

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
September 15, 2020**

AGENDA

12:00 Matters Presented by Board Members

12:00 Items Presented by the County Executive

**ADMINISTRATIVE
ITEMS**

1 Extension of Review Period for 2232 Application (Mason District)

2 Additional Time to Commence Construction for Special Exception SE 2009-PR-021, JSH Enterprises, LLC (Providence District)

3 Additional Time to Commence Construction for Special Exception SE 2010-MA-001, Radley Management, LLC and Radley Automobiles, Incorporated (Mason District)

4 Additional Time to Commence Construction for Special Exception SE 2008-MA-008, Radley Automobiles, Incorporated (Mason District)

5 Additional Time to Commence Construction for Special Exception SE 2008-LE-027, Trustees, Springfield Masonic Lodge 217, A.G. and A.M. (Lee District)

6 Additional Time to Obtain a Non-Residential Use Permit (Non-RUP) for SE 2014-PR-018, Beyer I Limited Liability Company (Providence District)

7 Authorization to Advertise a Public Hearing to Consider Amendments to *The Code of the County of Fairfax, Virginia* - Chapter 30 (Minimum Private School and Child Care Facility Standards), Article 3 (Home Child Care Facilities)

8 Approval of Traffic Calming Measures as Part of the Residential Traffic Administration Program (Mason District)

9 Authorization to Advertise Public Hearings on a Proposed Amendment to Chapter 104 (Erosion and Sedimentation Control) of *The Code of the County of Fairfax, Virginia* (County Code) Re: Enforcement

10 Authorization to Advertise a Public Hearing on a Proposal to Vacate and Abandon a Portion of White Spruce Way (Mount Vernon District)

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**ADMINISTRATIVE
ITEMS
(continued)**

- 11 Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance to Establish the Idylwood Community Parking District (Providence District)
- 12 Authorization to Advertise a Public Hearing to Extend Parking Restrictions on Sullyfield Circle (Sully District)
- 13 Authorization to Advertise a Public Hearing for Interim Agreement with Alpine-X LLC for Fairfax Peak Development at I-95 Lorton Landfill (Mount Vernon District)
- 14 Authorization to Advertise a Public Hearing for the Enlargement and De-Creation of Small and Local Sanitary Districts for Refuse/Recycling and Vacuum Leaf Collection Services (Mason District)
- 15 Authorization to Advertise a Public Hearing for the Enlargement of Small and Local Sanitary Districts for Refuse/Recycling and Vacuum Leaf Collection Services (Providence District)
- 16 Authorization to Advertise a Public Hearing for the Enlargement of Small and Local Sanitary Districts for Refuse/Recycling and/or Vacuum Leaf Collection Services (Dranesville District)
- 17 Authorization to Advertise a Public Hearing for the De-Creation/Re-Creation of Small and Local Sanitary Districts for Refuse/Recycling and Vacuum Leaf Collection Services (Lee District)

ACTION ITEMS

- 1 Approval of a Resolution to Extend the Cable Franchise Term of Verizon Virginia LLC
- 2 Approval of Revisions to Chapters 1, 5, 7, and 16 of the Personnel Regulations due to Legislation Passed by the 2020 Session of the Virginia General Assembly
- 3 Presentation of the Delinquent Tax List for Tax Year 2019 (FY 2020)
- 4 Approval of the FY 2019 and FY 2020 Community Services Performance Contract Amendment and Extension Agreement Between the Fairfax-Falls Church Community Services Board and the Virginia Department of Behavioral Health and Developmental Services

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**ACTION ITEMS
(continued)**

- 5 Approval of Use of Tysons Grid of Streets Road Fund Revenue for Center Street Land Acquisition Purchase in Tysons (Providence District)
- 6 Approval of a Resolution Endorsing the Mason Neck Trail Project for Submission to the United States Department of Transportation's Federal Highway Administration Virginia Federal Lands Access Program (FLAP) for Fiscal Years 2020-2022 Grant Funding (Mount Vernon District)
- 7 Approval of Project Agreement Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Fiscal Year (FY) 2021 Transit Operating Assistance Grant Funds
- 8 Approval of the Fairfax County Department of Transportation's Major Service Change, Disparate Impact, and Disproportionate Burden Policies for the Fairfax Connector
- 9 Approval of a Request for a Name Change for the McLean Metrorail Station (Providence District)
- 10 Adoption of an Updated Sustainable Development Policy for County Capital Facilities Projects
- 11 Authorization to Add Funding to the Fairfax RISE: COVID-19 Small Business and Non-Profit Relief Grant Program

**INFORMATION
ITEMS**

- 1 Consolidated Plan Certification for the Fairfax County Redevelopment and Housing Authority Moving to Work Plan for Fiscal Year 2021

**PUBLIC
HEARINGS**

- 3:30 Public Hearing on PCA 89-D-007-02 and SE 2019-DR-012 (Milestone Tower Limited Partnership IV D/B/A Milestone; Fairfax County School Board) (Dranesville District)
- 3:30 Public Hearing on SE 2020-PR-006 (Mohamed Elrafaei D/B/A Mint Cafe) (Providence District)

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**PUBLIC
HEARINGS
(continued)**

- 3:30 Public Hearing on RZ 2019-HM-016 (Christopher Land, LLC) (Hunter Mill District)
- 3:30 Public Hearing on SEA 93-Y-006-02 (PM Plus, LLC) (Sully District)
- 3:30 Public Hearing on RZ 2019-DR-013 (Margaret F. Ahbe, Trustee) (Dranesville District)
- 4:00 Public Hearing on a Proposal to Prohibit Through Truck Traffic on Bull Run Post Office Road (Sully District)
- 4:00 Public Hearing on a Proposal to Vacate a Portion of Westbranch Drive / Route 5457 (Providence District)
- 4:00 Public Hearing to Consider Adopting an Ordinance to Establish an Economic Incentive Program (Dranesville, Lee, Mason, Mount Vernon and Providence Districts)
- 4:00 Decision Only on PCA-C-052-09/CDPA-C-052-02 (KIW SKYLINE 1, LLC, KIW SKYLINE 2, LLC and KIW SKYLINE 3, LLC) (Mason District)
- 4:00 Public Hearing to Consider Amendment of Chapter 11 of the County Code to Reflect Amendments to State Anti-Discrimination and Fair Housing Statutes Enacted During the 2020 Session of the General Assembly to Add Sexual Orientation, Gender Identity, Status as a Veteran, and, Regarding Fair Housing, Source of Funds as Protected Classes; Revision of the Chapter 11, Article 1 of the County Code (Human Rights Ordinance) to Conform to Federal and State Law Counterparts; Amendment of Chapter 11, Article 2 of the County Code (Fairfax County Fair Housing Act) to Conform to State Law by Adding Additional Provisions Regarding Reasonable Accommodations and By Clarifying the Scope of Certain Exemptions; and Recodification of Chapter 11 and Chapter 11.1 to Improve Structure and Clarity, and to Remove Obsolete and Duplicative Provisions
- 4:30 Public Hearing on a Proposal to Abandon and Convey a Portion of a Frontage Road (FR 953) (Dranesville District)

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**PUBLIC
HEARINGS
(continued)**

- 4:30 Public Hearing on a Proposal to Vacate and Abandon a Portion of Brecknock Street / Route 5443 (Sully District)
- 4:30 Public Hearing to Consider the Removal, Relocation, Contextualization, or Covering of Publicly-Owned Civil War Related Monuments or Memorials at the Fairfax County Judicial Complex (Providence District)
- 4:30 Public Hearing to Consider the Adoption of Amendments to Chapter 6 of the Fairfax County Code Relating to Weapons

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12:00 p.m.

Matters Presented by Board Members

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September 15, 2020

12:00 p.m.

Items Presented by the County Executive

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ADMINISTRATIVE - 1

Extension of Review Period for 2232 Application (Mason 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-M20-1

TIMING:

Board action is required by September 15, 2020, to extend the review period for the application noted above before its expiration date.

BACKGROUND:

Subsection B of *Section 15.2-2232* of the *Code of Virginia* states: "Failure of the commission to act within 60 days of a submission, unless the time is extended by the governing body, shall be deemed approval." Additional time is requested to ensure that there is sufficient time available within which to process the request. 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-M20-1	Department of Planning and Development, Community Revitalization Section Annandale Civic Space Tax Map No. 71-1 ((4)) 109A1 7200 Columbia Pike Annandale, VA Mason District Accepted July 20, 2020 Extended to June 20, 2021
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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

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ADMINISTRATIVE - 2

Additional Time to Commence Construction for Special Exception SE 2009-PR-021,
JSH Enterprises, LLC (Providence District)

ISSUE:

Board consideration of additional time to commence construction for a use permitted by SE 2009-PR-021, pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve twenty-four (24) months additional time for SE 2009-PR-021 to July 1, 2022.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception (SE) shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that approval of additional time is in the public interest.

On March 9, 2010, the Board of Supervisors approved Special Exception SE 2009-PR-021, concurrently with PCA 91-P-027, to permit a light vehicle service establishment on property located at 7800 Lee Highway, Tax Map Parcel 49-2 ((1)) 93, also referred to as the Merrifalls Auto Care Service (See Locator Map, Attachment 1). Specifically, the SE permitted construction of a roughly 5,600 SF vehicle light service establishment with five service bays on a portion of the existing surface parking lot of the Merrifalls Plaza Shopping Center (See Clerk's Letter, Attachment 2). The property is zoned C-8 and Highway Corridor Overlay District. A light vehicle service establishment is a category 5 special exception use and is permitted pursuant to Section 4-804 of the Fairfax County Zoning Ordinance. The SE was approved subject to development conditions and the rezoning was approved subject to proffers.

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The SE was approved with the condition that, in conformance with Sect. 9-015, the approved use was required to commence construction and be diligently prosecuted for one of the approved buildings within thirty (30) months of the approval date unless the Board granted additional time, or specifically in this case, by September 9, 2012. However, §15.2-2209.1 of the *Code of Virginia* permitted a series of automatic extensions with a new expiration date of July 1, 2020.

On June 24, 2020, the Department of Planning and Development (DPD) received a letter, dated June 13, 2020, from Jane Kelsey, agent for the applicant, requesting at least twenty-four (24) months of additional time. (See Request Letter, Attachment 3) While the current expiration date was July 1, 2020, the approved Special Exception will not expire pending the Board's action on the request for additional time.

In the additional time request letter, Ms. Kelsey states that, since the approval, the applicant did obtain site plan and building plan approval but was financially unable to continue. Ms. Kelsey indicates that the applicant will therefore need to secure additional funding and start the site plan, building plan and bonding process over from the beginning. She indicates that the requestor is still very motivated to construct this use and has every intention of doing so should additional time be granted. She indicates further that after these plans are approved, the applicant expects to move forward, seek new financing, and secure a contractor.

