shall mean the Executive Director of the Fairfax County Retirement Administration Agency.
- (n) *Internal Revenue Code* shall mean the federal income tax statutes, as they may be amended or superseded from time to time in the future.
- (p) *Medical Examining Board* shall mean the physician or physicians provided for by Section 3-3-10.
- (q) *Member* shall mean any person included in the membership of the System as provided in Section 3-3-20.
- (r) *Membership service credit* shall mean credit for service rendered while a member of the System, or as otherwise provided in Section 3-3-24.
- (s) *Normal retirement date* shall mean either (1) the member's 55th birthday, provided, said member shall have completed six years of creditable service as a uniformed member of the Fire and Rescue Department, Sheriff's Department, or Department of Animal Control, or as a park police officer, helicopter pilot, or sheriff, or (2) the date the member completes 25 years of creditable service as a uniformed member of the Fire and Rescue Department, Sheriff's Department, or Department of Animal Control, or as a park police officer, helicopter pilot, or sheriff. The normal retirement date for members who are former park police officers who elected to remain in the System pursuant to Section 3-3-20(b)(2) shall be computed in the same manner. Creditable service for these members shall include service both as a park police officer and as a police officer.
- (t) *Pick-up contributions* shall mean a member's regular contribution which is picked up, through a salary reduction, by the County from the member's compensation for service rendered on or after December 22, 1984.
- (u) *Plan A* shall mean the option effective July 1, 1981, available to employees whose County employment commenced by reporting for work on or before March 31, 1997, providing for current members of Plan A to:
 - (1) Contribute four percent of compensation up to the taxable wage base and five and three-fourths percent of compensation in excess of the taxable wage base; and
 - (2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(A) and (B) or as provided for in Section 3-3-33(a)(2)(A). Further, cost-of-living adjustments shall not be applicable to the allowance until the member reaches age 55 years, at which time the full benefits prescribed in Section 3-3-33 and Section 3-3-45 shall become payable.

- (v) *Plan B* shall mean the provision effective July 1, 1981, allowing current members the option and requiring new members whose County employment commenced by reporting for work on or before March 31, 1997, to:
 - (1) Contribute seven and eight-one-hundredths percent of compensation up to the taxable wage base and eight and eighty-three-one-hundredths percent of compensation in excess of the taxable wage base; and
 - (2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(A), (B), and (C) or as provided for in Section 3-3-33(a)(2)(A) and (B). Cost-of-living adjustments provided for in Section 3-3-45 shall be applied to this amount from the date of retirement. Additionally, 50 percent of the retirement allowance provided in Section 3-3-33(a)(1)(B) shall be payable from the date of retirement. Upon attainment of age 55 years, benefits shall be based on the provisions of Section 3-3-33(a)(1)(A) and (B).
- (w) *Plan C* shall mean the provision effective April 1, 1997, allowing then-existing members of Plan A who elect to transfer to Plan C prior to April 1, 1997, to:
 - (1) Contribute four percent of compensation; and
 - (2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(C). Further, cost-of-living adjustments shall not be applicable to the allowance until the member reaches age 55 years, at which time the full benefits prescribed in Sections 3-3-33 and 3-3-45 shall become payable.
- (x) *Plan D* shall mean the provision effective April 1, 1997, allowing then-existing members of Plan B, and requiring new members whose County employment commenced by reporting for work on or after April 1, 1997, but on or before December 31, 2012, to:
 - (1) Contribute seven and eight-one-hundredths percent of compensation; and
 - (2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(D). Cost-of-living adjustments provided for in Section 3-3-45 shall be applied to this amount from the date of retirement.
- (y) *Plan E* shall mean the option effective ~~beginning on~~ January 1, 2013, requiring new members whose County employment commenced by reporting for work on or after January 1, 2013, and before July 1, 2019, to:
 - (1) Contribute seven and eight-one-hundredths percent of compensation; and
 - (2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(D). Cost-of-living adjustments provided for in Section 3-3-45 shall be applied to this amount from the date of retirement.
- ~~(-Zz)~~— *Plan F* shall mean the option effective July 1, 2019, requiring new members whose County employment commenced by reporting for work on or after July 1, 2019, to-
 - (A) Contribute seven and eight-one-hundredths percent of compensation; and
 - (B) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(d) and as provided for Section 3-3-33(3)(C). Cost of living adjustments provided for in Section 3-3-45 shall be applied to this amount from the date of retirement.
- ~~(aa)z~~ *Primary social security benefit* shall mean the primary insurance amount to which the member is entitled, for old age or disability, as the case may be, pursuant to the federal Social Security Act as in effect at his or her date of retirement, under the provisions of this Chapter, except as otherwise specifically provided.

- (~~bb~~aa) *Prior service credit* shall mean credit for service rendered prior to the effective date of this Article [May 6, 1974], or as otherwise provided in Section 3-3-25.
- (~~cc~~bb) *Qualifying employment* shall mean employment that qualifies an employee for participation in the System, and defined specifically to mean regular employment by the Fire and Rescue Department, the Sheriff's Department, and the Department of Animal Control, with the exception of clerical employment in these departments, or as a park police officer or helicopter pilot rendering service to the County, whose compensation is fully or partially paid directly or indirectly by the County.
- (~~dd~~ee) *Retirement allowance* shall mean the retirement payments to which a member is entitled as provided in this Article.
- (~~ee~~dd) *Salary* shall mean the compensation, including pick-up contributions, established for each position as approved in the County Compensation Plan.
- (~~ff~~ee) *Service* shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.
- (~~gg~~ff) *Social security* shall mean the federal Social Security Act and its programs for old age, survivors and disability insurance and benefits, as applicable.
- (~~hh~~gg) *Social security breakpoint* shall mean the average of the taxable wage base for the 35 calendar years ending with the year in which the member attains social security normal retirement age. In determining a member's social security breakpoint during any particular plan year, it is assumed that the taxable wage in effect at the beginning of the plan year shall remain the same for all future years.
- (~~ii~~hh) *System* shall mean the Fairfax County Uniformed Retirement System. When any part of this Article refers to multiple retirement systems, the Uniformed Retirement System shall be referred to as "this System," rather than "the System."
- (~~iii~~i) *Taxable wage base* shall mean the maximum amount of wages received during the calendar year on which social security taxes are payable by the member and by the employer, as such amount is defined in Section 3121(a) of the Internal Revenue Code.

(1961 Code, § 9-72; 11-74-9; 28-77-3; 20-81-3; 5-83-3; 22-83-3; 23-85-3; 36-88-3; 29-89-3; 27-90-3, § 3; 43-92-3; 15-93-3; 37-94-3; 21-96-3; 14-00-3; 10-01-3; 18-01-3; 8-03-3; 8-04-3; 36-10-3; 27-12-3; 3-16-3.)

Section 3-3-2.1. - Definitions elsewhere in County Code and in County Personnel Regulations.

Unless this Article provides otherwise, the definitions provided in Sections 1-1-2, 3-3-1, and 3-3-12 of the Code of the County of Fairfax, and Chapter 2 of the Fairfax County Personnel Regulations shall apply herein. (3-16-3.)

Section 3-3-3. - Social Security Breakpoint.

Repealed by 3-16-3.

Section 3-3-4. - Duties of appointing authorities.

The authority having the power to hire the services of a member shall keep such records and from time to time shall furnish such information as the Board may require in the discharge of its duties. Upon employment of a member, the authority shall inform the member of his or her duties and obligations in connection with the System as a condition of employment. (1961 Code, § 9-74; 11-74-9; 3-16-3.)

Section 3-3-5. - Consent to provisions of Article required for employment.

By and upon acceptance of employment, every member shall be deemed to consent and agree to any deductions or employer pick-up of amounts from his or her compensation required by this Article and to all other provisions thereof. (1961 Code, § 9-75; 11-74-9; 5-85-3; 3-16-3.)

Section 3-3-6. - Protection against fraud.

In addition to any other provisions of law, any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the System in any attempt to defraud the System shall be guilty of a misdemeanor and shall be punished accordingly. (1961 Code, § 9-76; 11-74-9; 3-16-3.)

Section 3-3-7. - Benefits unassignable; non-attachable.

The right of any member to a retirement allowance, the return of accumulated contributions or any other right accrued or accruing to any person under this Article and the money created by this Article shall be unassignable and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws or any other process of law whatsoever except for administrative actions pursuant to Section 63.2-1900 et seq. of the *Virginia Code*, or any court process to enforce a child or child and spousal support obligation, and shall be unassignable except as specifically provided in this Article. However, retirement benefits and assets created under this Article which are deemed to be marital property pursuant to Section 20-89.1 et seq. of the *Virginia Code*, may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Virginia Code*. (1961 Code, § 9-77; 11-74-9; 3-80-3; 5-85-3; 13-92-3; 1-93-3; 3-16-3.)

Section 3-3-8. - Errors resulting in over- or under-payment.

Should any change or error in the records result in any member or beneficiary receiving from the System more (overpayment) or less than he or she would have been entitled to receive had the records or computation been correct, the Board shall have the power to correct such error and, as far as practicable, to adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1961 Code, § 9-78; 11-74-9; 3-16-3.)

Section 3-3-9. - Amendment of Article.

The Board of Supervisors shall have the continuing right and power to amend or supplement this Article at any time, which right and power is hereby expressly reserved. But no amendment shall be made unless an actuarial report has been filed with the Board of Supervisors as to its effect upon the System and no amendment shall be adopted which shall reduce the then accrued benefits of members or beneficiaries below the extent they are then covered by accumulated reserves, which reserves shall constitute a trust fund for the payment of such benefits. (1961 Code, § 9-79; 11-74-9; 3-16-3.)

Section 3-3-10. - Medical Examining Board.

The Medical Examining Board shall consist of the Director of the Health Department (or his or her designee) and, in the discretion of the Board, one or two other physicians designated by the Board. The duties of the Medical Examining Board shall be to arrange for and pass upon all medical examinations required under this Article or requested by the Board and to investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement. The members of the Medical Examining Board, who may act individually or collectively, shall report in writing to the Board their conclusions and recommendations upon all matters referred to it. (1961 Code, § 9-80; 11-74-9; 27-97-3; 3-16-3.)

Section 3-3-10.1. - Post-employment physical examinations.

- (a) Any member or person eligible to participate in the System who applies for service-connected disability retirement or severe service-connected disability retirement on or after July 1, 2004, shall disclose to the Board any and all medical records and information, including, but not limited to any pre-employment or post-employment physical examination, any examination made relating to any claim under the Virginia Workers' Compensation Act and any and all other further tests or examinations required by the Board to assist it in its determination of whether the disability for which the member seeks retirement is service-connected or if it is the result of a preexisting condition.
- (b) Failure to disclose to the Board any medical record or information required hereunder or to undergo any further required tests or examinations shall preclude a member who does not disclose such medical records and information or such other further tests or examinations from receiving service-connected disability retirement as provided for in Section 3-3-36 and from receiving severe service-connected disability retirement as provided for in Section 3-3-37.2. (34-04-3; 3-16-3.)

Division 2. - Board of Trustees.

Section 3-3-11. - Administration of System vested in Board of Trustees.

The general administration and the responsibility for the proper operation of the System and for making effective the provisions of this Article are hereby vested in the Board. (1961 Code, § 9-81; 11-74-9; 3-16-3.)

Section 3-3-12. - Membership; term of office.

(a) The Board of Trustees of the System shall consist of the following members:

- Four persons appointed by the Board of Supervisors;
- Two persons elected by the uniformed employees of the Fire and Rescue Department and the employees of the Department of Public Safety Communications;
- One person elected by the uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and helicopter pilot members of the System;
- One person elected by the retirees of the System;
- Director of the Department of Finance, who shall be the Treasurer of the Board, or his or her permanent designee, sitting ex officio; and
- Director of the Department of Human Resources, or his or her permanent designee, sitting ex officio.

(b) With the exception of the Director of the Department of Finance and Director of the Department of Human Resources, the terms of office of the trustees shall be four years.

(c) The only persons eligible to be elected by the uniformed employees of the Fire and Rescue Department and the employees of the Department of Public Safety Communications as trustees are uniformed employees of the Fire and Rescue Department and employees of the Department of Public Safety Communications. The only persons eligible to be elected as a trustee by the uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and helicopter pilot members of the System are uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and helicopter pilot members of the System. The offices of such trustees shall be vacated should such trustees separate from service prior to the completion of their term.

(d) The only persons eligible to be elected as a trustee by the retirees of the System are retirees of the System. (1961 Code, § 9-82; 11-74-9; 20-81-3; 13-92-3; 40-93-3; 36-10-3; 59-13-3; 3-16-3.)

Section 3-3-13. - Vacancies in office.

If a vacancy occurs in the office of a trustee of the System, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. (1961 Code, § 9-83; 11-74-9; 3-16-3.)

Section 3-3-14. - Compensation of trustees.

The trustees of the System may receive compensation at the rate set by the Board of Supervisors. (1961 Code, § 9-84; 11-74-9; 3-16-3.)

Section 3-3-15. - Accountable to the Board of Supervisors.

The Board of Trustees of the System shall be accountable to the Board of Supervisors. (1961 Code, § 9-85; 11-74-9; 3-16-3.)

Section 3-3-16. - Functions of the Board.

- (a) Subject to the limitations of this Article, the Board shall, from time to time, establish rules and regulations for the administration of the System and for the transaction of its business, copies of which shall be made available to interested parties.
- (b) The Board may employ and pay out of the System funds for all services as shall be required.
- (c) The Board shall keep in convenient form such data as shall be necessary for an actuarial valuation of the System and for checking the experience of the System.
- (d) The Board shall keep minutes of all its proceedings, which shall be open to public inspection unless applicable law provides otherwise.

- (e) The Board shall submit to the Board of Supervisors annually an independent audit showing the fiscal transactions of the System for the preceding fiscal year, the amount of accumulated cash and securities of the System, and the last balance sheet indicating the financial condition of the System.
- (f) At least once in each two-year period, beginning July 1, 1969, the Board shall cause an actuarial evaluation to be made of the System.
- (g) The Board shall review adverse decisions as provided by Section 3-3-49. (1961 Code, § 9-86; 11-74-9; 3-16-3.)

Division 3. - Management of Funds.

Section 3-3-17. - Board trustee of funds; investment of same.

- (a) The Board shall be the trustee of funds created by this Article and shall have full power to invest and re-invest such funds. Such investments and re-investments shall be conducted with bona fide discretion and in accordance with the laws of the Commonwealth of Virginia as such laws apply to fiduciaries investing such funds. The Board may, upon the exercise of bona fide discretion, employ investment counsel, who shall be subject to the same limitations herein provided for the Board. Subject to such limitations, the Board shall have full power to hold, purchase, sell, assign, transfer, or otherwise dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as the proceeds of such investments and any money belonging to such funds.
- (b) No trustee shall be personally liable for losses suffered by the System on investments made under the authority of and in compliance with this Section. (1961 Code, § 9-87; 11-74-9; 3-16-3.)

Section 3-3-18. - Treasurer fiscal officer of the Board.

The Treasurer of the Board shall be the custodian of all of its funds and securities or evidences of such when in the custody of a fiduciary agent. He or she shall give bond, conditioned upon the faithful performance of his or her duties and the proper accounting of all funds and securities coming into his or her hands. He or she shall deposit all money in the name of the Board and disburse the same only on vouchers signed by such person as is designated for the purpose by the Board. (1961 Code, § 9-88; 11-74-9; 3-16-3.)

Section 3-3-19. - Prohibited interest of member or employee of Board.

- (a) The State and Local Government Conflict of Interests Act, Section 2.2-3100 et seq. of the *Virginia Code*, shall apply to members and employees of the Board.
- (b) No member or employee of the Board shall, directly or indirectly, for himself or herself or as an agent in any manner use the funds of the System, except to make such current and necessary payments as are authorized by the Board. (1961 Code, § 9-89; 11-74-9; 3-16-3.)

Division 4. - Membership in System.

Section 3-3-20. - Membership composition.

- (a) Membership shall be composed of the following:
 - (1) Present employees, as hereinafter identified, except those listed in Subsection (2)(B) of this Section:
 - (A) All persons who were employees on the effective date of this Article or who were on leave from service on such date; or
 - (B) Any employee, otherwise qualified, who has been a member of another Fairfax County retirement system, and who has withdrawn therefrom, provided he or she pays into this System all contributions which would have been due from him or her had he or she been a member of this System, plus interest at the rate or rates, as established by the Board, for each of the years for which membership service credit is sought.
 - (2) Future employees, as hereinafter identified, except those listed in Subparagraph (B) of this Subsection:
 - (A) All persons who hereafter shall become employees, persons receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement

System, or Fairfax County Police Officers Retirement System eligible for membership only under the terms and conditions set forth in Section 3-3-43.

- (B) Employees who are members of the Virginia Retirement System (VRS) and the Educational Employees Supplemental Retirement System of Fairfax County (ERFC), the Employees' Retirement System, or the Police Officers Retirement System, and future employees who are eligible to become members of those systems are not eligible for membership in this System; provided, that an employee who is a member of such a system shall be eligible for membership in this System if he or she elects in writing to withdraw from such system, pursuant to the rules and regulations of this System and of the system of which he or she was previously a member. If the withdrawal from the other system occurs due to being employed in a different position by the same appointing authority, the employee shall be required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-3-24. If the withdrawal from the other system occurs due to being employed by a different appointing authority, the employee shall be permitted but not required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-3-24. Elected officials, who elect in writing at the time of their employment not to become members, shall be exempted from this System.
- (3) The membership in this System of uniformed employees of the Department of Animal Control transferred from the Employees' Retirement System to this System pursuant to Section 3-2-19(d) shall commence on October 1, 1985, or date of appointment, whichever is later. For purposes of this Article, such members shall be deemed to have been appointed on or after January 1, 1984, regardless of being granted any membership service credit pursuant to Section 3-3-24. Uniformed employees of the Department of Animal Control, including the Director, appointed on or after October 1, 1985, shall become members of this System upon appointment.
- (4) The membership in this System of certain employees of the Public Safety Communications Center transferred from the Employees' Retirement System to this System pursuant to Section 3-2-19(e), shall commence on October 1, 2005, or date of appointment, ~~which ever~~ whichever is later. Employees of the Public Safety Communications Center appointed on or after July 1, 2005, in the class specification Public Safety Communications Squad Supervisor, Public Safety Communications Assistant Squad Supervisor, Public Safety Communicator III, Public Safety Communicator II or Public Safety Communicator I, or any successor class specification(s) to these class specifications, shall become members of this System upon appointment.
- (b) Park police transferring to the Fairfax County Police Officers Retirement System.
 - (1) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, shall, within 30 days of the adoption of this Subsection [June 20, 1983], make an irrevocable election, in writing, whether to remain members of this System or to transfer to the Fairfax County Police Officers Retirement System.
 - (2) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, who elect to remain as members of this System shall continue as members of this System.
 - (3) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, who elect to transfer to the Police Officers Retirement System shall cease to be members of this System and shall be members of the Police Officers Retirement System as of January 22, 1983.
 - (4) Members who elect to transfer to the Police Officers Retirement System pursuant to Subsection (b)(3) of this Section shall make a further election among the following options at the time of their election under Subsection (b)(1) of this Section:
 - (A) Withdraw the total of his or her accumulated member contributions (with interest) as of January 22, 1983, which shall be reduced by the amount of any retirement allowances

previously received by him or her under this Article. Any member contributions to this System after January 22, 1983, shall be transferred to the transferee's member account in the Police Officers Retirement System. Said refund shall be paid to the member not later than 90 days from the date of receipt of the member's election by the Board; or

- (B) If the member has five or more years of creditable service in this System on January 22, 1983, the member may leave his or her accumulated contributions as of January 22, 1983, in this System and receive a deferred vested benefit commencing on the first of the month coinciding with or following the date the member attains age 55 years, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article; and any member contribution made to this System after January 22, 1983, shall be transferred to the transferred member's account in the Police Officers Retirement System; or
 - (C) The member may transfer his or her accumulated contributions to the Police Officers Retirement System to obtain prior service credit in that system pursuant to Section 3-7-20(b). In this case, the Board shall transfer the member's accumulated contributions (plus interest) as well as that portion of the retirement allowance account representing employer contributions to this System attributable to the member's service in this System to the Police Officers Retirement System.
- (5) Members who are required by Subsection (b)(1) of this Section to make an election whether to transfer to the Police Officers Retirement System who fail to do so within the 30 day period provided therein shall be deemed to have elected to continue in this System pursuant to Subsection (b)(1) of this Section.
- (6) Participation in this System of former members who return to qualifying employment ~~shall be determined in accordance with the following terms and conditions: and~~
- ~~(A) Former members~~ who have not withdrawn their accumulated contributions from this System as provided in Section 3-3-39 shall return to membership in the plan to which they were contributing at the time their former employment ceased.
- ~~(B) Former members who withdrew their accumulated contributions from this System as provided in Section 3-3-39 subsequent to the cessation of their former employment shall become members of Plan D upon their return to qualifying employment. A former member may purchase membership service credit for the period of his or her prior employment, provided that he or she pays into this System all contributions that would have been due from him or her had he or she been a member of this System during the period of his or her prior employment, plus interest on such contributions at the rate or rates established by the Board, for each of the years for which membership service credit is sought. Any election to purchase membership service credit for periods of prior employment under this Subsection must be made within one year after the former member returns to qualifying employment.~~
- (c) Members of the System who were deputy sheriffs and who as deputy sheriffs had been performing nursing and/or paramedical duties in the Sheriff's Department and who when reassigned to civilian positions in the Sheriff's Department allocated to one of the classes in the Correctional Health Nurse class series, shall, notwithstanding any other provision in this Chapter to the contrary, remain as members of the System so long as they remain in such positions and for so long as they remain so continuously employed in a position allocated to such classes in the Sheriff's Department or in other positions covered by this Article.
- (d) Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of this System who has more than five years of creditable service in this System and who is appointed to serve as a Deputy County Executive shall remain a member of this System, and shall not become a member of the Fairfax County Employees' Retirement System as a result of such appointment. Any such member shall remain a member of this System for so long as he or she is so employed or subsequently resumes working in a position that is covered under this System. (1961 Code, § 9-90; 11-74-9; 35-81-3; 22-83-3; 23-85-3; 36-86-3; 45-93-3, 10-01-3; 32-02-3; 23-05-3; 27-12-3; 3-16-3.)

Section 3-3-21. - Cessation of membership.

The membership of any person in the System shall cease:

- (a) If he or she ceases to be an employee for a period of five years; or
- (b) Upon separation and withdrawal of his or her accumulated contributions; or
- (c) Upon death. (1961 Code, § 9-91; 11-74-9; 20-81-3; 3-16-3.)

Division 5. - Service Credit.

Section 3-3-22. - Statement to be filed with Board.

Under such rules and regulations as are adopted by the Board, each member or someone on his or her behalf shall file with the Board in such form as the Board may prescribe, a statement of the facts pertaining to his or her status as a member, which shall include a statement of all service rendered as an employee, and such other information as the Board may require. Until such statement is filed, no member or his or her beneficiary shall be eligible to receive any benefits under this Article. (1961 Code, § 9-92; 11-74-9; 3-16-3.)

Section 3-3-23. - Year of service.

The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow credit for more than one year of service for all service rendered in any period of 12 consecutive months. (1961 Code, § 9-93; 11-74-9; 3-16-3.)

Section 3-3-24. - Membership service credit.

- (a) Each member shall receive membership service credit for periods for which he or she received compensation and was a member of the System or after he or she last became a member in the event of a break in his or her membership, provided that any former member of the System who ceased his or her County employment and withdrew his or her accumulated member contributions from the System may purchase membership service credit by paying into the System all accumulated contributions which were collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; a member may not purchase credit for only a portion of any prior period of service, but may only purchase credit for an entire prior period of service.

(1) In the event that a member of Plan A, Plan B, Plan C, Plan D, or Plan E ~~s-A, B, C, D or E~~, who ceased his or her County employment and withdrew his or her accumulated member contributions from the System seeks, on or after January 1, 2013, and before July 1, 2019, January 1, 2013, to purchase credit for periods during which he or she received compensation as a member of the System, he or she may only become a member of, and purchase membership service credit in, Plan E by paying into the System all accumulated contributions which would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought.

(2) In the event that a member of Plan A, Plan B, Plan C, Plan D, Plan E, or Plan F who ceased his or her County employment and withdrew his or her accumulated member contributions from the System seeks, on or after July 1, 2019, to purchase credit for periods during which he or she received compensation as a member of the System, he or she may only become a member of, and purchase membership service credit in Plan F, by paying into the System all accumulated contributions which would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought.

(3) ~~;~~ however, nNotwithstanding the foregoing, a member of any of the ~~six five~~ Plans (A, B, C, D, E or F) that are part of the System who ceased his or her County employment, but who left his or her accumulated member contributions in the System, shall, upon his or her return to County employment, rejoin the Plan to which he or she formerly belonged. Such member may satisfy some or all of the amount due from him or her for the purchase of such service through a rollover from an individual retirement account if the entire amount in that account is attributable to a

rollover from the System. Such member may also satisfy some or all of the amount due from him or her for the purchase of such service through a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), or through a direct trustee-to-trustee transfer from an annuity contract described in Section 403(b) of the Internal Revenue Code.

