

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
November 19, 2019**

AGENDA

9:30	Done	Presentations
10:00	Rescheduled to 12/3/19	Presentation of the Environmental Quality Advisory Council (EQAC) Annual Report
10:10	Done	Presentation of the Transportation Advisory Commission (TAC) Annual Transportation Achievement Award
10:20	Done	Items Presented by the County Executive

**ADMINISTRATIVE
ITEMS**

1	Approved	Streets into the Secondary System (Mount Vernon District)
2	Approved	Approval of Traffic Calming Measures, "\$200 Additional Fine for Speeding" Signs and "Watch for Children" Signs as Part of the Residential Traffic Administration Program (Braddock and Sully Districts)
3	Approved	Extension of Review Period for 2232 Application (Sully District)
4	Approved	Authorization to Advertise Public Hearings on a Proposed Zoning Ordinance Amendment Re: Article 14 – Outdoor Lighting and Related Provisions
5	Approved	Authorization to Advertise a Public Hearing to Revise Deed Restriction in Deed of Conveyance for Clermont Park (Lee District)
6	Approved	Supplemental Appropriation Resolution AS 20105 for Various Fairfax County Agencies to Accept Department of Homeland Security Urban Areas Security Initiative Subgrant Awards from the Government of the District of Columbia Homeland Security and Emergency Management Agency

ACTION ITEMS

1	Approved	Approval of an Amended Parking Reduction for 8100 Lee Highway (Providence District)
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**FAIRFAX COUNTY
BOARD OF SUPERVISORS
November 19, 2019**

**ACTION ITEMS
(continued)**

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| 2 | Approved | Designation of the Director, Department of Public Works and Environmental Services, and his Designee(s) as the Board of Supervisors' Agent(s) in Applying for and Seeking Zoning Approval of Board-Owned Property Projects and County Improvement Program Projects and Designation of the County Executive as the Board's Agent to Sign Proffers for Such Projects |
| 3 | Approved | Authorization to Sell Board-Owned Property North of Reston Station Boulevard to CRS Sunset Hills, LC and Proposed Amendment to Deed of Lease with Comstock Reston Station Holdings, LC to Remove Land Area (Hunter Mill District) |
| 4 | Approved | Designation of the Oakwood Senior Housing Property and the One University Property as Revitalization Areas (Lee and Braddock Districts) |
| 5 | Approved | Approval of a Project Agreement Between Cityline Partners LLC and Fairfax County for the Scotts Run Stream Restoration (Providence District) |
| 6 | Approved | Endorsement of Interstate 66 Trail Name (Providence, Braddock, Springfield, and Sully Districts) |
| 7 | Approved | Authorization for the Fairfax County Redevelopment and Housing Authority (FCRHA) to Make Housing Blueprint Loans to One University Family, LLC and One University Senior, LLC in the Aggregate Amount of \$6,500,000 to Assist in the Financing of the Construction of One University Apartments (Braddock District) |
| 8 | Approved | Approval of a Resolution Supporting Additional Projects Being Submitted to the Northern Virginia Transportation Authority for FY 2024 to FY 2025 Regional Funding Consideration (Lee, Hunter Mill, and Providence Districts) |
| 9 | Approved | Approval of Multiple Actions Necessary to Syndicate Virginia Historic Rehabilitation Tax Credits for the Renovation of the Original Mount Vernon High School (Mount Vernon District) |

**CONSIDERATION
ITEMS**

- | | | |
|---|-----------------|---|
| 1 | Approved | Approval of the Proposed Amended Bylaws for the Fairfax County Police Civilian Review Panel |
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**FAIRFAX COUNTY
BOARD OF SUPERVISORS
November 19, 2019**

10:30	Done	Matters Presented by Board Members
11:20	Done	Closed Session
PUBLIC HEARING ITEMS		
3:00	Held	Public Hearing to Receive Comment from Citizens on the Proposed Legislative Program to be Presented to the 2020 Virginia General Assembly
3:30	Approved	Public Hearing on a Proposed County Code Amendment for Chapter 3, County Employees, Personnel Administration, Definitions and Chapter 3, County Employees, Personnel Administration, Appointing Authorities
4:00	Approved	Public Hearing on a Proposal to Vacate and Abandon a Portion of Rock Hill Road / Route 605 (Dranesville District)
4:00	Withdrawn	Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Innovation Center to Arrowbrook Trail (Dranesville District)
4:00	Approved Chapter 124; Readvertise Chapter 118	Public Hearing on Proposed Amendments to Chapter 118 (Chesapeake Bay Preservation Ordinance) and Chapter 124 (Stormwater Management Ordinance) of <i>The Code of the County of Fairfax, Virginia</i> (County Code) Re: Long-term Maintenance of Stormwater Management Facilities, Illicit Discharges, and Enforcement
4:00	Approved	Public Hearing on an Ordinance to Amend the Fairfax County Code by Adding a New Chapter 86, Relating to Shared Mobility Devices

REVISED



Fairfax County, Virginia ***BOARD OF SUPERVISORS*** ***AGENDA***

Tuesday
November 19, 2019

9:30 a.m.

CHORAL PRESENTATION

Musical offering by members of the Fairfax Symphony and Fairfax Choral Society of a section of the composition "Resolutions" commissioned to celebrate the 275th anniversary of the founding of Fairfax County.
Requested by Chairman Bulova.

GRANT AWARD PRESENTATIONS

Grant awards given by Cox Communications to five nonprofit organizations serving Fairfax County.
Requested by Chairman Bulova.

PRESENTATIONS

- CERTIFICATE — To recognize Wendy Gao, student at Oakton High School, and Katie Monacella, student at Madison High School, to thank them for their transformative efforts in regard to climate change. Requested by Supervisor Hudgins.

— more —

Board Agenda Item
November 19, 2019

- CERTIFICATE — To recognize Madison High School Girls Swim and Dive for winning the state championship for the third consecutive year. Requested by Supervisors Hudgins and Smyth.
- CERTIFICATE — To recognize Madison High School Boys Lacrosse Team for winning the state championship. Requested by Supervisor Hudgins.
- PROCLAMATION — To designate November 2019 as Native American Heritage Month in Fairfax County. Requested by Chairman Bulova.
- RESOLUTION — To recognize Volunteers in Police Service for its 20th anniversary. Requested by Chairman Bulova and Supervisor McKay.
- RESOLUTION — To recognize NOVA Parks for its 60th anniversary. Requested by Chairman Bulova and Supervisor Herrity.

STAFF:

Tony Castrilli, Director, Office of Public Affairs

Bill Miller, Office of Public Affairs

Austin Hendrick, Office of Public Affairs

**Rescheduled
to 12/3/19**

Board Agenda Item
November 19, 2019

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-development/environmental-quality-advisory-council/annual-report-environment>

PRESENTED BY:

Stella Koch, Chairman, Environmental Quality Advisory Council

Board Agenda Item
November 19, 2019

10:10 a.m.

Presentation of the Transportation Advisory Commission (TAC) Annual Transportation Achievement Award

ENCLOSED DOCUMENTS:
None.

PRESENTED BY:
Jeffrey M. Parnes, Chairman of the Transportation Advisory Commission

Board Agenda Item
November 19, 2019

10:20 a.m.

Items Presented by the County Executive

Board Agenda Item
November 19, 2019

ADMINISTRATIVE - 1

Streets into the Secondary System (Mount Vernon District)

ISSUE:

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

RECOMMENDATION:

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

<u>Subdivision</u>	<u>District</u>	<u>Street</u>
Rollingwood West	Mount Vernon	Tanner Robert Court

TIMING:

Routine.

BACKGROUND:

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

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – Street Acceptance Forms

STAFF:

Rachel Flynn, Deputy County Executive
William D. Hicks, P.E., Director, Land Development Services

Street Acceptance Form For Board Of Supervisors Resolution - June 2005

FAIRFAX COUNTY BOARD OF SUPERVISORS FAIRFAX, VA Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.		VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM. PLAN NUMBER: 7705-SP-01-2 SUBDIVISION PLAT NAME: Rollingwood West COUNTY MAGISTERIAL DISTRICT: Mount Vernon	
ENGINEERING MANAGER: Houda A. Ali, PMP BY: <u>Nadia Alphonse</u>		FOR OFFICIAL USE ONLY DATE OF VDOT INSPECTION APPROVAL: <u>09/10/2019</u>	

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Tanner Robert Court	CL Rolling Road (Route 638) - 462' NW CL Creedmor Drive (Route 6004)	326' W to End of Cul-de-Sac	0.06
NOTES:			TOTALS:
4' Concrete Sidewalk on South Side to be maintained by Fairfax County.			0.06

ADMINISTRATIVE - 2

Approval of Traffic Calming Measures, "\$200 Additional Fine for Speeding" Signs and "Watch for Children" Signs as Part of the Residential Traffic Administration Program (Braddock and Sully Districts)

ISSUE:

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

RECOMMENDATION:

The County Executive recommends that the Board endorse the traffic calming plan and resolution for Wetherburn Drive (Attachment I and Attachment II) consisting of the following:

- Two Raised Crosswalks and one Speed Hump on Wetherburn Drive (Sully District)

The County Executive further recommends approval of resolutions (Attachment III, Attachment V and Attachment VII) for the installation of "\$200 Additional Fine for Speeding" signs on the following roads:

- Braeburn Drive, between the Olley Lane and Guinea Road (Attachment III) (Braddock District)
- Ashmeade Drive, between Braeburn Drive and Guinea Road (Attachment V) (Braddock District)
- Rockcrest Drive, between Olley Lane and Kristin Lane (Attachment VII) (Braddock District)

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

- Two "Watch for Children" signs on Braeburn Drive (Braddock District)
- One "Watch for Children" sign on Ashmeade Drive (Braddock District)
- One "Watch for Children" sign on Argonne Drive (Braddock District)
- One "Watch for Children" sign on Ashford Lane (Braddock District)
- One "Watch for Children" sign on Rockcrest Drive (Braddock District)

In addition, the County Executive recommends that the Fairfax County Department of Transportation (FCDOT) be requested to schedule the installation of the approved traffic

Board Administrative Item
November 19, 2019

calming measures and the “Watch for Children” signs as soon as possible. The County Executive also recommends that FCDOT request VDOT to schedule the installation of the approved “\$200 Additional Fine for Speeding” signs (Attachment IV, Attachment VI and Attachment VIII) as soon as possible.

TIMING:

Board action is requested on November 19, 2019.

BACKGROUND:

As part of RTAP, roads are reviewed for traffic calming when requested by a Board member on behalf of a homeowners or civic association. Traffic calming employs the use of physical devices such as speed humps, speed tables, raised pedestrian crosswalks, chokers, or median islands to reduce the speed of traffic on a residential street. Staff performed engineering studies documenting the attainment of qualifying criteria. Staff worked with the local Supervisor’s office and community to determine the viability of the requested traffic calming measure to reduce the speed of traffic. Once the plan for the road under review is approved and adopted by staff, that plan is then submitted for approval to the residents within the ballot area in the adjacent community.

On October 1, 2019, FCDOT received verification from the Sully District Supervisor’s office confirming community support for the Wetherburn Drive traffic calming plan.

Section 46.2-878.2 of the *Code of Virginia* permits a maximum fine of \$200, in addition to other penalties provided by law, to be levied on persons exceeding the speed limit on appropriately designated residential roadways. These residential roadways must have a posted speed limit of 35 mph or less. In addition, to determine that a speeding problem exists, staff performs an engineering review to ascertain that additional speed and volume criteria are met.

Braeburn Drive, between the Olley Lane and Guinea Road (Braddock District) met the RTAP requirements for posting the “\$200 Additional Fine for Speeding Signs.” On September 11, 2019, FCDOT received written verification from the Braddock District confirming community support.

Ashmeade Drive, between Braeburn Drive and Guinea Road (Braddock District) met the RTAP requirements for posting the “\$200 Additional Fine for Speeding Signs.” On September 11, 2019, FCDOT received written verification from the Braddock District Supervisor’s Office confirming community support.

Rockcrest Drive, between Olley Lane and Kristin Lane (Braddock District) met the RTAP requirements for posting the “\$200 Additional Fine for Speeding Signs.” On September

Board Administrative Item
November 19, 2019

11, 2019, FCDOT received written verification from the Braddock District Supervisor's Office confirming community support.

The RTAP allows for installation of "Watch for Children" signs at the primary entrance to residential neighborhoods, or at a location with an extremely high concentration of children relative to the area, such as playgrounds, day care centers, or community centers. FCDOT reviews each request to ensure the proposed signs will be effectively located and will not be in conflict with any other traffic control devices.

On September 11, 2019, FCDOT received verification from the Braddock District Supervisor's Office confirming community support for the referenced "Watch for Children" signs on Braeburn Drive, Ashmeade Drive, Argonne Drive, Ashford Lane and Rockcrest Drive (Braddock District).

FISCAL IMPACT:

Funding in the amount of \$55,000 for the traffic calming measures associated with these traffic calming projects and the "Watch for Children" signs is available in Fund 2G25-076-000, General Fund, under Job Number 40TTCP. For the "\$200 Additional Fine for Speeding" signs, \$1,000 is to be paid out of the VDOT secondary road construction budget.

ENCLOSED DOCUMENTS:

Attachment I: Traffic Calming Resolution for Wetherburn Drive

Attachment II: Traffic Calming Plan for Wetherburn Drive

Attachment III: "\$200 Additional Fine for Speeding" Signs Resolution – Braeburn Drive

Attachment IV: Area Map of Proposed "\$200 Additional Fine for Speeding" Signs – Braeburn Drive

Attachment V "\$200 Additional Fine for Speeding" Signs Resolution – Ashmeade Drive

Attachment VI: Area Map of Proposed "\$200 Additional Fine for Speeding" Signs – Ashmeade Drive

Attachment VII "\$200 Additional Fine for Speeding" Signs Resolution – Rockcrest Drive

Attachment VIII: Area Map of Proposed "\$200 Additional Fine for Speeding" Signs – Rockcrest Drive

STAFF:

Rachel Flynn, Deputy County Executive

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

Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Steven K. Knudsen, Transportation Planner, Traffic Engineering Section, FCDOT

RESOLUTION

**FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION
RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)
TRAFFIC CALMING MEASURES
WETHERBURN DRIVE
SULLY DISTRICT**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, November 19, 2019, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, the residents in the vicinity of Wetherburn Drive have requested the Sully District Supervisor's Office of Fairfax County to consider remedial measures to reduce the speed of traffic on Wetherburn Drive; and

WHEREAS, an engineering study by the Fairfax County Department of Transportation (FCDOT) for Wetherburn Drive indicates that all basic traffic calming criteria are met pertaining to functional classification of the roadways, identification of a significant speeding concern, and proof of community support; and

WHEREAS, the proposed Traffic Calming Plan was properly presented to the community in the affected survey for their review and consideration; and

WHEREAS, the Traffic Calming Plan was subsequently approved by the occupied residences within the appropriate surveyed area that voted; and

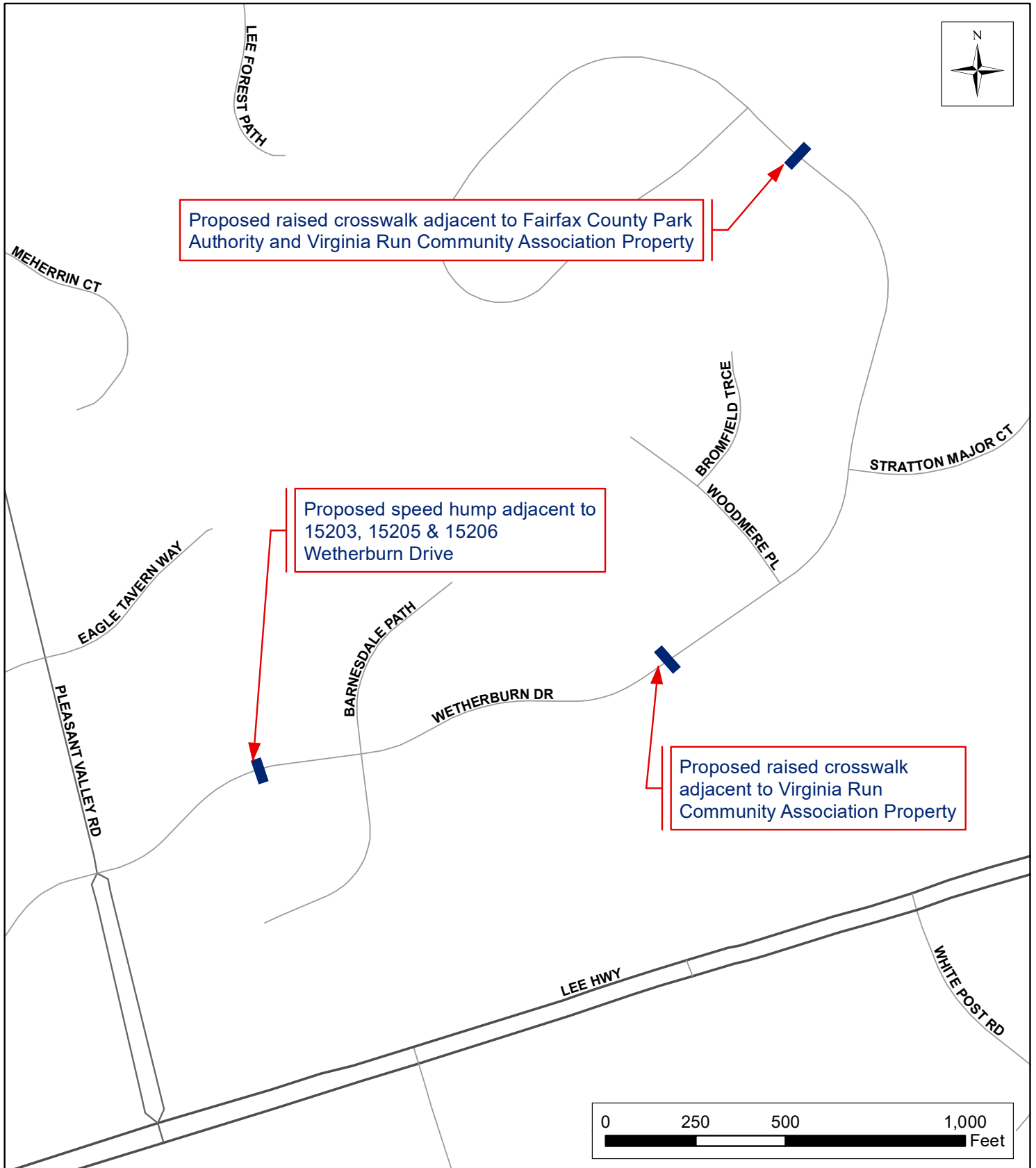
WHEREAS, the intended source of funding for the Traffic Calming Plan is Fairfax County.

NOW THEREFORE BE IT RESOLVED, that the Board of Supervisors endorses the proposed Traffic Calming Plan and requests that the Virginia Department of Transportation review and approve the feasibility of implementing traffic calming measures on Wetherburn Drive as part of FCDOT's Residential Traffic Administration Program.

ADOPTED this 19th day of November 2019.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors



Tax Map: 53-4, 64-2

November 2019

**Fairfax County Department of Transportation
Residential Traffic Administration Program
Traffic Calming Plan
Wetherburn Drive
Sully District**



RESOLUTION

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION
RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)
\$200 ADDITIONAL FINE FOR SPEEDING SIGNS
BRAEBURN DRIVE
BRADDOCK DISTRICT

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, November 19, 2019, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, Section 46.2-878.2 of the *Code of Virginia* enables the Board of Supervisors to request by resolution signs alerting motorists of enhanced penalties for speeding on residential roads; and

WHEREAS, the Fairfax County Department of Transportation has verified that a bona-fide speeding problem exists on Braeburn Drive from Olley Lane to Guinea Road. Such road also being identified as a Major Collector Road; and

WHEREAS, community support has been verified for the installation of "\$200 Additional Fine for Speeding" signs on Braeburn Drive.

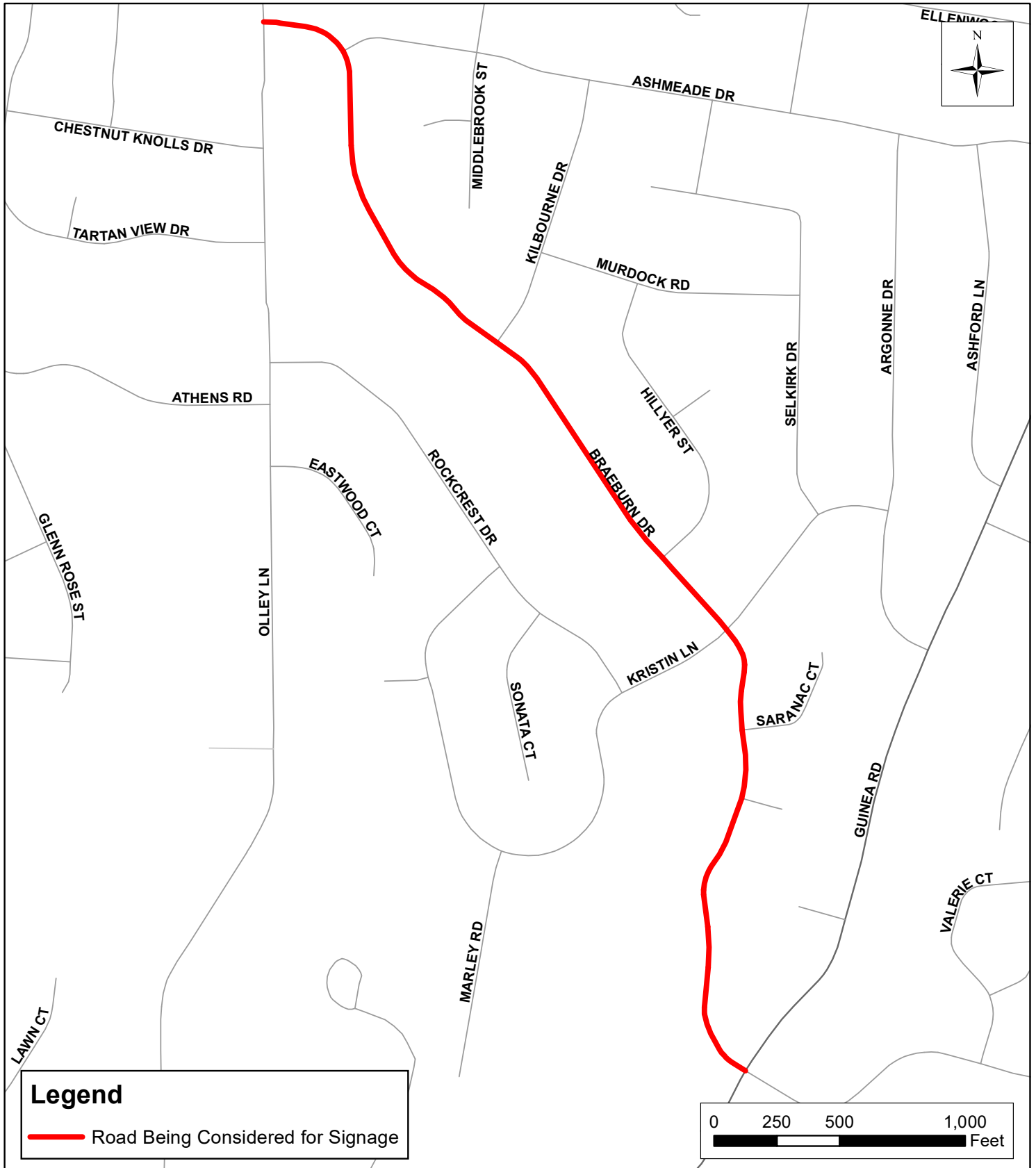
NOW, THEREFORE BE IT RESOLVED that "\$200 Additional Fine for Speeding" signs are endorsed for Braeburn Drive from Olley Lane to Guinea Road.

AND FURTHER, the Virginia Department of Transportation is requested to allow the installation of the "\$200 Additional Fine for Speeding" signage, and to maintain same, with the cost of each sign to be funded from the Virginia Department of Transportation's secondary road construction budget.

ADOPTED this 19th day of November 2019.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors



Tax Map: 69-2

November 2019

**Fairfax County Department of Transportation
Residential Traffic Administration Program
Proposed Additional \$200 Fine for Speeding
Braeburn Drive - Olley Lane to Guinea Road
Braddock District**



RESOLUTION

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION
RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)
\$200 ADDITIONAL FINE FOR SPEEDING SIGNS
ASHMEADE DRIVE
BRADDOCK DISTRICT

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, November 19, 2019, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, Section 46.2-878.2 of the *Code of Virginia* enables the Board of Supervisors to request by resolution signs alerting motorists of enhanced penalties for speeding on residential roads; and

WHEREAS, the Fairfax County Department of Transportation has verified that a bona-fide speeding problem exists on Ashmeade Drive from Braeburn Drive to Guinea Road. Such road also being identified as a Local Road; and

WHEREAS, community support has been verified for the installation of "\$200 Additional Fine for Speeding" signs on Ashmeade Drive.

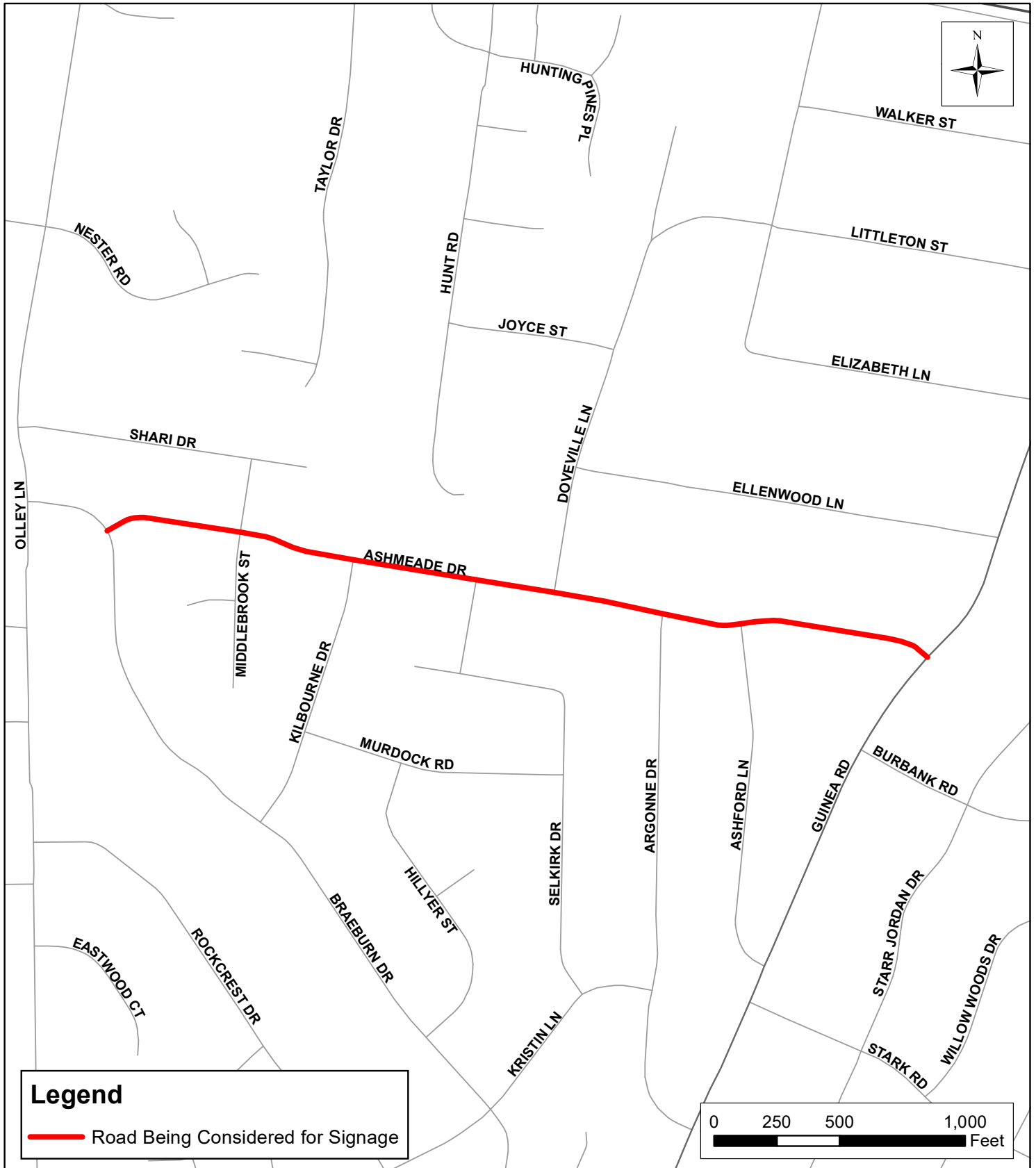
NOW, THEREFORE BE IT RESOLVED that "\$200 Additional Fine for Speeding" signs are endorsed for Ashmeade Drive from Braeburn Drive to Guinea Road.

AND FURTHER, the Virginia Department of Transportation is requested to allow the installation of the "\$200 Additional Fine for Speeding" signage, and to maintain same, with the cost of each sign to be funded from the Virginia Department of Transportation's secondary road construction budget.

ADOPTED this 19th day of November 2019.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors



Tax Map: 69-2

November 2019

**Fairfax County Department of Transportation
Residential Traffic Administration Program
Proposed Additional \$200 Fine for Speeding
Ashmeade Drive - Braeburn Drive to Guinea Road
Braddock District**



RESOLUTION

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION
RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)
\$200 ADDITIONAL FINE FOR SPEEDING SIGNS
ROCKCREST DRIVE
BRADDOCK DISTRICT

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, November 19, 2019, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, Section 46.2-878.2 of the *Code of Virginia* enables the Board of Supervisors to request by resolution signs alerting motorists of enhanced penalties for speeding on residential roads; and

WHEREAS, the Fairfax County Department of Transportation has verified that a bona-fide speeding problem exists on Rockcrest Drive from Olley Lane to Kritin Lane. Such road also being identified as a Local Road; and

WHEREAS, community support has been verified for the installation of "\$200 Additional Fine for Speeding" signs on Rockcrest Drive.

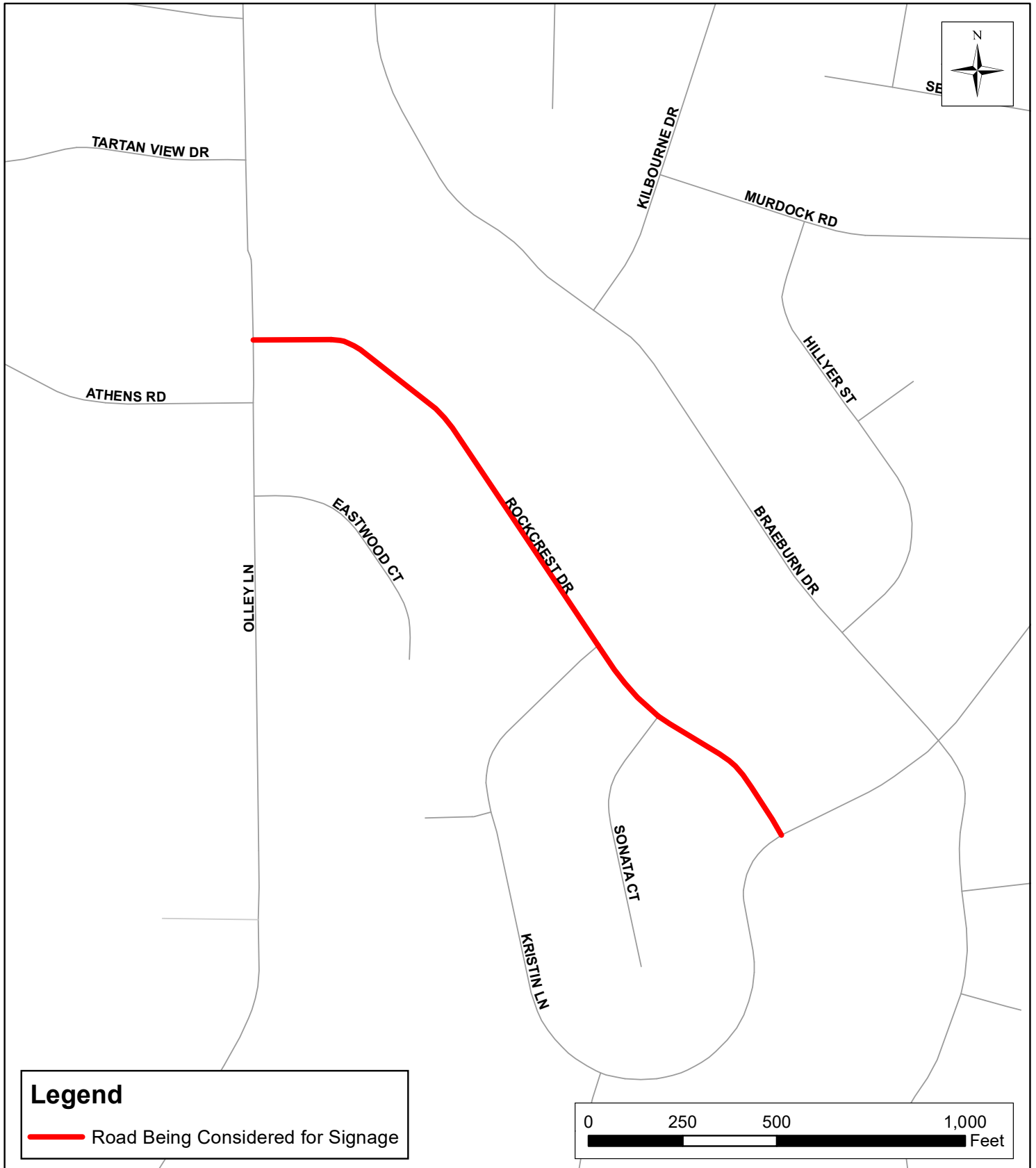
NOW, THEREFORE BE IT RESOLVED that "\$200 Additional Fine for Speeding" signs are endorsed for Rockcrest Drive from Olley Lane to Kritin Lane.

AND FURTHER, the Virginia Department of Transportation is requested to allow the installation of the "\$200 Additional Fine for Speeding" signage, and to maintain same, with the cost of each sign to be funded from the Virginia Department of Transportation's secondary road construction budget.

ADOPTED this 19th day of November 2019.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors



Tax Map: 69-2

November 2019



**Fairfax County Department of Transportation
Residential Traffic Administration Program
Proposed Additional \$200 Fine for Speeding
Rockcrest Drive - Olley Lane to Kristin Lane
Braddock District**



ADMINISTRATIVE - 3

Extension of Review Period for 2232 Application (Sully District)

ISSUE:

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

RECOMMENDATION:

The County Executive recommends that the Board extend the review period for the following application: 2232-Y19-8.

TIMING:

Board action is required November 19, 2019, to extend the review period for the application noted above before its 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 application should be extended:

2232-Y19-8	T-Mobile
	Tax Map No. 55-1 ((3)) 45
	4920 Stringfellow Road
	Centreville, VA
	Sully District
	Accepted September 16, 2019
	Extend to February 13, 2020

Board Agenda Item
November 19, 2019

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

None.

STAFF:

Rachel Flynn, Deputy County Executive

Barbara A. Byron, Director, Department of Planning and Development (DPD)

Michelle K. Stahlhut, Chief, Facilities Planning Branch, Planning Division, DPD

Bryan D. Botello, Planner, Facilities Planning Branch, Planning Division, DPD

ADMINISTRATIVE - 4

Authorization to Advertise Public Hearings on a Proposed Zoning Ordinance
Amendment Re: Article 14 – Outdoor Lighting and Related Provisions

ISSUE:

The proposed amendment updates the outdoor lighting standards by adding a correlated color temperature standard and revising the exemptions for lighting on lots with single family dwellings, motion-activated lighting, and the standards for sports illumination plans.

RECOMMENDATION:

The County Executive recommends the authorization of the proposed amendment by adopting the Resolution set forth in Attachment 1.

TIMING:

Board action is requested on November 19, 2019, to provide sufficient time to advertise the proposed Planning Commission public hearing on January 8, 2020, at 7:30 p.m., and the proposed Board of Supervisors public hearing on February 11, 2020, at 4:00 p.m.

BACKGROUND:

The proposed amendment addresses outdoor lighting topics identified on the 2019 Zoning Ordinance Amendment Work Program pertaining to:

- Single family residential exemptions
- Motion-activated security lighting exemptions
- Outdoor sports facilities
- Architectural Review Board (ARB) review of sports illumination plans

In addition to addressing these topics, staff recommends adding a maximum correlated color temperature, similar to that recently adopted in the Public Facilities Manual (PFM).

Staff has researched the topic and received input from stakeholders and citizens. The revisions are proposed in order to further the purpose and intent of the outdoor lighting performance standards, including reducing glare and excessive illumination and promoting safety and energy conservation. Specifically, the amendment proposes:

Board Agenda Item
November 19, 2019

- 1) A maximum correlated color temperature of 3,000K that would apply to all light fixtures, including residential, with an exception for sports fields and courts of up to 5,700K.
- 2) To reduce the lumens allowed for exempt fixtures on lots developed with single family dwellings from 2,000 to 1,500 lumens.
- 3) To reduce the lumens allowed for exempt motion-activated security lighting on lots developed with single family dwellings from 6,000 to 4,000 lumens.
- 4) To replace the standard for exempt motion-activated security lighting bulbs to not be visible at five feet above the property line with a requirement for the light to be aimed and directed within the property.
- 5) To revise the turn-off time from 11:00 PM to 10:00 PM for lighting of private outdoor playing fields or courts that are subject to a sports illumination plan and located on properties that are both residentially zoned and developed with a single family residential use.
- 6) Other minor revisions for sports illumination plans (SIP), including the review of stand-alone submissions of SIPs within Historic Overlay Districts by the Architectural Review Board.

A more detailed discussion is set forth in the Staff Report, enclosed as Attachment 2.

REGULATORY IMPACT:

The proposed amendment revises the performance standards applicable to the installation of new outdoor lighting fixtures or the replacement of existing fixtures.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution
Attachment 2 – Staff Report

STAFF:

Rachel Flynn, Deputy County Executive
Barbara Byron, Director, Department of Planning and Development (DPD)
Leslie B. Johnson, Zoning Administrator, DPD
Andrew Hushour, Deputy Zoning Administrator, DPD
Carmen Bishop, Principal Planner, DPD

ASSIGNED COUNSEL:

Cherie L. Halyard, Assistant County Attorney

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center Building, Fairfax, Virginia, on November 19, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, the purpose and intent of the regulations for outdoor lighting are to reduce glare, light trespass, and excessive lighting, and promote safety and energy conservation; and

WHEREAS, certain performance standards for outdoor lighting, as well as other applicable provisions of the Zoning Ordinance, need to be revised to further the purpose and intent of the outdoor lighting regulations; and

WHEREAS, adding a correlated color temperature standard will reduce glare, promote energy conservation, and potentially reduce adverse impacts on human health and wildlife; and

WHEREAS, reducing the maximum lumens allowed for light fixtures on lots developed with single family dwellings that are exempt from the outdoor lighting regulations will reduce unwanted impacts on adjacent properties and promote energy conservation while allowing adequate lighting for safety and security; and

WHEREAS, similarly reducing the maximum lumens allowed for motion-activated security lighting that is exempt from the outdoor lighting regulations will reduce unwanted impacts on adjacent properties and promote energy conservation while allowing adequate lighting for safety and security; and

WHEREAS, revising the standard for exempt motion-activated security lighting to require the lighting to be aimed and directed within the property will allow for needed lighting while reducing unwanted glare; and

WHEREAS, updates are appropriate for the requirements relating to sports illumination plans; and

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

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

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors



FAIRFAX
COUNTY

STAFF REPORT

V I R G I N I A

PROPOSED ZONING ORDINANCE AMENDMENT

Article 14 – Outdoor Lighting and Related Provisions

PUBLIC HEARING DATES

Planning Commission

January 8, 2020 at 7:30 p.m.

Board of Supervisors

February 11, 2020 at 4:00 p.m.

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

November 19, 2019

CB



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

STAFF COMMENT

The proposed amendment addresses certain outdoor lighting topics identified on the 2019 Zoning Ordinance Amendment Work Program.

The Work Program calls for consideration of revisions to the lighting standards contained in Part 9 of Article 14 pertaining to:

- Single family residential exemptions
- Motion-activated security lighting exemptions
- Outdoor sports facilities
- Architectural Review Board (ARB) review of sports illumination plans

In addition to addressing these topics, staff recommends adding a maximum correlated color temperature, similar to that recently adopted in the Public Facilities Manual (PFM). Other than color temperature, the topics that appear on the Work Program are minor revisions initially identified by staff and EQAC.

Current Zoning Ordinance Provisions

The current Zoning Ordinance performance standards for outdoor lighting were adopted in 2003 and represented a comprehensive update to the prior regulations that had been in effect since 1978. The 1978 regulations focused on light trespass by limiting illumination at a property line for a residential district to 0.5 footcandles; however, this standard was found to be inadequate in addressing glare. The 2003 rewrite deleted the light trespass standard and added the requirement for full cut-off fixtures that are mounted horizontal to the ground for most outdoor lighting, with certain exemptions. This was intended to establish a night-sky friendly ordinance and address the impacts of glare due to poorly designed lighting. The current standards also address height and location for lighting fixtures, dimming of nonresidential parking lot lights after the close of business, photometric plans for certain commercial uses, and sports illumination plans.

Proposed Amendment

Correlated Color Temperature:

Color temperature refers to the color characteristic of light, which for the purpose of outdoor lighting ranges from orange/yellow to blueish white, and is measured in kelvins (K). Lower color temperatures (e.g., 1,000 to 3,000K) are orange/yellowish and are referred to as “warm” while higher color temperatures (e.g., over 5,000K) are blueish white and are referred to as “cool.” A typical incandescent bulb has a color temperature of approximately 2,600K, but LED bulbs are available in a wide range of color temperatures. The higher color temperatures are associated with increased energy usage, glare, and impacts on human health and wildlife, as compared to lower color temperatures. Among other impacts, the “whiter” lighting can result in harsh glare, potentially damaging the eye and affecting safety, and can impact human circadian rhythm.

Consistent with the recently adopted amendment to the Public Facilities Manual for street lights and the recommendations of the American Medical Association and the International Dark Sky Association (IDA), staff recommends adding a maximum color temperature of 3,000K, which is

slightly higher than the color temperature of a typical incandescent bulb. This would apply to all light fixtures, including residential, with an exception of up to 5,700K for sports fields and courts that are subject to a sports illumination plan (SIP). The higher color temperature for the sports fields and courts is consistent with recent FCPA installations and IDA recommendations. It should be noted that fixtures and bulbs with 3,000K or less are readily available for purchase.

Exemptions for Single Family Dwellings:

On lots developed with single family dwellings, lighting that does not exceed 2,000 lumens (approximately equivalent to 133 watts with an incandescent bulb) is exempt from the requirements of Par. 2 of Sect. 14-902. This provision includes the requirements for fixtures to be full cut-off and mounted horizontal to the ground, for spotlighting of landscaping or other features to be shielded and aimed toward the object intended, and the locational or shielding requirements for lights abutting residential. There is no limit to the number, location, or orientation of lights that are under 2,000 lumens, sometimes resulting in unwanted glare and excessive lighting. It is appropriate to maintain an exemption for single family dwellings because limited styles of full cut-off fixtures are available. However, reducing the lumens for exempt fixtures would serve to reduce the unwanted impacts. For light fixtures to be exempt, it is recommended that the maximum initial light output be reduced to 1,500 lumens, similar to a 100-watt incandescent bulb. In addition, the exemption should be revised to only apply to Paragraphs 2A and 2E of Sect. 14-902, which include the requirement for lights to be full cut-off and mounted horizontal to the ground and the locational/shielding provisions. This change would require compliance with other provisions, such as the new color temperature standard and the requirement to direct spotlights toward the flag or landscaping intended to be illuminated.

Exemptions for Motion-activated Security Lights:

Currently, motion-activated lights on lots developed with single family dwellings are exempt from all requirements (except they may not cause disability glare) if: a) the fixtures are limited to 6,000 lumens, b) turn off within five minutes of the motion ceasing, and c) are aimed so that the bulb is not visible at five feet above the property line. Staff believes that 6,000 lumens, which is the average light output of a 400-watt incandescent bulb or a pair of 200-watt bulbs, is unnecessarily high and contributes to light pollution and unwanted glare onto neighboring properties. A more reasonable limit may be a maximum of 4,000 lumens per fixture, which is equivalent to a total of about 267 watts from incandescent bulbs.¹ This would provide adequate illumination for security lighting. Depending on topography, the mounting height of fixtures, and their angle, the standard that the bulb is not visible at five feet above the property line does not allow for security lighting in many circumstances and may still result in unwanted glare. The amendment proposes to replace this with a general standard that the light be aimed and directed within the property.

On lots developed with uses other than single family dwellings, the current standard for exemptions that the bulb is not visible at five feet above the property line is recommended to be replaced with the requirement for the illumination to be directed within the property.

Sports Illumination Plans:

The Zoning Ordinance requires approval of a SIP for all outdoor playing fields or courts that

¹ The amendment would be advertised with a range of 2,500 to 6,000 lumens.

exceed 10,000 square feet in area or have associated light poles that exceed 20 feet in height, including public, community, and private (e.g., associated with a single family dwelling) facilities.

Hours for Residential Outdoor Playing Field/Court Lighting:

Concerns have been raised that 11:00 p.m. may be too late to allow lighted outdoor playing fields or courts on single family residential properties. It is recommended that the hours be revised to 10:00 p.m. to better conform to the hours specified in the Noise Ordinance.² This revision would only apply to private outdoor facilities subject to a SIP on lots developed with a single family dwelling, and would not affect school or Park Authority fields or community fields sponsored by youth organizations such as the Southwestern Youth Association.

Perimeter Areas for SIPs:

The Zoning Ordinance requires a SIP to include the location and limits of the playing field or court and a perimeter area. The size of the perimeter area is based on the type of field. Revisions to the perimeter areas are proposed based on the recommendations of the FCPA, and to clarify that the perimeter area must be located on the subject property.

ARB Review of SIPs:

The ARB currently reviews SIPs as part of zoning applications and site plan submissions for properties located within a Historic Overlay District. However, in cases where a SIP is a stand-alone submission, the ARB is not given the opportunity for review. As lighting is an important component of review, staff recommends that all SIPs within a Historic Overlay District be referred to the ARB.

Definition of Lumen:

It is recommended that the definition of lumen be revised to clarify that when a light fixture contains two or more light bulbs (multiple heads), the lumen output measurement represents the cumulative total for the fixture.

Grandfathering:

The exemption provisions of Par. 1 of Sect. 14-902 are proposed to be extended to the new color temperature and lumen levels. The new standards would apply to the installation of new outdoor lighting fixtures or the replacement of existing fixtures. Routine fixture maintenance, such as changing light bulbs, does not constitute replacement if it does not result in a higher lumen output or a color temperature that exceeds the proposed standards.

Outreach

The proposed outdoor lighting amendment has been presented at numerous meetings, including five public zoning open houses (three in 2018 and two in 2019), the Northern Virginia Building Industry Association and National Association for Industrial and Office Parks (NVBIA/NAIOP), the zMOD Citizens Work Group, Land Use Attorneys Work Group, and Builders/Industry Work Group, the Engineers and Surveyors Institute, community groups (McLean Citizens Association, Great Falls Citizens Association), Planning Commission Land Use Process Review Committee,

² The amendment would be advertised with a turn-off time between 10:00 PM and 11:00 PM.

and the Board's Development Process Committee (September 10, 2019). Input was received from and draft text distributed to lighting work group members consisting of representatives from various agencies, including the Fairfax County Park Authority (FCPA) and Fairfax County Public Schools, the Environmental Quality Advisory Council (EQAC), engineers, and other stakeholder lighting groups.

Conclusion

In order to address the impacts of glare and light pollution and encourage safety and energy conservation, the amendment proposes to add a maximum correlated color temperature standard, reduce the lumens for certain exempt fixtures, and other revisions. Therefore, staff recommends approval of the proposed amendment. Although the advertising will include a wider range, staff recommends a turn-off time of 10:00 PM for the lighting of sports fields or courts approved with a SIP only on properties that are both zoned to a residential district and developed with a single family residential use and a maximum of 4,000 lumens for exempt motion activated lighting on lots developed with single family dwellings. The amendment, if adopted, would have an effective date of 12:01 a.m. on the day following adoption.

PROPOSED AMENDMENT

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of November 19, 2019, and there may be other proposed amendments that could affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment. Any necessary renumbering or editorial revisions will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

Amend Article 7, Overlay and Commercial Revitalization District Regulations, Part 2, Historic Overlay Districts, Sect. 7-204, Administration of Historic Overlay District Regulations, by revising Paragraphs 1 and 2 to read as follows:

1. All applications for rezoning, special exception, special permit, variance, sign permits, building permits, as qualified below, and all site plans, sports illumination plans, subdivision plats, grading plans, and applications for any new utility distribution or transmission poles 50-feet or lower in height (“new utility or transmission poles”) and their associated facilities, as qualified below, must be referred to the ARB for its review and recommendation or decision in accordance with the provisions of this Part.
2. The ARB review and recommendation on applications for a rezoning, special exception, special permit, variance and for site plans, sports illumination plans, subdivision plats and grading plans ~~shall~~ must include consideration of the potential impact of the proposal on the historical, architectural, or archaeological significance of the district and, but not limited to, the following:

Amend Article 14, Performance Standards, Part 9, Outdoor Lighting Standards as follows:

- Amend Sect. 14-902, Applicability and General Provisions, as follows:

- Amend the first two paragraphs of Par. 1 to read as follows:

1. Except as provided in Sect. 905, Exemptions, below, ~~theis~~ Part ~~shall~~ applyies to the installation of new outdoor lighting fixtures or the replacement of existing outdoor fixtures. Replacement of a fixture ~~shall~~ means a change of fixture type or change to the mounting height or location of the fixture. Routine lighting fixture maintenance, such as changing lamps or light bulbs, ballast, starter, photo control, housing, lenses and other similar components, ~~shall~~ does not constitute replacement and ~~shall~~ will be permitted provided such changes do not result in a higher lumen output or a color temperature that exceeds the provisions of Par. 4 below.

Outdoor lighting fixtures lawfully existing prior to June 17, 2003, that do not conform to the provisions of this Part ~~shall be~~ are deemed to be a lawful nonconforming use and may remain. For the purpose of the provisions in Par. 4 of Sect. 14-902 (correlated color temperature), Par. 5 of Sect. 14-905 (exemptions for motion activated light fixtures), and Par. 6 of Sect. 14-905 (exemptions for lots developed with single family dwellings), outdoor lighting fixtures lawfully existing prior to *[insert effective date of this*

amendment] are deemed to be a lawful nonconforming use and may remain. A nonconforming lighting fixture that is changed to or replaced by a conforming lighting fixture ~~shall~~ is no longer be deemed nonconforming, and ~~thereafter such lighting fixture shall must~~ be in accordance with the provisions of this Part.

- **Add new Par. 4, as follows:**

4. All light sources may not exceed a maximum Correlated Color Temperature (CCT) of 3,000K unless otherwise approved by the Director. However, sports fields or courts that are subject to a sports illumination plan may have a maximum CCT of up to 5,700K.

- **Amend Sect. 14-904, Outdoor Recreation/Sports Facility Lighting Requirements, as follows:**

- **Amend Par. 2B to read as follows:**

2. A sports illumination plan ~~shall must~~ be prepared by a lighting professional that is certified by the National Council on Qualifications for the Lighting Professions (NCQLP) or a State licensed professional engineer, architect, landscape architect, or land surveyor and ~~shall must~~ contain the following information:

...

B. Location and limits of playing fields/courts, to include a perimeter area which must be located entirely on the same lot. For baseball/softball fields, the perimeter area shall extends thirty (30) 40 feet in a direction perpendicular to the foul lines and away from the field. The perimeter area for rectangular playing fields, such as soccer, football, lacrosse, and field hockey, shall extends twenty (20) feet from the side lines and thirty (30) feet from the end lines. The perimeter area for tee boxes on golf courses and golf driving ranges is 30 feet. The perimeter area for all other playing fields/courts shall extends ten (10) feet beyond the playing field/court boundary.

- **Amend Par. 5 by deleting the current text and replacing it with the following:**

5. Time limits for lighting of outdoor playing fields or courts that are subject to a sports illumination plan, unless other hours are specifically approved by the BZA in conjunction with the approval of a special permit, or by the Board in conjunction with the approval of a special exception, development plan, or proffered rezoning:

1. For properties that are both zoned to a residential district and developed with a single family residential use, lighting is not allowed between the hours of 10:00 PM and 7:00 AM [Advertised to permit the Board to consider hours beginning between 10:00 PM and 11:00 PM]; and
2. For all other properties including but not limited to public athletic field sites, lighting is not allowed between the hours of 11:00 PM and 7:00 AM.

- **Amend Sect. 14-905, Exemptions, as follows:**

- **Amend Par. 5 to read as follows:**

14-905 Exemptions

The following ~~shall be~~ are exempt from the provisions of this Part, provided that such fixtures, except for those set forth in Paragraphs 1 and 2 below, do not cause disability glare:

...

5. Motion activated light fixtures located as follows:

A. On lots developed with single family dwellings, when such lighting fixtures: (1) emit initial lighting levels of ~~6000~~ 4000 lumens or less [*Advertised to permit the Board to consider a range of 2,500 to 6000 lumens*]; (2) are extinguished within five (5) minutes upon cessation of motion; and (3) are aimed such that the illumination is directed within lamp or light bulb portion of the lighting fixture is not visible at five (5) feet above the property boundary.

B. On all other lots when such lighting fixtures are aimed such that the illumination is directed within lamp or light bulb portion of the lighting fixture is not directly visible at five (5) feet above the property boundary.

- Amend Par. 6 to read as follows:

6. On lots developed with single family dwellings, outdoor lighting fixtures with initial light outputs of ~~2000~~ 1,500 lumens or less ~~shall be~~ are not subject to the provisions of Paragraphs- 2A and 2E of Sect. 902 above.

Amend Article 20, Ordinance Structure, Interpretations and Definitions, Part 3, Definitions, as follows:

- Amend the definition of Lumen, as follows:

LUMEN: A quantitative unit measuring the amount of light emitted from a light source. When a light fixture contains two or more light bulbs, the lumen output measurement represents the cumulative total of all light emitted from the fixture.

ADMINISTRATIVE - 5

Authorization to Advertise a Public Hearing to Revise Deed Restriction In Deed of Conveyance for Clermont Park (Lee District)

ISSUE:

Authorization of the Board of Supervisors to advertise a public hearing to revise the deed restriction in the deed of conveyance for Clermont Park.

RECOMMENDATION:

The County Executive recommends that the Board authorize a public hearing regarding the proposed revision to the deed restriction in the deed of conveyance for Clermont Park.

TIMING:

Board action is requested on November 19, 2019, to provide sufficient time to advertise the proposed public hearing on December 3, 2019 at 4:30 PM.

BACKGROUND:

Clermont Park, a 40.61-acre local park located at 4100 Franconia Road (Tax Map No. 0822 01 0003B), is bordered by single-family detached homes and townhomes to the east and west and Loftridge Park to the north. The property was originally slated for the construction of an elementary school but was master planned in 1975 as an interim park use and was later developed with athletic fields for use by the surrounding communities. Fairfax County Public Schools (FCPS) transferred ownership of the property to the Board in 1985 with the interim park facilities in place.

In the late 1990's, the developer of the nearby Kingstowne subdivision proffered to construct a park with athletic fields within the development. Due to wetland issues with the initial proposed park site in Kingstowne, the developer submitted a Proffer Condition Amendment (PCA) in 1999 to remove the planned athletic fields from the proffered park in Kingstowne and redevelop Clermont Park to increase the number of athletic fields at the park. The approved PCA required the developer to construct three (3) sixty-foot diamond fields and one (1) ninety-foot diamond field at the site as well as expand the parking lot to accommodate parking for 140 vehicles.

In 2000, a community task force was formed to work with Fairfax County Park Authority (FCPA) staff and the developer to refine the conceptual development plan (CDP) for the recreational amenities at the park. Based on the recommendations of the task force, the final CDP precluded the installation of athletic field and site lighting, permanent loudspeakers and/or a permanent concession stand at the site. The task force also

Board Agenda Item
November 19, 2019

requested that these restrictions be included in any future deed of conveyance from the Board to the FCPA. The Board subsequently transferred ownership of the entire parcel to the FCPA in 2007 with these deed restrictions in place as well as a 30-acre restrictive conservation covenant preventing development of the forested areas of the parcel.

Community athletic groups in the Franconia area have expressed a need for additional playing time on the diamond field facilities. Given the scarcity of land available to construct new athletic facilities in the district, the most effective way to increase playing time is by extending the hours of use in the evenings through the installation of lighting at existing athletic fields. At Clermont Park, the athletic groups have proposed the lighting of the ninety-foot diamond field, one of the sixty-foot diamond fields and the parking area to allow for expanded field usage. The proposed deed restriction revision would only allow for the lighting of these two fields and the parking lot. All other deed restrictions, including the conservation covenant, would remain intact.