Staff reviewed SE 2009-PR-021 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance. Staff knows of no changes in land use circumstances which affect the compliance of SE 2009-PR-021 with the standards applicable to this use and which should cause the filing of a new SE application and review through the public hearing process. Additionally, staff finds the development conditions associated with the Board's approval of SE 2009-PR-021 are still appropriate and should remain in full force and effect. Therefore, staff has determined that granting twenty-four (24) months of additional time to commence construction would be in the public interest and recommends that the request be approved.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Clerk's Letter dated March 10, 2010 to Jane Kelsey and Associates

Attachment 3: Request Letter dated June 13, 2020, to Leslie B. Johnson

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STAFF:

Rachel Flynn, Deputy County Executive

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

Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPD

Suzanne Wright, Chief, Conformance Review & Acceptance Branch, ZED, DPD

Denise James, Chief, Environment & Development Review Branch, Planning Division,
DPD



County of Fairfax, Virginia

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

March 10, 2010

Jane Kelsey and Associates, Inc.
4041 Autumn Court
Fairfax, VA 22030-5168



Re: Special Exception Application SE 2009-PR-021
(Concurrent with Proffered Condition Amendment Application PCA 91-P-027)

Dear Ms Kelsey:

At a regular meeting of the Board of Supervisors held on March 9, 2010, the Board approved Special Exception Application SE 2009-PR-021 in the name of JSH Enterprises, LLC. The subject property is located at 7800 Lee Highway on approximately 20,901 square feet of land, zoned C-8 and HC in the Providence District [Tax Map 49-2 ((1)) 93]. The Board's action permits a vehicle light service establishment and modifications of minimum lot size and width pursuant to Section 4-604 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions:

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. A copy of this Special Exception and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
3. This Special Exception is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special exception amendment plat approved with the application, as qualified by these development conditions.

Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903
Email: clerktothebos@fairfaxcounty.gov
<http://www.fairfaxcounty.gov/bosclerk>

4. This Special Exception is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to the special exception amendment shall be in substantial conformance with the approved Special Exception (SE) Plat entitled "Merrifield Auto Care Service", prepared by Christopher Consultants, dated June 29, 2009 as revised through November 30, 2009, and these conditions. Minor modifications to the approved special exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.
5. The hours of operation shall be limited to 6:00 AM to 7:30 PM, seven days a week.
6. The total number of employees shall be limited to a maximum of 6 at any one time.
7. All vehicles so parked must display a current State license plate and if licensed in the State of Virginia, must display a current Virginia registration and safety inspection sticker or one which is not expired for more than thirty (30) days. No more than ten (10) * vehicles that are in the process of repair, awaiting parts, or awaiting pick-up may be stored on the property for more than 72 hours, not including those that are inside the building on lifts, subject to the limitation that there shall be no dismantling, wrecking or sale of said vehicles or parts thereof. If there are any vehicles that require more time to repair beyond 72 hours, arrangements will be made for those vehicles to be relocated to an appropriately zoned property and shall be removed from the subject premises.
8. The three (3) feet of Right of Way reservation shown to the north of the service drive on GDP/ SE Plat shall be dedicated in fee simple to the Board of Supervisors within sixty (60) days upon request of Fairfax County.
9. Adequate turning radii along the access point from the service drive shall be demonstrated as determined by VDOT prior to site plan approval. Any landscaping determined to impact the turning radii shall be replaced with an appropriate size or relocated elsewhere on the site with equal size and quality, as determined by UFM.

The above proposed conditions are staff recommendations and do not reflect the position of the Board of Supervisors unless and until adopted by that Board.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Section 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, thirty (30) months after the date of approval unless, at a minimum, the use has been established or construction has commenced and been diligently prosecuted for one of the proposed buildings. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

The Board also:

- Waived the requirements to construct a major paved trail along the site frontage on Route 29 (Lee Highway), in favor of the right-of-way dedication and the existing sidewalk shown on the Generalized Development Plan/Special Exception (GDP/SE) Plat.
- Modified the transitional screening and barrier requirements along the southern property line, in favor of the landscaping shown on the GDP/SE Plat.
- Directed the Director of the Department of Public Works and Environmental Services to permit a deviation from the tree preservation target percentage, in favor of the proposed landscaping shown on the GDP/SE Plat and as proffered.

Sincerely,



Nancy Vehrs
Clerk to the Board of Supervisors
NV/ph

Cc: Chairman Sharon Bulova
Supervisor Linda Smyth, Providence District
Janet Coldsmith, Director, Real Estate Division, Dept. of Tax Administration
Regina Coyle, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Angela K. Rodeheaver, Section Chief, Transportation, Planning Division
Eric Teitelman, Capital Projects and Operations Div., Dept. of Transportation
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
District Planning Commissioner
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation



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Jane Kelsey & Associates, Inc.

Land Use Consultants

4041 Autumn Court

Fairfax, VA 22030-5168

703-385-4687 (Phone)

703-385-8760 (FAX)

jckelse@aol.com

June 13, 2020

Ms. Leslie Johnson
 Zoning Administrator
 12055 Government Center Parkway
 2nd floor
 Fairfax, VA 22030 (US mail and email to Leslie.Johnson@fairfaxcounty.gov)

RE: Request for Additional Time - SE 2009-PR-021 in conjunction with PCA 91-P-027.

On behalf of the Permittee, I am requesting additional time to establish the uses approved under the Special Exception. At the time of the SE application process, Mr. Hong, the principal in JSH, LLC, had hoped to begin construction right away. By the time the site plan was prepared and submitted to Fairfax County with all its associated fees, Mr. Hong found that sufficient funds were no longer available and the contractor he had selected was no longer available either. While the site plan was eventually approved, the bonding completed, he definitely had to delay to obtain new construction loans. His previous contractor then declined to construct.

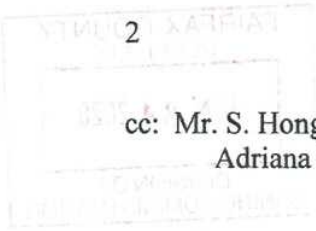
Now, the building permit, site plan, and bonding have expired but we don't want the Special Exception to expire. Mr. Hong was busy trying to raise enough money to meet any contractor's demand. He was over a barrel. By then he was having economic difficulty. To continue now will be starting over: the site plan will have to be revised to meet current Codes, the building permit reissued, bonding obtained and a new contractor must be found. Preparing a new site plan, getting it approved and a new building permit will take at least 1.5 to 2 years. Only then can he find a new contractor who he hopes will work within the confines of Mr. Hong's current budget

While we hope that two (2) years would be sufficient, however, the longest period of time possible would be much appreciated. Thirty six (36) months would be better. We will leave it up to you to give him the maximum amount of time to accomplish these tasks.

Thanks for your help and if you need additional information, please let me know.
 Thanks.

Jane Kelsey
Thanks

Jane Kelsey



cc: Mr. S. Hong, JSH, LLC
Adriana Santiago, Jane Kelsey & Associates, Inc.

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ADMINISTRATIVE - 3

Additional Time to Commence Construction for Special Exception SE 2010-MA-001, Radley Management, LLC and Radley Automobiles, Incorporated (Mason District)

ISSUE:

Board consideration of additional time to commence construction for SE 2010-MA-001, pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve thirty-six (36) months additional time for SE 2010-MA-001 to July 1, 2023.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that approval of additional time is in the public interest.

On May 25, 2010, the Board of Supervisors approved Special Exception SE 2010-MA-001, subject to development conditions. The application was filed in the name of Radley Management, LLC and Radley Automobiles, Incorporated, to permit the applicant to convert an existing building for use as a vehicle major service establishment in the C-8 zoning district and the Commercial Revitalization (CRD), Highway Corridor (HC) and Sign Control (SC) overlay districts. The site is located at 5908 Seminary Road, Tax Map 61-2 ((20)) 1 (see Locator Map in Attachment 1). The vehicle major service establishment, a Category 5 special exception use, is permitted pursuant to Section 4-804 of the Fairfax County Zoning Ordinance.

SE 2010-MA-001 was approved with a condition that at a minimum, the use be established or construction commenced for the vehicle major service establishment use

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within thirty (30) months of the approval date unless the Board granted additional time. The development conditions for SE 2010-MA-001 are included as part of the Clerk to the Board's letter contained in Attachment 2.

In conformance with the expiration provision, the approved use was required to commence construction of improvements by June 25, 2012. However, §15.2-2209.1 of the *Code of Virginia* permitted an automatic extension of this deadline to July 1, 2020. On June 25, 2020, the Department of Planning and Development (DPD) received a letter dated June 25, 2020, from Robert D. Brant, agent for the Applicant, requesting thirty-six (36) months of additional time (see Attachment 3). The approved Special Exception will not expire pending the Board's action on the request for additional time.

In the June 25, 2020 request for additional time, Mr. Brant stated additional time was necessary to complete the site improvements as shown on the SE Plat, including items such as removal of pavement, restriping, installation of onsite improvements such as sidewalks, landscaping, and installing streetscape improvements. According to Mr. Brant's letter, in addition to obtaining site plan approval in 2012, the requestor has worked to complete the required improvements and has completed some exterior improvements to the building and recorded the plat dedicating right-of-way and public access easements. Mr. Brant states that while the requestor intends to proceed with required construction, the requestor has not been able to do so due to rising construction costs and the expenses associated with obtaining the requisite special exception and site plan approvals. Furthermore, the economic challenges have been further compounded by the recent pandemic and associated impact on the requestor's business. The request for thirty-six (36) months of additional time will allow the requestor to satisfy development conditions, complete the required site improvements, and ultimately obtain a new Non-RUP.

Staff has reviewed Special Exception SE 2010-MA-001 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit a vehicle major service establishment within an C-8 zoning district and CRD, HC and SC overlay districts. Further, staff knows of no change in land use circumstances that affects compliance of SE 2010-MA-001 with the special exception standards applicable to this use, or which should cause the filing of a new special exception application and review through the public hearing process. The Comprehensive Plan recommendation for the property has not changed since approval of the Special Exception. Finally, the conditions associated with the Board's approval of SE 2010-MA-001 are still appropriate and remain in full force and effect. Staff believes that approval of the request for thirty-six (36) months additional time is in the public interest and recommends that it be approved.