- (1b) Members who are former park police officers who elected to remain in the System under Section 3-3-20(b)(2) shall receive membership service credit for service rendered as a park police officer and for their service as a police officer, including time served as a police officer prior to their election pursuant to Section 3-3-20(b)(2).
- (2c) Uniformed employees of the Department of Animal Control who transferred into this System pursuant to Section 3-2-19(d) may purchase membership service credit in this System for service as a uniformed employee of the Department of Animal Control rendered prior to October 1, 1985, by making an election in writing pursuant to Section 3-2-19(d)(3) and paying to the Board the difference between the employee contributions that would have been required under this System plus interest, and their employee contribution plus interest to the Fairfax County Employees' Retirement System for the period for which membership service credit is sought. The Board is authorized to enter into agreements with such members for the payment of the sum in installments, at the same interest rate, applied to the member's contribution account, so long as the entire sum due, plus interest, is paid within one year of the adoption of Section 3-2-19(d) [December 16, 1985].
- (3d) With respect to employees of the Public Safety Communications Center who transferred into this System pursuant to Section 3-2-19(e) and who purchase membership service credit in this System pursuant to Section 3-2-19(e)(3) and (5) by paying to the Board the difference between the employee contributions that would have been required under this System plus interest, and their employee contribution plus interest to the Employees' Retirement System, the Board is authorized to enter into agreements with such members for the payment of the sum in installments, at the same interest rate, to be applied to the member's contribution account, so long as the entire sum due, plus interest, is paid within three years of October 1, 2005.
- (4e) Under such rules and regulations as are adopted by the Board, any employee who has been a member of the Virginia Retirement System (VRS) and the Educational Employees Supplemental Retirement System of Fairfax County (ERFC), the Employees' Retirement System, or the Fairfax County Police Officers Retirement System, and who withdraws therefrom may purchase service credit for service rendered while a member of such other system by paying into this System all contributions that would have been due from him or her had he or she been a member of this System, plus interest at the rate or rates, as established by the Board, for each of the years for which membership service credit is sought. (A member may purchase membership service credit for prior service while a member of VRS only for service due to employment by the Fairfax County Public Schools (FCPS).)
- (5f) The amount due from a member for such purchase of service credit shall be satisfied, to the extent possible, (a) by directing the trustees of the system from which he or she is withdrawing to transfer his or her accumulated member contributions in such system directly to this System, without distribution to such employee, if such transfers are available under such system, or (b) through (i) a rollover from the system from which he or she is withdrawing (if the member would be eligible for a refund from such system), (ii) a rollover from an individual retirement account in which all contributions were derived from a rollover from a system, (iii) a direct trustee-to-trustee transfer from an annuity described in Section 403(b) of the Internal Revenue Code, or (iv) a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A). To the extent that a rollover or direct transfer permitted under this Subsection is insufficient to purchase the necessary service credit, other arrangements permitted by the rules and regulations adopted by the Board shall be made for purchasing such service credit.
- (6g) Members in service shall also receive membership service credit for periods of service-connected disability retirement from the System.

(eh) A member shall also receive membership service credit for any period during which the member is taking leave without pay from the County service and is receiving compensation from the County for temporary total or temporary partial disability under the Virginia Workers' Compensation Act.

(di) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within 90 days of discharge and such discharge is other than dishonorable. (1961 Code, § 9-94; 11-74-9; 22-83-3; 23-85-3; 45-93-3; 36-94-3; 22-96-3; 10-01-3; 8-03-3; 23-05-3; 27-12-3; 3-16-3.)

Section 3-3-25. - Prior service credit.

The Board shall determine, as soon as practicable after the filing of statements of service, the credit that the member is entitled to receive for prior service. Credit for prior service need not have been continuous provided no break in service exceeded five years. When an employee again becomes a member after his or her prior membership has ceased, he or she shall enter the System as an employee not entitled to prior service credit. Members who have had a break in service shall receive full credit for all past County service; provided, that no credit shall be given for a period of employment prior to a break in service in excess of five years. (1961 Code, § 9-95; 11-74-9; 45-93-3; 30-09-3; 3-16-3.)

Section 3-3-25.1. - Portability service credit.

(a) Definitions.

(1) *Accepting plan* shall mean the retirement plan or system which is receiving membership assets from another defined benefit retirement plan or system in order to permit a current member to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.

(2) *Portability service credit* shall mean service credit purchased in an accepting plan by the transfer of membership assets from the transferring plan.

(3) *Transferring plan* shall mean the retirement plan or system which is transferring membership assets to an accepting plan to enable a former employee of the transferring plan to purchase service in the accepting plan through the use of his or her membership contributions in the transferring plan.

(b) The Board of Supervisors may enter into agreements with the Virginia Retirement System (VRS) or with any other political subdivision of the Commonwealth of Virginia, provided that the retirement system of any other political subdivision of the Commonwealth of Virginia is a defined benefit plan or eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), to permit any vested member of any such plan to purchase portability credit in this System.

(c) The purchase of portability service credit in the System pursuant to this Section may only be made within 18 months of the date when an employee commences employment in a position covered by the System, or within 18 months of March 23, 2003, for County employees who are members of the System on March 23, 2003.

(d) In order to purchase portability service credit in the System, the member shall be a vested member of the transferring plan and the transferring plan shall be holding member contributions that are subject to transfer. A member desiring to purchase portability service credit shall make written application for the purchase of such credit to the System. The System shall determine from the transferring plan the amount of the member's assets that would be subject to transfer to the System. Based upon the amount subject to transfer, the Board shall determine the amount of portability service credit that would be actuarially equivalent to the amount of the assets to be transferred to the System; this amount shall represent the maximum amount of portability service credit that can be purchased. The Board shall communicate the amount of portability service credit that can be purchased to the member in writing; however, in no event shall the amount of portability service credit that can be purchased exceed the duration of the member's employment in a position that was covered by the transferring plan. The member shall have 30 days from the date of the letter advising him or her of the amount of portability service credit that can be purchased to determine whether to

proceed with the purchase or to withdraw his or her application for the purchase of portability service credit.

- (e) In the event that the assets transferred are not sufficient to purchase portability service credit in the System equivalent to five years of service, the member shall not become vested in the System until his or her creditable service equals five years.
- (f) The purchase of portability service credit in the Virginia Retirement System (VRS) or the retirement system of any political subdivision of the Commonwealth of Virginia that is covered by this Section shall be accomplished upon the transfer of assets from the transferring plan to this System. Upon the completion of such transfer, the member shall lose all rights to any allowances and benefits from the transferring plan, and shall only be entitled to receive allowances and benefits from this System.
- (g) When a vested member of this System leaves his or her covered employment and enters a position covered by the Virginia Retirement System (VRS) or by a defined benefit retirement plan of a political subdivision of the Commonwealth of Virginia with which the Board of Supervisors has entered into a portability agreement, the former member of this System may transfer an amount equal to the greater of (i) his or her accumulated member contributions with interest thereon, or (ii) an amount representing the present value of his or her accrued benefits with this System. In order to accomplish the transfer of assets from this System to an accepting plan, the member must make application in writing to this System. Upon the transfer of membership assets from this to the accepting plan, the member shall lose all rights to any allowances or benefits from this System based upon the service giving rise to the assets transferred to the accepting plan by this System. Should such a person resume service in a position covered by this System in the future, he or she may purchase service credit for such prior service or purchase portability service credit, if eligible to do so, in accordance with the provisions of this Article at the time he or she again becomes a member of this System. (18-01-3; 8-03-3; 3-16-3.)

Division 6. - Contributions.

Section 3-3-26. - Member contributions.

- (a) Each member shall contribute for each pay period for which he or she received compensation the amounts prescribed in this Section. Subsequent to December 22, 1984, the County shall pick up all employee contributions required herein, for all compensation earned on or after December 22, 1984. The Board of Supervisors may, from time to time, revise the rates of member contributions.
- (b) All members of Plan A, who, before April 1, 1997, do not elect in writing to accept the provisions set forth in Subsection (d) of this Section and Section 3-3-33(a)(2)(C) shall be considered as participants in Plan A. Contributions shall be made equal to four percent of such member's creditable compensation per pay period until his or her creditable compensation during the calendar year exceeds the taxable wage base. When such member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions shall be made equal to five and three-quarters percent of said member's creditable compensation per pay period.
- (c) All members of Plan B, who before April 1, 1997, do not elect in writing to accept the provisions set forth in Subsection (e) of this Section and Section 3-3-33(a)(2)(D) shall be considered participants in Plan B. Contributions shall be made equal to seven and eight-one-hundredths percent of such member's creditable compensation per pay period until his or her creditable compensation during the calendar year exceeds the taxable wage base. When such member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions shall be made equal to eight and eighty-three-one-hundredths percent of said member's creditable compensation per pay period.
- (d) All members of Plan A, who, before April 1, 1997, elect in writing to accept the provisions of this Section and Section 3-3-33(a)(2)(C), shall be considered participants in Plan C. Contributions shall be made equal to four percent of the member's creditable compensation per pay period.
- (e) All members of Plan B, who, before April 1, 1997, elect in writing to accept the provisions of this Section and Section 3-3-33(a)(2)(D), and all new members who begin employment that qualifies them for participation in the System on or after April 1, 1997, and before January 1, 2013 ~~July 1, 2019~~.

shall be considered participants in Plan D. Contributions shall be made equal to seven and eight-one-hundredths percent of the member's creditable compensation per pay period.

(f) All members of Plan E and Plan F shall have contributions made equal to seven and eight-one-hundredths percent of the member's creditable compensation per pay period.

(fg) Notwithstanding any other provision of this Section, no pick-up shall be made from any member's compensation if the employer's contribution required hereunder is in default.

(gh) The Board may modify the method of collecting the pick-up contributions of members so that the employers, departments, institutions, and agencies required to remit to the Treasurer of the Board may retain the amounts picked up by them with respect to members' salaries and have a corresponding amount deducted from County funds otherwise payable to them.

(hi) All contributions required to be made under Subsections (b), (c), (d), ~~and (e), and (f)~~ of this Section with respect to current services rendered by an active member on or after December 22, 1984, shall be picked up by the County and shall be treated as the employer's contribution in determining tax treatment under Section 414(h)(2) of the Internal Revenue Code. For all other purposes under this Chapter and otherwise, such pick-up contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to December 22, 1984. All picked-up amounts shall be included in compensation for the purpose of calculating benefits under Division 8. The County shall pay such picked-up amounts from the same source of funds which is used in paying earnings to the employee.

(ij) With the exception of the transfers between retirement plans specifically allowed as set forth above, no transfers between any of the Plans of the System shall be permitted. (1961 Code, § 9-96; 11-74-9; 20-81-3; 34-81; 5-85-3; 48-96-3; 3-16-3.)

Section 3-3-27. - Employer contributions.

(a) Each employer shall contribute at an annual rate to be fixed by the Board of Supervisors.

(b) The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient, when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future employee contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost plus an expense rate, as long as the System's funding ratio (actuarial value of assets divided by actuarial accrued liability) remains within a corridor, the lower measurement of which is described below and the upper measurement of which is 120 percent. The employer normal cost and System actuarial accrued liability are to be measured using the entry age normal funding method.

- To the extent that the System's funding ratio exceeds 120 percent, a credit shall be established equal to the amount of assets in excess of 120 percent of the actuarial accrued liability.
- To the extent that the System's funding ratio is lower than the lower measure of the corridor, a charge shall be established equal to the difference between the lower measure plus the actuarial accrued liability and the assets.

The employer contribution shall be adjusted by a 15 year amortization of the credit or charge described in this Subsection, to be paid until the funding ratio re-enters the corridor at which time it shall cease.

Effective with the fiscal year 2016 County contribution rate, the lower measure of the corridor shall be established at 95 percent. The 95 percent threshold shall be increased until it reaches 100 percent, no later than by the year 2020. Once the lower measurement of the corridor reaches 100 percent, the 15-year amortization described above shall be over a fixed 15 years with additional 15-year amortization layers created annually. Once the System's funding ratio reaches 100 percent, such amortizations shall cease.

In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there shall be an additional component to the employer cost equal to the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below 120 percent shall be excluded from this component. (1961 Code, § 9-97; 11-74-9; 23-85-3; 28-89-3; 48-96-3; 10-01-3; 16-02-3; 28-15-3, § 2; 3-16-3.)

Division 7. - Assets of System.

Section 3-3-28. - Assets to be credited to one of two accounts.

All of the assets of the System shall be credited, according to the purpose for which they are held, to one of two accounts, namely, the members' contribution account, and the retirement allowance account. (1961 Code, § 9-98; 11-74-9; 3-16-3.)

Section 3-3-29. - Members' contribution account.

- (a) The members' contribution account shall be the account to which all members' contributions, pick-up contributions and interest allowances as provided in this Article shall be credited. From this account shall be paid the accumulated contributions of a member required to be returned to him or her upon withdrawal or paid in the event of his or her death before retirement.
- (b) Each member's contribution and pick-up contributions provided for in Sections 3-3-26 and 3-3-27 shall be credited to the individual account of that member.
- (c) Each individual account of the members' contribution account shall be credited annually with interest at a rate of not less than two percent per annum on the accumulated contributions of the member; provided, that interest shall accrue on any such contribution beginning at the end of the calendar year in which each such contribution was made, and further provided that interest shall not be accredited or accumulated to the individual accounts of members who have ceased to be employees for a period of more than five years.
- (d) Upon the retirement of a member, his or her accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account. (1961 Code, § 9-99; 11-74-9; 5-85-3; 3-16-3.)

Section 3-3-30. - Retirement allowance account.

- (a) The retirement allowance account shall be the account in which shall be accumulated all employer contributions, amounts transferred from the members' contribution account, and to which all income from the invested assets of the System after all expenses for required services shall be credited. This account shall pay retirement allowances, other benefits payable after a member's retirement, and necessary expenses of the System.
- (b) The amount of interest allowances provided for in Section 3-3-29 shall be transferred each year from the retirement allowance account to the members' contribution account. (1961 Code, § 9-100; 11-74-9; 3-16-3.)

Section 3-3-31. - Deposits.

For the purpose of meeting disbursements for retirement allowances and other payments, there may be kept available cash, not exceeding ten percent of the total amount in the accounts of the System, on deposit in one or more banks or trust companies that are approved as depositories for County funds. (1961 Code, § 9-101; 11-74-9; 3-16-3.)

Division 8. - Benefits.

Section 3-3-32. - Service retirement.

- (a) Normal service retirement. Any member in service who has attained the age of 55 years and has completed six years of creditable service, or has completed 25 years of creditable service may retire at his or her normal retirement date or thereafter upon written notice to the Board made by the member, or his or her duly appointed agent, stating the time the retirement is to become effective. However, such effective date shall be subsequent to his or her last day of service, but not more than 90 days subsequent to the filing of such notice.

- (b) Early service retirement. Any member in service who has completed 20 years of creditable service may retire pursuant to the procedures set forth in Subsection (a) of this Section.
- (c) Compulsory retirement. Repealed; provided, any member in service who previously had reached compulsory retirement age but who had continued in service pursuant to the exemptions previously provided by this Subsection may continue in service without regard to the limitations set forth in this Subsection. (1961 Code, § 9-102, 11-74-9; 28-77-3; 20-81-3; 5-83-3; 22-83-3; 14-87-3; 3-16-3.)

Section 3-3-33. - Service retirement allowance and other benefits.

- (a) Normal service retirement. Upon service retirement after July 1, 1988, a member shall receive an annual retirement allowance, payable monthly as provided below:
 - (1) Effective the first of any month following the member's attainment of age 55 years the annual retirement allowance payable for life shall consist of:
 - (A) For members of Plans A and B, an amount equal to two percent of the average final compensation, multiplied by the number of years of creditable service.
 - (B) In addition to the amount of retirement allowance provided in Subparagraph (A) of this Subsection, members of Plans A and B shall receive an additional amount payable monthly, equal to the primary social security benefit to which such member would be entitled under the provisions of the Social Security Act in effect on the date of the member's retirement if such member were then 65 years of age. Further, such additional retirement allowance shall be reduced by the amount of any social security benefits such member may become eligible to receive, at the earliest date of such eligibility. For purposes of this reduction the amount of social security benefits of a member shall be the amount he or she would have been eligible to receive, without regard to any disqualification resulting from the earned income of the member. The social security benefits, for all employees whose County employment commenced by reporting for work after July 1, 1976, shall be determined on a pro rata basis as ratio of the number of years of creditable service in the County (numerator) and 25 years (denominator). This number is never larger than one.
 - (C) For the members of Plan B, the amount prescribed in Subparagraph (A) of this Subsection shall include cost-of-living adjustments provided for under Section 3-3-45 during the period between the member's retirement and his or her attainment of age 55 years.
 - (D) For members of Plans C, D, ~~and E, E and F~~ an amount equal to two and five-tenths percent of the member's average final compensation multiplied by the number of years of creditable service. For members of these plans the amount shall include cost-of-living adjustments provided for under Section 3-3-45.
 - ~~(E) For members of Plans D and E, the amount prescribed in Subparagraph (D) of this Subsection shall include cost-of-living adjustments provided for under Section 3-3-45.~~
 - (2) For members who retire before attaining the age of 55 years, the annual retirement allowance, payable during the period between retirement and the first of the month following such member's 55th birthday, shall be determined as follows:
 - (A) Members of Plan A shall receive the amount provided for in Subsection (a)(1)(A) of this Section. Such allowances shall not be subject to cost-of-living adjustments provided for under Section 3-3-45 until the first of the month following the member's 55th birthday. Further, the additional allowance prescribed in Subsection (a)(1)(B) of this Section shall not be included.
 - (B) After undergoing the additional deductions through December 31, 1981, members of Plan B shall receive the amount provided for in Subsection (a)(1)(A) of this Section subject to cost-of-living adjustments under Section 3-3-45 plus 50% of the additional allowance provided for under Subsection (a)(1)(B) of this Section.

- (C) Members of Plan C shall receive the amount provided for in Subsection (a)(1)(D) of this Section. Such allowances shall not be subject to cost-of-living adjustments provided for under Section 3-3-45 until the first of the month following the member's 55th birthday.
 - (D) Members of Plans D and E shall receive the amount provided for in Subsection (a)(1)(D) of this Section subject to cost-of-living adjustments under Section 3-3-45 as provided in Subsection (a)(1)(E) of this Section.
 - (E) Members of Plan F shall receive the amount provided for in Subsection (a)(1)(D) of this Section subject to cost-of-living adjustments under Section 3-3-45 as provided in Subsection (a)(1)(E) of this Section.
- (3) In addition to the allowances provided in Subsections (a)(1) and (a)(2) of this Section, for participants in Plans A, B, C, D or E retiring after March 18, 2002, the allowances in Subparagraphs (A) and (B) below, referred to as the pre-social security benefit, shall be payable until the first month after the member attains the age of eligibility for an unreduced social security retirement benefit. The pre-social security benefit shall not be subject to cost-of-living adjustments provided for under Section 3-3-45.
- (A) For members of Plans A and B, an additional amount equal to two-tenths of one percent of average final compensation times years of service.
 - (B) For members of Plan C, D, and E, an additional amount equal to three-tenths of one percent of average final compensation times years of service.
 - (C) The pre-social security benefit provided herein shall not be credited to the DROP accounts of members of Plan E who elect to participate in the DROP; however, upon the completion of the member's DROP period, the member shall be entitled to receive the pre-social security benefit provided herein if he or she is not then entitled to an unreduced social security benefit until the first month after such member is entitled to an unreduced social security benefit. Members in Plan F are not entitled to the Pre-social security benefit; however, those members are given an Early Age Option to receive a higher retirement allowance amount before they are entitled to receive an unreduced social security benefit as defined in Subsection (a)(1) (B) of this Section.
 - (D) Early Age Option. Any members in Plan F who retires prior to his or her full retirement age under social security shall be eligible to receive an additional monthly benefit equal to 0.3 percent of his or her average final compensation, not to exceed his or her social security breakpoint times years of service until the first month after such member is entitled to an unreduced social security benefit. Upon reaching the full retirement age under social security, the member's monthly benefit is reduced for life by an amount determined to result in a lifetime benefit under this option that is actuarially equivalent to the lifetime benefit that would be received without this option.
- (b) Early service retirement. An amount which shall be determined in the same manner as for retirement at the member's normal retirement date with years of creditable service and average final compensation being determined as of the date of his or her actual retirement, and the amount of the retirement allowance so determined being reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the normal retirement date; provided, that for members who retire after July 1, 1988, the amount provided for in Subsection (a)(1)(B) of this Section shall not be reduced on the actuarial equivalent basis.
- (1) The allowance for members of Plans A and C except those exempted under Subsection (b)(2) of this Section shall be reduced in accordance with the factors prescribed in Table 1.
 - (2) The allowance for members of Plans B, D, ~~and E, and F~~ and members of Plans A and C whose age plus creditable service equal 75 shall be reduced in accordance with the factors prescribed in Table 2.
- (c) Joint and last survivor option. Before the normal retirement date, a member may elect to receive a decreased retirement allowance during his or her lifetime and to have such retirement allowance or a

specified fraction thereof, continued after his or her death to the spouse, for his or her lifetime. The amount of such retirement allowance shall be determined on an actuarial equivalent basis and shall be calculated at the member's actual retirement date using the actuarial adjustment factors in Table 3. In the event a retired member has elected a reduced retirement allowance in consideration of continued allowance to his or her spouse after the member's death and such spouse predeceases the member, such member's retirement allowance shall be increased to that amount to which the member would have been entitled had no election been made. In the event a retired member who has elected the joint and last survivor option shall be divorced from his or her spouse, and such former spouse waives his or her rights to the benefits of the election of the joint and last survivor option, the retired member may revoke his or her joint and last survivor election; such revocation must be accompanied by a certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election. Upon the provision of the request to revoke the election and the certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election, the Executive Director shall revoke the election and increase the member's retirement allowance to the amount it would have been had no joint and last survivor election ever been made. The effective date of the increase in the member's retirement allowance shall be the first of the month next following the submission of the request to revoke the election accompanied by a certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election.

TABLE 1
FAIRFAX COUNTY UNIFORMED RETIREMENT SYSTEM

Actuarial Reduction Factors That Would Apply to Members
With a Normal Retirement Age Requirement of 25 Years of Service
(or, Attainment of Age 55, if Earlier) if They Are Permitted To
Retire Early With a Reduced Retirement Allowance After 20 Years of Service

(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS ARE EFFECTIVE
AT AGE 55 WITHOUT CATCH-UP PROVISION)

Age at Retirement	Years of Service					
	20	21	22	23	24	25
38	65.83	71.56	77.79	84.57	91.94	100.00
39	65.83	71.57	77.80	84.58	91.95	100.00
40	65.85	71.58	77.81	84.59	91.96	100.00
41	65.88	71.60	77.82	84.60	91.97	100.00
42	65.93	71.63	77.84	84.61	91.98	100.00
43	65.99	71.67	77.87	84.63	91.99	100.00
44	66.07	71.73	77.91	84.66	92.00	100.00
45	66.17	71.81	77.97	84.69	92.02	100.00
46	66.29	71.91	78.04	84.73	92.04	100.00
47	66.45	72.03	78.13	84.79	92.07	100.00
48	66.64	72.18	78.24	84.86	92.10	100.00
49	66.86	72.36	78.37	84.95	92.14	100.00
50	67.13	72.57	78.53	85.05	92.19	100.00
51	72.81	72.81	78.71	85.18	93.11	100.00

52	78.92	78.92	78.92	86.29	92.97	100.00
53	85.48	85.48	85.48	85.48	92.41	100.00
54	92.50	92.66	92.66	92.66	92.66	100.00
55	100.00	100.00	100.00	100.00	100.00	100.00

TABLE 2
FAIRFAX COUNTY UNIFORMED RETIREMENT SYSTEM
Actuarial Reduction Factors That Would Apply to Members
With a Normal Retirement Age Requirement of 25 Years of Service
(or, Attainment of Age 55, if Earlier) if They Are Permitted To
Retire Early With a Reduced Retirement Allowance After 20 Years of Service
(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS
ARE EFFECTIVE AT RETIREMENT)

Age at Retirement	Years of Service					
	20	21	22	23	24	25
38	74.50	79.17	84.06	89.18	94.48	100.00
39	74.18	78.89	83.83	89.01	94.39	100.00
40	73.84	78.61	83.60	88.84	94.30	100.00
41	73.49	78.32	83.37	88.67	94.21	100.00
42	73.11	78.01	83.13	88.50	94.12	100.00
43	72.72	77.68	82.88	88.33	94.03	100.00
44	72.32	77.34	82.61	88.14	93.93	100.00
45	71.89	76.98	82.34	87.95	93.83	100.00
46	71.44	76.61	82.04	87.75	93.73	100.00
47	70.97	76.22	81.74	87.53	93.62	100.00
48	70.48	75.81	81.41	87.31	93.50	100.00
49	69.96	75.38	81.08	87.07	93.38	100.00
50	69.42	74.92	80.72	86.83	93.25	100.00
51	74.45	74.45	80.35	86.57	93.11	100.00
52	79.95	79.95	79.95	86.29	92.97	100.00
53	86.00	86.00	86.00	86.00	92.82	100.00
54	92.66	92.66	92.66	92.66	92.66	100.00
55						

TABLE 3

FAIRFAX COUNTY UNIFORMED RETIREMENT SYSTEM

Actuarial Adjustment Factors That Would Apply to Members With a Normal or Early Service Retirement Allowance Determined Under Section 3-3-33 Who Elect a Joint and Last Survivor Option

Percent of Retirement Allowance Continued to Spouse Upon Member's Death	Factor for Equal Ages	Increase/Decrease For Each Full Year Beneficiary is Older (Younger) Than Employee	Maximum Factor
100%	87%	0.7%	96%
75%	90%	0.6%	97%
66.67%	91%	0.5%	98%
50%	93%	0.4%	99%

(1961 Code, § 9-103; 11-74-9; 28-7-3; 20-81-3; 34-81-3; 36-83-3; 36-88-3; 29-89-3; 27-90-3, § 3; 48-96-3; 28-97-3; 13-98-3; 5-00-3; 17-02-3; 27-12-3; 51-13-3; 3-16-3.)

Section 3-3-34. - Ordinary disability retirement.