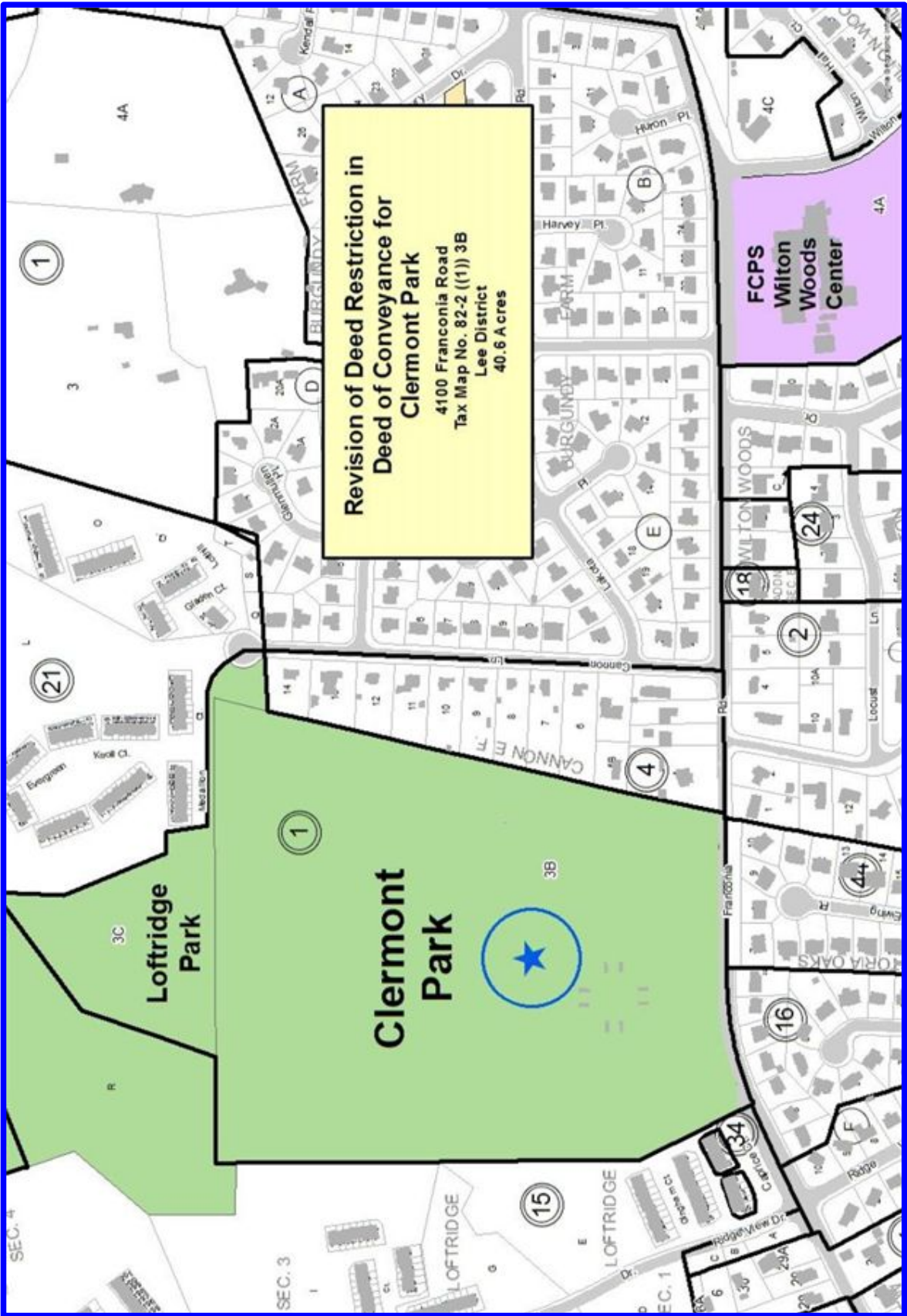
FCPA staff, working with the Lee District Supervisor's Office, held several informal public information meetings with the surrounding communities in the fall of 2018 to discuss the lighting proposal and share information on the latest athletic field lighting technology. FCPA initiated the master plan revision process to obtain community input on the field lighting proposal. The first informational meeting was conducted on July 25, 2019. FCPA is continuing to seek community input and the Lee District Supervisor's Office has convened a task force to further discuss the field lighting proposal and seek a common position between various community groups and local residents.

The County Executive recommends that the Board authorize the staff to advertise a public hearing pursuant to Virginia Code § 15.2-1800 to remove certain restrictions and revise the terms of the original deed of conveyance for Clermont Park to the FCPA.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1 – Location Map

STAFF:
Joseph M. Mondoro, Chief Financial Officer
Rachel O'Dwyer Flynn, Deputy County Executive
Kirk Kincannon, Director, Fairfax County Park Authority
José A. Comayagua, Director, Facilities Management Department
Mike Lambert, Assistant Director, Facilities Management Department
Paul M. Shirey, Manager, Project Management Branch, Fairfax County Park Authority



ADMINISTRATIVE - 6

Supplemental Appropriation Resolution AS 20105 for Various Fairfax County Agencies to Accept Department of Homeland Security Urban Areas Security Initiative Subgrant Awards from the Government of the District of Columbia Homeland Security and Emergency Management Agency

ISSUE:

Board approval of Supplemental Appropriation Resolution AS 20105 in the amount of \$8,343,849 for Fairfax County to accept Department of Homeland Security (DHS) FY 2019 Urban Areas Security Initiative (UASI) subgrant awards from the State Administrative Agency (SAA). These funds are made available by DHS through the District of Columbia, which is serving as the State Administrative Agency. DHS provides financial assistance to address the unique planning, training, equipment, and exercise needs of high-threat, high-density urban areas to assist them in building an enhanced and sustainable capacity to prevent, respond to, and recover from acts of terrorism. The grant period for the FY 2019 subgrant awards is September 1, 2019 through December 31, 2020, May 31, 2021 or September 30, 2021, depending on the award. No Local Cash Match is required. Board authorization is also requested for the Chairman of the Board of Supervisors, the County Executive and/or a designee appointed by the County Executive to enter into the grant agreement and any related agreements, including but not limited to Federal Subaward Agreements, on behalf of the County.

RECOMMENDATION:

The County Executive recommends that the Board approve Supplemental Appropriation Resolution AS 20105 in the amount of \$8,343,849. These funds will be used by various County agencies to enhance security and overall preparedness by implementing the projects summarized in Attachment 1. All projects will be implemented in accordance with the program guidance documents. Funding will continue to support 4/4.0 FTE existing grant positions. The County is under no obligation to continue these positions when the grant funding expires. No Local Cash Match is required. The County Executive also recommends the Board authorize the Chairman of the Board of Supervisors, the County Executive and/or a designee appointed by the County Executive to enter into the grant agreement and any related agreements, including but not limited to Federal Subaward Agreements, on behalf of the County.

Board Agenda Item
November 19, 2019

TIMING:

Board approval is requested on November 19, 2019.

BACKGROUND:

The Homeland Security Grant Program (HSGP) provides Urban Areas Security Initiative (UASI) funds from the Department of Homeland Security as financial assistance to high risk urban areas, as defined in legislation, in order to address the unique planning, equipment, training, and exercise needs of those areas. These funds can also be used to build or sustain an enhanced capacity to prevent, respond to, and recover from acts of terrorism. These funds, however, may not be used to supplant ongoing, routine public safety activities, the hiring of staff for operational activities, or the construction and/or renovation of facilities. Fairfax County is one of 12 jurisdictions that currently comprise the National Capital Region (NCR) as defined in the HSGP guidelines.

The UASI funding allocations are determined by a formula based on credible threat, presence of critical infrastructure, vulnerability, population, and other relevant criteria. Grant awards are made to the identified urban area authorities through State Administrative Agencies. The NCR process for allocation of the UASI funds included the development of concept papers that were vetted and endorsed by the Metropolitan Washington Council of Governments (MWCOC) Regional Emergency Support Function (RESF) committees, review of proposals by the Chief Administrative Officers (CAO) committee, preparation and submission of project proposals and application documents by the RESFs, prioritization of proposals by the CAOs, and ultimately the development of funding recommendations by the CAOs. The Senior Policy Group (SPG) then reviewed and recommended proposals and forwarded selected proposals to the SAA for awards.

Funded projects are typically regional in nature with benefits to multiple jurisdictions. In order to effectively implement these projects, a single jurisdiction is being identified to act as a recipient of a subgrant award to handle all of the financial management, audit, procurement, and payment provisions of the subgrant award and grant program. Several Fairfax County agencies including the Office of Emergency Management, the Police Department, the Fire and Rescue Department, the Health Department and the Department of Information Technology are expected to act as subgrantees for these funds. A listing of all the subgrant awards being requested for acceptance is attached along with a synopsis for each project. Individual awards are also attached to support requested acceptance.

Board Agenda Item
November 19, 2019

FISCAL IMPACT:

Grant funding in the amount of \$8,343,849 is available in the DHS UASI grant funds through the District of Columbia. These funds will be used to enhance capabilities in the Office of Emergency Management, Police Department, Fire and Rescue Department, Health Department, and the Department of Information Technology. This action does not increase the expenditure level in the Federal-State Grant Fund, as funds are held in reserve for Homeland Security grant awards received in FY 2020. Indirect costs are recoverable for some of these awards. No Local Cash Match is required.

CREATION OF NEW POSITIONS:

Grant funding will continue to support 4/4.0 FTE existing grant positions. The County is under no obligation to continue these positions when the grant funding expires.

ENCLOSED DOCUMENTS:

Attachment 1 – Grant Award Summary
Attachment 2 – Grant Award Documents
Attachment 3 – Supplemental Appropriation Resolution AS 20105

STAFF:

David Rohrer, Deputy County Executive
Seamus Mooney, Coordinator, Office of Emergency Management
John S. Butler, Chief, Fire and Rescue Department
Edwin C. Roessler Jr., Chief, Police Department
Gregory Scott, Director, Department of Information Technology
Gloria Addo-Ayensu, Director, Health Department

Department of Homeland Security - FY 2019 Homeland Security Grant Program Applications and Awards
National Capital Region (NCR) Urban Areas Security Initiative (UASI) Funds
Projects to Implemented by Fairfax County

Attachment 1

Project Title	Program Year	Award Amount	Award Status	Award Type	Implementing County Agency	Program Manager	Positions	Begin Date	End Date	Project Synopsis
FY 2019 UASI AWARDS AND APPLICATIONS										
1 Radio Cache (Continuation)	FY2019	222,846.00	Received	Continuation	Fire and Rescue Department	Greg Hunter	0/0.0 FTE	9/1/2019	5/31/2021	Providing ongoing logistical support to the National Capital Region radio cache housed in Fairfax County and to support training and exercise initiatives, or cache deployment for emergency responses and personnel.
2 Incident Management Team (Continuation)	FY2019	330,000.00	Received	Continuation	Fire and Rescue Department	Daryl Louder	0/0.0 FTE	9/1/2019	5/31/2021	Continued funding to ensure the NCR- Incident Management Team (NCR-IMT) receives adequate training and exercises to develop and maintain capability, capacity, and proficiency in all functional areas. The NCR-IMT is composed of 115 members from fire, emergency medical services (EMS), law enforcement, emergency management and public health agencies from the participating Council of Governments (COG) jurisdictions.
3 Regional Preparedness Program (Continuation)	FY2019	475,317.00	Received	Continuation	Office of Emergency Management	Andrew Sullivan	3/3.0 FTE	9/1/2019	12/31/2020	The National Capital Region (NCR) seeks to enhance regional preparedness and facilitate increased coordination capabilities among jurisdictions in the State of Maryland, the Commonwealth of Virginia and the District of Columbia. These enhancements can only occur by establishing a systematic program to integrate regional preparedness efforts, through targeted engagement of NCR Regional Emergency Support Function (RESF) Committees, devising a concept of operations for regional preparedness resourcing and facilitating regional communication, coordination, collaboration and consensus among various regional jurisdictions and multi-disciplinary stakeholders.
4 EMNET (Continuation) (NVERS)	FY2019	12,075.00	Received	Continuation	Office of Emergency Management	Sulayman Brown	0/0.0 FTE	9/1/2019	5/31/2021	Continued funding for a position and supporting equipment/supplies within the Office of Emergency Management to support design, development and implementation of a county and regional Department of Homeland Security compliant training and exercise program.
5 Mass Notification and Communications (Continuation)	FY2019	1,775,000.00	Received	Continuation	Office of Emergency Management	Sulayman Brown	0/0.0 FTE	9/1/2019	5/31/2021	Payment of the yearly maintenance costs for the National Capital Region's emergency alerting system, which includes EAN and Fairfax Alerts.
6 Volunteers and Donations Management - Fairfax County (Continuation)	FY2019	242,600.00	Received	Continuation	Office of Emergency Management	Matt Marquis	0/0.0 FTE	9/1/2019	5/31/2021	Continuation of efforts to recruit and retain affiliated volunteers in Fairfax County and to expand and integrate the local regional coordination mechanism and capacity to mobilize large numbers of volunteers (spontaneous and affiliated) for response to a catastrophic natural or terrorism event.
7 NCR Web EOC (Continuation)	FY2019	900,000.00	Received	Continuation	Office of Emergency Management	Paul Lupe	0/0.0 FTE	9/1/2019	5/31/2021	Continued funding to further enhance the WebEOC system within the NCR area and increase the interoperability with local and Federal Partners; as well as to expand the common operating picture within the National Capital Region.
8 Intelligence Analysis (PD)-VA (Continuation)	FY2019	1,375,367.00	Received	Continuation	Police Department	Lt. Jim Hardy	0/0.0 FTE	9/1/2019	5/31/2021	Continued funding for contracted intelligence analysts who support the National Capital Region. These analysts complete detailed reports in a timely manner any time something occurs in the world that may have an impact on the region. This information is provided to our first responders to increase their ability to detect, deter, and disrupt such planning activity to prevent attack.
9 Public Health Emergency Response Capacity	FY2019	151,591.00	Received	Continuation	Health Department	Jesse Habourn	1/1.0 FTE	9/1/2019	5/31/2021	Funding for one emergency planner to continue development, revision, and operationalization of agency Emergency Operations Plan and various supporting documents that guide the agency's response to public health

Department of Homeland Security - FY 2019 Homeland Security Grant Program Applications and Awards
National Capital Region (NCR) Urban Areas Security Initiative (UASI) Funds
Projects to Implemented by Fairfax County

Attachment 1

	Project Title	Program Year	Award Amount	Award Status	Award Type	Implementing County Agency	Program Manager	Positions	Begin Date	End Date	Project Synopsis
10	Interoperable Communications Infrastructure (ICI) (Sustainment)	FY2019	1,626,788.00	Received	Continuation	Department of Information Technology	Matt Dowd	0/0.0 FTE	9/1/2019	9/30/2021	Continued sustainment of the investments in the NCRNet, identity authentication services for regional applications, the regional colocation hosting facility, and the regional videoteleconferencing service. Services for technical, financial, and management functions supporting the NCR Interoperable Communications Infrastructure (ICI) for governance, operations, and other regional activities.
11	CAD to CAD Maintenance (Continuation)	FY2019	932,265.00	Received	Continuation	Department of Information Technology	Greg Scott	0/0.0 FTE	9/1/2019	9/30/2021	Provides sustainment funding for seamless, real-time data interoperability between disparate CAD Systems in daily use by first responders in NOVA and paves the way for expansion into Maryland. It will fund: (1) infrastructure hosting services, core software refresh and 24x7 maintenance/operations spt.; (2) maintenance of CAD System vendor enhancements; (3) vendor enhancements/testing/integration spt.; (4) data mapping to universal CAD2CAD data types; (5) dev/testing; and (6) technical and project management resources to support day-to-day operations.
12	Cybersecurity Regional Coordination	FY2019	300,000.00	Received	New	Department of Information Technology	TBA	0/0.0 FTE	9/1/2019	5/31/2021	Allows first responders and other emergency support functions (ESF) in the NCR to use a single, familiar username/email address and strong password combination to access regional and shared applications. This concept of "single credential" that is used for any authorized application is a faster, easier, trusted and secure common utility, that does not require additional regional credentialing administration overhead.
Total:			8,343,849.00					4/4.0 FTE			

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Homeland Security and Emergency Management Agency

Attachment 2

Muriel Bowser
Mayor



Dr. Christopher Rodriguez
Director

Subaward

PROGRAM
FY 2019 Homeland Security Grant Program
Urban Areas Security Initiative

SUBRECIPIENT
Fairfax County Fire and Rescue Department

SUBAWARD TITLE
Radio Cache (NCRICIG)

SUBAWARD ID
19UASI529-01

SUBAWARD AMOUNT
\$222,846.00

SUBAWARD PERFORMANCE PERIOD
09/01/2019–05/31/2021

SUBRECIPIENT DUNS
074837626 Fairfax County Virginia

FEDERAL AWARD IDENTIFICATION NUMBER
EMW-2019-SS-00069

FEDERAL AWARD DATE
08/12/2019

FEDERAL AWARDOING AGENCY
U.S. Department of Homeland Security
Federal Emergency Management Agency

CFDA
97.067 Homeland Security Grant Program

STATE ADMINISTRATIVE AGENT /
PASS-THROUGH ENTITY
District of Columbia Homeland Security and
Emergency Management Agency

As the duly authorized representative of the above-listed organization, you hereby accept the subaward and certify that you have read and understand the terms and conditions presented in the following documents:

- 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
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- FY 2019 DHS Standard Terms and Conditions
- FY 2019 District of Columbia Homeland Security and Emergency Management Agency Terms and Conditions
- FY 2019 Homeland Security Grant Program Notice of Funding Opportunity
- Subrecipient Handbook

AWARDING OFFICIAL
Dr. Christopher Rodriguez
Director

SUBRECIPIENT OFFICIAL
Bryan Hill
County Executive
Fairfax County Government

Signature

10/04/2019

Date

Signature

Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Homeland Security and Emergency Management Agency



Muriel Bowser
Mayor

Dr. Christopher Rodriguez
Director

Subaward

PROGRAM
FY 2019 Homeland Security Grant Program
Urban Areas Security Initiative

SUBRECIPIENT
Fairfax County Fire and Rescue Department

SUBAWARD TITLE
Incident Management Team

SUBAWARD ID
19UASI529-02

SUBAWARD AMOUNT
\$330,000.00

SUBAWARD PERFORMANCE PERIOD
09/01/2019–05/31/2021

SUBRECIPIENT DUNS
074837626 Fairfax County Virginia

FEDERAL AWARD IDENTIFICATION NUMBER
EMW-2019-SS-00069

FEDERAL AWARD DATE
08/12/2019

FEDERAL AWARDOING AGENCY
U.S. Department of Homeland Security
Federal Emergency Management Agency

CFDA
97.067 Homeland Security Grant Program

**STATE ADMINISTRATIVE AGENT /
PASS-THROUGH ENTITY**
District of Columbia Homeland Security and
Emergency Management Agency

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AWARDING OFFICIAL
Dr. Christopher Rodriguez
Director

SUBRECIPIENT OFFICIAL
Bryan Hill
County Executive
Fairfax County Government


Signature

10/04/2019
Date

Signature

Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Homeland Security and Emergency Management Agency



Muriel Bowser
Mayor

Dr. Christopher Rodriguez
Director

Subaward

PROGRAM
FY 2019 Homeland Security Grant Program
Urban Areas Security Initiative

SUBRECIPIENT
Fairfax County Office of Emergency
Management

SUBAWARD TITLE
Regional Preparedness System

SUBAWARD ID
19UASI531-01

SUBAWARD AMOUNT
\$475,317.00

SUBAWARD PERFORMANCE PERIOD
09/01/2019–12/31/2020

SUBRECIPIENT DUNS
074837626 Fairfax County Virginia

FEDERAL AWARD IDENTIFICATION NUMBER
EMW-2019-SS-00069

FEDERAL AWARD DATE
08/12/2019

FEDERAL AWARDOING AGENCY
U.S. Department of Homeland Security
Federal Emergency Management Agency

CFDA
97.067 Homeland Security Grant Program

STATE ADMINISTRATIVE AGENT /
PASS-THROUGH ENTITY
District of Columbia Homeland Security and
Emergency Management Agency

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- Subrecipient Handbook

AWARDING OFFICIAL
Dr. Christopher Rodriguez
Director

SUBRECIPIENT OFFICIAL
Bryan Hill
County Executive
Fairfax County Government


Signature

10/09/2019
Date

Signature

Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Homeland Security and Emergency Management Agency



Muriel Bowser
Mayor

Dr. Christopher Rodriguez
Director

Subaward

PROGRAM
FY 2019 Homeland Security Grant Program
Urban Areas Security Initiative

SUBRECIPIENT
Fairfax County Office of Emergency
Management

SUBAWARD TITLE
EMNet

SUBAWARD ID
19UASI531-05

SUBAWARD AMOUNT
\$12,075.00

SUBAWARD PERFORMANCE PERIOD
09/01/2019–05/31/2021

SUBRECIPIENT DUNS
074837626 Fairfax County Virginia

FEDERAL AWARD IDENTIFICATION NUMBER
EMW-2019-SS-00069

FEDERAL AWARD DATE
08/12/2019

FEDERAL AWARDOING AGENCY
U.S. Department of Homeland Security
Federal Emergency Management Agency

CFDA
97.067 Homeland Security Grant Program

STATE ADMINISTRATIVE AGENT /
PASS-THROUGH ENTITY
District of Columbia Homeland Security and
Emergency Management Agency

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- Subrecipient Handbook

AWARDING OFFICIAL
Dr. Christopher Rodriguez
Director

SUBRECIPIENT OFFICIAL
Bryan Hill
County Executive
Fairfax County Government


Signature

10/04/2019
Date

Signature

Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Homeland Security and Emergency Management Agency

Attachment 2

Muriel Bowser
Mayor



Dr. Christopher Rodriguez
Director

Subaward

PROGRAM
FY 2019 Homeland Security Grant Program
Urban Areas Security Initiative

SUBRECIPIENT
Fairfax County Office of Emergency
Management

SUBAWARD TITLE
Mass Notification and Communications

SUBAWARD ID
19UASI531-03

SUBAWARD AMOUNT
\$1,775,000.00

SUBAWARD PERFORMANCE PERIOD
09/01/2019–05/31/2021

SUBRECIPIENT DUNS
074837626 Fairfax County Virginia

FEDERAL AWARD IDENTIFICATION NUMBER
EMW-2019-SS-00069

FEDERAL AWARD DATE
08/12/2019

FEDERAL AWARDOING AGENCY
U.S. Department of Homeland Security
Federal Emergency Management Agency

CFDA
97.067 Homeland Security Grant Program

STATE ADMINISTRATIVE AGENT /
PASS-THROUGH ENTITY
District of Columbia Homeland Security and
Emergency Management Agency

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AWARDING OFFICIAL
Dr. Christopher Rodriguez
Director

SUBRECIPIENT OFFICIAL
Bryan Hill
County Executive
Fairfax County Government

10/04/2019

Signature

Date

Signature

Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Homeland Security and Emergency Management Agency

Attachment 2

Muriel Bowser
Mayor



Dr. Christopher Rodriguez
Director

Subaward

PROGRAM
FY 2019 Homeland Security Grant Program
Urban Areas Security Initiative

SUBRECIPIENT
Fairfax County Office of Emergency
Management

SUBAWARD TITLE
Volunteers and Donations Management

SUBAWARD ID
19UASI531-02

SUBAWARD AMOUNT
\$242,600.00

SUBAWARD PERFORMANCE PERIOD
09/01/2019-05/31/2021

SUBRECIPIENT DUNS
074837626 Fairfax County Virginia

FEDERAL AWARD IDENTIFICATION NUMBER
EMW-2019-SS-00069

FEDERAL AWARD DATE
08/12/2019

FEDERAL AWARDOING AGENCY
U.S. Department of Homeland Security
Federal Emergency Management Agency

CFDA
97.067 Homeland Security Grant Program

STATE ADMINISTRATIVE AGENT /
PASS-THROUGH ENTITY
District of Columbia Homeland Security and
Emergency Management Agency

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AWARDING OFFICIAL
Dr. Christopher Rodriguez
Director

SUBRECIPIENT OFFICIAL
Bryan Hill
County Executive
Fairfax County Government


Signature

10/09/2019
Date

Signature

Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Homeland Security and Emergency Management Agency



Muriel Bowser
Mayor

Dr. Christopher Rodriguez
Director

Subaward

PROGRAM
FY 2019 Homeland Security Grant Program
Urban Areas Security Initiative

SUBRECIPIENT
Fairfax County Office of Emergency
Management

SUBAWARD TITLE
WebEOC

SUBAWARD ID
19UASI531-04

SUBAWARD AMOUNT
\$900,000.00

SUBAWARD PERFORMANCE PERIOD
09/01/2019–05/31/2021

SUBRECIPIENT DUNS
074837626 Fairfax County Virginia

FEDERAL AWARD IDENTIFICATION NUMBER
EMW-2019-SS-00069

FEDERAL AWARD DATE
08/12/2019

FEDERAL AWARDOING AGENCY
U.S. Department of Homeland Security
Federal Emergency Management Agency

CFDA
97.067 Homeland Security Grant Program

STATE ADMINISTRATIVE AGENT /
PASS-THROUGH ENTITY
District of Columbia Homeland Security and
Emergency Management Agency

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AWARDING OFFICIAL
Dr. Christopher Rodriguez
Director

SUBRECIPIENT OFFICIAL
Bryan Hill
County Executive
Fairfax County Government


Signature

10/04/2019
Date

Signature

Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Homeland Security and Emergency Management Agency



Muriel Bowser
Mayor

Dr. Christopher Rodriguez
Director

Subaward

PROGRAM
FY 2019 Homeland Security Grant Program
Urban Areas Security Initiative

SUBRECIPIENT
Fairfax County Police Department

SUBAWARD TITLE
Intelligence Analysis

SUBAWARD ID
19UASI533-01

SUBAWARD AMOUNT
\$1,375,367.00

SUBAWARD PERFORMANCE PERIOD
09/01/2019–05/31/2021

SUBRECIPIENT DUNS
074837626 Fairfax County Virginia

FEDERAL AWARD IDENTIFICATION NUMBER
EMW-2019-SS-00069

FEDERAL AWARD DATE
08/12/2019

FEDERAL AWARDOING AGENCY
U.S. Department of Homeland Security
Federal Emergency Management Agency

CFDA
97.067 Homeland Security Grant Program

STATE ADMINISTRATIVE AGENT /
PASS-THROUGH ENTITY
District of Columbia Homeland Security and
Emergency Management Agency

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AWARDING OFFICIAL
Dr. Christopher Rodriguez
Director

SUBRECIPIENT OFFICIAL
Bryan Hill
County Executive
Fairfax County Government


Signature

10/04/2019
Date

Signature

Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Homeland Security and Emergency Management Agency



Muriel Bowser
Mayor

Dr. Christopher Rodriguez
Director

Subaward

PROGRAM
FY 2019 Homeland Security Grant Program
Urban Areas Security Initiative

SUBRECIPIENT
Fairfax County Health Department

SUBAWARD TITLE
Public Health Emergency Response Capacity

SUBAWARD ID
19UASI530-01

SUBAWARD AMOUNT
\$151,591.00

SUBAWARD PERFORMANCE PERIOD
09/01/2019–05/31/2021

SUBRECIPIENT DUNS
192897820 Fairfax County Virginia

FEDERAL AWARD IDENTIFICATION NUMBER
EMW-2019-SS-00069

FEDERAL AWARD DATE
08/12/2019

FEDERAL AWARDOING AGENCY
U.S. Department of Homeland Security
Federal Emergency Management Agency

CFDA
97.067 Homeland Security Grant Program

STATE ADMINISTRATIVE AGENT /
PASS-THROUGH ENTITY
District of Columbia Homeland Security and
Emergency Management Agency

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AWARDING OFFICIAL
Dr. Christopher Rodriguez
Director

SUBRECIPIENT OFFICIAL
Bryan Hill
County Executive
Fairfax County Government

Signature

10/04/2019

Date

Signature

Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Homeland Security and Emergency Management Agency



Muriel Bowser
Mayor

Dr. Christopher Rodriguez
Director

Subaward

PROGRAM
FY 2019 Homeland Security Grant Program
Urban Areas Security Initiative

SUBRECIPIENT
Fairfax County Department of Information
Technology

SUBAWARD TITLE
Interoperable Communications Infrastructure
(NCRnet)

SUBAWARD ID
19UASI583-02

SUBAWARD AMOUNT
\$1,626,788.00

SUBAWARD PERFORMANCE PERIOD
09/01/2019–09/30/2021

SUBRECIPIENT DUNS
074837626 Fairfax County Virginia

FEDERAL AWARD IDENTIFICATION NUMBER
EMW-2019-SS-00069

FEDERAL AWARD DATE
08/12/2019

FEDERAL AWARDDING AGENCY
U.S. Department of Homeland Security
Federal Emergency Management Agency

CFDA
97.067 Homeland Security Grant Program

STATE ADMINISTRATIVE AGENT /
PASS-THROUGH ENTITY
District of Columbia Homeland Security and
Emergency Management Agency

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- Subrecipient Handbook

AWARDING OFFICIAL
Dr. Christopher Rodriguez
Director

SUBRECIPIENT OFFICIAL
Bryan Hill
County Executive
Fairfax County Government


Signature _____ Date 10/04/2019

Signature _____ Date _____

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Homeland Security and Emergency Management Agency



Muriel Bowser
Mayor

Dr. Christopher Rodriguez
Director

Subaward

PROGRAM
FY 2019 Homeland Security Grant Program
Urban Areas Security Initiative

SUBRECIPIENT
Fairfax County Department of Information
Technology

SUBAWARD TITLE
CAD2CAD

SUBAWARD ID
19UASI583-01

SUBAWARD AMOUNT
\$932,265.00

SUBAWARD PERFORMANCE PERIOD
09/01/2019–09/30/2021

SUBRECIPIENT DUNS
074837626 Fairfax County Virginia

FEDERAL AWARD IDENTIFICATION NUMBER
EMW-2019-SS-00069

FEDERAL AWARD DATE
08/12/2019

FEDERAL AWARDING AGENCY
U.S. Department of Homeland Security
Federal Emergency Management Agency

CFDA
97.067 Homeland Security Grant Program

STATE ADMINISTRATIVE AGENT /
PASS-THROUGH ENTITY
District of Columbia Homeland Security and
Emergency Management Agency

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- Subrecipient Handbook

AWARDING OFFICIAL
Dr. Christopher Rodriguez
Director

SUBRECIPIENT OFFICIAL
Bryan Hill
County Executive
Fairfax County Government


Signature

10/09/2019
Date

Signature

Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Homeland Security and Emergency Management Agency

Attachment 2

Muriel Bowser
Mayor



Dr. Christopher Rodriguez
Director

Subaward

PROGRAM
FY 2019 Homeland Security Grant Program
Urban Areas Security Initiative

SUBRECIPIENT
Fairfax County Department of Information
Technology

SUBAWARD TITLE
Cybersecurity Regional Coordination

SUBAWARD ID
19UASI583-05

SUBAWARD AMOUNT
\$300,000.00

SUBAWARD PERFORMANCE PERIOD
09/01/2019-05/31/2021

SUBRECIPIENT DUNS
074837626 Fairfax County Virginia

FEDERAL AWARD IDENTIFICATION NUMBER
EMW-2019-SS-00069

FEDERAL AWARD DATE
08/12/2019

FEDERAL AWARDOING AGENCY
U.S. Department of Homeland Security
Federal Emergency Management Agency

CFDA
97.067 Homeland Security Grant Program

STATE ADMINISTRATIVE AGENT /
PASS-THROUGH ENTITY
District of Columbia Homeland Security and
Emergency Management Agency

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- Subrecipient Handbook

AWARDING OFFICIAL
Dr. Christopher Rodriguez
Director

SUBRECIPIENT OFFICIAL
Bryan Hill
County Executive
Fairfax County Government

10/09/2019
Date

Signature

Date

SUPPLEMENTAL APPROPRIATION RESOLUTION AS 20105

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax Virginia on November 19, 2019, at which a quorum was present and voting, the following resolution was adopted:

BE IT RESOLVED by the Board of Supervisors of Fairfax County, Virginia, that in addition to appropriations made previously for FY 2020, the following supplemental appropriation is authorized, and the Fiscal Planning Resolution is amended accordingly:

Appropriate to:

Fund:	500-C50000, Federal-State Grant Fund	
Agency:	G7070, Department of Information Technology	\$2,859,053
Grants:	1HS0036, CAD to CAD Maintenance	
	1HS0037, Interoperable Communications Infrastructure Sustainment	
	1HS0084, Cybersecurity Regional Coordination	
Agency:	G7171, Health Department	\$151,591
Grant:	1HS0030, Public Health Emergency Response Capacity	
Agency:	G9090, Police Department	\$1,375,367
Grant:	1HS0039, Intelligence Analysis	
Agency:	G9292, Fire and Rescue Department	\$552,846
Grants:	1HS0040, Incident Management Team	
	1HS0047, Radio Cache Maintenance	
Agency:	G9393, Office of Emergency Management	\$3,404,992
Grants:	1HS0035, Regional Preparedness System	
	1HS0038, EMNet	
	1HS0050, Mass Notification System Maintenance	
	1HS0051, Volunteer Initiatives	
	1HS0052, WebEOC Maintenance	

Reduce Appropriation to:

Agency:	G8787, Unclassified Administrative Expenses	\$8,343,849
Fund:	500-C50000, Federal-State Grant Fund	

Source of Funds: U.S. Department of Homeland Security, \$8,343,849

A Copy - Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

Board Agenda Item
November 19, 2019

ACTION - 1

Approval of an Amended Parking Reduction for 8100 Lee Highway (Providence District)

ISSUE:

Board of Supervisors (Board) approval of an amended parking reduction for 8100 Lee Highway, Tax Map 49-2 ((1)), Parcel 31 (Property).

RECOMMENDATION:

The County Executive recommends that the Board approve an amendment to the 2013 approved reduction, to allow for the utilization of offsite spaces for 8100 Lee Highway, which equates to an 18 percent reduction in required on-site parking, pursuant to Paragraphs 1 and 4 of Section 11-102 of the Zoning Ordinance, based on the shared parking utilization study, #5301-PKS-004-1, and subject to the Conditions in Attachment I.

TIMING:

Board action is requested on November 19, 2019.

BACKGROUND:

The property is currently occupied by two restaurants: TRIO Grill and Open Road, both owned and operated by Metropolitan Hospitality Group (Applicant). The current restaurant occupies 12,707 square feet of gross floor area and provides 362 total seats. Approximately 50 employees are on the site during peak operating hours.

On July 30, 2013, the Board approved parking reduction #5301-PKS-002-1 to reduce the number of spaces required on the site from 123 to 100 spaces based on proximity to the Dunn-Loring Metrorail station. This equated to an 18 percent overall reduction from code requirements and a 96 percent reduction in employee parking. A total of 98 spaces were required to be dedicated to customers and the remaining 2 spaces were to be reserved for an employee shuttle and shuttle driver; thereby allowing the on-site parking to be available for customers.

The conditions of the prior parking reduction established several requirements to ensure all restaurant employees would arrive at the site through a means other than private automobile, including a shuttle to the Dunn Loring-Merrifield Metrorail station for use by employees, and reduced-fare vouchers on public transit, keeping records of the

operation and patronage of the shuttle, appointing a point of contact, reporting to the County, and submission of a parking utilization study upon request.

However, soon after the restaurants opened, the operator discontinued the shuttle program and instead instituted valet parking on adjacent sites. After concerns were identified about offsite parking and evidence of a violation of the terms of the reduction was apparent, a formal parking utilization study was requested by the Zoning Administrator on July 18, 2017. The purpose of the study was for the owner to evaluate the current parking utilization by the restaurants, identify the amount of parking needed to adequately serve the site, and provide recommended actions that could be taken to provide adequate parking to serve the site.

The Applicant now requests approval of an amended parking reduction. The parking utilization study indicates that the Code-required parking for the site is 123 spaces. There will be 100 spaces at the restaurant site and, by agreement of two property owners, 23 spaces available off-site to meet the technical parking requirements for the restaurants. With the parking agreements, there will also be 74 off-site spaces for additional parking demand. The total proposed parking supply of 197 spaces is adequate to meet the projected peak parking demand of 182 spaces, which is based on yearly sales data for the restaurants and potential parking demand associated with this data. A comparison of the Code-required and proposed parking available is summarized in the table below.

Table 1. Required and Proposed Parking for 8100 Lee Highway (Trio Grill and Open Road Restaurants)

Land Use	Size	Rate Required by Code ¹	Number of Spaces Required to Meet Code	Number of Spaces Available Onsite	Number of Spaces Available Offsite	
Restaurant ¹	332 table seats	1 space/4 table seats	83		70 spaces at #2843 Harland Road	27 spaces at #2757 Hartland Road
	30 counter seats	1 space/2 counter seats	15			
	50 employees	1 space/2 employees	25			
Total spaces required =			123 spaces			
Total spaces provided =			197 spaces	100	97 (74 additional spaces provided to meet demand)	

¹Rates shown are grandfathered.

Board Agenda Item
November 19, 2019

The offsite spaces will be valet parked which is expected to provide an orderly management of these spaces. With the executed offsite parking agreements with the property owners of 2757 and 2843 Hartland Road, the applicant has demonstrated a workable means to manage parking for the restaurants; therefore, staff supports this revised parking reduction.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I – Proposed Conditions dated November 19, 2019

Attachment II – Parking utilization study from Wells and Associates dated March 1, 2018 and revised June 7, 2019 (#5301-PKS-004-1)

STAFF:

Rachel Flynn, Deputy County Executive

William D. Hicks, P.E., Director, Land Development Services (LDS)

Eleanor Ku Coddling, Director, Permitting and Code Administration, LDS

Michael Davis, Parking Program Manager, Site Code Research and Development, LDS

ASSIGNED COUNSEL:

Cherie L. Halyard, Assistant County Attorney

PARKING REDUCTION CONDITIONS

November 19, 2019

1. These conditions apply to the current owners, their successors and assigns (hereinafter "owners") of the parcel identified on 2019 Tax Map 49-2 ((1)), Parcel 31.

2. Off-street parking for the restaurants will be based on the following restaurant rates.

332 table seats	1 space/4 table seats
30 counter seats	1 space/2 counter seats
50 employees	1 space/2 employees

3. A minimum number of 197 spaces must be maintained in the locations described below.

Restaurant site	100 spaces
2757 Hartland Road property	27 spaces
2843 Hartland Road property	70 spaces

4. The owners must provide a minimum of 97 offsite spaces to address parking demand that exceeds the available parking on the restaurant site.
5. The owners must provide documentation satisfactory to the Director of Land Development Services (Director) demonstrating the right to use such offsite parking spaces. Should these agreements not be renewed or the owners opt out prior to the expiration of the term, the owners must submit a request to the Director for a determination of the validity of the approved reduction and, if the reduction is invalid, a revised reduction request must be submitted for review and approval by the Board.
6. Any additional uses not listed in Condition 2 must provide parking at rates required by the Zoning Ordinance.
7. The conditions of approval of this parking reduction must be incorporated into any site plan submitted to the Director for approval.
8. Other than parking spaces needed to meet accessibility requirements, no other spaces required to meet the parking requirements for the site will be restricted or reserved.
9. The owners must submit a parking space utilization study for review and approval by the Director at any time in the future that the Zoning Administrator or the Director so requests. Following review of that study, or if a study is not submitted within 90 days after its request, the Director may require alternative measures to satisfy the property's onsite parking needs. Such measures may include, but are not limited to, compliance with the full parking requirements specified in the Zoning Ordinance.

ATTACHMENT I

PARKING REDUCTION CONDITIONS

November 19, 2019

10. All parking utilization studies prepared in response to a request by the Zoning Administrator or the Director must be based on applicable requirements of *The Code of the County of Fairfax, Virginia* and the Zoning Ordinance in effect at the time of the study's submission.
11. All parking provided must comply with the applicable requirements of the Zoning Ordinance and the Fairfax County Public Facilities Manual including the provisions referencing the Americans with Disabilities Act and the Virginia Uniform Statewide Building Code.
12. These conditions of approval are binding on the owners and must be recorded in the Fairfax County Land Records in a form acceptable to the County Attorney. If these conditions have not been recorded and an extension has not been approved by the Director, approval of this parking reduction request will expire without notice six months from its approval date.

WELLS + ASSOCIATES**MEMORANDUM**

To: Jan Leavitt, P.E.
Michael Davis
Fairfax County DPWES

From: Michael J. Workosky, PTP, TOPS, TSOS
John F. Cavan IV, P.E., PTOE

Copy: Nichole Barta, Metropolitan Hospitality Group
Inda Stagg, Walsh Colucci Lubeley & Walsh PC

Re: 8100 Lee Highway – Parking Utilization Study (#5301-PKS-002-1)

Date: March 1, 2018
Revised: June 7, 2019



1420 Spring Hill Road,
Suite 610,
Tysons, VA 22102
703-917-6620
WellsandAssociates.com

**INTRODUCTION**

This memorandum presents an updated parking utilization Study for the existing restaurant uses located at 8100 Lee Highway in Fairfax County, Virginia. The site is located within $\frac{3}{4}$ miles from the Dunn Loring-Merrifield Metrorail station and on the north side of Lee Highway (Route 29) directly east of Gallows Road, as shown on Figure 1. A full-size copy of the site plan is included in Attachment I and a reduction is shown on Figure 2.

This document presents an update to the previously submitted parking study from July 20, 2018 to address comments provided by the Fairfax County Department of Public Works & Environmental Services dated January 10, 2019. Detailed responses to these comments are provided in Attachment II and have been incorporated into this updated report.

The purpose of this document is to evaluate the current parking utilization of the restaurant uses and identify the amount of parking needed to adequately serve the site and provide recommendations to improve operations, mitigate parking impacts, and provide an adequate parking supply to serve the site. This was accomplished through a detailed parking survey of current conditions and projected parking demands throughout the year. The scope of this study is based on a meeting with Fairfax County staff held on October 31, 2017.

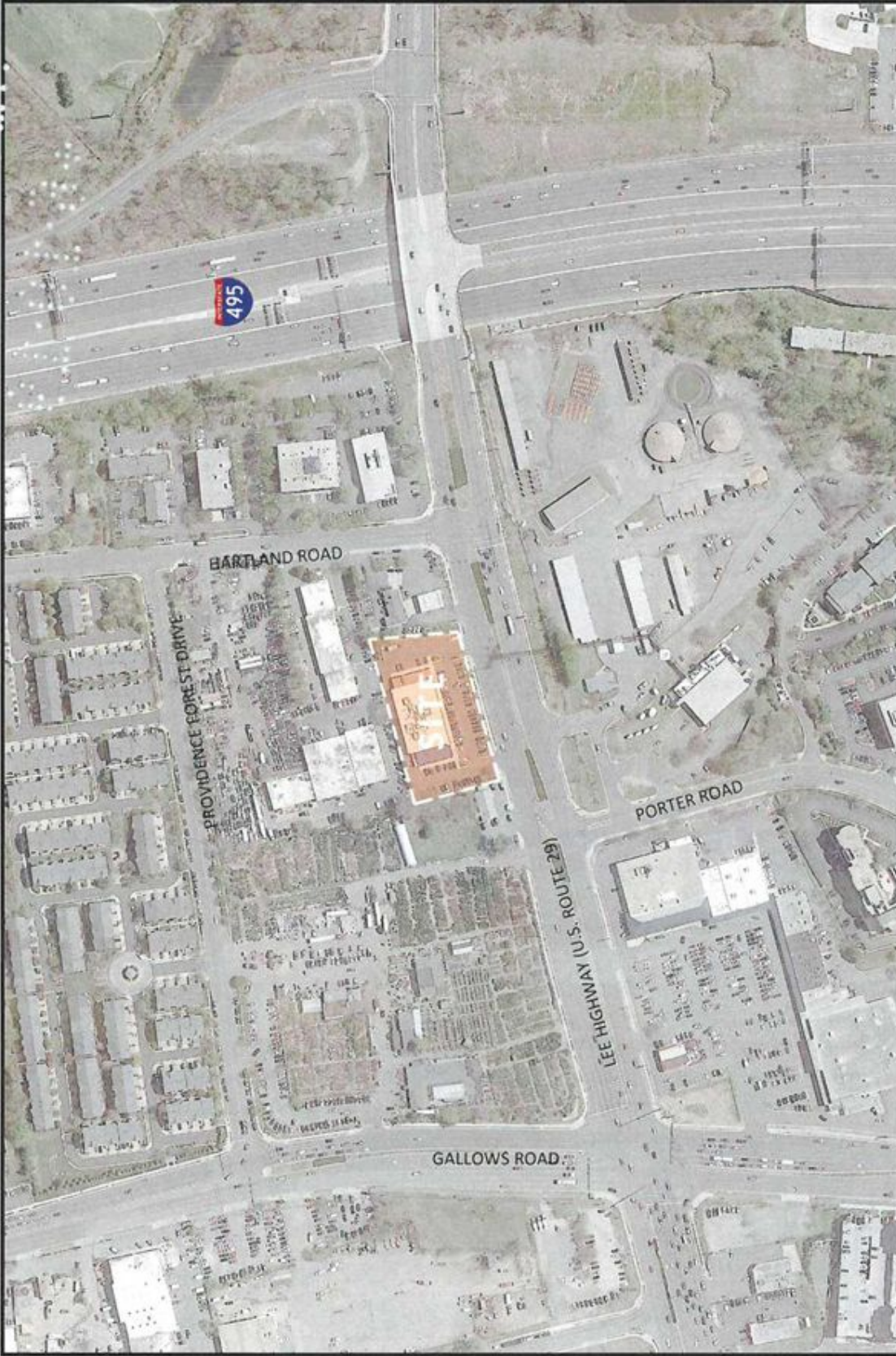


Figure 1

Site Location



NORTH

8100 Lee Highway
Fairfax County, Virginia

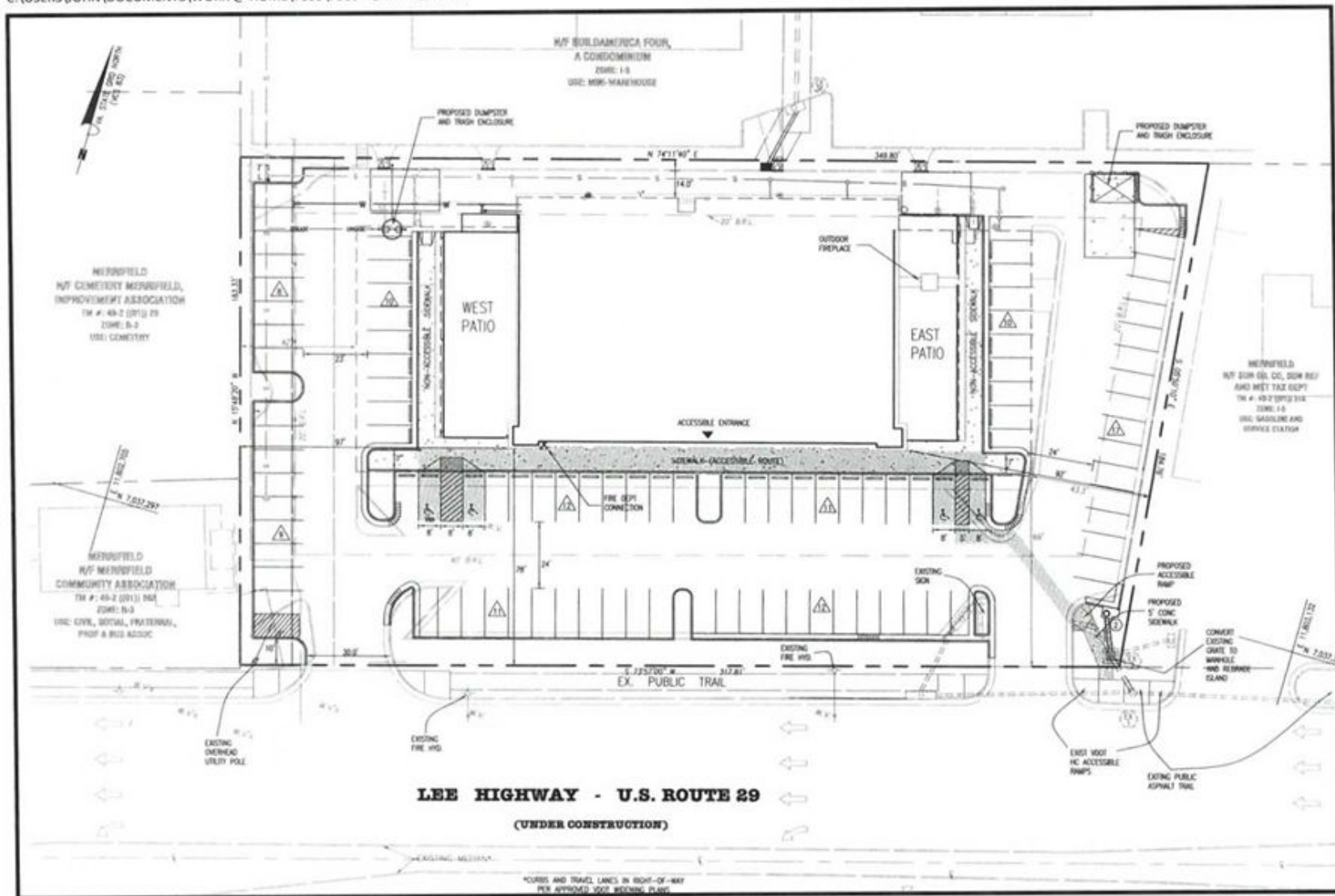


Figure 2
Site Plan Reduction

SOURCE: GJB ENGINEERING

8100 Lee Highway
Fairfax County, Virginia



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MEMORANDUM

SITE DATA

Approved Program. The site is currently approved for the following uses:

- 12,707 gross square feet (GSF) of eating establishment (restaurant use)
 - 332 table seats
 - 30 counter seats
 - 50 employees
 - 1 shuttle space

***Approximately 1,832 GSF of building space between the two restaurants is currently vacant and used only for storage.*

Currently Built and Occupied Program. Based on information provided by the Owner, the site is currently occupied with two restaurants with the following breakout of seats:

- TRIO Grill
 - 84 indoor dining table seats
 - 20 indoor bar table seats
 - 12 indoor bar counter seats
 - 36 patio table seats
 - 10 cigar lounge table seats
- Open Road
 - 104 indoor dining table seats
 - 12 indoor bar counter seats
 - 42 patio dining table seats
 - 24 patio bar table seats
 - 12 patio bar counter seats
- Total Seats
 - 320 table seats
 - 36 counter seats

While exact seat total differs from the original approval, the customer parking demand based on number of seats continues to be 98 parking spaces. In addition, while the number seats for a particular room or area may be adjusted for special events, the total number of seats throughout the restaurant would remain consistent. Therefore, the site continues to be conformance with Condition #2 of the approved parking reduction.

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MEMORANDUM

Based on information provided by the Owner, the following number of employees are present during each shift:

- AM Shift
 - Kitchen (8:00 AM to 3:00 PM): 8 employees
 - Front of House (10:00 AM to 3:30 PM): 8 employees
- PM Shift
 - Kitchen (4:00 PM to 11:00 PM): 13 employees
 - Front of House (3:30 PM to Midnight): 27 employees

A maximum of 40 employees would be on-site during the afternoon and evening shift. This is within the approved limit of 50 employees.

Point of Contact. The point of contact information required as part of Condition #4 of the approved parking reduction is:

Matthew Carlin
703-629-4352
mcarlin@eatmhg.com
7223 Lee Hwy. Ste. 200
Falls Church, VA 22046

The Applicant will provide the Providence Magisterial District Office and the Fairfax County Department of Transportation (FCDOT) any updates to the contact information.

Reduced Transit Fare Program. A SmartBenefits account (a pre-tax commuter benefits program) was created and offered to employees. The account is currently only employee-funded.



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MEMORANDUM

BACKGROUND INFORMATION

On July 30, 2013, the Board of Supervisors approved parking reduction (#5301-PKS-002-1) to reduce the number of spaces required on site from 124 to 100 spaces based on proximity to the Dunn-Loring Metrorail station. This equates to a 19 percent overall reduction from code requirements and a 96 percent reduction in employee parking.

A total of 98 parking spaces were required to be dedicated to customers and the remaining two (2) spaces would be reserved for an employee shuttle and shuttle driver. All restaurant employees would be required to arrive at property through a means other than private automobile. A shuttle would be required to be provided to the Dunn Loring-Merrifield Metrorail station and would be used to by restaurant employees.

Condition 8 of the approved parking agreement states:

"The owner of the parcel identified as Fairfax County Tax Map #049-2-01-0031, its successors or assignees shall submit a parking spaces utilization study for review and approval by the Board at any time in the future that the Zoning Administrator so requests. Following review of that study, or if a study is not submitted within 90 days after being requested, the Board may rescind this parking reduction or require alternative measures to satisfy parking needs which may include requiring all uses to comply with the full parking space requirements as specified in Article 11 of the Zoning Ordinance."

A formal parking utilization study was requested by Fairfax County staff in their letter dated July 18, 2017. A copy of the approved parking reduction conditions and the letter requesting the parking utilization study are included in Attachments III and VI, respectively.

FAIRFAX COUNTY PARKING REQUIREMENTS

Article II of the Fairfax County Zoning Ordinance establishes parking requirements for various land uses by providing parking rates per unit of land use (square feet of retail space, for example). According to the Ordinance, all required parking spaces shall be located on the same lot as the structure or uses to which they are accessory or on a lot contiguous thereto which has the same zoning classification, and is either under the same ownership, or is subject to arrangements satisfactory to the Director that will ensure the permanent availability of such spaces. Within the area in proximity to a mass transit station, the Board [of Supervisors] may, subject to conditions it deems appropriate, reduce the number of off-street parking spaces otherwise required by the strict application of the code (Section 11-102.5). A copy of the relevant Ordinance text is provided herein as Attachment V.

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MEMORANDUM

Article 11, Section 11-104 of the Ordinance outlines the requirements for restaurant (eating establishment) uses as follows:

Eating Establishment –

“One (1) space per four (4) seats plus one (1) space per two (2) employees where seating is at tables,

and/or

One (1) space per two (2) seats plus one (1) space per two (2) employees where seating is at a counter.”

In addition, one (1) additional parking space would be required to serve the proposed shuttle. Thus, as stated above and reflected on Table I, based on a strict application of the Zoning Ordinance, 124 parking spaces would be required to accommodate the parking demand associated with the eating establishments.

In January 2018, the parking requirement for eating establishments was amended to require 11 spaces per 1,000 S.F. of Gross Floor Area (GFA) (See Attachment VI). Based on the size of the facility at 12,707 GSF, a total of 140 spaces would be required to serve the site. This is 16 more spaces than required under the previous zoning requirements.

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MEMORANDUM

Table 1
8100 Lee Highway
Zoning Ordinance Code Parking Requirements (1)

Use	Amount	Unit	Fairfax County Zoning Ordinance	Required Parking Spaces
Original Approval				
Eating Establishment	332	Table Seats	1 space per 4 table seats	83
	30	Counter Seats	1 space per 2 counter seats	15
	50	Employees	1 space per 2 employees	25
	1	Shuttle	1 space per shuttle	<u>1</u>
		Total		124
Current Code (2)				
Eating Establishment	12,707	GSF	11 spaces per 1,000 GSF	140

Note(s): (1) Based on the Fairfax County Zoning Ordinance Code Requirements prior to January 2018.

(2) Based on Fairfax County Zoning Ordinance Code Requirements, amended in January 2018.

APPROVED PARKING REDUCTION

Table I shows the parking demand calculations based on Fairfax County parking rates and the proposed development program. As the table indicates, a maximum of 124 parking spaces are required for the proposed eating establishment (based on the ordinance in effect when the

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MEMORANDUM

parking reduction was approved). Based on the approved parking reduction, a minimum of 100 surface parking spaces would need to be provided. This represents a 19 percent reduction (or 24 parking spaces) of non-reserved spaces when compared to the Fairfax County Zoning Ordinance as shown on Table 2.

In order to achieve this reduction, all employees are required to arrive at the restaurant by a mode other than private automobile. To facilitate this requirement, a shuttle bus/circulator is required provide service to/from the Dunn Loring-Merrifield Metrorail station (within $\frac{3}{4}$ mile distance) for restaurant employees. If restaurant employees are unable to use Metrorail, they would have the option of using another non-auto mode of transportation (e.g. walk, bike or bus).

Bus stops are located approximately 500 feet to the east and west of the site on Lee Highway. These routes (1B, 2A) connect to the Dunn Loring Metrorail station. Bus line 1C runs along Gallows Road with a stop at the Lee Highway intersection. In addition, the Washington & Old Dominion (W&OD) trail is located approximately one-half mile north of the Dunn Loring Metrorail station with dedicated bike lanes on Gallows Road that connect the trail to the station.

Table 2
8100 Lee Highway
Parking Reduction Summary

Fairfax County Zoning Ordinance	Minimum Parking Requirement	Parking Space Reduction from Base Code Requirement	% Reduction from Base Code Requirement (non-reserved spaces)
Base Code Requirement ⁽¹⁾	122 (non-reserved) + 2 (reserved) 124 (total)	0	0%
Approved Parking Reduction ⁽²⁾	98 (non-reserved) +2 (reserved) 100 (total)	24	19.4%

Note(s):

- (1) Based on the Fairfax County rates without shared parking or parking adjustments.
- (2) This includes 98 parking spaces for customers, 1 space for an employee and 1 space for the shuttle bus to transport employees to/from the Dunn Loring-Merrifield Metrorail station.

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MEMORANDUM

EXISTING RESTAURANT OPERATIONS

The subject site is currently occupied by two restaurants, TRIO Grill and Open Road. Open Road provides both lunch and dinner service while TRIO Grill does not open until 4 PM. Based on the current Non-RUP permits, the restaurants occupy 12,707 GSF and provide 356 total seats. Based on current operations, approximately 40 employees are on site during the evening peak. These approvals are within the limits set forth in the parking reduction agreement.

In conformance to the approved parking conditions, a total of 100 parking spaces (includes four handicap accessible spaces) are provided on-site. Of these 100 parking spaces, 98 spaces are allocated for restaurant patrons, one (1) space for an employee and one (1) space for the shuttle bus.

Subsequent to the development and opening of the restaurants, the owner initiated a valet service in order to accommodate peak parking demands. The valet service provides a pick-up/drop-off area located in front of the building. The valet service operates directly in front of the building within the parking area and does not utilize any of the on-site parking spaces.