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FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Clerk's Letter dated May 26, 2010, to Jane Kelsey

Attachment 3: Request Letter dated June 25, 2020, to Leslie B. Johnson

STAFF:

Rachel Flynn, Deputy County Executive

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

Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPD

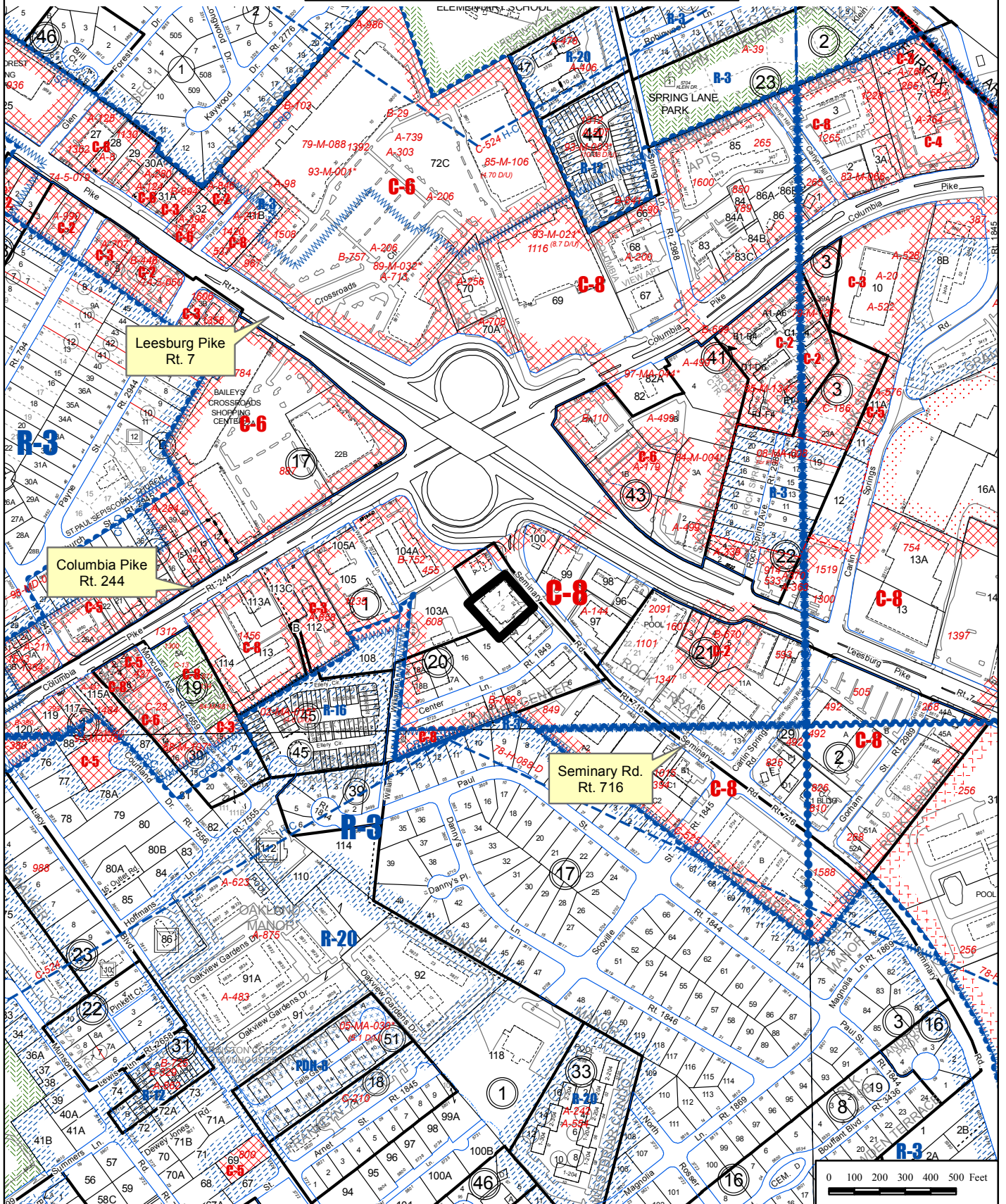
Suzanne Wright, Chief, Conformance Review & Acceptance Branch, ZED, DPD

Denise James, Chief, Environment & Development Review Branch, Planning Division, DPD

Laura O'Leary, Staff Coordinator, ZED, DPD

Special Exception

SE 2010-MA-001





County of Fairfax, Virginia

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

May 26, 2010

Jane Kelsey
Jane Kelsey and Associates, Incorporated
4041 Autumn Court
Fairfax, VA 22030

Re: Special Exception Application SE 2010-MA-001

Dear Ms. Kelsey:

At a regular meeting of the Board of Supervisors held on May 25, 2010, the Board approved Special Exception Application SE 2010-MA-001 in the name of Radley Management, LLC and Radley Automobiles, Incorporated. The subject property is located at 5908 Seminary Road on approximately 35,625 square feet of land, zoned C-8, CRD, HC and SC in the Mason District [Tax Map 61-2 ((20)) 1]. The Board's action permits a vehicle major service establishment and waivers and modifications in a commercial revitalization district (reduction in parking, reduction in open space, reduction in front yard) pursuant to Sections 4-804 and 9-622 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions:

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This Special Exception is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special exception plat approved with the application, as qualified by these development conditions.

Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903
Email: clerktothebos@fairfaxcounty.gov
<http://www.fairfaxcounty.gov/bosclerk>

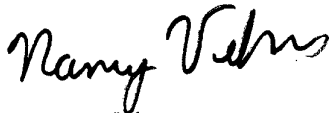
3. This Special Exception is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special exception shall be in substantial conformance with the approved Special Exception Plat entitled "Plat for Special Exception, the Land of Melmer Limited Liability Corporation," consisting of seven sheets prepared by DiGiulian Associates, P.C., and dated November 6, 2009 as revised through April 1, 2010, and these conditions. Minor modifications to the approved special exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.
4. The vehicle major service use on the property shall be limited to no more than four service areas/bays and no more than four employees at any one time, until such time as a shared parking agreement (or reciprocal parking license, as determined appropriate by DPWES) is approved for at least four off-site parking spaces. At such time as a shared parking agreement or reciprocal parking license is approved, the vehicle major service use on the property shall be limited to no more than six service areas/bays and no more than six employees at any one time, and shall be limited by the parking agreement. This provision shall not limit the wholesale trade establishment portion of the use and its employees.
5. At the time of site plan approval, or on demand (whichever occurs first) right-of-way as shown on the SE Plat along the frontage of Seminary Road, shall be dedicated to the Board of Supervisors in fee simple, at no cost.
6. Gated fencing may be provided across the travel aisles on either side of the building to secure the rear of the site.
7. The proposed frontage improvements (including curb returns, gutter and sidewalk) shall be aligned vertically and horizontally with the improvements proposed on the adjacent property under SE 2008-MA-008 (Tax Map Parcel 61-2 ((20)) 3A, 4, & 15).
8. All four sides of the building shall be painted a color coordinated with the building approved on the adjacent property under SE 2008-MA-008 (Tax Map Parcel 61-2 ((20)) 3A, 4, & 15).
9. All exterior lighting, including signage, canopy lighting, security, pedestrian and/or other incidental lighting, shall be in conformance with Part 9 of Article 14 of the Zoning Ordinance.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for

obtaining the required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Section 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, thirty (30) months after the date of approval unless, at a minimum, the use has been established or construction has commenced and been diligently prosecuted. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Sincerely,



Nancy Vehrs
Clerk to the Board of Supervisors
NV/ph

Cc: Chairman Sharon Bulova
Supervisor Penelope Gross, Mason District
Janet Coldsmith, Director, Real Estate Division, Dept. of Tax Administration
Regina Coyle, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Angela K. Rodeheaver, Section Chief, Transportation Planning Division
Eric Teitelman, Capital Projects and Operations Div., Dept. of Transportation
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
District Planning Commissioner
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation

Robert D. Brant
(703) 528-4700 Ext. 5424
rbrant@thelandlawyers.com



WALSH COLUCCI
LUBELEY & WALSH PC



ATTACHMENT 3

June 25, 2020

Via E-mail Only to dpzmailforprb@fairfaxcounty.gov

Leslie B. Johnson, Zoning Administrator
Zoning Administration Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035

Re: SE 2010-MA-001
Applicant: Radley Management, LLC and Radley Automobiles, Incorporated
(collectively, the "Applicant")
Fairfax County Tax Map Reference: 61-2 ((20)) 1 (the "Subject Property")

Dear Ms. Johnson:

Please accept this letter as request for additional time in accordance with the provisions of Section 9-015 of the Fairfax County Zoning Ordinance (the "Zoning Ordinance").

The referenced special exception application was approved by the Board of Supervisors (the "Board") at its hearing held on May 25, 2010 to permit the conversion of the existing building on the Subject Property, which was formerly used as a furniture warehouse, into a vehicle major service establishment and wholesale trade establishment to serve the Radley Acura automobile dealership. The approval was granted subject to nine (9) development conditions, and a requirement that the use be established or construction be commenced and diligently prosecuted within thirty (30) months of the date of approval. The expiration date of the approval was subsequently extended by the Virginia General Assembly legislation to July 1, 2020. On behalf of the Applicant, I hereby request thirty six (36) months of additional time to complete the remaining site improvements necessary to obtain a Non-Residential Use Permit.

Since obtaining the special exception approval, the Applicant has taken a number of steps to implement the approval, including the preparation and processing of a site plan and the completion of some of the approved improvements. On May 25, 2012, the Applicant recorded a plat that dedicated right-of-way and public access easements consistent with the special exception approval. The site plan bond, referenced as 25063-SPB-002-1, was approved on July 18, 2012 and subsequently extended on February 16, 2017 and again on August 8, 2019. The

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site plan, which is referenced as 25063-SP-001-2, was approved on August 8, 2012. The exterior improvements to the existing building approved in conjunction with SE 2010-MA-001 were completed in May 2013.

The remaining required improvements to the Subject Property include the installation of landscaping and construction of frontage improvements along Seminary Road. While the Applicant intends to proceed with these improvements as soon as possible, it has not yet been able to do so due to rising construction costs and the expenses associated with obtaining the requisite special exception and site plan approvals. The economic constraints have been further compounded by the recent pandemic and associated impact on the Applicant's business.

I would therefore appreciate the acceptance of this letter in accordance with Section 9-015 of the Zoning Ordinance as a request for thirty six (36) months of additional time to complete the improvements and obtain a Non-RUP as required by SE 2010-MA-001. This additional time will provide the Applicant with an opportunity to secure the funds necessary to complete the remaining required improvements, including the landscaping and streetscape improvements identified on the approved special exception plat that will satisfy all development conditions. Albeit slowly, the Applicant has remained in diligent pursuit of the completion of these improvements since the Board's approval in 2010. The character of the surrounding area is largely consistent with what it was at the time of approval, and there have been no changes in circumstances that would render the approval of additional time inconsistent with the public interest.

Should you have any questions regarding this request, or require additional information, please do not hesitate to contact me. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.