- (a) Any member in service who has five or more years of creditable service may, at any time before his or her normal retirement date, retire on account of disability, not compensable under the Virginia Workers' Compensation Act, upon written application to the Board, made by the member or his or her appointing authority, setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service, but shall not be more than 90 days prior to the execution and filing of such application; and provided further, that the Medical Examining Board, after a medical examination of such member, shall certify that such member is, and has been continuously since such effective date if prior to the filing of such application, mentally or physically incapacitated for the further performance of duty, and that such incapacity is likely to be permanent and that such member should be retired.
- (b) Any member not in service at the time of application who is otherwise eligible for ordinary disability retirement may be granted an ordinary disability retirement if:
 - (1) Written application is made within one year of the date he or she ceased to be in service; and
 - (2) The Board finds:
 - (A) The disability arose in the course of the member's service;
 - (B) The disability was the proximate cause of the member's ceasing to be in service; and
 - (C) There was good cause for the employee not to have filed an application while in service.
- (c) In the event a member is granted an ordinary disability retirement pursuant to Subsection (b) of this Section, the Board shall establish an effective date which, considering all the circumstances of the individual case is just; provided, such date shall be no more than 90 days prior to the execution and filing of his or her application. (1961 Code, § 9-104; 11-74-9; 20-81-3; 48-96-3; 3-16-3.)

Section 3-3-35. - Ordinary disability retirement allowance.

Upon ordinary disability retirement, as provided for in Section 3-3-34, a member shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to two percent of his or her average final compensation multiplied by the number of years of creditable service. However, said retirement allowance shall not be greater than 60 percent of the member's average final compensation. (1961 Code, § 9-105; 11-74-9; 28-77-3; 20-81-3; 48-96-3; 3-16-3.)

Section 3-3-36. - Service-connected disability retirement.

- (a) Any member in service may, at any time before his or her normal retirement date, retire on account of disability which is due to injury by accident and/or disease(s) which arose out of and in the course of the member's service. The Board shall determine a member is disabled due to injury by accident and/or disease(s) which arose out of and in the course of a member's service. In making this determination, the Board shall consult the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia which applied or construed language under the Virginia Workers' Compensation Act. Furthermore, in making this determination, the Board shall consider any medical record or information and/or any further tests or examinations required pursuant to Section 3-3-10.1.
- (b) The member or his or her employer shall be required to submit a written application setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service but shall not be more than 90 days prior to the date of such application. Prior to submitting such application, the member shall be required to apply for workers' compensation to which he or she may be entitled. The member shall be required to submit to the Board copies of the dispositions as made of his or her workers' compensation claim and any subsequent awards or other documents reflecting any modification or termination of such benefits. With respect to the determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act; and the Board may modify its prior determination of eligibility under this Section in light of any such decision within 90 days after the date such decision becomes final.
- (c) Any member otherwise eligible for ordinary disability retirement under Section 3-3-34, who applies for retirement pursuant to this Section, and whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to Section 3-3-34.
- (d) Any member who applied for service-connected disability retirement on or before (effective date of amendment [December 16, 1985]) shall have his or her eligibility for such retirement governed by the provisions of this Section in effect on that date. Members applying thereafter shall have their eligibility determined by the provisions of this Section.
- (e) When an application for service-connected disability retirement has been submitted by a member or on his or her behalf by his or her employer, the appointing authority for the agency in which the member is employed shall certify whether or not there exist any vacant positions within the agency the essential physical job functions of which the member could perform, with or without reasonable accommodation; this certification shall be provided to the member and to the Board. The appointing authority shall have a continuing obligation to notify the member and the Board if any such position becomes vacant between the time of the appointing authority's initial certification and the Board's action on the member's retirement application. A member who has applied for service-connected disability retirement who meets the physical requirements for such position, with or without reasonable accommodation, and who can be retrained to fulfill the other requirements for any such position shall be given the option to accept such position and withdraw his or her application for service-connected disability retirement or to decline such position and proceed with his or her application for service-connected disability retirement. A member shall have seven days from the date of the appointing authority's certification that a position is available to make his or her election as to whether he or she shall accept the position or proceed with his or her retirement application; the failure of the member to make such election shall constitute an election to proceed with his or her application for retirement. In the event that the member elects not to accept a position for which he or she has received notification, the appointing authority shall have no further duty to notify the member and the Board of any further positions that may subsequently become available. In the event that no such positions are vacant or the member elects not to accept a vacant position, the application for service-connected disability retirement shall proceed to a determination by the Board. The certification by an appointing authority that no such positions exist within the member's agency constitutes an application of specific County personnel policies, procedures, rules and regulations. (1961 Code, § 9-106; 11-74-9; 20-81-3; 24-85-3; 48-96-3; 34-04-3; 3-16-3.)

Section 3-3-37. - Service-connected disability retirement allowance.

- (a) Any member who is receiving, or has been approved by the Board to receive, service-connected disability retirement, or who has applied for service-connected disability retirement, or whose employer has submitted as application for service-connected disability retirement for such employee as of December 9, 1996, under Section 3-3-36, shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to 66 $\frac{2}{3}$ percent of the salary the member received at the time of retirement. This allowance shall be reduced by the amount of any compensation awarded under the Virginia Workers' Compensation Act to the member for temporary total or partial incapacity.
- (b) Any member who submits an application for service-connected disability retirement, or for whom his or her employer submits such application under Section 3-3-36 on or after December 9, 1996, shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to 40 percent of the salary the member received at the time of retirement. However, this allowance shall be reduced by the amount of any compensation awarded under the Virginia Workers' Compensation Act to the member for temporary total or partial incapacity.
- (c) The amount of the reduction shall be increased by an award of a cost-of-living increase to the member's compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act). When the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, the amount of such payments shall no longer be used to reduce the retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without the reduction for such payments.
- (d) If a member receives his or her compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act) in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, neither a lump sum payment or portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under Section 3-3-36 shall be offset against the member's allowance under this Section; and provided further, that in the event the member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the lump sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its judgment represents compensation for such benefits. (1961 Code, § 9-107; 11-74-9; 28-77-3; 20-81-3; 34-81-3; 4-83-3; 36-88-3; 29-89-3; 1-93-3; 48-96-3; 10-01-3; 23-07-3; 47-08-3; 23-11-3; 67-13-3, § 1; 3-16-3; 37-17-3.)

Section 3-3-37.1. - Joint and last survivor option for disability beneficiaries.

A member of the System who applied for an ordinary or service-connected disability retirement allowance, including those members who are determined to be eligible for severe service-connected disability retirement by the Board, on or after July 1, 1988, may, before his or her actual retirement date, elect the joint and last survivor option provided by Section 3-3-33(c). (36-88-3; 48-96-3; 3-16-3.)

Section 3-3-37.2. - Severe service-connected disability retirement.

- (a) Any member in service may, at any time before his or her normal retirement date, be retired on account of a severe disability which is due to injury by accident and/or disease(s) which arose out of and in the course of the member's service. The Board shall determine whether a member has suffered a severe disability as defined herein due to injury by accident and/or disease(s) which arose out of and in the course of a member's service. In making this determination, the Board shall consult the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia which applied or construed language under the Virginia Workers'

Compensation Act. Furthermore, in making this determination, the Board shall consider any medical record or information and/or any further tests or examinations required pursuant to Section 3-3-10.1.

- (b) When a member or his or her employer submits a written application for service-connected disability retirement as set forth in Section 3-3-36, the Board shall determine whether the member meets the requirements for qualification to receive severe service-connected disability as set forth in this Section. Prior to submitting such application, the member shall be required to apply for workers' compensation to which he or she may be entitled. The member shall also be required to submit to the Board copies of the dispositions as made of his or her workers' compensation claim and any subsequent awards or other documents reflecting any modification or termination of such benefits. With respect to the determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act; and the Board may modify its prior determination of eligibility under this Section in light of any such decision within 90 days after the date such decision becomes final.
- (c) Any member otherwise eligible for ordinary disability retirement under Section 3-3-34 whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to Section 3-3-34. Any member otherwise eligible for service-connected disability retirement under Section 3-3-36 whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to Section 3-3-36.
- (d) *Severe disability* shall mean an impairment from the list below that permanently incapacitates the member from performing the necessary duties of the position in which he or she had been employed prior to sustaining the impairment.
 - (1) Schedule of impairments:
 - (A) Loss of both hands or both feet;
 - (B) Loss of one hand and one foot;
 - (C) Loss of one hand and the sight of one eye;
 - (D) Loss of one foot and the sight of one eye;
 - (E) Loss of the sight of both eyes;
 - (F) Paralysis, either paraplegia or quadriplegia;
 - (G) Cancers determined to be compensable by the Virginia Workers' Compensation Commission which were caused by documented contact with a toxic substance, pursuant to Section 65.2-402(c) of the *Virginia Code* ;
 - (H) Loss of speech;
 - (I) Loss of hearing;
 - (J) A mental incapacity that meets the criteria for disability benefits under the Federal Old-Age Survivors' and Disability Insurance Act; or
 - (K) Hepatitis C.
 - (2) *Loss* shall mean:
 - (A) With respect to a hand or foot, the dismemberment by severance through or above the wrist or ankle joint, or the partial dismemberment resulting in the loss of functional use of the partially dismembered hand or foot.
 - (B) With respect to sight, central acuity of 20/200 or less with the use of correcting lenses or visual acuity greater than 20/200 if accompanied by a limitation in the field of vision that the widest diameter of the visual field subtends an angle no greater than 20 degrees. These

standards apply to the affected eye if sight loss is claimed for one eye in combination with loss of a hand or foot, or to the better eye if sight loss is claimed for both eyes.

- (C) With respect to hearing, a severe and irreversible bilateral loss of hearing that is not correctable with either the use of hearing aids or with corrective surgery.
- (e) For the purpose of this Section only, *member in service* shall include a member who has not reached his or her normal retirement date and who has been retired on account of a service-connected disability pursuant to the terms of Section 3-3-36.
- (f) A member for whom an application for severe service-connected disability is approved by the Board shall not be required to submit to medical re-evaluations as required by Section 3-3-40. (48-96-3; 19-01-3; 7-03-3; 34-04-3; 3-16-3.)

Section 3-3-37.3. - Severe service-connected disability retirement allowance.

- (a) Any member who retires pursuant to Section 3-3-37.2 shall receive an annual retirement allowance, payable monthly during his or her lifetime, consisting of an amount equal to 90 percent of the salary the member was entitled to receive at the time of his or her retirement. This allowance shall be reduced by the amount of any compensation awarded under the Virginia Workers' Compensation Act to the member for temporary total or partial incapacity.
- (b) The amount of the reduction shall be increased by an award of a cost-of-living increase to the member's compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act). When the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, the amount of such payments shall no longer be used to reduce the retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without the reduction for such payments.
- (c) If a member receives his or her compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act) in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, however, neither a lump sum payment or portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under Section 3-3-37.2 shall be offset against the member's allowance under this Section; and provided further, that in the event the member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the lump sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its judgment represents compensation for such benefits. (48-96-3; 10-01-3; 23-07-3; 47-08-3; 23-11-3; 68-13-3, § 1; 3-16-3; 38-17-3.)

Section 3-3-38. - Service-connected accidental death benefit.

If death of a member is caused by an accident occurring prior to retirement and such death is compensable under the Virginia Workers' Compensation Act, there shall be paid, in addition to any other benefits of this Article or other legislation, the following:

- (a) For a member whose death occurs before retirement:
 - (1) The member's accumulated contributions as provided in Section 3-3-29(c) to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-3-43; and
 - (2) The sum of \$10,000.00 to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate.
- (b) For a member whose death occurs after retirement:

- (1) The member's accumulated contributions as provided in Section 3-3-29(c) less the amount of any retirement allowances previously received by the member, such sum to be paid to his or her designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-3-33; and
- (2) The sum of \$10,000.00 to his or her designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the member's estate. (1961 Code, § 9-108; 11-74-9; 5-85-3; 3-16-3.)

Section 3-3-39. - Refund of contributions upon withdrawal or death; deferred vested benefit.

(a) Refund of contributions.

- (1) If a member has ceased to be an employee, otherwise than by death or by retirement under the provisions of this Article, and has fewer than five years of creditable service on his or her date of separation, he or she shall be eligible for a refund of the total of his or her accumulated contributions (with interest) which have been reduced by the amount of any retirement allowances previously received by him or her under this Article. The member shall file a written application with the Board for such refund and he or she shall be paid the amount to which he or she is entitled not later than 90 days after receipt of his or her application by the Board. Should a member or a person in retirement die, the amount of his or her accumulated contributions reduced by the amount of any retirement allowances previously received by him or her under this Article shall then be payable in a lump sum to a designated beneficiary or in the absence of a designated beneficiary to his or her estates; provided, no benefit is payable under Section 3-3-33(c).
 - (2) A member who becomes eligible for membership in either the Virginia Retirement System (VRS) and the Educational Employees Supplemental Retirement System of Fairfax County (ERFC), the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System prior to receipt of a refund amount may, under such rules and regulations as are adopted by the Board and by the board of the system of which he or she is eligible to become a member, elect in writing to transfer the amount of his or her refund directly from this System to the system for which he or she has become eligible for membership. In the alternative, to the extent that a refund is an "eligible rollover distribution" within the meaning of Section 402(f)(2)(A) of the Internal Revenue Code, such a member may (a) under rules and regulations of the system of which he or she is eligible to become a member, elect in writing to roll over the amount of his or her refund directly from this System to the system for which he or she has become eligible for membership or (b) elect in writing to roll over the portion of his or her refund which is such an eligible rollover distribution directly to an individual retirement account.
 - (3) All refunds shall be mailed to the last address on record with the Board. Refunds that have not been claimed within six months shall become the property of the System.
- (b) Deferred vested benefit. If a member has five or more years of creditable service on his or her date of separation from the County, the member may leave his or her accumulated contributions in the System and receive a deferred vested benefit payable beginning the date the member attains 55 years of age. Members who choose a deferred vested benefit are not eligible to receive the pre-social security benefit. (1961 Code, § 9-109; 11 -74-9; 20-81-3; 34-81-3; 5-85-3; 36-88-3; 45-93-3; 10-01-3; 01-11-3; 3-16-3.)

Section 3-3-40. - Medical reevaluation of disabled members; penalty for unjustified refusal to accept medical attention, vocational rehabilitation or selective employment, or to submit to medical examination.

- (a) Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board shall require any such beneficiary prior to his or her normal retirement date to undergo a medical examination by the Medical Examining Board. Should such a beneficiary refuse to submit to any such medical examination or unreasonably and without just cause or excuse refuse medical attention recommended by the Medical Examining Board, his or her disability retirement allowance shall be

discontinued until his or her withdrawal of such refusal; and should his or her refusal continue for one year, all his or her rights to any further disability retirement allowance shall cease.

- (b) Members who are beneficiaries of service-connected disability retirement allowances pursuant to Section 3-3-36, and who are receiving periodic payments from their employers pursuant to the Virginia Workers' Compensation Act (Act) which are required to be offset against the allowances pursuant to Section 3-3-37, shall cooperate with and accept medical services or vocational rehabilitation and/or selective employment provided by the employer pursuant to the Act. In the event a member's periodic payments are suspended by the Virginia Workers' Compensation Commission (Commission) for unjustified refusal to accept medical services, vocational rehabilitation and/or selective employment, the Board may, if in its determination such refusal was unjustified, direct that the allowance pursuant to Section 3-3-37 shall be computed as if the member received the suspended payments. The Board shall make appropriate adjustment to the member's allowance if the suspension by the Commission is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection, for unjustified refusal creates a rebuttable presumption that the member unjustifiably refused medical services, vocational rehabilitation training, and/or selective employment.
- (c) The requirement for medical examinations of disability retirees established in this Section is not applicable to retirees who are receiving severe service-connected disability retirement benefits pursuant to Section 3-3-37.2. (1961 Code, § 9-110; 11-74-9; 28-77-3; 36-88-3; 3-16-3.)

Section 3-3-41. - Reduction of service-connected disability retirement allowance.

Repealed by 11-94-3.

Section 3-3-42. - Cessation of disability retirement allowance.

- (a) Should a beneficiary of a disability retirement allowance return to service at any time prior to his or her normal retirement date, his or her disability retirement allowance shall cease, and he or she shall become a member of the System and contributions, in accordance with Section 3-3-26, shall resume. Any service on the basis of which his or her disability retirement allowance was computed shall thereafter be counted as creditable service; and, in addition, the period of disability retirement shall be counted as creditable service for those on service-connected disability retirement.
- (b) Any excess accumulated contributions of such beneficiary over the disability retirement allowances received by him or her shall be transferred from the retirement allowance account to the member's contribution account. (1961 Code, § 9-112; 11-74-9; 5-85-3; 3-16-3.)

Section 3-3-43. - Cessation of normal or early service retirement allowance.

- (a) Subsection (b) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System and who submitted their application for such allowance to the Board of such system on or before July 21, 1986. Subsection (c) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Employees' Retirement System, or the Police Officers Retirement System and who submitted their application for such allowance to the Board of such system after July 21, 1986.
- (b) Should a person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System (retiree) return to regular service in a permanent position in any office or employment paid directly or indirectly by the County, he or she shall elect to receive such retirement allowance under one of the following two options.
 - (1) Such allowance shall not commence or, if already commenced, shall cease while the retiree is so employed. His or her allowance shall commence or resume upon application or reapplication by the retiree after he or she has ceased permanent employment in such a position. The allowance of a retiree of this System who is appointed to a position covered by the Employees' Retirement System or Police Officers Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section 3-3-54 which would have been payable had the retiree continued to receive his or her allowance without interruption. A retiree of this

System who elects in writing at the time of reappointment to a position covered by this Article not to become a contributing member during the period of his or her reemployment shall be exempted from the requirement to make contributions to this System. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article to become a contributing member again during the period of his reemployment shall be eligible:

- (A) For a recomputation of his or her allowance to take into account compensation and creditable service attributable to the period of reemployment during which his or her allowance was suspended under this Subsection;
- (B) To make new election for any optional benefit to which he or she is entitled; and
- (C) For a retirement allowance for a service-connected disability arising out of and in the course of his or her reemployment (in lieu of his or her service retirement allowance).

A retiree of the Employees' Retirement System or Police Officers Retirement System who is appointed to a position covered by this Article and elects in writing within 30 days of such appointment may be excluded from membership in this System.

- (2) The retiree may elect to continue to receive his or her service retirement allowance. A retiree electing this option shall not be eligible for membership in the Employees' Retirement System or Police Officers Retirement System if either covers the position in which he or she is reemployed. If he or she is a retiree of this System and the position in which he or she is reemployed is covered by this System, he or she shall not be required to contribute to this System during his or her period of reemployment.
- (c) A person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police ~~officers~~ Officers Retirement System (retiree) may return to employment for which compensation is paid directly or indirectly by the County subject to the following conditions:
- (1) A retiree shall not receive in combined compensation and retirement allowance, computed monthly, any more than 115 percent of the then current maximum monthly salary for a Deputy County Executive in the County's Compensation Plan. The appropriate Retirement System Board of Trustees shall reduce the retiree's allowance as necessary to keep the combined salary and allowance at this limit. For purposes of this Subsection, a retiree's allowance shall be deemed to be the allowance that he or she would receive if he or she had not elected a joint or last survivor option which results in an actuarially reduced allowance. Employers under all three systems shall report salaries paid to retirees to the retiree's Board.
 - (2) A retiree who is employed in a position service in which would otherwise make him or her eligible for membership in this System, the Employees' Retirement System, or the Police Officers Retirement System, shall not be eligible for membership in that system.
- (d) Notwithstanding any other provision of this Article or any other Article of this Chapter, a person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System (retiree) may be employed in a position under his or her former appointing authority subject to the following terms and conditions.
- (1) If the retiree is a member of this System and service in the position to which he or she is to be appointed ordinarily would result in membership this System, his or her normal or early service retirement allowance shall be suspended for the duration of his or her new employment. During his or her new employment, he or she shall make member contributions to this System. At the time of his or her new employment, he or she shall be entitled to make all elections available to new members of this System, and if otherwise eligible, during his or her employment, he or she may apply for ordinary or service-connected disability retirement. In such case, his or her combined years of service and his or her average final compensation based on his or her new employment shall be used in calculating the disability retirement allowance. On re-application for service retirement from his or her new employment, the retiree shall receive as his or her

service retirement allowance the higher of (i) his or her initial service retirement allowance increased by any cost-of-living increases that were granted by the Board to service retirements during the period of his or her new employment or (ii) a service retirement allowance calculated on the basis of his or her combined years of creditable service in his or her initial and new employment and his or her average final compensation calculated on the basis of the creditable compensation that he or she received during both his or her initial and new employment, as if there had been no break in service.

- (2) A retiree who is a member of this System and who is to be re-appointed to a position service in which would result in membership in either the Employees' Retirement System or Police Officers Retirement Systems but for his or her membership in this System, shall be subject to Subsection (b) or (c) of this Section, whichever is applicable.
- (3) If the retiree is a member of either the Employees' Retirement or Police Officers Retirement Systems and service in the position to which he or she is to be appointed would result in membership in this System but for this membership in the other system, the retiree shall be subject to Subsection (b) or (c) of this Section, whichever is applicable.
- (4) This Subsection shall apply to all persons appointed to positions on or after March 1, 1990, service in which would ordinarily make them members of this System, the Employees' Retirement System, or Police Officers Retirement Systems. (20-81-3; 35-81-3; 36-86-3; 27-90-3, § 3; 10-01-3; 11-05-3; 3-16-3.)

Section 3-3-44. - Spouse retirement allowance.

- (a) Should death occur to a member in service who has completed five years of creditable service, a retirement allowance shall be payable to the member's spouse if said spouse is the designated beneficiary duly approved, acknowledged and filed with the Board. The annual retirement allowance, payable monthly for life shall be 50 percent of the annual retirement allowance provided in the first sentence of Section 3-3-33(a), with creditable service and final compensation being determined as of the date of the member's death. Said spouse shall elect within 90 days after notice by the Board of the option of receiving the benefits outlined in this Subsection or a lump sum payment of the member's accumulated contributions as provided in Section 3-3-39, or within 180 days of the death of the member, whichever first occurs. If death is due to a service-connected accident as defined in Section 3-3-38, and the designated beneficiary under Section 3-3-38(1)(A) is the member's spouse, the spouse shall elect in writing within 90 days after the notice by the Board, or within 180 days of the death of the member, whichever first occurs, to receive either the benefits contained in this Subsection or those contained in Section 3-3-38(1)(A). In the event of the spouse's death prior to receiving allowances under this Section equaling the sum of the member's accumulated contribution, said sum, reduced by the amount of any retirement allowances previously paid under this Section, shall be paid to the spouse's designated beneficiary duly approved, acknowledged and filed with the Board, otherwise the spouse's estate.
- (b) Should death occur to a member in service who has completed five years of creditable service and if the member's designated beneficiary, duly approved, acknowledged and filed with the Board, is not the member's spouse, a lump sum payment equaling the member's accumulated contribution as provided in Section 3-3-29(c), shall be paid to the designated beneficiary.
- (c) Should death occur to a member in service who has completed five years of creditable service and the member has no designated beneficiary, a lump sum payment equaling the member's accumulated contribution shall be paid to the member's estate; provided, that if such member's spouse is the sole person entitled under the laws of the Commonwealth of Virginia to the benefits provided hereunder, then said spouse shall have the same right to elect benefits as is provided to spouses in Subsection (a) of this Section.
- (d) Effective on and after January 1, 2007, if a member dies while performing "qualified military service" as defined in Section 414(u) of the Internal Revenue Code, any additional benefits that would have been provided under the System if the member had resumed employment on the day prior to his or her death and then terminated employment due to death shall be paid to such member's designated

beneficiary or, if applicable, estate. (1961 Code, § 9-113; 11-74-9; 28-77-3; 20-81-3; 5-85-3; 29-09-3; 01-11-3; 3-16-3.)

Section 3-3-45. - Cost-of-living adjustments.

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of benefit commencement; provided, that such adjustments shall not affect the amount of the social security benefit allowance payable pursuant to Section 3-3-33(a)(1)(B) or Section 3-3-33(a)(2)(B); and provided further, that allowances for service-connected disability retirement shall be subject to Subsection (d) of this Section. The monthly benefit allowance to be effective July 1 of any such year shall be the benefit in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection (a) of this Section and the supplemental cost-of-living increase if any, provided for in Subsection (b) of this Section with such increase reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than 12 months.

- (a) The basic cost-of-living increase shall be the lesser of four percent and the percentage corresponding to the percentage increase in the Consumer Price Index during the 12-month calendar period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, *Consumer Price Index* shall mean the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the appropriate Standard Metropolitan Statistical Area (SMSA) that includes the County.
- (b) As part of each biennial actuarial valuation, the actuary shall determine the percentage supplemental cost-of-living increase (not greater than one percent that can be provided on the following two July first's based upon the available actuarial surplus). The Board then may, but shall not be required to, increase the benefits of all retirement allowances in pay status on each of such July first by such actuarially determined percentage. For the purpose of this Section, *available actuarial surplus* shall mean the excess of the actuarial value of the assets of the System over the actuarial accrued liabilities of the System as disclosed in the biennial actuarial valuation of the System.
- (c) In the event a member receiving a retirement allowance has not been in pay status for 12 full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be determined as the percentage of the full increase determined in Subsections (a) and (b) of this Section as follows:

Number of Complete Months Benefit Has Been in Pay Status	Percentage of Full Increase
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Less than 3 0%

3, 4 or 5 25%

6, 7 or 8 50%

9, 10 or 11 75%

- (d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-3-37 have been made. The member's allowance after the adjustments for cost of living provided by this Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-3-37.