Valet vehicles are parked in the surface lot serving the medical office building located at 2843 Hartland Road, just east of the subject property that provides approximately 48 parking spaces. The location of the valet parking and routes is shown on Figure 3. An agreement was reached in September 2013 with the property owner to use up to 44 spaces within the parking lot. In addition, approximately 20 vehicles can be parked in the unmarked lot to the east of the office building. This lot was purchased from VDOT in 2014 and the record is included in Attachment VII. An additional six (6) cars could be parked if tandem spaces were utilized. Therefore, a total of 70 spaces are available for restaurant uses.

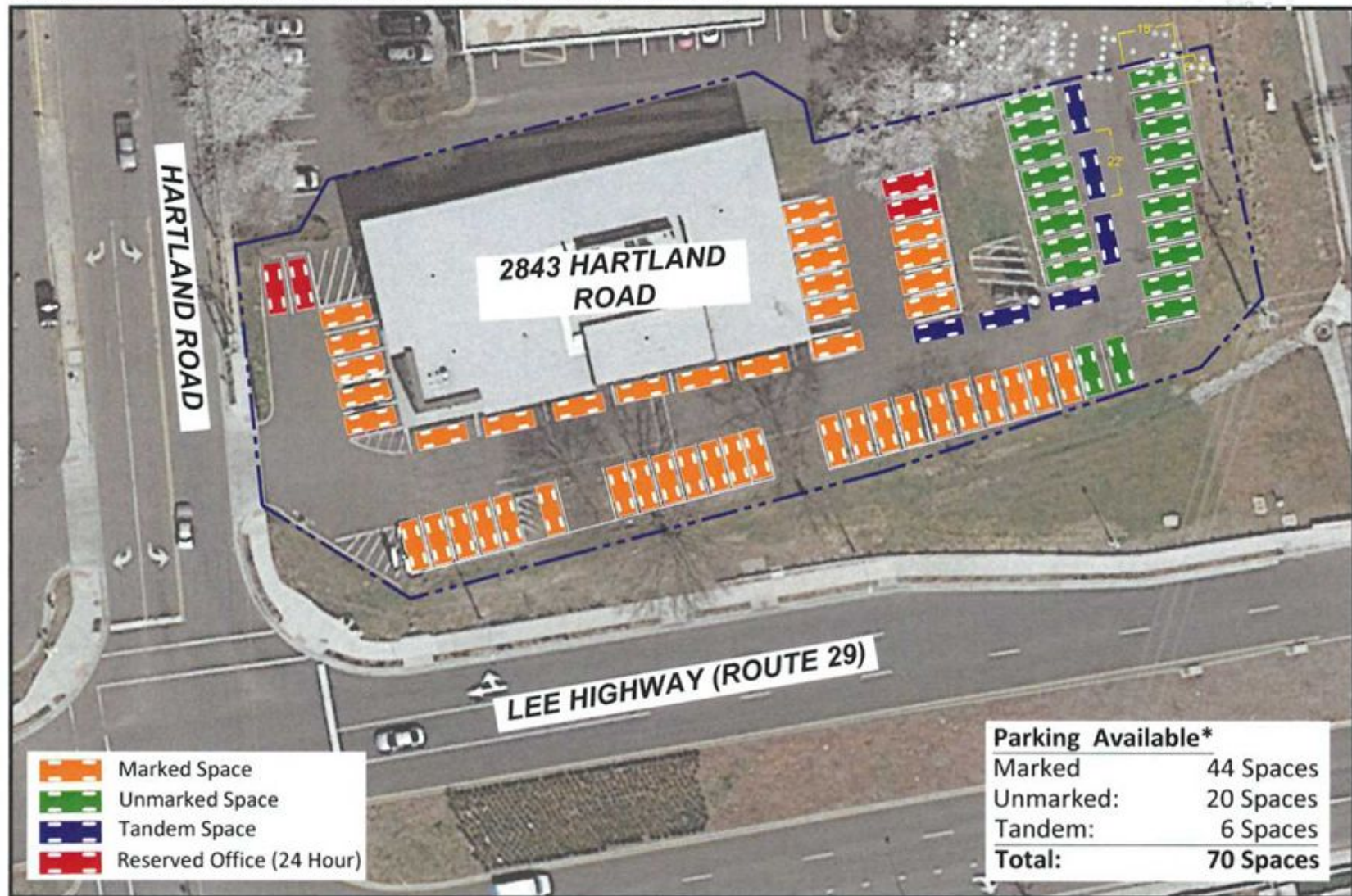
Based on comments provided by Fairfax County, a detailed parking layout was prepared for this property to define the number spaces available including the unmarked parking area, and is shown in Figure 4. A full-size copy of the plan is included in Attachment VIII. It is also noted that a waiver for the unmarked spaces is being submitted under a separate cover.

Access to this parking lot is currently provided starting at 5:30 PM Monday through Thursday, 3:00 PM on Fridays, and all day on weekends. While valet service may be provided seven days a week, based on typical operations, it is only provided during peak periods on Thursday, Friday, and Saturday.



Figure 3
Off-Site Valet Parking Location





* - Parking available weekdays after 5:30 PM and on weekends

Figure 4
Off-Site Parking Exhibit
2843 Hartland Road



8100 Lee Highway
Fairfax County, Virginia



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MEMORANDUM

EXISTING PARKING DEMAND

Based on discussions with the restaurant Owner, the peak periods for parking occur during the evening on Thursdays, Fridays, and Saturdays. This was verified through a review of the daily sales revenue provide by the Owner throughout the year that showed Sunday through Wednesday reported significantly lower revenue as discussed in the later sections of this report.

Based on this information, parking occupancy and valet pick-up/drop-off counts were conducted on-site and at the medical office building during the following days:

- Thursday, November 16
- Friday, November 17
- Saturday, November 18

The counts were conducted each day between 4 PM and 10 PM and recorded in 30-minute intervals in order to capture the peak demands of the restaurant uses. The parking demand results for the restaurant uses are summarized in Tables 3 through 5 and the off-site parking demand at the 2843 Hartland Road property is summarized in Tables 6 through 8.

In addition, it is noted that some valet vehicles may have been parked on the adjacent community center property that is not part of the formal valet parking agreement. Although this parking area was not specifically counted when the data was collected, the valet parking demand has been captured in the count since valet vehicles were observed and counted at the drop-off point in front of the restaurant. Thus, the overall parking demand of the facility has been accurately assessed. Subsequent to the parking counts, additional enforcement has been implemented to ensure that restaurant vehicles do not use the parking area.

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MEMORANDUM

Table 3
8100 Lee Highway
Observed Restaurant Parking Demand - Thursday, November 16, 2017

Occupied Spaces				% Occupied Spaces			Vacant Spaces		
Time	On-Site Parking	Valet Parking	Total Parking	On-Site Parking	Valet Parking	Total Parking	On-Site Parking	Valet Parking	Total Parking
4:00 PM	47	0	47	47%	0%	28%	53	70	123
4:30 PM	52	0	52	52%	0%	31%	48	70	118
5:00 PM	63	0	63	63%	0%	37%	37	70	107
5:30 PM	77	0	77	77%	0%	45%	23	70	93
6:00 PM	82	0	82	82%	0%	48%	18	70	88
6:30 PM	100	7	107	100%	10%	63%	0	63	63
7:00 PM	96	22	118	96%	31%	69%	4	48	52
7:30 PM	91	26	117	91%	37%	69%	9	44	53
8:00 PM	94	27	121	94%	39%	71%	6	43	49
8:30 PM	82	17	99	82%	24%	58%	18	53	71
9:00 PM	75	13	88	75%	19%	52%	25	57	82
9:30 PM	62	9	71	62%	13%	42%	38	61	99
10:00 PM	47	9	56	47%	13%	33%	53	61	114
Inventory Spaces	100	70	170						

Note: Off-site parking inventory includes portion of gravel lot east of office building.

MEMORANDUM

Table 4
8100 Lee Highway
Observed Restaurant Parking Demand - Friday, November 17, 2017

Occupied Spaces				% Occupied Spaces			Vacant Spaces		
<u>Time</u>	<u>On-Site Parking</u>	<u>Valet Parking</u>	<u>Total Parking</u>	<u>On-Site Parking</u>	<u>Valet Parking</u>	<u>Total Parking</u>	<u>On-Site Parking</u>	<u>Valet Parking</u>	<u>Total Parking</u>
4:00 PM	55	0	55	55%	0%	32%	45	70	115
4:30 PM	83	0	83	83%	0%	49%	17	70	87
5:00 PM	95	5	100	95%	7%	59%	5	65	70
5:30 PM	98	10	108	98%	14%	64%	2	60	62
6:00 PM	95	38	133	95%	54%	78%	5	32	37
6:30 PM	96	49	145	96%	70%	85%	4	21	25
7:00 PM	98	59	157	98%	84%	92%	2	11	13
7:30 PM	98	52	150	98%	74%	88%	2	18	20
8:00 PM	97	49	146	97%	70%	86%	3	21	24
8:30 PM	87	52	139	87%	74%	82%	13	18	31
9:00 PM	89	44	133	89%	63%	78%	11	26	37
9:30 PM	88	30	118	88%	43%	69%	12	40	52
10:00 PM	79	25	104	79%	36%	61%	21	45	66
Inventory Spaces	100	70	170						

Note: Off-site parking inventory includes portion of gravel lot east of office building.

WELLS + ASSOCIATES

MEMORANDUM

Table 5
8100 Lee Highway
Observed Restaurant Parking Demand - Saturday, November 18, 2017

Occupied Spaces				% Occupied Spaces			Vacant Spaces		
<u>Time</u>	<u>On-Site Parking</u>	<u>Valet Parking</u>	<u>Total Parking</u>	<u>On-Site Parking</u>	<u>Valet Parking</u>	<u>Total Parking</u>	<u>On-Site Parking</u>	<u>Valet Parking</u>	<u>Total Parking</u>
4:00 PM	16	0	16	16%	0%	9%	84	70	154
4:30 PM	20	0	20	20%	0%	12%	80	70	150
5:00 PM	24	0	24	24%	0%	14%	76	70	146
5:30 PM	46	0	46	46%	0%	27%	54	70	124
6:00 PM	60	0	60	60%	0%	35%	40	70	110
6:30 PM	74	0	74	74%	0%	44%	26	70	96
7:00 PM	87	2	89	87%	3%	52%	13	68	81
7:30 PM	96	2	98	96%	3%	58%	4	68	72
8:00 PM	98	2	100	98%	3%	59%	2	68	70
8:30 PM	92	6	98	92%	9%	58%	8	64	72
9:00 PM	91	6	97	91%	9%	57%	9	64	73
9:30 PM	83	5	88	83%	7%	52%	17	65	82
10:00 PM	63	5	68	63%	7%	40%	37	65	102
Inventory Spaces	100	70	170						

Note: Off-site parking inventory includes portion of gravel lot east of office building.



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MEMORANDUM

Table 6
8100 Lee Highway
Thursday, November 16, 2017

Occupied Spaces					
<u>Time</u>	<u>Total Parking</u>	<u>Restaurant Valet Parking</u>	<u>Remaining Parking</u>	<u>Percent Occupied</u>	<u>Vacant Parking</u>
4:00 PM	57	0	57	81%	13
4:30 PM	56	0	56	80%	14
5:00 PM	52	0	52	74%	18
5:30 PM	30	0	30	43%	40
6:00 PM	20	0	20	29%	50
6:30 PM	28	7	21	40%	42
7:00 PM	44	22	22	63%	26
7:30 PM	44	26	18	63%	26
8:00 PM	36	27	9	51%	34
8:30 PM	30	17	13	43%	40
9:00 PM	25	13	12	36%	45
9:30 PM	18	9	9	26%	52
10:00 PM	15	9	6	21%	55
Inventory Spaces	70				

Notes: Parking Inventory includes portion of gravel lot east of office building.

Valet parking demand measured at drop-off station and reflects
total valet parking demand for the restaurant uses.

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MEMORANDUM

Table 7
8100 Lee Highway
Friday, November 17, 2017

Occupied Spaces					
<u>Time</u>	<u>Total Parking</u>	<u>Restaurant Valet Parking</u>	<u>Remaining Parking</u>	<u>Percent Occupied</u>	<u>Vacant Parking</u>
4:00 PM	22	0	22	31%	48
4:30 PM	29	0	29	41%	41
5:00 PM	30	5	25	43%	40
5:30 PM	39	10	29	56%	31
6:00 PM	60	38	22	86%	10
6:30 PM	65	49	16	93%	5
7:00 PM	66	59	7	94%	4
7:30 PM	62	52	10	89%	8
8:00 PM	56	49	7	80%	14
8:30 PM	60	52	8	86%	10
9:00 PM	53	44	9	76%	17
9:30 PM	44	30	14	63%	26
10:00 PM	32	25	7	46%	38
Inventory Spaces	70				

Note: Parking Inventory includes portion of gravel lot east of office building.

Valet parking demand measured at drop-off station and reflects
total valet parking demand for the restaurant uses.

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MEMORANDUM

Table 8
8100 Lee Highway
Saturday, November 18, 2017

Occupied Spaces					
<u>Time</u>	<u>Total Parking</u>	<u>Restaurant Valet Parking</u>	<u>Remaining Parking</u>	<u>Percent Occupied</u>	<u>Vacant Parking</u>
4:00 PM	18	0	18	26%	52
4:30 PM	19	0	19	27%	51
5:00 PM	22	0	22	31%	48
5:30 PM	23	0	23	33%	47
6:00 PM	26	0	26	37%	44
6:30 PM	25	0	25	36%	45
7:00 PM	27	2	25	39%	43
7:30 PM	27	2	25	39%	43
8:00 PM	26	2	24	37%	44
8:30 PM	29	6	23	41%	41
9:00 PM	30	5	25	43%	40
9:30 PM	28	5	23	40%	42
10:00 PM	23	5	18	33%	47
Inventory Spaces	70				

Note: Parking Inventory includes portion of gravel lot east of office building.

Valet parking demand measured at drop-off station and reflects
total valet parking demand for the restaurant uses.

MEMORANDUM

The results of the existing counts are summarized as follows:

1. The on-site parking lot was observed to be full (at least 95 percent occupied) starting at 6:30 PM on Thursday, 5:00 PM on Friday, and 7:30 PM on Saturday. Valet operations begin at these times to accommodate the excess parking demand.
2. The maximum parking demand of 157 parked vehicles (98 on-site, 59 off-site) was observed on Friday at 7:00 PM. The maximum parking demand on Thursday consisted of 121 parked vehicles (94 on-site, 27 off-site) occurred at 8:00 PM. The maximum parking demand on Saturday consisted of 100 parked vehicles (98 on-site, 2 off-site) occurred at 8:00 PM. The higher parking demand on Friday versus Saturday appears to be a function of the different operations of the two days. Patrons may be coming from work to happy hour events on Fridays and may be more likely to drive, creating a shorter but more intense peak compared to Saturday conditions where there may be more patrons per vehicle and no happy hour events.
3. Between 8:30 PM and 9:30 PM, the occupancy of the on-site parking lot would fall below 90 percent.
4. The maximum parking occupancy of the 2843 Hartland Road property occurred on Friday at 7:00 PM with 66 parked vehicles. Of these 66 parked vehicles, 59 were vehicles parked by restaurant valet and the remaining seven (7) vehicles were associated with other users. It is noted that this demand exceeds the 44-space parking agreement through the use of the adjacent unmarked lot that is not part of the formal easement area.
5. The peak parking demand for non-restaurant users at the 2843 Hartland Road property occur on Thursday at 4:00 PM with 57 parked vehicles. By 5:30 PM, the non-restaurant demand was reduced to 30 vehicles. The non-restaurant demand remained below 30 park vehicles for all other times counted. Subsequent parking enforcement policies have been implemented to prohibit parking for other uses on the 44 reserved spaces after 5:30 PM, allowing them to be used to accommodate restaurant demand.

As mentioned above, valet parking at the 2843 Hartland Road property begins at around 5:00 PM or later. In order to better isolate parking during the contained problem hours and to deter non-Hartland guests and non-restaurant from parking in the Hartland Road lots, parking enforcement signage including "Reserved Parking/Towing" signs have been installed (See Attachment IX).

Additionally, the office hours of operation of the 2843 Hartland Road business were reviewed and summarized below. As shown below, the other businesses on-site would not be open during the hours of restaurant valet parking, reducing the interaction between the uses.

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MEMORANDUM

- Banaji Pediatric Dental: Monday through Thursday closes at 5 PM, Friday closes at 1 PM
- Merrifield Oral Surgery: Monday/Tuesday/Thursday closes at 3:30 PM, Wednesday closes at 5 PM, Friday closes at 2 PM
- Temburni Family & Aesthetic Dentistry – Monday/Wednesday/Friday closes at 4 PM, Tuesday/Thursday closes at 5 PM

In addition to the parking occupancy counts, vehicle queuing at the valet station was recorded in 30-second increments throughout the count period. The results (reported in queued vehicles) are summarized in Table 9 below.

Table 9
8100 Lee Highway
Valet Queuing Summary ⁽¹⁾

	Thursday, November 16	Friday, November 17	Saturday, November 18
Average	0.2	0.9	0.2
85 th Percentile	0.0	2.0	0.0
90 th Percentile	1.0	2.0	1.0
95 th Percentile	1.0	3.0	1.0
Maximum	4.0	5.0	4.0

Note(s): (1) Queues reported in number of vehicles.

As shown in Table 9, a maximum queue of four (4) or (5) vehicles was observed on each of the three days. However, queuing was observed to occur during only a portion of the data collection period. On Thursday and Saturday, the maximum queuing generally occurred during the drop-off peak (6:30 to 7:30 PM) and the pick-up peak (8:00 to 8:30 PM). Due to the greater parking demand on Friday, peak queues were observed throughout the period of valet operation (5:30 to 10:00 PM).

DESIGN DAY ADJUSTMENTS

The daily sales data for a full year was obtained through the owner of the property in order to adjust the observed parking occupancy to design day conditions. The sales data from the count days was compared to the calculated 50th, 70th and 85th percentile sales days.

The “design day” parking requirement was determined by using the 85th percentile methodology. The use of the 85th percentile is accepted within the parking and engineering industry and is

WELLS + ASSOCIATES

MEMORANDUM

recommended by industry organizations such as the Institute of Transportation Engineers (ITE) and the Urban Land Institute (ULI) as an appropriate standard to provide adequate parking.

In order to maintain an accurate correlation between parking demand and restaurant sales for each day, the sales data was delineated by day of the week. No other adjustments were made to the sales data. Factors specific to the day of the week may affect the correlation between parking demand and sales. For example, Friday experiences a higher parking demand likely due to patrons coming from work and arriving by private vehicle versus being spread out throughout the day (and more persons per party) on Saturday. This phenomenon is reflected by the more intense peak on Friday. A review of the data indicated that other days had lower sales and parking demand.

Use of this method that utilizes the 85th percentile for each day of the week provides a more accurate estimate rather than using the entire data set that would result in a shortage of parking for most Fridays throughout the year.

A design day factor was determined and applied to the actual count data collected in November to convert the occupancy count to the design day parking demand. The design day parking demand was further adjusted for "practical capacity" to reflect the need to provide some additional parking that allows for circulating traffic and the turnover of spaces. In this case, a five (5.0) percent factor was applied to identify the parking supply that would be needed to adequately accommodate the peak parking demands of the facility. These are summarized and discussed in the following section.

PARKING NEEDS ASSESSMENT

Based on the methodology described previously, the parking occupancy data was evaluated to identify the design day parking demand and the appropriate parking supply required to adequately serve the site. A summary of the results is shown in Table 10 and described below.

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MEMORANDUM

Table 10
8100 Lee Highway
Design Day Parking Summary ⁽¹⁾

	Thursday, November 16	Friday, November 17	Saturday, November 18
Observed Sales	\$15,219.40	\$26,681.70	\$24,934.76
50 th Percentile Sales	\$17,759.58	\$27,882.85	\$25,468.30
70 th Percentile Sales	\$20,230.31	\$29,015.14	\$27,116.19
85 th Percentile Sales	\$21,081.58	\$30,976.62	\$29,350.11
50 th Percentile Factor	1.17	1.05	1.02
70 th Percentile Factor	1.33	1.09	1.09
85 th Percentile Factor	1.39	1.16	1.18
Observed Parking Demand	121	157	100
50 th Percentile Demand	141	164	102
70 th Percentile Demand	161	171	109
85 th Percentile Demand	168	182	118

Note(s): (1) Based on sales data from November 2016 through October 2017.

The 85th percentile sales day would be approximately 16 to 39 percent higher than the surveyed days. It should be noted that since the 85th percentile was calculated only for the peak days of the week, the calculated 85th percentile demand represents nearly the peak parking demand that would be expected throughout the year. The factored 85th percentile parking for demand for Friday would therefore be 182 parked vehicles. The 85th percentile Thursday demand would be 168 parked vehicles while the Saturday demand would be 118 vehicles.

RESULTS

In order to determine to total parking supply needed to accommodate the site, a five (5) percent practical capacity factor (or buffer) was applied to the adjusted parking demands described above. The results are summarized in Table 11 below and indicate that 177 parking spaces would be required for Thursday conditions, 192 spaces would be required for Friday conditions, and 124 spaces would be required for Saturday conditions.

WELLS + ASSOCIATES

MEMORANDUM

Table 11

3100 Lee Highway

Parking Requirement Summary

	Thursday	Friday	Saturday
Adjusted Parking Demand	168	182	118
Parking Required (5% Buffer)	177	192	124
On-Site Supply	100	100	100
Difference (Supply – Required)	-77	-92	-24

These results indicate that 24 to 92 additional off-site parking spaces would be needed in order to accommodate the forecasted parking requirements. While the 100 on-site and 70 off-site spaces (including approximately 26 spaces in the unmarked lot to the east of office building that are not part of the formal easement agreement) could accommodate Saturday parking demands, additional parking would be required for peak Thursdays and Friday periods. Specifically, another 22 parking spaces would be required to accommodate Friday conditions. If these additional spaces cannot be provided within the unmarked lot, additional off-site parking would need to be acquired.

MITIGATION MEASURES

In order to accommodate the parking needs of the facility, the follow summarizes the actions being pursued by the owner to mitigate parking impacts, improve operations, and provide an adequate parking supply:

Secure Off-Site Parking. The property owner has obtained access to off-site parking at the HITT property (2757 Hartland Road). As shown on Figure 5, the site is located on the east side of Hartland Road, just north of Providence Forest Drive and within ¼-mile walking distance to the restaurant as shown on Figure 5. It is being developed as a general office building and is scheduled to open in the summer of 2019. A total of up to 27 spaces would be available after 5:00 PM on weekdays and all-day on weekends for use by the restaurant when office spaces are vacant. A copy of the site plan and parking agreement is included in Attachment X.

If other off-site parking becomes available, the agreement may be adjusted or eliminated assuming the additional parking spaces are provided.

Assuming these spaces are secured by the owner, a surplus in parking would be provided during all of the peak periods as shown on Table 12.



Figure 5
On-Site and Off-Site Parking Locations


NORTH
 8100 Lee Highway
 Fairfax County, Virginia

WELLS + ASSOCIATES

MEMORANDUM

Table 12

3100 Lee Highway

Future Parking Summary

	Thursday	Friday	Saturday
Adjusted Parking Demand	168	182	118
Parking Required (5% Buffer)	177	192	124
On-Site Supply	100	100	100
2843 Hartland Road Marked Spaces	44	44	44
2843 Hartland Road Unmarked Spaces	20	20	20
2843 Hartland Road Tandem Spaces	6	6	6
HITT Property (2757 Hartland Road)	27	27	27
Off-Site Parking Supply (1)	97	97	97
Difference (Supply – Required)	20	5	73

Note(s): (1) Pending approval of agreement with HITT Property.

Valet Parking. Apply for formal approval to provide valet parking service on the property. Ensure that adequate manpower is provided in order to avoid queuing and traffic congestion.

Shuttle Service. While providing an employee shuttle is a condition of approval for the current parking reduction and encouraging employees to use alternative modes should continue, the shuttle service was discontinued as a result of low ridership. It is suggested that employees park within the off-site parking areas during periods when this parking is available.

These measures would provide for adequate parking to meet the peak demands of the building throughout the year.

IMPACT TO ADJACENT PROPERTIES (Z.O. 11-102.4B)

The on-site and off-site parking areas described in this report would provide sufficient parking to accommodate code parking requirements and measured parking demands of the restaurant uses. Therefore, other properties would not experience overflow parking. The parking agreements with the off-site parking areas allow for restaurant parking during the peak restaurant evening periods. This parking would be managed by valet staff. Because the off-site restaurant parking would occur outside normal business hours, the office parking would not be adversely affected. In summary, if the parking reduction request were granted, there would be no adverse impact on the site or surrounding areas.

WELLS + ASSOCIATES

MEMORANDUM

CONCLUSIONS

The conclusions of this parking utilization study are summarized below:

1. Based on the strict application of the Zoning Ordinance 124 parking spaces would be required to accommodate the parking demand associated with the existing eating establishment. A parking reduction was approved in 2013 to reduce the number of spaces required on site from 124 to 100 spaces based on proximity to the Dunn-Loring Metrorail station.
2. The recently updated zoning ordinance (2018) for eating establishments would require a total of 140 parking spaces to be provided on-site.
3. A total of 100 parking spaces are currently provided on-site. In order to accommodate peak parking demands, valet service is provided. The restaurant operator has an agreement with owner of the 2843 Hartland Road building to use up to 44 spaces within the parking lot. In addition, approximately 20 vehicles can be parked within the unmarked lot to the east of the office building but are not part of the formal agreement. In addition, an additional six (6) tandem spaces could be provided. A detailed plan for this property and a waiver to utilize the unmarked spaces is being submitted under a separate cover for compliance purposes.
4. Based on counts conducted Thursday, November 16 to Saturday, November 18, the peak parking demand occurred on Friday evening when 157 vehicles were parked on and off-site.
5. A maximum queue of four (4) to (5) vehicles was observed at the valet station on each of the three surveyed days. While this queue can be accommodated on-site, a sufficient number of valet staff would be required on peak days to ensure that queuing would not affect traffic operations on-site.
6. Adjusting the parking occupancy counts based on sales data for a full year, the 85th percentile Friday demand would be 182 parked vehicles. The 85th percentile parking demand for Thursday would be 168 vehicles while the 85th percentile Saturday demand would be 118 vehicles.
7. Assuming a five percent buffer to account for practical capacity and circulation, 177 spaces would be required for Thursday conditions, 192 spaces would be required for Friday conditions, and 124 spaces would be required for Saturday conditions. Based on the current parking supply of 100 parking spaces provided on site, a maximum deficit of 92 parking spaces would be realized. These estimates are well above the current and updated code parking requirements for the restaurant uses.

WELLS + ASSOCIATES

MEMORANDUM

8. A number of mitigation measures have been identified in order to accommodate the peak parking demands of the building. Use of the 2843 Hartland Road property (70 spaces) and securing 27 additional off-site parking spaces at the HITT property (2757 Hartland Road) that is anticipated to be open in the summer of 2019 would provide an adequate parking supply during peak conditions for the restaurant uses.

Questions regarding this document should be directed to Wells + Associates.

O:\Projects\7301-7500\7385 8100 Lee Hwy Parking Utilization\Documents\Reports\8100 Lee Highway Parking Utilization Memo (6.7.2019).docx

Board Agenda Item
November 19, 2019

ACTION - 2

Designation of the Director, Department of Public Works and Environmental Services, and his Designee(s) as the Board of Supervisors' Agent(s) in Applying for and Seeking Zoning Approval of Board-Owned Property Projects and County Improvement Program Projects and Designation of the County Executive as the Board's Agent to Sign Proffers for Such Projects

ISSUE:

Staff proposes that the Board of Supervisors designate the Director, Department of Public Works and Environmental Services (DPWES), and his designee(s) to act as the Board's agent in applying for and seeking zoning approval of Board-owned property projects and County Improvement Program projects ("County projects") and designate the County Executive to sign proffers on behalf of the Board for such projects.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors adopt the Resolution set forth in Attachment 1.

TIMING:

Board action is requested on November 19, 2019.

BACKGROUND:

The Board has historically designated its agent(s) on County projects requiring zoning approval—such as applications for a rezoning, proffer condition amendment, special exception, or the like—on a project-specific basis. This approach has become time consuming and cumbersome, because it sometimes requires the Board to take action more than once on a single project to designate agents. This Action Item seeks to streamline the process.

The Board has typically designated DPWES and particular employees within that department to serve as its agent in applying for and seeking zoning approval of County projects, because the Capital Facilities business area of DPWES often heads up the work. Accordingly, the attached resolution (Attachment 1) designates the Director, DPWES, and his designee(s) to act as the Board's agent in applying for and pursuing zoning approval of projects involving Board-owned property and on County Improvement Program approved projects.

Board Agenda Item
November 19, 2019

The Board has typically designated the County Executive as its agent for the purpose of signing proffers on County projects. The Board's adoption of the attached resolution would eliminate the need for future Board matters to accomplish this purpose. This designation would apply only to County projects; it would not apply to projects requiring the Board to sign proffers as a landowner when it is not the applicant.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution

STAFF:

Rachel Flynn, Deputy County Executive

Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)

Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

Carey Needham, Director, DPWES, Capital Facilities, Building Design and Construction Division

ASSIGNED COUNSEL:

Laura S. Gori, Senior Assistant County Attorney

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center Building, Fairfax, Virginia, on November 19, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, the Board of Supervisors periodically initiates approved projects on the County Improvement Program and on Board-owned property ("County projects"); and

WHEREAS, the Board has historically designated an agent(s) to apply for and pursue zoning approval of the County project applications and to represent the Board in meetings and hearings; and

WHEREAS, the Board has typically designated the Department of Public Works and Environmental Services and particular DPWES employees to act as its agents; and

WHEREAS, the Board has typically designated the County Executive to sign proffers on behalf of the Board on County projects; and

WHEREAS, the Board has designated its agents on a project-by-project basis, sometimes even taking action more than once to designate agents for a single project; and

WHEREAS, the general welfare, convenience, and good governmental practices favor streamlining the process described above; and

NOW THEREFORE BE IT RESOLVED, for the foregoing reasons the Board of Supervisors designates the Director, Department of Public Works and Environmental Services and his designee(s) to act as the Board's agent in applying for and seeking zoning approval of County projects without the need for project-specific designations by the Board; and

THEREFORE BE IT FURTHER RESOLVED, that the Board of Supervisors designates the County Executive to act as the Board's agent for purposes of signing any proffered conditions associated with County projects only.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

ACTION - 3

Authorization to Sell Board-Owned Property North of Reston Station Boulevard to CRS Sunset Hills, LC and Proposed Amendment to Deed of Lease with Comstock Reston Station Holdings, LC to Remove Land Area (Hunter Mill District)

ISSUE:

Authorization to sell Board-owned property to CRS Sunset Hills, LC (Purchaser) and authorization of the proposed amendment (Amendment) to the existing Deed of Lease (Lease) between the Board, as landlord, and Comstock Reston Station Holdings LC (Comstock), as tenant, regarding Fairfax County Tax Map 17-4 ((1)) Parcel 17A (the Site). The Amendment would remove the portion of the parcel sold to the Purchaser from the Lease and accordingly adjust the future rent on the remainder of the Site.

RECOMMENDATION:

The County Executive recommends that the Board approve the sale of a portion of Board-owned property north of Reston Station Boulevard and authorize approval of an Amendment to the Lease to reflect the removal of that property from the Lease and associated changes as included in the Amendment.

TIMING:

On September 24, 2019, the Board authorized advertisement of a public hearing to be held on October 15, 2019 at 5:30 p.m. The Board then held the public hearing on October 15, 2019. Pursuant to the Public Private Education Facilities and Infrastructure Act of 2002 (VA Code §§ 56-575.1 to 575.16), the Board must wait at least 30 days after the public hearing before it may approve the conveyance.

BACKGROUND:

On June 1, 2009, the Board approved a Comprehensive Agreement with Comstock (together with its affiliates). The agreement provided for Comstock to construct an underground County-owned garage that serves the adjacent Wiehle-Reston East Metrorail station. The garage is located on that portion of the Site that is south of Reston Station Boulevard. The Comprehensive Agreement also encompassed a 99-year ground lease that leases the rest of the Site (other than the County-owned garage) to Comstock for private development (currently marketed as Reston Station). The parking garage began operations on July 26, 2014. Comstock has obtained land use approval

Board Agenda Item
November 19, 2019

for six buildings on the Site, has completed construction on two buildings, and has started construction on two additional buildings.

The Lease, by its terms, may be split, or “severed”, into multiple leases. This flexibility exists to facilitate development of private buildings. Two buildings have already been severed off, each into its own lease with a distinct Comstock-affiliated tenant entity, and the remainder of the premises remains subject to the original lease with Comstock. (It is anticipated that a third building, currently under construction, will be further severed off into its own lease, in September or October 2019). The Amendment applies only to the original Lease with Comstock.

In general terms, Comstock currently pays an aggregate annual base rent of \$2,900,000 per year for all of its leases with the Board. The base rent will increase in three future phases:

- Base rent will increase to \$3,302,593 on June 28, 2024 or on the issuance of a RUP (or Non-RUP, as may be applicable) for 25,000 square feet of the fourth building to be constructed on the Site, whichever occurs first.
- Base rent will increase to \$3,705,187 on June 28, 2027 or on the issuance of a RUP (or Non-RUP, as may be applicable) for 25,000 square feet of the fifth building to be constructed on the Site, whichever occurs first.
- Base rent will increase to \$4,107,780 on June 28, 2030 or on the issuance of a RUP (or Non-RUP, as may be applicable) for 25,000 square feet of the sixth building to be constructed, whichever occurs first.

At such time, the aggregate annual base rent remains at \$4,107,780 until July 2035, at which point the base rent will be reset at 8% of the then-market value of the premises.

On December 5, 2017 the Board approved the Sixth Amendment to the Lease. (The previous amendments dealt with lease severances or other issues not directly relevant here). The Sixth Amendment allowed, among other things, for County staff and Comstock to explore the possibility of selling (or otherwise modifying the ownership structure of) an approximately 0.91-acre portion of the Site located north of Reston Station Boulevard (Sale Area) depicted in Attachment 1. Over the past 18 months, County staff and Comstock have developed the framework of such a sale for the Board’s review and approval.

Under the proposal, the Site would be subdivided into two new parcels. The County would convey the Sale Area, comprising 0.906 acres (39,480 square feet), together with the density associated with 19,599 square feet that has been dedicated for

a public street. The Sale Area parcel is disconnected from the Wiehle-Reston Station Metrorail garage by Reston Station Boulevard and is not necessary for garage operations. Further, the Sale Area was integrated into the Reston Station Promenade rezoning (RZ 2016-HM-035 / PCA 2009-HM-019), approved on April 10, 2018. The proposed conveyance of the Sale Area to the Purchaser would thus enable a more efficient redevelopment of the Reston Station Promenade project.

The County would also retain the fee simple interest in the remaining 6.67 acres of the parcel (the Garage-Plaza Area) which contains the Wiehle-Reston Station garage and to which the Amended Lease, together with the severance leases, would continue to apply.

County staff obtained an appraisal that determined the value of the Sale Area to be \$10,750,000, based on a base density of 3.5 FAR (i.e., the base density for the approved Reston Station Promenade project). The proposed compensation for the Sale Area consists of two components:

- A lump sum cash payment of \$3,070,000, based on the value of 1.0 FAR on the Sale Area. This figure equates to two-sevenths (i.e., 1.0 FAR / 3.5 FAR) of the value of the Sale Area and was confirmed by a separate appraisal.
- A transfer of 147,690 square feet of density from the parcel located at Tax Map No. 17-4 ((24)), Parcel 3, which is also known as Reston Station Block 2, which is owned by another Comstock affiliate, and which is part of the same land use case (RZ 2009-HM-019 (Plaza Rezoning)) as the Garage-Plaza Area. The Plaza Rezoning allows for density to be transferred from Block 2 to the Garage-Plaza Area. The proposed amount of transfer density equates to the land of the Sale Area at a 2.5 FAR (i.e., its current, actual 3.5 FAR, less the 1.0 FAR being paid for in a lump sum as noted in the previous bullet). This density transfer would, in turn, enhance the value Garage-Plaza Area and thus result in a rental stream under the Lease with an estimated net present value of \$8,600,000 or greater.

County staff recommends this compensation structure, as it is anticipated to have the following benefits:

- Generate a higher net present value to the County for the Sale Area asset;
- Locate a greater amount of approved density closer to the adjacent Wiehle-Reston East Metrorail station;

Board Agenda Item
November 19, 2019

- Simplify the ownership structure within Reston Station Promenade to facilitate redevelopment of that site and generate additional economic development and revenue for the County.

This compensation structure was reviewed and endorsed by Savills, an international real estate consultant contracted by the County to review this proposed structure.

Since the proposed sale would convey Sale Area to Purchaser, the Lease will need to be amended to remove the Sale Area from the terms of the Lease. Accordingly, the Amendment to the Lease (Attachment 2) would further adjust rent levels to account for the fact that the County would be receiving a lump sum payment of \$3,070,000 within the next nine months, with the Sale Area transaction. Specifically, the Amendment would retain the current aggregate annual base rent of \$2,900,000 per year but revise the rent increases described above as follows:

- Base rent would increase to \$3,446,262 on July 25, 2025 or on the issuance of a RUP (or Non-RUP, as may be applicable) for 25,000 square feet of the fourth building to be constructed on the Garage-Plaza Area, whichever occurs first.
- Base rent would increase to \$3,901,004 on July 25, 2030 or on the issuance of a RUP (or Non-RUP, as may be applicable) for 25,000 square feet of any the fifth building to be constructed on the Garage-Plaza Area, whichever occurs first.

The aggregate annual base rent would then remain at \$3,901,004 until July 2035, at which point the base rent would be reset at 8% of the then-market value of the premises, just as the current Lease contemplates.

If approved by the Board, the conveyance would close promptly after the satisfaction of certain conditions (discussed below), but no later than April 30, 2020, unless the County opted to modify that date. The Purchaser will post a deposit of \$250,000 to secure its performance under the purchase agreement (Attachment 3).

Of the conditions to closing, the most significant is approval by the Federal Transit Administration (FTA) of the use to which the Board would put a majority of the sales proceeds. When the Board originally acquired the Site in 1995, it used an FTA grant to fund 75% of the initial acquisition and project costs. (The Site was used as a surface parking lot for over a decade prior to the PPEA with Comstock.) Because of the use of FTA funds in acquiring the Site, the Board must also obtain FTA approval of the conveyance, of the compensation for the conveyance, and – if the Board wishes to retain the federal share of the sales proceeds – of a transportation project to which the Board would apply the federal share of the sale proceeds. The Department of Transportation has identified the grade separation project of the Washington and Old

Dominion Trail at Wiehle Avenue (W&OD Trail Project) as the preferred eligible transportation project for these funds.

Staff has obtained FTA approval of both the conveyance and the compensation structure described above (Attachment 4). Staff has initiated the process with FTA for the agency's approval of use of the funds to the W&OD Trail Project. If such FTA approval is not received before April 30, 2020, the County will have no obligation to complete the sale and related Lease Amendment. The County may, however, at its sole election, opt to modify or waive that condition and proceed to close if it determined that doing so was in its best interests.

The proposed Amendment to the Lease also expressly requires Comstock to permit electoral campaigning and voter registration activities on the plaza next to the entry to the north entrance of the Wiehle-Reston East Metrorail Station.

Lastly, the original Comprehensive Agreement and Lease were entered into pursuant to the Public-Private Education and Infrastructure Act of 2002, Title 56, Chapter 22.1 of the Virginia Code (PPEA). As the conveyance of the Sale Area to the Purchaser would represent a significant alteration to the original transaction, the PPEA statute requires not only a public hearing on the proposed documents but also a period of not less than 30 days between the public hearing and the final Board action to approve the conveyance. Thus, the action of October 15, 2019, would be a public hearing; decision on the sale and Amendment should occur on or after November 19, 2019.

FISCAL IMPACT:

Proceeds from the \$3,070,000 land sale to CRS Sunset Hills, LC will be allocated between two funds. \$2,302,500 will be retained to be used by FCDOT to offset the cost of a future eligible public transportation capital project. FTA approval of the proceeds to a subsequent capital award, such as the W&OD Trail Project, is required.

The remaining \$767,500 in land sale proceeds will be placed in Fund 40125, Metrorail Parking System Pledged Revenues, to offset the required debt service on the bonds issued to finance construction of the Wiehle-Reston East parking garage, as well as associated operation and maintenance expense.

The existing base rent under the current Lease is \$2.9 million per year, with an increase to \$4.1 million per year by no later than 2030. Under the Amendment, the current Lease rate of \$2.9 million per year would remain unchanged, with an increase to \$3.9 million per year by no later than 2030.

Board Agenda Item
November 19, 2019

Base rents under the Amendment will continued be allocated to Fund 40125, Metrorail Parking System Pledged Revenues, to offset the required debt service on the bonds issued to finance construction of the Wiehle-Reston East parking garage, as well as associated operation and maintenance expenses.

ENCLOSED DOCUMENTS:

Attachment 1 – Graphic of Proposed Board-Owned Property Conveyance

Attachment 2 – Proposed Amendment to the Deed of Lease with Comstock can be found online at: http://www.fairfaxcountypartnerships.org/P3-Joint_Ventures/Wiehle-Toe-8th-Amendment_FFX_public.pdf

Attachment 3 – Proposed Purchase and Sale Agreement can be found online at: http://www.fairfaxcountypartnerships.org/P3-Joint_Ventures/Wiehle-Toe-PSA-public.pdf

Attachment 4 – FTA Letter Approving Conveyance and Compensation

STAFF:

Rachel Flynn, Deputy County Executive

Martha Coello, Division Chief, Special Projects, Department of Transportation

Joe LaHait, Debt Coordinator, Department of Management and Budget

Michael Lambert, Assistant Director, Facilities Management Department

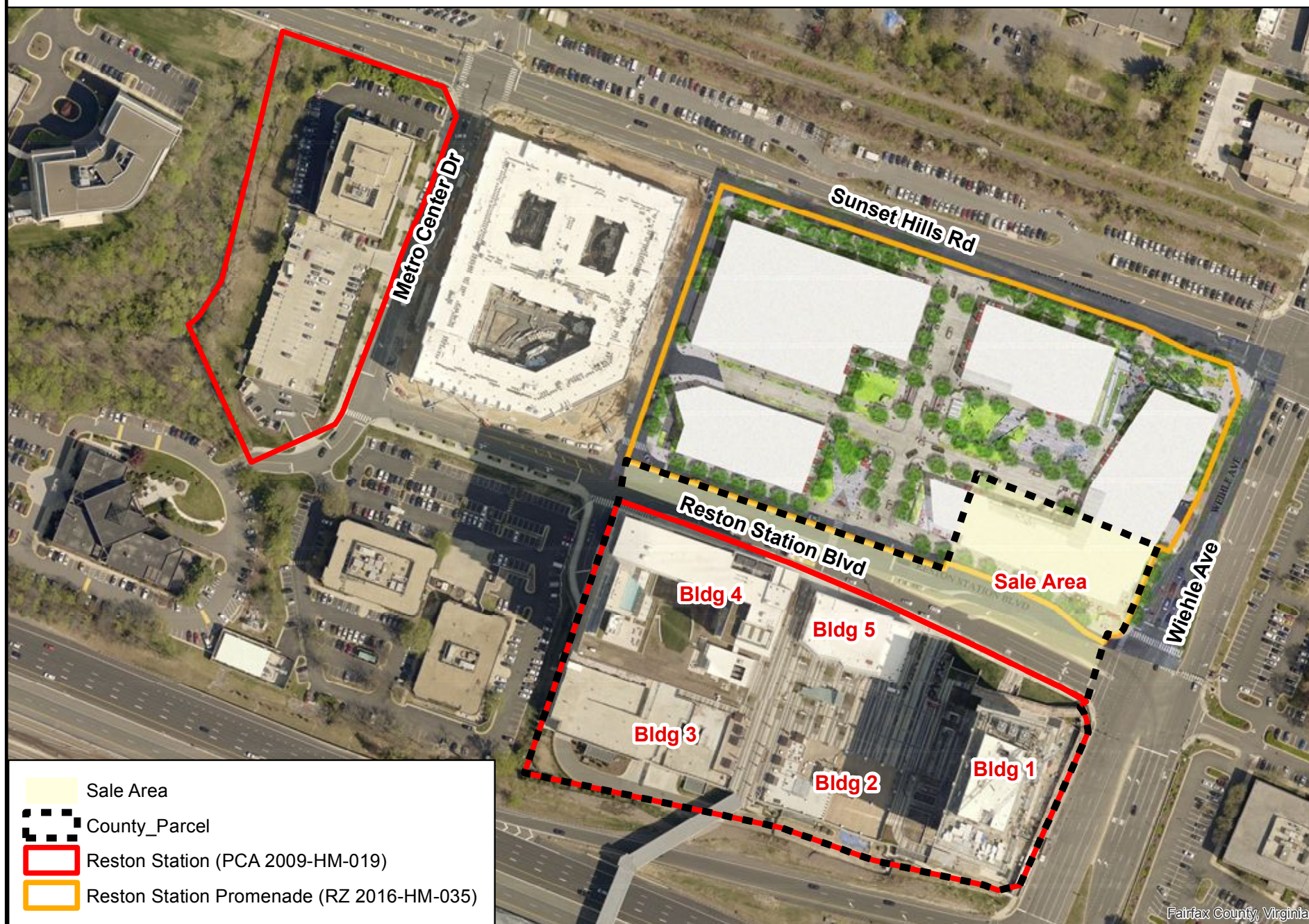
Scott Sizer, P3/Joint-Venture Policy Coordinator, Department of Economic Initiatives

ASSIGNED COUNSEL:

Cynthia Bailey, Deputy County Attorney

Ryan Wolf, Assistant County Attorney

Sale of County Property at Reston Station





U.S. Department
of Transportation
**Federal Transit
Administration**

REGION III
Delaware, District of
Columbia, Maryland,
Pennsylvania, Virginia,
West Virginia

1760 Market Street
Suite 500
Philadelphia, PA 19103-4124
215-656-7100
215-656-7260 (fax)

July 25, 2019

Mr. Tom Biesiadny
Director
Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 22033-2895

RE: Disposition of Property – 1900 Block Reston Station Boulevard (North Side)

Dear Mr. Biesiadny:

The Federal Transit Administration (FTA) has reviewed and considered Fairfax County Department of Transportation's (FCDOT) letter dated June 18, 2019, which was received on July 9, 2019, requesting FTA concurrent to dispose of real property that is no longer required for intended public transportation use. The letter also requested FTA approval for FCDOT to retain and utilize the sales proceeds to offset the cost of a future eligible public transportation capital project.

Per the information submitted, the total land area is 59,079 square feet (1.36 acres). The property is improved with a kiss-and-ride parking lot and related site improvements. The property was appraised with a 'before value' and an 'after value' to estimate a baseline market value in its' current density of 2.5 FAR and to estimate the increase in property value associated with a recent 'up zoning' of the property to Planned Development Commercial. The highest and best use is to assemble with other land at the subject block that supports Reston Promenade – a mixed use site. The review appraiser concurs that eventual development of the site is pursuant to 'up zoning' requirements.

The appraiser arrived at a value of \$3,070,000 by considering the difference between the 'before value' and the 'after value' utilizing the Sales Comparison Approach. The review appraiser reached the conclusion that the \$3,070,000 value set in the appraisal report for the fee simple interest represents the supported estimate of fair market value. Hence, the appraisal report is recommended for approval.

FTA conducted an administrative review of the appraisal and review appraisal provided as part of the disposition request. The appraisal submitted meets the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and the implementing regulations, 49 CFR Part 24.102, 103 and 104. FTA also confirmed that no Federal funds were utilized to construct the kiss-and-ride improvements located on the parcel being disposed. Therefore, there are no Federal interest considerations for these improvements.

Per FTA's Circular 5010.1E, "Award Management Requirements", with FTA approval a recipient

July 25, 2019
Mr. Tom Biesiadny
Page 2

may sell real property and use the proceeds for other capital projects under an award (see FTA C. 5010.1E, Chapter IV, Section 2.j.2.3). When this disposition method is utilized, the recipient is expected to record the receipt of the proceeds in the recipient's accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the amount of those restricted funds as those proceeds are applied to one or more FTA approved capital projects under awards. FTA must approve the application of the proceeds to a subsequent capital award, which should clearly show that the gross cost of the Award has been reduced with proceeds from the earlier transaction.

Based on the information submitted, FTA concurs in the request to dispose of this property and retain the sales proceeds to be reinvested into FCDOT's capital budget to offset the cost of a future eligible public transportation capital project. As indicated in your letter, the Federal share of the proceeds from the sale of this property is \$2,302,500 (75% of \$3,070,000 sale value). FCDOT is to track the proceeds per the requirements prescribed in FTA C 5010.1E and discussed in the previous paragraph. FTA must approve the application of the proceeds to a subsequent capital award, which should clearly show that the gross cost of the award has been reduced with proceeds from the earlier transaction. Please attach all correspondence associated with this action to the new capital award.

This letter only provides approval for the disposition of the real property and approval to retain the sales proceeds for a future capital project. In your June 18, 2019 letter, FCDOT requested FTA's approval to utilize these proceeds towards a grade separation project of the Washington & Old Dominion (W&OD) Trail at Wiehle Avenue. FTA will continue to discuss in subsequent conversations with FCDOT the potential to apply these disposition proceeds towards the W&OD trail project.

If you have any questions, please contact Tim Steinitz at (215) 656-7253 or via e-mail at timothy.steinitz@dot.gov.

Sincerely,

Tony Cho
Director, Office of Program Management & Oversight

cc: Martha Coello, Fairfax County Department of Transportation

ACTION - 4

Designation of the Oakwood Senior Housing Property and the One University Property as Revitalization Areas (Lee and Braddock Districts)

ISSUE:

The Board is requested to designate the Oakwood Senior Housing Property and the One University Property as Revitalization Areas pursuant to Virginia Code § 36-55.30:2.

RECOMMENDATION:

The County Executive recommends that the Board designate the Oakwood Senior Housing Property and the One University Property as Revitalization Areas, for the purpose of facilitating applications for federal Low Income Housing Tax Credits (LIHTC).

TIMING:

Immediate. Board revitalization area designation is requested for the development partners to meet the March 14, 2020, deadline for submitting Low Income Housing Tax Credit applications to the Virginia Housing Development Authority (VHDA).

BACKGROUND:

Oakwood Senior Housing Property: In February 2018, the County received an unsolicited Public Private Education Act (PPEA) proposal from the Arlington Partnership for Affordable Housing (APAH) to create affordable senior housing on the site, located at South Van Dorn and Oakwood Road. In accordance with the procedures adopted by Fairfax County and the provisions of the PPEA, a request for competing proposals was issued and pursuant to the PPEA guidelines, APAH, LLC was selected to develop and construct approximately 150 affordable senior housing units on the 6.2-acre property owned by the Fairfax County Redevelopment Housing Authority (FCRHA).

One University Property: In July 2017, the County received an unsolicited proposal from One University Development Partners, LLC (One University Partners) to redevelop the One University Property to create affordable and student housing, located at University Drive. In accordance with the procedures adopted by Fairfax County and the provisions of the PPEA, a request for competing proposals was issued and pursuant to the PPEA guidelines, One University Partners was selected to develop and construct approximately 120 affordable multifamily housing units, 120 senior housing units, and 333 student housing units on the 10.7-acre property owned by FCRHA.

Revitalization Area Designation and Tax Credit Application:

Applying for Low Income Housing Tax Credits, which is a critical source of project funding, is a highly competitive process, with points awarded by VHDA to projects that meet specific criteria. A project is eligible for 15 points if it is located in a Revitalization Area as described in the Virginia Code pertaining to VHDA in § 36-55.30:2 (VHDA Revitalization Statute). If the Oakwood Senior Housing Property and the One University Property are each designated by the Board as a “Revitalization Area”, the designation will be used solely for the purpose of receiving additional points in the two tax credit applications. The designation will in no manner affect any areas in Fairfax County that have, or in the future may be, determined by the Board to be Revitalization Areas or Revitalization Districts pursuant to Board actions on the County Comprehensive Plan that are separate and distinct from those set forth in the VHDA Revitalization Statute.

Staff has determined that the Oakwood Senior Housing Property and the One University Property meet the above-referenced code definition because (i) the development of the area will benefit Fairfax County, but these areas lack the housing needed to induce, among other things, the commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings, to locate or remain in these areas, and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such areas and will induce other persons and families to live within these areas and thereby create a desirable economic mix of residents in such areas.

For each application to receive the 15 points, a County Board resolution is needed to designate the development sites as a Revitalization Areas pursuant to the VHDA Revitalization Statute criteria (Attachment 1).

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 - VHDA Revitalization Statute Criteria

Attachment 2 – Resolution for Oakwood Senior Housing Property

Attachment 3 – Resolution for One University Property

Board Agenda Item
November 19, 2019

STAFF:

Tisha M. Deeghan, Deputy County Executive

Thomas Fleetwood, Director, Department of Housing and Community Development (HCD)

Teresa G. Lepe, Acting Deputy Director, Real Estate, Finance and Development, HCD

Ahmed Rayyan, Division Director, Design, Development and Construction, HCD

Jyotsna Sharma, Associate Director, Real Estate, Finance and Development, HCD

ASSIGNED COUNSEL:

Cynthia A. Bailey, Deputy County Attorney

Alan M. Weiss, Assistant County Attorney

Susan Timoner, Assistant County Attorney



Revitalization Area

General Instructions

Revitalization areas are defined in Virginia Code §36-55.30:2.A.

Designation

To qualify for revitalization area points, select one of the following (and provide adequate documentation):

1. The development is located in a Qualified Census Tract, as defined by HUD.
2. The development is located in a census tract wherein 70% or more of the families have incomes which are \leq 80% statewide median income. **NOTE:** these census tracts are included in the definition of targeted area for single-family lending purpose, but do not include ACEDS.
3. The development is located in an already established redevelopment area, conservation area or rehabilitation district created by a city or county, pursuant to §36-1 et seq. Documentation must show area boundaries and support that the development lies within those boundaries.
4. The development is located in a Housing Rehabilitation Zone established through an ordinance created by a city, county or town pursuant to §36-55.64. Documentation must include a copy of the ordinance with support that the development lies within the Rehabilitation Zone.
5. The development is located in a defined revitalization area. Documentation must include a resolution from the locality supporting the development's location within the revitalization area. See language below.

*The above-referenced development is located in a Revitalization Area in the Town/City/County of _____, Virginia. The revitalization area is (i) **either** (1) blighted, deteriorated, deteriorating or, if not rehabilitated, likely to deteriorate by reason that the buildings, improvements or other facilities in such area are subject to one or more of the following conditions- dilapidation, obsolescence, overcrowding, inadequate ventilation, light or sanitation, excessive land coverage, deleterious land use, or faulty or otherwise inadequate design, quality or condition, **or** (2) the industrial, commercial or other economic development of such area will benefit the city or county but such area lacks the housing needed to induce manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; **and** (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area.*

Delete the language that does not apply, (i)(1) or (i)(2) above.

RESOLUTION OF BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA
DESIGNATING THE OAKWOOD SENIOR HOUSING PROPERTY REVITALIZATION
AREA PURSUANT TO VIRGINIA CODE § 36-55.30:2

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, November 19, 2019, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, pursuant to the provisions of the Public-Private Education Facilities and Infrastructure Act of 2002, as amended, Arlington Partnership for Affordable Housing, LLC (the “Developer”) has proposed to develop an approximately 150-unit affordable senior housing project (the “Development”) on a site in the Lee District as described on the attached Exhibit A (the “Development Site”).

WHEREAS, the Developer’s financing plan for the Development includes, among other things, an application to the Virginia Housing and Development Authority (“VHDA”) for competitive nine percent tax credits pertaining to a portion of the 150-unit proposed Development.

WHEREAS, the VHDA tax credit evaluation process provides that 15 additional points may be awarded to projects that meet the definition of a revitalization area pursuant to Virginia Code § 36-55.30:2 (“Revitalization Area”) and have been so designated by resolution of the governing body in which the Revitalization Area is located.

WHEREAS, the definition of a Revitalization Area used in Virginia Code § 36-55.30:2 is separate and distinct from terms “Revitalization Area” and “Revitalization District” as used in the various comprehensive plans for Fairfax County, Virginia. Any designation of the Development Site as a Revitalization Area does not in any manner affect any areas of the County that have been, or in the future may be, determined by the Board to be Revitalization Areas or Revitalization Districts.

WHEREAS, the Development Site meets the standards for a Revitalization Area as described in Virginia Code § 36-55.30:2, namely that (i) the development of the Development Site will benefit Fairfax County, but that such area lacks the housing needed to induce, among other things, the commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings, to locate or remain in such area, and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area.

NOW, THEREFORE, THE BOARD HEREBY DETERMINES as follows:

The above-referenced proposed Development is located in an area that is hereby designated a Revitalization Area in Fairfax County, Virginia in accordance with Virginia Code § 36-55.30:2. The Board has determined that (i) the commercial or other economic development of the Revitalization Area will benefit Fairfax County, but that this area lacks the housing needed to induce, among other things, the commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings, to locate or remain in this area, and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in this area and will induce other persons and families to live within this area and thereby create a desirable economic mix of residents in such area.