Robert Brant

Robert D. Brant

cc: Jeff Bronder
Rod Emmons
Ken Marceron

A0922354.DOCX / 1 Ltr to Johnson re: Request for Additional Time SE 2010-MA-001 (6-25-20) 008772 000002

Board Agenda Item
September 15, 2020

ADMINISTRATIVE - 4

Additional Time to Commence Construction for Special Exception SE 2008-MA-008,
Radley Automobiles, Incorporated (Mason District)

ISSUE:

Board consideration of additional time to commence construction for SE 2008-MA-008, pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve thirty-six (36) months additional time for SE 2008-MA-008 to July 1, 2023.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that approval of additional time is in the public interest.

On August 4, 2008, the Board of Supervisors approved Special Exception SE 2008-MA-008, subject to development conditions. The application was filed in the name of Radley Automobiles, Incorporated, to permit a vehicle major service establishment with associated building and site improvements in the C-8 zoning district and the Commercial Revitalization (CRD), Highway Corridor (HC) and Sign Control (SC) overlay districts. The site is located at 5900 Seminary Road, Tax Map 61-2 ((20)) 15A (previously Tax Map 61-2 ((20)) 3A, 4 and 15) (see Locator Map in Attachment 1). The vehicle major service establishment, a Category 5 special exception use, is permitted pursuant to Section 4-804 of the Fairfax County Zoning Ordinance. SE 2008-MA-008 was approved with a condition that the use be established or construction commenced for the vehicle major service establishment use within thirty (30) months of the approval

Board Agenda Item
September 15, 2020

date unless the Board granted additional time. The development conditions for SE 2008-MA-008 are included as part of the Clerk to the Board's letter contained in Attachment 2.

In conformance with the expiration provision, the approved use was required to commence construction of improvements by February 4, 2011. However, §15.2-2209.1 of the *Code of Virginia* permitted an automatic extension of this deadline to July 1, 2020. On June 25, 2020, the Department of Planning and Development (DPD) received a letter dated June 25, 2020, from Robert D. Brant, agent for the Applicant, requesting thirty-six (36) months of additional time (see Attachment 3). The approved Special Exception will not expire pending the Board's action on the request for additional time.

In the June 25, 2020 request for additional time, Mr. Brant stated additional time was necessary to complete site improvements that include the installation of landscaping, the removal of pavement in specified areas, and the construction of curb and gutter and sidewalk. According to Mr. Brant's letter, in addition to obtaining site plan approval in 2013, the requestor has worked to complete the required improvements, including recording a consolidation plat of three parcels, and dedicating right-of-way and public access easements. Mr. Brant states that while the requestor intends to proceed with required construction, the requestor has not been able to do so due to rising construction costs and the expenses associated with obtaining the requisite special exception and site plan approvals. Furthermore, the economic challenges have been further compounded by the recent pandemic and associated impact on the requestor's business. The request for thirty-six (36) months of additional time will allow the requestor to satisfy development conditions, complete the required site improvements, and ultimately obtain a new Non-RUP.

Staff has reviewed Special Exception SE 2008-MA-008 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit a vehicle major service establishment within an C-8 zoning district and CRD, HC and SC overlay districts. Further, staff knows of no change in land use circumstances that affects compliance of SE 2008-MA-008 with the special exception standards applicable to this use, or which should cause the filing of a new special exception application and review through the public hearing process. The Comprehensive Plan recommendation for the property has not changed since approval of the Special Exception. Finally, the conditions associated with the Board's approval of SE 2008-MA-008 are still appropriate and remain in full force and effect. Staff believes that approval of the request for thirty-six (36) months additional time is in the public interest and recommends that it be approved.

Board Agenda Item
September 15, 2020

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Clerk's Letter dated August 8, 2008, to Jane Kelsey

Attachment 3: Request Letter dated June 25, 2020, to Leslie B. Johnson

STAFF:

Rachel Flynn, Deputy County Executive

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

Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPD

Suzanne Wright, Chief, Conformance Review & Acceptance Branch, ZED, DPD

Denise James, Chief, Environment & Development Review Branch, Planning Division, DPD

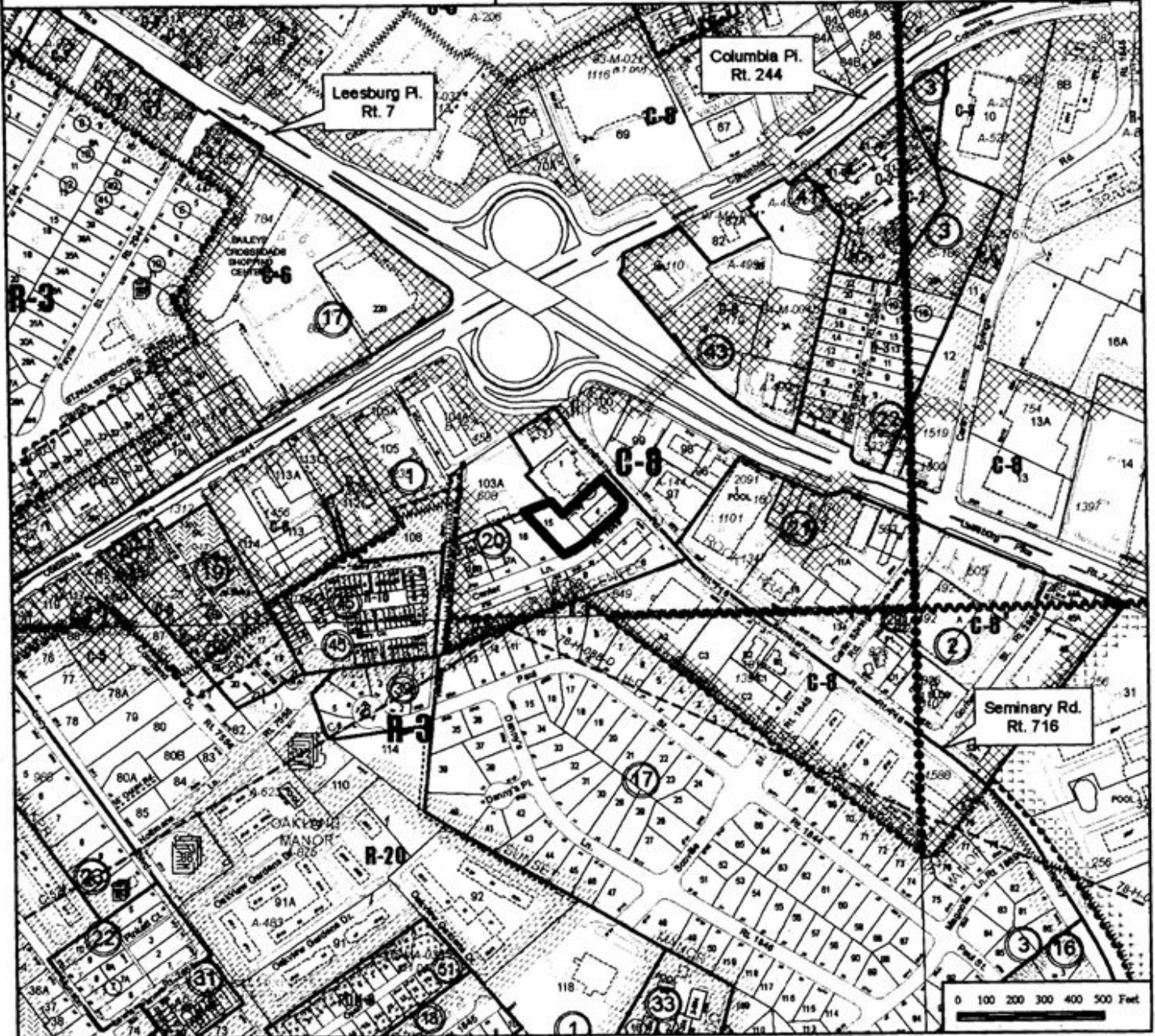
Laura O'Leary, Staff Coordinator, ZED, DPD

Special Exception
SE 2008-MA-008



Applicant: RADLEY AUTOMOBILES, INCORPORATED
Accepted: 03/19/2008
Proposed: VEHICLE MAJOR SERVICE ESTABLISHMENT AND MODIFICATIONS AND WAIVERS IN THE COMMERCIAL REVITALIZATION DISTRICT

Area: 41,968 SF OF LAND; DISTRICT - MASON
Zoning Dist Sect: 09-062204-0804
Art 9 Group and Use: 6-19 5-24
Located: 5900 SEMINARY ROAD
Zoning: C- 8
Plan Area: 1,
Overlay Dist: CRD HC
Map Ref Num: 061-2- /20/ /0003A /20/ /0004
/20/ /0015 *PREVIOUS TAX MAP NUMBER
NEW TAX MAP NUMBER: 061-2/20/0015A





County of Fairfax, Virginia

ATTACHMENT 2

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

August 8, 2008

Jane Kelsey
Jane Kelsey & Associates
4041 Autumn Court
Fairfax, Virginia 22030

Re: Special Exception Application SE 2008-MA-008

Dear Ms. Kelsey:

At a regular meeting of the Board of Supervisors held on August 4, 2008, the Board approved Special Exception Application SE 2008-MA-008 in the name of Radley Automobiles, Incorporated. The subject property is located at 5900 Seminary Road on approximately 41,968 square feet of land zoned C-8, CRD, HC, and SC in the Mason District [Tax Map 61-2 ((20)) 3A, 4 and 15]. The Board's action permits a vehicle major service establishment and modifications and waivers in a Commercial Revitalization District pursuant to Sections 4-804 and 9-622 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions:

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This Special Exception is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special exception plat approved with the application, as qualified by these development conditions.
3. A copy of this Special Exception and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Exception is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special exception shall be in substantial conformance with the approved Special Exception Plat entitled "Radley Management, LLC", prepared by DiGiulian Associates, PC which is dated December 22, 2006, and revised through July 10, 2008, and these conditions. Minor modifications to the approved special exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.

Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903
Email: clerktothebos@fairfaxcounty.gov
<http://www.fairfaxcounty.gov/bosclerk>

5. The maximum number of service bays on site shall be limited to fifteen (15) as depicted on the SE Plat. Vehicle repairs shall be performed within interior service bays only. No outdoor vehicle lifts shall be permitted.
6. All sides of the proposed structure on site shall be improved in substantial conformance with the architectural elevations depicted on the SE Plat.
7. The maximum number of employees assigned to staff the site at any one time shall be limited to twenty (20).
8. All exterior lighting shall be in conformance with Part 9 of Article 14 of the Zoning Ordinance.
9. Irrespective of that shown on the SE Plat, all signage shall be in conformance with Article 12 of the Zoning Ordinance. The existing building mounted signs shall be removed. Pole mounted signs shall be prohibited.
10. A landscape plan shall be submitted concurrent with the first and all subsequent submissions of the site plan for review and approval of Urban Forest Management (UFM). This plan shall provide for the number and sizes of trees and plantings consistent with that shown on the SE plat and the additional requirements of these conditions, subject to UFM approval.
11. Prior to the issuance of the Non-RUP, the Applicant shall scarify and remove the "EX. PAVEMENT TO BE REMOVED" areas as shown on the SE Plat in order to increase the survivability of planted and landscaped areas.
12. Any trees shown to be located within a public utility easement shall be coordinated with the holder of the easement and with UFM for viability. Any trees which are shown in the easement, but are not able to be located as shown, shall be relocated in as close proximity as possible to the locations shown, as approved by UFM.
13. Irrespective of that shown on the SE Plat, curbing shall be provided along the periphery of the parking lot area and around the proposed landscaped island located within the parking lot area to serve as a barrier between the parking lot pavement and the landscaping. The curbing shall not include the area shown in Exhibit A.

14. The streetscape elements and plantings along the Property's Seminary Road and Center Lane frontage as shown on the SE Plat shall be installed. Trees located within VDOT rights-of-way are subject to VDOT approval. If VDOT does not permit trees within the right-of-way, these failed attempts shall be demonstrated by the applicant to DPWES, and the same number of trees on-site shall be located adjacent to the right-of-way, and outside of any sight lines as approved by VDOT and outside of any necessary easements. All sidewalks shown on the SE Plat shall be maintained by the applicant.
15. At the time of site plan approval, a public access easement shall be provided in a form approved by the County Attorney, for the purpose of providing access to the sidewalks along the Seminary Road and Center Lane frontages, in the approximate location shown on the SE plat.
16. Any trash dumpsters shall be fully screened with a brick wall or board-on-board fence and a gate, as shown on the SE Plat.
17. There shall be no outdoor storage or display of goods offered for sale.

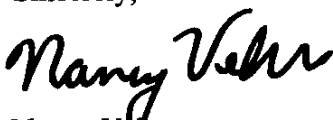
This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Section 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

The Board also:

- Modified the trail and streetscape requirements along Seminary Road and Center Lane, in favor of that shown on the SE Plat.

Sincerely,



Nancy V. Vahrs
Clerk to the Board of Supervisors
NV/dms

Cc: Chairman Gerald E. Connolly
Supervisor Penelope Gross, Mason District
Janet Coldsmith, Director, Real Estate Division, Dept. of Tax Administration
Regina Coyle, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Thomas Conry, Dept. Manager. – GIS - Mapping/Overlay
Angela K. Rodeheaver, Section Chief, Transportation, Planning Division
Ellen Gallagher, Capital Projects and Operations Div., Dept. of Transportation
Audrey Clark, Director – Building Plan Review, DPWES
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
District Planning Commissioner
Barbara J. Lippa, Executive Director, Planning Commission
José Comayagua, Director, Facilities Management
Denise James, Office of Capital Facilities/Fairfax County Public Schools
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation

RECEIVED
Department of Planning & Zoning

AUG 22 2008

Zoning Evaluation Division

2020-2833

Robert D. Brant
(703) 528-4700 Ext. 5424
rbrant@thelandlawyers.com



WALSH COLUCCI
LUBELEY & WALSH PC



ATTACHMENT 3

June 25, 2020

Via E-mail Only to dpzmailforprb@fairfaxcounty.gov

Leslie B. Johnson, Zoning Administrator
Zoning Administration Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035

Re: SE 2008-MA-008
Applicant: Radley Automobile, Incorporated
Fairfax County Tax Map Reference: 61-2 ((20)) 15A (previously, Parcels 61-2
((20)) 3A, 4 and 15) (the "Subject Property")

Dear Ms. Johnson:

Please accept this letter as request for additional time in accordance with the provisions of Section 9-015 of the Fairfax County Zoning Ordinance (the "Zoning Ordinance").

The referenced special exception application was approved by the Board of Supervisors (the "Board") at its hearing held on August 4, 2008 to permit, in part, a major vehicle service establishment in the existing building on the Subject Property, as well as a number of associated building and site improvements. As it was at the time of approval, the building is currently owned and utilized by the Radley Acura automobile dealership on Columbia Pike to the west. The approval was granted subject to seventeen (17) development conditions, and a requirement that the use be established or construction be commenced and diligently prosecuted within thirty (30) months of the date of approval. The expiration date of the approval was subsequently extended by the Virginia General Assembly legislation to July 1, 2020. On behalf of the Applicant, I hereby request thirty six (36) months of additional time to complete the remaining site improvements necessary to obtain a Non-Residential Use Permit.

Since obtaining the special exception approval, the Applicant has taken a number of steps to implement the approval, including the preparation and processing of a site plan and the completion of a number of improvements. On December 12, 2012, the Applicant recorded a plat that included a consolidation of the three former parcels, dedication of right of way, public access easements, and other items associated with the approval. The site plan bond, referenced

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LOUDOUN 703.737.3633 • WOODBRIDGE 703.680.4664

as 25063-SPB-001-1-1, was approved on November 28, 2012 and extended on February 16, 2017. The site plan, which is referenced as 25063-SP-001-2, was approved on January 31, 2013. Some of the approved improvements associated with SE 2008-MA-008, including exterior improvements to the building and the establishment of a drive aisle connection between the Subject Property and Parcel 103A to the northwest, were completed in May 2013.

The remaining required improvements to the property include the installation of landscaping, the removal of pavement in specified areas, and the construction of curb, gutter and sidewalk as shown on the approved special exception plat. While the Applicant intends to proceed with these improvements as soon as possible, it has not yet been able to do so due to rising construction costs and the expenses associated with obtaining the requisite special exception and site plan approvals. The economic constraints have been further compounded by the recent pandemic and associated impact on the Applicant's business.

I would therefore appreciate the acceptance of this letter in accordance with Section 9-015 of the Zoning Ordinance as a request for thirty six (36) months of additional time to complete the improvements and obtain a Non-RUP as required by SE 2008-MA-008. This additional time will provide the Applicant with an opportunity to secure the funds necessary to complete the remaining required improvements, including landscaping and streetscape improvements that will satisfy all development conditions. Albeit slowly, the Applicant has remained in diligent pursuit of the completion of these improvements since the Board's approval in 2008. The character of the surrounding area is largely consistent with what it was at the time of approval, and there have been no changes in circumstances that would render the approval of additional time inconsistent with the public interest.

Should you have any questions regarding this request, or require additional information, please do not hesitate to contact me. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.

Robert Brant

Robert D. Brant

cc: Jeff Bronder
Rod Emmons
Ken Marceron

Board Agenda Item
September 15, 2020

ADMINISTRATIVE - 5

Additional Time to Commence Construction for Special Exception SE 2008-LE-027, Trustees, Springfield Masonic Lodge 217, A.G. and A.M. (Lee District)

ISSUE:

Board consideration of additional time to commence construction for SE 2008-LE-027 pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve 12 months additional time for SE 2008-LE-027 to July 1, 2021.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors (BOS), an approved special exception shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that the approval of additional time is in the public interest.

On October 12, 1977, the Board of Zoning Appeals (BZA) approved Special Permit S 189-77, permitting the Memorial Masonic Temple, a private club use, on the subject site in accordance with the Zoning Ordinance in effect at that time. The structure was built in 1978. On October 24, 2006, a Notice of Violation was issued as the property was being used as a place of worship in addition to the private club. Following a series of appeals and notices of violation, on September 21, 2007, the applicants filed two applications: Special Permit Amendment SPA 77-S-189 to permit the place of worship use within the existing facility and Special Exception SE 2008-LE-027, filed in the name of Trustees, Springfield Masonic Lodge 217, A.G. and A.M. for continued use of the facility as a private club. The 1.45-acre subject property, Tax Map #90-2 ((1)) 19, is zoned R-1 and located in Springfield at 7001 Backlick Road. (See Locator Map,

Board Agenda Item
September 15, 2020

Attachment 1.) The Special Exception was required as the Zoning Ordinance had been amended after the original SP approval to require SE, not SP, approval for private club uses in the R-1 District. Specifically, the private club use, a Category 3 special exception, is permitted pursuant to Section 3-104 of the Fairfax County Zoning Ordinance. On October 27, 2009, the BZA approved SPA 77-S-189 and on January 26, 2010, the BOS approved SE 2008-LE-027. Both applications were approved subject to development conditions which required, among other things, improvements to the parking lot and its associated landscaping.

The SE also included a condition that it would expire 30 months after the date of approval unless the use was established, or construction had commenced. In conformance with the expiration provision, the approved use was required to commence construction of the improvements by July 26, 2012. However, §15.2-2209.1 of the *Code of Virginia* permitted a series of automatic extensions of this deadline to July 1, 2020. On June 11, 2020, the Department of Planning and Development (DPD) received a letter, dated June 11, 2020, from Daniel Abarquez, agent for the applicant, requesting 12 months of additional time. (See Request Letter, Attachment 3.) While the current expiration date was July 1, 2020, the approved Special Exception will not expire pending the Board's action on the request for additional time. (Mr. Abarquez also submitted an additional time request for SPA 77-S-189, which will be considered by the BZA at its September 16, 2020 meeting.)

In his additional time request letter, Mr. Abarquez stated that since the approval, the applicant has pursued development of the property in conformance with the SE, including required improvements to the parking lot and its perimeter landscaping. The applicant had submitted plans for site plan review and has been working with the Land Development Service Department and the Urban Forestry Management Division of the Department of Public Works and Environmental Services to address stormwater and tree planting issues that arose as part of that review. Mr. Abarquez further stated that he feels the issues are close to being resolved and construction can soon commence and be completed within the next 12 months.

Staff has reviewed SE 2008-LE-027 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit a private club in the R-1 zoning district. Further, staff knows of no change in land use circumstances that affects compliance of SE 2008-LE-027 with the SE standards applicable to this use and which should cause the filing of a new SE application and review through the public hearing process. The Comprehensive Plan recommendation for the property has not changed since approval of the SE. Finally, the conditions associated with the Board's approval of SE 2008-LE-027 are still appropriate and remain in full force and effect. Staff believes approval of the request for 12 months is in the public interest and recommends that it be approved.

Board Agenda Item
September 15, 2020

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Clerk's Letter dated January 27, 2010, to Larry E. Johnson

Attachment 3: Request Letter dated June 11, 2020, to Leslie B. Johnson

STAFF:

Rachel Flynn, Deputy County Executive

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

Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPD

Suzanne Wright, Chief, Conformance Review and Acceptance Branch, ZED, DPD

Denise James, Chief, Environment and Development Review Branch, Planning
Division, DPD

Bobby Katai, Planner III, Conformance Review and Acceptance Branch, ZED, DPD

Special Exception

SE 2008-LE-027



Applicant: TRUSTEES, SPRINGFIELD MASONIC LODGE
217, A.G. & A.M.