- (e) The Board of Supervisors reserves the right to amend, terminate or modify the post-retirement increases described in Subsection (b) of this Section. Upon termination, no further increases to allowances shall be due or payable to any member or beneficiary. However, any such amendment, termination or modification shall not reduce the amount of the allowance then being paid to any member or beneficiary who has received allowances as of the date of the amendment, termination or modification. Furthermore, no amendment, termination or modification shall reduce the rights of any member as of June 30, 1981, to increases such member was entitled to based upon the terms of the plan in effect on June 30, 1981. (1961 Code, § 9-114; 11-74-9; 20-81-3; 1-93-3; 26-10-3; 3-16-3.)

Section 3-3-46. - Retention rights.

Participation in the System does not convey the right to be retained in service, or any right or claim to any assets of the System unless such right has specifically accrued under this Article. (1961 Code, § 9-116; 11-74-9; 20-81-3; 36-88-3; 3-16-3.)

Section 3-3-47. - Vesting on termination of System; nonreversion of funds.

Upon termination of the System or upon complete discontinuance of contributions to the System, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, are non-forfeitable. No portion of the assets of the System shall be used for, or diverted to, purposes other than for the exclusive benefit of the members and their beneficiaries prior to the satisfaction of all liabilities with respect to members and their beneficiaries. (1961 Code, § 9-117; 11-74-9; 20-81-3; 36-88-3; 3-16-3.)

Section 3-3-48. - Nonretroactivity to members retired or terminated prior to July 1, 1974.

The benefits provided by this Article shall not apply to members retired or terminated prior to July 1, 1974, and their rights and benefits shall be determined under the ordinance in effect prior thereto. However, retirement allowances determined thereunder shall be subject to post-1974 cost-of-living adjustments. (1961 Code, § 9-118; 11-74-9; 20-81-3; 3-16-3.)

Section 3-3-49. - Review of adverse decisions.

Any member adversely affected by a decision of the Board shall receive written notice of said decision and may, within 30 days of receipt of such notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board. (20-81-3; 3-16-3.)

Section 3-3-50. - Transfer to Senior Executive Retirement Plan.

Repealed by 97-26-3.

Section 3-3-51. - Masculine usage includes feminine.

Repealed by 3-16-3.

Section 3-3-52. - Limitation on annual retirement allowance.

Notwithstanding any other provision of this Article, the annual retirement allowance to which any member may be entitled shall not exceed the limits on benefits set forth in Section 415 of the Internal Revenue Code and any regulations issued by the U.S. Department of the Treasury thereunder, and in calculating such limits a member's compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code and paid on or after January 1, 2009. Such limits shall be applied annually for the 12-month period commencing each July 1 and ending the following June 30. A benefit payable other than in the form of an annuity shall not exceed the amount which, when converted to an actuarial equivalent annual benefit, does not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code. Effective June 30, 2000, the mortality tables prescribed by the Uruguay Round Agreement Acts (GATT), as set forth in Internal Revenue Service Revenue Ruling 2001-62 (superseding and modifying Revenue Ruling 95-29), or as further updated or modified by the Internal Revenue Service, shall be used in determining the actuarial equivalent amount of such benefit. (27-90-3, § 4; 21-96-3; 8-03-3; 01-11-3; 3-16-3.)

Section 3-3-53. - Distribution of benefits.

Notwithstanding any other provision of this Article, effective for plan years beginning after December 31, 1986, the entire interest of each member shall be distributed to such member not later than the

required beginning date specified below, or shall be distributed, beginning not later than the required beginning date, over the life of such member or over the lives of such member and a beneficiary or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a beneficiary. For this purpose, the term *required beginning date* shall mean April 1 of the calendar year following the later of the calendar year in which the member attains 70½ years of age, or the calendar year in which the member retires. If a member dies after distribution of the member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a member dies before the distribution of the member's interest has begun, any death benefit shall be distributed within five years after the death of such member, unless (1) any portion of the member's interest is payable to (or for the benefit of) a designated beneficiary, (2) such portion shall be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary, and (3) if the beneficiary is someone other than the member's surviving spouse, such distributions shall begin not later than one year after the date of the member's death or such later date as the U.S. Secretary of the Treasury may by regulations prescribe. If the beneficiary is the surviving spouse of the member, (1) distribution shall begin on or before the latest of one year after the date of the member's death, such later date as the U.S. Secretary of the Treasury may by regulations prescribe, or the date on which the member would have attained 70½ years of age and (2) if the surviving spouse dies before the distributions to such spouse begin, the distribution rules specified in this Section shall be applied as if the surviving spouse were the member. Distributions from the System shall be made in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code, including the rules for incidental death distributions set forth at Section 401(a)(9)(G). (27-90-3, § 4; 51-13-3; 3-16-3.)

Section 3-3-54. - Direct rollovers to other plans.

- (a) General. This Section applies to distributions made on or after January, 1, 1993. Notwithstanding any provision of the System to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, to the extent that any portion of the amount of the rollover is comprised of after-tax contributions, the distribution may only be rolled over to an eligible retirement plan that separately accounts for after-tax contributions.
- (b) Definitions.
 - (1) *Eligible rollover distribution* shall mean any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.
 - (2) *Eligible retirement plan* shall mean any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal Revenue Code; a qualified trust described in Section 401(a) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; or effective for distributions made after December 31, 2007, a Roth IRA described in Section 408A of the Internal Revenue Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e). However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

- (3) *Distributee* shall mean a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is entitled to receive benefits from the System, shall be distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee shall include a non-spouse beneficiary of a deceased member or former member who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.
- (4) *Direct rollover* shall mean a payment by the System to the eligible retirement plan specified by the distributee. (45-93-3; 21-96-3; 8-03-3; 01-11-3; 3-16-3.)

Section 3-3-55. - Additional retirement allowance.

(a) Definitions.

- (1) *Active member* shall mean a member of the System who is an employee on July 1, 1995, or who became an employee thereafter, and whose membership in the System has not ceased at any time from July 1, 1995, or from when he or she became an employee (whichever is later), until the effective date of his or her subsequent retirement.
 - (2) *Retired member* shall mean a member of the System who is receiving a retirement allowance on July 1, 1995. A member of the System who is receiving a retirement allowance shall include any member whose effective date of retirement is on or before July 1, 1995.
 - (3) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, an ordinary disability retirement allowance, a deferred vested benefit, or a spouse retirement allowance.
 - (4) *Base annual retirement allowance* shall mean the initial calculation of a member's or spouse's annual retirement allowance without regard for any deductions for withholding or other benefit elections or adjustments under Section 3-3-8. For a member taking normal service retirement under Section 3-3-32(a), this is the allowance calculated under Section 3-3-33(a)(1) (post-age 55 years) or Section 3-3-33 (a)(2) (pre-age 55 years) less any additional allowance under Section 3-3-33(a)(1)(B); for a member taking early retirement under Section 3-3-32(b), this is the allowance calculated under Section 3-3-33(b), less any additional allowance under Section 3-3-33(a)(1)(B); for a member retired on account of ordinary disability under Section 3-3-34, this is the allowance calculated under Section 3-3-35; for a member receiving a deferred benefit, this is the allowance calculated under Section 3-3-39(b); and for a spouse receiving a spouse retirement allowance, this is the allowance calculated under Section 3-3-44.
 - (5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance of a retired member or of the spouse of a member receiving the base spouse annual retirement allowance provided under Section 3-3-44, as increased by any cost-of-living adjustments applied to the member's or spouse's retirement allowance from the effective date of his or her retirement or election of the spouse retirement allowance through July, 1, 1995.
 - (6) *Member in service* shall mean a member of the System.
- (b) The adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance on July 1, 1995, shall be increased by three percent, effective July 1, 1995, (modified adjusted base annual retirement allowance). Adjustments to the retired member's or spouse's retirement allowance made under the provisions of this Article after July 1, 1995, shall be computed on the basis of the modified adjusted base annual retirement allowance.
 - (c) When an active member retires, or an eligible spouse of an active member elects to receive the spouse retirement allowance after July 1, 1995, after his or her base annual retirement allowance has been computed under the applicable Section of this Article, the resulting base annual retirement allowance shall be increased by three percent (initial base annual retirement allowance). Adjustments to the member's or spouse's retirement allowance under this Article shall be computed on the basis of the initial base annual retirement allowance.

- (d) If a member is entitled to the three percent increase in the base retirement allowance provided by either Subsection (b) or (c) of this Section and if at the time he or she is entitled to such increase, he or she is also eligible to receive in whole or in part the additional allowance provided by Section 3-3-33(a)(1)(B) under any provision of this Article, such additional allowance shall be also increased by three percent.
- (e) Separation from service.
- (1) A member who:
- (A) Separated from service other than by death or retirement with five or more years of creditable service in the System prior to July 1, 1995, and
- (B) Has not withdrawn his or her accumulated contributions as of July 1, 1995, and
- (C) Subsequently applies for and is determined to be eligible for a deferred vested benefit after July 1, 1995, shall have his or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
- (2) A member in service on or after July 1, 1995, who:
- (A) Subsequently separates from service other than by death or retirement with five or more years of creditable service in the System, and
- (B) Does not withdraw his or her accumulated contributions, and
- (C) Subsequently applies for and is determined to be eligible for a deferred vested benefit, shall have his or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
- (3) A member in service on or after July 1, 1995, who,
- (A) Subsequently separates from service other than by death or retirement with five or more years of creditable service in the System, and
- (B) Does not withdraw his or her accumulated contributions, and
- (C) Thereafter, returns to service and again becomes a member of the System, and
- (D) Subsequently applies for and is determined to be eligible for a normal service, early service, or ordinary disability retirement allowance, or for a deferred vested benefit, shall have his or her allowance or deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
- (4) A member in service on or after July 1, 1995, who:
- (A) Thereafter separates from service, and
- (B) Withdraws his or her accumulated member's contributions, and
- (C) Subsequently returns to service and again becomes a member of the System, and
- (D) At that time makes arrangements to purchase credit for all of his or her previous service in the System under this Article, and
- (E) Thereafter applies for and is determined to be eligible for a normal service, early service, or ordinary disability retirement or for a deferred vested benefit, shall have his or her allowance or deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (ced) of this Section.
- (f) The spouse of a member who retired on a normal service, early service or ordinary disability retirement who is receiving an allowance under the joint and last survivor option provided by Section 3-3-33(c), on July 1, 1995, shall have such allowance increased by three percent, effective July 1, 1995. Adjustments to such allowance under this Article after July 1, 1995, shall be computed on the basis of this increased allowance.

- (g) Notwithstanding the 60 percent of average final compensation limit contained in Section 3-3-35, the initial base annual retirement allowance of an active member who becomes eligible to receive an ordinary disability retirement allowance and who is entitled to the increase provided by Subsection (c) of this Section shall not exceed 61.8 percent of his or her average final compensation.
- (h) Notwithstanding any provision of this Section to the contrary, no adjustment under this Section shall be made which would violate the limitations provided by Section 3-3-52 concerning the limitations imposed by Section 415 of the Internal Revenue Code and U.S. Treasury regulations issued thereunder; provided, that any adjustment under this Section may be made up to those limitations.

(i) This Section shall not be applicable to members of Plan F.

(12-95-3; 3-16-3.)

Section 3-3-56. - Deferred retirement option program.

Effective October 1, 2003, there is hereby established a Deferred Retirement Option Program (DROP) for eligible members of the System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

(a) Definitions.

- (1) *DROP period* shall mean the three-year period immediately following the commencement of the member's participation in the DROP.
- (2) *Eligible member* shall mean any member who is, or shall become within 60 days, eligible for normal service retirement benefits as those are defined in Section 3-3-32(a).

(b) Election to participate.

- (1) An eligible member may participate in the DROP only once. An eligible member who desires to participate in the DROP must file an application with the Fairfax County Retirement Administration Agency not less than 60 days prior to the date of the commencement of the member's participation in the DROP.
- (2) A member's election to participate in the DROP is irrevocable, with the exception that a member who elects to participate in the DROP may revoke that election prior to the commencement of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least 12 months from the date of his or her revocation.
- (3) At the time of an eligible member's election to participate in the DROP, he or she must make an election in writing pursuant to Section 3-3-33(c) as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse after the member's death.
- (4) An eligible member who elects to participate in the DROP shall agree to do so for a period of three years.
- (5) Subject to any limitation on the number of accrued sick leave hours that may be converted to creditable service as provided in Section 3-3-24(a)(24), an eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her available accrued sick leave to creditable service or to convert all but 40 hours of his or her accrued sick leave to creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.

(c) Continued employment.

- (1) A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County in the position he or she held before the effective date of his or her election to participate in the DROP. Thereafter, the participating DROP member

shall perform the services of that position or any other position to which he or she is promoted or transferred.

- (2) A participating DROP member shall continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member shall receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case shall a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.
 - (3) A participating DROP member shall continue to remain eligible for health and life insurance benefits provided by the County to its employees and shall remain eligible to participate in the County's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance benefits shall be the same deductions that would have been taken had the participating DROP member been an active County employee, not the deductions that would be taken from the retirement allowances and benefits of a retiree.
 - (4) All County personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member shall remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period shall not be included in the computation of the member's average final compensation. A participating DROP member is also subject to the County's disciplinary policies and regulations.
 - (5) If a participating DROP member's continued employment with the County is interrupted by military service, there shall be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement allowances and benefits shall continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance shall be paid to the member whether or not he or she has returned to his or her former County position, and the member shall begin to receive his or her normal retirement benefits.
 - (6) Except as otherwise set forth herein, a participating DROP member's continued service shall be deemed to be normal service retirement and shall not count as creditable service with the System.
 - (7) Upon commencement of a participating DROP member's DROP period, the County shall cease to withhold contributions to the System from the participating DROP member's salary.
 - (8) The salary received by a participating DROP member during his or her DROP period shall not be included by the County in the base that is used to determine the amount of the County's employer contributions to the System.
- (d) DROP account.
- (1) Upon commencement of the participation of a member of ~~the four plans that existed before January 1, 2013 (Plans A, B, C, and D), whose County employment commenced by reporting for work before January 1, 2013,~~ in the DROP, the member's service retirement allowance pursuant to Section 3-3-33(a) and the additional retirement allowance pursuant to Section 3-3-55 shall be paid into the member's DROP account.

Upon commencement of the participation of a member of Plan E, ~~whose County employment commenced by reporting for work on or after January 1, 2013,~~ in the DROP, the member's service retirement allowance pursuant to Section 3-3-33(a) shall be paid into the member's DROP account; the additional retirement benefits provided for in Section 3-3-33(a)(3) shall not be credited to the DROP accounts of members of Plan E, although members of Plan E shall

remain eligible to receive the additional retirement benefits provided for in Section 3-3-33(a)(3) upon the completion of their DROP period, if they then meet the requirements for eligibility for such benefits set forth in Section 3-3-33(a)(3). ~~The initial amount credited to a member's DROP account shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.~~ Upon commencement of the participation of a member of Plan F, in the DROP, the member's service retirement allowance pursuant Section 3-3-33(a) shall be paid into the member's DROP account, the additional retirement benefits provided for in Section 3-3-33(d) and Section 3-3-55(d) shall not be credited to the DROP account of members of Plan F. The initial amount credited to a member's DROP account shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.

- (2) The initial monthly amount shall be increased each July 1 based upon the annual cost-of-living adjustment provided to retirees pursuant to Section 3-3-45. Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement allowances and benefits if he or she were retired shall also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.
 - (3) The participating DROP member's DROP account shall be credited with interest at an annual rate of five percent, compounded monthly. Interest shall not be pro-rated for any period less than a full month.
 - (4) Contributions by the County and the participating DROP member into the System for the participating DROP member shall cease.
 - (5) Amounts credited to a participating DROP member's DROP account shall not constitute annual additions under Section 415 of the Internal Revenue Code.
 - (6) A participating DROP member's DROP account shall not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance shall remain part of the assets of the System.
- (e) Cessation of County employment.
- (1) At the conclusion of a participating DROP member's DROP period, the member's County employment shall automatically cease. The participating DROP member shall then begin to receive normal service retirement allowances and benefits computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost-of-living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least 60 days prior to the conclusion of a participating DROP member's DROP period, the member shall make one of the following elections concerning payment of his or her DROP account balance:
 - (A) The member may receive payment of his or her DROP account balance as a lump sum.
 - (B) The member may elect to roll over his or her DROP account balance into an "eligible retirement plan," as defined in Section 3-3-54(b)(2).
 - (C) The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.
 - (D) The member may elect to use his or her DROP account balance to increase his or her monthly retirement benefits and allowances. The amount of the increase shall be

determined based on the actuarial equivalent of the member's DROP account balance.

- (E) The member may divide his or her DROP account balance in half, and may then elect to use 50 percent of his or her DROP account balance to increase his or her monthly retirement allowances and benefits, and to receive the remainder in any manner listed in Subparagraphs (A), (B) and (C) above.

In the event that the participating DROP member does not make the election required by this Subsection, the member shall receive payment of his or her DROP account balance as a lump sum.

- (2) A participating DROP member may terminate his or her County employment at any time, in which case the effective date of the member's termination of his or her County employment shall be treated as the end of the DROP period for all purposes of this Section.
 - (3) In the event that the employment of a participating DROP member is terminated by the County during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.
- (f) Death or disability during DROP period.
- (1)
 - (A) If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of Section 3-3-33(c), the participating DROP member's surviving spouse shall receive payment of the participating DROP member's DROP account balance and shall begin to receive allowances and benefits pursuant to the joint and last survivor option election of the participating DROP member.
 - (B) If a participating DROP member dies during the DROP period, and the participating DROP member's death is a service-connected accidental death as set forth in Section 3-3-38, the member's beneficiary shall receive the benefits provided for in Section 3-3-38(a)(1); if there is no designated beneficiary on record with the System, payment of these amounts shall be to the member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of Section 3-3-33(c), the participating DROP member's surviving spouse shall receive the benefits provided for in Section 3-3-38(a)(1)(B) and the participating DROP member's DROP account balance, and shall begin to receive allowances and benefits pursuant to the joint and last survivor election of the participating DROP member.
 - (2) If a participating DROP member becomes disabled during the DROP period, the participating DROP member shall receive:
 - (A) In the case that a participating DROP member suffers a disability that would be considered an ordinary disability as defined in Section 3-3-35, the effective date of the member's disability shall be treated as the end of the participating DROP member's DROP period.
 - (B) In the case that a participating DROP member suffers a service-connected disability as set forth in Section 3-3-36 or a severe service-connected disability as set forth in Section 3-3-37.2, the participating DROP member may elect either (i) to receive the

service-connected disability retirement allowances and benefits or the severe service-connected disability retirement allowances and benefits to which he or she would otherwise be entitled or (ii) to receive the normal service retirement benefits and allowances to which he or she would be entitled plus his or her DROP account balance. An election to receive service-connected disability retirement allowances and benefits or severe service-connected disability retirement benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.

- (g) Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board of Trustees is also authorized to adopt rules and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (36-03-3; 41-08-3; 27-10-3; 01-11-3; 27-12-3; 3-16-3.)

Section 3-3-57. - Increased retirement allowance for certain retired members.

(a) For the purposes of this Section only, the following words and phrases shall be defined as follows:

- (1) *Retired member* shall mean a member of the System whose effective date of retirement was on or before March 18, 2002.
- (2) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, an allowance to a surviving spouse pursuant to the joint and last survivor option, or a spouse retirement allowance.
- (3) *Spouse receiving a spouse allowance* shall mean a member's surviving spouse who was, on or before March 18, 2002, entitled to receive a spouse retirement allowance.
- (4) *Base annual retirement allowance* shall mean the initial calculation of a member's retirement allowance, a surviving spouse's allowance pursuant to the joint and last survivor option, or a spouse's annual retirement allowance, without regard to any deductions for withholding or other benefit elections or adjustments under Section 3-3-8.
 - (A) For Plan A members taking normal service retirement pursuant to Section 3-3-32(a), this is the allowance calculated pursuant to Sections 3-3-33(a)(1)(A) and (B) as in effect on the effective date of their retirement;
 - (B) For Plan B members taking normal service retirement pursuant to Section 3-3-32(a), this is the allowance calculated pursuant to Section 3-3-33(a)(1)(A), (B) and (C) as in effect on the effective date of their retirement;
 - (C) For Plan C members taking normal service retirement pursuant to Section 3-3-32(a), this is the allowance calculated pursuant to Section 3-3-33(a)(1)(D) as in effect on the effective date of their retirement;
 - (D) For Plan D members taking normal service retirement pursuant to Section 3-3-32(a), this is the allowance calculated pursuant to Section 3-3-33(a)(1)(D) and (E) (Plan D members) as in effect on the effective date of their retirement;
 - (E) For Plan A and C members taking early service retirement pursuant to Section 3-3-32(b) whose age plus creditable service as of the effective date of their retirement was less than 75 years, this is the allowance calculated pursuant to Section 3-3-33(b)(1) as in effect on the effective date of their retirement;
 - (F) For Plan B and D members and for Plan A and C members taking early service retirement pursuant to Section 3-3-32(b) whose age plus creditable service was greater than or equal to 75 years as of the effective date of their retirement, this is the allowance calculated pursuant Section 3-3-33(b)(2) as in effect on the effective date of their retirement; or

- (G) For a surviving spouse receiving an allowance pursuant to the joint and last survivor option, this is the allowance calculated pursuant to Section 3-3-33(c) as in effect on the effective date of the member's retirement; or
- (H) For a spouse receiving a spouse allowance, this is the allowance calculated pursuant to Section 3-3-44(a) as in effect on the date of the commencement of payment of the spouse allowance.
- (5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance as set forth in Subparagraph 4 of this Subsection as increased by any cost-of-living adjustments applied to the base annual retirement allowance from the effective date of the retired member's retirement or of the commencement of the receipt of a spouse allowance through December 31, 2003.
- (b) Effective January 1, 2004, the adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance shall be increased as follows:
 - (1) For Plan A members, by 23 percent;
 - (2) For Plan B members, by 15 percent;
 - (3) For Plan C members, by five percent;
 - (4) For Plan D members, by five percent;
 - (5) For spouses receiving spouse allowances pursuant to Section 3-3-44(a), by ten percent; or
 - (6) For surviving spouses receiving allowances pursuant to the joint and last survivor option set forth in Section 3-3-33(c), by ten percent.
- (c) No increased retirement allowance calculated pursuant to this Section shall violate the limitations on annual retirement allowances set forth in Section 3-3-52.
- (d) For those persons eligible to receive the increased retirement allowance pursuant to this Section, cost of-living adjustments pursuant to Section 3-3-45 and made after January 1, 2004, shall be calculated based upon the increased retirement allowance set forth in this Section. (43-03-3; 3-16-3.)

Division 9. - Benefit Restoration Plan.

Section 3-3-58. - Benefit restoration plan.

- (a) There is hereby established a Benefit Restoration Plan for the System.
- (b) Purpose and intent; rule of construction.
 - (1) In establishing this Benefit Restoration Plan, the Board of Supervisors intends to establish and maintain a "qualified governmental excess benefit arrangement," as defined and authorized by the Section 415(m) of the Internal Revenue Code, as is permitted by Section 51.1-1302 of the *Virginia Code*. The purpose of this Benefit Restoration Plan is to restore, through a non-qualified arrangement, the benefits lost by the application of the limitation on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans. This Benefit Restoration Plan shall exist in addition to all other retirement, pension, or other benefits available to participants, including the benefits established by the System.
 - (2) This Section shall be construed to ensure compliance with federal and state law, and any regulations promulgated thereunder, governing such qualified governmental excess benefit arrangements, including, but not limited to Section 415(m) of the Internal Revenue Code and Sections 51.1-1302, 51.1-1303, and 51.1-1304 of the *Virginia Code*, as in effect at the time of the adoption of this Section and as subsequently amended.
- (c) Definitions.
 - (1) *Administrator* or *Plan Administrator* shall mean the Board, which is responsible for the general administration and operation of the Benefit Restoration Plan and for making effective the provisions of this Section. Under the oversight of the Board, the Executive Director shall be responsible for the day to day operation and administration of the Benefit Restoration Plan.

- (2) *Beneficiary* shall mean the person or persons entitled under this Article to receive any benefits payable after the participant's death.
 - (3) *Benefit Restoration Plan* or *Plan* shall mean the Benefit Restoration Plan for the System established by this Section.
 - (4) *Effective date* shall mean the date of this Section's adoption [June 5, 2006].
 - (5) *Eligible member* shall mean a retired member of the System whose benefits thereunder are reduced by the application of the limitations on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans.
 - (6) *Enabling statute* shall mean Chapter 13 of Title 51.1 of the *Virginia Code*, as amended.
 - (7) *Grantor trust* shall mean the trust fund described in Subsection (i)(3) of this Section and established and maintained for the Benefit Restoration Plan.
 - (8) *Participant* shall mean an eligible member qualified to participate in the Benefit Restoration Plan.
 - (9) *Plan Sponsor* shall mean the Board of Supervisors.
 - (10) *Plan Year* shall mean the 12-month period beginning on July 1.
 - (11) *Restoration death benefit* shall mean the benefit due the beneficiary of a participant under the Plan as determined under this Section.
 - (12) *Restoration retirement benefit* shall mean the benefit due a participant or his or her beneficiary under the Benefit Restoration Plan determined under this Section.
- (d) Eligibility and Participation.
- (1) Eligibility and date of participation. Each eligible member shall be a participant in the Benefit Restoration Plan commencing with the date he or she first becomes, or again becomes, an eligible member.
 - (2) Length of participation. Each eligible member who becomes a participant shall be or remain a participant for so long as he or she is entitled to future benefits under the terms of the Benefit Restoration Plan.
- (e) Restoration retirement benefit. Subject to the terms and conditions set forth in this Section, a participant who retires or is retired under the System and who is entitled to the payment of benefits under the System shall be entitled to a restoration retirement benefit, generally expressed as a benefit payable monthly for the life of the participant and commencing at the applicable time provided under this Article, equal to the excess, if any, of:
- (1) The amount of the participant's retirement allowance under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
 - (2) The amount of the participant's retirement allowance under the System.
- To the extent that the participant's retirement allowance payable under the System is increased at any time due to increases in limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U. S. Treasury Secretary or his or her delegate or otherwise, the participant's restoration retirement benefit shall be reduced correspondingly.
- (f) Death Benefit.
- (1) Death after benefit commencement. If a participant dies after his or her restoration retirement benefit commences to be paid, the only benefits payable under the Benefit Restoration Plan to his or her beneficiary after his or her death shall be those, if any, provided under the form of payment being made to him or her at his or her death.