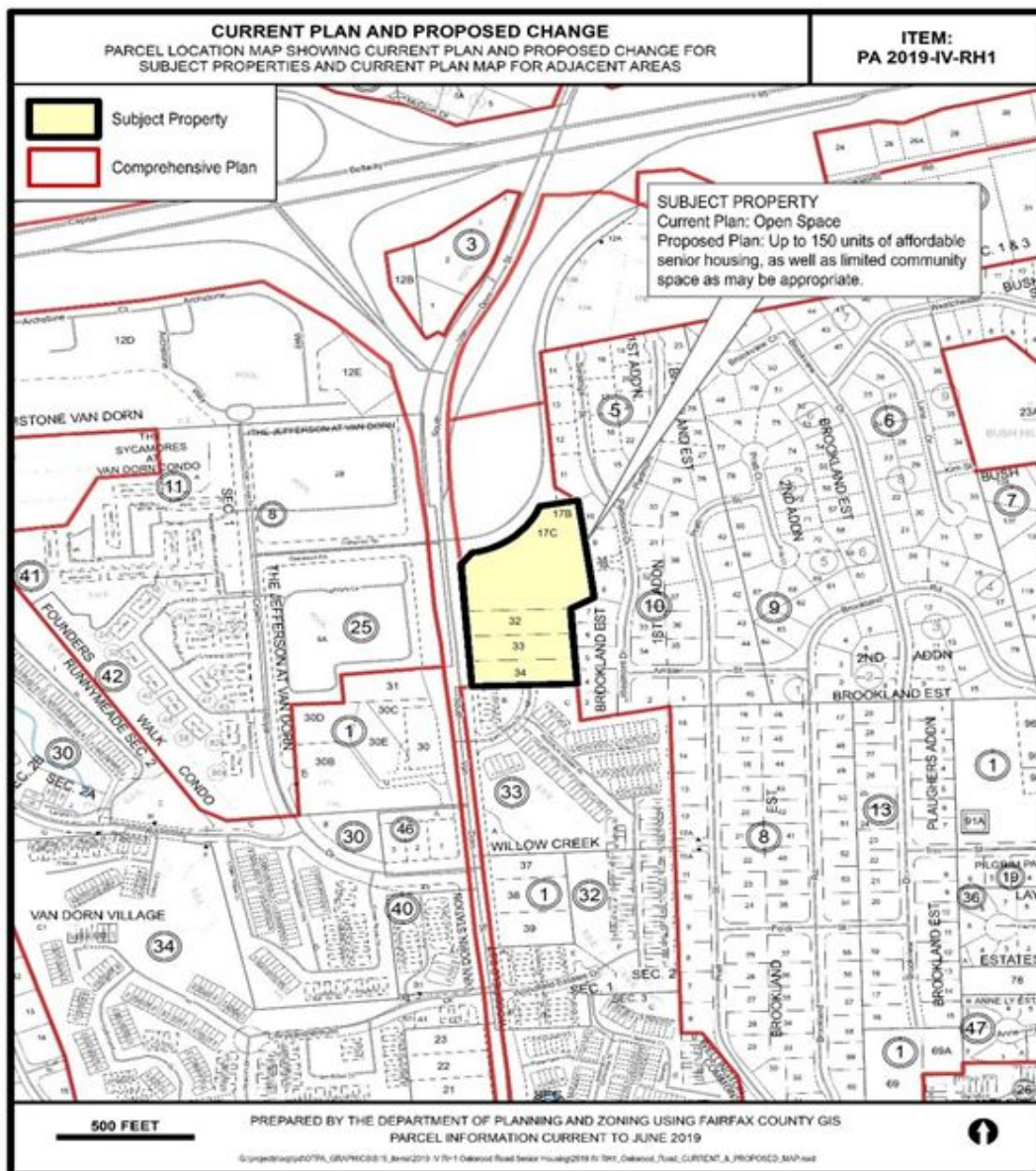
A Copy – Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

Exhibit A

Development Site

The Oakwood Senior Housing is located in a 6.2-acre site at the southeast quadrant of the intersection of South Van Dorn Street and Oakwood Road, (Tax Map Parcels 81-2 ((1))17C and 81-4 ((1))32, 33 and 34) in the Rose Hill Planning District, Bush Hill Community Planning Sector.



RESOLUTION OF BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA
DESIGNATING THE ONE UNIVERSITY PROPERTY A REVITALIZATION AREA
PURSUANT TO VIRGINIA CODE § 36-55.30:2

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, November 19, 2019, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, pursuant to the provisions of the Public-Private Education Facilities and Infrastructure Act of 2002, as amended, One University Development Partners, LLC (the “Developer”) has proposed to develop approximately 240 affordable multi-family and senior housing units (the “Development”) on a site in the Braddock District as described on the attached Exhibit A (the “Development Site”).

WHEREAS, the Developer’s financing plan for the Development includes, among other things, an application to the Virginia Housing and Development Authority (“VHDA”) for competitive nine percent tax credits pertaining to a 120-unit portion of the proposed Development.

WHEREAS, the VHDA tax credit evaluation process provides that 15 additional points may be awarded to projects that meet the definition of a revitalization area pursuant to Virginia Code § 36-55.30:2 (“Revitalization Area”) and have been so designated by resolution of the governing body in which the Revitalization Area is located.

WHEREAS, the definition of a Revitalization Area used in Virginia Code § 36-55.30:2 is separate and distinct from terms “Revitalization Area” and “Revitalization District” as used in the various comprehensive plans for Fairfax County, Virginia. Any designation of the Development Site as a Revitalization Area does not in any manner affect any areas of the County that have been, or in the future may be, determined by the Board to be Revitalization Areas or Revitalization Districts.

WHEREAS, the Development Site meets the standards for a Revitalization Area as described in Virginia Code § 36-55.30:2, namely that (i) the development of the Development Site will benefit Fairfax County, but that such area lacks the housing needed to induce, among other things, the commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings, to locate or remain in such area, and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area.

NOW, THEREFORE, THE BOARD HEREBY DETERMINES as follows:

The above-referenced proposed Development is located in an area that is hereby designated a Revitalization Area in Fairfax County, Virginia in accordance with Virginia Code § 36-55.30:2. The Board has determined that (i) the commercial or other economic development of the Revitalization Area will benefit Fairfax County, but that this area lacks the housing needed to induce, among other things, the commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings, to locate or remain in this area, and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in this area and will induce other persons and families to live within this area and thereby create a desirable economic mix of residents in such area.

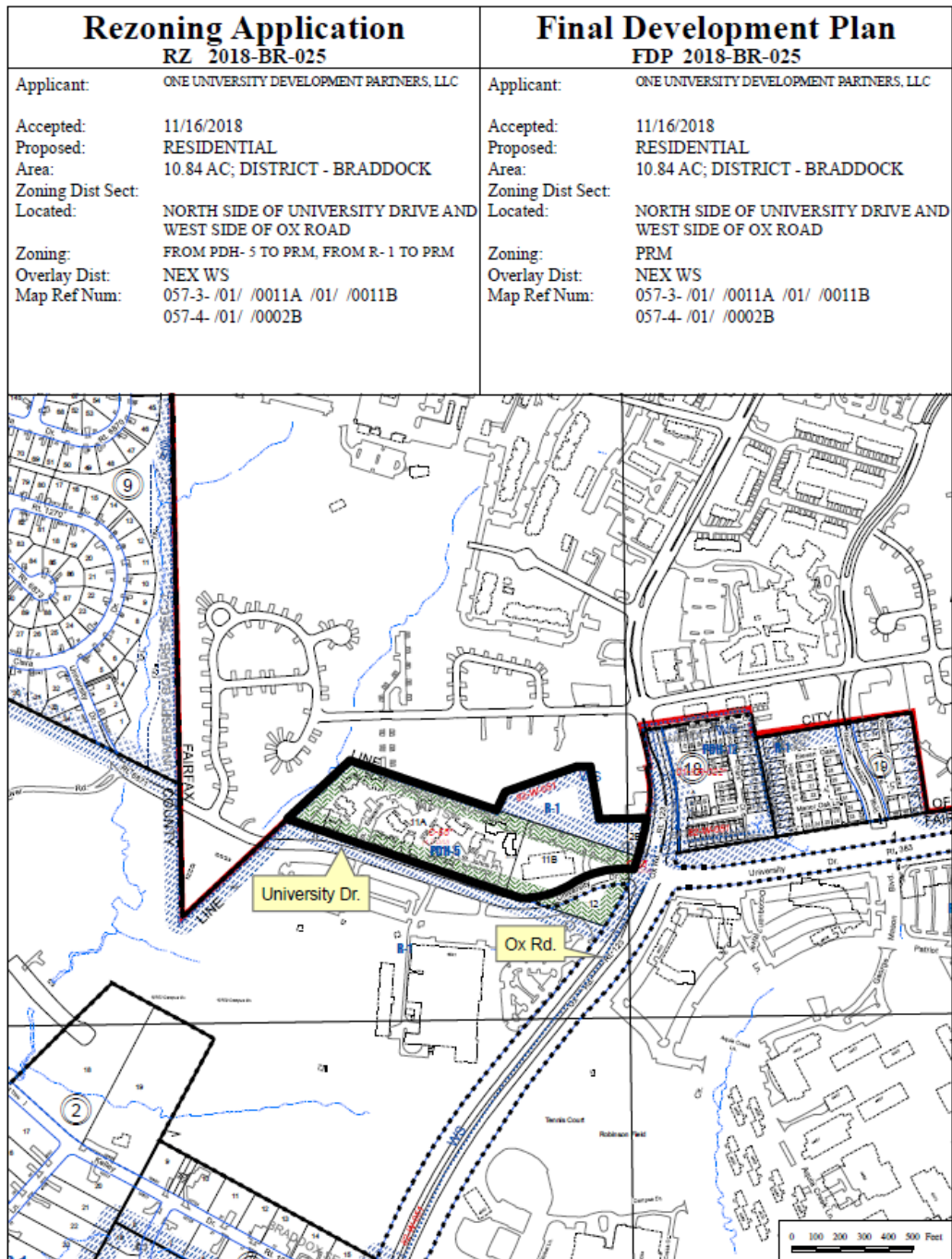
A Copy – Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

Exhibit A

Development Site

The One University Property is located in a 10.84-acre site on the west side of Ox Road, (Tax Map Parcels 57-3 ((1)) 11A & 11B; 57-4 ((1)) 2B) in the Braddock Magisterial District.



Board Agenda Item
November 19, 2019

ACTION - 5

Approval of a Project Agreement Between Cityline Partners LLC and Fairfax County for the Scotts Run Stream Restoration (Providence District)

ISSUE:

Board of Supervisors' authorization is requested for the County to execute an agreement with the Cityline Partners, LLC (Cityline) allowing the County and Cityline to partner on a stream restoration project in Scotts Run.

RECOMMENDATION:

The County Executive recommends that the Board approve and authorize the County Executive to sign an agreement with Cityline that gives Cityline the option to fund a portion of a stream restoration project in Scotts Run, which will satisfy its proffered conditions.

TIMING:

Board approval is requested on November 19, 2019.

BACKGROUND:

On April 9, 2013, the County approved Cityline's rezoning application RZ 2011-PR-010, which requires Cityline to design and construct a stream restoration project in a portion of Scotts Run (Cityline Plan) in the Scotts Run Stream Valley Park, which is owned by the Fairfax County Park Authority, and is more particularly identified on Tax Map No. 29-4 ((01)) parcel 31. Also, as part of the Stormwater Capital Improvement Program, the County has finalized designs and is ready to construct a stream restoration project in a section of the Scotts Run that is contiguous with the Cityline Plan (County Project). The County and Cityline want to implement the Cityline Plan and the County Project concurrently.

Under the proposed agreement, the County will solicit bids for the construction of the combined Cityline Plan and the County Project, and, based on the bid, Cityline will choose whether to fund its proportional share of construction costs or construct the Cityline Plan independent of the County Project.

Combining the stream restoration projects will allow the Cityline Plan to be implemented well before it would otherwise be completed if Cityline were to do it independently.

Board Agenda Item
November 19, 2019

Consolidation of the projects will also lower construction costs and promote the protection and restoration of stream valleys, which is a priority of the adopted Comprehensive Plan and part of the Tysons Urban Design Guidelines. Additionally, stormwater improvement and stream restoration projects for Tysons are included in the adopted Scotts Run Watershed Management Plan and are part of the Fiscal Year 2020 Capital Improvement Program.

FISCAL IMPACT:

There will be no fiscal impact resulting from the execution of this agreement.

ENCLOSED DOCUMENTS:

Attachment 1: Agreement for Construction of Scotts Run Stream Restoration

STAFF:

Rachel Flynn, Deputy County Executive

Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)

**AGREEMENT FOR CONSTRUCTION
OF
SCOTTS RUN STREAM RESTORATION**

This Agreement for Construction of Scott's Run Stream Restoration ("Agreement") is made as of the ____ day of _____, 2019 (the "Effective Date") by and between CITYLINE PARTNERS LLC, a Virginia limited liability company, hereinafter referred to as "Cityline", as applicant in the Rezoning (as hereinafter defined), and THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a political subdivision, hereinafter referred to as the "County".

WHEREAS, on April 9, 2013, the County approved Cityline's proffered rezoning application, specifically, RZ 2011-PR-010, which, in general, sets forth the redevelopment of eight parcels into a mixed use development containing office, hotel, residential and retail uses ("the Rezoning"); and

WHEREAS, Proffer No.98 of the Rezoning, which is attached hereto as Exhibit A, requires Cityline to provide plans for the restoration of the Scotts Run Stream Valley Park to the Fairfax County Park Authority to construct certain stream restoration improvements (referred to herein as "the Cityline Plan") on property shown on Tax Map No. 29-4 ((01)) parcel 31; and

WHEREAS, Proffer No.99(B) of the Rezoning, which also is attached hereto as part of Exhibit A, requires Cityline to, among other things, implement the Cityline Plan in phases as determined by Cityline after obtaining all necessary federal, state, and local permit approvals; and

WHEREAS, Proffer Nos. 98 and 99(B) are referred to herein as the "Stream Proffers"; and

WHEREAS, Cityline has submitted the Cityline Plan to the County; and

WHEREAS, the County has procured design plans to implement a stream restoration project on a downstream stretch of Scotts Run that is contiguous with the Cityline Plan ("the County Project"); and

WHEREAS, the County and Cityline desire to implement the Cityline Plan and the County Project concurrently ("the Scotts Run Project"), with Cityline funding its proportional share of construction costs, which is the cost of implementing the Cityline Plan as part of the Scotts Run Project, as required under Proffers 98 and 99(B); and

WHEREAS, on October ___, 2019, the Fairfax County Board of Supervisors authorized the County Executive to execute this agreement; and

WHEREAS, Cityline granted a Temporary Construction Easement to the County to provide a construction entrance into the stream valley, which is recorded in the Fairfax County Land Record in Deed Book 25846, at Page 827; and

WHEREAS, the Parties agree that all easements necessary to construct and maintain either the Scotts Run Project or the County Project have been obtained; and

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The recitals of this Agreement set forth above are incorporated herein and made a part of this Agreement.
2. The County will solicit bids for the Scotts Run Project to multiple contractors, requesting that the submitting Contractors provide a bid alternative for implementation of the Cityline Plan (the itemized cost of the Cityline Plan).
3. The County will provide Cityline with copies of all bids on the Scotts Run Project and notify Cityline which is the winning bid.
4. If the amount of the bid alternative in the winning bid (the "Bid Alternative") for the Scotts Run Project is less than \$____, Cityline will pay the County the amount of the Bid Alternative, as follows:
 - a. Five percent (5%) of the Bid Alternative at mobilization of construction activities;
 - b. Forty percent (45%) at fifty percent (50%) completion; and
 - c. Fifty percent (50%) at substantial completion.
5. The payments required in paragraph 4 must be paid to the County within 14 days after the County notifies Cityline that the events in 4.a, -.b, .and -.c have occurred.
6. If the Bid Alternative exceeds \$____, Cityline may agree to fund the Cityline Plan at the amount of the Bid Alternative after the County makes a reasonable effort to negotiate with the bidding contractors to reduce the cost of the Bid Alternative.

7. If negotiations by the County with the bidding contractors fail to reduce the amount of the Bid Alternative below \$_____, and Cityline does not agree to pay the Bid Alternative, it must notify the County of such decision, which upon that occurrence, this Agreement will be deemed terminated.
8. If Cityline rejects the Bid Alternative as set forth in paragraph 7 above, Cityline must satisfy the Stream Proffers independent of the County Project.
9. All County notifications to Cityline and payments to the County must be made to the following individuals by regular mail and e-mail:

To Cityline:
Tasso Flocos
Cityline Partners LLC
1651 Old Meadows Road, Suite 650
McLean, Virginia 22102
tflocos@citylinepartners.com

To Fairfax County:

Tiana Mason, Financial Specialist
Stormwater Planning Division
12000 Government Center Parkway, Suite 449
Fairfax, Virginia 22035

With a copy to:

Matthew Meyers
Stormwater Planning Division
12000 Government Center Parkway, Suite 449
Fairfax, Virginia 22035

10. Payment by Cityline of the Bid Alternative in full (as set forth in paragraph 4) will satisfy Cityline's obligations under the Stream Proffers.
11. All obligations of the County shall be subject to annual appropriations from the Board of Supervisors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below.

**THE BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA**

Date: _____

By: _____
Bryan J. Hill

STATE OF VIRGINIA)
) To-wit:
COUNTY OF FAIRFAX)

The foregoing instrument was acknowledged before me by Bryan Hill, County Executive, on behalf of the Board of Supervisors of Fairfax County, Virginia, this day of _____, 2019.

Notary Public

My Commission Expires: _____

[SIGNATURES CONTINUE ON NEXT PAGE]

CITYLINE PARTNERS LLC, a Virginia
limited liability company

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA)
COUNTY OF FAIRFAX) To-wit:

The foregoing instrument was acknowledged before me by _____,
_____ of Cityline Partners LLC, on behalf of Cityline Partners
LLC, this _____ day of _____, 2019.

Notary Public

My Commission Expires: _____

acoustical study prepared by a qualified acoustical consultant (the "Indoor Noise Study") addressing indoor noise levels, including proposed noise attenuation measures and proposed materials to ensure compliance with the interior DNL limit of 45 dBA or 50 dBA, as appropriate. The Applicant shall not obtain full-shell building permits until the E&D Chief has approved the applicable Indoor Noise Study, provided that a failure by the E&D Chief to review and respond to the Applicant within 60 days of receipt of the Indoor Noise Study shall be deemed approval of such study. Prior to the issuance of the first RUP for any residential building, the Applicant shall demonstrate through testing of noise levels that interior noise does not exceed 45 dBA.

97. Notification of Exterior Noise Levels. The Applicant shall notify potential tenants or purchasers of individual residential units with balconies, either in the lease or sales contract, that exterior noise levels may exceed 65 dBA, which is the policy established by Fairfax County for outdoor recreation in residential areas impacted by high noise levels.

PUBLIC FACILITIES

98. Scotts Run Stream Valley Plans. To address the Comprehensive Plan's recommendations regarding the provision of public facilities and stream valley improvements in Tysons Corner, the Applicant shall provide plans prepared by Wetland Studies and Solutions entitled "Scotts Run Preliminary Stream Restoration Plan," dated January 2011 (the "Restoration Plan") for the restoration of the Scotts Run Stream Valley Park to the FCPA at no cost. The Restoration Plan shall be modified by the Applicant to permit phased construction and shall be submitted to Fairfax County at no cost within one hundred eighty (180) days of the approval of the rezoning applications.

PUBLIC FACILITIES

PROFFERS APPLICABLE ONLY TO RZ 2011-PR-010 (LAND BAY WEST)

The following Proffer 99 shall be applicable solely to Land Bay West that is subject to RZ 2011-PR-010. The term Applicant as used in Proffer 99 shall mean and refer to only the owner(s) of Land Bay West, that is subject to RZ 2011-PR-010, and its successors and assigns.

99. Public Facilities. To address the Comprehensive Plan's recommendations regarding the provision of public facilities and athletic fields in Tysons Corner, the Applicant shall provide the following:

A. Athletic Field.

- (i) The Applicant shall install a synthetic turf athletic field with lights (the "Athletic Field"), approximately 210 feet x 250 feet, which includes fifteen (15) foot wide overruns, and parking on a portion of the parcel identified among the Fairfax County tax assessment records as 29-4 ((6)) 96A ("Parcel 96A" or the "Taft Site") as generally shown on Sheet L-4 of the CDP. The Athletic Field as shown on Sheet L-4 of the CDP shall be designed so that it may be expanded onto adjacent property to the north by

others. The Athletic Field design shall be determined in coordination with the FCPA Synthetic Turf Construction Manager and shall satisfy the athletic field requirement as defined by the recommendations of the Comprehensive Plan for the Application Property and that property subject to RZ 2011-PR-009, up to 1,500,000 square feet of GFA. Should RZ 2011-PR-009 be approved by the Board with more than 1,500,000 square feet of GFA, the difference in athletic field credit shall be addressed on-site by the Applicant in RZ 2011-PR-009.

- (ii) To allow construction of the Athletic Field, the Applicant, at its sole cost and expense, shall submit to DPWES an RPA Exception application for redevelopment that shall be evaluated and administratively approved by DPWES as permitted redevelopment. The RPA Exception shall include a Water Quality Impact Assessment, and a floodplain study, if needed. Should DPWES not approve the RPA Exception application submitted by the Applicant, the size of the Athletic Field described in Proffer 99.A.(i), shall be proportionately reduced in size so that it does not encroach in the RPA, without a corresponding reduction in field credit.
- (iii) The Athletic Field, subject to receipt of approvals described above, shall be constructed no later than thirty-six (36) months after the conveyance of the Fire Station as described in Proffer 99.D.(vii). The Applicant, within its sole discretion, may complete construction earlier than this time period. That portion of Parcel 96A that supports the Athletic Field shall be dedicated to Fairfax County, subject to a reservation of density credit under Section 2-308 of the Zoning Ordinance, within one hundred twenty (120) days following completion of construction of the Athletic Field and bond release, except as may be extended in accordance with the provisions of Proffer 104.
- (iv) In addition to the Athletic Field improvements described above, the Applicant shall contribute the sum of \$125,000.00 to the Board of Supervisors to be distributed within the discretion of the Providence District Supervisor for park improvements and/or design of stream improvements in the vicinity of the Application Property. Said contribution shall be made within sixty (60) days of the approval of this rezoning application.

B. Stream Valley Improvements.

- (i) As permitted under Zoning Ordinance Section 2-903, Paragraph 7, the Applicant shall submit the Restoration Plan, as defined in Proffer 98, to the Army Corps of Engineers for approval under a Nationwide Permit (NWP) #27 and to the Department of Environmental Quality (DEQ) for confirmation that the work proposed under NWP #27 satisfied DEQ's Section 401 Water Quality Certification for a NWP #27 approval. Upon approval of the Restoration Plan, the Applicant shall obtain a permit from

DPWES and construct that phase of the Restoration Plan, as modified by the Applicant to identify construction phases, from Route 123 to the Taylor Block as shown on the CDP, subject to receipt of all necessary easements from the FCPA, WMATA and any other property owner as necessary, at no cost, exclusive of administrative costs as may be associated with the easements, including review fees and recordation among the Fairfax County land records. Said improvements shall be constructed in one or more phases as determined by the Applicant, in coordination with FCPA, with the site development work associated with an approved FDP on Grant Building Site A or earlier as elected by the Applicant within its sole discretion. Upon completion of improvements approximately 27,509 square feet of land as shown on the CDP shall be dedicated to the FCPA, subject to a reservation of density credit under Section 2-308 of the Zoning Ordinance.

- (ii) The Applicant shall install hardscape improvements, including, but not limited to, pedestrian pathways, terraces, seating, signage, public art and a pedestrian bridge crossing the stream valley, to improve its condition and facilitate its use. The construction of all hardscape improvements in the designated RPA shall be deemed a permitted improvement and shall not necessitate the approval of an RPA exception. Improvements shall be constructed subject to receipt of necessary easements from the FCPA, WMATA, and any other property owner as necessary, at no cost, exclusive of administrative costs as may be associated with the easements, including recordation among the land records. Improvements shall be in substantial conformance with the concepts and locations as shown on Sheet L-8 of the CDP as may be adjusted at FDP and site plan approval to allow for final engineering and design considerations. In addition, the trails proposed to be constructed on Taylor Building Site A and the adjacent stream valley shall be field located with the FCPA trails coordinator to minimize impacts on existing mature trees. Additional plantings shall be installed to supplement existing vegetation. Said improvements shall be constructed in one or more phases as determined by the Applicant with development of Grant Building Site A, or earlier as elected by the Applicant, in coordination with FCPA, within its sole discretion. While subject to public access easements, the Applicant shall retain private ownership of and maintain the landscape improvements adjacent to Grant Road on Grant Building Site A and Grant Building Site B, and reserves the right to reasonably restrict access for limited times for special events, security, maintenance and repairs and/or safety purposes.
- (iii) The FCPA shall be responsible for regular maintenance of the trails and pedestrian pathways installed by the Applicant within the stream valley. The remaining hardscape improvements installed in the stream valley by the Applicant shall be maintained by the Applicant subject to receipt of a right of access at no cost. At time of construction of the improvements, the Applicant shall enter into a mutually acceptable maintenance

ACTION - 6

Endorsement of Interstate 66 Trail Name (Providence, Braddock, Springfield, and Sully Districts)

ISSUE:

Board endorsement of recommended Interstate 66 trail name in Fairfax County, and request for Commonwealth Transportation Board (CTB) concurrence.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve a resolution (Attachment I) to endorse a name for the collection of trails being completed by Fairfax County and the Transform 66 Express Lanes Project, and request the CTB's concurrence with the name.

TIMING:

Board action is requested on November 19, 2019, so that the CTB can take action on the Board's request in early 2020.

BACKGROUND:

The Virginia Department of Transportation's (VDOT) Transform 66 Outside the Beltway Express Lanes Project will install 22.5 miles of dynamically-tolled express lanes from the I-495 Beltway to University Boulevard in Prince William County. In addition to the express lanes, the project also accommodates future transit in the highway median and reconfigures highway interchanges to address congestion and access needs. As part of the collaboration between VDOT and Fairfax County Department of Transportation, the Transform 66 Express Lanes Project will also construct 11 miles of a pedestrian and bike trail in Fairfax County. Trail segments that cannot be accommodated within the highway right-of-way are to be funded by Fairfax County and constructed as part of VDOT's locally administered projects.

To assist in its identification as a greater trail network, a public process was conducted to select a name for this trail. According to § 33.2-213, which allows the CTB to name

Board Agenda Item
November 19, 2019

transportation facilities so that signage may be placed and maintained by VDOT, a resolution from the locality requesting such naming is required.

Suggestions for trail names were gathered by FCDOT and solicited at two public meetings for trails in Spring 2019. A final list of eight potential names were shared with members of the Board of Supervisors in whose districts the trail resides and were then included in an online public survey. Respondents were asked to choose up to two potential trail names. The names included in the survey were:

- Sixty-Six or 66 Parallel
- Sixty-Six or 66 Ramble
- Capital Gateway
- Dogwood Trail
- East-West Gateway
- Heart of Fairfax Trail
- Kaleidoscope Trail
- Mid-County Trail

A total of 1,124 respondents participated in the survey. As a result, FCDOT staff recommends “66 Parallel Trail” be endorsed by the Board of Supervisor and forwarded to the CTB for final approval.

FISCAL IMPACT:

According to § 33.2-213, the locality is responsible for costs associated with the new trail name as necessitated for the production, placement, and maintenance of signage. However, the \$100,000 approximate cost for such wayfinding needs would be absorbed in existing trail wayfinding efforts that are already budgeted. There is no impact on County General Funds.

ENCLOSED DOCUMENTS:

Attachment I: Resolution Requesting the Commonwealth Transportation Board Name the Future Trail Along I-66

STAFF:

Rachel Flynn, Deputy County Executive

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

Martha Elena Coello, Chief, Special Projects Division, FCDOT

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 Tuesday, November 19, 2019, at which meeting a quorum was present and voting, the following resolution was adopted.

WHEREAS, Fairfax County and the Virginia Department of Transportation have collaborated on the creation of a pedestrian and bicycle trail network along the Interstate 66 Corridor to be completed by Fairfax County and the Transform 66 Outside the Beltway Express Lanes Project, and;

WHEREAS, the Commonwealth Transportation Board has been given the authority of naming of transportation facilities according to § 33.2-213; and

WHEREAS, to process these requests, the Commonwealth Transportation Board requires a resolution requesting such naming from the locality within which the transportation facility is located, and;

WHEREAS, an online public survey was conducted to provide feedback on eight potential trail names and;

WHEREAS, County staff has recommended and the Board of Supervisors has endorsed “66 Parallel Trail” be advanced as the name for the new trail to accompany the Interstate 66 Express Lanes Project,

NOW THEREFORE, BE IT RESOLVED, that this Board requests the Commonwealth Transportation Board’s approval of “66 Parallel Trail” for the naming of the comprehensive trail being constructed along Interstate 66 in conjunction with the Express Lanes project.

BE IT FURTHER RESOLVED, that Fairfax County agrees to pay the costs of producing, placing, and maintaining the signs needed for this naming.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

ACTION - 7

Authorization for the Fairfax County Redevelopment and Housing Authority (FCRHA) to Make Housing Blueprint Loans to One University Family, LLC and One University Senior, LLC in the Aggregate Amount of \$6,500,000 to Assist in the Financing of the Construction of One University Apartments (Braddock District)

ISSUE:

The Board of Supervisors is requested to authorize the Fairfax County Redevelopment and Housing Authority (FCRHA) to make two Housing Blueprint Loans in the aggregate amount of \$6,500,000 for the One University Apartments (Project), in the Braddock District. The loans will be made to subsidiaries of SCG Development Partners, LLC (SCG Development) as follows: \$2,000,000 to One University Family, LLC for 120 multifamily affordable units and \$4,500,000 to One University Senior, LLC for 120 senior affordable units. Although the division of the loans may be modified prior to closing, the total amount of \$6,500,000 will not change.

RECOMMENDATION:

The County Executive recommends that the Board authorize the FCRHA to make the proposed loans in the aggregate amount of \$6,500,000 to One University Family, LLC and One University Senior, LLC.

TIMING:

Immediate. Approval is needed for One University Family, LCC to apply to the Virginia Housing Development Authority (VHDA) in March 2020 for 9% competitive low-income housing tax credits (LIHTC) and One University Senior, LLC to apply for 4% LIHTC.

BACKGROUND:

In July 2019, the Department of Housing and Community Development (HCD) issued a Notice of Funding Availability (NOFA) for Housing Blueprint Funds of \$14,745,237. In response to the NOFA, HCD received a proposal from SCG Development requesting \$6,500,000 to assist in developing the Project; the HCD Selection Advisory Committee subsequently recommended an award of \$6,500,000 in Housing Blueprint Funds for the Project.

Board Agenda Item
November 19, 2019

Ownership:

The FCRHA currently owns an approximately 10.8-acre site comprised of three parcels at 4348 Old Ox Road, 4400 St. Edwards Place, and 4500 University Drive, Fairfax, Virginia 22030.

SCG Development, through their subsidiaries, One University Family, LLC and One University Senior, LLC, will each respectively enter into a Ground Lease with the FCRHA for portions of the FCRHA property, with terms not to exceed 99 years. Under the terms of the Ground Lease, SCG Development will construct 120 units intended for individuals and families earning between 30 percent and 60 percent of Area Median Income (AMI) and 120 units intended for seniors aged 62 and up earning 60 percent of AMI and below. Concurrently, but unrelated to this Housing Blueprint Loan, a portion of the FCRHA property will be leased to RISE Development for the development of 333 units of student housing. None of the requested Blueprint Funds will be used for this purpose.

Applicant:

SCG Development is a privately held real estate development firm focused on creating quality affordable and workforce rental residences with a portfolio of over 40 properties across the country, ranging from high-rise new construction, to adaptive reuse of historic buildings, to the acquisition and rehabilitation of existing apartment communities.

SCG Development has developed and rehabilitated 4,000 units throughout the nation. They are headquartered in Fairfax County and have done extensive work in Washington D.C., Maryland and Virginia. They recently completed The Residences at Government Center in Fairfax, Virginia, an EarthCraft Home-certified gold, 270-unit apartment complex that was financed with low income housing tax credits. This project has received several notable awards including the 2018 International Economic Development Council Excellence in Economic Development Silver Award Recipient, the 2017 Best Affordable Development Award at the Virginia Governor's Housing Conference, and the 2017 Outstanding Project Innovation Award from the National Council for Public-Private Partnerships (NCPPP). SCG Development has also developed other properties in the Greater Washington D.C. and Virginia area, including Forest Village Apartments in Fredericksburg, VA (192 units), Georgia Commons in Washington D.C. (130 units), Park Heights Apartments in Baltimore, MD (100 units), and Mallard Cove Apartments (160 units) and Marsh Landing Apartments (250 units) in Portsmouth, VA (410 units).

Project Description:

The Project received zoning approval on September 24, 2019, for a total of 240 new units: 120 units for individuals and families with incomes between 30 percent and 60 percent of AMI, and 120 units for seniors aged 62 and up with incomes at 60 percent of AMI or below. Please see Attachment 2 for a breakdown of affordability.

There are 46 existing affordable townhomes currently located on the FCRHA property, all of which are operated under the federal Rental Assistance Demonstration program (RAD). These 46 townhomes, as well as the current FCRHA and Property Improvement and Maintenance Division offices, will be demolished as part of the Project. SCG Development will be required to relocate the townhome residents. Replacement housing will be provided during construction and those tenants will be given the option to move into the new multifamily or senior units after construction completion. The RAD program will be maintained for 46 units in the multifamily building when construction is complete. HCD staff will ensure that the relocation plan complies with Uniform Relocation Assistance guidelines. Ten percent of units in each building will meet Universal Design specifications.

There will be 384 underground parking spaces (192 parking spaces for each building), 45 surface parking spaces, and 10 dedicated parking spaces for the FCRHA.

The Project is adjacent to George Mason University (GMU) and is located within a quarter of a mile of several Fairfax City and Fairfax County bus stops. Walking and bicycle paths will be available to access the university and Downtown Fairfax from the property.

A variety of support services are under consideration for the Project, including: (1) assistance with housing vouchers and income-reporting; (2) on-site job training and extended learning opportunities; and (3) potentially working with the student housing project to create a start-up incubator space.

Potential Benefits of the Project:

- a) Addition of 240 units of affordable housing in a highly cost-burdened Fairfax/Fairfax City area, including 24 three and four-bedroom units that are in a high demand in the area.
- b) Close proximity to multiple bus stops, shopping and restaurants, grocery stores and GMU campus amenities.
- c) Affordability period of at least 30 years pursuant to the Extended Use Regulatory Agreement with VHDA.

- d) Incorporation of multiple universal and sustainable design features.
- e) Five percent of the units in each building will be Americans with Disabilities Act compliant.

Assessed Value (2019):

	<u>4400 St. Edwards Place</u>	<u>4500 University Drive</u>
Land:	\$2,668,000	\$1,687,340
Building:	\$10,440,870	\$721,870
Total:	\$13,108,870	\$2,409,210

Appraised Value:

The parcel that is located on the Old Ox Road is not subject to the appraisal as it is not part of the affordable housing portion of the development.

HCD engaged an independent appraiser from Robert Paul Jones, Inc. to ensure that the valuation provided by the appraisal fully collateralizes the FCRHA Housing Blueprint Loans. The Department of Tax Administration will also review and approve the values as well as the methodology used to determine those values.

Affordability; Ground Lease; Financing Plan; Terms of Housing Blueprint Loan
Please see Attachment 2.

Closing:

The loans will be closed following approvals by the FCRHA and the Board of Supervisors. Requirements for the closing include, but are not limited to, the following items being completed:

1. Simultaneous closings of First mortgage loan, Housing Blueprint Loan and tax-exempt bond financing and disbursement of funds
2. Commitment and disbursement from tax credit investor
3. Tax-exempt Bonds issued by FCRHA
4. Approval of the Relocation Plan by HCD Staff
5. Final underwriting by HCD Staff
6. A satisfactory appraisal of the property that collateralizes both the loans
7. Receipt and approval of all third-party reports by HCD staff
8. Other factors as deemed necessary to protect the interest of the FCRHA and Fairfax County
9. Closing is conditioned upon, among other things, One University Family, LLC closing on the 9% LIHTC financing. If One University Family, LLC is not awarded 9% LIHTC in the 2020 cycle, it will have the option of reapplying again

in each of the annual cycles for 2021, 2022, and 2023, unless the transaction has been terminated by either party.

Risks and Concerns:

1. Interest rate risk on the first mortgage: The interest rate will not be fixed until closing. Should interest rates increase before closing above the current estimated interest rate of 4.25 percent, SCG Development will have to seek additional sources of funds or identify cost savings in the development budget.
2. FHA commitment/HUD approval risk: If FHA commitments and other applicable HUD approvals are not received well before closing, the timing for the project will need to be re-evaluated.
3. Tax credit equity price: Currently, the tax credits have been priced at \$0.95/credit dollar. Should equity prices fall below current levels, SCG Development will have to identify additional funds or cost savings in the development budget.

STAFF IMPACT:

None.

FISCAL IMPACT:

Funding of up to \$6,500,000 will be allocated from funds identified as part of the Fiscal Year 2020 Housing Blueprint Project in Fund 30300, Penny for Affordable Housing Fund, project 2H38-180-000 with a project balance of \$14,758,237 as of October 24, 2019.

The FCRHA will receive an ongoing monitoring fee of \$5,000, escalating at three percent annually for a period of at least thirty years for the Housing Blueprint Loan. All the fees will go into Fund 81000, FCRHA General Operating Fund.

ENCLOSED DOCUMENTS:

Attachment 1 – Vicinity Map

Attachment 2 – Affordability; Ground Lease; Financing Plan; Terms of Housing Blueprint Loan

Attachment 3 – Housing Blueprint Term Sheet for Four Percent

Attachment 4 – Housing Blueprint Term Sheet for Nine Percent

Board Agenda Item
November 19, 2019

STAFF:

Tisha M. Deeghan, Deputy County Executive

Thomas Fleetwood, Director, Department of Housing and Community Development (HCD)

Teresa Lepe, Acting Deputy Director, Real Estate, Finance and Development, HCD

Jyotsna Sharma, Associate Director, Real Estate Finance and Grants Management (REFGM), HCD

Debashish Chakravarty, Senior Real Estate Finance Officer, REFGM, HCD

ASSIGNED COUNSEL:

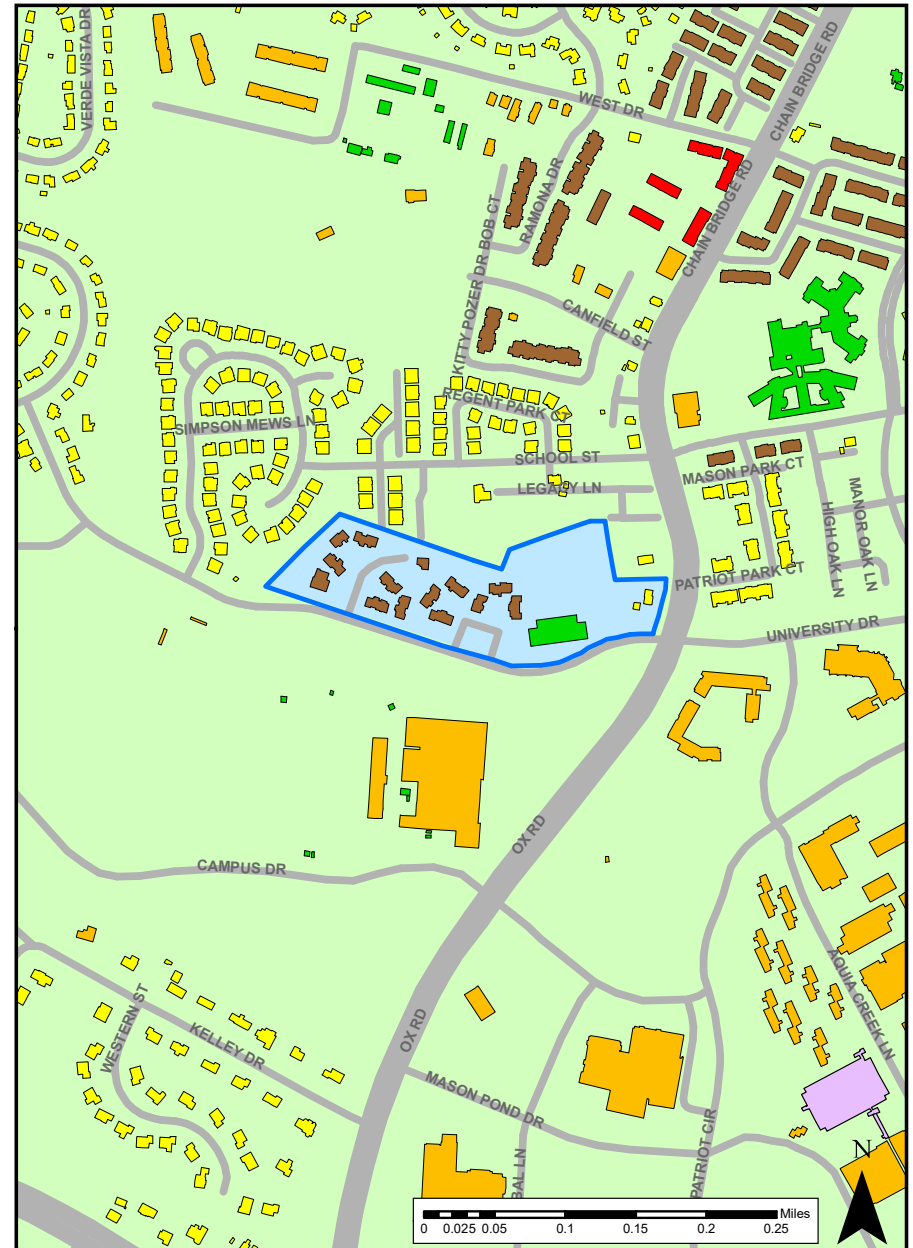
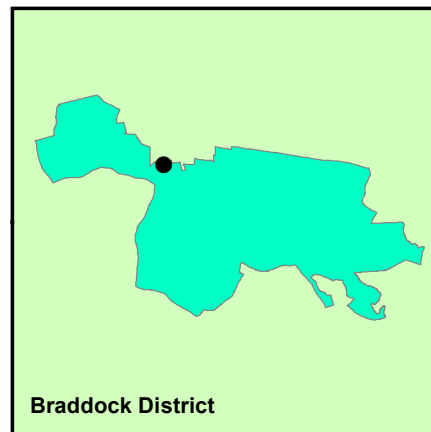
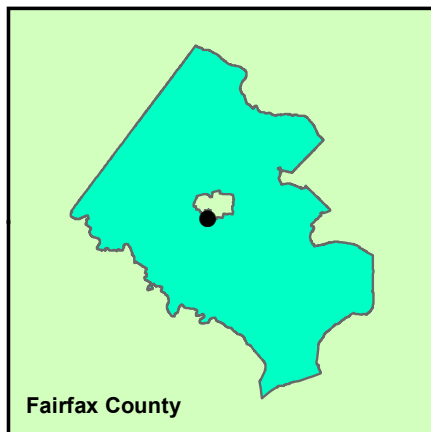
Cynthia A. Bailey, Deputy County Attorney

Susan Timoner, Assistant County Attorney

One University

4500 University Drive, Fairfax, VA 22030

Attachment 1



Affordability; Ground Lease; Financing Plan; Terms of Housing Blueprint LoanRents and Affordability Restrictions:

The following tables represent the proposed rents for One University Apartments, with the multifamily units using nine percent low-income housing tax credits (LIHTC) and the senior units using four percent LIHTC:

Multifamily Units (Nine Percent LIHTC)

RAD Units 30% AMI Units	# Units	Gross Rent	Utility Allowance	Net Rent
One Bedroom	12	\$694	\$100	\$594
Two Bedroom	11	\$819	\$124	\$695
Three Bedroom	17	\$1,008	\$147	\$861
Four Bedroom	6	\$1,260	\$175	\$1,085
Total/Average	46	\$914		\$781
50% AMI Units	# Units	Gross Rent	Utility Allowance	Net Rent
Studio	0	\$1,080	\$81	\$999
One Bedroom	1	\$1,137	\$100	\$1,037
Two Bedroom	13	\$1,365	\$124	\$1,241
Three Bedroom	0	\$1,577	\$147	\$1,430
Total/Average	14	\$1,349		\$1,226
60% AMI Units	# Units	Gross Rent	Utility Allowance	Net Rent
Studio	5	\$1,274	\$81	\$1,193
One Bedroom	0	\$1,365	\$100	\$1,265
Two Bedroom	54	\$1,638	\$124	\$1,514
Three Bedroom	1	\$1,892	\$147	\$1,745
Total/Average	60	\$1,612		\$1,491
TOTAL UNITS:	120			

Senior Units (Four Percent LIHTC)

60% AMI Units	# Units	Gross Rent	Utility Allowance*	Net Rent
Studio	0	\$1,274	\$81	\$1,193
One Bedroom	85	\$1,365	\$100	\$1,265
Two Bedroom	35	\$1,638	\$124	\$1,514
Three Bedroom	0	\$1,892	\$147	\$1,745
Total/Average	120	\$1,445		\$1,496
TOTAL UNITS	120			

*Utility allowance includes electricity, water, and sewer.

Ground Lease

SCG Development, through their subsidiaries, One University Family, LLC and One University Senior, LLC, will each respectively enter into a Ground Lease with the FCRHA for portions of the FCRHA property, with terms not to exceed 99 years. Under the terms of the Ground Lease, SCG Development will construct 120 units intended for individuals and families earning between 30 percent and 60 percent of Area Median Income (AMI) and 120 units intended for seniors aged 62+ earning 60 percent of AMI. Concurrently, but unrelated to this Housing Blueprint Loan, a portion of the FCRHA property will be leased to RISE Development for the development of 333 units intended for student housing. In addition, SCG Development will, upon the final completion of construction, lease back to the FCRHA a meeting space portion of the new multi-family building comprised of approximately 3,000 gross rental square feet. If the financial contingencies regarding the tax credit approvals and tax-exempt bonds are not secured, the option to exercise the Ground Leases may be terminated.

Financing Plan:

SCG Development is proposing to finance the development using both nine percent and four percent LIHTC. The overall project will be financed using two separate financing mechanisms: a) the multifamily units of 120 units with nine percent LIHTC, Federal Housing Administration (FHA) financing, and subordinate financing from the FCRHA of \$2,000,000 (Housing Blueprint Loan); and b) the senior units of 120 units with four percent LIHTC with FCRHA short-term tax-exempt bonds, FHA financing, and subordinate financing from the FCRHA of \$4,500,000 (Housing Blueprint Loan). To the extent, SCG Development Partners changes the structure of its development in a manner that warrants the creation of condominium regime for LIHTC purposes, the change shall not affect the aggregate amount of the Housing Blueprint loan.

The project will provide a total of 240 affordable units and serve an income mix of 30 percent of Area Median Income (AMI), 50 percent of AMI, and 60 percent of AMI levels. The construction will take place over a period of 24 months after closing and is expected to commence in Winter 2020. SCG Development is still finalizing the details and may request that the loan amounts between the two transactions be adjusted. However, the aggregate amount will remain at \$6,500,000.

SCG Partnership in collaboration with FCRHA has evaluated the use of the four percent and nine percent tax credits applied to different areas of the Project. Both the proposed nine percent for the multi-family building and four percent for the senior building, and conversely the four percent for multi-family and nine percent for senior, are financially viable. The final selected option may modify the \$6,500,000 split between One University Family and One University Senior; however, the approval will not exceed this requested amount of \$6,500,000 in Housing Blueprint Loans.

One University Multifamily Units (Nine Percent LIHTC) 120 Units

SOURCES	
Tax Credit Equity	27,544,000
FHA Financing (FHA 221(d)(4) Loan)	14,200,000
Deferred Developer Fee	1,907,214
Housing Blueprint Loan	2,000,000
Total	45,651,214
DEVELOPMENT COSTS	
Structure/Construction	31,329,427
Hard Cost Contingency	1,575,575
Architecture and Engineering	3,637,730
Relocation	63,504
Printing/Travel - Due Diligence	52,920
Traffic Studies	15,876
Legal	391,333
Market Studies/Appraisal	15,000
FHA Financing	468,600
Tax Credit Fees (7%)	202,959
RE Taxes & Insurance (const. period)	105,839
Mortgagor's Cost Cert	10,000
Title and Recording	142,883
Advertising	89,964

FF&E	190,510
Operating Reserve	781,004
FCRHA Public Space Buildout	360,000
Working Capital Reserve HUD (4%)	568,000
Interest Expense	1,500,000
Bridge Loan Costs	400,000
Development Fee	3,750,090
Total	\$45,651,214

For the multifamily nine percent LIHTC transaction, SCG Development plans to seek an FHA loan at an interest rate of 4.25 percent with a 40-year amortization.

One University Senior Units (Four Percent LIHTC) 120 Units

SOURCES	
Tax Credit Equity	8,645,000
FHA Financing (FHA 221(d)(4)Loan)	17,000,000
Deferred Developer Fee	1,645,877
Housing Blueprint Loan	4,500,000
Total	\$31,790,877
DEVELOPMENT COSTS	
Structure/Construction	20,043,420
Hard Cost Contingency	1,008,674
Architecture and Engineering	3,204,395
Relocation	56,496
Printing/Travel - Due Diligence	47,080
Traffic Studies	14,124
Legal - Partnership	303,667
Market Studies/Appraisal	15,000
FHA Financing	391,000
Bond Cost of Issuance	320,000
Tax Credit Fees (7%)	63,698
RE Taxes & Insurance (const. period)	94,161
Mortgagor's Cost Cert	10,000
Title and Recording	127,117
Advertising	80,036

FF&E	169,489
Operating Reserve	871,077
Working Capital Reserve HUD (4%)	680,000
Interest Expense	1,334,711
Bridge Loan Costs	100,000
Development Fee	2,856,732
Total	\$31,790,877

For the senior units, four percent LIHTC transaction, SCG Development will apply for FCRHA tax-exempt bonds that are fully cash-collateralized by the proceeds of a 221(d)(4) FHA loan. At the same time as the bonds are issued, SCG Development will secure FHA financing for the project in the form of an FHA-insured mortgage. The FHA loan will be in the approximate amount equal to \$17,000,000. This will be evidenced by a mortgage note and mortgage recorded in the first lien position on the Project. Based on the information provided, SCG Development will need a minimum bond amount of \$15,000,000 (50 percent of eligible basis plus land) to fund this Project, which will be determined before the closing and upon completion of full underwriting. Staff will bring forward an item discussing the short-term bond financing structure for approval and authorization to hold the TEFRA hearing at a later date.

Terms of Housing Blueprint Loan:

The subordinate Housing Blueprint Loans, the subordinate loans, will be closed simultaneously with all other permanent funding sources in this project. The interest rate for the Blueprint Loans will be two percent simple interest per annum. The Housing Blueprint Loans will be disbursed at construction completion. Interest will start accruing at the time the first mortgages begin to amortize.

The payment of all principal and interest will be deferred and simple interest will accrue for 30 years or such other term as is coterminous with the first mortgages. The entire indebtedness will become due and payable upon (i) the transfer of the Property, unless approved in advance by the FCRHA, (ii) refinancing, unless approved in advance by the FCRHA, or (iii) failure to comply with the requirement of Housing Blueprint Loans and/or first mortgages. The Housing Blueprint Loans will be “cash flow” loans, which means that principal and interest payments are deferred unless there is sufficient cash flow, in which case cash flow is applied first to the accrued interest and then to the principal. At the end of the term of 30 years or such other term as is coterminous with the first mortgage loans, the outstanding principal balance along with any accrued interest shall become due and payable. The annual loan payments shall be payable only from 50 percent of the cash flow remaining after payment of the deferred developer fee in full. Refinancing may occur at the discretion of the FCRHA and as allowed by FCRHA policies. In the event that the Housing Blueprint Loans are paid off before maturity of

the loans, the project owner shall maintain the affordability period according to the Housing Blueprint goals, for a minimum term of 30 years or for a term coterminous with the first mortgages, whichever is longer.

Housing Blueprint Loan Term Sheet:

Borrower: One University Senior, LLC

Address: Fairfax, Fairfax County, Virginia

Amount: \$4,500,000, subject to terms and conditions

Interest Rate: A minimum rate of 2% simple interest per annum with a maximum rate equal to the Applicable Federal Rate (AFR). Interest rate during construction will be 0% per annum.

Amortization: N/A - will be deferred for repayment as provided below

Term: The payment of all principal and interest (in the event of default and as provided in the Housing Blueprint Loan documents) will be deferred and simple interest will accrue for 30 years or such other term as is coterminous with the primary loan from a third-party lender but the entire indebtedness will become due and payable upon transfer of the Property without the prior approval of the FCRHA, refinancing, or failure to comply with the Housing Blueprint and/or loan documents requirements. *Although the principal and interest are deferred, the loan from the FCRHA will be a cash-flow loan, which means that, should there be cash flow, it will get applied first to the accrued interest and then to the principal.* At the end of the 30-year term or such other term as is co-terminus with the primary loan, the outstanding principal balance along with any accrued interest shall become due and payable. The annual loan payments shall be payable only from fifty percent (50%) of the cash flow remaining after payment of the deferred developer's fee in full. During the 30-year term or such other term as is co-terminus with the primary loan, refinancing may occur at the discretion of the FCRHA and as allowed by FCRHA policies. In the event that the Housing Blueprint Loan is paid off before maturity of the loan, the developer shall maintain the affordability period according to the Housing Blueprint goals, for a minimum term of thirty (30) years or for a term coterminous with the first mortgage, whichever is greater.

Security: Second Lien Deed of Trust on the Property, or such other lower priority lien position necessary to avoid reallocation of the tax credits under IRC Section 42 of the Internal Revenue Code, with reasonable assurance that the value of the Property exceeds the aggregate debt of the higher priority loans and the Housing Blueprint loan.

Conditions:

- 1) This Housing Blueprint Loan is for the specific purpose of providing a loan associated with the Borrower's project consisting of 120 rental units located in Fairfax (Fairfax County) (Tax Map Number: 0573 01 0011).
- 2) The Housing Blueprint Loan will close simultaneously with the permanent mortgage lender(s) and the low-income housing tax credit equity provider.
- 3) There will be no further subordinate debt permitted to be placed on the Property, other than the loans represented in the application for this loan, without the permission of the FCRHA.
- 4) Borrower will pay an annual monitoring fee of \$5,000, for monitoring the property, after payment of the must-pay debt service and before payment of the deferred developer's fee.
- 5) Borrower and FCRHA shall execute a Right of First Refusal Agreement. The FCRHA will have the Right of First Refusal (ROFR), subordinate to the developer's ROFR, under the same terms and conditions that the developer has under the Limited Partner's Partnership Agreement. Should the developer exercise their right under the ROFR, the developer will make sure that the minimum affordability requirements under the loan documents are met.
- 6) In case of any material default under the senior lien Deed of Trust, terms acceptable to the FCRHA negotiator shall be provided to assist in the protection of the Housing Blueprint loan value which may include, but not be limited to, the right to cure or to acquire ownership of the senior debt or of the property or both rights.
- 7) Borrower will maintain the Property as affordable housing for households where the initial household income for 120 of the units does not exceed 60% of the area median income (AMI), and the Property shall be occupied by such households where the household income limits do not exceed the above limits. The term "affordable" shall mean that no more than 30% of the household's gross income is paid for housing costs. These restrictions shall be established in the deed of trust for the Housing Blueprint Loan and by a recorded regulatory agreement and shall be in place and run with the land of the Property for at least 30 years.
- 8) And the following conditions are required for loan closing and release of funds:
 - a. **Loan Terms.** Loan will (1) not exceed \$4,500,000, (2) the loan will have an interest rate of no less than 2% per annum or a maximum rate of AFR, and (3) the payment of all principal and interest (which shall accrue) will be deferred for 30 years (or such other term as is co-terminus with the primary loan) but will become due and payable upon transfer of all or any part of the Property without the prior approval of the FCRHA, refinancing, or failure to comply with the Housing Blueprint or loan document requirements. *Although the principal and interest are deferred, the loan*

from the FCRHA will be a cash-flow loan, which means that, should there be cash flow, it will get applied first to the accrued interest and then to the principal. The annual loan payments shall be payable only from fifty percent (50%) of the cash flow remaining after payment of the deferred developer's fee in full. During the 30 years or such other term as is co-terminus with the primary loan, refinancing may occur at the discretion of the FCRHA and as allowed by FCRHA policies. Borrower will provide satisfactory construction commitments prior to closing.

- b. Loan Disbursement.** The loan will be disbursed at construction completion for One University Senior, LLC.
- c. Construction Completion.** Documents needed to confirm construction completion before the balance can be disbursed at construction completion include the following: The Architect's Completion Certificate, final lien release, and Occupancy Certificate (if applicable).
- d. Lien Position.** The Housing Blueprint Loan is anticipated to be secured by a Deed of Trust in second lien position encumbering the Property, subject only to the first priority Deed of Trust securing the primary loan.
- e. Title.** Borrower will provide (1) satisfactory title and judgment search of Property and (2) satisfactory lender's title insurance commitments for the benefit of the FCHRA including, among other things, affirmative mechanics lien coverage, as prepared by a title company selected by the FCRHA.
- f. Loan Documentation.** All senior loans and all Housing Blueprint Loan terms and any lease agreement terms, conditions, and documentation shall be acceptable to the FCRHA's authorized negotiator/representative and its counsel.
- g. Conditions to Disburse Funds.** The Housing Blueprint Loan closing and disbursement of funds will take place only with the approval of any Assistant Secretary of the FCRHA.
- h. Other Conditions to Close.** Closing will not take place until the following have been accomplished in form and substance acceptable to HCD on behalf of the FCRHA:
 - i. Appraisal accepted and approved by the FCRHA.
 - ii. Environmental reviews accepted and approved by the FCRHA.
 - iii. Physical Needs Assessment acceptable and approved by the FCRHA.
 - iv. Market Study accepted and approved by the FCRHA.
 - v. Relocation Plan reviewed and approved by HCD Staff (if applicable).
 - vi. Reservation of all needed low-income housing tax credits.
 - vii. Primary loan commitment from a third-party lender for both construction and permanent financing.
 - viii. Commitment from tax credit investor.
 - ix. Final underwriting by the HCD Staff.
 - x. Zoning letter issued by the Fairfax County Department of Planning and Zoning with respect to the Property and the Arden Project.