Accepted: 07/23/2008

Proposed: PRIVATE CLUB

Area: 1.445 AC OF LAND; DISTRICT - LEE

Zoning Dist Sect: 03-0104

Art 9 Group and Use: 3-07

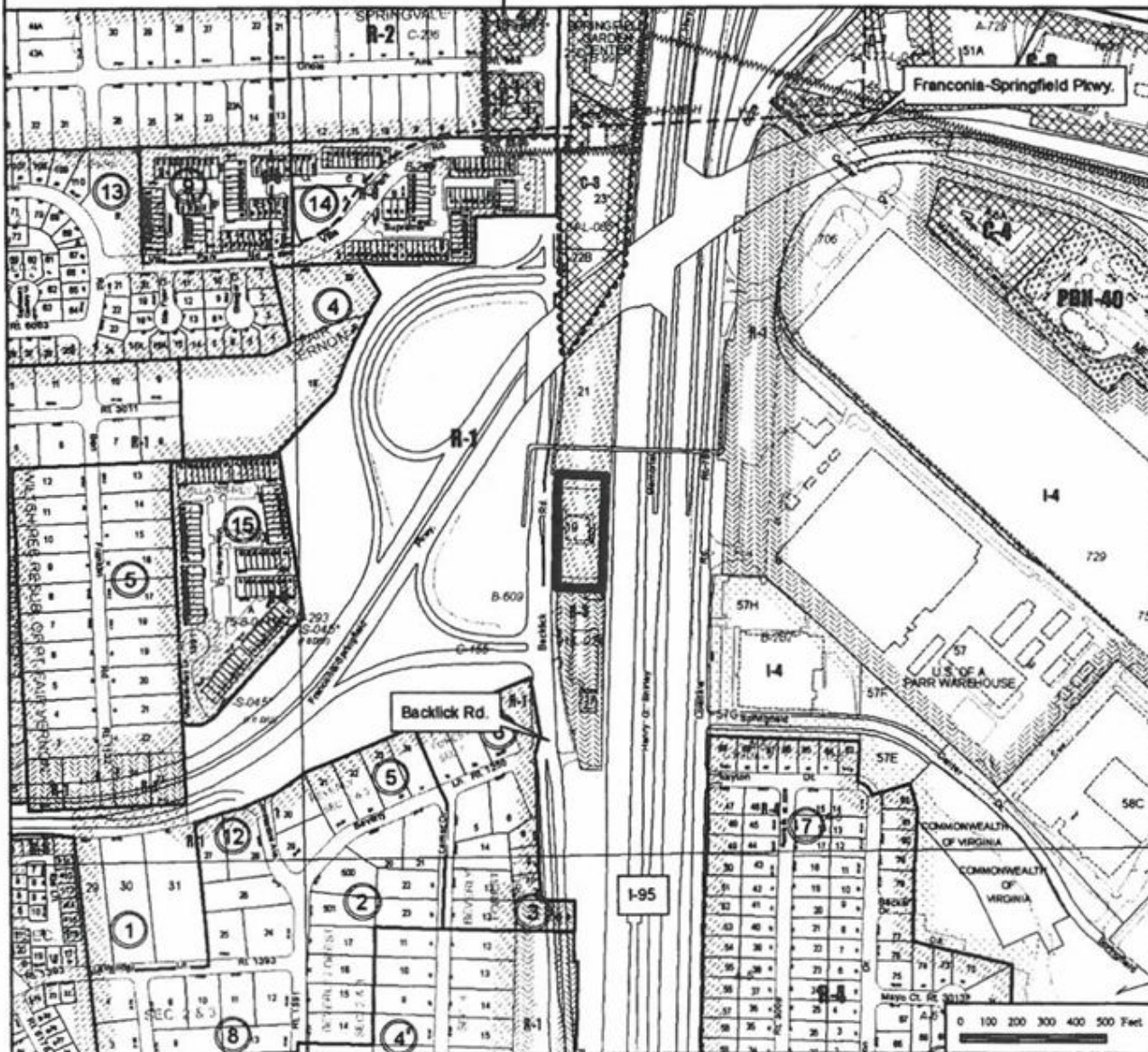
Located: 7001 BACKLICK ROAD

Zoning: R-1

Plan Area: 4,

Overlay Dist:

Map Ref Num: 090-2- /01/ /0019





County of Fairfax, Virginia

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

January 27, 2010

Larry E. Johnson
5415-A Backlick Road
Springfield, VA 22151

Re: Special Exception Application SE 2008-LE-027

Dear Mr. Johnson:

At a regular meeting of the Board of Supervisors held on January 26, 2010, the Board approved Special Exception Application SE 2008-LE-027 in the name of Trustees, Springfield Masonic Lodge. The subject property is located at 7001 Backlick Road on approximately 1.45 acres of land zoned R-1 in the Lee District [Tax Map 90-2 ((1)) 19]. The Board's action permits a private club pursuant to Section 3-104 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions:

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This Special Exception is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special exception plat approved with the application, as qualified by these development conditions.
3. This Special Exception is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to the special exception shall be in substantial conformance with Special Exception (SE) Plat entitled "Springfield Lodge # 217, A.F.A.M."; prepared by Springfield Associates Inc. and revised by Sukwinder S. Ruprai as revised through January 28, 2009. Minor modifications to the approved special exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.

Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903
Email: clerktothebos@fairfaxcounty.gov
<http://www.fairfaxcounty.gov/bosclerk>

4. Prior to issuance of the Non Residential Use Permit (Non-RUP), the lines for the proposed parking spaces shall be painted to properly delineate the parking spaces.
5. The maximum number of memberships for the private club shall be 230 with a maximum seating capacity of 230.
6. The hours of operation for the private club uses shall be between 9:00 a.m. and midnight Monday through Saturday. However, the private club shall not operate during those times that the site is being utilized by a place of worship.
7. All parking shall be provided on-site, as depicted on the Special Exception Plat. Approval of a parking reduction shall be obtained through the Board of Supervisors as required by Section 11-102.4B of the Zoning Ordinance prior to the issuance of a new Non-RUP for the private club and place of worship to permit the shared use of the private club parking lot for both the private club use and place of worship uses. If approval of parking reduction request # 25098-PKS-001-1 is not obtained from the Board of Supervisors, then this Special Exception application will become null and void.
8. Prior to issuance of the Non-RUP, all proposed landscaping shall be installed in the northern and southern parking areas as depicted on the SE Plat. The Urban Forest Management (UFM) Division of the Department of Public Works and Environmental Services (DPWES) shall be consulted prior to said installation to ensure that the appropriate size of trees and selection of species is made based on existing and proposed site conditions. All landscaping that is installed pursuant to this Special Exception shall be maintained in good health by the applicant.
9. Existing lighting, including parking lot, security, and/or other incidental lighting may remain. All new and replacement lighting and lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 of Article 14 of the Zoning Ordinance.
10. All signs shall be in accordance with the provisions of Article 12 of the Zoning Ordinance.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Section 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, thirty (30) months after the date of approval unless, at a minimum, the use has been established or construction has commenced and

been diligently prosecuted. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Sincerely,



Nancy Vehrs
Clerk to the Board of Supervisors
NV/ph

Cc: Chairman Sharon Bulova
Supervisor Jeffrey McKay, Lee District
Janet Coldsmith, Director, Real Estate Division, Dept. of Tax Administration
Regina Coyle, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Angela K. Rodeheaver, Section Chief, Transportation, Planning Division
Ellen Gallagher, Capital Projects and Operations Div., Dept. of Transportation
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
District Planning Commissioner
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation



June 11, 2020

ATTACHMENT 3

Ms. Leslie B. Johnson, Zoning Administrator
Zoning Administration Division
Fairfax County Department of Planning and Development
12055 Government Center Parkway, Suite 807
Fairfax, VA 22035

Re: Special ~~Permit~~ ^{Exception} SE 2008-LE-027

Extension Request for Special Permit Amendment Expiring July 1, 2020

Dear Ms. Johnson;

This is in reference to our application for a Non-Residential Use Permit for our building parking lot in Springfield VA. We are diligently working with Jennifer Josiah, Project Management Services and Todd Nelson (UFMD) to ensure that the amendments are in conformity with the county requirements, and now working with Mr. Bobby Katai of Department of Planning and Zoning, Zoning Evaluation Division.

According to Ms. Josiah, the revised plan is now with the Zoning Evaluation Division of Fairfax County and waiting for a few more informational items to show on the plan, which we are working on. The revision of the plan, the review time of the county and the time needed to complete the project will take longer than anticipated due to the pandemic situation we are in. We are also in the process of raising the necessary funds for this project.

That said, we would like to request an extension to our Special Permit Amendment application for another 12 months or as deemed appropriate. Looking forward to hearing from you soonest.

Sincerely,

Daniel Abarquez
Springfield Lodge# 217
7001 Backlick Rd
Springfield VA 22150
Mobile: 571-278-8376
Email: dan.globalink@gmail.com

Board Agenda Item
September 15, 2020

ADMINISTRATIVE - 6

Additional Time to Obtain a Non-Residential Use Permit (Non-RUP) for SE 2014-PR-018, Beyer I Limited Liability Company (Providence District)

ISSUE:

Board consideration of additional time to obtain a Non-RUP for SE 2014-PR-018 pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve 12 months additional time for SE 2014-PR-018 to July 1, 2021.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that the approval of additional time is in the public interest.

On February 16, 2016, the Board of Supervisors approved Special Exception SE 2014-PR-018, permitting vehicle storage associated with a vehicle sales, rental, and ancillary service establishment for property located at 7113 and 7117 Shreve Road and 118 Gordon Road, Tax Map # 40-3 ((12)) 8A, 11, and 13. (See Locator Map, Attachment 1) Specifically, the SE permitted certain improvements and continuation of an existing vehicle sales, rental, and ancillary service establishment and its vehicle storage parking lot associated with a dealership that straddles the Fairfax County and the City of Falls Church boundary. (See Clerk's Letter, Attachment 2.) The SE, filed by Beyer I Limited Liability Company, was approved concurrent with Rezoning RZ 2015-PR-016, which rezoned the I-5 with HC Overlay zoned portion of the 1.25-acre subject property to C-8 with HC Overlay, to permit the desired use subject to the approval of an SE. Vehicle

Board Agenda Item
September 15, 2020

storage associated with a vehicle sales, rental and ancillary establishment is permitted by Special Exception pursuant to Sect. 4-804 of the Zoning Ordinance. The rezoning was approved subject to proffers and the SE was approved subject to development conditions. We note that SE 2014-PR-018 included a condition that the SE would automatically expire, without notice, 30 months after the date of approval unless a new Non-RUP had been issued.