- (2) Death before benefit commencement. If a participant dies before his or her restoration retirement benefit commences to be paid, the only benefit payable under the Benefit Restoration Plan with respect to him or her shall be the restoration death benefit, if any, provided in Subsection (f)(3) of this Section.
- (3) Restoration death benefit. Subject to the terms and conditions set forth herein, if a participant dies on or after the effective date and before his or her restoration retirement benefit commences to be paid, his or her beneficiary shall be entitled to a restoration death benefit as follows:
 - (A) If his or her beneficiary is entitled to receive any death benefit under the System, such beneficiary shall be entitled to receive as a restoration death benefit under the Benefit Restoration Plan an amount equal to the excess, if any, of:
 - (i) The amount of such death benefit under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
 - (ii) The actual amount of such death benefit under the System.

To the extent that the participant's accrued benefit or any death benefit payable under the System is increased at any time due to increases in the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U.S. Secretary of the Treasury or his or her delegate or otherwise, the participant's restoration death benefit shall be reduced correspondingly.
- (g) Vesting. A participant's restoration retirement benefit or restoration death benefit, as the case may be, shall be vested at the time of his or her retirement under the System or death, but only to the extent, and determined in the manner, that such participant has a vested and non-forfeitable right to his or her retirement allowance under the System.
- (h) Payment of Benefits.
 - (1) Time and manner for payment of benefits. A participant's restoration retirement benefit, or the restoration death benefit, shall be payable at the same time and in the same manner as the participant's retirement allowance or comparable death benefit (other than his or her accumulated contributions or contribution refund death benefit) is paid under the System, whether as elected by the participant or otherwise payable. For a member who is receiving a retirement allowance under the System on the effective date, and who would immediately be an eligible member upon the effective date, such Member shall immediately commence receiving a restoration retirement benefit on a prospective basis.
 - (2) Discretionary use of other methods of payment. In the sole discretion of the Administrator, monthly payment amounts of less than \$100.00, or such amount as the Administrator may from time to time determine, may be paid on an annual or semi-annual basis, in arrears and without interest.
 - (3) Benefit determination and payment procedure. The Administrator shall make all determinations concerning eligibility for benefits under the Benefit Restoration Plan, the time or terms of payment, and the form or manner of payment to the participant (or the participant's beneficiary in the event of the death of the participant). The Administrator shall promptly notify the employer and, where payments are to be made from a grantor trust, the trustee thereof, of each such determination that benefit payments are due and provide to the employer or trustee such other information necessary to allow the employer or trustee to carry out said determination, whereupon the employer or trustee shall pay such benefits in accordance with the Administrator's determination.
 - (4) Payments to minors and incompetents. If a participant or beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits shall be paid to such person as the Administrator may designate for the benefit of such

participant or beneficiary. Such payments shall be considered a payment to such participant or beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Benefit Restoration Plan.

- (5) Distribution of benefit when distributee cannot be located. The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a participant or his or her beneficiary entitled to benefits under the Benefit Restoration Plan, including the mailing by certified mail of a notice to the last known address shown on the employer's or the Administrator's records. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no such claim made for such benefits, the employer shall continue to hold the benefit due such person, subject to any applicable statute of escheats.

(i) Funding.

- (1) The undertaking to pay the benefits hereunder shall be unfunded obligations payable solely from the general assets of the employer and subject to the claims of the employer's creditors.
- (2) Except as provided in a grantor trust established as permitted in Subsection (i)(3) of this Section, nothing contained in the Benefit Restoration Plan and no action taken pursuant to this Section shall create or be construed to create a trust of any kind of a fiduciary relationship between the employer and the participant or his or her beneficiary or any other person or to give any participant or beneficiary any right, title, or interest in any specific asset or assets of the employer. To the extent that any person acquires a right to receive payments from the employer under the Benefit Restoration Plan, such rights shall be no greater than the right of any unsecured general creditor of the employer.
- (3) Use of grantor trust permitted. Notwithstanding any provision of this Section to the contrary, the Benefit Restoration Plan Sponsor may in its sole discretion elect to establish and fund a grantor trust for the purpose of providing benefits under the Benefit Restoration Plan.

(j) Plan Administrator.

- (1) The Plan Administrator shall have full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Benefit Restoration Plan pursuant to this Section and the enabling statute. The Administrator shall have any and all powers as may be necessary or advisable to discharge its duties under the Benefit Restoration Plan including the power and authority to interpret the terms of the Benefit Restoration Plan.
- (2) The Plan Administrator shall be responsible for performing the duties required for the operation of the Benefit Restoration Plan, and shall be responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities under this Section and the enabling statute.
- (3) To enable the Plan Administrator to perform its responsibilities, employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Benefit Restoration Plan. The Plan Administrator shall rely upon this information supplied by the employer, and shall have no duty or responsibility to verify this information.
- (4) Except as prohibited by law or by this Section, the Plan Administrator may delegate any of its duties to the Executive Director. The Plan Administrator may contract with any person to provide services to assist in the administration of the Benefit Restoration Plan. The Plan Administrator shall make such contracts in compliance with all applicable state and local laws and regulations. Any person other than the Plan Administrator who performs services regarding the Benefit Restoration Plan is subject to the supervision and direction of the Plan Administrator, and does not have the authority to control the operation of the Plan.

(k) Termination and amendment of Benefit Restoration Plan.

- (1) Termination. The Board of Supervisors hereby reserves the right to terminate the Benefit Restoration Plan at any time; provided, that no such termination shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such termination.
- (2) Amendment. The Board of Supervisors hereby reserves the right to amend this Benefit Restoration Plan at any time; provided, that no such amendment shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such amendment.

(l) Non-assignability.

The interests of each participant hereunder the Benefit Restoration Plan are not subject to the claims of the participant's creditors; and neither the participant nor his or her beneficiary, shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Benefit Restoration Plan, which payments and interest are expressly declared to be non-assignable and non-transferable. Notwithstanding the foregoing, the Plan Administrator shall honor any process for a debt to the employer who has employed the participant and any administrative actions pursuant to Section 63.2-1900 et seq. of the *Virginia Code*, or any court process to enforce a child or spousal support obligation, in the manner as described in Section 3-3-7 mutatis mutandi. Restoration retirement benefits and/or restoration death benefits created under this Section which are deemed to be marital property pursuant to Section 20-89.1 et seq. of the *Virginia Code* may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Virginia Code*. Under no circumstances may a payment under this Subsection take place before the participant's benefit under the System is actually paid. (12-06-3; 3-16-3.)

ARTICLE 7. - Fairfax County Police Officers Retirement System.

Division 1. - Generally.

Section 3-7-1. - Fairfax County Police Officers Retirement System established.

- (a) Under the authority granted by Chapter 303, 1944 Acts of the Assembly, as amended, the Police Pension and Retirement System, established previously under the authority of Chapter 303, 1944 Acts of the Assembly, is hereby continued and is adopted and enacted by ordinance, as hereinafter set forth, and is to be known henceforth as the "Fairfax County Police Officers Retirement System."
- (b) The previously established Policemen's Pension and Retirement Board is hereby continued and shall be referred to as the "Board of Trustees of the Fairfax County Police Officers Retirement System." Members of the Board of Trustees in office on the effective date of this Article (June 22, 1981) shall continue in office as trustees until the expiration of their present terms and may be reappointed in accordance with the provisions of this Article.
- (c) The Fairfax County Police Officers Retirement System is intended to satisfy the requirements of Sections 401(a) and 414(d) of the Internal Revenue Code for qualified governmental pension plans. (20-81-3; 52-13-3.)

Section 3-7-2. - Definitions.

Unless provided otherwise in another Section, the following definitions shall apply to this Article:

(a) *Accrued sick leave credit* shall mean:

- (1) For employees who ~~are so County employment commenced by reporting for work before January 1, 2013~~ (members of Plan A), the credit allowed a member at a rate of one (1) month for each one-hundred-seventy-two (172) hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof.
- (2) For employees ~~whose County employment commenced by reporting for work on or after January 1, 2013~~ (who are members of Plans B or C), the credit allowed a member with more than five (5) years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one (1) month for every one-hundred-seventy-two (172) hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof; however, for employees whose County employment commenced by reporting to work on or after January 1, 2013, notwithstanding the amount of the employee's accrued sick leave balance, the maximum amount of accrued sick leave credit that may be used for determining retirement eligibility and for computing the member's retirement allowances and benefits shall be the employee's accrued sick leave balance or two-thousand-eighty (2,080) hours, whichever is less.

(b) *Actuarial equivalent* shall mean a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board.

(c) *Average final compensation* shall mean the average annual creditable compensation of a member during the thirty-six (36) consecutive months (seventy-eight (78) consecutive pay periods) ~~in which the member received his or her highest creditable compensation~~ for a member of Plans A or B, or 60 consecutive months (130 consecutive pay periods) for a member of Plan C, in which the member received his or her highest creditable compensation. In the event a member's creditable service is less than 36 months (78 pay periods) for a member of Plan A or B, or less than 60 months (130 pay periods) for a member of Plan C, his or her average final compensation shall be his or her average monthly creditable compensation received during the entire period of creditable service multiplied by 12 (average biweekly creditable compensation multiplied by 26 for biweekly paid members).

- (1) In determining average final compensation for members who retire after July 1, 1988, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his or her final salary during the period of his or her accrued unused sick leave; provided, that in determining the average final compensation for members who became members of the System on or after January 1, 2013 (members of Plans B or C), no more than two-thousand-eighty (2,080) hours of the member's accrued unused sick leave may be used for this purpose.
- (2) If a member ordered or called to active duty with the armed forces of the United States on or after August 2, 1990, with or without his or her consent, other than for training at the request of the member, is entitled to service credit as a result of such military service pursuant to Section 3-7-23(d) and he or she otherwise would have no creditable compensation attributable to some portion or all of such period of service, his or her average final compensation shall be calculated as if he or she had continued to receive the salary, including pick-up contributions, approved and established for his or her position by the County Compensation Plan during the period of military service for which he or she is receiving service credit. A member shall be entitled to the benefit of the application of this rule for up to a cumulative total of four (4) years of military service commencing on or after August 2, 1990. The Board shall make any and all necessary retroactive adjustments to members' allowances as a result of this rule.
- (3) Notwithstanding the foregoing, whenever the Director of the Department of Human Resources, at the request of the Board, the member, or the member's beneficiary determines that the member's receipt of a merit increment was delayed as a result of either or both of the amendments to Section 4.3-2 of the Personnel Regulations, effective July 13, 1991, and July 11, 1992, and that the member would otherwise have been entitled to such merit increment under the Personnel Regulations, based upon the Human Resources Director's review of the member's personnel and payroll records, the Board shall calculate the member's average final compensation as if the member had received the merit increment at the time he or she would have but for the aforesaid amendments to Section 4.3-2 of the Personnel Regulations. This Subparagraph shall apply to all applications for allowances and benefits filed with the Board on or after July 13, 1991. The Board shall make any necessary retroactive adjustments to allowances and benefits.
- (4) Periods of leave without pay under the federal Family and Medical Leave Act of 1993 (FMLA) shall be disregarded in determining periods of consecutive months or pay periods in calculating average final compensation.
- (d) *Average salary*, as used in Section 3-7-34, shall mean the current salary of the position the member was in at the time he or she was disabled.
- (e) *Beneficiary* shall mean any person, other than a member, entitled to receive benefits as provided by the System. The Board shall provide a member with a form on which to designate in writing one or more beneficiaries of the member's benefits upon the member's death. The Board shall maintain any such written designation on file. A designated beneficiary may be changed from time to time by written notice by the member filed with the Board.
- (f) *Board* shall mean the Board of Trustees of the System, as provided in this Article.
- (g) *Creditable compensation* shall mean payment of salary including pick-up contributions, roll call and holiday pay but excluding performance bonuses. Effective for plan years after December 31, 1988, compensation in excess of \$200,000.00, as indexed under Section 415(d) of the Internal Revenue Code, shall be disregarded. Notwithstanding the foregoing, effective for members hired on or after July 1, 1996, compensation in excess of the limit set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. In determining the compensation of an employee under this definition, the rules of Section 415(c)(3) of the Internal Revenue Code shall apply. Effective for plan years on or after January 1, 2001 an employee's compensation shall include amounts not includible in gross income by reason of Section 132(f)(4) of the Internal Revenue Code.

- (h) *Creditable service* shall mean the total of membership service credit, plus portability service credit purchased pursuant to Section 3-7-23.1.
- (i) *DROP* shall mean the Deferred Retirement Option Program, as provided in Section 3-7-52.
- (j) *Employee* shall mean any law enforcement officer within the Fairfax County Police Department, whose compensation is fully paid by the County, and excluding any person as defined by Section 3-3-1(a)(9) of the *Code of the County of Fairfax*.
- (k) *Employer* shall mean the Chief of Police for the Fairfax County Police Department or an authority in the County having power to appoint police officers paid directly or indirectly by the County and/or the Board of Trustees of the System.
- (l) *Executive Director* shall mean the Executive Director of the Fairfax County Retirement Administration Agency.
- (m) *Handicapped child* shall mean natural or legally adopted member's progeny who has demonstrated to the Board by medical evidence acceptable to the Board, in its sole discretion, to be permanently mentally incompetent or permanently physically handicapped, unless and until a determination has been made by the Board that such progeny no longer is permanently mentally incompetent or permanently physically handicapped in accordance with Section 3-7-41.
- (n) *Internal Revenue Code* shall mean the federal income tax statutes, as they may be amended or superseded from time to time in the future.
- (o) *Member* shall mean a full-time employee, or a part-time employee, provided the Board first determines that it desires to receive a part-time employee into the System, or a former employee entitled to benefits under the System.
- (p) *Membership service credit* shall mean credit for service while a member of the System.
- (q) *Partial disability* shall mean the inability of the member to perform some part of the duties of a police officer, such as in administrative or desk assignments.
- (r) *Pick-up contributions* shall mean a member's regular contribution to the System which is picked up, through a salary reduction, by the County from the member's compensation for service rendered on or after December 22, 1984.
- (s) *Plan A* shall mean the provisions of this Article as applicable to all employees whose County employment commenced by reporting for work before January 1, 2013.
- (t) *Plan B* shall mean the provisions of this Article as applicable to all employees whose County employment commenced by reporting for work on or after January 1, 2013, and before July 1, 2019.
- ~~(u)~~ (u) *Plan C* shall mean the provisions of this Article as applicable to all employees whose County employment commenced by reporting for work on or after July 1, 2019.
- ~~((v))~~ (v) *Retirement allowance* shall mean the retirement payments to which a member is entitled as provided in this Article.
- ~~(w)~~ (w) *Salary* shall mean the compensation, including pick-up contributions, established for each position as approved in the County Compensation Plan.
- ~~(x)~~ (x) *Service* shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.
- ~~(y)~~ (y) *System* shall mean the Fairfax County Police Officers Retirement System. When any part of this Article refers to multiple retirement systems, the Police Officers Retirement System shall be referred to as "this System," rather than "the System."
- ~~(z)~~ (z) *Total disability* shall mean the inability of a member to reasonably perform his or her duties as a police officer. (20-81-3; 5-85-3; 36-88-3; 27-90-3, § 5; 13-92-3; 43-92-3; 15-93-3; 37-94-3; 21-96-3; 14-00-3; 18-01-3; 8-03-3; 8-04-3; 28-12-3.)

Section 3-2-2.1. - Definitions elsewhere in County Code and in County Personnel Regulations.

Unless this Article provides otherwise, the definitions provided in Sections 1-1-2, 3-3-1, and 3-3-12 of the *Code of the County of Fairfax*, and Chapter 2 of the Fairfax County Personnel Regulations shall apply herein.

Section 3-7-3. - Duties of the employer.

The employer shall keep all necessary records relating to the hiring and employment of members, and from time to time shall furnish such information as the Board may require in the discharge of its duties. Upon employment of a member, the employer shall inform the member of his or her duties and obligations in connection with the System as a condition of employment. (20-81-3.)

Section 3-7-4. - Consent to provisions of Article required for employment.

By and upon acceptance of employment with the employer, every member shall be deemed to consent and agree to any deductions or employer pick-up of amounts from his or her compensation required by this Article and to all other provisions thereof. (20-81-3; 5-85-3.)

Section 3-7-5. – Protection against fraud.

In addition to any other provisions of law, any person who shall knowingly make any false statement, or shall falsify or permit to be falsified, any record or records of the System in any attempt to defraud the System shall be guilty of a misdemeanor and shall be punished accordingly. (20-81-3.)

Section 3-7-6. - Benefits unassignable; non-attachable.

The right of any member to a retirement allowance, to the return of contributions, including picked-up amounts, or any other right accrued or accruing to any person under this Article, and the funds created by this Article shall be unassignable and shall not be subject to execution, garnishment, attachment, bankruptcy, insolvency, or any other process of law whatsoever except for administrative actions pursuant to Section 63.2-1900 *et seq.* of the *Code of Virginia* or any court process to enforce a child or child and spousal support obligation, and shall be unassignable except as specifically provided in this Article. However, retirement benefits and assets created under this Article which are deemed to be marital property pursuant to Section 20-89.1 *et seq.* of the *Code of Virginia* may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Code of Virginia*. (5-85-3; 13-92-3; 1-93-3)

Section 3-7-7. – Errors resulting in over- or under-payment.

- (a) Should any change or error in the records or in the computation of a member's benefits result in any member or beneficiary receiving from the System more (overpayment) or less than he or she would have been entitled to had the records or computation been correct, the Board shall have the authority to correct such error and, as far as practicable, adjust the payments in such a manner that the actuarial equivalent of the benefit, to which such member or beneficiary was correctly entitled, shall be paid.
- (b) The Board is authorized to negotiate and compromise with a member with respect to any amounts which the Board determines have been paid to the member in excess of amounts to which the member is entitled. (20-81-3; 13-92-3.)

Section 3-7-8. – Amendment of Article.

- (a) The Board of Supervisors shall have the continuing right and power to amend, ~~suspend, or revoke or supplement~~ this Article at any time, which right and power is hereby expressly reserved, so long as the benefits payable are consistent with Va. Code Ann. 51.1-800. But no amendment shall be made inconsistent with the provisions of Section 51.1-821 of the Code of Virginia, as amended, and Chapter 303, 1944 Acts of Assembly, as amended.

- (b) No amendment, suspension or revocation, including termination or partial termination of the System, shall have the effect of diverting the trust fund of the System to purposes other than the exclusive benefit of the participating employees or their beneficiaries, until all liabilities for accrued benefits payable under the terms of the System shall have been fully satisfied. Upon termination of the System or a discontinuance of contributions to the System, each member's benefit accrued as of such date will be nonforfeitable. (20-81-3; 21-96-3; 52-13-3)

Division 2. - Board of Trustees.

Section 3-7-9. - Administration of System vested in Board of Trustees.

The general administration and the responsibility for the proper operation of the System and for making effective the provisions of this Article are hereby vested in the Board. (20-81-3.)

Section 3-7-10. – Membership; term of office; election of officers.

- (a) The Board of Trustees of the System shall consist of the following members:
- Director of the Department of Finance, who shall be the Treasurer of the Board, or his or her permanent designee, sitting ex officio;
 - Three (3) persons appointed by the Board of Supervisors;
 - Two (2) persons currently employed by the Fairfax County Police Department as sworn police officers elected by the members of the System currently employed by the Fairfax County Police Department as sworn police officers; and
 - One (1) person who is retired from employment as a sworn police officer of Fairfax County elected by the retired members of the System.
- (b) With the exception of the Director of the Department of Finance, the term of office of trustees shall be four (4) years. (20-81-3; 10-01-3.)

Section 3-7-11. - Vacancies in office.

Vacancies which occur in the office of trustee of the System shall be filled for the unexpired term in the same manner as the office was previously filled. (20-81-3.)

Section 3-7-12. - Compensation of trustees.

The three (3) trustees appointed by the Board of Supervisors may receive compensation at the rate set by the Board of Supervisors. (20-81-3.)

Section 3-7-13. – Election of officers.

The Board shall elect one (1) member as president, one (1) as secretary, and may elect one (1) as vice-president. Such election shall occur at the first meeting of the Board in each calendar year. (20-81-3.)

Section 3-7-14. – Accountable to the Board of Supervisors.

The Board of Trustees of the System shall be accountable to the Board of Supervisors. (20-81-3.)

Section 3-7-15. - Functions of the Board.

The general powers and authorized duties of the Board, subject to the limitations of this Article, are as follows:

- (a) To adopt bylaws, rules and regulations, lawful and necessary for the proper conduct of its affairs.
- (b) To conduct hearings, make investigations, and determine the amount of awards or pensions to be paid any police officer or his or her beneficiaries.

- (c) To provide for the expense of such clerical, legal, medical, investment counsel, and other services as it deems necessary or proper.
- (d) To provide for, and require deductions from, the salaries of active and paid members of the Police Department, and to cause the amounts deducted to be paid into its treasury, for its use in the administration of the System.
- (e) To draw warrants, signed in its name and countersigned by its president, and its treasurer, for the payments of pensions and benefits hereunder, and of costs and expenses of administration.
- (f) To determine who shall be members of the System.
- (g) To submit to the Board of Supervisors annually an independent audit showing the fiscal transactions of the System for the preceding fiscal year, the amount of accumulated cash and securities of the System, and the last balance sheet indicating the financial condition of the System.
- (h) To cause an actuarial evaluation to be made of the System as of July 1, 1982, and at least once in each succeeding two-year period. The Board shall keep in convenient form such data as shall be necessary for an actuarial evaluation of the System and for checking the experience of the System.
- (i) To review adverse decisions as provided by Section 3-7-45. (20-81-3; 8-82-3.)

Division 3. – Management of Funds.

Section 3-7-16. - Board trustee of funds; investment of same.

- (a) The Board shall be the trustee of funds created by this Article and shall have full power to invest and re-invest such funds. Such investments and re-investments shall be conducted with bona fide discretion and in accordance with the laws of the Commonwealth of Virginia, as such laws apply to fiduciaries investing such funds. The Board may upon the exercise of bona fide discretion employ investment counsel, who shall be subject to the same limitations herein provided for the Board. Subject to such limitations, the Board shall have the full power to hold, purchase, sell, assign, transfer or otherwise dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as the proceeds of such investments and any money belonging to such funds.
- (b) No trustee shall be personally liable for losses suffered by the System on investments made under the authority of and in compliance with this Section. (20-81-3.)

Section 3-7-17. - Treasurer fiscal officer of the Board.

The Treasurer of the Board shall be the custodian of all of its funds and securities, and may designate a fiduciary agent, upon the direction and approval of the Board. He or she shall give bond, in such amount, and with such surety, as the Board requires, as a condition for the faithful performance of his or her duties and the proper accounting for all funds and securities coming into his or her hands. He or she shall disburse the funds on warrants drawn by the Board, signed and countersigned as provided herein. (20-81-3.)

Section 3-2-18. - Prohibited interest of member or employee of Board.

- (a) The State and Local Government Conflict of Interests Act, Section 2.2-3100 *et seq.*, of the *Code of Virginia*, shall apply to members and employees of the Board.
- (b) No member or employee of the Board shall, directly or indirectly, for himself or herself or as an agent in any manner use the funds of the System, except to make such current and necessary payments as are authorized by the Board. (20-81-3.)

Division 4. - Membership in System.

Section 3-7-19. – Membership composition.

- (a) Membership shall be composed of the following:
 - (1) Present employees.

- (2) All persons who were employees on June 22, 1981, or who were on authorized leave from service on such date.
- (3) Future employees.
- (4) Former park police officers who elected to transfer to this System from the Fairfax County Uniformed Retirement System pursuant to the provisions of Section 3-3-20(b)(3). Membership in this System shall commence on January 22, 1983. For purposes of this Article, such members shall be deemed to have been appointed on or after July 1, 1981, regardless of being granted any prior service credit pursuant to Section 3-7-20(b). Such members may receive service credit for prior service as a park police officer if the member pays into this System the difference between the amount he or she contributed to the Uniformed Retirement System and the amount he or she would have contributed to this System had he or she been a member during the period for which he or she is seeking prior service credit plus an amount equal to the total return of this System's assets in each year for which prior service credit is applied to those contributions that have been in this System had he or she been a member at the time. At the Board's discretion, such a member may pay in installments over a period not to exceed one year. However, prior service credit shall not be granted until payment has been received in full. This offer to purchase service shall be effective for a period of one year from the approval date of this change [February 26, 2001].
- (b) Employees of the County who are members of the Virginia Retirement System (VRS) or the Fairfax County Uniformed Retirement System, and future employees who are eligible to become members of those systems, are not eligible for membership in this System.
- (c) Persons receiving a normal service or early service retirement allowance from this System, the Fairfax County Employees' Retirement System or the Fairfax County Uniformed Retirement System are eligible for membership only under the terms and conditions set forth in Section 3-7-40.
- (d) Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of this System who has more than five (5) years of creditable service in this System and who is appointed to serve as a Deputy County Executive shall remain a member of this System, and shall not become a member of the Fairfax County Employees' Retirement System as a result of such appointment. Any such member shall remain a member of this System for so long as he or she is so employed or subsequently resumes working in a position that is covered under this System. (20-81-3; 35-81-3; 22-83-3; 36-86-3; 27-90-3, § 5; 8-91-3; 56-93-3; 10-01-3; 28-12-3.)