- xi. Other factors as deemed necessary to protect the interest of the FCRHA and Fairfax County.

i. Note:

- i. The lien position is subject to the satisfaction of the senior lender and tax credit investors.
- ii. Any savings in the development budget, at the discretion of the FCRHA and provided it does not impact the tax credit basis, will be used to reduce the Housing Blueprint Loan.

Housing Blueprint Loan Term Sheet:

Borrower: One University Family, LLC

Address: Fairfax, Fairfax County, Virginia

Amount: \$2,000,000, subject to terms and conditions

Interest Rate: A minimum rate of 2% simple interest per annum with a maximum rate equal to the Applicable Federal Rate (AFR). Interest rate during construction will be 0% per annum.

Amortization: N/A - will be deferred for repayment as provided below

Term: The payment of all principal and interest (in the event of default and as provided in the Housing Blueprint Loan documents) will be deferred and simple interest will accrue for 30 years or such other term as is coterminous with the primary loan from a third-party lender but the entire indebtedness will become due and payable upon transfer of the Property without the prior approval of the FCRHA, refinancing, or failure to comply with the Housing Blueprint and/or loan documents requirements. *Although the principal and interest are deferred, the loan from the FCRHA will be a cash-flow loan, which means that, should there be cash flow, it will get applied first to the accrued interest and then to the principal.* At the end of the 30-year term or such other term as is co-terminus with the primary loan, the outstanding principal balance along with any accrued interest shall become due and payable. The annual loan payments shall be payable only from fifty percent (50%) of the cash flow remaining after payment of the deferred developer's fee in full. During the 30-year term or such other term as is co-terminus with the primary loan, refinancing may occur at the discretion of the FCRHA and as allowed by FCRHA policies. In the event that the Housing Blueprint Loan is paid off before maturity of the loan, the developer shall maintain the affordability period according to the Housing Blueprint goals, for a minimum term of thirty (30) years or for a term coterminous with the first mortgage, whichever is greater.

Security: Second Lien Deed of Trust on the Property, or such other lower priority lien position necessary to avoid reallocation of the tax credits under IRC Section 42 of the Internal Revenue Code, with reasonable assurance that the value of the Property exceeds the aggregate debt of the higher priority loans and the Housing Blueprint loan.

Conditions:

- 1) This Housing Blueprint Loan is for the specific purpose of providing a loan associated with the Borrower's project consisting of 120 rental units located in Fairfax (Fairfax County) (Tax Map Number: 0573 01 0011).
- 2) The Housing Blueprint Loan will close simultaneously with the permanent mortgage lender(s) and the low-income housing tax credit equity provider.
- 3) There will be no further subordinate debt permitted to be placed on the Property, other than the loans represented in the application for this loan, without the permission of the FCRHA.
- 4) Borrower will pay an annual monitoring fee of \$5,000, for monitoring the property, after payment of the must-pay debt service and before payment of the deferred developer's fee.
- 5) Borrower and FCRHA shall execute a Right of First Refusal Agreement. The FCRHA will have the Right of First Refusal (ROFR), subordinate to the developer's ROFR, under the same terms and conditions that the developer has under the Limited Partner's Partnership Agreement. Should the developer exercise their right under the ROFR, the developer will make sure that the minimum affordability requirements under the loan documents are met.
- 6) In case of any material default under the senior lien Deed of Trust, terms acceptable to the FCRHA negotiator shall be provided to assist in the protection of the Housing Blueprint loan value which may include, but not be limited to, the right to cure or to acquire ownership of the senior debt or of the property or both rights.
- 7) Borrower will maintain the Property as affordable housing for households where the initial household income for 46 of the units does not exceed 30% of the area median income (AMI), the initial household income for 14 of the units does not exceed 50% AMI, the initial household income for 60 of the units does not exceed 60% AMI, and the Property shall be occupied by such households where the household income limits do not exceed the above limits. The term "affordable" shall mean that no more than 30% of the household's gross income is paid for housing costs. These restrictions shall be established in the deed of trust for the Housing Blueprint Loan and by a recorded regulatory agreement and shall be in place and run with the land of the Property for at least 30 years.
- 8) And the following conditions are required for loan closing and release of funds:
 - a. **Loan Terms.** Loan will (1) not exceed \$2,000,000, (2) the loan will have an interest rate of no less than 2% per annum or a maximum rate of AFR, and (3) the payment of all principal and interest (which shall accrue) will be deferred for 30 years (or such other term as is co-terminus with the primary loan) but will become due and payable upon transfer of all or any part of the Property without the prior approval of the FCRHA, refinancing,

or failure to comply with the Housing Blueprint or loan document requirements. *Although the principal and interest are deferred, the loan from the FCRHA will be a cash-flow loan, which means that, should there be cash flow, it will get applied first to the accrued interest and then to the principal.* The annual loan payments shall be payable only from fifty percent (50%) of the cash flow remaining after payment of the deferred developer's fee in full. During the 30 years or such other term as is co-terminus with the primary loan, refinancing may occur at the discretion of the FCRHA and as allowed by FCRHA policies. Borrower will provide satisfactory construction commitments prior to closing.

- b. Loan Disbursement.** The loan will be disbursed at construction completion for One University Family, LLC.
- c. Construction Completion.** Documents needed to confirm construction completion before the balance can be disbursed at construction completion include the following: The Architect's Completion Certificate, final lien release, and Occupancy Certificate (if applicable).
- d. Lien Position.** The Housing Blueprint Loan is anticipated to be secured by a Deed of Trust in second lien position encumbering the Property, subject only to the first priority Deed of Trust securing the primary loan.
- e. Title.** Borrower will provide (1) satisfactory title and judgment search of Property and (2) satisfactory lender's title insurance commitments for the benefit of the FCHRA including, among other things, affirmative mechanics lien coverage, as prepared by a title company selected by the FCRHA.
- f. Loan Documentation.** All senior loans and all Housing Blueprint Loan terms and any lease agreement terms, conditions, and documentation shall be acceptable to the FCRHA's authorized negotiator/representative and its counsel.
- g. Conditions to Disburse Funds.** The Housing Blueprint Loan closing and disbursement of funds will take place only with the approval of any Assistant Secretary of the FCRHA.
- h. Other Conditions to Close.** Closing will not take place until the following have been accomplished in form and substance acceptable to HCD on behalf of the FCRHA:
 - i. Appraisal accepted and approved by the FCRHA.
 - ii. Environmental reviews accepted and approved by the FCRHA.
 - iii. Physical Needs Assessment acceptable and approved by the FCRHA.
 - iv. Market Study accepted and approved by the FCRHA.
 - v. Relocation Plan reviewed and approved by HCD Staff (if applicable).
 - vi. Reservation of all needed low-income housing tax credits.
 - vii. Primary loan commitment from a third-party lender for both construction and permanent financing.
 - viii. Commitment from tax credit investor.
 - ix. Final underwriting by the HCD Staff.

- x. Zoning letter issued by the Fairfax County Department of Planning and Zoning with respect to the Property and the Arden Project.
- xi. Other factors as deemed necessary to protect the interest of the FCRHA and Fairfax County.

i. Note:

- i. The lien position is subject to the satisfaction of the senior lender and tax credit investors.
- ii. Any savings in the development budget, at the discretion of the FCRHA and provided it does not impact the tax credit basis, will be used to reduce the Housing Blueprint Loan.

ACTION - 8

Approval of a Resolution Supporting Additional Projects Being Submitted to the Northern Virginia Transportation Authority for FY 2024 to FY 2025 Regional Funding Consideration (Lee, Hunter Mill, and Providence Districts)

ISSUE:

Board approval of a resolution (Attachment 1) supporting applications submitted by the Town of Vienna and City of Falls Church to the Northern Virginia Transportation Authority (NVTA) for FY 2024 – FY 2025 Regional Funding, and providing the County's concurrence that a project submitted by the Department of Rail and Public Transportation (DRPT) be evaluated. Projects submitted by the County and other regional partners were endorsed by the Board on September 24, 2019.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve Attachment 1, in substantial form, supporting Town of Vienna and City of Falls Church projects for NVTA's regional funding program and concurring that the application from DRPT be evaluated.

TIMING:

Board of Supervisors' approval is requested on November 19, 2019, to provide NVTA a resolution of support for the projects, which is due on November 29, 2019. NVTA is expected to approve projects for its regional transportation funding in summer 2020.

BACKGROUND:

On June 7, 2019, NVTA approved the Call for Regional Transportation Projects for the FY 2024–25 Six Year Program Update. Funding for these capital projects is provided by NVTA's 70 percent share of regional revenues that NVTA retains. Project applications were due to NVTA on September 27, 2019, with Governing Body and any other supporting resolutions due by November 29, 2019.

At its September 24, 2019, meeting, the Board of Supervisors adopted a resolution endorsing ten projects to be submitted by Fairfax County to NVTA, as well as support of several projects submitted by regional partners (Attachment 2). NVTA's process requires that projects located in multiple jurisdictions must demonstrate multijurisdictional support to advance (e.g. resolutions of support from the governing body of each affected jurisdiction).

Following the actions taken by the Board, the County was contacted by several jurisdictions and agencies requesting support of their projects, including:

Town of Vienna

- Patrick Henry Library Parking Garage - Vienna Metrorail Access Improvements - The Town of Vienna is engaging in a partnership with Fairfax County to incorporate 188 commuter public parking spaces into a planned reconstruction of Patrick Henry Library, which is located at the corner of Maple Avenue and Center Street S. This site is located near four Fairfax Connector bus stops and along three bus routes that provide service to three Metrorail stations (Vienna, Dunn Loring, and Tysons Corner). The site is also near the Washington and Old Dominion (W&OD) Bike Trail.
- Bikeshare Stations – Vienna Regional Bikesharing - The Town of Vienna, in coordination with Fairfax County, is proposing to install and operate an extension of the regional Capital Bikeshare system, connecting residents to the planned extension of Capital Bikeshare at the Vienna and Dunn Loring Metrorail Stations. The Town's implementation of the Capital Bikeshare system will include up to four Bikeshare stations throughout the Town.

City of Falls Church

- Falls Church Multimodal Improvements – The project is located on the east side of Shreve Road between the W&OD Trail and the intersection of Route 7 and Shreve Road. The project includes a ten-foot shared use path, and a six-foot planting strip between the street edge and path. A crosswalk will be installed near the intersection of Shreve Road and Gordon Road. Benches will be installed near the entrance to the trail. The project is located in both the City of Falls Church and Fairfax County.

NVTA's process requires that projects located in multiple jurisdictions must demonstrate multijurisdictional support to advance (e.g. resolutions of support from the governing body of each affected jurisdiction.). The recommendation is that the County supports the efforts of the City of Falls Church in submitting an application to improve multimodal connectivity and safety along Shreve Road without endorsing a specific project scope; and believes any such project must include coordination with Fairfax County and the affected Fairfax County Supervisor, as well as the Virginia Department of Transportation, to undertake additional evaluation and analysis to address various matters, including stormwater management, impacts to property owners, and maintenance responsibilities for the project.

Board Agenda Item
November 19, 2019

Department of Rail and Public Transportation

- Franconia-Springfield Passenger Rail Bypass – The project moves Virginia Railway Express trains from east side platforms to west side platforms to access the future Long Bridge expansion. The project provides dedicated passenger rail corridor from Franconia to the District of Columbia and is projected to reduce the number of times that passenger and freight trains must cross tracks to access service specific facilities and customers. The project would be constructed as part of the DRPT Franconia to Occoquan Third Track project.

As this project is located in Fairfax County, staff recommends that the Board concur that the project be evaluated. However, staff also believes that major transportation improvements that provide benefits beyond Northern Virginia should primarily be funded by the Commonwealth and federal government. Diverting existing Northern Virginia transportation revenues for such projects would significantly disrupt long-standing regional priorities. Staff also recommends that no decision to recommend funding for this project occur until after the 2020 General Assembly Session.

FISCAL IMPACT:

There is no direct fiscal impact associated with this action.

CREATION OF POSITIONS:

No positions will be created through this action.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution Supporting Additional Projects Being Submitted to the Northern Virginia Transportation Authority for FY 2024 to FY 2025 Regional Funding and concurring that the application from DRPT be evaluated

Attachment 2 – Resolution approved on September 24, 2019, for projects to be submitted to the Northern Virginia Transportation Authority for FY 2024 to FY 2025 Regional Funding

STAFF:

Rachel Flynn, Deputy County Executive

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

Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT

Noelle Dominguez, Section Chief, Coordination and Funding Division, FCDOT

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center in Fairfax, Virginia, on Tuesday, November 19, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby supports the efforts of the Town of Vienna in submitting applications to the NVTa requests for regional funding for FY 2024 — FY 2025 consideration, for the following projects located in or near Fairfax County:

- Town of Vienna - Patrick Henry Library Parking Garage - Vienna Metrorail Access Improvements
- Town of Vienna - Bikeshare Stations – Vienna Regional Bikesharing

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby supports the efforts of the City of Falls Church in submitting an application to the NVTa requests for regional funding for FY 2024 — FY 2025 consideration to improve multimodal connectivity and safety along Shreve Road without endorsing a specific project scope; and believes any such project must include coordination with Fairfax County and the affected Fairfax County Supervisor, as well as the Virginia Department of Transportation, to undertake additional evaluation and analysis to address various matters, including stormwater management, impacts to property owners, and maintenance responsibilities for the project.

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby concurs with the submission of an application for the following project to be evaluated:

- Department of Rail and Public Transportation - Franconia-Springfield Passenger Rail Bypass

Adopted this 19th day of November 2019, Fairfax, Virginia.

A Copy - Teste

Jill G. Cooper
Clerk for the Board of Supervisors

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center in Fairfax, Virginia, on Tuesday, September 24, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby approves the submission to the Northern Virginia Transportation Authority (NVTA) requests for regional funding for FY 2024 – FY 2025 for the following projects in amounts not to exceed:

- Richmond Highway Widening (Mount Vernon Memorial Highway to Sherwood Hall Lane) - \$183,700,000: TransAction ID 214 (Route 1 Widening: Route 235 North to Route 235 South)
- Richmond Highway Bus Rapid Transit (Huntington Metrorail Station to Fort Belvoir) - \$71,000,000: TransAction ID 39 (Route 1 BRT)
- Rolling Road Widening (Old Keene Mill Road to Fairfax County Parkway) \$27,700,000: TransAction ID 54 (Rolling Road Widening: Hunter Village Drive to Old Keene Mill Road)
- Soapstone Drive Extension (Dulles Toll Road (DTR) Overpass) \$69,000,000: TransAction ID 7 (Soapstone Drive Extension)
- Fairfax County Parkway Widening (1 mile south of Nomes Court to .6 miles north of Route 29) - \$37,400,000: TransAction ID 57 (Fairfax County Parkway Widening: Ox Road (Route 123) to Lee Highway (Route 29))
- Route 7 Widening (Jarrett Valley Drive to Reston Avenue) - \$35,000,000: TransAction 2040 Project - Lewinsville Road to Dulles Toll Road
- Braddock Road Improvements (Burke Lake Road to I-495) - \$79,000,000: TransAction ID 336 (Braddock Road Intersection Improvements: Guinea Road to Ravensworth Road)
- Frontier Drive Extension - \$105,000,000: TransAction ID 84 (Frontier Drive Extension and Intersection Improvements)
- Seven Corners Ring Road (Phase 1A/Segment 1A) - \$94,800,000: TransAction ID 18 (Seven Corners Ring Road Improvements)
- Davis Drive (previously known as Rock Hill Road Extension) \$144,000,000: TransAction ID 19 (Davis Drive Extension and Dulles Toll Road: Rock Hill Overpass)

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby also supports the efforts of the Town of Herndon and Prince William County in submitting applications to the NVTA requests for regional funding for FY 2024 – FY 2025, for the following projects located in or near Fairfax County:

- Town of Herndon - Herndon Metrorail Multimodal Improvements

- Prince William County - Annapolis Way East with Annapolis Way West near I-95 on-ramp

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby supports advancing the following project without endorsing a specific alternative:

- Prince William County - Route 28 Improvements south of Bull Run that are the subject of a current alternatives analysis to identify ways to ease congestion and improve traffic conditions

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby supports the efforts of the City of Fairfax in submitting an application to the NVTa requests for regional funding for FY 2024 – FY 2025, for the following projects located in or near Fairfax County, and requests that the City of Fairfax coordinate the implementation of this project with Fairfax County and the affected Fairfax County Supervisors:

- City of Fairfax – Government Center Parkway Extension Adopted this 24th day of September 2019, Fairfax, Virginia

Adopted this 24th day of September 2019, Fairfax, Virginia.

A Copy – Teste:



Jill G. Cooper
Clerk for the Board of Supervisors

ACTION - 9

Approval of Multiple Actions Necessary to Syndicate Virginia Historic Rehabilitation Tax Credits for the Renovation of the Original Mount Vernon High School (Mount Vernon District)

ISSUE:

Authorization of the Board of Supervisors to approve multiple actions, as further explained below, to syndicate Virginia Historic Rehabilitation Tax Credits (“VHRTCs”) for the Renovation of the Historic Original Mount Vernon High School (“OMVHS”).

RECOMMENDATION:

The County Executive recommends the Board approve the multiple actions necessary to syndicate VHRTCs for the Renovation of OMVHS.

TIMING:

Board action is requested on November 19, 2019, because it is expected that costs eligible for VHRTCs will be incurred as soon as January of 2020. For these costs to be reimbursed, the legal entities that will incur these costs must be in place prior to that time.

BACKGROUND:

The Board of Supervisors owns the Original Mount Vernon High School located at 8333 Richmond Highway, Alexandria, Virginia, in the Mount Vernon Magisterial District (Tax Map #101-4-((1))-0005A and 101-4-((7))-0001) and certain surrounding property. The property is comprised in total of approximately 22 acres, upon which is located a facility that was built in 1939 and is listed on both the Virginia Historic Landmarks Register and the National Registry of Historic Places. These designations are a critical first step for the use of VHRTCs as part of the project financing.

The County recently completed a Master Plan Study for the redevelopment, rehabilitation, and adaptive reuse of the historic structure, which is referenced as Phase 1 (the “Project”). The vision of the Project is to leverage the former high school structure to build communities of opportunity, create career pathways, connect different generations, and better integrate residents into the economy. The Project is also

intended to provide for educational childcare and childhood education programs; art; recreational and life skill training programs; and innovation and business incubation spaces. Phase II of the Master Plan Study envisions living accommodations for persons of low and moderate income, senior housing, parks, and recreational opportunities, among others. As noted above, however, the Project will address only the renovation of the historic high school.

Expected costs for the Project are approximately \$80 million. Of this amount, approximately \$55 million are estimated to be eligible for VHRTCs, and are estimated to yield approximately \$13 million of additional equity to the Project. (Under state law, tax credit investors may receive a tax credit of 25 percent of the qualified rehabilitation expenditures for investments in historic properties). The remaining funding will be from existing project appropriations, taxable or tax-exempt bonds, or other debt obligations. It is expected that the Fairfax County Redevelopment and Housing Authority (FCRHA) will issue these bonds or other obligations, which will generate substantial revenue in issuer and other fees over the life of the debt that the FCRHA can use to further its mission to create affordable housing. The bonds or other obligations will be structured to be payable by the Board, subject to appropriation.

Although the facility is also likely eligible for federal historic tax credits various constraints on the use of the facility under the federal program rendered that program unworkable. Accordingly, staff determined that only VHRTCs would be used for the Project.

The Virginia Historic Rehabilitation Tax Credit Program and Requested Actions:

To syndicate VHRTCs, an entity such as a limited liability company must be formed to acquire a legal property interest in the Project. This entity must incur the expenses of the renovation project, and after tax credit investors join the entity, they provide cash to the entity in exchange for an allocation of the VHRTCs (the "Tax Credit Entity"). The Board, however, does not have express statutory authority to form an ownership entity such as a limited liability company, and therefore it cannot create such an entity to acquire a legal interest in OMVHS and qualify for the VHRTCs.

The Fairfax County Redevelopment and Housing Authority (FCRHA) does have express statutory authority to form corporations, partnerships, joint ventures, trusts, and other entities for either housing or redevelopment purposes at the request of, and approval by, the Board. This structure involves multiple actions and the approval of various agreements and leases by both the FCRHA and the Board to create a structure that will allow the County to take advantage of VHRTCs. It is expected that, contingent upon the

request and approval of the Board, the FCRHA will have approved this legal structure and framework at a special meeting held on November 14, 2019.

In short, this framework involves (1) using the authority of the FCRHA to create the limited liability structure—with Board approval—that may receive the VHRTC's (i.e. the Tax Credit Entity); (2) lease of the property from the County through the FCRHA to the Tax Credit Entity and then sub-sublease the property back to the County; (3) an agreement between the Tax Credit Entity and the County defining how the County will develop and manage the Project on behalf of the Tax Credit Entity; and (4) an agreement among the County, the FCRHA, and the Tax Credit Entity to define how the Project will be funded. Specifically, Board approval is sought to as to the following:

1. Approval of the FCRHA to create the Tax Credit Entity to be known as OMVHS LLC, that will meet the requirements of the VHRTC program. Specifically, OMVHS LLC will have a leasehold property interest in OMVHS (a sublease from the FCRHA) and will be the entity that incurs the costs of the construction and rehabilitation.
2. Approval of FCRHA to create a second limited liability company, to be known as OMVHS MM LLC, that will serve as the managing member and 99.9 percent owner of OMVHS LLC. (The .1 percent owners of OMVHS LLC will be the future tax credit investors). The FCRHA will be the sole member of OMVHS MM LLC. The purpose of this managing member entity is to mitigate the possibility of any liability to the FCRHA for its role in the Project.
3. Approval of a lease of the Project's property from the Board to the FCRHA and authorizing the FCRHA to sublease the property to OMVHS LLC.
4. Approval of a sub-sublease in which OMVHS LLC sub-subleases the Project's property back to the Board so that the County can be in control of the property for renovation purposes.
5. Approval of a Development Agreement between OMVHS LLC and the Board in which OMVHS LLC appoints the County to serve as the developer of the Project, and thus is fully responsible for its development, construction, and rehabilitation.
6. Approval of a Grant Funding Agreement among the Board, the FCRHA, and OMVHS LLC that details how funding for the Project will be handled. The

intent is that except for the equity received by OMVHS LLC from the tax credit investors in exchange for the allocation of the VHRTCs, all expenditures for the Project incurred by OMVHS LLC will be reimbursed by the Board to OMVHS LLC by way of grants made by the County to the FCRHA, which will be used by the FCRHA to make capital contributions into OMVHS LLC.

FISCAL IMPACT:

The creation of this structure will enable the County to obtain approximately \$13 million of funding that it would not otherwise have to renovate OMVHS. Although there are additional costs associated with the creation of this structure, it is expected that they will not exceed \$500,000. These costs include the hiring of outside experts—familiar with the specialized and nuanced VHRTC program—such as attorneys, historic preservation architects, and accountants who will assist the County with this effort. Funding for these expenses will be paid out of existing appropriations in Fund 20000, Consolidated County and Schools Debt Service Fund.

Debt service costs associated with the anticipated bonds to be sold through the FCRHA for the Project have been included in the County's long-term debt ratio projections and the FY 2020-2024 Adopted Capital Improvement Program (With Future Fiscal Years to 2029). Project updates as it relates to the cash flow needs and the timing of the bond sale will be provided at future Board committee meetings and quarterly reviews. A subsequent Board action item would then follow with the accompanying bond documents to proceed with the bond sale.

ENCLOSED DOCUMENTS:

Attachment 1 - Proposed Resolution with Attachments A-D

STAFF:

Rachel Flynn, Deputy County Executive
Randolph Bartlett, Director, Department of Public Works and Environmental Services
Tom Fleetwood, Director, Housing and Community Development
Joe LaHait, Debt Manager, Department of Management and Budget

ASSIGNED COUNSEL:

Cynthia Bailey, Deputy County Attorney
Alan Weiss, Assistant County Attorney

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3 **RESOLUTION APPROVING AND AUTHORIZING THE FAIRFAX**
4 **COUNTY REDEVELOPMENT AND HOUSING AUTHORITY’S**
5 **CREATION OF CERTAIN ENTITIES FOR THE PURPOSE OF**
6 **SYNDICATING VIRGINIA HISTORIC REHABILITATION TAX**
7 **CREDITS FOR THE RENOVATION OF THE ORIGINAL MOUNT**
8 **VERNON HIGH SCHOOL; APPROVING AND AUTHORIZING**
9 **THE EXECUTION AND DELIVERY OF CERTAIN CONTRACTS**
10 **AND LEASES ASSOCIATED WITH THE REDEVELOPMENT OF**
11 **THE ORIGINAL MOUNT VERNON HIGH SCHOOL; AND**
12 **DELEGATING TO CERTAIN COUNTY OFFICIALS AUTHORITY**
13 **TO EXECUTE AND DELIVER THESE AND ANY SUCH OTHER**
14 **DOCUMENTS NECESSARY TO EFFECTUATE THESE PURPOSES.**

15 **WHEREAS**, Fairfax County, Virginia (the “**County**”), owns the Original Mount Vernon
16 High School and approximately 11.5 acres of surrounding property (“**OMVHS**”); and

17 **WHEREAS**, OMVHS includes a structure of historical significance that is listed on the
18 Virginia Historic Landmarks Register and the National Registry of Historic Places—and that is
19 located at 8333 Richmond Highway, Alexandria, Virginia, in the Mount Vernon Magisterial
20 District (Tax Map #101-4-((1))-0005A and 101-4-((7))-0001) (the “**Structure**”); and

21 **WHEREAS**, the County recently completed a Master Plan Study for the redevelopment,
22 rehabilitation, and adaptive reuse of OMVHS (“the **Project**”), which envisions using the
23 Structure to build communities of opportunity, create career pathways, connect different
24 generations, and better integrate nearby residents into the community, and to provide for certain
25 public purposes such as the educational childcare and childhood education programs, art,
26 recreational and life skill training programs, and innovation and business incubation spaces,
27 among other uses (“**Phase 1**”); and which further envisions using the surrounding acreage for
28 affordable housing, recreation, and other public and community uses (“**Phase 2**”); and

29 **WHEREAS**, expected costs of Phase 1 are approximately \$80 million, and of this
30 amount, approximately \$55 million are eligible for Virginia historic rehabilitation tax credits
31 pursuant to Virginia Code § 58.1-339.2 (“**VHRTC**s”), which are estimated to yield
32 approximately \$13 million of additional equity for Phase 1; and

33 **WHEREAS**, pursuant to Virginia Code §§ 36-19(2) the Fairfax County Redevelopment
34 and Housing Authority (“**FCRHA**”) has the express authority, upon the request of the Fairfax
35 County Board of Supervisors (“**Board**”) to, among other things, provide for the construction,
36 reconstruction, improvement, alteration or repair of any public building or other facility used for
37 public proposes; and

38 **WHEREAS**, pursuant to Virginia Code § 36-19(12), the FCRHA has the express
39 authority, with the approval of the Board to form corporations, partnerships, joint ventures,
40 trusts, or any other legal entity with any public or private entity; and

41 **WHEREAS**, Virginia Code § 58.1-339.2 authorizes, among others, limited liability
42 companies that incur certain eligible expenses in the rehabilitation of a certified structure, such
43 as the OMVHS Structure, to allocate VHRTCs to its members; and

44 **WHEREAS**, the Board has determined that the renovation and rehabilitation of the
45 Structure is a proper public purpose that will render significant benefits to the citizens of Fairfax
46 County not only for its unique and important historic value, but also for the exceptional
47 programming, recreational opportunities, and the development of safe and sanitary living
48 accommodations for person of low and moderate income that are attendant to and accompany its
49 renovation; and

50 **WHEREAS**, the Board anticipates that additional financing for the Project will be
51 provided by the issuance of taxable or tax-exempt bonds or other obligations by the County or
52 FCRHA ("**Bonds**"), including Bonds to reimburse for expenditures previously made in
53 connection with the Project; and

54 **WHEREAS**, the Board has further determined that using VHRTCs to help fund the
55 renovation of the Structure is fiscally sound and prudent; and

56 **WHEREAS**, the Board of Supervisors has reviewed, duly considered the form and terms
57 of the agreements and leases that will enable the County—by and through the FCRHA—to
58 benefit from the VHRTCs; and

59 **WHEREAS**, the Board of Supervisors has determined that it is necessary to delegate to
60 appropriate County officials authority to execute the requisite agreements and leases subject to
61 the guidelines and standards established hereby; now, therefore,

62 **BE IT RESOLVED** by the Board of Supervisors, as follows:

63 **SECTION 1.** The Board expressly requests the FCRHA to take all actions necessary to
64 renovate and rehabilitate the Structure; and

65 **SECTION 2.** The Board authorizes the FCRHA to create a limited liability company,
66 known as OMVHS LLC, that will acquire a property interest in OMVHS in order to syndicate
67 the VHRTCs; and

68 **SECTION 3.** The Board authorizes the FCRHA to create a limited liability company
69 known as OMVHS MM LLC, that will allow the FCRHA to manage OMVHS LLC; and

70 **SECTION 4.** The Board approves the execution and delivery by ~~any~~ the Chairman or
71 Vice Chairman of the Board or the County Executive or the Chief Financial Officer of the
72 County (each a "Delegate") of the Lease, which is in substantial conformance to the form of the
73 Lease attached to this Resolution as Attachment A. In addition, any other agreements,

documents, closing papers and certificates executed and delivered pursuant to this Resolution, shall be conclusive evidence of the Delegate's approval, on behalf of the County, of the changes, if any, to the form and content of the Lease.

SECTION 5. The Board approves the execution and delivery by any Delegate of the Sub Sublease, which is in substantial conformance to the form of the Sub Sublease attached to this Resolution as Attachment B. In addition, other agreements, documents, closing papers and certificates executed and delivered pursuant to this Resolution, shall be conclusive evidence of the Delegate's approval, on behalf of the County, of the changes, if any, to the form and content of the Sub Sublease.

SECTION 6. The Board approves the execution and delivery by any Delegate of the Development Agreement, which is in substantial conformance to the form of the Development Agreement attached to this Resolution as Attachment C. In addition, any other agreements, documents, closing papers and certificates executed and delivered pursuant to this Resolution, shall be conclusive evidence of the Delegate's approval, on behalf of the County, of the changes, if any, to the form and content of the Development Agreement.

SECTION 7. The Board approves the execution and delivery by any Delegate of the Grant Funding Agreement, which is in substantial conformance to the form of the Grant Funding Agreement attached to this Resolution as Attachment D. In addition, any other agreements, documents, closing papers and certificates executed and delivered pursuant to this Resolution, shall be conclusive evidence of the Delegate's approval, on behalf of the County, of the changes, if any, to the form and content of the Grant Funding Agreement; and

SECTION 8. The Delegates and other members, officers and employees of the Board of Supervisors and the County are hereby authorized and directed to do all acts and things required of them by the provisions of the each of the above-referenced agreements for the full, punctual, and complete performance of all the terms, covenants, and provisions of these agreements, and to do all acts and things required of them to promote the goals of this Resolution.

SECTION 9. The Board expects that the County, FCRHA, or other parties will pay on and after the date hereof certain expenditures in connection with Phase I of the Project (the "**Expenditures**") with funds available only for a temporary period for which the County intends and reasonably expects to be reimbursed as permitted by Treasury Regulation Section 1.150-2 issued pursuant to the Internal Revenue Code of 1986, as amended, from the proceeds of one or more issues of Bonds in an aggregate principal amount presently estimated not to exceed \$80,000,000. Each Expenditure will be either (a) of a type properly chargeable to capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), or (b) a grant to a party that is not related to or an agent of the County or FCRHA, which does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the County or FCRHA. The County or FCRHA will make a reimbursement allocation, which is a written allocation by the County or FCRHA that evidences the use of proceeds of the Bonds to reimburse such Expenditures, no later than 18 months after the later of (i) the date on which the Expenditure is paid and (ii) the date Phase I of the Project is placed in

service or abandoned, but in no event more than three years after the date on which the Expenditure is paid.

SECTION 10. Each of the Delegates is authorized to execute one or more certificates evidencing the determinations made or other actions carried out pursuant to the authority granted in this Resolution, and any such certificate shall be conclusive evidence of the actions or determinations as stated therein.

SECTION 11. All actions taken by any of the Delegates and other members, officers and employees of the County heretofore in connection with this Resolution are hereby authorized, approved, ratified, and confirmed.

SECTION 12. Any and all resolutions of the Board of Supervisors or portions thereof in conflict with the provisions of this Resolution are hereby repealed to the extent of such conflict.

SECTION 13. This Resolution shall take effect immediately upon its adoption.

(Seal) A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

Resolution Attachment A - Lease

DEED OF LEASE AGREEMENT

THIS DEED OF LEASE AGREEMENT ("Lease"), for commercial purposes, made _____, 20__ (the "Effective Date"), by and between the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body corporate and politic ("Landlord"), whose address is 12000 Government Center Parkway, Facilities Management Department, Suite 424, Fairfax, Virginia 22035; and FAIRFAX REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia ("Tenant"), whose address is 3500 Pender Drive, Suite 300, Fairfax, Virginia 22035.

In consideration of the mutual promises and covenants set forth below, as well as other good and valuable consideration, the receipt of which is acknowledged, the parties hereto agree as follows:

1. **Leased Premises.** Landlord hereby leases to Tenant and Tenant hereby leases and takes from Landlord that parcel of land located at 8333 Richmond Highway, Alexandria, Virginia, commonly known as the Original Mount Vernon High School, and more specifically described on Exhibit A attached hereto, together with all appurtenances thereto and improvements located thereon (the "Leased Premises").

2. **Term.** The term of this Lease (the "Term") shall commence on the date of this Lease (the "Commencement Date") and shall terminate on the last day of the tenth full Lease Year. The term "Lease Year," means a period of twelve consecutive full calendar months. The first Lease Year shall begin on the Commencement Date. If the Commencement Date occurs on the first day of a calendar month, the second and each successive Lease Year shall commence upon the anniversary of the Commencement Date. If the Commencement Date does not occur on the first day of a calendar month, (i) the first Lease Year shall include the remainder of the month in which the Commencement Date occurs and the following twelve successive full calendar months and (ii) each succeeding Lease Year shall commence on each successive anniversary of the first day of the first calendar month immediately succeeding the month in which the Commencement Date occurs.

3. **Rent.**

(a) The base rent under this Lease for the entire Term is fair market rent, or other amount as may be mutually determined by the parties. [TBD based on advice of accountant.]

(b) Tenant shall pay the Base Rent and all other charges to be paid by Tenant hereunder to Landlord c/o Facilities Management Department at 12000 Government Center Parkway, Suite 442, Fairfax, Virginia 22035, or at such other place as may be designated in writing by Landlord. The Base Rent shall be payable in arrears on the last day of each Lease Year.

(c) All amounts and charges in addition to the Base Rent required to be paid by Tenant shall be deemed to be additional rent (the "Additional Rent") and collectible as such.

No payment by Tenant or acceptance by Landlord of an amount less than the Base Rent and the Additional Rent that is due and payable shall be deemed a waiver of any other rental due.

4. **Landlord's Entry on Premises.** Landlord and its agents, contractors and employees shall have the right to enter the Leased Premises at any time and for any reason.

5. **Tenant Improvements.** Tenant (or Tenant's subtenant), intends to rehabilitate the Leased Premises in a manner that is intended to qualify for the Virginia historic rehabilitation tax credit described in Section 58.1-339.2 of the Code of Virginia (1950), as amended ("Virginia Historic Credits"). Tenant (or Tenant's subtenant) shall have the right, at its own cost and expense, to make alterations, installations, changes, and additions to the Premises (collectively called "Alterations") as Tenant (or Tenant's subtenant) deems expedient or necessary for its business purposes to allow the Leased Premises to be eligible for the Virginia Historic Credits, if any. Tenant (or Tenant's subtenant) shall perform, or cause Tenant's (or Tenant's subtenant's) contractors to perform, all work in connection with Alterations in a good and workmanlike manner and in accordance with applicable Laws and in accordance with Section 58.1-339.2 of the Code of Virginia (1950), as amended, and any other documents and/or regulations and guidance related to the Leased Premises' qualification for and receipt of the Virginia Historic Credits.

6. **Landlord Improvements.** Landlord shall not make alterations or betterments to the Leased Premises unless agreed to by the Tenant (or Tenant's subtenant); provided, however, such approved alterations or betterments to the Leased Premises shall be performed in a good and workmanlike manner and in accordance with applicable Laws and in accordance with Section 58.1-339.2 of the Code of Virginia (1950), as amended, and any other documents and/or regulations and guidance related to the Leased Premises' qualification for and receipt of the Virginia Historic Credits.

7. **Maintenance and Repairs; Other Expenses.** Tenant shall, at its expense, maintain all aspects of the Leased Premises in good condition and as fully and completely as if Tenant owned the Leased Premises in fee simple. Unless otherwise agreed to by the Tenant, Landlord shall, at its expense, make all replacements and repairs to the roof and structure of the Leased Premises as may be necessary or desirable to keep those components of the Leased Premises in good repair and condition and in compliance with all applicable building, fire and other similar governmental codes and regulations.

8. **Use.** Tenant shall have the right to use the Leased Premises for the conduct of its usual and customary activities and any other purposes permitted by applicable law. Tenant agrees to use and occupy the Leased Premises in compliance with all applicable laws.

9. **Landlord's Representations.** Landlord represents that (a) it owns fee simple title to the Leased Premises, (b) it has the requisite power and authority to enter into this Lease and to perform its obligations hereunder and (c) the undersigned representative of Landlord has been duly authorized to execute this Lease on behalf of Landlord.

10. Tenant's Representations. Tenant represents that (a) it has the requisite power and authority to enter into this Lease and to perform its obligations hereunder and (b) the undersigned representative of Tenant has been duly authorized to execute this Lease on behalf of Tenant.

11. Mechanic's Liens. Neither Landlord nor Tenant shall permit any mechanics', laborers' or materialmen's liens to stand against the Leased Premises for any labor or materials furnished in connection with work of any character performed on the Leased Premises. If any such lien is asserted, the party authorizing the work giving rise to such claim shall have the right to contest the validity or amount of such lien, but shall provide a bond to have such lien removed of record or give such other reasonable security to ensure its payment and prevent any sale, foreclosure, or forfeiture of the Leased Premises by reason of such lien. On final determination of the validity of any such lien or claim of lien, the party deemed responsible, at its own expense, shall immediately pay or satisfy any judgment rendered with regard to such lien, including all proper costs and charges, and shall have the lien released or judgment satisfied.

12. Insurance.

(a) For so long as any improvements on the Leased Premises are being renovated or constructed, Landlord shall cause (either directly or indirectly) to be maintained all-risk builder's risk and extended coverage insurance to cover items of labor and materials in respect of such renovation or construction and equipment in place or to be used as part of the Leased Premises. The building limit shall be 100% of the insurable Replacement Cost (as hereinafter defined) of the Leased Premises. The coverage period must coincide with the period of renovation or construction. Tenant shall be named an additional insured on such all-risk builder's risk and extended coverage insurance at all times during the Term.

(b) Landlord shall at all times cause (either directly or indirectly) the Leased Premises to be insured with all risk coverage as is or then shall be commonly included in policies insuring similar buildings against loss by fire and other casualties at the Replacement Cost of the Leased Premises. "Replacement Cost" shall mean the actual cost of demolishing the improvements to be removed from the Property and replacing those improvements, exclusive of the costs of excavations, foundations and footings below the lowest basement floor, in accordance with the then-applicable building code. The coverage shall be a non-reporting commercial property policy form with a special cause of loss form. The value should be "an agreed value basis" equal to at least 100% of the Replacement Cost of the improvements. The coverage shall be adjusted annually to reflect increased value due to inflation and/or renovations and shall name the Tenant as an additional insured at all times during the Term.

(c) Landlord shall have the right, in lieu of maintaining all of the insurance described in Section 12(a) and (b), to self-insure against any one or more of the liabilities, perils or circumstances described if deemed appropriate by the Manager of Risk Management of the Department of Finance of Fairfax County.

13. Damage to the Leased Premises. If during the Term, the Leased Premises or any part thereof is destroyed or damaged, unless otherwise agreed to by Tenant, Landlord shall

be obligated to repair such destruction or damage to the extent of insurance proceeds actually received by Landlord and other funds Landlord has available for such purpose; provided, however, in no event shall such repair have a material adverse impact on the Virginia Historic Credits or the Leased Premises' eligibility therefore. .

14. No Termination or Abatement of Rental. Except as otherwise expressly provided or in any other written agreement between Landlord and Tenant, neither damage to nor destruction of any portion or all of the Leased Premises by fire, the elements or any other cause whatever, whether or not without fault on the part of Tenant, nor any other condition that may deprive Tenant of the use and enjoyment of the Leased Premises, shall terminate this Lease or entitle Tenant (a) to surrender the Leased Premises, (b) to any reduction or abatement of Base Rent or any other amounts payable by Tenant hereunder or (c) to make any deduction or offset against the same unless expressly permitted by this Lease.

15. Taxes. Tenant shall be responsible for and pay all ad valorem taxes assessed against the Leased Premises and any and all personal property, equipment, materials and other property belonging to Tenant and located upon the Leased Premises.

16. Utilities. Tenant shall pay all charges for public utilities of every kind attributable to the use of the Leased Premises. Landlord agrees to send to Tenant promptly copies of any notices for any such charges if such notices are received by Landlord.

17. Condemnation. If the Leased Premises or any material portion thereof is appropriated or taken under the power of eminent domain, or by purchase in lieu thereof, either party may terminate this Lease by providing written notice thereof to the other party within twenty-one calendar days after the date of such taking or receipt of notice of such taking, whichever is later, in which case this Lease shall terminate and expire as of the date of such termination notice and Landlord and Tenant will be relieved of any further liability under this Lease. A portion of the Leased Premises shall be deemed to be "material" if, as a result of its taking, Tenant is unable to carry on its activities in the Leased Premises in its usual and customary manner. Any award for the land and buildings of which the Leased Premises are a part and for damages to the residue, or any negotiated payment by sale in lieu thereof, shall be the property of Landlord, and Tenant hereby assigns to Landlord all of its right, title and interest in and to any such award or payment. Tenant, however, shall be entitled to claim, prove and receive in any condemnation proceeding, or negotiated sale in lieu thereof, such separate awards or amounts as may be allowed or paid, if any, for moving expenses and for fixtures and other equipment installed by Tenant, at its expense.

18. Assignment and Subletting. Tenant may assign this Lease or sublet the Leased Premises with Landlord's consent. No assignment or sublease will release Tenant from continuing responsibility for the full performance of the terms and conditions in this Lease, unless Landlord signs a written statement releasing Tenant from such liability. Notwithstanding the foregoing to the contrary, Landlord acknowledges that Tenant intends to enter into a Deed of Sublease with OMVHS LLC, as subtenant, and consents to such sublease.

19. Estoppel Certificates. Tenant shall, upon ten days' prior written request of Landlord, deliver to Landlord, or any current or prospective mortgagee or purchaser of the Leased Premises, a statement in writing setting forth the commencement and termination dates of this Lease and certifying that this Lease is or is not in full force and effect and that this Lease has not been changed, modified or amended. If it has been so changed, modified, or amended, Tenant shall state the specific changes, modifications or amendments and that, as of the date of certification, Tenant has not paid rental for more than the current month, or stating the amount of rental so paid, and that there are no defaults under this Lease nor defenses or offsets thereto, or if there are any such defaults, defenses or offsets, stating the specific defaults, defenses or offsets claimed by Tenant.

20. Default.

(a) Tenant shall be in default under this Lease if (i) Tenant fails to pay any installment of the Base Rent, Additional Rent or any other sum payable hereunder on the date due therefor and fails to cure such default within five days after receipt of written notice of such default from Landlord or (ii) if Tenant defaults in the performance of any of the other covenants or conditions contained in this Lease and fails to cure such default within thirty days after receipt of written notice of such default from Landlord (or within such longer period as may be required to cure such default if it cannot reasonably be cured within thirty days, so long as Tenant promptly commences and diligently pursues the curing of such default).

(b) If Tenant is in default under the provisions of Section 22(a)(i) of this Lease, Tenant shall pay interest on the past due amount, from the date it is first due and payable until the date it is paid in full, at a rate equal to twelve percent (12%) per annum (the "Default Rate").

(c) If Tenant shall default in the performance of any of its obligations hereunder, Landlord may, but shall not be obligated to, cure any such default and add the cost thereof with interest at the Default Rate to the amount of the next installment of the Base Rent to be paid by Tenant hereunder, but it is expressly agreed that such curing of any default or payment of any indebtedness by Landlord shall not be deemed a waiver or release of any default hereunder or remedy provided herein.

(d) To the extent permitted by law, if Tenant (i) shall become bankrupt or insolvent, or (ii) shall file or have filed against it any petition in bankruptcy or insolvency or for reorganization, or (iii) shall file or have filed against it a petition for the appointment of a receiver or trustee of all or a portion of the property of Tenant, or (iv) makes an assignment for the benefit of its creditors, then the total amount of the rental payable during the Term of this Lease, discounted to the date of Tenant's payment thereof at the rate of eight percent per annum, shall immediately become due and payable at the option of Landlord.

(e) In the event that (i) any provision of Section 20(d) is deemed unenforceable, and (ii) Tenant shall file or have filed against it a petition in bankruptcy or for reorganization under any provisions of the Bankruptcy Code, Tenant shall assume the terms and

provisions of this Lease in their entirety within 60 days of the order for relief, or this Lease shall be deemed rejected.

(f) In addition to all other rights or remedies Landlord may have, in the event of a default as specified in Section 20(a), above, Landlord shall have the immediate right to re-enter the Leased Premises and remove all persons and property from the Leased Premises. Landlord shall have the right to take such action without service of notice (other than the notices of default provided for above) or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. In the event Landlord elects to re-enter the Leased Premises or takes possession of the Leased Premises pursuant to legal proceedings or pursuant to any notice required by law, Landlord may, at its option, either terminate this Lease or, without terminating this Lease, relet the Leased Premises or any part thereof for the benefit of Tenant, for such term or terms (whether shorter or longer than the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord, in its sole discretion, deems advisable, and at the expense of Tenant, Landlord shall have the right to make such reasonable repairs or alterations to the Leased Premises as Landlord deems necessary in order to relet the Leased Premises. Upon each such reletting all rentals received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than rental due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including costs incurred by Landlord for brokerage fees, attorneys' fees and alterations and repairs; third, to the payment of any unpaid portion of the accelerated rental provided for in Section 20(a) above and fourth, the remainder, if any, to Tenant. No such re-entry or taking possession of the Leased Premises by Landlord shall be construed as an election by Landlord to terminate this Lease unless written notice of such intention is given by Landlord to Tenant or this Lease is terminated by an order or a decree of a court of competent jurisdiction. Notwithstanding any such reletting without termination, if Landlord has lawfully taken possession of the Leased Premises, Landlord may at any time thereafter elect to terminate this Lease for any previous default by Tenant in the performance of the terms and conditions of this Lease. In the event that Landlord elects to terminate this Lease for any such default, Landlord shall reimburse Tenant the amount by which the accelerated rental, allocable to the remainder of the Term hereof, paid by Tenant pursuant to Section 20(a) of this Lease exceeds the then reasonable rental value of the Leased Premises for the remainder of the Term hereof, discounted to the date of termination of this Lease at the rate of eight percent per annum, less any damages Landlord shall be entitled to collect from Tenant.

(g) No re-entry, taking possession of or repair of the Leased Premises by Landlord, or any other action taken by Landlord as a result of any default of Tenant, shall relieve Tenant of any of its liabilities and obligations under this Lease whether or not the Leased Premises are relet.

(h) The failure on the part of Landlord to re-enter or repossess the Leased Premises, or to exercise any of its rights hereunder upon any default, shall not be deemed a waiver of any of the terms and conditions of this Lease and shall not preclude Landlord from exercising any such rights upon any subsequent default or defaults. All of Landlord's rights shall

be cumulative and shall not preclude Landlord from exercising any other rights which it may have under law.

(i) In any suit brought under the terms of this Lease or for any failure to perform any of the covenants and conditions of this Lease, the prevailing party shall have the right to recover all reasonable costs incurred in connection with such suit, including reasonable attorneys' fees.

21. Notices. All notices from Tenant to Landlord required or permitted by any provision of this Lease shall be in writing and sent by hand delivery, facsimile transmission, overnight delivery service or certified mail, return receipt requested, as follows:

TO LANDLORD:

Board of Supervisors of Fairfax County, Virginia
12000 Government Center Parkway
Suite 442
Fairfax, Virginia 22035
Attention: Facilities Management Department

With a copy to:

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

All notices from Landlord to Tenant so required or permitted shall be in writing and sent by hand delivery, facsimile transmission, overnight delivery service or certified mail, return receipt requested, as follows:

TO TENANT:

Fairfax Redevelopment and Housing Authority
12000 Government Center Parkway
Suite 549
Fairfax, Virginia 22035
Attention: Thomas E. Fleetwood

With a copy to:

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

Notices shall be deemed given when actually received. Either party hereto may, at any time or from time to time, designate in writing a substitute address for that set forth above, and thereafter notices (and rental payments in the case of Landlord) shall be directed to such substitute address.

22. Surrender. At the expiration of the Term, Tenant shall (a) quit and surrender the Leased Premises broom clean and in a condition similar to the condition which the Leased Premises was delivered to Tenant at the commencement of the Lease, except for normal wear and tear and (b) surrender to Landlord at the place established by it all keys used in connection with the Leased Premises and shall inform Landlord of all combinations for all locks, safes and vaults on the Leased Premises.

23. Force Majeure; Emergency. In the event that either party shall be delayed or hindered in or prevented from performing any act required by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, riots, insurrection, war or other reason not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then the performance of such act shall be excused for the period of the delay. The period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that in no event shall Tenant be excused from the payment of the annual rental, or any other amounts or charges to be paid by Tenant under the terms of this Lease.

24. Short Form of Lease. The parties agree that upon the request of either party they will execute, acknowledge and deliver a memorandum of lease for the purpose of recordation. The party who records such memorandum shall pay the recording cost therefor.

25. Covenant of Quiet Enjoyment. Provided Tenant is not then in default of any of the terms and conditions of this Lease, Landlord covenants and warrants that Tenant shall have quiet peaceable possession and enjoyment of the Leased Premises for the Term hereof; provided that Landlord shall have full access to the Leased Premises for the purpose of the ongoing renovation and construction project.

26. Landlord's Lien. Landlord hereby reserves to right to assert, in the event of a default by Tenant, Landlord's statutory lien, secondary only to purchase money security interest, upon every right and interest of Tenant in and to the stock, merchandise, equipment, machinery and inventory of Tenant to secure the performance of all covenants, conditions and obligations of this Lease to be performed and observed by Tenant.

27. **No Brokerage or Commissions.** Landlord and Tenant each represent and warrant that they have had no dealings with any real estate firm, agent, salesperson or broker in connection with this Lease or the Leased Premises and shall defend and hold each other harmless from any claim to the contrary.

28. **No Partnership.** It is agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture or any other association between Landlord and Tenant, or cause Landlord or Tenant to be responsible in any way for the debts or obligations of the other, except as expressly provided herein, and neither the method of computing rental nor any other provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

29. **Successors and Assigns.** This Lease and the terms hereof shall be binding upon and inure to the benefit of Landlord and Tenant and their respective successors and assigns.

30. **Construction of Agreement.** This Lease shall be governed by the laws of the Commonwealth of Virginia without regard to its choice of laws statutes.

31. **Titles.** The titles or paragraph headings are inserted only for convenience and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provisions to which they refer.

32. **Counterparts.** This Lease may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

33. **Jury Trial.** Landlord and Tenant shall and do hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use and/or occupancy of the Lease Premises, or any statutory remedy.

34. **Entire Agreement.** This Lease contains the entire agreement between the parties hereto and supersedes in their entirety any and all prior discussions, understandings or agreements. No agreement hereafter made shall operate to change, modify, terminate or discharge this Lease in whole or in part unless such agreement is in writing and signed by each of the parties hereto.

[Signature Pages Follows]

APPROVED AS TO FORM:

Assistant County Attorney

LANDLORD:

BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA, a body corporate and politic

By: _____
Name: Bryan J. Hill
Title: County Executive

TENANT:

FAIRFAX COUNTY REDEVELOPMENT AND
HOUSING AUTHORITY, a political subdivision of
the Commonwealth of Virginia

By: _____
Name: Thomas E. Fleetwood
Title: Assistant Secretary

EXHIBIT A
LEGAL DESCRIPTION

Parcel 1

BEGINNING at the pipe on the southeasterly side of the Washington-Richmond Highway, the said pipe being N. 62° 10' E. 459.65 feet from an old pipe at the corner of the Springman Tract; thence with the said side of the highway N. 62° 10' E. 300.0 feet to a pipe; thence, departing from the highway, S. 27° 50' E. 692.0 feet to a pipe; thence S. 19° 18' W. 438.25 feet to a pipe; thence S. 62° 10' W. 178.79 feet to a pipe; thence N. 27° 50' W. 690.14 feet to a pipe; thence N. 62° 10' E. 200.0 feet to a pipe; thence N. 27° 50' W. 300.0 feet to the beginning. Containing 8.8885 acres.

AND BEING the same land acquired by the Grantor by a deed recorded in Deed Book G-13 at Page 207 among the land records of Fairfax County, Virginia. Tax Map 101-4-01-0005-A.

Parcel 2

Lots 1 through 6, both inclusive, Section 1, Mount Zephyr, as the same is duly dedicated, platted and recorded among the aforesaid land records in Deed Book D-15 at Page 405, AND BEING the same land acquired by the Grantor by a deed recorded in Deed Book 614 at Page 180 among the aforesaid land records.

together with

Lots 7 through 10, both inclusive, Section 1, Mount Zephyr, as the same is duly dedicated, platted and recorded in Deed Book A-14 at Page 16, and Plat Book 3, Page 111, and corrected in Deed Book E-14, Page 92 of the aforesaid land records, AND BEING the same land acquired by the Grantor by a deed recorded in the aforesaid land records in Deed Book 617 at page 425. Tax Map 101-4-07-0001.

Parcel 3

Lots 39, 40 and 41, Section 1, Mount Zephyr, as the same is duly dedicated, platted and recorded among the aforesaid land records in Deed Book A-14, Page 16, amended Deed Book E-14, Page 92, AND BEING the same land acquired by the Grantor by a deed recorded in Deed Book 882 at Page 5. Tax Map 101-4-07-0039.

Parcel 4

Lots 1, 2 and 3, Block E, Section 2, MOUNT ZEPHYR, dedicated, platted and recorded in Deed Book 606 at page 44 of the aforesaid land records, AND BEING the same land acquired by the Grantor by a deed recorded in Deed Book 857 at Page 357 in the aforesaid land records

together with

Lots 4, 5 and 6, Block E, Section 2, MOUNT ZEPHYR, dedicated, platted and recorded in Deed Book P-14, Page 490 and Plat Book 4, Page 70 of the aforesaid land records, AND BEING the same land acquired by the Grantor by a deed recorded in Deed Book 1247 at Page 245 in the aforesaid land records. Tax Map 101-4-08-E-0001.

and

Parcel 5

Beginning at a pipe at northerly corner of the entire Freeman tract, said pipe being in the easterly line of Mt. Zephyr Subdivision Section 1, said pipe is also the corner common to lots 2 and 3 of the original Agnew Division; thence with the northerly line of Freeman, also the line between lots 2 & 3 Agnew Division S 76° 58' 24" E 300.00 feet; thence with the following new division lines through the residue of the Freeman tract: S 13° 37' 29" W 350.26 feet; S 76° 58' 24" E 225.77 feet; and S 13° 37' 29" W 493.80 feet to a point on the line now or formerly in the name of Charles Davis; thence with said line N 80° 58' 57" W 518 .07 feet to a point in the line of Mt. Zephyr Subdivision Sect. 2; thence with the said line of Sect. 2 and the same line continued with the line of Mt. Zephyr Sect. 1 N. 13° 01' 00" E 880.23 feet to the beginning containing 8.50 Ac., AND BEING the same land acquired by the Grantor by a deed recorded in Deed Book 845 at Page 212 among the aforesaid land records, LESS AND EXCEPT 1.1068 acres, more or less, conveyed by the Grantor to the Fairfax County Park Authority by deed recorded in Deed Book 3064 at Page 188 among the aforesaid land records.

together with

Beginning at a point in the line of The County School Board of Fairfax County, Virginia, a corner to Freeman; thence with the line of Freeman S 76° 58' 24" E 156.00 to a point in the line of the Fairfax County Park Authority; thence with the lines of said Park Authority S 43° 48' 24" feet to a point, S 08° 06' 10" E 142.24 feet to a point, and S 59° 27' 25" W 170.00 feet to a point; thence departing the said Park Authority and running through said School Board property N 13° 37' 29" E 140.00 feet to a point, N 76° 58' 34" W 225.77 feet to a point and N 13° 37' 29" E 200.13 feet to the point of beginning, containing 1.4919 acres. AND BEING the same land acquired by the Grantor from the Fairfax County Park Authority by deed recorded in Deed Book 3064 at Page 190 among the aforesaid land records, Tax Map 101-4-01-0057.

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DEED OF SUB-SUBLEASE AGREEMENT

THIS DEED OF SUB-SUBLEASE AGREEMENT ("Sub-Sublease"), for commercial purposes, made _____, 20__ (the "Effective Date"), by and between the OMVHS LLC, a Virginia limited liability company ("Sub-Sublandlord"), whose address is 3500 Pender Drive, Suite 300, Fairfax, Virginia 22030; and BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia ("Sub-Subtenant"), whose address is 12000 Government Center Parkway, Facilities Management Department, Suite 424, Fairfax, Virginia 22035.

In consideration of the mutual promises and covenants set forth below, as well as other good and valuable consideration, the receipt of which is acknowledged, the parties hereto agree as follows:

1. **Sub-Subleased Premises.** Sub-Sublandlord hereby leases to Sub-Subtenant and Sub-Subtenant hereby leases and takes from Sub-Sublandlord, for the term and upon the terms and conditions hereinafter set forth, that certain parcel of land located at 8333 Richmond Highway, Alexandria, Virginia, commonly known as the Original Mount Vernon High School, and more specifically described on Exhibit A attached hereto, together with all appurtenances thereto and improvements located thereon (the "Sub-Subleased Premises").