In conformance with the expiration provision, to establish the use, the approved use was required to obtain a Non-RUP by August 16, 2018. However, §15.2-2209.1 of the *Code of Virginia* permitted an automatic extension of this deadline to July 1, 2020. On May 18, 2020, the Department of Planning and Development (DPD) received a letter, dated May 12, 2020, from Andrew A. Painter, Esq., agent for the applicant, requesting twelve (12) months of additional time. (See Request Letter, Attachment 3.) While the current expiration date was July 1, 2020, the approved Special Exception will not expire pending the Board's action on the request for additional time.

In the additional time request letter, Mr. Painter stated that since the approval, the applicant has diligently pursued development of the property in conformance with the SE. He noted that the applicant has applied for site plan approval, recently received an interpretation to respond to comments to improve the stormwater facilities, and has resolved several issues with the Virginia Department of Transportation including resolution of site entrance concerns and obtaining a buffer strip waiver. Additionally, Mr. Painter noted that the applicant has secured an SE from the City of Falls Church to permit construction of a new showroom on the city's portion of the dealership. Within the next 12 months, the applicant anticipates completion of the construction activities, including road improvements and on-site stormwater facilities.

Staff has reviewed SE 2014-PR-018 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit a vehicle sales, rental, and ancillary service establishment in the C-8 with HC Overlay zoning district. Further, staff knows of no change in land use circumstances that affects compliance of SE 2014-PR-018 with the special exception standards applicable to this use and which should cause the filing of a new SE application and review through the public hearing process. The Comprehensive Plan recommendation for the property has not changed since approval of the Special Exception. Finally, the conditions associated with the Board's approval of SE 2014-PR-018 are still appropriate and remain in full force and effect. Staff believes approval of the request for 12 months is in the public interest and recommends that it be approved.

FISCAL IMPACT:

None.

Board Agenda Item
September 15, 2020

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Clerk's Letter dated February 17, 2016 to Andrew Painter

Attachment 3: Request Letter dated May 12, 2020 to Leslie B. Johnson

STAFF:

Rachel Flynn, Deputy County Executive

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

Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPD

Suzanne Wright, Chief, Conformance Review and Acceptance Branch, ZED, DPD

Denise James, Chief, Environment and Development Review Branch, Planning
Division, DPD

Bobby Katai, Planner III, Conformance Review and Acceptance Branch, ZED, DPD

Special Exception
SE 2014-PR-018



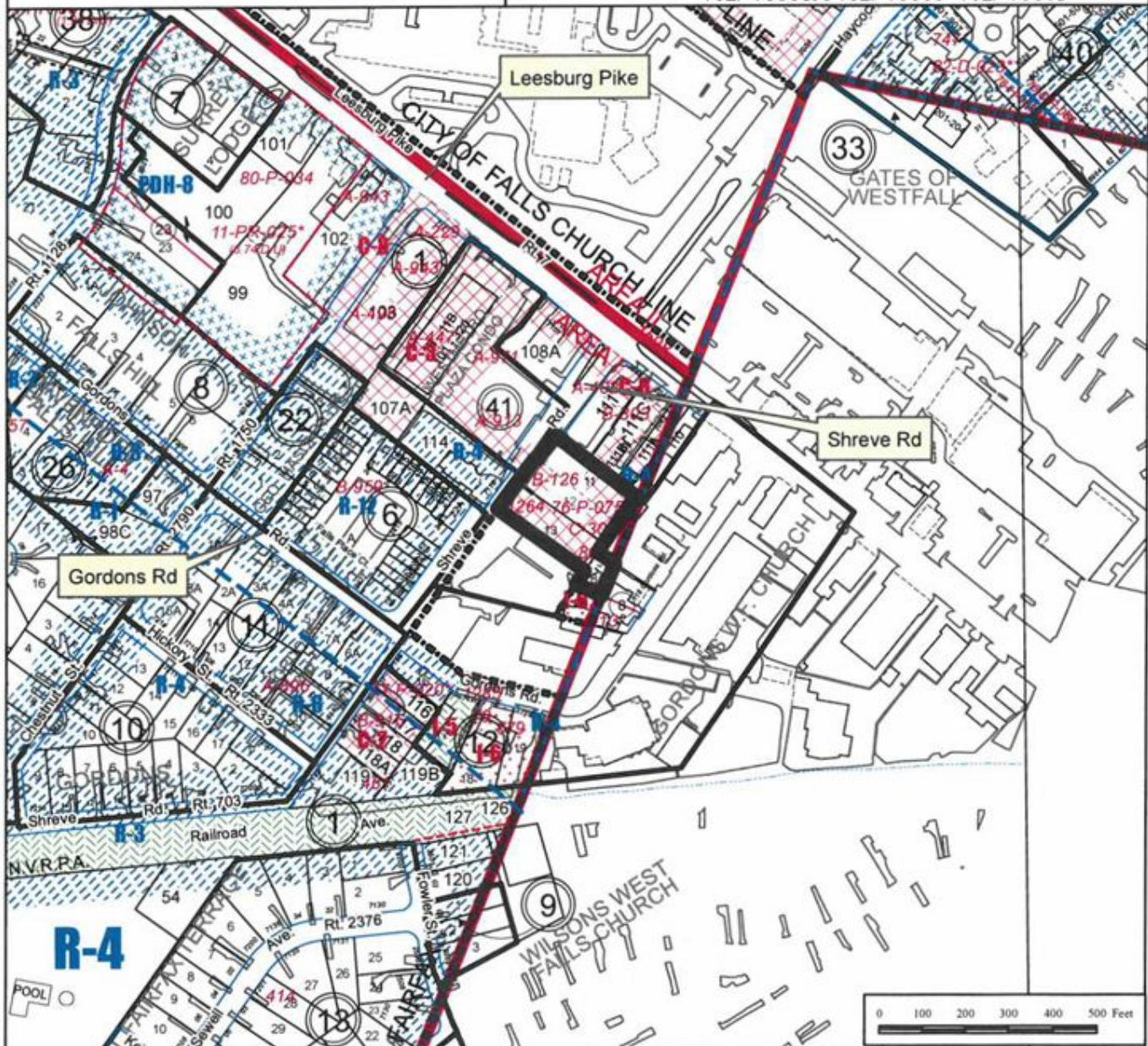
Applicant: BEYER 1 LIMITED LIABILITY COMPANY
Accepted: 05/09/2014
Proposed: VEHICLE STORAGE ASSOCIATED WITH A VEHICLE SALES, RENTAL AND ANCILLARY SERVICE ESTABLISHMENT

Area: 1.25 AC OF LAND; DISTRICT - PROVIDENCE
Zoning Dist Sect: 04-080405-0504
Located: 7113 & 7117 SHREVE ROAD AND 118 GORDON ROAD, FALLS CHURCH, VA 22043

Zoning: C- 8
Plan Area: 1,1
Overlay Dist:
Map Ref Num: 040-3- /12/ /0008A /12/ /0011

ATTACHMENT 1

/12/ /0013 040-3- /12/ /0008A
/12/ /0011 /12/ /0013 040-3-
/12/ /0008A /12/ /0011 /12/ /0013





County of Fairfax, Virginia

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

RECEIVED
Department of Planning & Zoning

Zoning Evaluation Division

February 17, 2016

Andrew Painter
Walsh, Colucci, Lubeley & Walsh, P.C.
2200 Clarendon Boulevard, Ste. 1300
Arlington, VA 22201

Re: Special Exception Application SE 2014-PR-018
(Concurrent with Rezoning Application RZ 2015-PR-016)

Dear Mr. Painter:

At a regular meeting of the Board of Supervisors held on February 16, 2016, the Board approved Special Exception Application SE 2014-PR-018 in the name of Beyer 1 Limited Liability Company. The subject property is located at 7113 and 7117 Shreve Road, on approximately 1.25 acres of land, zoned C-8 and I-5, HC in the Providence District [Tax Map 40-3 ((12)) 8A, 11, and 13]. The Board's action permits vehicle storage associated with vehicle sales, rental, and ancillary establishment, and a waiver of the minimum open space requirements, pursuant to Sections 4-804 and 9-612 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions:

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This Special Exception is granted only for the purpose(s), structure(s), and/or use(s) indicated on the Special Exception Plat approved with this application, as qualified by these development conditions.
3. A copy of this Special Exception and the Non-Residential Use Permit (Non-RUP) shall be posted in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 711
Email: clerktothebos@fairfaxcounty.gov
<http://www.fairfaxcounty.gov/bosclerk>

4. This Special Exception is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this Special Exception shall be in substantial conformance with the approved GDP/SE Plat entitled "7113 and 7117 Shreve Road," prepared by Walter L. Phillips, Inc., dated October 10, 2013, as revised through December 21, 2015, consisting of 8 sheets and these conditions. Minor modifications to the approved Special Exception may be permitted pursuant to Paragraph 4 of Section 9-004 of the Zoning Ordinance.
5. There shall be no outdoor storage of wrecked or inoperable vehicles on the site for a period exceeding 72 hours. Any spaces reserved for loading, parking, vehicle storage and vehicle display shall not be used for wrecked or inoperable vehicles, and all non-operating vehicles must be stored away from Shreve Road. All parking of inoperable vehicles shall be located in designated, paved parking spaces.
6. There shall be no outdoor storage or sales of materials on the site, with the exception of vehicles for sale (which may be parked in that area designated on the GDP/SE Plat as "Vehicle Storage").
7. All vehicular service and maintenance shall occur indoors. If such service occurs between the hours of 10:00 p.m. and 8:00 a.m., it shall be in a fully enclosed interior space with no windows or doors open.
8. Approximately 3,012 square feet of right-of-way as depicted on the SE Plat shall be dedicated to the Board of Supervisors, in fee simple, along Shreve Road. The area within 41.5 feet from the existing centerline of Shreve Road shall be reserved for future dedication of right-of-way along Shreve Road as depicted on the SE Plat. Any amount of the 41.5-foot reservation shall be conveyed to the Board of Supervisors, in fee simple on demand. All intensity/density attributable to land area dedicated from the Application Property as designated on GDP/SE Plat and/or conveyed at no cost to the Board or any other public entity pursuant to these conditions, or as may be required at site plan, shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the Application Property.
9. All loading and unloading of vehicles on transport carriers shall be conducted on-site. Absolutely no loading and unloading of vehicles shall take place on Shreve Road.
10. A landscape plan shall be submitted in conjunction with the site plan submitted on the Application Property for the review and approval of UFMD. Plantings shall be installed in general conformance to the GDP/SE Plat and native species shall be incorporated to the extent feasible.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances,

SE 2014-PR-018
February 17, 2016

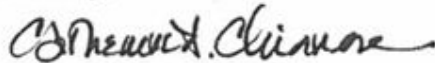
regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit (Non-RUP) through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Section 9-015 of the Zoning Ordinance, this Special Exception shall automatically expire, without notice, thirty (30) months after the date of approval unless a new (Non-RUP) has been issued to reflect this Special Exception. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the Special Exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

The Board also:

- Waived the minimum open space requirement in the C-8 District to five percent as shown on the General Development Plan/Special Exception (GDP/SE) Plat
- Modified the barrier requirements along a portion of Shreve Road to that shown the GDP/SE Plat
- Modified the peripheral parking lot landscaping requirement for all yards to that shown on the GDP/SE Plat

Sincerely,



Catherine A. Chianese
Clerk to the Board of Supervisors

cc: Chairman Sharon Bulova
Supervisor Linda Smyth, Providence District
Tim Shirocky, Acting Director, Real Estate Division, Dept. of Tax Administration
Barbara C. Berlin, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Thomas Conry, Dept. Manager, GIS, Mapping/Overlay
Michael Davis, Section Chief, Transportation Planning Division
Donald Stephens, Transportation Planning Division
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
Jill Cooper, Executive Director, Planning Commission
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation

Recv. 5-28-2020
 Dept. of Planning & Development-ZED
 Conformance Review & Applic. Acceptance Br.
 (B.R.)