Division 5. Service Credit.

Section 3-7-20. - Statement to be filed with Board.

Under such rules and regulations as are adopted by the Board, each member or someone on his or her behalf shall file with the Board, in such form as the Board may prescribe, a statement of the facts pertaining to his or her status as a member, which shall include a statement of all service as an employee, and such other information as the Board may require. Until such statement is filed, no member or his or her beneficiary shall be eligible to receive any benefits under this Article. (20-81-3.)

Section 3-7-21. - Year of service.

The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months. (20-81-3.)

Section 3-7-22. - Membership service credit.

- (a) Each member shall receive membership service credit for service rendered while a member of the System, or after he or she last became a member in the event of a break in his or her membership.

- (b) Each member shall receive membership service credit for any period he or she is on service-connected total disability retirement. All members who have been retired before, and all members who are retired on or after, July 7, 2003, on account of service-connected partial disability pursuant to Section 3-7-29 shall receive membership service credit for any period they are on service-connected partial disability retirement.
- (c) Each member shall be allowed membership service credit for accrued unused sick leave upon making application for retirement, at the rate of one (1) month of credit for each one-hundred-seventy-two (172) hours of accrued unused sick leave; and pro rata credit shall be allowed for each fraction thereof. In determining average final compensation, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his or her final salary during the period of his or her accrued unused sick leave.
- (d) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within ninety (90) days of discharge and such discharge is other than dishonorable. (20-81-3; 36-88-3; 8-03-3; 33-03-3.)

Section 3-7-23. – Prior service credit.

- (a) A member shall receive membership service credit for prior employment as a police officer with the County, provided he or she shall return his or her contributions, including picked-up amounts, previously paid, in addition to interest received at the yearly rates earned by the System during the period the member's contributions, including picked-up amounts, had been withdrawn. The Board may, in its discretion, accept a return of a member's contributions, including picked-up amounts on an installment basis, as determined by the Board. Such member may satisfy some or all of the amount due from him or her for the purchase of such service through a rollover from an individual retirement account if the entire amount in that account is attributable to a rollover from the System. Such member may also satisfy some or all of the amount due from him or her for the purchase of such service through a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), or through a direct trustee-to-trustee transfer from an annuity described in Section 403(b) of the Internal Revenue Code.
- (b) Former park police officers who elected to transfer to this System pursuant to Section 3-3-20(b)(3) and to transfer their contributions from the Fairfax County Uniformed Retirement System pursuant to Section 3-3-20(b)(4)(C) shall be granted membership service credit for their service as park police officers. Any deficits created by this action shall be funded by increasing the rate of employer contributions as determined by the required actuarial evaluation of this System as of June 30, 1983.
- (c) Any former Fairfax County park police officer who transferred to this System from the Fairfax County Uniformed Retirement System between August 1, 1974, and October 31, 1982, and who has remained in continuous service in this System since such transfer, may receive membership service credit in this System for his or her prior service as a park police officer if such member pays into this System:
 - (1) The difference between the amount that he or she had contributed to the Uniformed Retirement System and the amount that he or she would have been required to contribute to this System had he or she been a member during the period for which he or she is seeking prior service credit; and
 - (2) An additional sum representing the amount that this System would have earned on the contributions that he or she would have been required to make to this System had he or she been a member during the period for which service credit is sought under this Subsection.

In determining the amount required under condition (2), the Board shall use the historical rate(s) of return on this System's assets during the period for which service credit is sought. At the Board's discretion, such a member may pay in installments over a period not to exceed one (1) year. However, prior service credit shall not be granted until payment has been received in full. This option to purchase service shall be effective for a period of one (1) year from the date of enactment of this Subsection [February 26, 2001]. The purchase of service credit for prior service as a park police officer under this Subsection by a member

shall not alter the minimum amount of creditable service that the member is required to have to be eligible for normal service retirement under this Article. Where a member elects to purchase service credit for prior service as a park police officer under this Subsection, the Board of Trustees of the Uniformed Retirement System shall transfer from its funds the employer contributions attributable to the member's service for which prior service credit is being purchased under this Subsection to this System.

- (d) Members who are former park police officers who transferred their member contributions from the Fairfax County Uniformed Retirement System, including member's contributions from service in a position covered by the Fairfax County Employees' Retirement System prior to their service as a park police officer, may elect to either (i) receive a refund of their Employees' Retirement System member contributions from this System or (ii) purchase membership service credit in this System based upon their prior service in the Employees' Retirement System on the terms and conditions set forth in this Subsection.
 - (1) Such members must elect in writing to purchase such service credit within one (1) year of the effective date of this Subsection [December 6, 1993]. Members who do not elect to purchase such credit within one (1) year of the effective date of this Subsection shall have such contributions refunded to them and shall be deemed to have waived any right to purchase such service credit.
 - (2) Members electing to purchase such credit may do so by paying into this System (A) the difference between the amount which they had contributed to the Employees' Retirement System and the amount they would have been required to contribute to this System had they been members during the period for which they are seeking prior service credit and (B) an additional sum representing the amount that this System would have earned on the contributions they would have been required to make to this System had they been a member during the period for which service credit is sought, as determined by using the historical rate(s) of return of this System.
 - (3) At the discretion of the Board, such members may pay the required amounts in installments over a period not to exceed one (1) year. However, such service credit shall not be granted until payment has been made in full.
 - (4) The purchase of such service credit shall not alter the minimum amount of creditable service that the member is required to have to be eligible for normal or early service retirement under this Article. (20-81-3; 36-88-3; 8-03-3; 33-03-3) (20-81-3; 22-88-3; 5-85-3; 56-93-3; 36-94-3; 10-01-3; 8-03-3.)

Sec. 3-7-23.1. - Portability service credit.

- (a) Definitions.
 - (1) *Accepting plan* shall mean the retirement plan or system which is receiving membership assets from another retirement plan or system in order to permit a current member to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.
 - (2) *Portability service credit* shall mean service credit purchased in an accepting plan by the transfer of membership assets from the transferring plan.
 - (3) *Transferring plan* shall mean the retirement plan or system which is transferring membership assets to an accepting plan to enable a former employee of the transferring plan or system to purchase service in the accepting plan through the use of his or her membership contributions in the transferring plan.
- (b) The Board of Supervisors may enter into agreements with the Virginia Retirement System (VRS) or with any other political subdivision of the Commonwealth of Virginia, provided that the retirement system of any other political subdivision of the Commonwealth of Virginia is a defined benefit plan or eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), to permit any vested member of such plan to purchase portability service credit in this System.

- (c) The purchase of portability service credit in the System pursuant to this Section may only be made within eighteen (18) months of the date when an employee commences employment in a position covered by the System, or, for employees who are members of the System on March 24, 2003, within eighteen (18) months thereafter.
- (d) In order to purchase portability service credit in the System, the member shall have served as a sworn law enforcement officer and shall be a vested member of the transferring plan. The transferring plan shall be holding member contributions that are subject to transfer. A member desiring to purchase portability service credit shall make written application for the purchase of such credit to the System. The System shall determine from the transferring plan the amount of the member's assets that would be subject to transfer to the System. Based upon the amount subject to transfer, the Board shall determine the amount of portability service credit that would be actuarially equivalent to the amount of assets to be transferred to the System; this amount shall represent the maximum amount of portability service credit that can be purchased. The Board shall communicate the amount of portability service credit that can be purchased to the member in writing; however, in no event shall the amount of portability service credit that can be purchased exceed the duration of the member's employment in a position that was covered by the transferring plan. The member shall have thirty (30) days from the date of the letter advising him or her of the amount of portability service credit that can be purchased to determine whether to proceed with the purchase or to withdraw his or her application for the purchase of portability service credit.
- (e) In the event that the assets transferred are not sufficient to purchase portability service credit in the System equivalent to five (5) years of service, the member shall not become vested in the System until his or her creditable service equals five (5) years.
- (f) The purchase of portability service credit in the Virginia Retirement System (VRS) or the retirement system of any political subdivision of the Commonwealth of Virginia that is covered by this Section shall be accomplished upon the transfer of assets from the transferring plan to this System. Upon the completion of such transfer, the member shall lose all rights to any allowances and benefits from the transferring plan, and shall only be entitled to receive allowances and benefits from this System.
- (g) When a vested member of this System leaves his or her covered employment and enters a position covered by the Virginia Retirement System (VRS) or by a defined benefit retirement plan of a political subdivision of the Commonwealth of Virginia with which the Board of Supervisors has entered into a portability agreement, the former member of this System may transfer an amount equal to the greater of (i) his or her accumulated member contributions, or (ii) an amount representing the present value of his or her accrued benefits with this System. In order to accomplish the transfer of assets from this System to the accepting plan, the member shall lose all rights to any allowances or benefits from this System based upon the service giving rise to the assets transferred to the accepting plan by this System. Should such a person resume service in a position covered by this System in the future, he or she may purchase service credit for such prior service or purchase portability service credit if eligible to do so, in accordance with the provisions of this Article at the time he or she again becomes a member of this System. (18-01-3; 8-03-3.)

Division 5. – Contributions.

Section 3-7-24. - Member contributions.

- (a) Contributions shall be made by each employee equal to eight-and-sixty-five-one-hundredths percent (8.65%) of his or her creditable compensation per payroll period.
- (b) There shall be deducted or picked up from the compensation of each member for each and every payroll period subsequent to the date of the establishment of the System to contribution payable by such member as provided in this Section.
- (c) Notwithstanding any other provisions of this Article, no deduction shall be made nor shall amounts be picked up from any member's compensation if the employer's contribution as required is in default.

- (d) The Board of Supervisors may, from time to time, revise the rates of member contributions to the System.
- (e) Subsequent to December 22, 1984, the County shall pick up all employee contributions required herein, for all compensation earned on or after December 22, 1984. All amounts picked up by the County shall be treated as the employer's contribution in determining tax treatment under Section 414(h)(2) of the Internal Revenue Code. For all other purposes, under this Chapter and otherwise, such picked-up contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to December 22, 1984. All picked-up amounts shall be included in compensation for purpose of calculating benefits under Division 6. The County shall pay such picked-up amounts from the same source of funds which is used in paying earnings to the employee. (20-81-3; 5-85-3; 22-07-3; 46-08-3; 25-14-3.)

Section 3-7-25. - Employer contributions.

The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient, when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future member contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost plus an expense rate, as long as the System's funding ratio (actuarial value of the System's assets divided by actuarial accrued liability of the System) remains within a corridor, the lower measurement of which is described below and the upper measurement of which is one-hundred-twenty percent (120%). The employer normal cost and System actuarial accrued liability are to be measured using the entry age normal funding method.

- To the extent that the System's funding ratio exceeds one-hundred-twenty percent (120%), a credit shall be established equal to the amount of assets in excess of one-hundred-twenty percent (120%) of the actuarial accrued liability.
- To the extent that the System's funding ratio is lower than the lower measure of the corridor, a charge shall be established equal to the difference between the lower measure plus the actuarial accrued liability and the assets.

The employer contribution shall be adjusted by a fifteen (15) year amortization of the credit or charge described in this Section, to be paid until the funding ratio re-enters the corridor, at which time it shall cease.

Effective with the fiscal year 2016 County contribution rate, the lower measure of the corridor shall be established at ninety-five percent (95%). The ninety-five (95%) threshold shall be increased until it reaches one-hundred percent (100%), no later than by the year 2020. Once the lower measurement of the corridor reaches one-hundred percent (100%), the fifteen (15) year amortization described above shall be over a fixed fifteen (15) years with additional fifteen (15) year amortization layers created annually. Once the System's funding ratio reaches one-hundred percent (100%), such amortizations shall cease.

In the event of an ordinance change that affects member benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there shall be an additional component to the employer cost equal to the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below one-hundred-twenty percent (120%) shall be excluded from this component.

All contributions made to the System are made for the exclusive benefit of the members and their beneficiaries, and such contributions shall not be used for, nor diverted to, purposes other than for the exclusive benefit of the members. Notwithstanding the foregoing, to the extent that such refunds do not, in themselves, deprive the System of its qualified status, refunds of contributions shall be made to the employer under the following circumstances:

- (a) If the System is determined not to initially satisfy qualification requirements of Section 401(a) of the Internal Revenue Code and the employer declines to amend the System to satisfy such qualification requirements, contributions made prior to the determination the System has failed to qualify shall be returned to the employer;

- (b) To the extent that a federal income tax deduction is disallowed in whole or in part for any employer contribution; and
- (c) If a contribution is made in whole or in part by reason of a mistake of fact, the employer contribution attributable to the mistake of fact shall be returned to the employer. (20-81-3; 16-02-3; 52-13-3; 28-15-3, § 3.)

Division 6. – Benefits.

Section 3-7-26. – Service retirement.

- (a) Normal service retirement.
 - (1) Any member employed on active duty on or before June 30, 1981, who has attained twenty (20) years of creditable service or age fifty-five (55) years shall be eligible for retirement on that date when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.
 - (2) Any member employed on active duty following July 1, 1981, who has attained twenty-five (25) years of creditable service or age fifty-five (55) years shall be eligible for retirement on that date when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.
- (b) Early service retirement. Any member appointed subsequent to July 1, 1981, who has attained twenty (20) years of creditable service, shall be eligible for early service retirement, when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.
- (c) Ineligibility. Any member who applies for service-connected disability pursuant to Section 3-7-28, or who applies for partial service-connected disability pursuant to Section 3-7-29, and who receives the allowance and benefits prescribed by Section 3-7-28 as a result thereof, on or after the effective date of Subsection 3-7-28(d) [July 1, 1988], shall not be eligible for retirement under this Section while receiving allowances and benefits for disability. (20-81-3; 14-87-3; 36-88-3.)

Section 3-7-27. – Service retirement allowance.

- (a) Normal service retirement. Any member who retires on or after July 1, 2000, pursuant to Section 3-7-26(a) shall receive an annual retirement allowance, payable monthly for life, consisting of two-and-eight-tenths percent (2.8%) of his or her average final compensation for each year of creditable service, as computed on the basis provided in Section 3-7-2; but in no event shall his or her total retirement allowance exceed eighty-four percent (84%) of his or her average final compensation. The annual retirement allowance of a member who retires or who has retired on or before June 30, 2000, or of a surviving spouse or surviving handicapped child of such a member receiving an allowance under an election made by the member under Section 3-7-39, shall be increased, effective July 1, 2000, by twelve percent (12%).
- (b) Early service retirement. Upon retirement, with twenty (20) years of creditable service pursuant to Section 3-7-26(b), any member appointed subsequent to July 1, 1981, shall receive the annual retirement allowance computed on the basis provided in Subsection (a) of this Section reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the normal retirement date as projected on Table 1.

TABLE 1

FAIRFAX COUNTY POLICE OFFICERS RETIREMENT SYSTEM

Actuarial Reduction Factors That Would Apply to Members With a Normal Retirement Age Requirement of 25 years of Service (or, Attainment of Age 55, if Earlier) if They Are Permitted To Retire Early With a Reduced Retirement Allowance After 20 Years of Service

(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS ARE EFFECTIVE AT RETIREMENT)						
Age at	Years of Service					
Retirement	20	21	22	23	24	25
38	74.50	79.17	84.06	89.18	94.48	100.00
39	74.18	78.89	83.83	89.01	94.39	100.00
40	73.84	78.61	83.60	88.84	94.30	100.00
41	73.49	78.32	83.37	88.67	94.21	100.00
42	73.11	78.01	83.13	88.50	94.12	100.00
43	72.72	77.68	82.88	88.33	94.03	100.00
44	72.32	77.34	82.61	88.14	93.93	100.00
45	71.89	76.98	82.34	87.95	93.83	100.00
46	71.44	76.61	82.04	87.75	93.73	100.00
47	70.97	76.22	81.74	87.53	93.62	100.00
48	70.48	75.81	81.41	87.31	93.50	100.00
49	69.96	75.38	81.08	87.07	93.38	100.00
50	69.42	74.92	80.72	86.83	93.25	100.00
51	74.45	74.45	80.35	86.57	93.11	100.00
52	79.95	79.95	79.95	86.29	92.97	100.00
53	86.00	86.00	86.00	86.00	92.82	100.00
54	92.66	92.66	92.66	92.66	92.66	100.00

55	100.00	100.00	100.00	100.00	100.00	100.00
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- (c) Joint and contingent spouse and handicapped child options. Any member who qualifies for normal or early service retirement under this Section is eligible to elect a joint and contingent spouse and handicapped child option under Section 3-7-39. (20-81-3; 6-00-3, § 1; 36-83-3; 28-89-3; 27-90-3, § 5; 13-92-3; 34-94-3.)

Section 3-7-28. - Service-connected disability retirement.

- (a) Any member who in the discharge of his or her official duties has become totally disabled as a result of an accident or personal injury on or before June 30, 1981, shall receive an annual retirement allowance, payable monthly, equaling sixty-six-and-two-thirds percent (66 2/3%) of the salary that would have been received had no injury occurred and the performance of duty had continued. Such allowance and benefits shall continue during the existence of such total disability, or until such time as eligibility is reached for normal service retirement pursuant to Section 3-7-26(a)(1).
- (b) Any member who in the discharge of his or her official duties has become totally disabled as a result of an accident or personal injury on or after July 1, 1981, shall receive an annual retirement allowance, payable monthly, equaling sixty-six-and-two-thirds percent (66 2/3%) of the salary the member received on the date of the accident or personal injury subject to the provisions of Section 3-7-37. Such allowance shall continue during the existence of such total disability, or until such time as eligibility is reached for normal service retirement pursuant to Section 3-7-26(a)(2).
- (c) The amount of compensation awarded under the Virginia Workers' Compensation Act (Act) to such members for temporary total or partial incapacity, including any awards of cost-of-living increases under the Act, shall be deducted from such retirement allowance. Whenever the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, such payments shall no longer be used to reduce the monthly retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without reduction for such payments.
- (d) Any member who applies for a service-connected disability retirement allowance pursuant to Subsection (a) or (b) of this Section, or who applies pursuant to Section 3-7-29, and who receives the allowance prescribed by this Section as a result thereof, on or after the effective date of this Subsection [July 1, 1988], shall receive the allowance so provided during the existence of such disability, until the total membership service credit period equals twenty-five (25) years, whereafter said allowance shall be reduced to sixty percent (60%) of the salary that would have been received had no injury occurred and the performance of duty continued.
- (e) With respect to all retirements after the effective date of this Subsection (January 11, 1993) pursuant to this Section or as a result of an application pursuant to Section 3-7-29 as a result of which the member receives the allowance provided by this Section, if a member receives some or all of his or her compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act) in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, neither a lump sum payment or any portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or a portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under this Section shall be offset against the member's allowance under this Section; and provided further, that in the event that the member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its

judgment represents compensation for such benefits. (20-81-3; 8-82-3; 4-83-3; 36-88-3; 13-92-3; 1-93-3.)

Section 3-7-29. - Partial service-connected disability retirement.

- (a) Members granted a retirement allowance and benefits for partial disability shall be subject to recall to active service by the Board when police officer positions are available in the Police Department that they are capable of performing, as determined by the Chief of Police. If so recalled, all retirement allowances and benefits for partial disability shall terminate from and after the date of such recall.
- (b) Any member becoming partially disabled in the manner provided in this Section, who shall remain in the Police Department in a police officer position which he or she is capable of performing, shall not receive retirement allowances and benefits until such service credit is acquired as would otherwise be required for service retirement.
- (c) If the Chief of Police determines that there is no suitable police officer position available for a partially disabled member, such member shall then be treated as totally disabled under the provisions of this Article from and after the date of his or her separation from employment with the Police Department.
- (d) The surviving spouses and dependents of all members who have been retired before and of those who are retired on or after July 7, 2003, on account of partial service-connected disability shall be entitled to benefits under Section 3-7-41. (20-81-3; 33-03-3).

Section 3-7-30. – Processing disabilities.

- (a) Upon receiving a member's or the employer's written request for disability benefits, the Board shall require the member to submit, from a physician of the member's choice, a written report of findings and recommendations. The Board shall then select a physician of its choice and require the member to submit to a medical examination. In the event there is not a clear preponderance of medical evidence from the above two (2) physicians, a third physician shall be selected by the original two (2) physicians, who shall also examine the member and submit a written report of findings and recommendations.
- (b) A waiver of examinations, as required by this Section, may be made by either the Board or member for justifiable causes; but in no event shall any member be granted disability benefits without submitting to at least one (1) medical examination.
- (c) Failure of any member to submit to medical examination as required by this Section may result in the denial, loss or reduction of the member's disability benefits.
- (d) Any member submitting a written request for disability benefits on or after the effective date [of Ord. No. 24-85-3] shall, prior to or simultaneously with submitting such request, apply for all workers' compensation benefits to which he or she may be entitled. The member shall also be required to submit to the Board copies of the dispositions as made of his or her workers' compensation claims and any subsequent awards or other documents reflecting any modification or termination of any awarded workers' compensation benefits. With respect to the determination of a member's eligibility for disability benefits, the Board shall give great weight to the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act, and the Board may modify its prior determination of his or her eligibility under this Section in light of any such decision within ninety (90) days after the date such decision becomes final. (20-81-3; 24-85-3; 13-92-3.)

Section 3-7-31. - Non-service-connected disability retirement.

- (a) Any member who becomes totally disabled, but not as a result of activities in the discharge of his or her official duties, may receive a non-service-connected disability benefit equal to the same benefit pursuant to Section 3-7-27, provided the service credit requirements exist thereof.
- (b) Members who do not have the service credit required in Section 3-7-26 shall receive a disability benefit in an amount equivalent to the greater of (1) ten percent (10%) of his or her average final compensation, or (2) an amount determined under Section 3-7-27(a).

- (c) Members granted benefits under this Section shall not receive service credit while on non-service-connected disability, nor shall their surviving spouses or dependents be eligible for benefits under this Article. (20-81-3.)

Section 3-7-32. - Rehabilitation of disabled members.

- (a) The Board may determine, upon receiving supporting medical data from any two (2) physicians, as referred to in Section 3-7-30, that a disabled member has sufficiently recovered to perform a part or all the duties of a police officer, or to engage in other gainful employment in which he or she might reasonably be expected to be engaged, in light of education, training, or experience. To the extent that such member has sufficiently recovered but is unable to be certified to full-time active duty as a police officer, the Board may determine the degree of partial disability then still existing and reduce the disability benefits accordingly. The determination of partial disability shall be based upon the medical record and the ability of the member to seek gainful employment in light of education, training, experience, retraining, and rehabilitation.
- (b) The Board is authorized to enter into contracts or agreements for the rehabilitation of disabled members and to pay reasonable costs thereof. (20-81-3; 33-03-3).

Section 3-7-33. - Medical reevaluation of disabled members; penalty for unjustified refusal of medical attention, vocational rehabilitation or selective employment, or to submit to medical reevaluation.

- (a) Once each year during the first five (5) years following disability, and once every three (3) year period thereafter, the Board shall require such members to undergo medical examinations by the same physicians as specified in Section 3-7-30, if available. Should any such physician be unavailable, a successor shall be designated, as previously determined in Section 3-7-30. Each physician shall independently examine such member and submit a written report of findings and recommendations to the Board. In the event that such member fails to submit to these medical examinations, benefits shall be discontinued until the member submits to the examinations; and should the refusal continue for one (1) year, all rights to disability benefits under this Article shall terminate. In lieu of the examinations specified in this Subsection, the Board, in its discretion, may accept the reports of physicians who are treating or examining the member for purposes of the Virginia Workers' Compensation Act.
- (b) Members who are receiving service-connected disability retirement allowances pursuant to Section 3-7-28, and who are receiving periodic payments pursuant to the Virginia Workers' Compensation Act (Act) which payments are required to be offset against such allowances pursuant to Section 3-7-28 shall cooperate with and accept medical services, vocational rehabilitation, and/or selective employment provided pursuant to the Act. In the event that such a member's periodic payments are suspended by the Virginia Workers' Compensation Commission (Commission) then the allowance pursuant to Section 3-7-28 shall be computed as if the member had received the suspended payments unless the Board, in its discretion determines not to accept the decision of the Commission. Should such member's refusal to accept medical services, vocational rehabilitation and/or selective employment continue for three-hundred-sixty-five (365) days whether or not consecutive, all his or her rights to any future disability allowance shall cease. The Board shall make appropriate adjustments to the member's allowance if the suspension by the Commission is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection. For purposes of this Subsection, an order of the Commission suspending compensation for refusal creates a rebuttable presumption that the member unjustifiably refused medical services, vocational rehabilitation, and/or selective employment. (20-81-3; 41-93-3; 29-97-3.)

Section 3-7-34. - Reduction of disability allowance.

- (a) Whenever the Board concludes that any member receiving a disability retirement allowance pursuant to either Section 3-7-28 or 3-7-29 is, prior to his or her normal service retirement date, engaged in a gainful occupation or work paying more than the difference between his or her service-connected disability allowance and his or her average salary, the Board shall reduce such retirement allowance

to an amount which, together with the amount earned by the member, equals the amount of his or her average salary.

- (b) Members receiving a disability retirement allowance pursuant to either Section 3-7-28 or 3-7-29 shall submit by May 30 of each year a copy of that portion of their federal income tax returns showing the amount of their earned income and copies of W-2 forms (wage statements) provided by their employers to the Board for the previous calendar year. Failure to submit such documentation on request shall result in the loss of the allowance until the documentation is provided; and should a member's refusal continue for one (1) year, all his or her rights to any further disability retirement allowances shall cease.
- (c) The Board shall adopt written regulations governing the administration of this Section, providing for, among other things, the notification to the members deemed appropriate, and allowing for late submission of required documentation for good cause shown. (20-81-3; 36-88-3.)