2. **Term.** The term of this Sub-Sublease (the "Term") shall commence on the date of this Sub-Sublease (the "Commencement Date") and shall terminate on the last day of the tenth (10th) month of the ninth (9th) full Sub-Sublease Year (as hereinafter defined). The term "Sub-Sublease Year," as used herein, shall mean a period of twelve (12) consecutive full calendar months. The first Sub-Sublease Year shall begin on the Commencement Date. If the Commencement Date occurs on the first (1st) day of a calendar month, the second and each successive Sub-Sublease Year shall commence upon the anniversary of the Commencement Date. If the Commencement Date does not occur on the first (1st) day of a calendar month, (i) the first (1st) Sub-Sublease Year shall include the remainder of the month in which the Commencement Date occurs and the following twelve (12) successive full calendar months and (ii) each succeeding Sub-Sublease Year shall commence on each successive anniversary of the first (1st) day of the first (1st) calendar month immediately succeeding the month in which the Commencement Date occurs.

3. **Rent.**

(a) The base rent under this Lease for the entire Term is fair market rent, or other amount as may be mutually determined by the parties. [TBD based on advice of accountant.]

(b) Sub-Subtenant shall pay the Base Rent and all other charges to be paid by Sub-Subtenant hereunder to Sub-Sublandlord at c/o Facilities Management Department at 3500 Pender Drive, Suite 300, Fairfax, Virginia 22030, or at such other place as may be designated in

writing by Sub-Sublandlord. The Base Rent shall be payable in arrears on the last day of each Sub-Sublease Year.

(c) All amounts and charges in addition to the Base Rent required to be paid by Sub-Subtenant in accordance with the terms hereof shall be deemed to be additional rent (the "Additional Rent") and collectible as such. No payment by Sub-Subtenant or acceptance by Sub-Sublandlord of an amount less than the Base Rent and the Additional Rent that is due and payable shall be deemed a waiver of any other rental due.

4. Sub-Sublandlord's Entry on Premises. Sub-Sublandlord and its agents, contractors and employees shall have the right to enter the Sub-Subleased Premises at any time and for any reason.

5. Sub-Subtenant Improvements. Sub-Subtenant shall not make alterations or betterments to the Sub-Subleased Premises unless agreed to by the Sub-Sublandlord; provided, however, any such approved alterations or betterments to the Sub-subleased Premises shall be performed in a good and workmanlike manner and in accordance with applicable Laws and in accordance with Section 58.1-339.2 of the Code of Virginia (1950), as amended, and any other documents and/or regulations and guidance related to the Sub-Subleased Premises' qualification for and receipt of the Virginia Historic Credits.

6. Sub-Sublandlord Improvements. Sub-sublandlord intends to rehabilitate the Sub-Subleased Premises in a manner that is intended to qualify for the Virginia historic rehabilitation tax credit described in Section 58.1-339.2 of the Code of Virginia (1950), as amended ("Virginia Historic Credits"). Sub-Sublandlord shall have the right, at its own cost and expense, to make alterations, installations, changes, and additions to the Sub-Subleased Premises (hereinafter collectively called "Alterations") as Sub-Sublandlord deems expedient or necessary for its business purposes in order to enable the Sub-subleased Premises to be eligible for Virginia Historic Credits, if any, that the Sub-Subleased Premises may have or for which shall become eligible. Sub-Sublandlord shall perform, or cause Sub-Sublandlord's contractors to perform, all work in connection with Alterations in a good and workmanlike manner and in accordance with applicable Laws and in accordance with Section 58.1-339.2 of the Code of Virginia (1950), as amended, and any other documents and/or regulations and guidance related to the Sub-Subleased Premises' qualification for and receipt of the Virginia Historic Credits.

7. Maintenance and Repairs; Other Expenses. Sub-Subtenant shall, at its expense, maintain all aspects of the Sub-Subleased Premises in good condition and as fully and completely as if Sub-Subtenant owned the Sub-Subleased Premises in fee simple. Unless otherwise agreed to by Sub-Subtenant, Sub-Sublandlord shall, at its expense, make all replacements and repairs to the roof and structure of the Sub-Subleased Premises as may be necessary or desirable to keep those components of the Sub-Subleased Premises in good repair and condition and in compliance with all applicable building, fire and other similar governmental codes and regulations.

8. Use. Sub-Subtenant shall have the right to use the Sub-Subleased Premises for the conduct of its usual and customary activities and any other purposes permitted by applicable

law. Sub-Subtenant agrees to use and occupy the Sub-Subleased Premises in compliance with all applicable laws.

9. Sub-Sublandlord's Representations. Sub-Sublandlord represents that (a) it holds leasehold title to the Sub-Subleased Premises, (b) it has the requisite power and authority to enter into this Sub-Sublease and to perform its obligations hereunder and (c) the undersigned representative of Sub-Sublandlord has been duly authorized to execute this Sub-Sublease on behalf of Sub-Sublandlord.

10. Sub-Subtenant's Representations. Sub-Subtenant represents that (a) it has the requisite power and authority to enter into this Sub-Sublease and to perform its obligations hereunder and (b) the undersigned representative of Sub-Subtenant has been duly authorized to execute this Sub-Sublease on behalf of Sub-Subtenant.

11. Mechanic's Liens. Neither Sub-Sublandlord nor Sub-Subtenant shall permit any mechanics', laborers' or materialmen's liens to stand against the Sub-Subleased Premises for any labor or materials furnished in connection with work of any character performed on the Sub-Subleased Premises. If any such lien is asserted, the party authorizing the work giving rise to such claim shall have the right to contest the validity or amount thereof, but shall provide a bond to have such lien removed of record or give such other reasonable security to ensure payment thereof and prevent any sale, foreclosure or forfeiture of the Sub-Subleased Premises by reason of such lien. On final determination of the validity of any such lien or claim of lien, the party deemed responsible, at its own expense, shall immediately pay or satisfy any judgment rendered in respect thereto with all proper costs and charges and shall have the lien released or judgment satisfied.

12. Insurance.

(a) For so long as any improvements on the Sub-Subleased Premises are being renovated or constructed, Sub-Subtenant shall cause (either directly or indirectly) to be maintained all-risk builder's risk and extended coverage insurance to cover items of labor and materials in respect of such renovation or construction and equipment in place or to be used as part of the Sub-Subleased Premises. The building limit shall be 100% of the insurable Replacement Cost (as hereinafter defined) of the Sub-Subleased Premises. The coverage period must coincide with the period of renovation or construction. Sub-Sublandlord shall be named an additional insured on such all-risk builder's risk and extended coverage insurance at all times during the Term.

(b) Sub-Subtenant shall at all times cause (either directly or indirectly) the Sub-Subleased Premises to be insured with all risk coverage as is or then shall be commonly included in policies insuring similar buildings against loss by fire and other casualties at the Replacement Cost of the Sub-Subleased Premises. For the purposes of this Section 12, the term "Replacement Cost" shall mean the actual cost of demolishing the improvements to be removed from the Property and replacing those improvements, exclusive of the costs of excavations, foundations and footings below the lowest basement floor, in accordance with the then-applicable building code. The coverage shall be a non-reporting commercial property policy form with a special cause of loss form. The value should be "an agreed value basis" equal to at

least 100% of the Replacement Cost of the improvements. The coverage shall be adjusted annually to reflect increased value due to inflation and/or renovations and shall name the Sub-sublandlord as an additional insured at all times during the Term.

(c) Sub-Subtenant shall have the right, in lieu of maintaining all of the insurance described in Section 12(a) and (b), to self-insure against any one or more of the liabilities, perils or circumstances described if deemed appropriate by the Manager of Risk Management of the Department of Finance of Fairfax County.

13. Damage to the Sub-Subleased Premises. If during the Term, the Sub-Subleased Premises or any part thereof is destroyed or damaged, unless agreed to otherwise by Sub-Subtenant, Sub-Sublandlord shall be obligated to repair such destruction or damage to the extent of insurance proceeds actually received by Sub-Sublandlord and other funds Sub-Sublandlord has available for such purpose; provided, however, in no event shall such repair have a material adverse impact on the Virginia Historic Credits or the Sub-Subleased Premises' eligibility therefore.

14. No Termination or Abatement of Rental. Except as otherwise expressly provided herein or in any other written agreement between Sub-Sublandlord and Sub-Subtenant, neither damage to nor destruction of any portion or all of the Sub-Subleased Premises by fire, the elements or any other cause whatever, whether or not without fault on the part of Sub-Subtenant, nor any other condition that may deprive Sub-Subtenant of the use and enjoyment of the Sub-Subleased Premises, shall terminate this Sub-Sublease or entitle Sub-Subtenant (a) to surrender the Sub-Subleased Premises, (b) to any reduction or abatement of Base Rent or any other amounts payable by Sub-Subtenant hereunder or (c) to make any deduction or offset against the same unless expressly permitted by this Sub-Sublease.

15. Taxes. Sub-Subtenant shall be responsible for and pay all ad valorem taxes assessed against the Sub-Subleased Premises and any and all personal property, equipment, materials and other property belonging to Sub-Subtenant and located upon the Sub-Subleased Premises.

16. Utilities. Sub-Subtenant shall pay all charges for public utilities of every kind attributable to the use of the Sub-Subleased Premises. Sub-Sublandlord agrees to send to Sub-Subtenant promptly copies of any notices for any such charges if such notices are received by Sub-Sublandlord.

17. Condemnation. In the event that the Sub-Subleased Premises or any material portion thereof is appropriated or taken under the power of eminent domain, or by purchase in lieu thereof, either party may terminate this Sub-Sublease by providing written notice thereof to the other party within twenty-one (21) calendar days after the date of such taking or receipt of notice of such taking, whichever is later, in which case this Sub-Sublease shall terminate and expire as of the date of such termination notice and Sub-Sublandlord and Sub-Subtenant will be relieved of any further liability hereunder. A portion of the Sub-Subleased Premises shall be deemed to be "material" if, as a result of its taking, Sub-Subtenant is unable to carry on its activities in the Sub-Subleased Premises in its usual and customary manner. Any award for the land and buildings of which the Sub-Subleased Premises are a part and for damages to the

residue, or any negotiated payment by sale in lieu thereof, shall be the property of Sub-Sublandlord, and Sub-Subtenant hereby assigns to Sub-Sublandlord all of its right, title and interest in and to any such award or payment. Sub-Subtenant, however, shall be entitled to claim, prove and receive in any condemnation proceeding, or negotiated sale in lieu thereof, such separate awards or amounts as may be allowed or paid, if any, for moving expenses and for fixtures and other equipment installed by Sub-Subtenant, at its expense.

18. Assignment and Subletting. Sub-Subtenant may assign this Sub-Sublease or sublet the Sub-Subleased Premises with Sub-Sublandlord's consent. No assignment or Sub-Sublease will release Sub-Subtenant from continuing responsibility for the full performance of the terms and conditions in this Sub-Sublease, unless Sub-Sublandlord signs a written statement releasing Sub-Subtenant from such liability.

19. Estoppel Certificates. Sub-Subtenant shall, upon ten days' prior written request of Sub-Sublandlord, deliver to Sub-Sublandlord, or any current or prospective mortgagee or purchaser of the Sub-Subleased Premises, a statement in writing setting forth the commencement and termination dates of this Sub-Sublease and certifying that this Sub-Sublease is or is not in full force and effect and that this Sub-Sublease has not been changed, modified or amended, or if it has, stating the specific changes, modifications or amendments and that, as of the date of certification, Sub-Subtenant has not paid rental for more than the current month, or stating the amount of rental so paid, and that there are no defaults under this Sub-Sublease nor defenses or offsets thereto, or if there are any such defaults, defenses or offsets, stating the specific defaults, defenses or offsets claimed by Sub-Subtenant.

20. Default.

(a) Sub-Subtenant shall be in default under this Sub-Sublease if (i) Sub-Subtenant fails to pay any installment of the Base Rent, Additional Rent or any other sum payable hereunder on the date due therefor and fails to cure such default within five (5) days after receipt of written notice of such default from Sub-Sublandlord or (ii) if Sub-Subtenant defaults in the performance of any of the other covenants or conditions contained in this Sub-Sublease and fails to cure such default within thirty (30) days after receipt of written notice of such default from Sub-Sublandlord (or within such longer period as may be required to cure such default if it cannot reasonably be cured within thirty (30) days, so long as Sub-Subtenant promptly commences and diligently pursues the curing of such default).

(b) If Sub-Subtenant is in default under the provisions of Section 22(a)(i) of this Sub-Sublease, Sub-Subtenant shall pay interest on the past due amount, from the date it is first due and payable until the date it is paid in full, at a rate equal to twelve percent (12%) per annum (the "Default Rate").

(c) If Sub-Subtenant shall default in the performance of any of its obligations hereunder, Sub-Sublandlord may, but shall not be obligated to, cure any such default and add the cost thereof with interest at the Default Rate to the amount of the next installment of the Base Rent to be paid by Sub-Subtenant hereunder, but it is expressly agreed that such curing of any default or payment of any indebtedness by Sub-Sublandlord shall not be deemed a waiver or release of any default hereunder or remedy provided herein.

(d) To the extent permitted by law, if Sub-Subtenant (i) shall become bankrupt or insolvent, or (ii) shall file or have filed against it any petition in bankruptcy or insolvency or for reorganization, or (iii) shall file or have filed against it a petition for the appointment of a receiver or trustee of all or a portion of the property of Sub-Subtenant, or (iv) makes an assignment for the benefit of its creditors, then the total amount of the rental payable during the Term of this Sub-Sublease, discounted to the date of Sub-Subtenant's payment thereof at the rate of eight percent per annum, shall immediately become due and payable at the option of Sub-Sublandlord.

(e) In the event that (i) any provision of Section 20(d) is deemed unenforceable, and (ii) Sub-Subtenant shall file or have filed against it a petition in bankruptcy or for reorganization under any provisions of the Bankruptcy Code, Sub-Subtenant shall assume the terms and provisions of this Sub-Sublease in their entirety within 60 days of the order for relief, or this Sub-Sublease shall be deemed rejected.

(f) In addition to all other rights or remedies Sub-Sublandlord may have, in the event of a default as specified in Section 20(a), above, Sub-Sublandlord shall have the immediate right to re-enter the Sub-Subleased Premises and remove all persons and property from the Sub-Subleased Premises. Sub-Sublandlord shall have the right to take such action without service of notice (other than the notices of default provided for above) or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. In the event Sub-Sublandlord elects to re-enter the Sub-Subleased Premises or takes possession of the Sub-Subleased Premises pursuant to legal proceedings or pursuant to any notice required by law, Sub-Sublandlord may, at its option, either terminate this Sub-Sublease or, without terminating this Sub-Sublease, relet the Sub-Subleased Premises or any part thereof for the benefit of Sub-Subtenant, for such term or terms (whether shorter or longer than the Term of this Sub-Sublease) and at such rental or rentals and upon such other terms and conditions as Sub-Sublandlord, in its sole discretion, deems advisable, and at the expense of Sub-Subtenant, Sub-Sublandlord shall have the right to make such reasonable repairs or alterations to the Sub-Subleased Premises as Sub-Sublandlord deems necessary in order to relet the Sub-Subleased Premises. Upon each such reletting all rentals received by Sub-Sublandlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than rental due hereunder from Sub-Subtenant to Sub-Sublandlord; second, to the payment of any costs and expenses of such reletting, including costs incurred by Sub-Sublandlord for brokerage fees, attorneys' fees and alterations and repairs; third, to the payment of any unpaid portion of the accelerated rental provided for in Section 20(a) above and fourth, the remainder, if any, to Sub-Subtenant. No such re-entry or taking possession of the Sub-Subleased Premises by Sub-Sublandlord shall be construed as an election by Sub-Sublandlord to terminate this Sub-Sublease unless written notice of such intention is given by Sub-Sublandlord to Sub-Subtenant or this Sub-Sublease is terminated by an order or a decree of a court of

competent jurisdiction. Notwithstanding any such reletting without termination, if Sub-Sublandlord has lawfully taken possession of the Sub-Subleased Premises, Sub-Sublandlord may at any time thereafter elect to terminate this Sub-Sublease for any previous default by Sub-Subtenant in the performance of the terms and conditions of this Sub-Sublease. In the event that Sub-Sublandlord elects to terminate this Sub-Sublease for any such default, Sub-Sublandlord shall reimburse Sub-Subtenant the amount by which the accelerated rental, allocable to the remainder of the Term hereof, paid by Sub-Subtenant pursuant to Section 20(a) of this Sub-Sublease exceeds the then reasonable rental value of the Sub-Subleased Premises for the remainder of the Term hereof, discounted to the date of termination of this Sub-Sublease at the rate of eight percent per annum, less any damages Sub-Sublandlord shall be entitled to collect from Sub-Subtenant.

(g) No re-entry, taking possession of or repair of the Sub-Subleased Premises by Sub-Sublandlord, or any other action taken by Sub-Sublandlord as a result of any default of Sub-Subtenant, shall relieve Sub-Subtenant of any of its liabilities and obligations under this Sub-Sublease whether or not the Sub-Subleased Premises are relet.

(h) The failure on the part of Sub-Sublandlord to re-enter or repossess the Sub-Subleased Premises, or to exercise any of its rights hereunder upon any default, shall not be deemed a waiver of any of the terms and conditions of this Sub-Sublease and shall not preclude Sub-Sublandlord from exercising any such rights upon any subsequent default or defaults. All of Sub-Sublandlord's rights shall be cumulative and shall not preclude Sub-Sublandlord from exercising any other rights which it may have under law.

(i) In any suit brought under the terms of this Sub-Sublease or for any failure to perform any of the covenants and conditions of this Sub-Sublease, the prevailing party shall have the right to recover all reasonable costs incurred in connection with such suit, including reasonable attorneys' fees.

21. Notices. All notices from Sub-Subtenant to Sub-Sublandlord required or permitted by any provision of this Sub-Sublease shall be in writing and sent by hand delivery, facsimile transmission, overnight delivery service or certified mail, return receipt requested, as follows:

TO SUB-SUBLANDLORD:

OMVHS LLC
c/o Fairfax Redevelopment and Housing Authority
3500 Pender Drive
Suite 300
Fairfax, Virginia 22030
Attention: Thomas E. Fleetwood

With a copy to:
Office of the County Attorney
12000 Government Center Parkway
Suite 549
Fairfax, Virginia 22035
Attention: County Attorney

All notices from Sub-Sublandlord to Sub-Subtenant so required or permitted shall be in writing and sent by hand delivery, facsimile transmission, overnight delivery service or certified mail, return receipt requested, as follows:

TO SUB-SUBTENANT:

Board of Supervisors of Fairfax County, Virginia
Facilities Management Department
12000 Government Center Parkway
Suite 442
Fairfax, Virginia 22035
Attention: Director, Facilities Management Department

With a copy to:

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

Notices shall be deemed given when actually received. Either party hereto may, at any time or from time to time, designate in writing a substitute address for that set forth above, and thereafter notices (and rental payments in the case of Sub-Sublandlord) shall be directed to such substitute address.

22. Surrender. At the expiration of the Term, Sub-Subtenant shall (a) quit and surrender the Sub-Subleased Premises broom clean and in a condition similar to the condition which the Sub-Subleased Premises was delivered to Sub-Subtenant at the commencement of the Lease, except for normal wear and tear and (b) surrender to Sub-Sublandlord at the place established by it all keys used in connection with the Sub-Subleased Premises and shall inform Sub-Sublandlord of all combinations for all locks, safes and vaults on the Sub-Subleased Premises.

23. Force Majeure; Emergency. In the event that either party hereto shall be delayed or hindered in or prevented from performing any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason not the fault of the party delayed in performing work or doing acts required under the terms of this Sub-Sublease, then the performance of such act shall be excused for the period of the delay and the period for

the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that in no event shall Sub-Subtenant be excused from the payment of the annual rental, or any other amounts or charges to be paid by Sub-Subtenant under the terms of this Sub-Sublease.

24. Short Form of Lease. The parties agree that upon the request of either party they will execute, acknowledge and deliver a memorandum of lease for the purpose of recordation. The party who records such memorandum shall pay the recording cost therefor.

25. Covenant of Quiet Enjoyment. Provided Sub-Subtenant is not then in default of any of the terms and conditions of this Sub-Sublease, Sub-Sublandlord covenants and warrants that Sub-Subtenant shall have quiet peaceable possession and enjoyment of the Sub-Subleased Premises for the Term hereof; provided that Sub-Sublandlord shall have full access to the Sub-Subleased Premises for the purpose of the ongoing renovation and construction project.

26. Sub-Sublandlord's Lien. Sub-Sublandlord hereby reserves to right to assert, in the event of a default by Sub-Subtenant, Sub-Sublandlord's statutory lien, secondary only to purchase money security interest, upon every right and interest of Sub-Subtenant in and to the stock, merchandise, equipment, machinery and inventory of Sub-Subtenant to secure the performance of all covenants, conditions and obligations of this Sub-Sublease to be performed and observed by Sub-Subtenant.

27. No Brokerage or Commissions. Sub-Sublandlord and Sub-Subtenant each represent and warrant that they have had no dealings with any real estate firm, agent, salesperson or broker in connection with this Sub-Sublease or the Sub-Subleased Premises and shall defend and hold each other harmless from any claim to the contrary.

28. No Partnership. It is agreed that nothing contained in this Sub-Sublease shall be deemed or construed as creating a partnership, joint venture or any other association between Sub-Sublandlord and Sub-Subtenant, or cause Sub-Sublandlord or Sub-Subtenant to be responsible in any way for the debts or obligations of the other, except as expressly provided herein, and neither the method of computing rental nor any other provision contained in this Sub-Sublease nor any acts of the parties hereto shall be deemed to create any relationship between Sub-Sublandlord and Sub-Subtenant other than the relationship of Sub-Sublandlord and Sub-Subtenant.

29. Successors and Assigns. This Sub-Sublease and the terms hereof shall be binding upon and inure to the benefit of Sub-Sublandlord and Sub-Subtenant and their respective successors and assigns.

30. Construction of Agreement. This Sub-Sublease shall be governed by the laws of the Commonwealth of Virginia.

31. Titles. The titles or paragraph headings are inserted only for convenience and are in no way to be construed as a part of this Sub-Sublease or as a limitation on the scope of the particular provisions to which they refer.

32. Counterparts. This Sub-Sublease may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

33. Jury Trial. Sub-Sublandlord and Sub-Subtenant shall and do hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Sub-Sublease, the relationship of Sub-Sublandlord and Sub-Subtenant, Sub-Subtenant's use and/or occupancy of the Lease Premises, or any statutory remedy.

34. Entire Agreement. This Sub-Sublease contains the entire agreement between the parties hereto and supersedes in their entirety any and all prior discussions, understandings or agreements. No agreement hereafter made shall operate to change, modify, terminate or discharge this Sub-Sublease in whole or in part unless such agreement is in writing and signed by each of the parties hereto.

[Signature Pages Follows]

SUB-SUBLANDLORD:

OMVHS LLC a Virginia limited liability company

By: OMVHS MM LLC, a Virginia limited liability company, its Manager

By: Fairfax County Redevelopment and Housing Authority, a political subdivision of the Commonwealth of Virginia, its Sole Member and Manager

By: _____
Name: Thomas E. Fleetwood
Title: Assistant Secretary

SUB-SUBTENANT:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia

By: _____
Name: Bryan J. Hill
Title: County Executive

EXHIBIT A
LEGAL DESCRIPTION

Parcel 1

BEGINNING at the pipe on the southeasterly side of the Washington-Richmond Highway, the said pipe being N. 62° 10' E. 459.65 feet from an old pipe at the corner of the Springman Tract; thence with the said side of the highway N. 62° 10' E. 300.0 feet to a pipe; thence, departing from the highway, S. 27° 50' E. 692.0 feet to a pipe; thence S. 19° 18' W. 438.25 feet to a pipe; thence S. 62° 10' W. 178.79 feet to a pipe; thence N. 27° 50' W. 690.14 feet to a pipe; thence N. 62° 10' E. 200.0 feet to a pipe; thence N. 27° 50' W. 300.0 feet to the beginning. Containing 8.8885 acres.

AND BEING the same land acquired by the Grantor by a deed recorded in Deed Book G-13 at Page 207 among the land records of Fairfax County, Virginia. Tax Map 101-4-01-0005-A.

Parcel 2

Lots 1 through 6, both inclusive, Section 1, Mount Zephyr, as the same is duly dedicated, platted and recorded among the aforesaid land records in Deed Book D-15 at Page 405, AND BEING the same land acquired by the Grantor by a deed recorded in Deed Book 614 at Page 180 among the aforesaid land records.

together with

Lots 7 through 10, both inclusive, Section 1, Mount Zephyr, as the same is duly dedicated, platted and recorded in Deed Book A-14 at Page 16, and Plat Book 3, Page 111, and corrected in Deed Book E-14, Page 92 of the aforesaid land records, AND BEING the same land acquired by the Grantor by a deed recorded in the aforesaid land records in Deed Book 617 at page 425. Tax Map 101-4-07-0001.

Parcel 3

Lots 39, 40 and 41, Section 1, Mount Zephyr, as the same is duly dedicated, platted and recorded among the aforesaid land records in Deed Book A-14, Page 16, amended Deed Book E-14, Page 92, AND BEING the same land acquired by the Grantor by a deed recorded in Deed Book 882 at Page 5. Tax Map 101-4-07-0039.

Parcel 4

Lots 1, 2 and 3, Block E, Section 2, MOUNT ZEPHYR, dedicated, platted and recorded in Deed Book 606 at page 44 of the aforesaid land records, AND BEING the same land acquired by the Grantor by a deed recorded in Deed Book 857 at Page 357 in the aforesaid land records

together with

Lots 4, 5 and 6, Block E, Section 2, MOUNT ZEPHYR, dedicated, platted and recorded in Deed Book P-14, Page 490 and Plat Book 4, Page 70 of the aforesaid land records, AND BEING the same land acquired by the Grantor by a deed recorded in Deed Book 1247 at Page 245 in the aforesaid land records. Tax Map 101-4-08-E-0001.

and

Parcel 5

Beginning at a pipe at northerly corner of the entire Freeman tract, said pipe being in the easterly line of Mt. Zephyr Subdivision Section 1, said pipe is also the corner common to lots 2 and 3 of the original Agnew Division; thence with the northerly line of Freeman, also the line between lots 2 & 3 Agnew Division S 76° 58' 24" E 300.00 feet; thence with the following new division lines through the residue of the Freeman tract: S 13° 37' 29" W 350.26 feet; S 76° 58' 24" E 225.77 feet; and S 13° 37' 29" W 493.80 feet to a point on the line now or formerly in the name of Charles Davis; thence with said line N 80° 58' 57" W 518 .07 feet to a point in the line of Mt. Zephyr Subdivision Sect. 2; thence with the said line of Sect. 2 and the same line continued with the line of Mt. Zephyr Sect. 1 N. 13° 01' 00" E 880.23 feet to the beginning containing 8.50 Ac., AND BEING the same land acquired by the Grantor by a deed recorded in Deed Book 845 at Page 212 among the aforesaid land records, LESS AND EXCEPT 1.1068 acres, more or less, conveyed by the Grantor to the Fairfax County Park Authority by deed recorded in Deed Book 3064 at Page 188 among the aforesaid land records.

together with

Beginning at a point in the line of The County School Board of Fairfax County, Virginia, a corner to Freeman; thence with the line of Freeman S 76° 58' 24" E 156.00 to a point in the line of the Fairfax County Park Authority; thence with the lines of said Park Authority S 43° 48' 24" feet to a point, S 08° 06' 10" E 142.24 feet to a point, and S 59° 27' 25" W 170.00 feet to a point; thence departing the said Park Authority and running through said School Board property N 13° 37' 29" E 140.00 feet to a point, N 76° 58' 34" W 225.77 feet to a point and N 13° 37' 29" E 200.13 feet to the point of beginning, containing 1.4919 acres. AND BEING the same land acquired by the Grantor from the Fairfax County Park Authority by deed recorded in Deed Book 3064 at Page 190 among the aforesaid land records, Tax Map 101-4-01-0057.

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Resolution Attachment C – Development Agreement

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of _____, 20__, between [OMVHS LLC], a Virginia limited liability company (the “Owner”), and the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body corporate and politic (the “Developer”).

Recitals

WHEREAS, the Owner is the leasehold owner of the building located at 8333 Richmond Highway, Alexandria, Virginia 22309 (the “Building”), as well as certain other improvements associated therewith, and the tracts of land upon which the Building is located (collectively, the “Land” and, together with the Building, the “Project”);

WHEREAS, the Owner is governed by that certain Operating Agreement dated effective as of the date hereof, as the same may be amended from time to time (the “Owner Operating Agreement”);

WHEREAS, the Project is intended to be rehabilitated and managed in order that it will qualify for the Virginia rehabilitation tax credits (the “Credits”) provided in Section 58.1-339.2 of the Code of Virginia;

WHEREAS, the rehabilitation of the Building will help ensure the preservation and protection of an historic project through the restoration of the historic interior and exterior of the Building, that will qualify for the Credits; and

WHEREAS, the Developer has been acting as the Developer of the Project since its inception, and has been engaged in all aspects of initial design work, project management, and business planning; and

WHEREAS, the Owner desires to continue the Developer as the developer as the Project, reaffirm the Developer’s obligations to provide certain services for the Owner with respect to overseeing the continued development and rehabilitation of the Building (the “Rehabilitation”) until all development and rehabilitation work is completed, and to detail overall Developer tasks, responsibilities and compensation.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. **Appointment.** The Owner hereby reaffirms and reappoints the Developer to render services for it, and confirms and ratifies the appointment of the Developer with respect to services rendered for it to date, in supervising and overseeing the development of the Project as herein contemplated.

2. Authority. The Developer shall have, and has had, the authority and the obligation to:

(i) act on behalf of the Owner in its relation with any governmental agency or authority and any construction and/or mortgage loan lender with respect to all matters relating to the Rehabilitation;

(ii) coordinate the preparation of the plans and specifications (the "Plans and Specs"), if any, and recommend alternative solutions whenever design details affect construction or renovation feasibility or schedules;

(iii) ensure that the Plans and Specs, if any, are in compliance with all applicable codes, laws, ordinances, rules and regulations;

(iv) negotiate all necessary contracts and subcontracts, including with the general contractor (the "GC"), for the Rehabilitation;

(v) choose the products and materials necessary to equip the Project in a manner which satisfies all requirements of any construction or mortgage loan and the Plans and Specs;

(vi) monitor disbursement and payment of all loan and equity disbursements during the Rehabilitation, including amounts owed contractors and subcontractors, all of which must be approved by all officers of the Developer;

(vii) insure that the Project is constructed and renovated free and clear of all mechanics' and materialmen's liens;

(viii) cause the Project to be completed in a prompt and expeditious manner, consistent with good workmanship, and in compliance with the following:

(1) the Plans and Specs as they may be amended by the agreement of the parties hereto;

(2) any and all obligations of the Owner under any construction or mortgage loan; and

(3) any and all zoning regulations, city ordinances, including health, fire and safety regulations, and any other requirements of federal, state and local laws, rules, regulations and ordinances applicable to the Rehabilitation;

(ix) cause to be performed in a diligent and efficient manner the following:

(1) the Rehabilitation pursuant to the Plans and Specs, including any required off-site work; and

- (2) general administration and supervision of the Rehabilitation, including but not limited to activities of subcontractors and their employees and agents, and others employed as to the Project in a manner which complies in all respects with any construction or mortgage loan and the Plans and Specs;
- (x) keep, or cause to be kept, accounts and cost records as to the Rehabilitation;
- (xi) maintain, or cause to be maintained, at its expense, office and accounting facilities and equipment necessary to adequately perform the foregoing functions;
- (xii) make available to the Owner, during normal business hours and upon its written request, copies of all material contracts and subcontracts;
- (xiii) provide, and periodically update, the construction and renovation time schedule;
- (xiv) investigate and recommend a schedule for purchase by the Owner of all materials and equipment requiring long lead time procurement, expedite and coordinate delivery of such purchases;
- (xv) prepare criteria for bidders interested in the construction and renovation, establish bidding schedules and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques with any special systems, materials or methods;
- (xvi) receive bids, prepare bid analyses and make recommendations to the Owner for award of contracts or rejection of bids;
- (xvii) coordinate the work of the general contractor to complete the Project in accordance with the objectives as to cost, time and quality, and provide sufficient personnel at the Project with authority to achieve such objectives;
- (xviii) provide a detailed schedule of realistic activity sequences and durations, allocation of labor and materials and processing of shop drawings and samples;
- (xix) provide regular monitoring of the schedule as construction progresses, identify potential variances between scheduled and probable completion dates, review the schedule for work not started or incomplete, recommend to the Owner adjustments in the schedule to meet the probable completion date, provide summary reports of such monitoring, and document all changes in the schedule;
- (xx) recommend courses of action to the Owner when requirements of subcontracts are not being fulfilled;

(xxi) revise and refine the approved estimate of construction and renovation costs, incorporate changes as they occur, and develop cash flow reports and forecasts as needed;

(xxii) provide regular monitoring of the approved estimate of construction and renovation costs, show actual costs for activities in process and estimates for uncompleted tasks, identify variances between actual and budgeted or estimated costs and advise the Owner whenever projected costs exceed budgets or estimates;

(xxiii) develop and implement a system for review and processing of change orders as to the Rehabilitation;

(xxiv) develop and implement a procedure for the review and processing of applications by subcontractors for progress and final payments;

(xxv) establish and implement procedures for expediting the processing and approval of shop drawings and samples, if any;

(xxvi) record the progress of the Rehabilitation and submitting written progress reports to the Owner, including the percentage of completion and the number and amounts of change orders; and

(xxvii) coordinating all requirements and applications to ensure that the Rehabilitation complies with the laws and regulations for, and obtains all certifications required to obtain Credits for the Project.

3. Developer Fee. For services performed and to be performed under Sections 1 and 2 of this Agreement, the Owner agrees to pay the Developer a developer fee (the "Developer Fee") in an amount equal to _____ and No/100 Dollars (\$_____.00), but in no event to exceed [ten percent (10%) – fifteen percent (15%) – TBD based on advice of accountant] of the qualified rehabilitation expenditures incurred by the Owner in connection with the Project. The Developer Fee shall be deemed earned in its entirety as of the date of construction completion of the Rehabilitation, and otherwise in accordance with the terms hereof. The Developer Fee shall be paid in full upon Owner's receipt of all equity proceeds from any state tax credit investors that may be admitted to Owner in the future pursuant to the Owner Operating Agreement (as the same may be amended or modified from time to time), but in no event prior to the date of "Completion", as defined below. The Developer shall not be compensated for, and no portion of the Development Fee shall apply to, services in connection with, the organization or syndication of the Owner, the acquisition of the Land or existing building included in the Project, obtaining an allocation of Credits, or securing Project financing other than construction financing, it being the understanding between the parties hereto that all such listed activities and services are the exclusive responsibility of the Owner and/or consultants or others engaged by the Owner.

4. Termination of Duties and Responsibilities of Developer. The Developer shall have no further duties or obligations hereunder after receipt of the accountant's certification of the qualified rehabilitation costs for the Building ("Completion"). The Developer's duties,

responsibilities and rights hereunder shall not be terminated by the Owner except for “cause” as finally determined by a court of competent jurisdiction. For purposes hereof, “cause” shall mean fraud, dishonesty, reckless disregard for customary practices and intentional misconduct after at least thirty (30) days’ prior notice and opportunity to cure.

5. Default. In the event that the Developer shall be in default of this Agreement after written notice and a ninety (90) day opportunity to cure such default, the Owner may terminate this Agreement and withhold any payments due hereunder.

6. Successors and Assigns. This Agreement shall be binding on the parties hereto, and their heirs, successors, and assigns.

7. Separability of Provisions. Each provision of this Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid.

8. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

9. No Continuing Waiver. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

10. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

OWNER:

[OMVHS LLC], a Virginia limited liability company

By: [OMVHS MM LLC], a Virginia limited liability company, its Manager

By: Fairfax County Redevelopment and Housing Authority, a political subdivision of the Commonwealth of Virginia, its Sole Member and Manager

By: _____
Name: Thomas E. Fleetwood
Title: Assistant Secretary

DEVELOPER:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body corporate and politic

By: _____
Name: Bryan J. Hill
Title: County Executive

Resolution Attachment D – Grant Funding Agreement

ORIGINAL MOUNT VERNON HIGH SCHOOL GRANT FUNDING AGREEMENT
By and Among
THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA
and
THE FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY
and
OMVHS LLC

This Original Mount Vernon High School Grant Funding Agreement (this “Agreement”) is made this ____ day of November, 2019, by and among the Board of Supervisors of Fairfax County, Virginia, a body corporate and politic (“Board”), the Fairfax County Redevelopment and Housing Authority, a political subdivision of the Commonwealth of Virginia (“FCRHA”), and OMVHS LLC, a Virginia limited liability company (“OMVHS LLC”).

RECITALS

R-1 The Board is the fee simple owner of the historic Original Mount Vernon High School, located at 8333 Richmond Highway, Alexandria, Virginia 22309, in the Mount Vernon Magisterial District, Tax Map Nos. 101-4-((1))-0005A and 101-4-((7))-001 (“OMVHS”), which was built in 1939 and is listed on the Virginia Historic Landmarks Register and the National Registry of Historic Places.

R-2 The Board has recently completed a Master Plan Study for OMVHS, with an initial phase for the redevelopment, renovation and adaptive reuse of the facility. This initial redevelopment phase contemplates reuse programs that provide for educational, childcare and childhood education programs, art, recreational and life skill training programs, and innovation and business incubation spaces (collectively, the “Intended Use”). The Board

anticipates additional phases for the redevelopment and rehabilitation of OMVHS (collectively, such phases are referred to as the “Redevelopment Project”).

R-3 The Board’s current estimate for the initial phase of the Redevelopment Project is approximately \$80,000,000, of which, due to the historic nature of the building, over \$50,000,000 of the interior and improvements, including design with respect to the improvements and a developer’s fee (“Developer’s Fee”), may qualify for Virginia historic rehabilitation tax credits (“Credits”) provided in Section 58.1-339.2 of the Code of Virginia (1950), as amended.

R-4 In order to syndicate the Credits, an entity such as a limited partnership or limited liability company must be formed to acquire a legal property interest in the building, which can be affected through a leasehold interest of five years or longer. Taxpayers who pay Commonwealth of Virginia income taxes can invest equity in these entities in exchange for an allocation of the Credits.

R-5 The Board does not have express statutory authority to form limited partnerships, limited liability companies and/or corporations and therefore cannot create an entity to acquire a property interest in OMVHS to syndicate the Credits for the Project. The FCRHA, however, does have express statutory authority, as provided in Section 36-19(12) of the Code of Virginia (1950), as amended, with the approval of the Board, to form corporations, limited partnership partnerships, joint ventures, and other legal entities to carry out its powers, which powers expressly include the facilitation of redevelopment undertakings such as the redevelopment contemplated for the Rehabilitation Project.

R-6 To enable Fairfax County (“County”) and its residents to benefit from the syndication of the Credits related to the Rehabilitation Project, the Board, the FCRHA, and

OMVHS LLC, have agreed to enter into a transaction whereby the Board will lease OMVHS to the FCRHA, which in turn will sublease OMVHS to OMVHS LLC. The managing member of OMVHS LLC is OMVHS MM LLC, whose sole member is the FCRHA. The other initial member of OMVHS LLC is the FCHRA Redevelopment and Housing Assistance Corporation, a Virginia corporation (“FCHRA RHAC”), established and controlled by the FCRHA. By virtue of the sublease, OMVHS LLC will hold a leasehold interest of five (5) or more years in OMVHS. Further, OMVHS LLC will enter into all agreements for the design, construction and implementation of the Redevelopment Project and will incur all costs for such rehabilitation work, including the Developer’s Fee.

R-8 OMVHS LLC will sub-sublease OMVHS to the Board, which will manage the operation and maintenance of OMVHS for its Intended Use. In connection with the Board’s role as developer for the Rehabilitation Project, the Board and OMVHS LLC are entering into a development agreement (“Development Agreement”) designating the Board, as developer for OMVHS LLC, with full authority to effectuate the redevelopment of the Redevelopment Project through the Board’s Department of Public Work and Environmental Services, and other Board agencies and departments as deemed appropriate by the Board.

R-9 Upon, or prior to, completion of the initial phase of the Redevelopment Project and the award of Credits for such initial phase, an institutional investor will be admitted to OMVHS LLC in exchange for an agreement to make equity contributions in consideration for an allocation of the Credits (“State Credit Investment”).

R-10 In order to help finance the rehabilitation and development of the Rehabilitation Project, the parties to this Agreement desire that the Board provide future grant funding to

the FCRHA, for further indirect contribution to OMVHS LLC to enable OMVHS LLC to indirectly pay for all of the costs incurred by OMVHS LLC in connection with the Redevelopment Project, including payment of the Developer's Fee. Such funding is intended to come, in large part, from the issuance of taxable or tax-exempt bonds or other obligations by the FCRHA for the benefit of the Board ("Bonds"), including Bonds to reimburse the Board for expenditures previously made by or on behalf of the County for the Redevelopment Project. The intent is that all expenditures incurred by OMVHS LLC for the Redevelopment Project, less the net proceeds received by OMVHS LLC from the State Credit Investment, will be indirectly reimbursed by the Board to OMVHS LLC in the manner set forth herein.

R-11 To facilitate payment and accounting of all financial obligations that the Board is undertaking in this Agreement, the FCRHA and OMVHS LLC are designating the Board's Department of Management and Budget and the Board Department of Finance to process all payments and maintain books and records with respect to such payments.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties to this Agreement, and of other good and valuable consideration, the receipt and legal sufficiency of which are acknowledged by the parties, it is agreed as follows:

1. Incorporation of Recitals. The Recitals are fully incorporated into this Agreement.
2. Grant of Funds. The Board agrees to provide, subject to appropriation, a grant of funds, including, but not limited to, proceeds from the Bonds (collectively, the "Grant Funds"), to FCRHA for the direct costs incurred by OMVHS LLC in the design, construction and rehabilitation of OMVHS, including the Developer's Fee, less the net amount the Equity Contribution that OMVHS LLC receives. The Board intends to make

the Grant Funds available to FCRHA to cover, indirectly, the financial obligations of OMVHS LLC in its development and operation of the Redevelopment Project.

3. Equity Contributions. FCRHA, in turn, shall contribute the Grant Funds to OMVHS MM LLC as an equity contribution (the “FCRHA Contribution”) of a member therein and pursuant to Section 721 of the Internal Revenue Code of 1986, as amended (the “Code”). OMVHS MM LLC shall then contribute the FCRHA Contribution to OMVHS LLC as an equity contribution (the “OMVHS MM Contribution”) of a member therein and pursuant to Code Section 721.

4. Administrative Convenience. For purposes of administrative convenience, the Board, in its discretion, may remit the Grant Funds directly to OMVHS LLC. All parties, however, acknowledge and agree that any such direct remittance shall be deemed to have been made, first, to FCRHA, and then from FCRHA to OMVHS MM LLC as the FCRHA Contribution, and from OMVHS MM LLC to OMVHS LLC as the OMVHS MM Contribution, for all purposes.

5. Reimbursements of County Funds. To the extent the Grant Funds consist of any general funds of County and are remitted to FCRHA prior to the issuance of the Bonds, the Board shall be entitled to use the proceeds from the issuance of the Bonds to reimburse such County general funds.

6. Designation of Financial Accounting. FCRHA and OMVHS LLC appoint as their agent the Board’s Department of Management and Budget, the Board’s Department of Finance, and such other individuals and agencies designated by the County Executive of the County, to process all payments and manage all accounting for the Redevelopment

Project, to assure that all the Grant Funds are handled in a manner deemed appropriate by the Board.

7. Subject to Appropriation. All payments and other financial obligations undertaken by the Board in this Agreement are subject to appropriation by the Board.

[Signature Page Follows]

BOARD:

BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA, a body
corporate and politic

By: _____
Bryan J. Hill
County Executive

FCRHA:

FAIRFAX COUNTY REDEVELOPMENT
AND HOUSING AUTHORITY, a political
subdivision of the Commonwealth of
Virginia

By: _____
Thomas E. Fleetwood
Assistant Secretary

OMVHS LLC:

OMVHS LLC, a Virginia limited liability
company

By: OMVHS MM LLC, a Virginia
limited liability company, its
Manager

By: Fairfax County
Redevelopment and Housing
Authority, a political
subdivision of the
Commonwealth of Virginia,
its Sole Member and
Manager

By: _____
Thomas Fleetwood
Assistant Secretary

CONSIDERATION - 1

Approval of the Proposed Amended Bylaws for the Fairfax County Police Civilian Review Panel

ISSUE:

Approval of amendments to the Bylaws for the Fairfax County Police Civilian Review Panel (PCRCP).

TIMING:

Board consideration is requested on November 19, 2019, so the Bylaws can become effective, as amended.

BACKGROUND:

On September 24, 2019, the Board of Supervisors approved revisions to the original Action Item which established the Police Civilian Review Panel (Action-17, Establishment of a Police Civilian Review Panel, dated December 6, 2016). The approved revisions allow for greater transparency when the Police Civilian Review Panel (PCRCP) issues public review reports by clarifying the restrictions on disclosure of certain personnel records, portions of investigative case files, and law enforcement agency records. In addition, the approved revisions provide that certain employee grievances or complaints made by certain Fairfax County employees are not within the Panel's scope of authority.

The PCRCP drafted amendments to its Bylaws to incorporate the approved revisions, and these were presented and approved at the PCRCP's October 7, 2019, meeting. The amendments to the Bylaws include:

- Removal of matters subject to County Personnel Regulations or Police Department General Orders from scope of authority for PCRCP review (Section VI.A.1.e)
- Clarification of the limitations on Panel Members to disclose certain personnel records and portions of investigative case files (Section VI.E.2.d.)
- Explicit restrictions on disclosure of certain law enforcement agency records by Panel Members (Section VI.E.2.e.)

Amendments to the PCRCP Bylaws require Board approval. The PCRCP Bylaws were originally approved by the Board of Supervisors on July 11, 2017, and accepted by the

Board Agenda Item
November 19, 2019

PCRP on August 3, 2017; and amendments were approved by the Board of Supervisors on October 16, 2018.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1: Proposed Bylaws of the Fairfax County Police Civilian Review Panel (as amended)

STAFF:
Richard Schott, Independent Police Auditor, Office of the Independent Police Auditor

ASSIGNED COUNSEL:
Julia Judkins, Panel Counsel

BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL

Approved by the Board of Supervisors on July 11, 2017

Accepted by the Police Civilian Review Panel on August 3, 2017

**Amendments Approved by the Board of Supervisors on October 16, 2018, and
November 19, 2019**

ARTICLE I. NAME¹

The name of this organization is the **Fairfax County Police Civilian Review Panel**.

ARTICLE II. PURPOSE

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies and practices as they pertain to case reviews to assist the FCPD Chief of Police ("Chief") and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS

- A. Composition and Qualifications.
 - 1. The Board of Supervisors shall appoint each Panel Member.
 - 2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel's responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
 - 3. The Board of Supervisors shall endeavor to create an independent and fair body giving

¹ Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.

due consideration to the following factors, among others it may choose: community and civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.
2. Panel Member terms shall be staggered.
3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.
4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three- year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.
2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendar year (unless the absence is for good reason as determined by the Chair).
3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.
4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

A. The Initial Chair and Vice-Chair.

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

B. Succession; Annual Election of Officers; Vacancies.

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
4. No Panel Member may serve more than one, one year term as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
 - (a) Preside over all Panel meetings at which the Chair is present;
 - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
 - (c) Serve as the Panel's official spokesperson;
 - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
 - (e) Perform any other duties as the Panel may delegate; and
 - (f) Delegate any of these duties to other Panel Members.

2. The Vice-Chair shall:

- (a) Preside over Panel meetings in the absence of the Chair; and
- (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.

3. Panel Committees.

- (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

ARTICLE V. QUORUM, VOTING AND MEETINGS

A. Quorum.

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

B. Voting.

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

C. Meetings.

- 1. The Panel shall meet as often as necessary to conduct Panel business.
- 2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
- 3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.

4. Panel Meeting Notices shall be:
 - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
 - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
 - (a) places that are accessible to persons with disabilities,
 - (b) public buildings whenever practical; and
 - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
 - (a) the date, time, and location of each meeting;
 - (b) the Panel Members present and absent;
 - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
 - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.

ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

A. Scope of Panel Review Authority.

1. The Panel shall review Investigations to ensure their thoroughness, completeness, accuracy, objectivity, and impartiality where (1) the subject matter of an Investigation is an allegation of “abuse of authority” or “serious misconduct” by a FCPD officer, and (2) a Review Request is filed. The Panel shall not review:
 - (a) alleged misconduct that is subject to the exclusive review by the Auditor;
 - (b) any Complaint related to an incident that occurred before December 6, 2016;
 - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
 - (d) a Review Request filed more than sixty (60) days after the date of the FCPD notice sent to the complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint (unless the Panel determines that there is good cause to extend the filing deadline); or
 - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding; or any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court’s judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
3. Where a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

B. Definition of “Abuse of Authority” or “Serious Misconduct”.

For purposes of determining the Panel’s authority to review an Investigation, “abuse of authority” or “serious misconduct” by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
 - (i) identifying information for the person filing the Complaint;
 - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
 - (iii) the specific police behavior of concern;
 - (iv) a description of the incident in which the behavior occurred; and
 - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

2. Initial Disposition Notice.

- (a) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.
- (b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.
- (c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:
 - (i) is timely filed; or
 - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.
- (e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.
- (f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D. Pending Proceedings.

- 1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
 - (a) suspend its review;
 - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
 - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
 - (d) track any deferred matter and notify the complainant and the Board of Supervisors

once the proceedings are closed and the request for review may proceed.

2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.
3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.
- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
- (e) The Panel shall not take testimony or receive evidence.
- (f) At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
- (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about

the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.

- (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional investigation.
- (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.

2. Closed Sessions, and Confidential Matters During Panel Review Meetings.

- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
- (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
- (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
- (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that ~~the file and case record is a personnel record that shall not be disclosed to anyone or copied~~ an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.
- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the

Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.

- ~~(e)~~(f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F. Disposition of Review Requests.

1. Timely Completion.

- (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
- (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.

2. Panel Findings.

- (a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:
 - (i) Concur with the findings and determination detailed in the Investigation Report;
 - (ii) Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief; or
 - (iii) Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
- (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
- (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
- (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel's final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES

A. Review of Law Enforcement Policies and Practices.

1. Based on the Panel's review of Investigations, the Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies and practices that the Panel concludes are needed.
2. The Panel may conduct Public Meetings to assist the Panel in making recommendations for policy and practice changes to the Chief and the Board of Supervisors.

B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS

A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.
2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

ARTICLE IX. RECORDKEEPING; ANNUAL REPORT

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1st of each year.

ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND THE AUDITOR; BOARD OF SUPERVISORS

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Auditor.

The staff of the Office of the Auditor shall provide administrative support for the Panel.

C. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.

2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.

ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

Exhibit A

DEFINED TERMS

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

Abuse of Authority has the meaning assigned to the term in Article VI.B.

Annual Report means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

Auditor means the Fairfax County Independent Police Auditor.

Board of Supervisors means the Board of Supervisors of Fairfax County.

Bylaws means the Bylaws of the Fairfax County Police Civilian Review Panel

Chief means the FCPD Chief of Police.

Complaint means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

Counsel means the legal counsel that the Board of Supervisors designates to support the Panel.

FCPD means the Fairfax County Police Department.

FCSO means the Fairfax County Sheriff's Office.

Initial Complaint means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

Initial Disposition Notice means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

Investigation(s) means a FCPD internal administrative investigation.

Investigation Report means the completed written FCPD report setting forth the findings of the Investigation.

Laws means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

Meeting(s) has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

Panel means the Fairfax County Police Civilian Review Panel.

Panel Findings means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

Panel Meeting means a meeting of the Panel.

Panel Meeting Notice means the written notice stating the date, time, and location of a Panel Meeting.

Panel Member(s) means each of the persons that the Board of Supervisors appoints to the Panel.

Panel Review Meeting means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

Panel Review Meeting Notice means the Panel Meeting Notice for a Panel Review Meeting.

Public Meeting(s) means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

Receipt of the Investigation Report is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

Review Request means a person's request for the Panel to review an Investigation.

Serious Misconduct has the meaning assigned to the term in Article VI.B.

VFOIA means the Virginia Freedom of Information Act, as amended from time to time.

Board Agenda Item
November 19, 2019

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. *Sovannorith Duong v. Fairfax County*, VWC File No VA02000031262 (Va. Workers' Compensation Commission); *Sovannorith Duong v. Fairfax County*, EEOC Charge Number 570-2019-01032 (Equal Employment Opportunity Commission)
 - 2. *Gillian Ethridge v. Fairfax County*, Case No. 1:19-cv-00382 (E.D. Va.)
 - 3. *Justin Reed v. Fairfax County*, Case No.1:18-cv-1454 (E.D. Va.)
 - 4. *Barry McCabe v. Fairfax County, Fairfax County Animal Shelter, Fairfax County Board of Supervisors, David Rohrer, Ed Roessler, Anthony Matos, Barbara Hutcherson, Amanda Novotny, and John Doe(s)*, Case No, CL-2019-0008951 (Fx. Co. Cir. Ct.)
 - 5. *Brett A. Payne v. Officer Adalikwu*, Case No.: GV19-026437 (Fx. Co. Gen. Dist. Ct.)
 - 6. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Zabiullah Ahmed*, Case No. CL-2019-0014187 (Fx. Co. Cir. Ct.) (Lee District)
 - 7. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Walter J. Grandjean and Mary A. Grandjean*; Case No. GV19-027230 (Fx. Co. Gen. Dist. Ct.) (Lee District)
 - 8. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Saul Garcia-Ramirez*, Case No. CL-2019-0010619 (Fx. Co. Cir. Ct.) (Mason District)
 - 9. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Michael Hausenfleck and Susan Brassfield-Hausenfleck*, Case No. CL-2019-0014369 (Fx. Co. Cir. Ct.) (Mount Vernon District)

10. *Leslie B. Johnson, Fairfax County Zoning Administrator v. John N. Withrow*, Case No. CL-2019-0014360 (Fx. Co. Cir. Ct.) (Mount Vernon District)
11. In re: January 10, 2018, Decision of the Board of Zoning Appeals of Fairfax County, Virginia; *John A. McEwan and Mary Lou McEwan v. Board of Supervisors of the County of Fairfax, Virginia*, Case No. CL-2018-0002104 (Fx. Co. Cir. Ct.) (Mount Vernon District)
12. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Virginia Marine Investments, LLC*, Case No. CL-2019-0003530 (Fx. Co. Cir. Ct.) (Mount Vernon District)
13. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Holly P. Fay and John Willoughby*, Case No. GV19-027231 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
14. In re: May 1, 2019, Decision of the Board of Zoning Appeals of Fairfax County, Virginia; *Nagla A. Abdelhalim v. Board of Supervisors of the County of Fairfax, Virginia*, Case No. CL-2019-0007529 (Fx. Co. Cir. Ct.) (Providence District)
15. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Nagla A. Abdelhalim*, Case No. CL-2019-0009486 (Fx. Co. Cir. Ct.) (Providence District)
16. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Otis Perry and Elcetia L. Perry*, Case No. CL-2008-0005923 (Fx. Co. Cir. Ct.) (Providence District)
17. *Board of Supervisors of Fairfax County, Virginia v. DSF/Long Metro, LLC, and Westchester Fire Insurance Company*, Case No. CL-2019-0014805 (Fx. Co. Cir. Ct.) (Providence District)
18. *Gary S. Pisner v. Leslie B. Johnson, Fairfax County Zoning Administrator*, Record No. 191343 (Va. Sup. Ct.) (Springfield District)
19. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Christopher L. Soderger*, Case No. CL-2015-0016908 (Fx. Co. Cir. Ct.) (Springfield District)

Board Agenda Item
November 19, 2019

3:00 p.m.

Public Hearing to Receive Comment from Citizens on the Proposed Legislative Program to be Presented to the 2020 Virginia General Assembly

ENCLOSED DOCUMENTS:

Attachment I – Draft Fairfax County Legislative Program for the 2020 Virginia General Assembly

Attachment II – Draft Human Services Issue Paper

Attachments I and II will be made available online under Board Reports by close of business November 14, 2019, at: <https://www.fairfaxcounty.gov/boardofsupervisors/>

STAFF:

Bryan J. Hill, County Executive

Claudia Arko, Legislative Director

Board Agenda Item
November 19, 2019

3:30 p.m.

Public Hearing on a Proposed County Code Amendment for Chapter 3, County Employees, Personnel Administration, Definitions and Chapter 3, County Employees, Personnel Administration, Appointing Authorities

ISSUE:

Public Hearing to amend Chapter 3, County Employees, Article 1, Personnel Administration, of the Code of the County of Fairfax. The proposed changes will allow the County Executive to appoint Department Head positions as allowed by state statute and defined in the updated ordinance.

RECOMMENDATION:

The County Executive recommends that the Board hold the public hearing for the proposed County code amendment.

TIMING:

On October 29, 2019, the Board authorized advertisement of a Public Hearing to consider the proposed amendment to Chapter 3, County Employees, Article 1, Personnel Administration, of the Code of the County of Fairfax to take place on November 19, 2019, at 3:30 p.m.

BACKGROUND:

To facilitate more timely hiring of senior positions, the Board has requested a change to the Code of the County of Fairfax to allow the County Executive to appoint most Department Heads, as authorized by Va. Code Ann. § 15.2-807, after consulting with the Board of Supervisors on all such appointments.