Section 3-7-35. - Presumption; hypertension or heart disease.

Any condition or impairment of health of any such member caused by hypertension or heart disease resulting in total disability shall be presumed to have been suffered in the discharge of his or her official duties unless the contrary be shown by competent evidence; provided, that prior to making any claim based upon such presumption for retirement allowances and benefits under this Section on account of such total or partial disability, such member shall have been found free from cardiovascular disease by a physical examination which shall include such appropriate laboratory and other diagnostic studies as the Board may prescribe, and which shall have been conducted by physicians whose qualifications shall have been prescribed by the Board; and provided further, that any such member claiming that his or her disability was suffered in the discharge of his or her official duties shall, if requested by the Board, submit to physical examination by any physician designated by the Board, which examination may include such tests or studies as may reasonably be prescribed by the physician so designated. Such member shall have the right to have present at such examination, at his or her own expense, any qualified physician he or she may be designate. (20-81-3.)

Section 3-7-36. - Disability as a result of negligence.

Should an accident or personal injury causing total disability be the result of the member's own gross and willful negligence, wanton neglect of duties and responsibilities, drunkenness, or illicit use of narcotics, such disability shall be deemed to be a non-service-connected disability and the benefits shall be fixed pursuant to provisions of Section 3-7-31. (20-81-3.)

Section 3-7-37. - Cost-of-living adjustments.

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of benefit commencement; provided, that allowances for service-connected disability retirement shall be subject to the provisions of Subsection (d) of this Section. The monthly allowance to be effective July 1 of any such year shall be the allowance in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection (a) of this Section, with such increase reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than twelve (12) months.

- (a) The basic cost-of-living increase shall be the lesser of four percent (4%) and the percentage corresponding to the percentage increase in the Consumer Price Index during the twelve (12) month calendar period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, *Consumer Price Index* shall mean the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the appropriate Standard Metropolitan Statistical Area (SMSA) that includes the County.
- (b) As part of each biennial actuarial valuation, the actuary shall determine the percentage supplemental cost-of-living increase (not greater than one percent (1%) that can be provided on the following two (2) July firsts (1sts) based upon the available actuarial surplus). The Board then may, but shall not be

required to, increase all retirement allowances in pay status on each of such July first (1st) by such actuarially determined percentage. For the purpose of this Section, *available actuarial surplus* shall mean the excess of the actuarial value of the assets of the System over the actuarial accrued liabilities of the System as disclosed in the biennial actuarial valuation of the System.

- (c) In the event a retired member has not been receiving his or her retirement allowance for twelve (12) full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be determined as the percentage of the full increase determined in Subsections (a) and (b) of this Section as follows:

Number of Complete Months Member Has Been in Pay Status	Percentage of Full Increase
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Less than 30%

3, 4 or 525%

6, 7 or 850%

9, 10 or 1175%

- (d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-7-28 have been made. The member's allowance after the adjustments for cost of living provided by this Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-7-28. (20-81-3; 1-93-3; 26-10-3.)

Section 3-7-38. - Refund of contributions upon withdrawal or death; deferred vested benefit.

- (a) Refund of contributions.

- (1) In the event of the death of any member, active or retired, the difference between the total contributions made hereunder by such member, including picked-up amounts, and any benefit payments received by him or her, his or her surviving spouse or dependents, shall be payable to his or her estate or designated beneficiary; provided, that such payment shall be made only after the cessation of benefits under Section 3-7-41 or Section 3-7-43.
 - (2) Any member who shall have been separated from the service and whose employment shall have been terminated otherwise than by death or retirement shall, on application made within two (2) years from the date of such separation, be refunded all of his or her accumulated contributions, including picked-up amounts; provided, that if such member has received payments or benefits under the System, the amount of such payments or benefits shall be deducted from the amount to be refunded; and provided further, that should any retired member be receiving benefits hereunder at the time of his or her death then, and in that event, his or her dependents, or beneficiaries if any, who are not eligible to receive benefits under this Article shall receive the difference between the total contributions made hereunder by such member, including picked-up amounts, and any payments received, and at the same rate which such retired member was receiving benefits.
- (b) Deferred vested benefit. If a member has five (5) or more years of creditable service on his or her date of separation from the County, the member may leave his or her accumulated contributions, including picked-up amounts, in the System and receive a deferred vested benefit payable beginning the date the member attains age fifty-five (55) years, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article. (20-81-3; 5-85-3; 28-89-3; 10-01-3.)

Section 3-7-39. - Joint and contingent spouse and handicapped child options.

Any member who qualifies for normal or early service retirement under Section 3-7-26, and with the exception of any member converting from disability retirement to normal service retirement at twenty-five (25) years of creditable service, may elect at the time of retirement to have his or her retirement compensation continue to be paid to either (1) his or her spouse in the event such spouse survives the member, or (2) his or her surviving handicapped child, if at the time of election the member has no spouse; in either event, the retirement allowance provided for in Section 3-7-27 shall be recomputed for a joint and survivor annuity in accordance with Table 2. Such reduced amount shall be paid the member during his or her lifetime, with the indicated percentage of the reduced amount paid to his or her surviving spouse for such spouse's lifetime, or to his or her surviving handicapped child for such child's lifetime, as the case may be. Such election shall become irrevocable upon commencement of such payments except in the case that such spouse or surviving handicapped child, as the case may be, predeceases the member or if the handicapped child is determined by the Board to no longer be permanently mentally incompetent or permanently physically handicapped, then such member's retirement allowance shall be increased to that amount to which the member would have been entitled had no election been made.

TABLE 2
FAIRFAX COUNTY POLICE RETIREMENT OFFCERS RETIREMENT SYSTEM

Actuarial Adjustment Factors That Would Apply to Members With a Normal or Early Service Retirement Allowance Determined Under Section 3-7-27 Who Elect a Joint and Contingent Spouse and Handicapped Child Options

Percent of Allowance Continued to Spouse Upon Member's Death	Factor for Equal Ages ¹	Increase/Decrease For Each Full Year Beneficiary Is Older (Younger) Than Employee	Maximum Factor
100%	89.2%	0.6%	96%
66 2/3%	92.1%	0.4%	98%
50%	93.1%	0.3%	99%

1. Factor applied to adjust member's allowance, as determined under Section 3-7-27, for joint and contingent spouse and handicapped child option for a member and spouse of equal age.

Section 3-7-40. - Cessation of normal or early retirement allowance.

- (a) Subsection (b) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Employees' Retirement System and who submitted their application for such allowance to the Board of such system on or before July 21, 1986. Subsection (c) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Uniformed Retirement System, or the Employees' Retirement System and who submitted their application for such allowance to the Board of such system after July 21, 1986.
- (b) Should a person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Uniformed Retirement System (retiree) return to regular service in a permanent position in any office or employment paid directly or indirectly

by the County, he or she shall elect to receive such retirement allowance under one (1) of the following two (2) options.

- (1) Such allowance shall not commence or, if already commenced, shall cease while the retiree is so employed. His or her allowance shall commence or resume upon application or reapplication by the retiree after he or she has ceased permanent employment in such a position. The allowance of a retiree of this System who is appointed to a position covered by the Employees' Retirement System or Uniformed Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section 3-7-27 which would have been payable had the retiree continued to receive his or her allowance without interruption. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article not to become a contributing member during his or her period of reemployment shall be exempted from the requirement to make contributions to this System. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article to become a contributing member during his or her period of reemployment shall be eligible:
 - (A) For a recomputation of his or her allowance to take into account creditable compensation and creditable service attributable to the period of reemployment during which his or her allowance was suspended under this Subsection.
 - (B) To make a new election for any optional benefit to which he or she is entitled; and
 - (C) For a retirement allowance for a service-connected disability arising out of and in the course of his or her reemployment (in lieu of his or her service retirement allowance).

A retiree of the Employees' Retirement System or Uniformed Retirement System who is appointed to a position covered by this Article and elects in writing within thirty (30) days of such appointment may be excluded from membership in this System.

- (2) The retiree may elect to continue to receive his or her service retirement allowance. A retiree electing this option shall not be eligible for membership in the Employees' Retirement System or Uniformed Retirement System if either covers the position in which he or she is reemployed. If he or she is a retiree of this System and the position in which he or she is reemployed is covered by this System, he or she shall not be required to contribute to this System during his or her period of reemployment.
- (c) A person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Uniformed Retirement System (retiree) may return to employment for which compensation is paid directly or indirectly by the County subject to the following conditions:
- (1) A retiree shall not receive in combined compensation and retirement allowance, computed monthly, any more than one-hundred-fifteen percent (115%) of the then current maximum monthly salary for a Deputy County Executive in the County's Compensation Plan. The appropriate Retirement System Board of Trustees shall reduce the retiree's allowance as necessary to keep the combined salary and allowance at this limit. For purposes of this Subsection, a retiree's retirement allowance shall be deemed to be the allowance that he or she would receive if he or she had not elected a joint and contingent spouse or handicapped child option which results in an actuarially reduced allowance. Employers under all three (3) systems shall report salaries paid to retirees to the retiree's Board.
 - (2) A retiree who is employed in a position of service which would otherwise make him or her eligible for membership in this System, the Uniformed Retirement System, or the Employees' Retirement System shall not be eligible for membership in that system.
- (d) Notwithstanding any other provision of this Article or any other Article of this Chapter, a person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Uniformed Retirement System (retiree) may be employed in a position under his or her former appointing authority subject to the following terms and conditions.

- (1) If the retiree is a member of this System and service in the position to which he or she is to be re-appointed ordinarily would result in membership in this System, his or her normal or early service retirement allowance shall be suspended for the duration of his or her new employment. During his or her new employment, he or she shall make member contributions to this System. At the time of his or her new employment, he or she shall be entitled to make all elections available to new members of this System, and if otherwise eligible, during his or her employment, he or she may apply for service-connected or non-service-connected disability retirement. In such case, his or her combined years of service and his or her average final compensation based on his or her new employment shall be used in calculating the disability retirement allowance. On re-application for service retirement from his or her new employment, the retiree shall receive as his or her service retirement allowance the higher of (i) his or her initial service retirement allowance increased by any cost-of-living increases that were granted by the Board to service retirements during the period of his or her new employment or (ii) a service retirement allowance calculated on the basis of his or her combined years of creditable service in his or her initial and new employment and his or her average final compensation calculated on the basis of the creditable compensation that he or she received during both his or her initial and new employment, as if there had been no break in service.
- (2) A retiree who is a member of this System and who is to be re-appointed to a position of service which would result in membership in either the Employees' Retirement System or Uniformed Retirement System but for his or her membership in this System, shall be subject to the provisions of Subsection (b) or (c) of this Section, whichever is applicable.
- (3) If the retiree is a member of either the Employees' Retirement System or Uniformed Retirement System and service in the position to which he or she is to be appointed would result in membership in this System but for his or her membership in the other system, the retiree shall be subject to the provisions of Subsection (b) or (c) of this Section, whichever is applicable.
- (4) This Subsection shall apply to all persons appointed to positions on or after March 1, 1990, service in which would ordinarily make them members of this System, the Employees' Retirement System, or the Uniformed Retirement System. (20-81-3; 35-81-3; 27-90-3, § 5; 10-01-3; 11-05-3.)

Section 3-7-41. - Benefits to surviving spouse and children of members deceased before or during service retirement.

- (a) The surviving spouse of a member who dies before retirement or while receiving a service retirement allowance shall be entitled to receive relief from the System in an amount equal to \$1,000.00 per month. Any surviving children of such member under eighteen (18) years of age shall be entitled to receive relief in an amount equal to \$400.00 per month; and any child under the age of twenty-three (23) years who is a full-time student in an accredited college or secondary school shall also receive such relief; and any handicapped child shall receive such relief during the child's lifetime. Upon death of the surviving spouse, a surviving handicapped child, if any, shall be entitled to receive continued relief from the System as if that child were a surviving spouse, in addition to any other relief he or she is entitled to as a surviving child. Relief granted any child, not handicapped, shall cease upon said child's marriage or said child's becoming self-supporting, whichever shall occur first. Relief granted to a handicapped child shall cease if said child becomes self-supporting or if said child is determined by the Board no longer to be permanently mentally incompetent or permanently physically handicapped based on evidence available to the Board in accordance with Section 3-7-41(b). No combination of the relief previously granted shall be paid to the spouse or handicapped child, as the case may be, and children of any one member in an amount exceeding \$2,000.00 per month. Benefit amounts as listed above shall be adjusted on July 1 of each year after enactment by the lesser of four percent (4%) and the percentage corresponding to the percentage increase in the Consumer Price Index during the twelve (12) month calendar period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, *Consumer Price Index* shall mean the Washington, DC-MD-VA index of the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor. Benefits conferred upon a

surviving spouse pursuant to this Section shall extend to the surviving spouses of service retirees who died prior to the enactment of this Article.

- (b) Once each year during the first five (5) years following the Board's commencement of payments to the handicapped child, and once every three (3) year period thereafter, the Board shall require such handicapped child to undergo medical examinations by the same physicians as specified in the selection process set forth in Section 3-7-30, if available. Should any such physician be unavailable, a successor shall be designated, as previously determined in Section 3-7-30.

Each physician shall independently examine such handicapped child and submit a written report of findings and recommendations to the Board. In the event that such handicapped child fails to submit to these medical examinations, benefits shall be discontinued until the handicapped child submits to the examinations; and should the failure continue for one (1) year, all rights to benefits under this Article shall terminate. The Board is authorized to determine that the handicapped child no longer qualifies as such, based on such written report and other evidence acceptable to the Board in its sole discretion.

- (c) Handicapped children receiving an allowance pursuant to Section 3-7-39 shall submit by May 30 of each year a copy of that portion of their federal income tax returns showing the amount of their earned income and copies of W-2 forms (wage statements) provided by their employers to the Board for the previous calendar year. Failure to submit such documentation on request shall result in the loss of allowance until the documentation is provided; and should a handicapped child's failure continue for one (1) year, all rights to benefits shall cease.
- (d) Effective on and after January 1, 2007, if a member dies while performing "qualified military service" as defined in Section 414(u) of the Internal Revenue Code, any benefits under this Section that would have been provided under the System if the member had resumed employment on the day prior to his or her death and then terminated employment due to death shall be paid to such member's designated beneficiary or, if applicable, estate. (20-81-3; 8-82-3; 28-89-3; 13-92-3; 29-09-3; 01-11-3.)

Section 3-7-42. - Benefits to surviving spouses and children of members receiving service-connected disability.

The entitlements and conditions of surviving spouses and children of members receiving service-connected disability compensation shall be as provided in Section 3-7-41. (20-81-3.)

Section 3-7-43. - Benefits to surviving spouses and children of members killed while in performance of official duties.

The surviving spouse or, if no surviving spouse, the surviving handicapped child, of any member killed while in performance of official duties may elect to receive relief from the System in the amount of sixty-six-and-two-thirds percent (66 2/3%) of the member's current salary in lieu of any benefits provided in Section 3-7-41. The surviving spouse shall make such election in writing filed with the Board within ninety (90) days of receiving notice in writing from the Board of his or her right to make such election, or within one-hundred-eighty (180) days of the death of the member, whichever first occurs. In the event that the surviving spouse does not make a timely election, benefits shall be paid as provided under Section 3-7-41. Such election, if approved by the Board, shall become irrevocable upon commencement of payments and shall cease if such handicapped child shall become self-supporting, as determined by the Board based on standards established by the Board, or if said child is determined by the Board no longer to be permanently mentally incompetent or permanently physically handicapped based on evidence available to the Board in accordance with Section 3-7-41(b), as the case may be. Upon death of the surviving spouse, a surviving handicapped child, if any, shall be entitled to receive continued relief from the System as if that child were a surviving spouse. (20-81-3; 13-92-3; 29-09-3.)

Section 3-7-44. - Medical insurance benefits.

Repealed by 35-94-3.

Section 3-7-45. - Review of adverse decisions.

Any member adversely affected by a decision of the Board shall receive written notice of said decision and may, within thirty (30) days of receipt of such notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board. (20-81-3.)

Section 3-7-46. – Transfer to Senior Executive Retirement Plan.

Repealed by 97-26-3.

Section 3-7-47. – Masculine usage includes the feminine.

Repealed by 16-__-3.

Section 3-7-48. - Limitation on annual retirement allowance.

Notwithstanding any other provision of this Article, the annual retirement allowance to which any member may be entitled shall not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code and any regulations issued by the U.S. Department of the Treasury thereunder, and in calculating such limits a member's compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code and paid on or after January 1, 2009. Notwithstanding any provision of the Internal Revenue Code to the contrary, the limitations imposed by this Section apply only to retirement allowances granted under this Article, and not to any retirement allowance provided to any employee under any other Article of this Chapter. Such limits shall be applied annually for the twelve (12) month period commencing each July 1 and ending the following June 30. A benefit payable other than in the form of an annuity shall not exceed the amount which, when converted to an actuarial equivalent annual benefit, does not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code. Effective June 30, 2000, the mortality tables prescribed by the Uruguay Round Agreement Acts (GATT), as set forth in Internal Revenue Service Revenue Ruling 2001-62 (superseding and modifying Revenue Ruling 95-29), or as further updated or modified by the Internal Revenue Service, shall be used in determining the actuarial equivalent amount of such benefit. (27-90-3, § 6; 21-96-3; 8-03-3; 01-11-3.)

Section 3-7-49. - Distribution of benefits.

Notwithstanding any other provision of this Article, effective for plan years beginning after December 31, 1986, the entire interest of each member shall be distributed to such member not later than the required beginning date specified below, or shall be distributed, beginning not later than the required beginning date, over the life of such member or over the lives of such member and a beneficiary or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a beneficiary. For this purpose, the term *required beginning date* means April 1 of the calendar year following the later of the calendar year in which the member attains seventy-and-a-half (70½) years of age, or the calendar year in which the member retires. If a member dies after distribution of the member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a member dies before the distribution of the member's interest has begun, any death benefit shall be distributed within five (5) years after the death of such member, unless (1) any portion of the member's interest is payable to (or for the benefit of) a designated beneficiary, (2) such portion shall be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary, and (3) if the beneficiary is someone other than the member's surviving spouse, such distributions shall begin not later than one (1) year after the date of the member's death or such later date as the U.S. Secretary of the Treasury may by regulations prescribe. If the beneficiary is the surviving spouse of the member, (1) distribution shall begin on or before the latest of one (1) year after the date of the member's death, such later date as the U.S. Secretary of the Treasury may by regulations prescribe, or the date on which the member would have attained seventy-and-a-half (70½) years of age and (2) if the surviving spouse dies before the distributions to such spouse begin, the distribution rules specified in this Section shall be applied as if the surviving spouse were the member. Distributions from the System shall be made in accordance with the requirements of Section 401(a)(9) Internal Revenue Code, including the rules for incidental death distributions set forth at Section 401(a)(9)(G). (27-90-3, § 6; 52-13-3.)

Section 3-7-50. - Direct rollovers to other plans.

- (a) General. This Section applies to distributions made on or after January, 1, 1993. Notwithstanding any provision of this Article to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, to the extent that any portion of the amount of the rollover is comprised of after-tax contributions, the distribution may only be rolled over to an eligible retirement plan that separately accounts for after-tax contributions.
- (b) Definitions.
 - (1) *Eligible rollover distribution* shall mean any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.
 - (2) *Eligible retirement plan* shall mean any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal Revenue Code; a defined contribution plan described in Section 401(a) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; a qualified trust described in Section 401(a) of the Internal Revenue Code; or effective for distributions made after December 31, 2007, a Roth IRA described in Section 408A of the Internal Revenue Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e). However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan shall be an individual retirement account or individual retirement annuity.
 - (3) *Distributee* shall mean a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is entitled to receive benefits from the System, shall be distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee also shall include a non-spouse beneficiary of a deceased member or former member who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.
 - (4) *Direct rollover* shall mean a payment by the System to the eligible retirement plan specified by the distributee. (45-93-3; 21-96-3; 8-03-3; 01-11-3)

Section 3-7-51. - Additional retirement allowance.

- (a) Definitions.
 - (1) *Active member* shall mean a member of the System who is an employee on July 1, 1995, or who became an employee thereafter, and whose membership in the System has not ceased at any time from July 1, 1995, forward or from when he or she became an employee (whichever is later) until the effective date of his or her subsequent retirement.
 - (2) *Retired member* shall mean a member of the System who is receiving a retirement allowance on July 1, 1995. A member of the System who is receiving a retirement allowance shall include any member whose effective date of retirement is on or before July 1, 1995.

- (3) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, a nonservice-connected disability retirement allowance, a deferred vested benefit, or a surviving spouse and children's benefit.
- (4) *Base annual retirement allowance* shall mean the initial calculation of a member's, spouse's or children's annual retirement allowance without regard for any deductions for withholding or other benefit elections or adjustments under Section 3-7-7. For a member taking normal service retirement under Section 3-7-26(a), this is the allowance calculated under Section 3-7-27(a); for a member taking early service retirement under Section 3-7-26(b), this is the allowance calculated under Section 3-7-27(b); for a member retired on account of non-service-connected disability under Section 3-7-31, this is the allowance calculated under Section 3-7-31; for a member receiving a deferred vested benefit, this is the allowance calculated under Section 3-7-38(b); and for a surviving spouse and children receiving a spouse and children's benefit, this is the allowance calculated under the provisions of Section 3-7-41, 3-7-42 or 3-7-43.
- (5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance of a retired member or of the spouse and children of a member receiving the base surviving spouse and children annual retirement allowance provided under Section 3-7-41, 3-7-42 or 3-7-43 as increased by any cost-of-living adjustments applied to the member's retirement from the effective date of his or her retirement or election of the spouse and children retirement allowance through July 1, 1995.
- (6) *Member in service* shall mean a member of the System.
- (b) The adjusted base annual retirement allowance of each retired member or spouse and children receiving a retirement allowance on July 1, 1995, shall be increased by three percent (3%), effective July 1, 1995 (modified adjusted base annual retirement allowance). Adjustments to the retired member's or spouse and children's retirement allowance made under this Article after July 1, 1995, shall be computed on the basis of the modified adjusted base retirement allowance.
- (c) When an active member retires or an eligible spouse and children elect to receive the spouse and children's retirement allowance after July 1, 1995, after his or her base annual retirement allowance has been computed under the applicable Section of this Article, the resulting base annual retirement allowance shall be increased by three percent (3%) (initial base annual retirement allowance). Adjustments to the member's or spouse and children's retirement allowance under this Article shall be computed on the basis of the initial base annual retirement allowance.
- (d) Separation from service.
 - (1) A member who:
 - (A) Separated from service other than by death or retirement with five (5) or more years of creditable service in the System prior to July 1, 1995, and
 - (B) Has not withdrawn his or her accumulated contributions as of July 1, 1995, and
 - (C) Subsequently applies for and is determined to be eligible for a deferred vested benefit after July 1, 1995, shall have his or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
 - (2) A member in service on July 1, 1995, who:
 - (A) Subsequently separates from service other than by death or retirement with five (5) or more years of creditable service in the System, and
 - (B) Does not withdraw his or her accumulated contributions, and
 - (C) Subsequently applies for and is determined to be eligible for a deferred vested benefit, shall have his or her deferred vested benefit determined under Subsection (c) of this Section.
 - (3) A member in service on July 1, 1995, who:

- (A) Subsequently separates from service and withdraws his or her accumulated members' contributions, and
- (B) Thereafter returns to service and again becomes a member of the System and thereafter retires, shall have his or her retirement allowance calculated under Subsection (c) of this Section as if he or she were an active member as defined in this Section if at the time he or she subsequently returns to service, he or she has made arrangements to purchase credit for all of his or her previous service in the System under this Article.
- (e) Notwithstanding the eighty-four percent (84%) of average final compensation limit contained in Section 3-7-27(a), the initial base annual retirement allowance of an active member who is entitled to the increase provided by Subsection (c) of this Section shall not exceed eighty-six-and-fifty-two-one-hundredths percent (86.52%) of his or her average final compensation.
- (f) Notwithstanding any provision of this Section to the contrary, no adjustment under this Section shall be made which would violate the limitations provided by Section 3-7-48 concerning the limitations imposed by Section 415 of the Internal Revenue Code and any U.S. Treasury Regulations issued thereunder; provided, that any adjustment under this Section may be made up to those limitations. (12-95-3; 6-00-3, § 2.)

(g) This Section shall not be applicable to members of Plan C.

Section 3-7-52. - Deferred Retirement Option Program.

Effective October 1, 2003, there is hereby established a Deferred Retirement Option Program (DROP) for eligible members of the System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

- (a) Definitions.
 - (1) *DROP period* shall mean the three (3) year period immediately following the commencement of the member's participation in the DROP.
 - (2) *Eligible member* shall mean any member who is, or will become within sixty (60) days, eligible for normal service retirement benefits as those are defined in Section 3-7-26(a).
- (b) Election to participate.
 - (1) An eligible member may participate in the DROP only once. An eligible member who desires to participate in the DROP must file an application with the Fairfax County Retirement Administration Agency not less than sixty (60) days prior to the date of the commencement of the member's participation in the DROP.
 - (2) A member's election to participate in the DROP is irrevocable, with the exception that a member who elects to participate in the DROP may revoke that election prior to the commencement of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least twelve (12) months from the date of his or her revocation.
 - (3) At the time of an eligible member's election to participate in the DROP, he or she shall make an election in writing pursuant to Section 3-7-39 as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse and/or handicapped child after the member's death.
 - (4) An eligible member who elects to participate in the DROP shall agree to do so for a period of three (3) years.
 - (5) Subject to any limitation on the number of accrued sick leave hours that may be converted to creditable service as provided in Section 3-7-2(a)(2), an eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her available accrued sick leave to creditable service or to convert all but forty (40) hours of his or her accrued sick leave to

creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.