ENCLOSED DOCUMENTS:

Attachment 1 – Proposed changes to Fairfax County Code § 3-1-1, Definitions
Attachment 2 - Proposed changes to Fairfax County Code § 3-1-12, Appointing Authorities

STAFF:

Catherine Spage, Director, Department of Human Resources

ASSIGNED COUNSEL:

Karen Gibbons, Deputy County Attorney

Section 3-1-1. - Purposes of Article; definitions.

(a) *Purposes.* The purposes of this Article are:

- (1) To place personnel administration on a merit basis in order to attract and retain for public service in the County Government employees with integrity and superior ability;
- (2) To strengthen the effectiveness of the County Government through the improvement of personnel administration;
- (3) To provide for a County merit system under which recruitment, appointment, and advancement of covered employees will be on a competitive basis, free of discrimination on the basis of race, color, national origin, religion, sex, age, political affiliation, disability, or genetic information, and which will be administered in conformity with the Merit Principles set forth by the U.S. Office of Personnel Management (5 CFR 900) under authority of the Intergovernmental Personnel Act of 1970, as amended;
- (4) To provide for an exempt service which will be limited to positions so designated in accordance with this Article or by Personnel Regulations.

(b) *Authority.* The authority for this article is contained in *Va. Code Ann. § 15.2-1506*, which reads, in part, as follows: "Notwithstanding any other provision of law to the contrary, the governing body of every county, city and town which has more than fifteen employees shall establish by June thirty, nineteen hundred seventy-four, a grievance procedure for its employees to afford an immediate and fair method for the resolution of disputes which may arise between such public employer and its employees and a personnel system including a classification plan for service and uniform pay plan for all employees;" and *Va. Code Ann. §15.2-807*, which reads, in part, as follows: "All appointments shall be on the basis of ability, training and experience of the appointees which fit them for the work which they are to perform." ¹ [§](#)

(c) *Applicability.*

- (1) This Article applies to all employees in the administrative service of the County who are appointed by the Board of Supervisors, County Executive or the head of a department, as provided in *Va. Code Ann. §15.2-807*. ² [§](#)
- (2) This Article and any regulations or administrative directives or procedures issued under its authority also may be applied to designated employees of other public agencies within the County, pursuant to written agreements between the heads or governing boards of such agencies and the Human Resources Director of the County, subject to approval of the County Executive and Board of Supervisors, to the effect that the conditions of employment of such employees are to be administered under this Article in the same manner as if those employees were in the administrative service of the County. ³ [§](#)

(d) *Severability.* Should any article, section, subsection, sentence, clause, or phrase of this ordinance, for any reason, be held unconstitutional or invalid for any reason, such decision or holding shall have no effect on the validity of the remaining portions hereof. It is the intent of the Board of Supervisors to enact or have enacted each section, and portion thereof, individually, and each such section shall stand alone, if necessary, and be in force regardless of the determined invalidity of any other section or provision.

(e) *Definitions.*

- (1) *Personnel Regulations.* A body of rules governing County personnel administration issued under authority of this Article by the Board of Supervisors after consideration of the recommendation of the County Civil Service Commission, and having the effect of ordinance.
- (2) *Competitive service.* All positions not specifically designated as exempt positions in accordance with this Article, and the employees appointed to fill such positions. Competitive positions must be filled in accordance with merit principles. Persons in the competitive service

are considered career employees. They have all rights, benefits, privileges, protections and obligations set forth in this Article and Personnel Regulations.

- (3) *Exempt service.* Positions which are specifically so designated in accordance with this article and Personnel Regulations, and employees appointed to fill such positions. Exempt personnel are not merit employees. They may be appointed, classified, promoted to other exempt positions, demoted to other exempt positions and discharged without regard to the restrictions contained in this Article and Personnel Regulations, which apply to the competitive service. They are entitled to only such employee rights and benefits as are provided for various categories of exempt personnel elsewhere in this Article and Personnel Regulations or by the Board of Supervisors or in procedural directives issued by the County Executive or his or her designee.
- (4) *Full-time position.* Any position, whether authorized for the competitive service or exempt, which is authorized to be filled for at least 2080 scheduled hours in 12 consecutive months.
- (5) *Part-time position.* Any position, whether authorized for the competitive service or exempt, which does not meet the above criteria for full-time positions.
- (6) *Full-time employee.* Any employee, whether in the competitive service or exempt, who is regularly scheduled to work at least 2080 hours in 12 consecutive months.
- (7) *Part-time employee.* Any employee, whether in the competitive service or exempt, who does not meet the above criteria for full-time employees.
- (8) *Probationary employee.* Any employee in the competitive service serving in a probationary appointment as defined in § 3-1-13 of this Article and Personnel Regulations.
- (9) *Merit system.* The system of personnel administration applicable to the competitive service. It includes the provisions of this Article, other applicable provisions of County ordinances, County Personnel Regulations and all applicable and lawful personnel management directives of the Board of Supervisors, County Executive or Human Resources Director.
- (10) *Merit employee.* Any employee in the competitive service.
- (11) *Department Head.* An employee appointed by the Board of Supervisors or the County Executive to oversee, direct, or manage a major functional division of County government, whether formally known as a department or not, under the general direction of the County Executive, and to act as the appointing authority for the positions assigned to that organization. All department head positions are assigned to the exempt service. All persons appointed as department heads on or after July 1, 1987, are exempt employees. Any department head appointed as a department head by the Board of Supervisors on or after July 1, 1987, may be removed by the Board of Supervisors with or without cause and in any event, may not grieve his or her removal under the County's grievance procedures. Any department head appointed by the County Executive may be removed by either the Board of Supervisors or the County Executive with or without cause and in any event, may not grieve his or her removal under the County's grievance procedure. (7-87-3; 32-8-3; 26-98-3; 35-05-3; 32-11-3.)

Footnotes:

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As to appointment, tenure, suspension or removal and compensation of officers and employees, see Va. Code Ann., § 15.2-807, 15.2-808 and 15.2-809.

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Wherever used in this Article, the term "department" means "department," "office," "agency," or other administrative unit, the director of which reports to the County Executive, either directly or via a deputy

| county executive, or to the Board of Supervisors. Elected officials, persons appointed to fill vacancies in elective offices, and members of boards, authorities and commissions appointed by the Board of Supervisors are not employees in the sense of this article, although they may be compensated and receive such other benefits as State law or regulations, County ordinance or the Board of Supervisors may authorize.

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Public agencies authorized to execute such agreements include (but are not limited to) the offices of Constitutional Officers and individual members of the Board of Supervisors, the School Board, the Library Board, the Park Authority, the Housing Authority, the Fairfax/Falls Church Community Services Board, the Economic Development Authority, the Water Authority, the Industrial Authority, similar agencies established by the Board of Supervisors in the future, community centers and other service agencies established in small districts under authority of the Board of Supervisors, and State agencies located in and serving the County where such agreements are consistent with State law and regulations. Employees whose conditions of employment are to be administered pursuant to such agreements may be either merit system or exempt employees, as defined in this Article, whichever is specified in the applicable agreement.

Section 3-1-12. - Appointing authorities.

- (a) Appointing authority means the officer, board, commission, person or group of persons having the power by virtue of State law or County ordinance to make appointments. The appointing authority or his or her designee is the responsible official or body to whom the Human Resources Director certifies lists of eligibles from which appointments shall be made. The appointing authority is generally responsible for personnel administration within a given department. For the purposes of this Article, appointing authorities are described as follows:
- (1) The Board of Supervisors shall be the appointing authority for the County Executive, deputy county executives, the County Attorney, the Board Auditor, the Police Independent Auditor, the Chief of Police, the Fire Chief, the Human Resources Director, the County Purchasing Agent, the Health Department Director, the Office of Human Rights & Equity Programs Director, and the Clerk to the Board. ~~and department heads under the control of the County Executive.~~ The Board of Supervisors shall consult with the County Executive with regard to all such appointments.
 - (2) ~~The All~~ department heads ~~in the above departments~~ are delegated the authority to appoint all employees in their respective department.
 - (3) The appointing authority for other public agencies within the County which may have executed agreements to administer their personnel under this Article, as provided by section 3-1-1(c)(2) of this Article, shall be the person or body designated as such in the applicable agreement, unless otherwise specified by law or regulation.
 - (4) Except as otherwise provided in this section or elsewhere by law, the County Executive shall be the appointing authority for the staff, if any, of the Planning Commission, the Civil Service Commission and all boards and commissions whose functions are primarily advisory rather than operating. In making such appointments, the County Executive shall consider the recommendations of the respective boards and commissions.
- (b) For any positions not covered by the above descriptions, the County Executive shall be the appointing authority. The County Executive shall consult with the Board of Supervisors with regard to all such appointments. For new departments, which may be created, the ~~Board of Supervisors~~ County Executive shall be the appointing authority for the department head if the department head reports to the County Executive or a deputy county executive, otherwise the Board of Supervisors shall be the appointing authority. The appropriate department head shall be the appointing authority for all other employees. (7-87-3; 26-98-3; 35-05-3.)

Board Agenda Item
November 19, 2019

4:00 p.m.

Public Hearing on a Proposal to Vacate and Abandon a Portion of Rock Hill Road /
Route 605 (Dranesville District)

ISSUE:

Public hearing on a proposal to vacate and abandon a portion of Rock Hill Road / Route 605.

RECOMMENDATION:

The County Executive recommends that the Board adopt the attached order (Attachment III) for abandonment and resolution (Attachment IV) for vacation of the subject right-of-way.

TIMING:

On October 15, 2019, the Board authorized the public hearing to consider the proposed abandonment and vacation for November 19, 2019, at 4:00 p.m.

BACKGROUND:

The applicant, Markur LLC, on behalf of the Dulles Corridor Metrorail Project, is requesting that a portion of Rock Hill Road / Route 605 be vacated under §15.2-2272(2) of the Virginia Code and abandoned under Virginia Code §33.2-909.

The subject portion of Rock Hill Road, at the north side of the intersection of Innovation Avenue, has been reconstructed in a different location that aligns with access to the Dulles Corridor Metrorail Project's Kiss-and-Ride facility and Passenger pavilion at "Innovation Station." These facilities will ultimately be operated and maintained by Fairfax County. Consequently, the portions of the existing Rock Hill Road that are the subject of this request are no longer necessary. The property that abuts both sides of the existing right-of-way to be vacated and abandoned is currently owned by The Innovation and Entrepreneurship Investment Authority ("CIT") – the entity to which the land would revert after the vacation and abandonment.

Traffic Circulation and Access

The vacation and abandonment will have no long-term impact on pedestrian, transit, or vehicle circulation and access. The new alignment of Rock Hill Road is in service and will perform all functions of the previous alignment.

Board Agenda Item
November 19, 2019

Easements

The project manager has certified that all easement requirements for the project have been met.

The proposal to vacate and abandon this right-of-way was circulated to the following public agencies and utility companies for review: Office of the County Attorney, Department of Public Works and Environmental Services, Fairfax County Department of Transportation, Department of Planning and Zoning, Fairfax County Park Authority, Fairfax County Water Authority, Fairfax County School Board, Fire and Rescue, Virginia Department of Transportation, Dominion Virginia Power, Washington Gas Light Company, and Verizon. None of these indicate any opposition to the proposal.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I: Application Letter
Attachment II: Notice of Intent to Abandon & Vacate
Attachment III: Order of Abandonment
Attachment IV: Ordinance of Vacation
Attachment V: Metes and Bounds Description
Attachment VI: Vacation and Abandonment Plat
Attachment VII: Vicinity Map

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Gregg Steverson, Deputy Director, FCDOT
Michelle Guthrie, FCDOT

ASSIGNED COUNSEL:

Pamela K. Peltó, Assistant County Attorney



Markur, LLC
109 Carpenter Drive, Suite 130
Sterling, VA 20164
Office: (571) 525-2025

July 30, 2019

Attention: Michelle Guthrie

Fairfax County Department of Transportation
4050 Legato Rd
Fairfax, VA 22033

Reference: Dulles Corridor Metrorail Project – Phase 2; Request and Justification for Vacation/Abandonment of (portion of) Rock Hill Road ROW

Dear Michelle,

On behalf of the Dulles Corridor Metrorail Project, (sponsored and funded by the Metropolitan Washington Airports Authority, Fairfax County and Loudoun County), please accept this request and justification for the above referenced vacation and/or abandonment.

The subject portion of Rock Hill Road, at the north side of the intersection of Innovation Avenue, has been reconstructed in a location that aligns with access to the Dulles Corridor Metrorail Project's Kiss and Ride facility and Passenger pavilion at "Innovation Station" – these facilities shall ultimately be operated and maintained by Fairfax County. Fairfax County, as a funding-partner of the Metrorail Project, supports this request as outlined by the attached letter from Mark Canale dated May 17th, 2019. (Please note: this request for Vacation/Abandonment shall be "FEE EXEMPT" per previous Fairfax County mandate. Please contact Mark Canale, cc'd herein, if further confirmation is required.)

The property that abuts both sides of the existing ROW to be Vacated/Abandoned, is currently owned by The Innovation and Entrepreneurship Investment Authority ("CIT") – the entity to which the land would revert. Per an action of the Virginia General Assembly in 2016, the Virginia State controlled CIT property has been designated as "Surplus" and falls within the oversight of Department of General Services ("DGS"). Attached are letters dated May 17, 2019 from Phil DeLeon - on the behalf of the Department of Rail and Public Transportation - that further justifies this request as part of a requirement by DGS, and James Van Zee letter dated January 9, 2018 this requested action as a Dulles Corridor Metrorail Project commitment.

All underlying utilities and easements have been identified as shown on the Recordable Plat that is provided with this request, and all other required, applicable information and documentation is being provided as part of this submission. The submission does not provide the \$200 fee as outlined above, nor the site plan/development plan which is also not-applicable.



Running Down Results

July 30, 2019

Reference: Vacation/Abandonment of (portion of) Rock Hill Road ROW

Page 2 of 2

Thank you in advance for your time and attention to this matter. Please contact me at Stacie.Kurzahls@Markurllc.com or 703 675-6486 with any questions, comments, and or requests in regard to this submission.

Sincerely,

MARKUR, LLC



Stacie Kurzahls

President/Project Manager

Phone: 571-525-2025

Stacie.kurzahls@markurllc.com

cc. James Van Zee, Airports Authority
Mark Canale, Fairfax DOT
Martha Coello, Fairfax DOT
Sarah Ross, Airports Authority
File



Running Down Results

NOTICE OF INTENT TO ABANDON AND INTENT TO
ADOPT AN ORDINANCE VACATING
A PART OF A PLAT ON WHICH IS SHOWN

ROCK HILL ROAD

DRANESVILLE DISTRICT
Fairfax County, Virginia

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on November 19, 2019, at 4:00 PM during its regular meeting in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, VA, pursuant to Virginia Code Ann. § 15.2-2204 on:

- (i) the proposed abandonment of a portion of the public road known as Rock Hill Road pursuant to Virginia Code § 33.2-909 consisting of the following areas:
 - (i) approximately 4,657 square feet in the location as shown on that certain plat entitled “Plat Showing Vacation/Abandonment of Public Right of Way Vacation to the Properties of FAIRFAX COUNTY BOARD OF SUPERVISORS Deed Book 6184 Page 1298/Byrd Act, Deed Book 10268 Page 0668,” dated September 13, 2019 and prepared by Wiles Mensch Corporation (the “Plat”); (ii) approximately 2,497 square feet recorded in Deed Book 18863, at Page 1162, and (iii) approximately 1,500 square feet recorded in Deed Book 10268, at Page 0668, in the locations as shown on the above-referenced Plat; and
- (ii) the proposed vacation of portions of the plats of Rock Hill Road pursuant to Virginia Codes § 15.2-2270; § 15.2-2272(2), consisting of (i) approximately 2,497 square feet recorded in Deed Book 18863, at Page 1162, and approximately 1,500 square feet recorded in Deed Book 10268, at Page 0668, in the locations as shown on the above-referenced Plat.

The road is located on Tax Map 015-2, and is described and shown on the metes and bounds schedule and plat prepared by Wiles Mensch Corporation, dated September 13, 2019, both of which are on file with the Fairfax County Department of Transportation, 4050 Legato Road, Suite 400, Fairfax, Virginia 22033, Telephone Number (703) 877-5600.

ATTACHMENT II

All persons wishing to speak on this subject may call the Office of the Clerk to the Board, (703) 324-3151, to be placed on the Speaker's List, or may appear and be heard.

DRANESVILLE DISTRICT

§ 33.2-909; § 15.2-2270; § 15.2-2272(2)

ORDER OF ABANDONMENT

Rock Hill Road

DRANESVILLE DISTRICT,
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held this 19th day of November 2019, it was duly moved and seconded that:

WHEREAS, after conducting a public hearing pursuant to notice as required by Virginia Code §33.2-909, and after giving due consideration to the historic value, if any, of such road, the Board has determined that no public necessity exists for continuance of this road as a public road, and that the safety and welfare of the public will be served best by an abandonment,

WHEREFORE, BE IT ORDERED:

That a portion of the public road known as Rock Hill Road, consisting of the following areas: **(i)** approximately **4,657 square feet**, located on Tax Map 015-2, and described on the metes and bounds schedule plat entitled “Plat Showing Vacation/Abandonment of Public Right of Way FAIRFAX COUNTY BOARD OF SUPERVISORS Deed Book 6184 Page 1298/Byrd Act, Deed Book 10268 Page 0668,” dated September 13, 2019, and prepared by Wiles Mensch Corporation, and attached hereto and incorporated herein (the “Plat”), **(ii)** approximately **2,497 square feet** recorded in Deed Book 18863, at Page 1162, and **(iii)** approximately **1,500 square feet** recorded in Deed Book 10268, at Page 0668, in the locations as described on the above-referenced Plat, be and the same is **hereby abandoned** as a public road pursuant to Virginia Code §33.2-909.

In accordance, with Virginia Code Ann. §33.2-909, fee simple ownership in and to the abandoned portion of Rock Hill Road, consisting of approximately 4,657 square feet shall hereby vest in the owner of Tax Map #015-2-01-0015.

This abandonment is subject to any right, privilege, permit, license, or easement in favor of any public service company, utility, or other person or entity, including any political subdivision, whether located above, upon, or under the surface, either presently in use or of record, including the right to operate, maintain, replace, alter, extend, increase or decrease in size any facilities in the abandoned roadway, without any permission of the landowner(s).

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

§33.2-909

ADOPTION OF AN ORDINANCE VACATING
A PART OF A PLAT ON WHICH IS SHOWN

Rock Hill Road

DRANESVILLE DISTRICT,
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Governmental Center in Fairfax County, Virginia, on November 19, 2019, at which meeting a quorum was present and voting, the Board, after conducting a public hearing upon due notice given pursuant to Virginia Code Ann. §15.2-2204 and as otherwise required by law, adopted the following ordinance, to-wit:

BE IT ORDERED by the Board of Supervisors of Fairfax County, Virginia: that those portions of plats of Rock Hill Road consisting of (i) approximately **2,497 square feet** recorded in Deed Book 18863, at Page 1162 ; and (ii) approximately **1,500 square feet** recorded in Deed Book 10268, at Page 0668, located on Tax Map 015-2, and described and shown on the metes and bounds schedule and plat entitled “Plat Showing Vacation/Abandonment of Public Right of Way FAIRFAX COUNTY BOARD OF SUPERVISORS Deed Book 6184 Page 1298/Byrd Act, Deed Book 10268 Page 0668,” dated September 13, 2019, and prepared by Wiles Mensch Corporation, and attached hereto and incorporated herein, be and the same are **hereby vacated**, pursuant to Virginia Code Ann. §15.2-2270 and §15.2-2272(2).

In accordance, with Virginia Code Ann. §15.2-2270 and §15.2-2272(2), fee simple ownership in and to the vacated portions of the plats, consisting of approximately 2,497 square feet recorded in Deed Book 18863, at Page 1162 shall hereby vest in the owner of Tax Map #015-2-01-0015, and fee simple ownership in and to the vacated portions of the plats consisting of approximately 1,500 square feet recorded in Deed Book 10268, at Page 0668 shall hereby vest in the owner of Tax Map #015-2-01-0017.

This vacation is subject to any right, privilege, permit, license, easement, in favor of any public service company, utility, or other person or entity, including any political subdivision, whether located above, upon, or under the surface, either presently in use or of record, including the right to operate, maintain, replace, alter, extend, increase, or decrease in size any facilities in the vacated roadway, without any permission of the landowner.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

§15.2-2270; §15.2-2272(2)

A

Portion of Rock Hill Road Right of Way to be Vacated

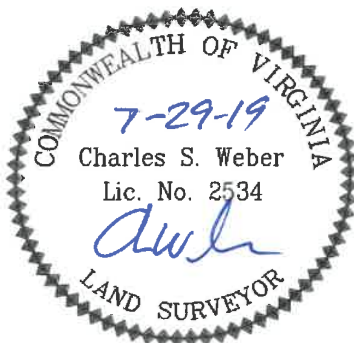
Commencing at a point, said point being on the westerly line of Rock Hill Road (Route 605) and the southeasterly corner of the property of The Innovation and Entrepreneurship Investment Authority (Tax Map 012-2-01-0015) as recorded in Deed Book 6188 Page 1830 among the land records of Fairfax County, Virginia; thence N28°23'21"E 44.87 feet with said westerly line of Rock Hill Road to the Point of Beginning; thence

Continuing with said westerly line of Rock Hill Road N28°23'21"E 292.38 feet to a point; thence

Departing said westerly line of Rock Hill Road along a curve to the left with a radius of 410.23 feet, a distance of 68.16 feet, with a chord bearing and distance of S19°56'43"W 68.08 feet to a point; thence

S28°23'21"W 220.08 feet to a point; thence

N87°59'58"W 11.16 feet to the Point of Beginning and containing 2,497 square feet or 0.05732 acres of land.



B**Portion of Rock Hill Road Right of Way to be Abandoned**

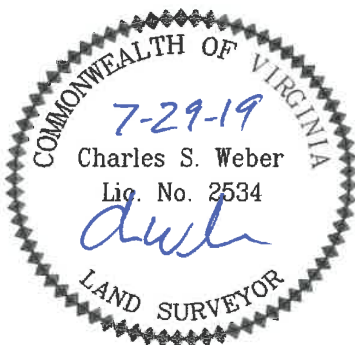
Commencing at a point, said point being on the westerly line of Rock Hill Road (Route 605) and the southeasterly corner of the property of The Innovation and Entrepreneurship Investment Authority (Tax Map 012-2-01-0015) as recorded in Deed Book 6188 Page 1830 among the land records of Fairfax County, Virginia; thence N28°23'21"E 44.87 feet with said westerly line of Rock Hill Road to a point; thence S87°59'58"E 11.16 feet to the Point of Beginning; thence

N28°23'21"E 220.08 feet to a point; thence

Along a curve to the left with a radius of 410.23 feet, a distance of 86.47 feet, with a chord bearing and distance of S09°08'51"W 86.31 feet to a point; thence

S29°12'37"W 125.39 feet to a point; thence

N87°59'58"W 29.75 feet to the Point of Beginning and containing 4,657 square feet or 0.10691 acres of land.



C

Portion of Rock Hill Road Right of Way to be Vacated

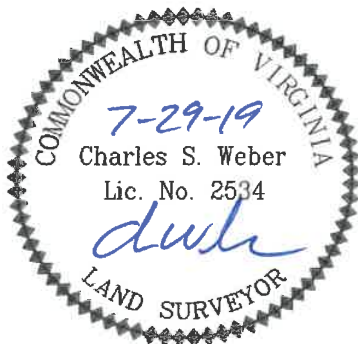
Commencing at a point, said point being on the westerly line of Rock Hill Road (Route 605) and the southeasterly corner of the property of The Innovation and Entrepreneurship Investment Authority (Tax Map 012-2-01-0015) as recorded in Deed Book 6188 Page 1830 among the land records of Fairfax County, Virginia; thence N28°23'21"E 44.87 feet with said westerly line of Rock Hill Road to a point; thence S87°59'58"E 40.91 feet to the Point of Beginning; thence

N29°12'37"E 67.95 feet to a point; thence

S60°47'23"E 9.48 feet to a point; thence

Along a curve to the left with a radius of 43.00 feet, a distance of 65.76 feet, with a chord bearing and distance of S17°35'04"E 59.54 feet to a point; thence

N87°59'58"W 59.46 feet to the Point of Beginning and containing 1,500 square feet or 0.03443 acres of land.



NOTES:

1. THE PROPERTY SHOWN HEREON IS LOCATED ON MAP# 015-2-01-0015 AND 015-2-01-0017 AND IS ZONED "I-4".
2. THE PROPERTY SHOWN HEREON IS NOW IN THE NAME OF THE FAIRFAX COUNTY BOARD OF SUPERVISORS, AND IS PART OF THE PARCEL ACQUIRED FROM DAVID B. NOURSI AND JOHN F. CARMAN BY DEED DATED JULY 17, 1985, RECORDED IN DEED BOOK 6184 AT PAGE 1298 AND ACQUIRED BY THE BYRD ACT (TAX MAP 015-2-01-0015), AND IS PART OF THE PARCEL ACQUIRED FROM THE INNOVATIVE TECHNOLOGY AUTHORITY AND DULLES GREENE, LP BY DEED DATED FEBRUARY 5, 1998, RECORDED IN DEED BOOK 10268 AT PAGE 0668 (TAX MAP 015-2-01-0017); BOTH AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.
3. THE BOUNDARY INFORMATION SHOWN HEREON IS BASED ON FAIRFAX COUNTY LAND RECORDS AND DOES NOT REPRESENT A BOUNDARY SURVEY BY WILES MENSCH CORPORATION.
4. THE PROPERTY SHOWN HEREON IS LOCATED WITHIN ZONE "X" AND "A" AS SHOWN ON F.I.R.M. (FLOOD RATE INSURANCE MAP) COMMUNITY PANEL NUMBER 51059C 0110E. MAP EFFECTIVE DATE: SEPTEMBER 17, 2010.

AREA TABULATION

ORIGINAL AREA		
TAX MAP No.		
015-2-01-0015	326,180 SQ.FT.	7.4881 ACRES
TOTAL AREA	326,180 SQ.FT.	7.4881 ACRES

STREET VACATION/ABANDONMENT

TAX MAP No.		
015-2-01-0015	326,180 SQ.FT.	7.4881 ACRES
STREET ABANDONMENT	4,657 SQ.FT.	0.1069 ACRES
STREET VACATION	2,497 SQ.FT.	0.0573 ACRES
TOTAL AREA	333,334 SQ.FT.	7.6523 ACRES

ORIGINAL AREA

TAX MAP No.		
015-2-01-0017	577,770 SQ.FT.	13.2638 ACRES
TOTAL AREA	577,770 SQ.FT.	13.2638 ACRES

STREET VACATION/ABANDONMENT

TAX MAP No.		
015-2-01-0017	577,770 SQ.FT.	13.2638 ACRES
STREET VACATION	1,500 SQ.FT.	0.0344 ACRES
TOTAL AREA	579,270 SQ.FT.	13.2982 ACRES

SURVEYORS CERTIFICATE

I, CHARLES S. WEBER, A DULY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT THE LAND EMBRACED IN THIS SITE IS NOW IN THE NAME OF FAIRFAX COUNTY BOARD OF SUPERVISORS, IN DEED BOOK 6184 AT PAGE 1298/BYRD ACT AND DEED BOOK 10268 AT PAGE 0668, BOTH AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.

REV	COMMENT	DATE

WETLANDS STATEMENT

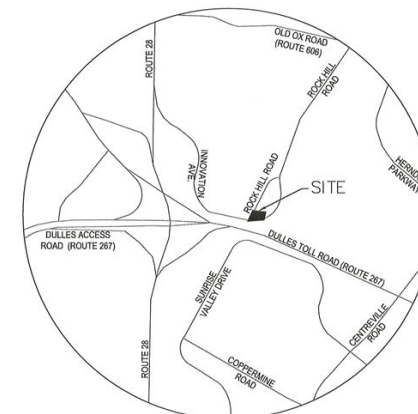
I HEREBY CERTIFY THAT ALL WETLANDS PERMITS REQUIRED BY LAW WILL BE OBTAINED PRIOR TO COMMENCING LAND DISTURBING ACTIVITIES.

SIGNATURE _____

OWNER/DEVELOPER _____

NAME

TITLE



VICINITY MAP
SCALE: Not to Scale



APPROVED	
FAIRFAX COUNTY HEALTH DEPARTMENT	
DATE _____	HEALTH OFFICIAL _____

THIS APPROVAL IS NOT A COMMITMENT TO PROVIDE PUBLIC SANITARY SEWER	
AGENT _____	

FINAL PLAT	
RECOMMENDED FOR APPROVAL FAIRFAX COUNTY SITE REVIEW BRANCH CHIEF	
BY _____	AGENT _____
DATE _____	

APPROVED FOR BOARD OF SUPERVISORS FAIRFAX COUNTY, VIRGINIA	
BY _____	Director/Public Works & Environmental Services or Agent
DATE _____	

APPROVAL VOID IF PLAT IS NOT OFFERED FOR RECORD ON OR BEFORE _____	
--	--

DEPARTMENT OF PUBLIC WORKS
AND ENVIRONMENTAL SERVICES
OFFICE OF SITE DEVELOPMENT SERVICES
FAIRFAX, VIRGINIA

All street locations and/or easements conform to
the requirements of this office and the necessary
agreements or bonds have been received.

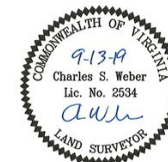
By _____ Date _____

APPROVED
COUNTY OF FAIRFAX
OFFICE OF SITE DEVELOPMENT SERVICES
SANITARY SEWER SECTION

BY _____
DATE _____

APPROVED
COUNTY OF FAIRFAX
OFFICE OF BUILDING CODE SERVICES
PERMITS DIVISION-SITE PERMITS SECTION
STREET ADDRESS FUNCTION

BY _____
DATE _____



PLAT SHOWING VACATION/ABANDONMENT OF PUBLIC RIGHT OF WAY FAIRFAX COUNTY BOARD OF SUPERVISORS

DEED BOOK 6184 PAGE 1298/BYRD ACT
DEED BOOK 10268 PAGE 0668
DRANESVILLE TRANS DULLES RAIL WEST
FAIRFAX COUNTY, VIRGINIA

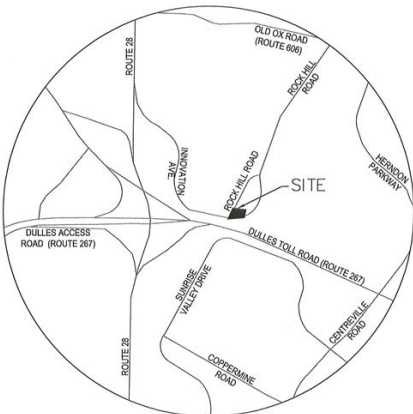
SCALE: 1"=60' DATE: 09/13/19
DRAWN BY: AA CHECKED BY: SW
WILES MENSCH CORPORATION
11860 SUNRISE VALLEY DRIVE, SUITE 200
RESTON, VIRGINIA 20191
(703)391-7600



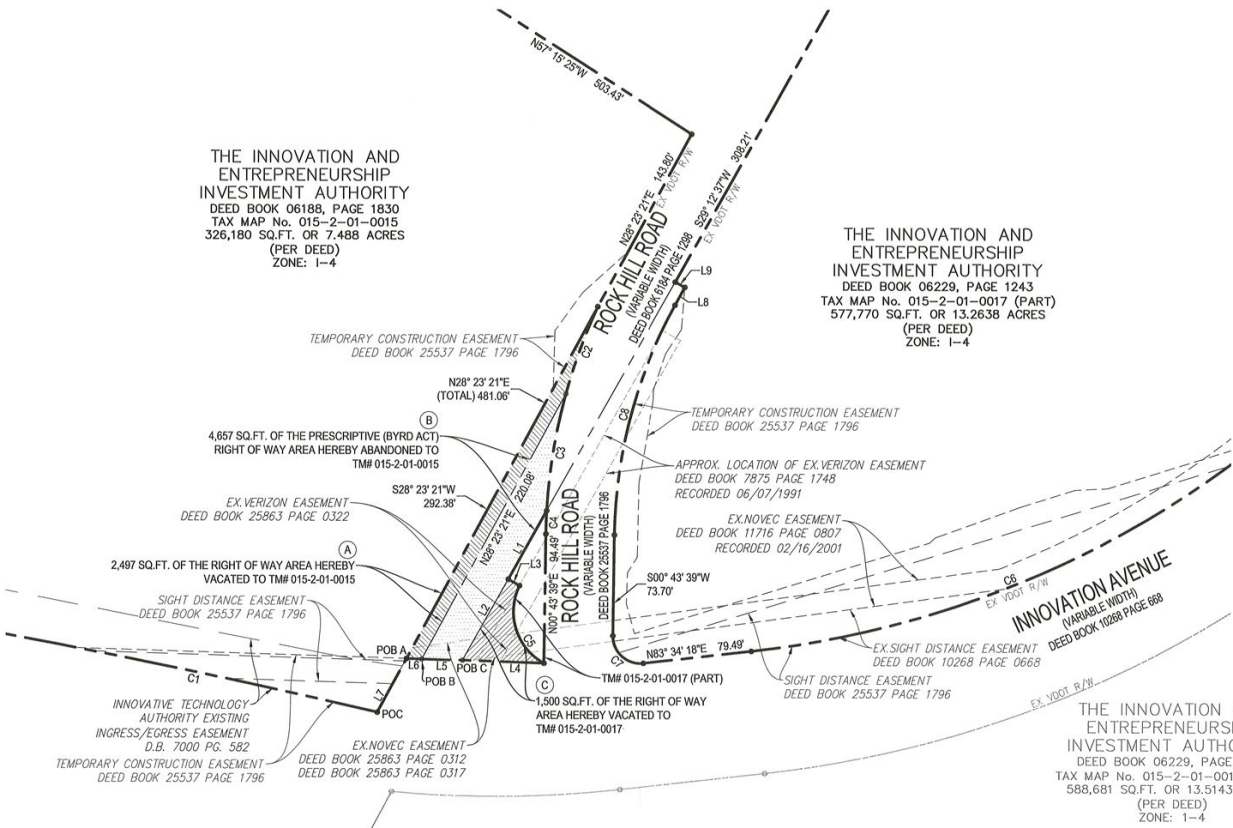
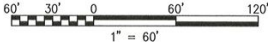
CURVE TABLE						
CURVE #	RADIUS	LENGTH	TANGENT	DELTA	BEARING	CHORD
C1	6009.58	563.16	281.78	5°22'09"	N79°34'07"W	562.95
C2	410.23	68.16	34.16	9°31'09"	N19°56'43"E	68.08
C3	410.23	86.47	43.39	12°04'36"	N9°08'51"E	86.31
C4	410.23	17.05	8.53	2°22'54"	N1°55'06"E	17.05
C5	43.00	65.76	41.26	87°37'38"	N17°35'04"W	59.54
C6	725.00	679.18	366.82	53°40'29"	N56°44'04"E	654.62
C7	20.00	33.91	22.67	97°09'21"	S47°51'01"E	29.99
C8	360.23	175.39	89.47	27°53'49"	S14°40'34"W	173.67

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	57.44'	N29°12'37"E
L2	67.95'	S29°12'37"W
L3	9.48'	N60°47'23"W
L4	59.46'	S87°59'58"E
L5	29.75'	S87°59'58"E
L6	11.16'	S87°59'58"E
L7	44.87'	S28°23'21"W
L8	14.99'	S28°37'29"W
L9	8.03'	S61°22'31"E

- 4,657 SQ.FT. OF THE PRESCRIPTIVE (BYRD ACT) RIGHT OF WAY AREA HEREBY ABANDONED TO TM# 015-2-01-0015
- 2,497 SQ.FT. OF THE RIGHT OF WAY AREA HEREBY VACATED TO TM# 015-2-01-0015 DEED BOOK 18863 PAGE 1162, RECORDED 10/26/2006
- 1,500 SQ.FT. OF THE RIGHT OF WAY AREA HEREBY VACATED TO TM# 015-2-01-0017 DEED BOOK 10268 PAGE 0668, RECORDED 02/17/1998



VICINITY MAP
SCALE: Not to Scale

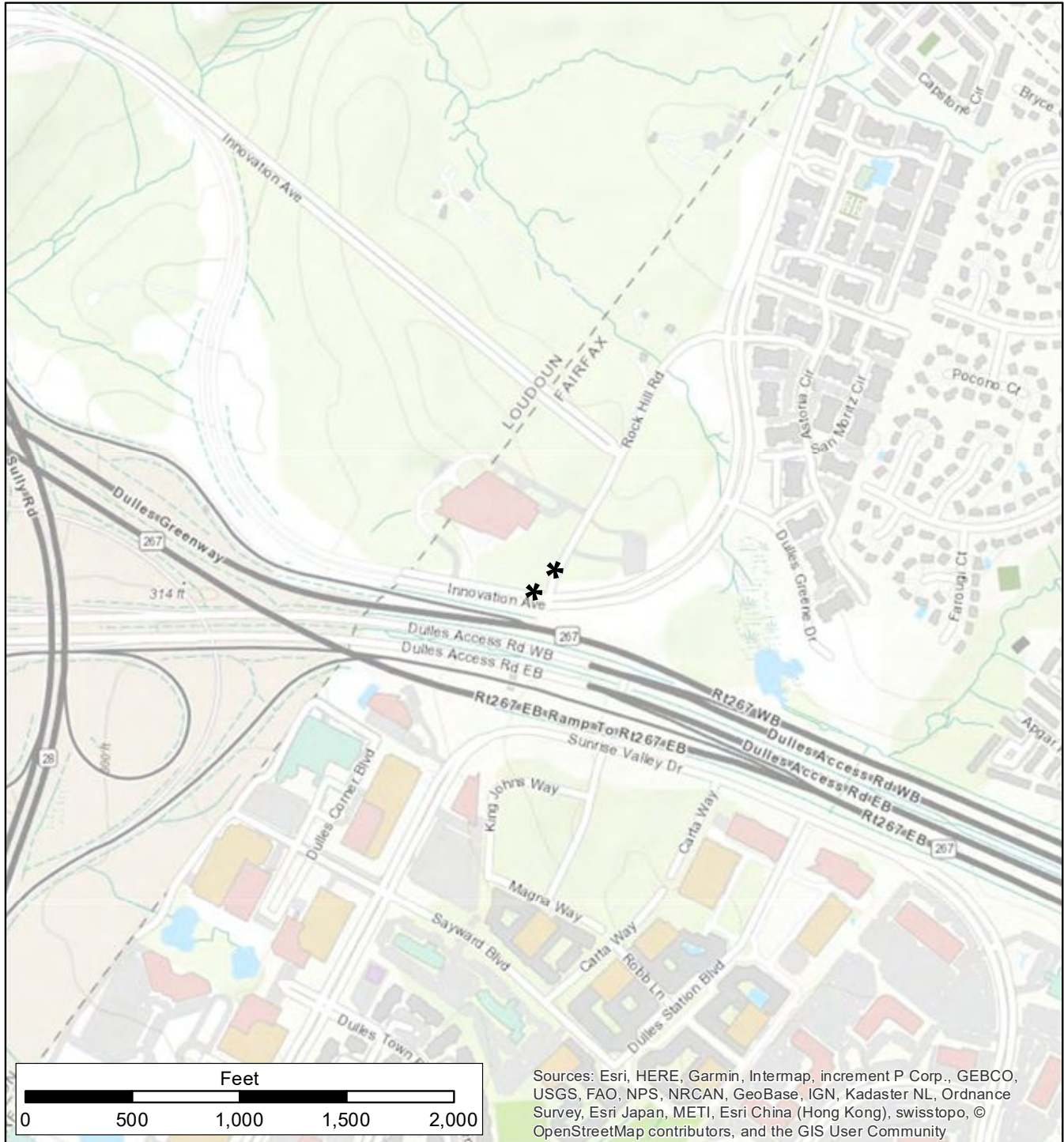


REV	COMMENT	DATE



PLAT SHOWING
VACATION/ABANDONMENT OF PUBLIC RIGHT OF WAY
FAIRFAX COUNTY BOARD OF SUPERVISORS
DEED BOOK 6184 PAGE 1298/BYRD ACT
DEED BOOK 10268 PAGE 0668
DRANESVILLE TRANS DULLES RAIL WEST
FAIRFAX COUNTY, VIRGINIA
SCALE: 1"=60' DATE: 09/13/19
DRAWN BY: AA CHECKED BY: SW
WILES MENSCH CORPORATION
11860 SUNRISE VALLEY DRIVE, SUITE 200
RESTON, VIRGINIA 20191
(703)391-7600

Rock Hill Road Easement Vacation/Abandonment Dranesville District



Tax Map 15-2

* Symbol Denotes Area of Easement to be Vacated

Board Agenda Item
November 19, 2019

4:00 p.m.

Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Innovation Center to Arrowbrook Trail (Dranesville District)

ISSUE:

Public Hearing on the acquisition of certain land rights necessary for the construction of Project 2G40-086-007, Innovation Center to Arrowbrook Trail, Fund 40010, County and Regional Transportation Projects.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (Board) adopt the attached resolution authorizing the acquisition of the necessary land rights.

TIMING:

On October 29, 2019, the Board authorized advertisement of a public hearing to be held on November 19, 2019, at 4:00 p.m.

BACKGROUND:

This project consists of the installation of 600 linear feet of multi-purpose, lighted trail extending from the Arrowbrook Development to Sunrise Valley Drive and includes a HAWK signal installation across Sunrise Valley Drive with Americans with Disabilities Act compliant crosswalks and curb ramps. This project is one of the improvements identified through the Herndon Metro Station Access Management Study (HMSAMS).

Land rights for these improvements are required on three properties, one of which has been acquired by the Land Acquisition Division. The construction of this project requires the acquisition of dedication, storm drainage easement, traffic signal equipment easement, trail easement, and grading agreement and temporary construction easements.

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

Board Agenda Item
November 19, 2019

FISCAL IMPACT:

Funding is available in Project 2G40-086-000, HMSAMS, in Fund 40010, County and Regional Transportation Projects. This project is included in the FY2020 - FY2024 Adopted Capital Improvements Program (with future Fiscal Years to FY2029). No additional funding is being requested from the Board.

ENCLOSED DOCUMENTS:

Attachment A – Project Location Map

Attachment B – Resolution with Fact Sheets on the affected parcels with plats showing interests to be acquired (Attachments 1 through 2B).

STAFF:

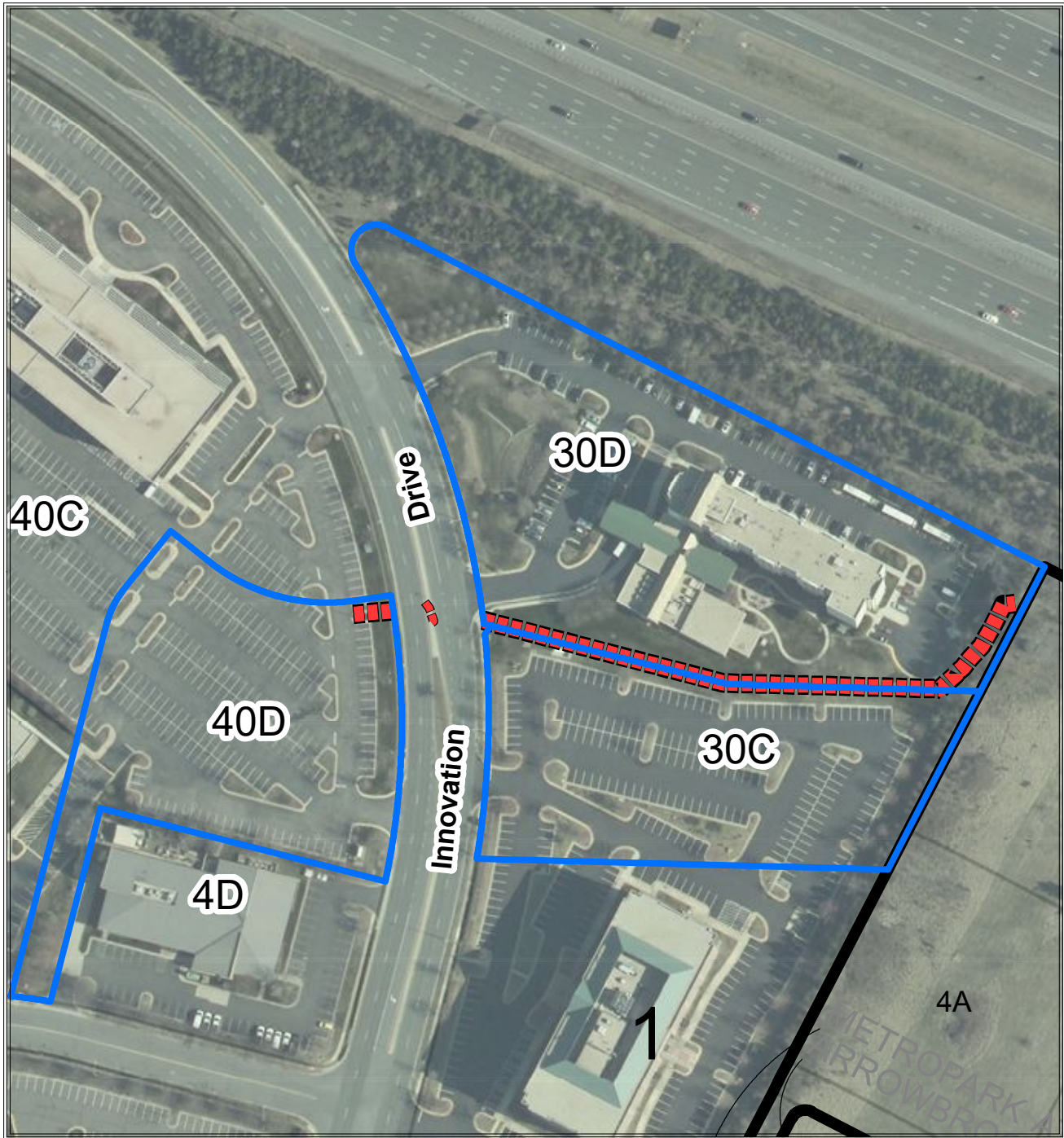
Rachel Flynn, Deputy County Executive

Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)

Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

ASSIGNED COUNSEL:

Pamela K. Pelto, Assistant County Attorney



Innovation Center to Arrowbrook

Project: 2G40-086-007

Tax Map: 016-3

Dranesville District

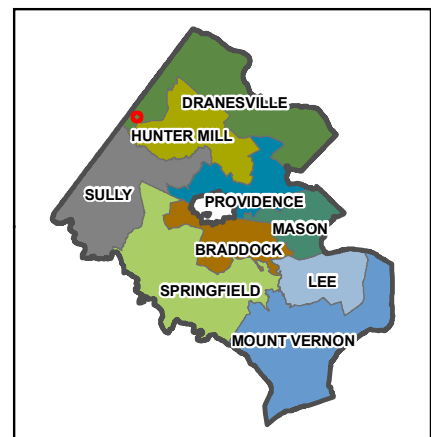
Affected Properties:



Proposed Improvements:



0 0.015 0.03 0.06
Miles



ATTACHMENT B

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, November 19, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, certain Project 2G40-086-007, Innovation Center to Arrowbrook Trail had been approved; and

WHEREAS, a public hearing pursuant to advertisement of notice was held on this matter, as required by law; and

WHEREAS, the property interests that are necessary have been identified; and

WHEREAS, in order to keep this project on schedule, it is necessary that the required property interests be acquired not later than December 31, 2019.

NOW THEREFORE BE IT RESOLVED, that the Director, Land Acquisition Division, in cooperation with the County Attorney, is directed to acquire the property interests listed in Attachments 1 through 2B by gift, purchase, exchange, or eminent domain; and be it further

RESOLVED, that following the public hearing, this Board hereby declares it necessary to acquire the said property and property interests and that this Board intends to enter and take the said property interests for the purpose of This project consists of the installation of 600 linear feet of multi-purpose, lighted trail extending from the Arrowbrook Development to Sunrise Valley Drive and includes a HAWK Signal installation across Sunrise Valley Drive with Americans with Disabilities Act (ADA)

compliant crosswalks and curb ramps as shown and described in the plans of Project 2G40-086-007, Innovation Center to Arrowbrook Trail on file in the Land Acquisition Division of the Department of Public Works and Environmental Services, 12000 Government Center Parkway, Suite 449, Fairfax, Virginia; and be it further

RESOLVED, that this Board does hereby exercise those powers granted to it by the Code of Virginia and does hereby authorize and direct the Director, Land Acquisition Division, on or subsequent to December 20, 2019, unless the required interests are sooner acquired, to execute and cause to be recorded and indexed among the land records of this County, on behalf of this Board, the appropriate certificates in accordance with the requirements of the Code of Virginia as to the property owners, the indicated estimate of fair market value of the property and property interests and/or damages, if any, to the residue of the affected parcels relating to the certificates; and be it further

RESOLVED, that the County Attorney is hereby directed to institute the necessary legal proceedings to acquire indefeasible title to the property and property interests identified in the said certificates by condemnation proceedings, if necessary.

LISTING OF AFFECTED PROPERTIES
Project 2G40-086-007 – Innovation Center to Arrowbrook Trail
(Dranesville District)

PROPERTY OWNER(S)

TAX MAP NUMBER

1. Richmond CW Hotel, LLC
and Sunrise Hotels, LLC

016-3-01-0030D

Address:
13460 Sunrise Valley Drive
Herndon, VA 20171

2. WF Liberty Park, LLC

016-3-01-0040D

Address:
13461 Sunrise Valley Drive
Herndon, VA 20171

A Copy – Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

ATTACHMENT 1

AFFECTED PROPERTY

Tax Map Number: 016-3-01-0030D

Street Address: 13460 Sunrise Valley Drive
Herndon, VA 20171

OWNER(S): Richmond CW Hotel, LLC
Sunrise Hotels, LLC

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Dedication for Public Street Purposes – 346 sq. ft.
Trail Easement – 6,213 sq. ft.
Storm Drainage Easement – 962 sq. ft.
Grading Agreement and Temporary Construction Easement – 4,482 sq. ft.
Traffic Signal Equipment Easement – 856 sq. ft.

VALUE

Estimated value of interests and damages:

SIXTY ONE THOUSAND DOLLARS (\$61,000.00)

ATTACHMENT 2

AFFECTED PROPERTY

Tax Map Number: 016-3-01-0040D

Street Address: 13461 Sunrise Valley Drive
Herndon, VA 20171

OWNER(S): WF Liberty Park, LLC

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Grading Agreement and Temporary Construction Easement – 1,697 sq. ft.
Traffic Signal Equipment Easement – 815 sq. ft.

VALUE

Estimated value of interests and damages:

TWELVE THOUSAND SIX HUNDRED FORTY DOLLARS (\$12,640.00)



THE FOLLOWING EASEMENT(S) APPLY TO THE PROPERTY SHOWN HEREON BUT CANNOT BE ACCURATELY LOCATED BECAUSE THE RECORDED PLAT IS ILLEGIBLE:
 1) EXISTING FAIRFAX COUNTY WATER AUTHORITY EASEMENT(S) AS RECORDED IN DEED BOOK 10023 AT PAGE 1251.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N81°24'42"E	18.31'
L2	S08°30'18"E	4.84'
L3	S32°46'41"W	18.22'
L4	N16°01'02"W	7.31'
L5	S16°01'02"E	88.51'
L6	S86°42'00"E	184.83'
L7	N27°21'05"E	26.16'
L8	S27°23'26"W	14.40'
L9	S27°23'26"W	102.42'
L10	N16°01'02"W	58.14'
L11	N16°01'02"W	34.43'
L12	N88°13'41"W	8.25'
L13	S32°46'41"W	4.32'
L14	N81°38'18"E	6.14'
L15	S06°46'35"E	27.90'
L16	N81°24'42"E	10.63'
L17	S08°48'02"E	4.84'
L18	S82°26'45"E	28.04'
L19	N84°41'41"E	13.55'
L20	S85°04'58"E	22.54'
L21	S71°11'41"E	13.58'
L22	S44°32'44"E	10.00'
L23	S68°51'07"E	21.60'
L24	S66°33'16"E	61.31'
L25	S83°21'45"E	21.66'
L26	S80°51'35"E	31.22'
L27	S83°41'58"E	43.69'
L28	N84°35'34"E	43.16'
L29	S83°44'23"E	64.65'
L30	S84°48'52"E	25.66'
L31	S58°44'35"E	1.36'
L32	S23°18'04"W	0.84'
L33	S66°46'36"E	6.02'
L34	S54°08'44"E	5.90'
L35	N27°24'28"E	48.11'
L36	S27°23'26"W	5.40'
L37	S10°31'18"E	11.98'
L38	S14°23'58"E	130.61'
L39	S87°23'51"E	177.11'
L40	S02°36'09"W	2.74'
L41	N86°42'00"W	3.93'

- TRAIL EASEMENT
 GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT
 STORM DRAINAGE EASEMENT

NOTES:

THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT. THEREFORE NOT ALL ENCUMBRANCES TO THE PROPERTY ARE NECESSARILY SHOWN HEREON.

THE LAND SHOWN ON THIS PLAT IS NOW HELD AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED AMONG THE LAND RECORDS OF FAIRFAX COUNTY. ALL EASEMENTS AND DEDICATIONS FOR PUBLIC STREET PURPOSES ARE WITHIN THE BOUNDS OF THE ORIGINAL TRACT, AS DESCRIBED AND SHOWN ON THIS PLAT.

THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM EXISTING LAND RECORDS AND DOES NOT REPRESENT THE RESULTS OF AN ACTUAL FIELD RUN BOUNDARY SURVEY.

ALL PREVIOUSLY RECORDED RIGHT-OF-WAYS, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.

THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON ASSESSMENT MAP 16-3-(11), PARCEL 30D.

DEDICATION AREA

DEDICATION FOR PUBLIC STREET PURPOSES = 346 SQ. FT.

EASEMENT AREAS

TRAIL EASEMENT = 6,213 SQ. FT.

STORM DRAINAGE EASEMENT = 962 SQ. FT.

GRADING AGREEMENT AND

TEMPORARY CONSTRUCTION EASEMENT "a" = 538 SQ. FT.

GRADING AGREEMENT AND

TEMPORARY CONSTRUCTION EASEMENT "b" = 3,842 SQ. FT.

GRADING AGREEMENT AND

TEMPORARY CONSTRUCTION EASEMENT "c" = 55 SQ. FT.

GRADING AGREEMENT AND

TEMPORARY CONSTRUCTION EASEMENT "d" = 47 SQ. FT.

TOTAL GRADING AGREEMENT AND

TEMPORARY CONSTRUCTION EASEMENT = 4,482 SQ. FT.

CURVE TABLE					
CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING
C1	845.00'	380.44'	143.74'	371.11'	N41°28'36"W
C2	845.00'	20.73'	10.36'	20.73'	N07°13'46"W
C3	67.00'	38.63'	14.81'	38.10'	S84°44'45"E
C4	83.00'	73.04'	34.11'	70.75'	S16°02'11"E
C5	67.00'	24.60'	15.04'	24.36'	S63°21'45"E
C6	67.00'	12.38'	6.21'	12.36'	S81°24'31"E
C7	67.00'	77.12'	43.47'	72.43'	N60°14'33"E
C8	88.00'	55.02'	28.44'	54.13'	N45°15'48"E
C9	87.00'	14.44'	4.74'	14.45'	S44°53'36"W
C10	63.00'	34.81'	17.40'	34.43'	N16°01'02"W
C11	22.44'	14.02'	7.25'	13.74'	S83°54'35"E
C12	64.06'	70.63'	34.34'	67.11'	N81°04'31"E
C13	78.88'	43.28'	22.20'	42.74'	N54°43'22"E
C14	845.00'	31.38'	15.64'	31.38'	N08°54'46"W
C15	83.00'	4.91'	2.46'	4.91'	S52°30'16"E
C16	845.00'	360.26'	182.91'	357.54'	N20°08'46"W

INNOVATION CENTER TO ARROWBROOK TRAIL
 PROJECT NUMBER 2640-086-001

FAIRFAX COUNTY, VIRGINIA

DEPARTMENT OF PUBLIC WORKS
 & ENVIRONMENTAL SERVICES
 CAPITAL FACILITIES, LAND SURVEY BRANCH
 12000 GOVERNMENT CENTER PARKWAY
 FAIRFAX, VIRGINIA

PLAT SHOWING
 DEDICATION FOR PUBLIC STREET PURPOSES
 AND
 TRAIL EASEMENT, STORM DRAINAGE EASEMENT,
 AND

GRADING AGREEMENT AND
 TEMPORARY CONSTRUCTION EASEMENTS
 THROUGH

LOT A-1B
 DULLES TECHNOLOGY
 CENTER VENTURE

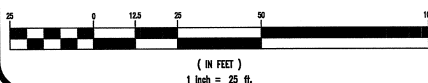
D.B. 10023, PG. 1244
 PROPERTY BEING IN THE NAME OF
 RICHMOND CW HOTEL, LLC
 AND
 SUNRISE HOTELS, LLC

D.B. 25431, PG. 1604
 DRANESVILLE DISTRICT
 FAIRFAX COUNTY, VIRGINIA
 SHEET 1 OF 3

SCALE: 1"=25' DATE: 10/16/19 DRAWN BY: JLG



GRAPHIC SCALE



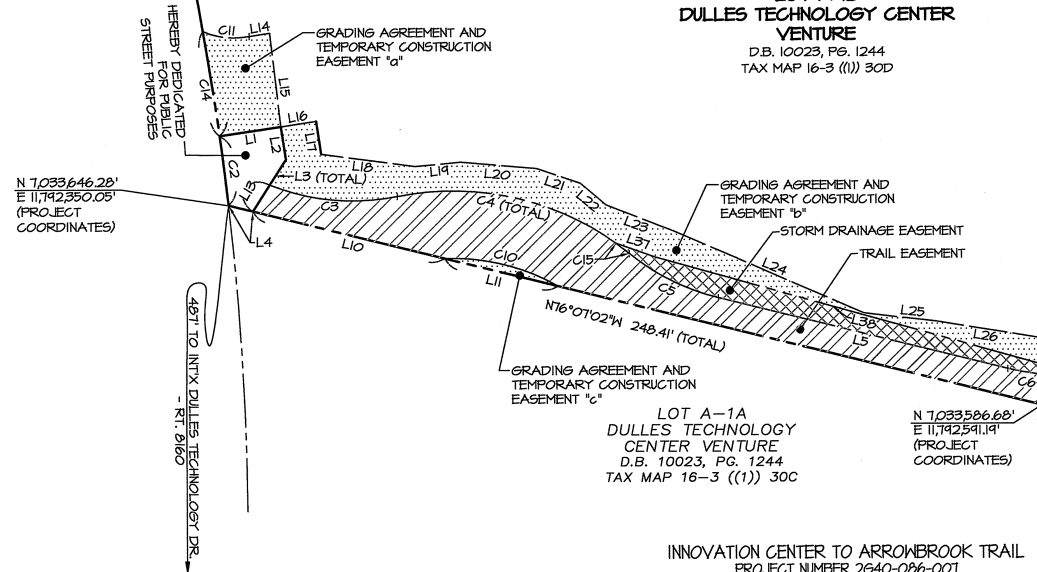
Engineering • Surveying • Land Planning • Transportation • Environmental Services
 8385 Discovery Boulevard, Suite 200, Manassas VA, 20109
 Telephone: (703) 388-7373 Fax: (703) 257-5443

Rinker Design Associates, P.C.



VA STATE GRID NORTH
VC5 83 NORTH ZONE

SUNRISE VALLEY
DRIVE - RT. 5320
(40' WIDE)



INNOVATION CENTER TO ARROWBROOK TRAIL
PROJECT NUMBER 2640-026-001

FAIRFAX COUNTY, VIRGINIA
DEPARTMENT OF PUBLIC WORKS
& ENVIRONMENTAL SERVICES
CAPITAL FACILITIES, LAND SURVEY BRANCH
12000 GOVERNMENT CENTER PARKWAY
FAIRFAX, VIRGINIA

PLAT SHOWING
DEDICATION FOR PUBLIC STREET PURPOSES
AND
TRAIL EASEMENT, STORM DRAINAGE EASEMENT,
AND
GRADING AGREEMENT AND
TEMPORARY CONSTRUCTION EASEMENTS
THROUGH

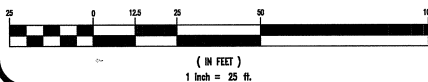
LOT A-1B
DULLES TECHNOLOGY
CENTER VENTURE
D.B. 10023, PG. 1244
PROPERTY BEING IN THE NAME OF
RICHMOND CW HOTEL, LLC
AND
SUNRISE HOTELS, LLC

D.B. 25431, PG. 1604
DRAKEVILLE DISTRICT
FAIRFAX COUNTY, VIRGINIA
SHEET 2 OF 3

SCALE: 1"=25' DATE: 10/16/14 DRAWN BY: JLG



GRAPHIC SCALE



MATCH LINE SEE SHEET 3

Rinker Design Associates, P.C.



Engineering * Surveying * Land Planning * Transportation * Environmental Services
9385 Discovery Boulevard, Suite 200, Manassas VA, 20109
Telephone: (703) 388-7373 Fax: (703) 257-5443



VA STATE
GRID NORTH
105 83 NORTH ZONE

MATCH LINE SEE SHEET 2

**LOT A-1B
DULLES TECHNOLOGY CENTER
VENTURE**

D.B. 10023, PG. 1244
TAX MAP 16-3 ((1)) 30D

GRADING AGREEMENT AND
TEMPORARY CONSTRUCTION
EASEMENT "b"

STORM DRAINAGE EASEMENT
TRAIL EASEMENT

N 70°33'58.68"
E 11°14'25.41.14"
(PROJECT
COORDINATES)

**LOT A-1A
DULLES TECHNOLOGY
CENTER VENTURE**
D.B. 10023, PG. 1244
TAX MAP 16-3 ((1)) 30C

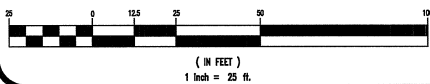
N 88°13'41"W 252.11' (TOTAL)

GRADING AGREEMENT AND
TEMPORARY CONSTRUCTION
EASEMENT "d"

N 70°33'57.89"
E 11°14'25.43.17"
(PROJECT
COORDINATES)

527°23'28"W 130.00' (TOTAL)
**PARCEL "5"
ARROWBROOK CENTER**
D.B. 24884 PG. 837
TAX MAP 16-3 ((20)) 5

GRAPHIC SCALE



INNOVATION CENTER TO ARROWBROOK TRAIL
PROJECT NUMBER 2640-086-001

FAIRFAX COUNTY, VIRGINIA
DEPARTMENT OF PUBLIC WORKS
& ENVIRONMENTAL SERVICES
CAPITAL FACILITIES, LAND SURVEY BRANCH
12000 GOVERNMENT CENTER PARKWAY
FAIRFAX, VIRGINIA

PLAT SHOWING
DEDICATION FOR PUBLIC STREET PURPOSES
AND
TRAIL EASEMENT, STORM DRAINAGE EASEMENT,
AND
GRADING AGREEMENT AND
TEMPORARY CONSTRUCTION EASEMENTS
THROUGH

**LOT A-1B
DULLES TECHNOLOGY
CENTER VENTURE**
D.B. 10023, PG. 1244
PROPERTY BEING IN THE NAME OF
RICHMOND CW HOTEL, LLC
AND
SUNRISE HOTELS, LLC

D.B. 25431, PG. 1604
DRAVESVILLE DISTRICT
FAIRFAX COUNTY, VIRGINIA
SHEET 3 OF 3

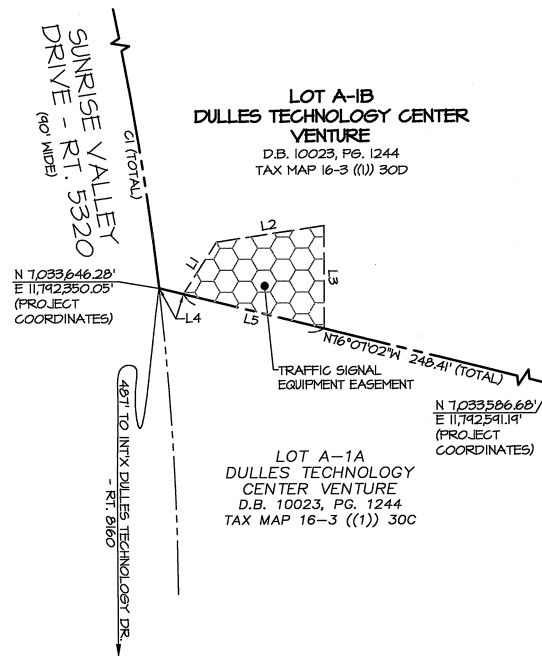
SCALE: 1"=25' DATE: 10/16/19 DRAWN BY: JLG

Engineering * Surveying * Land Planning * Transportation * Environmental Services
9385 Discovery Boulevard, Suite 200, Manassas VA, 20109
Telephone: (703) 368-7373 Fax: (703) 257-5443

Rinker Design Associates, P.C.



VA STATE GRID NORTH
VCS 83 NORTH ZONE



THE FOLLOWING EASEMENT(S) APPLY TO THE PROPERTY SHOWN HEREON BUT CANNOT BE ACCURATELY LOCATED BECAUSE THE RECORDED PLAT IS ILLEGIBLE:
1) EXISTING FAIRFAX COUNTY WATER AUTHORITY EASEMENT(S) AS RECORDED IN DEED BOOK 10023 AT PAGE 1251.

TRAFFIC SIGNAL EQUIPMENT EASEMENT

Engineering * Surveying * Land Planning * Transportation * Environmental Services
9385 Discovery Boulevard, Suite 200, Manassas VA, 20109
Telephone: (703) 388-7373 Fax: (703) 257-5443

Rinker Design Associates, P.C.



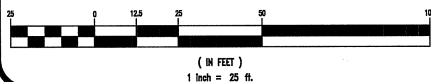
LINE TABLE		
LINE	BEARING	DISTANCE
L1	N32°46'41"E	18.22'
L2	N81°24'42"E	32.27'
L3	S00°00'00"E	30.41'
L4	N16°07'02"W	1.31'
L5	N16°07'02"W	43.03'

CURVE TABLE					
CURVE	RADIUS	LENGTH	TANGENT	CHORD	DELTA
C1	845.00'	380.44'	143.74'	371.77'	N14°26'36"W 25°50'00"

EASEMENT AREAS

TRAFFIC SIGNAL EQUIPMENT EASEMENT = 856 SQ. FT.

GRAPHIC SCALE



NOTES:

THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT. THEREFORE NOT ALL ENCUMBRANCES TO THE PROPERTY ARE NECESSARILY SHOWN HEREON.

THE LAND SHOWN ON THIS PLAT IS NOW HELD AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED AMONG THE LAND RECORDS OF FAIRFAX COUNTY. ALL EASEMENTS AND DEDICATIONS FOR PUBLIC STREET PURPOSES ARE WITHIN THE BOUNDS OF THE ORIGINAL TRACT, AS DESCRIBED AND SHOWN ON THIS PLAT.

THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM EXISTING LAND RECORDS AND DOES NOT REPRESENT THE RESULTS OF AN ACTUAL FIELD RUN BOUNDARY SURVEY.

ALL PREVIOUSLY RECORDED RIGHT-OF-WAYS, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.

THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON ASSESSMENT MAP 16-3-((1)), PARCEL 30D.

INNOVATION CENTER TO ARROWBROOK TRAIL
PROJECT NUMBER 2640-086-001

FAIRFAX COUNTY, VIRGINIA
DEPARTMENT OF PUBLIC WORKS
& ENVIRONMENTAL SERVICES
CAPITAL FACILITIES, LAND SURVEY BRANCH
12000 GOVERNMENT CENTER PARKWAY
FAIRFAX, VIRGINIA

PLAT SHOWING A
TRAFFIC SIGNAL EQUIPMENT EASEMENT
THROUGH

LOT A-1B
DULLES TECHNOLOGY
CENTER VENTURE

D.B. 10023, PG. 1244
PROPERTY BEING IN THE NAME OF
RICHMOND CW HOTEL, LLC
AND
SUNRISE HOTELS, LLC

D.B. 25431, PG. 1604
DRAVESVILLE DISTRICT
FAIRFAX COUNTY, VIRGINIA
SHEET 1 OF 1

SCALE: 1"=25' DATE: 10/16/14 DRAWN BY: JL6



VA STATE Z GRID NORTH
VCS 83: NORTH ZONE

**GRADING AGREEMENT AND
TEMPORARY CONSTRUCTION EASEMENT**

N 7,033.671.02'
E 11,792,254.81'
(PROJECT
COORDINATES)

GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT

EXISTING TEMPORARY STORM
DRAINAGE EASEMENT
(D.B. 5812, PG. 979)

PARCEL D
LIBERTY PARK
D.B. 25598, PG. 1911
TAX MAP 16-3 (11) 40D

EXISTING 10' COMMUNICATION-
SYSTEM EASEMENT
(D.B. 8083, PG. IIII)

EXISTING 15' VEPCO EASEMENT:
(D.B. 5690, PG. II96)

SUNRISE VALLEY DRIVE - RT. 532C
(90' WIDE)

N 7,033,388.47
E 11,792,248.00
(PROJECT
COORDINATES)

LOT 1
ARROWHEAD INTERNATIONAL
BUSINESS PARK
D.B. 5698, PG. 1171
TAX MAP 16-3 ((1)) 4D

NOTES:

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THEREFORE NOT ALL ENCUMBRANCES TO THE PROPERTY ARE
NECESSARILY SHOWN HEREON.

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THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM EXISTING
LAND RECORDS AND DOES NOT REPRESENT THE RESULTS OF AN
ACTUAL FIELD RUN BOUNDARY SURVEY.

ALL PREVIOUSLY RECORDED RIGHT-OF-WAYS, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.

THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON ASSESSMENT
MAP 16-3-((1)), PARCEL 40D.

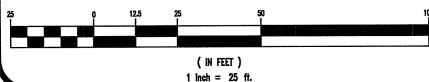
LINE TABLE		
LINE	BEARING	DISTANCE
L1	S84°37'45"W	17.00'
L2	S81°25'28"W	23.87'
L3	N08°22'39"W	32.00'
L4	N81°25'28"E	40.92'

CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	755.00'	240.44'	147.04'	288.65'	S01°21'04"N	22°02'28"
C2	738.00'	22.20'	11.10'	22.20'	N06°11'58"W	1°43'26"
G3	755.00'	1.84'	0.95'	1.84'	S04°35'36"E	0°08'38"
C4	755.00'	55.16'	27.59'	55.15'	S01°25'53"E	4°11'04"
C5	755.00'	233.39'	117.63'	232.46'	S03°31'02"W	17°42'41"

EASEMENT AREA

GRADING AGREEMENT AND
TEMPORARY CONSTRUCTION EASEMENT = 1,697 SQ. FT.

GRAPHIC SCALE



INNOVATION CENTER TO ARROWBROOK TRAIL
PROJECT NUMBER 2640-086-007

FAIRFAX COUNTY, VIRGINIA
DEPARTMENT OF PUBLIC WORKS
& ENVIRONMENTAL SERVICES
CAPITAL FACILITIES, LAND SURVEY BRANCH
12000 GOVERNMENT CENTER PARKWAY
FAIRFAX, VIRGINIA

PLAT SHOWING
GRADING AGREEMENT
AND
TEMPORARY CONSTRUCTION EASEMENT
THROUGH

THROUGH
PARCEL D
LIBERTY PARK

D.B. 25548, PG. 1411
 PROPERTY BEING IN THE NAME OF
WF LIBERTY PARK, LLC
 D.B. 25804, PG. 1760
 DRANESVILLE DISTRICT
 FAIRFAX COUNTY, VIRGINIA
 SHEET 1 OF 1

SCALE: 1"=25'	DATE: 08/05/2019	DRAWN BY: JLG
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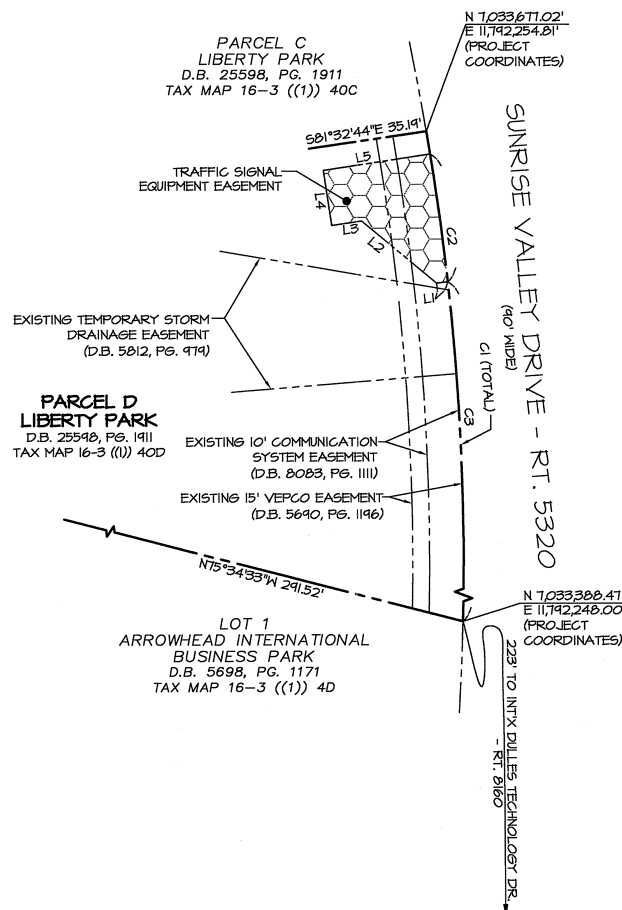
Engineering * Surveying * Land Planning * Transportation * Environmental Services
9385 Discovery Boulevard, Suite 200, Manassas VA, 20109
Telephone: (703) 368-7373 Fax: (703) 257-5443

Rinker Design Associates, P.C.

reda

VA STATE GRID NORTH
VC3 B3 NORTH ZONE

TRAFFIC SIGNAL EQUIPMENT EASEMENT



NOTES:

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THE LAND SHOWN ON THIS PLAT IS NOW HELD AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED AMONG THE LAND RECORDS OF FAIRFAX COUNTY. ALL EASEMENTS AND DEDICATIONS FOR PUBLIC STREET PURPOSES ARE WITHIN THE BOUNDS OF THE ORIGINAL TRACT, AS DESCRIBED AND SHOWN ON THIS PLAT.

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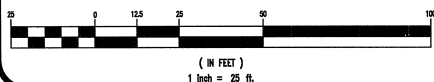
ALL PREVIOUSLY RECORDED RIGHT-OF-WAYS, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.

THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON ASSESSMENT MAP 16-3-((1)), PARCEL 40D.

EASEMENT AREAS

TRAFFIC SIGNAL EQUIPMENT EASEMENT = 815 SQ. FT.

GRAPHIC SCALE



INNOVATION CENTER TO ARROWBROOK TRAIL
PROJECT NUMBER 2640-086-001

FAIRFAX COUNTY, VIRGINIA

DEPARTMENT OF PUBLIC WORKS
& ENVIRONMENTAL SERVICES
CAPITAL FACILITIES, LAND SURVEY BRANCH
12000 GOVERNMENT CENTER PARKWAY
FAIRFAX, VIRGINIA

PLAT SHOWING
TRAFFIC SIGNAL EQUIPMENT EASEMENT
THROUGH

**PARCEL D
LIBERTY PARK**

D.B. 25598, PG. 1911
PROPERTY BEING IN THE NAME OF
WF LIBERTY PARK, LLC
D.B. 25801, PG. 1160
DRAVESVILLE DISTRICT
FAIRFAX COUNTY, VIRGINIA
SHEET 1 OF 1

SCALE: 1"=25' DATE: 08/05/2014 DRAWN BY: JLG

Engineering * Surveying * Land Planning * Transportation * Environmental Services
9385 E Discovery Lane, Suite 200, Alexandria, VA 22304
Telephone: (703) 388-7373 Fax: (703) 257-5443

Rinker Design Associates, P.C.



Board Agenda Item
November 19, 2019

4:00 p.m.

Public Hearing on Proposed Amendments to Chapter 118 (Chesapeake Bay Preservation Ordinance) and Chapter 124 (Stormwater Management Ordinance) of *The Code of the County of Fairfax, Virginia* (County Code) Re: Long-term Maintenance of Stormwater Management Facilities, Illicit Discharges, and Enforcement

ISSUE:

Board of Supervisors' (Board) adoption of proposed amendments to the provisions related to long-term maintenance of stormwater management facilities, illicit discharges, and enforcement in the Chesapeake Bay Preservation Ordinance and Stormwater Management Ordinance. The amendments are necessary to align the ordinances with current lines of business and business practices and to allow violations to be processed more expeditiously.

PLANNING COMMISSION RECOMMENDATION:

On September 18, 2019, the Planning Commission voted 12-0 to recommend adoption of the amendments to the Stormwater Management Ordinance with revisions dated September 12, 2019, (Attachment 1) and that the proposed amendments to the Chesapeake Bay Preservation Ordinance not be adopted at this time and be re-advertised with related amendments to Chapter 12 of the Public Facilities Manual (PFM) at a later date.

RECOMMENDATION:

The County Executive recommends that the Board adopt the proposed amendments to the Stormwater Management Ordinance with revisions dated September 12, 2019, (Attachment A to the Staff Report Addendum dated November 19, 2019) as recommended by the Planning Commission and approve the changes to the Private Maintenance Agreements (PMAs) with revisions dated September 12, 2019 (Attachments B and C to the Staff Report Addendum dated November 19, 2019). The changes to the PMAs implement the changes to the ordinance. The County Executive further recommends that the Board not adopt the proposed amendments to the Chesapeake Bay Preservation Ordinance at this time and that the amendments be re-advertised with related amendments to Chapter 12 of the PFM at a later date as recommended by the Planning Commission.

Board Agenda Item
November 19, 2019

TIMING:

Board action is requested on November 19, 2019. On June 25, 2019, the Board authorized advertising the public hearings. The Planning Commission held a public hearing on July 24, 2019, and deferred decision to September 12, 2019. On September 12, 2019, the Planning Commission deferred decision again to September 18, 2019. If adopted, the proposed amendments will become effective on November 20, 2019, at 12:01 a.m.

BACKGROUND:

The Director of Land Development Services (LDS) is responsible for administering the Stormwater Management Ordinance. However, some County responsibilities under the ordinance are performed by the Department of Public Works and Environmental Services (DPWES) and are funded through its budget. These responsibilities include the post-construction stormwater management facility inspection program, which is a requirement of the Virginia Stormwater Management Program (VSMP) Regulation and the County's Municipal Separate Storm Sewer System (MS4) Permit; and the illicit discharge and industrial and high-risk runoff facility inspection programs, which are elements of the County's MS4 Permit. LDS became the administering agency for the Stormwater Management Ordinance when it was created as a separate agency in 2017.

The Director of LDS delegated responsibility for administering the above provisions of the ordinance and processing of violations of those provisions to the Director of DPWES. The amendments will expressly authorize the Director of DPWES to administer the portions of the Stormwater Management Ordinance over which the Director of DPWES currently has delegated authority and will align the ordinance with the existing lines of business.

The VSMP Regulation requires localities to ensure the long-term functionality of privately-owned stormwater management facilities by using maintenance agreements. The regulation specifies, among other things, that maintenance agreements must require owners to submit inspection and maintenance reports to the VSMP authority (the County). However, the regulation does not specify how often reports must be submitted or what those reports must include. The maintenance agreements currently used by the County specify the inspection and maintenance reporting requirements and require owners to submit inspection and maintenance reports annually to the County. As proposed, the maintenance agreements are being modified to allow owners to retain the reports on-site and made available for review by County staff upon request. The regulation also allows localities to use an alternative enforcement mechanism other than a maintenance agreement for facilities serving individual lots. This option was included in the proposed amendments and uses language taken directly from the state regulations.

Legal action to assess civil penalties is one enforcement method used to obtain compliance with and penalize violations of the Stormwater Management Ordinance. The ordinance requires that civil penalties be filed in circuit court even though the enabling legislation (Virginia Stormwater Management Act, Va. Code §§ 62.1-44.15:24. *et seq.*) allows legal action to be taken in any appropriate court. In some cases, seeking civil penalties in general district court would be more efficient and require less staff time. Therefore, amending the Stormwater Management Ordinance to allow legal action to be taken in any appropriate court would provide flexibility to pursue civil penalties in general district court, and will expedite enforcement and reduce staff time to process certain violations.

The advertised amendments to the Chesapeake Bay Preservation Ordinance replaced the planting densities for the establishment and restoration of Resource Protection Areas (RPAs) in the ordinance with a requirement to meet the planting densities for RPAs in the PFM. Based on issues raised during the Planning Commission hearing process, it was decided that these amendments should be withdrawn and brought back with associated PFM amendments after additional coordination with stakeholders. There is a discussion of these issues in the Staff Report Addendum.

DISCUSSION:

Two issues were raised at the Planning Commission hearing on the proposed amendments to the Stormwater Management Ordinance. The first issue was a concern that eliminating the requirement to submit annual reports would lead to inadequate maintenance of facilities. This change will not eliminate the requirement for an owner to inspect, prepare and retain inspection reports, and maintain facilities. The proposed changes simply eliminate the need for the owner to annually submit their inspection reports to the county. Staff will request the annual reports at the time compliance inspections are conducted, which occurs once every five years. The requirement for submission of inspection reports on an annual basis was created with the initial adoption of the ordinance in 2014. It was not a requirement before adoption of the ordinance and is not currently a requirement at the state level. Most of the 5,000 privately maintained facilities in the county's inventory do not include this requirement in their recorded maintenance agreements. As part of the inspection program, the county has a robust outreach program to inform owners of their maintenance responsibilities at the time facilities are added to the county's inventory. Of the approximately 1,000 compliance inspections performed each year only about 2% receive notices of violation, which is an indication that the inspection program is working well.

The second issue raised was that provisions for an alternative to a private maintenance agreement shouldn't be included in the ordinance until an alternative enforcement mechanism is developed. Staff is not proposing to implement an alternative

enforcement mechanism at this time, but this amendment will eliminate the need to amend the ordinance if the post-construction inspection program develops alternatives to private maintenance agreements. Any change to post-construction enforcement mechanisms will be vetted with the Board before implementation. After staff provided the Planning Commission with information on the inspection program, the commission recommended approval of the amendments.

PROPOSED AMENDMENTS:

The Stormwater Management Ordinance is being amended to authorize the Director of DPWES to administer and enforce specific provisions of the ordinance related to the County's MS4 Permit and long-term maintenance of stormwater management facilities, which is consistent with current lines of business. Also, the ordinance is being amended to allow legal action under the ordinance to be pursued in any appropriate court. Staff is also requesting the Board to approve two standard maintenance agreements for privately maintained stormwater management facilities that reflect the changes to the ordinance. There is one agreement for facilities located on private property and a second agreement for facilities located in the right-of-way (applicable to the Tyson's area only). The advertised amendments to the Chesapeake Bay Preservation Ordinance are not being recommended for approval at this time. Per the Planning Commission's request, the proposed amendments to the Stormwater Management Ordinance have been revised to more clearly distinguish between the Director of Land Development Services and the Director of the Department of Public Works and Environmental Services and eliminate gender-specific language. In addition, the word "shall" has been replaced with the words "will" or "must" in the Private Maintenance Agreements (PMAs). Details of the proposed and revised amendments are provided in the Staff Report and Staff Report Addendum.

REGULATORY IMPACT:

There is only minimal regulatory impact on the public. The proposed amendments provide for the processing of civil penalties through General District Court instead of Circuit Court, which will expedite the enforcement process for some enforcement actions.

FISCAL IMPACT:

There is no fiscal impact to the County. The ability to process violations through General District Court instead of Circuit Court may result in some savings of staff time.

Board Agenda Item
November 19, 2019

ENCLOSED DOCUMENTS:

Attachment 1 – Planning Commission Meeting September 18, 2019, Verbatim Excerpt is available online at:

<https://www.fairfaxcounty.gov/planningcommission/sites/planningcommission/files/assets/documents/pdf/2019%20verbatims/verbatim091819codeamendmentchapt118and124.pdf>

Attachment 2 – Staff Report dated June 25, 2019, is available online at:

<https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/assets/documents/pdf/pfm/staff-report-enforcement-maintenance.pdf>

Attachment 3 – Staff Report Addendum dated November 19, 2019, is available online at:

<https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/assets/documents/pdf/pfm/staff-report-addendum-enforcement-maintenance.pdf>

STAFF:

Rachel Flynn, Deputy County Executive
William D. Hicks, P.E., Director, LDS
Randolph W. Bartlett, P.E., Director, DPWES

ASSIGNED COUNSEL:

Marc Gori, Assistant County Attorney

Board Agenda Item
November 19, 2019

4:00 p.m.

Public Hearing on an Ordinance to Amend the Fairfax County Code by Adding a New Chapter 86, Relating to Shared Mobility Devices

ISSUE:

Public hearing on an ordinance to amend the Fairfax County Code by adding a new Chapter 86, relating to Shared Mobility Devices.

RECOMMENDATION:

The County Executive recommends that the Board amend the Fairfax County Code by adding a new Chapter 86, Shared Mobility Devices.

TIMING:

Board action is requested on November 19, 2019, to allow sufficient lead time for County staff to implement the requirements of the new ordinance by the January 1, 2020, General Assembly deadline.

BACKGROUND:

During the 2019 Session, the General Assembly passed HB 2752, which allows localities to regulate the use of motorized skateboards or scooters, bicycles, or electric power-assisted bicycles (Shared Mobility Devices) for hire. Specifically, a locality may (i) by ordinance regulate, or (ii) by any governing body action or administrative action establish a demonstration project or pilot program regulating the operation of Shared Mobility Devices for hire. On or after January 1, 2020, in the absence of any licensing ordinance, regulation, or other action, a person may offer Shared Mobility Devices for hire in Fairfax County.

The Department of Cable and Consumer Services (DCCS), in coordination with the Department of Transportation (FCDOT) and the Office of the County Attorney (OCA), has drafted an ordinance to regulate Shared Mobility Devices for hire in Fairfax County. Staff developed the ordinance based on the Board's directives and after research and analysis into the use of Shared Mobility Devices in other Virginia jurisdictions and across the country. The proposed ordinance would amend the Fairfax County Code by adding a new Chapter 86, relating to Shared Mobility Devices.

Board Agenda Item
November 19, 2019

The proposed new Chapter 86, Shared Mobility Devices, included as Attachment 1, contains provisions for Operator's Permits and Shared Mobility Device Certificates; application process, fee structure, insurance and bonding requirements; revocations, suspensions, and appeals; records and reports; requirements of the Permittees and riders; and general penalties. Other highlights of the proposed new Chapter 86, Shared Mobility Devices, are highlighted below.

Article 1 defines the intent of the Chapter and applicable terms used throughout the ordinance. Also included is an exclusion stating that no provision of this Chapter shall apply to any Shared Mobility Device offered for hire that is regulated pursuant to County administrative action under a regional multi-jurisdictional agreement (e.g. Capital Bikeshare). Article 2 discusses the application process for the Operator's Permit and Shared Mobility Device Certificates, fees, fleet sizes, and revocation and/or suspension. Article 3 outlines the appeals process for an Operator to pursue if a suspension or revocation has been issued by the Director of the Department of Cable and Consumer Services, specifically, the Fairfax County Consumer Protection Commission would hear the appeal and render a binding decision. Article 4 includes the records and reports data that should be filed by the Permittee to the County. Article 5 details the requirements of the Permittees, Shared Mobility Devices, and riders. Article 6 discloses penalties and fines associated with violations of this Chapter.

During the development of the draft ordinance, County staff solicited and received feedback on Shared Mobility Devices from the public, local businesses and property owners, pedestrian and biking groups, and the industry. This feedback was incorporated into the proposed ordinance.

On August 20, 2019, DCCS staff requested approval to advertise a public hearing at the Consumer Protection Commission (Commission) meeting on September 17, 2019. The Commission voted unanimously to advertise a public hearing.

On September 17, 2019, the Commission held a public hearing on the proposed Shared Mobility Device ordinance. During the public hearing, staff provided a presentation to the Commission, which included background on HB 2752, a discussion of the current Shared Mobility Device status in Fairfax County and other programs in Northern Virginia, and a review of the proposed ordinance. Following public comment and questions, the Commission voted unanimously to recommend that the Board of Supervisors amend the Fairfax County Code by adding a new Chapter numbered 86, related generally to Shared Mobility Devices.

On October 22, 2019, staff presented an update to the Board's Transportation Committee. The update focused on a balanced approach between transportation and industry desires and the anticipated community concerns regarding abandonment,

Board Agenda Item
November 19, 2019

vandalism, and volume of devices. Staff also indicated they would return to the Board with an update in early 2021, after data from the first 12 months of the program could be analyzed. Any proposed adjustments to the ordinance, as appropriate, would also be reviewed as part of this update.

Following the October 22 presentation and discussion, the Board directed staff to advertise ranges for the initial number of Shared Mobility Device certificates to be issued to any Permittee, the number of additional Shared Mobility Device certificates to be issued to Permittee per quarter, and the maximum number of Shared Mobility Device Certificates to be issued per Permittee.

Throughout this process, various stakeholders have provided comments on several issues related to the proposed ordinance, including comments on the number of devices that should be allowed, the maximum speed the devices should operate within the County, and where the devices should be allowed to operate. Staff continues to consider these comments and will provide an update to the Board during the staff presentation at the public hearing on November 19, 2019.

It should be noted, in the interim period from July 1, 2019, until 12:00 A.M. on January 1, 2020, any Shared Mobility Device for hire company is free to apply for a Fairfax County business license, under Va. Code §46.2-1315, but no person or company may offer Shared Mobility Devices for hire within the County until either a) the County passes its ordinance regulating such use; or b) January 1, 2020, whichever is sooner.

Shared Mobility Device for hire companies have been instructed to monitor rides that terminate within Fairfax County and collect such devices within 12 hours of the company receiving notice of such location or notification from County staff to the company. Shared Mobility Devices not collected within 12 hours, will be deemed abandoned property and disposed of by the County.

FISCAL IMPACT:

The revenue that could be collected in FY 2020, at a minimum, would include a \$100 non-refundable application processing fee and a \$1,000 annual Operator's Permit, to be paid by the Permittee. Based on the number of Shared Mobility Device certificates requested by the Permittee, an additional annual fee of \$28 per Shared Mobility Device certificate would also be collected. These revenue projections will fluctuate according to the number of operators that apply for a permit to offer shared mobility devices for hire in Fairfax County and the number of Shared Mobility Device certificates requested by the operators once permitted.

Board Agenda Item
November 19, 2019

Expenses associated with the regulation of the Shared Mobility Device for hire industry will be covered within existing FY 2020 budget appropriations in DCCS. Costs incurred by the County for the collection, removal, and/or disposal of Shared Mobility Devices will be reimbursed to the County from the \$5,000 bond required by each Permittee, to be replenished as drawn on by the County. DCCS staff will monitor the workload and any additional expenses associated with the new regulation of this industry and request additional funding if necessary.

ENCLOSED DOCUMENTS:

Attachment 1 – New Chapter 86, Shared Mobility Devices

STAFF:

Joseph M. Mondoro, Chief Financial Officer
Rachel Flynn, Deputy County Executive
Michael S. Liberman, Director, Department of Cable and Consumer Services
Tom Biesiadny, Director, Fairfax County Department of Transportation
Rebecca L. Makely, Director, Consumer Services Division, DCCS
Noelle C. Dominguez, Chief, Coordination Section, FCDOT
Chris Wells, Active Transportation Program Manager, FCDOT

ASSIGNED COUNSEL:

Joanna L. Faust, Assistant County Attorney

Fairfax County Code Chapter 86 (Shared Mobility Devices)
Proposed Adoption of New Chapter 86

Page 1 of 11

TABLE OF CONTENTS

1		
2	ARTICLE 1. - In General.	2
3	Section 86-1-1. - Purpose of chapter.	2
4	Section 86-1-2. - Definitions.	2
5	Section 86-1-3. - Exclusions.	2
6	ARTICLE 2. - Operator’s Permit and Shared Mobility Device Certificates.	3
7	Section 86-2-1. - Operator’s Permit and Shared Mobility Device Certificates required.	3
8	Section 86-2-2. - Application; forms; contents; notice of application.	3
9	Section 86-2-3. - False statements on applications or reports.	3
10	Section 86-2-4. - Operator’s Permit and Shared Mobility Device Certificate fees.	3
11	Section 86-2-5. - Number of Shared Mobility Device Certificates.	3
12	Section 86-2-6. - Duration of Shared Mobility Device Certificates; nontransferable.	4
13	Section 86-2-7. - Insurance requirements.	4
14	Section 86-2-8. - Permittee bonding required; condition; term renewal.	5
15	Section 86-2-9. - Revocation or suspension of Operator’s Permit or Shared Mobility Device	
16	Certificates.	6
17	Section 86-2-10. - Application after revocation of Operator’s Permit.	7
18	ARTICLE 3. - Appeals.	7
19	Section 86-3-1. - Appeals from decisions of the Director; procedure.	7
20	ARTICLE 4. - Records and reports.	8
21	Section 86-4-1. - Records to be maintained; reports; inspection and examination.	8
22	Section 86-4-2. - Reports to be filed.	9
23	ARTICLE 5. - Requirements and standards.	9
24	Section 86-5-1. - General requirements and standards for Permittees.	9
25	Section 86-5-2. - Shared Mobility Device requirements.	10
26	Section 86-5-3. - Rider requirements.	10
27	ARTICLE 6. - Penalties.	11
28	Section 86-9-1. - General penalties.	11
29		

**Fairfax County Code Chapter 86 (Shared Mobility Devices)
Proposed Adoption of New Chapter 86**

Page 2 of 11

**AN ORDINANCE ADOPTING
CHAPTER 86 OF THE FAIRFAX COUNTY CODE, RELATING TO
SHARED MOBILITY DEVICES**

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

1. **That Chapter 86 is adopted as follows:**

ARTICLE 1. - In General.

Section 86-1-1. - Purpose of chapter.

The purpose of this Chapter is to regulate the operation of Shared Mobility Devices offered for hire within the County to ensure safe, reliable, adequate, and efficient service.

Section 86-1-2. - Definitions.

Applicant means any person that files an application to offer Shared Mobility Devices for hire in the County.

Bicycle has the meaning specified in Virginia Code § 46.2-100.

Commission means the Consumer Protection Commission of the County.

Department means the Fairfax County Department of Cable and Consumer Services.

Director means the Director of the Department or the duly authorized agent of the Director of the Department.

Electric power-assisted bicycle has the meaning specified in Virginia Code § 46.2-100.

Motorized skateboard or scooter has the meaning specified in Virginia Code § 46.2-100.

Operator's Permit means the permit granted by the Director to offer Shared Mobility Devices for hire in the County and that comprises the specific number of Shared Mobility Device Certificates that have been awarded by the Director.

Permittee means any person who has been granted an Operator's Permit and holds one or more Shared Mobility Device Certificates.

Shared Mobility Device means a motorized skateboard or scooter, bicycle, or electric power-assisted bicycle and any other device specified in Virginia Code § 46.2-1315.

Shared Mobility Device Certificate means the individual numbered certificate associated with a specific Shared Mobility Device that is issued by the Director to a Permittee.

Section 86-1-3. - Exclusions.

No provision of this Chapter will apply to any Shared Mobility Device offered for hire that is regulated pursuant to County administrative action under a regional multi-jurisdictional agreement.

ARTICLE 2. - Operator's Permit and Shared Mobility Device Certificates.**Section 86-2-1. - Operator's Permit and Shared Mobility Device Certificates required.**

- (a) No person will engage in the business of offering Shared Mobility Devices for hire without a valid and current Operator's Permit from the Director. For the purposes of this Chapter, offering Shared Mobility Devices for hire means offering a ride for hire that originates within the County.
- (b) An Operator's Permit will only be issued upon receipt of a complete application and upon a finding that the Applicant has complied with all applicable sections of the Fairfax County Code, the Code of Virginia, and County regulations as may be adopted or amended.
- (c) A Permittee will not offer Shared Mobility Devices for hire or allow Shared Mobility Devices to be operated within the County without having been granted a Shared Mobility Device Certificate for each Shared Mobility Device that Permittee operates in the County.

Section 86-2-2. - Application; forms; contents; notice of application.

- (a) Applicants for Operator's Permits must possess a valid Fairfax County Business, Professional and Occupational License (BPOL) in accordance with Chapter 4 of the Fairfax County Code.
- (b) Applications for Operator's Permits or for a change in the number of individual Shared Mobility Device Certificates issued to a Permittee will be made upon forms provided and in the format requested by the Department. The Applicant will provide full answers to all questions on the application and that information will be submitted under oath.
- (c) The fee for processing an application for an Operator's Permit will be \$100.00. This application processing fee is nonrefundable, and it will be paid by check, credit card, or money order upon submission of the application to the Director.
- (d) In order to carry out the purposes of this Chapter, the Director may request that the Applicant provide information in addition to that provided on the application.

Section 86-2-3. - False statements on applications or reports.

It will be unlawful for any person to make or cause to be made any false statement in writing for the purpose of procuring an Operator's Permit or Shared Mobility Device Certificates, or to make any false statements or entry on the records required to be kept by this Chapter.

Section 86-2-4. - Operator's Permit and Shared Mobility Device Certificate fees.

- (a) The annual fee for an Operator's Permit will be \$1,000.00.
- (b) The annual fee for each Shared Mobility Device Certificate will be \$28.00.

Section 86-2-5. - Number of Shared Mobility Device Certificates.

- (a) The maximum initial number of Shared Mobility Device Certificates that will be issued to any Permittee is [300-600].
- (b) Permittee may request that additional Shared Mobility Device Certificates be issued to Permittee. Requests from Permittees to increase the number of Shared Mobility Device Certificates will be considered quarterly. If the Permittee demonstrates to the Director that the Permittee's existing fleet of Shared Mobility Devices averages a minimum of three

**Fairfax County Code Chapter 86 (Shared Mobility Devices)
Proposed Adoption of New Chapter 86****Page 4 of 11**

rides per Shared Mobility Device per day for a three month period, then the Director may authorize up to [75-150] additional Shared Mobility Device Certificates to be issued to Permittee per quarter. In no circumstances will the fleet size of any Permittee exceed [600-1200] Shared Mobility Devices.

- (c) If the Director determines that the Permittee's existing fleet of Shared Mobility Devices averages less than three rides per Shared Mobility Device per day, then the Director may require Permittee to reduce Permittee's fleet size in the County to no less than the number of Shared Mobility Device Certificates initially issued to Permittee.

Section 86-2-6. - Duration of Shared Mobility Device Certificates; nontransferable.

- (a) No Operator's Permit or Shared Mobility Device Certificate will be issued under this Article or continued in effect until all fees and taxes imposed by this Chapter or any other Chapter of this Code are paid, insofar as such fees relate to the operation of a Shared Mobility Device for hire business within the County.
- (b) Any Operator's Permit or Shared Mobility Device Certificate will be nontransferable by sale, lease, or otherwise and will be valid from the date of issuance until relinquished or revoked as provided in this Chapter.
- (c) Unless the Shared Mobility Device is removed from service pursuant to Section 86-2-9 or because of a critical safety issue, a Permittee may at any time substitute a replacement Shared Mobility Device for another Shared Mobility Device that has an individual numbered Shared Mobility Device Certificate and is to be removed from service with notice to the Department. The substituted Shared Mobility Device will comply with all provisions of this Chapter.

Section 86-2-7. - Insurance requirements.

- (a) Except as otherwise provided by Subsection (d) or (e) of this Section, Permittees will not offer Shared Mobility Devices for hire unless there is in full force and effect a liability insurance policy for each Shared Mobility Device in the amount of at least \$1,000,000 for property damages, bodily injury, or death to any person, and in the amount of at least \$5,000,000 for property damages, bodily injuries, or death to more than one person sustained in the same accident.
- (b) Such insurance policy will provide coverage for any liability during the operation of the Shared Mobility Device to include any actual or alleged negligence of Shared Mobility Device riders and inure to the benefit of any person who may be injured or the estate in the event of death, or to the benefit of any persons sustaining damage to property for which the Permittee may be liable.
- (c) Liability insurance may be in the form of commercial general liability insurance, automobile liability insurance, or another specialty insurance policy covering all owned, non-owned, borrowed, leased, or rented Shared Mobility Devices for claims arising from the ownership, maintenance, and use of any Shared Mobility Device by the rider and may be a combination of primary and excess or umbrella liability policy.
- (d) Evidence of such insurance will be filed with the Director prior to the issuance of any Shared Mobility Device certificates and will include provisions for notice by the insurance carrier to the Director prior to termination of such coverage.

**Fairfax County Code Chapter 86 (Shared Mobility Devices)
Proposed Adoption of New Chapter 86****Page 5 of 11**

- 1 (e) Permittees will maintain all insurance requirements for Shared Mobility Devices as
2 required by the Commonwealth of Virginia.

3 **Section 86-2-8. - Permittee bonding required; condition; term renewal.**

- 4 (a) All Permittees will maintain a bond or other letter of credit acceptable to the County and
5 furnish it to the Director. The surety will be payable to the County in the amount of \$5,000
6 and conditioned to indemnify, defend, and hold harmless the County and all its elected and
7 appointed officials, officers, boards, commissions, commissioners, agents, and employees
8 against any and all claims, suits, causes of action, proceedings, and judgments made by
9 third parties for any and all losses, damages, injuries, fees (including attorney's fees),
10 charges, expenses (including court costs), or damages caused by Permittee's acts or
11 omissions or any failure to comply with the provisions of this Chapter or other applicable
12 law.

- 13 (b) The following procedures will apply to drawing on any bond or letter of credit provided by
14 a Permittee:

- 15 (1) If the County notifies a Permittee of any amounts due pursuant to any applicable
16 law, and the Permittee does not make such payment within 30 days, the County
17 may draw the amount in question, with any applicable interest and penalties, from
18 the bond or letter of credit after providing written notice to the Permittee and the
19 issuing financial institution, specifying the amount and purpose of such draw.

- 20 (2) Within three business days of a draw on the bond or letter of credit, the County will
21 mail to the Permittee, by certified mail, return receipt requested, written notification
22 of the amount, date, and purpose of such draw.

- 23 (3) If at the time of a draw on the bond or letter of credit by the County, the amount
24 available is insufficient to provide the total payment of the claim asserted in the
25 County's draw notice, the balance of such claim will not be discharged or waived,
26 but the County may continue to assert the same as an obligation of the Permittee to
27 the County.

- 28 (4) No later than 30 days after the County mails notice to the Permittee by certified
29 mail, return receipt requested, of a draw on the bond or letter of credit, the Permittee
30 will restore the amount of the bond or letter of credit to its original amount.

- 31 (a) The bond will be for a term at least equal to the duration of the Operator's Permit.
32 Cancellation of the bond, for any reason, prior to the date of expiration of the Operator's
33 Permit will require a written notification to the Director at least 30 days prior to
34 cancellation. The Operator's Permit will be revoked if an alternate bond, meeting the
35 requirements of this Section, is not provided.

- 36 (b) The Director may increase the bond amount for any Permittee, or allow alternate financial
37 assurance mechanisms, if deemed necessary to protect the financial interests of the County
38 or to address chronic failure to comply with this Chapter.

Fairfax County Code Chapter 86 (Shared Mobility Devices)
Proposed Adoption of New Chapter 86

Page 6 of 11

Section 86-2-9. - Revocation or suspension of Operator's Permit or Shared Mobility Device Certificates.

(a) In response to any finding that the public safety and welfare so demands, the Director may suspend any individual numbered Shared Mobility Device Certificate(s) of a Permittee, until proof of compliance is met to the Director's satisfaction for any of the following reasons:

(1) Failure to maintain the Shared Mobility Device(s) identified in the Shared Mobility Device Certificates in good order, maintenance, and repair, in accordance with Article 5 of this Chapter and industry safety standards as reasonably interpreted by the Director.

(2) Failure to comply with applicable speed limitations in state and local law.

(3) Failure to pay any fees required under this Chapter.

(4) Failure to list Permittee contact information on each Shared Mobility Device.

(5) Failure to collect any Shared Mobility Device within the applicable time period of being notified by the County.

(b) In response to any finding that the public safety and welfare so demands, the Director may suspend a Permittee's Operator's Permit and authority to operate in the County, including all individual numbered Shared Mobility Device Certificates issued to the Permittee, until proof of compliance is met to the satisfaction of the Director for any of the following reasons:

(1) Failure to maintain a BPOL license as required by the Fairfax County Code.

(2) Failure to supply information required under this Chapter.

(3) Failure to pay any fees and taxes required under this this Chapter or any other Chapter of this Code insofar as such fees and taxes relate to operation of a Shared Mobility Device business within the County.

(4) Failure to maintain proper insurance required under this Chapter.

(5) Discontinuance of service of the entire business of the Permittee for more than five consecutive calendar days.

(6) Three or more violations by the Permittee of any of the provisions of this Chapter within a 12-month period.

The Director's failure to suspend an individual Shared Mobility Device Certificate for any of the causes set forth in Subsection (a) of this Section will not impair the authority of the Director to suspend all certificates held by a Permittee based on such causes.

(c) Written notice of any suspension pursuant to this Section will be given to the Permittee by electronic mail. Such suspension will be effective upon receipt, unless a different effective date is specified.

(d) The Director, upon a determination that the Permittee is not operating the authorized Shared Mobility Devices in such a manner as to serve the public safely, reliably, adequately, or efficiently, may revoke the Permittee's authority to operate a Shared

Fairfax County Code Chapter 86 (Shared Mobility Devices)
Proposed Adoption of New Chapter 86

Page 7 of 11

Mobility Device business in the County, including allowing a rider to originate a ride on the Shared Mobility Device in the County, and all individual numbered Shared Mobility Device Certificates issued thereunder. Such determination will be based upon the Director's consideration of evidence showing violation, by the Permittee, of one or more of the provisions of this Chapter.

- (e) It will be unlawful for Permittee to offer a Shared Mobility Device for hire in the County, including allowing a rider to originate a ride on the Shared Mobility Device in the County, when the Shared Mobility Device Certificate under which the Shared Mobility Device was placed in service is under suspension or revocation. If a Shared Mobility Device Certificate is suspended or revoked, a Permittee will collect the Shared Mobility Device associated with the Shared Mobility Device Certificate within a reasonable time period as determined by the Director.
- (f) An Operator's Permit or Shared Mobility Device Certificate that has been suspended or revoked will be returned to the Director within three business days from the effective date of the revocation or suspension.

Section 86-2-10. - Application after revocation of Operator's Permit.

A Permittee whose operating authority and all Shared Mobility Device Certificates have been revoked may not apply for an Operator's Permit for six months.

ARTICLE 3. - Appeals.

Section 86-3-1. - Appeals from decisions of the Director; procedure.

- (a) If the Director suspends or revokes an Operator's Permit or any or all Shared Mobility Device Certificates, any party aggrieved thereby may appeal such decision to the Commission.
- (b) Any appeal will be filed with the Department by the appellant or by the legal representative of the appellant. Appeals will be in writing, and appeals will include a brief statement of the reasons thereof. Appeals will be filed within 45 calendar days of receipt of the notice of suspension or revocation, and appeals will be signed by the appellant or the legal representative of the appellant.
- (c) Upon receipt of any notice of appeal, the Department will forward the notice of appeal to the Commission. The Commission will set a time and place for such hearing and will give the appellant or legal representative and the Director reasonable notice thereof. All hearings on appeals will be scheduled and determined as promptly as practicable and in no event more than 60 calendar days from the date the notice of appeal is filed.
- (d) All hearings or other public proceedings conducted by the Commission in accordance with this Chapter will be conducted in an informal manner. The Commission will have the discretion to admit all evidence which may be of probative value even if that evidence is not in accord with formal rules of legal practice and procedure. Applicants and appellants may appear, either by personal appearance, legal counsel, or other representation, to present argument and evidence on their behalf. In addition, the Commission may establish rules of procedure for the conduct of hearings. Any interested party may record all public

Fairfax County Code Chapter 86 (Shared Mobility Devices)
Proposed Adoption of New Chapter 86

Page 8 of 11

proceedings of any hearing in any manner which will not impede the orderly conduct of the hearing.

(e) The Commission will consider the case record as well as the statement offered by any interested party and will consider the matter de novo, and the Commission will, upon the basis of the record before it, affirm, modify or reverse the decision of the Director. The Commission will report all recommendations and decisions in writing, and the Commission will furnish copies of those decisions to the Director and to any Applicant or appellant affected thereby. To any other person entitled to receive a copy pursuant to the Virginia Freedom of Information Act, the Commission will furnish copies in accordance with that Act.

(f) If the Commission affirms the decision of the Director to suspend or revoke an Operator's Permit or any Shared Mobility Device Certificate, then the suspension or revocation will be effective from the date of the Commission's decision.

(g) If the Commission reverses the decision of the Director, the Director will issue or restore the Operator's Permit or any Shared Mobility Device Certificate in accordance with the Commission's decision.

ARTICLE 4. - Records and reports.

Section 86-4-1. - Records to be maintained; reports; inspection and examination.

(a) A Permittee will maintain records of the following in sufficient accuracy and detail to comply with the filing requirements of this Chapter and provide monthly reports to the Director in such format reasonably requested by the Director:

- (1) Total number of active customers riding in the County;
- (2) Number, type, and specifications of all Shared Mobility Devices available for service and in operation on a daily basis, including the number of Shared Mobility Device Certificates reassigned;
- (3) Ride data, including number of rides beginning and ending in the County, rate information, including the proration of any rates, average duration of rides for each of Permittee's Shared Mobility Devices in service per day, and map data sufficient to determine which areas of the County are being serviced;
- (4) Maintenance and repair records of Permittee's Shared Mobility Devices and other equipment employed in operating Permittee's Shared Mobility Device fleet, including the reason why any Shared Mobility was removed from service;
- (5) Number and location of any Shared Mobility Device that was towed or removed from the County;
- (6) Complaints received regarding Permittee's operations in the County or for any Shared Mobility Device located within the County, including the time and date the complaint was received and the resolution of the complaint, the location of the Shared Mobility Devices;

Fairfax County Code Chapter 86 (Shared Mobility Devices)
Proposed Adoption of New Chapter 86

Page 9 of 11

- (7) Injury or crash data, including time, date, precise location, severity of incident, and cause (if known) of any reported injury or crash involving a Shared Mobility Device;
- (8) Such other information reasonably requested by the Director to ensure safe, reliable, adequate, and efficient service of Shared Mobility Devices in the County.
- (b) A Permittee will retain and preserve the records required by this Chapter, for a period of no less than three years. Such records may be kept in any reasonable form in ordinary business practice and will be made available within a reasonable period of time not to exceed 30 calendar days after request for inspection and examination by the Director.

Section 86-4-2. - Reports to be filed.

In order to accomplish the purpose of this Chapter, all Permittees will file, under oath, to the best of their knowledge, with the Department on a monthly basis (or more frequently if requested by the Department) reports with the information in Section 86-4-1(a). Such reports will include data solely related to the operations of Permittee's Shared Mobility Devices located in the County. Such reports must be filed by the 15th day of each month for the previous month.

ARTICLE 5. - Requirements and standards.

Section 86-5-1. - General requirements and standards for Permittees.

- (a) Permittees will use their best efforts to offer Shared Mobility Devices in all areas of the County and will not restrict Shared Mobility Devices to any specific geographical area of the County.
- (b) Permittees will comply with Chapter 11 (Human Rights Ordinance) of the County Code and all other applicable laws governing fairness and equity to all persons in the County.
- (c) Permittees are encouraged to provide a cash-based or non-smartphone mechanism to access Shared Mobility Devices.
- (d) Permittees will maintain a place of business or office with telephone service within the County or within thirty miles of the County.
- (e) Permittees or their agents must be accessible 24 hours per day to receive requests for service and collect Shared Mobility Devices.
- (f) Permittees will notify all Shared Mobility Device riders of the Permittees' safety and etiquette rules and regulations as well as rider requirements pursuant to Section 86-5-3, and County and state laws applicable to the operation of Shared Mobility Devices.
- (g) If requested by the County, Permittee will collect any Shared Mobility Device within the County:
- i. If notified by the County between 7 a.m. to 9 p.m., within 4 hours, or
 - ii. If notified by the County after 9 p.m., by 8 a.m.
- If the Permittee fails to collect the Shared Mobility Device(s), the County may remove and store the Shared Mobility Device at Permittee's expense and the Shared Mobility Device may not be reacquired until all such expenses have been paid. Any Shared Mobility Device

not reacquired within 30 days will be forfeited to the County and sold at public auction or added to the County's assets.

- (h) In the event of a critical issue or emergency situation designated by the County, Permittee will provide the approximate location of all Shared Mobility Devices to the Director and then collect and relocate all Shared Mobility Devices located within the County within such time reasonably specified by the Director. If the Permittee fails to collect the Shared Mobility Device(s), the County may remove and store all Shared Mobility Devices at Permittee's expense and the Shared Mobility Device may not be reacquired until all such expenses have been paid. Any Shared Mobility Device not reacquired within 30 days will be forfeited to the County and sold at public auction or added to the County's assets.

Section 86-5-2. - Shared Mobility Device requirements.

- (a) Each Shared Mobility Device offered by a Permittee for hire in the County will:
- (1) Have a unique identifying number provided to the County and associated with a Shared Mobility Device Certificate;
 - (2) Have a top-motor-powered speed not to exceed 10 miles per hour if the Shared Mobility Device is a motorized skateboard or scooter;
 - (3) Have the name and telephone number of Permittee as well as the unique identifying number for the Shared Mobility Device clearly and legibly displayed on the exterior of the Shared Mobility Device;
 - (4) Be equipped with appropriate and operable brakes and bell;
 - (5) Be equipped with lights as required by Virginia Code § 46.2-1015;
 - (6) Be operable, free of defects, reasonably clean, and conform to relevant safety standards for the operation of commercial Shared Mobility Devices;
 - (7) Be maintained so as to provide for the safety of the public and for continuous and satisfactory operation, and to reduce to a minimum, noise and vibration caused by operation.
- (b) If the Director determines that the requirements of this Section are not met or any Shared Mobility Device is unsafe for riders or the public warranting removal from service, then notice will be given to Permittee regarding immediate suspension of the Shared Mobility Device Certificate(s) pursuant to Section 86-2-9, and it will be unlawful for the Permittee to offer the Shared Mobility Device for hire in the County until the deficiencies have been corrected.

Section 86-5-3. - Rider requirements.

- (a) Where signs have been posted indicating that the use of Shared Mobility Devices is prohibited on designated sidewalks or crosswalks, no person will ride a Shared Mobility Device on any such designated sidewalk or crosswalk.
- (b) No person will park a Shared Mobility Device in a manner that impedes the normal movement of pedestrian or other traffic or where such parking is prohibited by official traffic control devices.

**Fairfax County Code Chapter 86 (Shared Mobility Devices)
Proposed Adoption of New Chapter 86**

Page 11 of 11

- 1 (c) A violation of this Section will be punishable by a civil penalty of not more than \$50.

ARTICLE 6. - Penalties.

2 **Section 86-9-1. - General penalties.**

3 Any person who violates or causes to be violated any provision of this Chapter except for
4 Section 86-5-3 will be guilty of a misdemeanor punishable by a fine of not more than \$50.00 for
5 the first offense and not more than \$500.00 for each subsequent offense.

6

7 **2. That the provisions of this ordinance will take effect on January 1, 2020.**

8

9 GIVEN under my hand this ____ day of ____, 2019

10

11

12

Jill G. Cooper

13

Clerk for the Board of Supervisors