(c) Continued employment.

- (1) A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County in the position he or she held before the effective date of his or her election to participate in the DROP. Thereafter, the participating DROP member shall perform the services of that position or any other position to which he or she is promoted or transferred.
- (2) A participating DROP member shall continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member shall receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case shall a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.
- (3) A participating DROP member shall continue to remain eligible for health and life insurance benefits provided by the County to its employees and shall remain eligible to participate in the County's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance benefits shall be the same deductions that would have been taken had the participating DROP member been an active County employee, not the deductions that would be taken from the retirement benefits and allowances of a retiree.
- (4) All County personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member shall remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period shall not be included in the computation of the member's average final compensation. A participating DROP member shall also be subject to the County's disciplinary policies and regulations.
- (5) If a participating DROP member's continued employment with the County is interrupted by military service, there shall be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement benefits and allowances shall continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance shall be paid to the member whether or not he or she has returned to his or her former County position, and the member shall begin to receive his or her normal retirement benefits.
- (6) Except as otherwise set forth herein, a participating DROP member's continued service shall be deemed to be normal service retirement and shall not count as creditable service with the System.
- (7) Upon commencement of a participating DROP member's DROP period, the County shall cease to withhold contributions to the System from the participating DROP member's salary.
- (8) The salary received by a participating DROP member during his or her DROP period shall not be included by the County in the base that is used to determine the amount of the County's employer contributions to the System.

(d) DROP account.

- (1) Upon commencement of the ~~member's~~ participation of a member in either Plan A or Plan B in the DROP, the member's service retirement allowance pursuant to Section 3-7-27 and the additional retirement allowance pursuant to Section 3-7-51 shall be paid into the member's DROP account. ~~The initial amount credited to a member's DROP account shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.~~ Upon commencement of participation ~~the~~ of a member in Plan C in the DROP, the member's service retirement allowance shall be determined pursuant to Section 3-7-27. The initial amount credited to a member's DROP account shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.

- (2) The initial monthly amount shall be increased each July 1 based upon the annual cost-of- living adjustment provided to retirees pursuant to Section 3-7-37. Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement allowances and benefits if he or she were retired shall also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.
 - (3) The participating DROP member's DROP account shall be credited with interest at an annual rate of five percent (5%), compounded monthly. Interest shall not be pro-rated for any period less than a full month.
 - (4) Contributions by the County and the participating DROP member into the System for the participating DROP member shall cease.
 - (5) Amounts credited to a participating DROP member's DROP account shall not constitute annual additions under Section 415 of the Internal Revenue Code.
 - (6) A participating DROP member's DROP account shall not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance shall remain part of the assets of the System.
- (e) Cessation of County employment.
- (1) At the conclusion of a participating DROP member's DROP period, the member's County employment shall automatically cease. The participating DROP member shall then begin to receive normal service retirement allowances and benefits computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost-of-living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least sixty (60) days prior to the conclusion of a participating DROP member's DROP period, the member shall make one of the following elections concerning payment of his or her DROP account balance:
 - (A) The member may receive payment of his or her DROP account balance as a lump sum.
 - (B) The member may elect to roll over his or her DROP account balance into an "eligible retirement plan", as defined in Section 3-7-50(b)(2).
 - (C) The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.
 - (D) The member may elect to use his or her DROP account balance to increase his or her monthly retirement allowances and benefits. The amount of the increase shall be determined based on the actuarial equivalent of the member's DROP account balance.
 - (E) The member may divide his or her DROP account balance in half, and may then elect to use fifty percent (50%) of his or her DROP account balance to increase his or her monthly retirement allowances and benefits, and to receive the remainder in any manner listed in Subparagraphs (A), (B) and (C) above.

In the event that the participating DROP member does not make the election required by this Subsection, the member shall receive payment of his or her DROP account balance as a lump sum.
 - (2) A participating DROP member may terminate his or her County employment at any time, in which case the effective date of the member's termination of his or her County employment shall be treated as the end of the DROP period for all purposes of this Section.

- (3) In the event that the employment of a participating DROP member is terminated by the County during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.
- (f) Death or disability during DROP period.
 - (1) (A) If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and contingent spouse and handicapped child option pursuant to the terms of Section 3-7-39, the participating DROP member's surviving spouse or handicapped child shall receive payment of the participating DROP member's DROP account balance and shall begin to receive allowances and benefits pursuant to the joint and contingent spouse and handicapped child option election of the participating DROP member in addition to the benefits to which they may be entitled under Section 3-7-41.
 - (B) If a participating DROP member is killed while in performance of his or her official duties during the DROP period, as set forth in Section 3-7-43, the member's spouse, or, if there is no surviving spouse, the member's handicapped child, may elect to receive the benefits set forth in Section 3-7-43, pursuant to the terms and conditions set forth in that Section. Such an election shall constitute a waiver of the right to receive the participating DROP member's DROP account balance.
 - (C) If a participating DROP member is killed while in performance of his or her official duties and there is no surviving spouse or handicapped child, the member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate.
- (2) If a participating DROP member becomes disabled during the DROP period, the participating DROP member shall receive:
 - (A) In the case that a participating DROP member suffers a disability that would be considered a non-service-connected disability as defined in Section 3-7-31 or a disability as a result of negligence as defined in Section 3-7-36, the effective date of the member's disability shall be treated as the end of the participating DROP member's DROP period.
 - (B) In the case that a participating DROP member suffers a service-connected disability as defined in Section 3-7-28, the participating DROP member may elect either (i) to receive the service-connected disability retirement allowances and benefits to which he or she would otherwise be entitled or (ii) to receive the normal service retirement allowances and benefits to which he or she would be entitled plus his or her DROP account balance. An election to receive service-connected disability retirement allowances and benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.
- (g) Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board is also authorized to adopt rules and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (36-03-3; 41-08-3; 27-10-3; 01-11-3; 28-12-3.)

Division 7. - Benefit Restoration Plan.

Section 3-7-53. - Benefit Restoration Plan.

- (a) There is hereby established a Benefit Restoration Plan for the System.
- (b) Purpose and intent; rule of construction.
 - (1) In establishing this Benefit Restoration Plan, the Board of Supervisors intends to establish and maintain a "qualified governmental excess benefit arrangement," as defined and authorized by Section 415(m) of the Internal Revenue Code, as is permitted by Section 51.1-1302 of the *Code of Virginia*. The purpose of this Benefit Restoration Plan is to restore, through a non-qualified arrangement, the benefits lost by the application of the limitation on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans. This Benefit Restoration Plan shall exist in addition to all other retirement, pension, or other benefits available to participants, including the benefits established by the System.
 - (2) This Section shall be construed to ensure compliance with federal and state law, and any regulations promulgated thereunder, governing such qualified governmental excess benefit arrangements, including, but not limited to Section 415(m) of the Internal Revenue Code and Sections 51.1-1302, 51.1-1303, and 51.1-1304 of the *Code of Virginia*, as in effect at the time of the adoption of this Section and as subsequently amended.
- (c) Definitions.
 - (1) *Administrator* or *Plan Administrator* shall mean the Board, which is responsible for the general administration and operation of the Benefit Restoration Plan and for making effective the provisions of this Section. Under the oversight of the Board, the Executive Director shall be responsible for the day to day operation and administration of the Benefit Restoration Plan.
 - (2) *Beneficiary* shall mean the person or persons entitled under this Article to receive any benefits payable after the participant's death.
 - (3) *Benefit Restoration Plan* or *Plan* shall mean the Benefit Restoration Plan for the System established by this Section.
 - (4) *Effective date* shall mean the date of this Section's adoption [June 5, 2006].
 - (5) *Eligible member* shall mean a retired member of the System whose benefits thereunder are reduced by the application of the limitations on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans.
 - (6) *Enabling statute* shall mean Chapter 13 of Title 51.1 of the *Code of Virginia*, as amended.
 - (7) *Grantor trust* shall mean the trust fund described in Subsection (i)(3) of this Section and established and maintained for the Benefit Restoration Plan.
 - (8) *Participant* shall mean an eligible member qualified to participate in the Benefit Restoration Plan.
 - (9) *Plan sponsor* shall mean the Board of Supervisors.
 - (10) *Plan year* shall mean the twelve (12) month period beginning on July 1.
 - (11) *Restoration death benefit* shall mean the benefit due the beneficiary of a participant under the Benefit Restoration Plan as determined under this Section.
 - (12) *Restoration retirement benefit* shall mean the benefit due a participant or his or her beneficiary under the Benefit Restoration Plan determined under this Section.
- (d) Eligibility and participation
 - (1) Eligibility and date of participation. Each eligible member shall be a participant in the Benefit Restoration Plan commencing with the date he or she first becomes, or again becomes, an eligible member.
 - (2) Length of participation. Each eligible member who becomes a participant shall be or remain a participant for so long as he or she is entitled to future benefits under the terms of the Benefit Restoration Plan.

(e) Restoration retirement benefit. Subject to the terms and conditions set forth in this Section, a participant who retires or is retired under the System and who is entitled to the payment of benefits under the System shall be entitled to a restoration retirement benefit, generally expressed as a benefit payable monthly for the life of the participant and commencing at the applicable time provided under this Article, equal to the excess, if any, of:

- (1) The amount of the participant's retirement allowance under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
- (2) The amount of the participant's retirement allowance under the System.

To the extent that the participant's retirement allowance payable under the System is increased at any time due to increases in limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the Secretary of the U. S. Treasury or his or her delegate or otherwise, the participant's restoration retirement benefit shall be reduced correspondingly.

(f) Death Benefit.

- (1) Death after benefit commencement. If a participant dies after his or her restoration retirement benefit commences to be paid, the only benefits payable under the Benefit Restoration Plan to his or her beneficiary after his or her death shall be those, if any, provided under the form of payment being made to him or her at his or her death.
- (2) Death before benefit commencement. If a participant dies before his or her restoration retirement benefit commences to be paid, the only benefit payable under the Benefit Restoration Plan with respect to him or her shall be the restoration death benefit, if any, provided in Subsection (f)(3) of this Section.
- (3) Restoration death benefit. Subject to the terms and conditions set forth herein, if a participant dies on or after the effective date and before his or her restoration retirement benefit commences to be paid, his or her beneficiary shall be entitled to a restoration death benefit as follows:
 - (A) If his or her beneficiary is entitled to receive any death benefit under the System, such beneficiary shall be entitled to receive as a restoration death benefit under the Benefit Restoration Plan an amount equal to the excess, if any, of:
 - (i) The amount of such death benefit under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
 - (ii) The actual amount of such death benefit under the System.

To the extent that the participant's accrued benefit or any death benefit payable under the System is increased at any time due to increases in the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U.S. Secretary of the Treasury or his or her delegate or otherwise, the participant's restoration death benefit shall be reduced correspondingly.

(g) Vesting. A participant's restoration retirement benefit or restoration death benefit, as the case may be, shall be vested at the time of his or her retirement under the System or death, but only to the extent, and determined in the manner, that such participant has a vested and non-forfeitable right to his or her retirement allowance under the System.

(h) Payment of benefits.

- (1) Time and manner for payment of benefits. A participant's restoration retirement benefit, or the restoration death benefit, shall be payable at the same time and in the same manner as the participant's retirement allowance or comparable death benefit (other than his or her accumulated contributions or contribution refund death benefit) is paid under the System, whether as elected by the participant or otherwise payable. For a member who is receiving a retirement allowance

under the System on the effective date, and who would immediately be an eligible member upon the effective date, such member shall immediately commence receiving a restoration retirement benefit on a prospective basis.

- (2) Discretionary use of other methods of payment. In the sole discretion of the Administrator, monthly payment amounts of less than \$100.00, or such amount as the Administrator may from time to time determine, may be paid on an annual or semi-annual basis, in arrears and without interest.
 - (3) Benefit determination and payment procedure. The Administrator shall make all determinations concerning eligibility for benefits under the Benefit Restoration Plan, the time or terms of payment, and the form or manner of payment to the participant (or the participant's beneficiary in the event of the death of the participant). The Administrator shall promptly notify the employer and, where payments are to be made from a grantor trust, the trustee thereof, of each such determination that benefit payments are due and provide to the employer or trustee such other information necessary to allow the employer or trustee to carry out said determination, whereupon the employer or trustee shall pay such benefits in accordance with the Administrator's determination.
 - (4) Payments to minors and incompetents. If a participant or beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits shall be paid to such person as the Administrator may designate for the benefit of such participant or beneficiary. Such payments shall be considered a payment to such participant or beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Benefit Restoration Plan.
 - (5) Distribution of benefit when distributee cannot be located. The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a participant or his or her beneficiary entitled to benefits under the Benefit Restoration Plan, including the mailing by certified mail of a notice to the last known address shown on the employer's or the Administrator's records. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no such claim made for such benefits, the employer shall continue to hold the benefit due such person, subject to any applicable statute of escheats.
- (i) Funding.
- (1) The undertaking to pay the benefits hereunder shall be unfunded obligations payable solely from the general assets of the employer and subject to the claims of the employer's creditors.
 - (2) Except as provided in a grantor trust established as permitted in Subsection (i)(3) of this Section, nothing contained in the Benefit Restoration Plan and no action taken pursuant to this Section shall create or be construed to create a trust of any kind of a fiduciary relationship between the employer and the participant or his or her beneficiary or any other person or to give any participant or beneficiary any right, title, or interest in any specific asset or assets of the employer. To the extent that any person acquires a right to receive payments from the employer under the Benefit Restoration Plan, such rights shall be no greater than the right of any unsecured general creditor of the employer.
 - (3) Use of grantor trust permitted. Notwithstanding any provision of this Section to the contrary, the Benefit Restoration Plan Sponsor may in its sole discretion elect to establish and fund a grantor trust for the purpose of providing benefits under the Benefit Restoration Plan.
- (j) Plan Administrator.
- (1) The Plan Administrator shall have full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Benefit Restoration Plan pursuant to this Section and the enabling statute. The Administrator shall have any and all powers as may be necessary or advisable to discharge its duties under the Benefit Restoration Plan including the power and authority to interpret the terms of the Benefit Restoration Plan.

- (2) The Plan Administrator shall be responsible for performing the duties required for the operation of the Benefit Restoration Plan, and shall be responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities under this Section and the enabling statute.
 - (3) To enable the Plan Administrator to perform its responsibilities, employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Benefit Restoration Plan. The Plan Administrator shall rely upon this information supplied by the employer, and shall have no duty or responsibility to verify this information.
 - (4) Except as prohibited by law or by this Section, the Plan Administrator may delegate any of its duties to the Executive Director. The Plan Administrator may contract with any person to provide services to assist in the administration of the Benefit Restoration Plan. The Plan Administrator shall make such contracts in compliance with all applicable state and local laws and regulations. Any person other than the Plan Administrator who performs services regarding the Benefit Restoration Plan shall be subject to the supervision and direction of the Plan Administrator and shall not have the authority to control the operation of the Plan.
- (k) Termination and amendment of Benefit Restoration Plan.
- (1) Termination. The Board of Supervisors hereby reserves the right to terminate this Benefit Restoration Plan at any time; provided, that no such termination shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such termination.
 - (2) Amendment. The Board of Supervisors hereby reserves the right to amend this Benefit Restoration Plan at any time; provided, that no such amendment shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such amendment.
- (l) Non-assignability.
- The interests of each participant hereunder the Benefit Restoration Plan are not subject to the claims of the participant's creditors; and neither the participant nor his or her beneficiary, shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Benefit Restoration Plan, which payments and interest are expressly declared to be non-assignable and non-transferable. Notwithstanding the foregoing, the Plan Administrator shall honor any process for a debt to the employer who has employed the participant and any administrative actions pursuant to Sections 63.2-1900 *et seq.* of the *Code of Virginia* or any court process to enforce a child or spousal support obligation, in the manner as described in Section 3-7-6 *mutatis mutandi*. Restoration retirement benefits and/or restoration death benefits created under this Section which are deemed to be marital property pursuant to Sections 20-89.1 *et seq.* of the *Code of Virginia*, may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Code of Virginia*. Under no circumstances may a payment under this Subsection take place before the participant's benefit under the System is actually paid. (12-06-3.)

*Via Electronic Mail*

September 13, 2018

Board of Trustees
 Fairfax County Employees' Retirement System
 12015 Lee Jackson Memorial Highway, Suite 350
 Fairfax, Virginia 22033

Re: Follow-up Information to June 26 Meeting on Personnel Committee Meeting

Dear Members of the Board:

At the Personnel Committee meeting on June 26, 2018, the Board of Supervisors narrowed down a list of potential offerings for a new tier of benefits. We are writing to provide information on possible combinations of these potential offerings and the impact on the Fairfax County Employees' Retirement System (ERS).

The potential changes that are being considered to benefits for all new hires after the effective date of the ordinance under the current Plan D include:

- Raise the minimum retirement age from 55 to 60
- Raise the Rule of 85 to the Rule of 90
- Change the average final compensation from high three years to high five years average
- Eliminate Pre-Social Security (pre-SS) Supplements
- Eliminate the 3% increase in the benefit formula

While the actual cost impact of a new hire plan will be unknown until the members have actually been hired, we are able to estimate the impact using the Plan D active population and the normal cost reduction for each possible combination being considered. The impact of any of these changes will be felt slowly over a number of years as new members are hired. If the contribution rate were recalculated each year to reflect the valuation results, we anticipate that the normal cost rate would begin to change immediately, albeit slowly. However, the County has decided not to let the ERS contribution rate decline until the Plan reaches 100% funding. Consequently, it is more likely that no savings would emerge until the Plan reaches 100% funding, at which time the contribution would drop enough to recoup the savings that had been suppressed in the interim.

Normal cost is an actuarial measure of the value of each year's accrual of benefits and will be lower for new hires under the proposed changes. The table on the following page lists the combinations that are being considered as well as the impact on normal cost. Note that combining changes in a certain order will change the potential savings since the changes are interdependent. For example, if you were to eliminate the pre-Social Security supplements as the first step in making a change, the change of increasing the minimum retirement age to 60 would be less of a savings since part of the savings was due to the pre-SS supplement piece of the benefit. This is why it is important to view the changes in packages rather than looking at each change on an individual basis.

ERS Normal Cost Impact of Prospective Changes to New Hires								
	A	B	C	D	E	F	G	H
1a. Minimum retirement age of 60	-0.22%	-0.22%	N/A	-0.22%	-0.22%	N/A	N/A	N/A
2. Rule of 90 retirement	-0.04%	N/A	-0.08%	-0.04%	N/A	-0.08%	N/A	N/A
3a. 5-year average final compensation	-0.35%	-0.35%	-0.35%	-0.35%	-0.35%	-0.35%	N/A	-0.36%
4. Eliminate pre-SS supplement	-0.42%	-0.44%	-0.49%	-0.42%	-0.44%	-0.49%	-0.58%	-0.58%
9. Eliminate 3% formula increase	-0.32%	-0.32%	-0.33%	N/A	N/A	N/A	-0.33%	-0.32%
Total Change	-1.35%	-1.33%	-1.25%	-1.03%	-1.01%	-0.92%	-0.91%	-1.26%


Assumptions and Statement of Reliance

These cost estimates were prepared using the same actuarial assumptions and methods as described in our June 30, 2016 actuarial valuation reports. The data used in this analysis was the active data provided for the 2016 valuation for members participating in Plan D. We note that the average age at hire for active members of Plan D has not significantly changed in the last three years of valuation data that we have collected and so we feel the 2016 active group is an appropriate proxy for future hires who may accrue benefits under this provision.

I hereby certify that, to the best of my knowledge, this letter and its contents are complete and have been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board. Furthermore, as a credentialed actuary, I meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this letter. This letter does not address any contractual or legal issues. I am not an attorney, and my firm does not provide any legal services or advice.

Please call if you have any questions or comments.

Sincerely,
Cheiron



Fiona E. Liston, FSA, EA
Principal Consulting Actuary



Via Electronic Mail

August 3, 2018

Board of Trustees
Fairfax County Uniformed Retirement System
12015 Lee Jackson Memorial Highway, Suite 350
Fairfax, Virginia 22033

Re: Follow-up Information to June 26 Meeting on Personnel Committee Meeting

Dear Members of the Board:

At the Personnel Committee meeting on June 26, 2018, the Board of Supervisors narrowed down a list of potential offerings for a new tier of benefits. We are writing to provide information on possible combinations of these potential offerings and the impact on the Fairfax County Uniformed Retirement System (URS).

The potential changes that are being considered to benefits for all new hires after the effective date of the ordinance under the current Plan E include:

- Change the average final compensation from high three years to high five years average
- Eliminate Pre-Social Security (pre-SS) Supplements
- Eliminate the 3% increase in the benefit formula

While the actual cost impact of a new hire plan will be unknown until the members have actually been hired, we are able to estimate the impact using the Plan E active population and the normal cost reduction for each possible combination being considered. The impact of any of these changes will be felt slowly over a number of years as new members are hired. If the contribution rate were recalculated each year to reflect the valuation results, we anticipate that the normal cost rate would begin to change immediately, albeit slowly. However, the County has decided not to let the URS contribution rate decline until the Plan reaches 100% funding. Consequently, it is more likely that no savings would emerge until the Plan reaches 100% funding, at which time the contribution would drop enough to recoup the savings that had been suppressed in the interim.

Normal cost is an actuarial measure of the value of each year's accrual of benefits and will be lower for new hires under the proposed changes. The table on the following page lists the combinations that are being considered as well as the impact on normal cost. Note that combining changes in a certain order will change the potential savings since the changes are interdependent. For example, if you were to eliminate the pre-Social Security supplements as the first step in making a change, the change of increasing the average final compensation years from three to five would be less of a savings since part of the savings was due to the pre-SS supplement piece of the benefit. This is why it is important to view the changes in packages rather than looking at each change on an individual basis.

URS Normal Cost Impact of Prospective Changes to New Hires			
	A	B	C
3a. 5-year average final compensation	-0.84%	-0.84%	N/A
4. Eliminate pre-SS supplement	-0.89%	-0.89%	-0.92%
9. Eliminate 3% formula increase	-0.57%	N/A	0.59%
Total Change	-2.30%	-1.73%	-1.51%


Assumptions and Statement of Reliance

These cost estimates were prepared using the same actuarial assumptions and methods as described in our June 30, 2016 actuarial valuation reports. The data used in this analysis was the active data provided for the 2016 valuation for members participating in Plan E. We note that the average age at hire for active members of Plan E has not significantly changed in the last three years of valuation data that we have collected and so we feel the 2016 active group is an appropriate proxy for future hires who may accrue benefits under this provision.

I hereby certify that, to the best of my knowledge, this letter and its contents are complete and have been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board. Furthermore, as a credentialed actuary, I meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this letter. This letter does not address any contractual or legal issues. I am not an attorney, and my firm does not provide any legal services or advice.

Please call if you have any questions or comments.

Sincerely,
Cheiron



Fiona E. Liston, FSA, EA
Principal Consulting Actuary



Via Electronic Mail

August 3, 2018

Board of Trustees
Fairfax County Police Officers Retirement System
12015 Lee Jackson Memorial Highway, Suite 350
Fairfax, Virginia 22033

Re: Follow-up Information to June 26 Meeting on Personnel Committee Meeting

Dear Members of the Board:

At the Personnel Committee meeting on June 26, 2018, the Board of Supervisors narrowed down a list of potential offerings for a new tier of benefits. We are writing to provide information on possible combinations of these potential offerings and the impact on the Fairfax County Police Officers Retirement System (PORS).

The potential changes that are being considered to benefits for all new hires after the effective date of the ordinance under the current Plan B include:

- Change the average final compensation from high three years to high five years average
- Eliminate the 3% increase in the benefit formula

While the actual cost impact of a new hire plan will be unknown until the members have actually been hired, we are able to estimate the impact using the Plan B active population and the normal cost reduction for each possible combination being considered. The impact of any of these changes will be felt slowly over a number of years as new members are hired. If the contribution rate were recalculated each year to reflect the valuation results, we anticipate that the normal cost rate would begin to change immediately, albeit slowly. However, the County has decided not to let the PORS contribution rate decline until the Plan reaches 100% funding. Consequently, it is more likely that no savings would emerge until the Plan reaches 100% funding, at which time the contribution would drop enough to recoup the savings that had been suppressed in the interim.

Normal cost is an actuarial measure of the value of each year's accrual of benefits and will be lower for new hires under the proposed changes. The table below lists the combinations that are being considered as well as the impact on normal cost.

PORS Normal Cost Impact of Prospective Changes to New Hires			
	A	B	C
3a. 5-year average final compensation	-0.79%	-0.79%	N/A
9. Eliminate 3% formula increase	-0.63%	N/A	-0.65%
Total Change	-1.42%	-0.79%	-0.65%

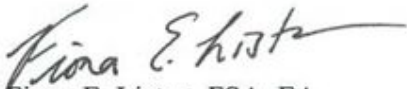
Assumptions and Statement of Reliance

These cost estimates were prepared using the same actuarial assumptions and methods as described in our June 30, 2016 actuarial valuation reports. The data used in this analysis was the active data provided for the 2016 valuation for members participating in Plan B. We note that the average age at hire for active members of Plan B has not significantly changed in the last three years of valuation data that we have collected and so we feel the 2016 active group is an appropriate proxy for future hires who may accrue benefits under this provision.

I hereby certify that, to the best of my knowledge, this letter and its contents are complete and have been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board. Furthermore, as a credentialed actuary, I meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this letter. This letter does not address any contractual or legal issues. I am not an attorney, and my firm does not provide any legal services or advice.

Please call if you have any questions or comments.

Sincerely,
Cheiron



Fiona E. Liston, FSA, EA
Principal Consulting Actuary