Andrew A. Painter, Esq.
 (571) 209-5775
 apainter@thelandlawyers.com

WALSH COLUCCI
 LUBELEY & WALSH PC



May 12, 2020

Via First Class Mail

Ms. Leslie B. Johnson, Zoning Administrator
 Zoning Administration Division
 Fairfax County Department of Planning and Development
 12055 Government Center Parkway, Suite 807
 Fairfax, Virginia 22035

**Re: Request for Additional Time
 SE 2014-PR-018: Beyer I Limited Liability Company
 7113 and 7117 Shreve Road
 Fairfax County Tax Map ## 40-3 ((12)) 8A, 11, and 13 (jointly, the "Property")**

Dear Ms. Johnson:

On behalf of **Beyer I Limited Liability Company** (the "Applicant"), and in accordance with § 9-015 of the Zoning Ordinance of Fairfax County, Virginia (the "Zoning Ordinance"), I am writing to request additional time to establish the vehicle sales, rental, and ancillary establishment use associated with SE 2014-PR-018.

By way of background, the Board of Supervisors (the "Board") approved SE 2014-PR-018 on February 16, 2016 concurrently with RZ 2015-PR-016. The approval permitted vehicle storage associated with vehicle sales, rental, and ancillary establishment, and a waiver of the minimum open space requirements. The approvals were made subject to a proffer statement dated December 29, 2015, special exception conditions, and a Generalized Development Plan/Special Exception Plat (the "GDP/SE Plat").

Pursuant to the special exception conditions of approval imposed by the Board, the special exception was due to expire 30 months after the date of approval (or on August 16, 2018) unless construction of the improvements had commenced and been diligently pursued. Due to statutory changes adopted by the General Assembly codified at Va. Code Ann. § 15.2-2209.1, the period of validity to establish the use approved by SE 2014-PR-018 was automatically extended by operation of law until July 1, 2020. Accordingly, and unless otherwise extended by the Board, the special exception is due to expire on July 1, 2020.

Since the 2015 approval, the Applicant has worked to diligently pursue development of the Property. It has, for example, worked with VDOT to resolve several new site plan-related issues (identified by VDOT in a comment letter dated January 17, 2019) that were not originally included in, or contemplated by, the initial VDOT site plan review comments. On July 24, 2019,

ATTORNEYS AT LAW

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 2200 CLARENDON BLVD • SUITE 1300 • ARLINGTON, VA 22201-3359

LOUDBON 703 737 3633 • WOODBRIDGE 703 680 4664

the Applicant submitted a request to VDOT for reconsideration of the sight distance waiver based on a redesign of the site frontage to address concerns. VDOT rejected the request on September 12, 2019. On October 3, 2019, the Applicant met with VDOT officials to discuss options to keep the existing site entrance open as shown on the approved GDP/SE Plat. VDOT recommended that the Applicant submit a request for a waiver buffer strip, which was sent on December 10, 2019. On February 24, 2020, VDOT approved the Applicant's request for a buffer strip waiver.

Additionally, in order to meet Volvo's branding requirements, the Applicant worked to process a special exception in the City of Falls Church (the "City") to construct a new dealership showroom. This special exception was approved in 2018, and the Applicant has been diligently constructing the new showroom along West Broad Street. As part of the showroom's construction, the Applicant has worked to evaluate its long-term business operations and vehicle inventory needs.

While the Applicant is working through these engineering and business matters, it is clear that additional time will be required to establish the approved use. In accordance with § 9-015 of the Zoning Ordinance, the Applicant respectfully requests 12 months of additional time to establish the approved use or commence construction of the improvements approved with SE 2014-PR-018. If this additional time is granted, the new expiration date of the approval will be July 1, 2021. There have been no changes in circumstances that would render the existing approval inconsistent with the Zoning Ordinance, the Comprehensive Plan, or the public interest.

For reference, a copy of the special exception conditions is enclosed. Should you have any questions or require additional information, please do not hesitate to contact me directly at (571) 209-5775. As always, I appreciate your cooperation and assistance.

Thank you for your kind attention to this matter.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.



Andrew A. Painter, Esq.

cc: The Honorable Dalia Palchik, Providence District Supervisor
Mr. Michael S. Beyer, Beyer I Limited Liability Company
Ms. Marylee "Weetie" Beyer-Hill, Beyer II Limited Liability Company
Mr. Aaron Vinson, P.E., Walter L. Phillips, Inc.
Mr. Bill Prodo, P.E., Walter L. Phillips, Inc.
Mr. Bernard S. Suchicital, Walsh Colucci

Board Agenda Item
September 15, 2020

ADMINISTRATIVE - 7

Authorization to Advertise a Public Hearing to Consider Amendments to *The Code of the County of Fairfax, Virginia* - Chapter 30 (Minimum Private School and Child Care Facility Standards), Article 3 (Home Child Care Facilities)

ISSUE:

Authorization to advertise a public hearing to consider amendments to *The Code of the County of Fairfax*, Chapter 30, Article 3. The amendments will add requirements for additional out of state criminal background checks and sex offender registry searches for any adult who has lived in another state in the preceding five years.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing on October 20, 2020 at 4:30 p.m. to consider adoption of these amendments.

TIMING:

Board action is requested on September 15, 2020 to provide sufficient time to advertise an October 20, 2020 public hearing on the proposed amendments.

BACKGROUND:

Chapter 30, Article 3, of the County Code regulates Home Child Care Facilities in which a person cares for four or fewer children. Section 30-3-2 of this Chapter sets forth the requirements for the applicant of a proposed home child care facility and each adult resident in the facility.

In 2018, the County Code was amended to replace the background check requirement with a new fingerprint based national background check. This amendment was made in response to changes in the state child care licensing requirements at that time. Recently, in the 2020 General Assembly, the state updated the background check requirements for child care licensing to include an additional criminal history record information check and sex offender registry search maintained by any other state in which the applicant or adult resident has resided in the preceding five years.

Section 30-3-2 of the County Code currently requires a fingerprint-based national background check every five years for each applicant and adult resident in the facility.

Board Agenda Item
September 15, 2020

This background check includes a Virginia state criminal history name check and a search of the state sex offender registry. The proposed amendment to Section 30-3-2 authorizes the Office for Children to obtain a copy of the results of a criminal history record information check and sex offender registry search maintained by any other state in which the applicant or adult resident has resided in the preceding five years. If the state where the individual previously resided participates in the National Fingerprint File (NFF) program through the FBI, the additional criminal background check is not required and only the search of the sex offender registry needs to be completed. This proposed amendment will align the County Code with new state child care licensing requirements, and reflects federal and state requirements for background checks for child care facilities.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Amendments to *The Code of the County of Fairfax*, Chapter 30, Article 3.

STAFF:

Tisha Deeghan, Deputy County Executive

Christopher A. Leonard, Director, Department of Neighborhood and Community Services (NCS)

Anne-Marie D. Twohie, Director, Office for Children, NCS

ASSIGNED COUNSEL:

Daniel Robinson, Assistant County Attorney

1 AN ORDINANCE AMENDING
2 ARTICLE 3 OF CHAPTER 30 OF THE FAIRFAX COUNTY CODE, RELATING TO
3 HOME CHILD CARE FACILITIES
4

5 Draft of August 3, 2020
6

7 AN ORDINANCE to amend the Fairfax County Code by amending and
8 readopting Section 30-3-2, relating to home child care facilities.
9

10 Be it ordained by the Board of Supervisors of Fairfax County:

11 1. That Section 30-3-2 of the Fairfax County Code is amended and readopted as
12 follows:

13 Article 3. – Home Child Care Facilities.
14

15 Section 30-3-2. - Annual permit application, issuance or denial.

16 (a) A person proposing to operate a home child care facility, and each adult who resides in the
17 proposed facility, shall submit to fingerprinting and shall provide personal descriptive
18 information to be forwarded along with each individual's fingerprints through the Central
19 Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of
20 obtaining criminal history record information regarding each such person. The applicant shall
21 also submit an application on a form prepared by the Director of the Office for Children, which
22 shall include:

23 (i) The name and address of the home child care facility;

24 (ii) The name of the applicant;

25 (iii) A statement of whether the applicant currently holds or previously held a home child
26 care facility permit in the County;

27 (iv) The names of all persons who reside in the home;

28 (v) A sworn statement from the applicant and each adult who resides in the proposed facility
29 stating whether he or she has ever been convicted of or is the subject of any pending
30 charges for any offense within or outside the Commonwealth and consent forms signed
31 by the applicant and each adult who resides in the proposed facility allowing the Director
32 of the Office for Children to obtain the results of the criminal history record search
33 conducted in accordance with Section 30-3-2(b)(iii). The applicant must provide consent
34 forms signed by the applicant and each adult who resides in the proposed facility
35 authorizing the Director of the Office for Children to obtain the results of a criminal
36 history record information check and sex offender registry check from any state in which
37 the applicant or any adult who resides in the proposed facility has lived in the 5 years
38 prior to the date of the application. The applicant must pay any fee or fees required in
39 connection with any such criminal history investigation or sex offender registry
40 investigation for each person making disclosures and providing consent forms;

- 41 (vi) A sworn statement from the applicant and each adult who resides in the proposed
42 facility stating the names of all states in which he or she has lived in the 5 years prior to
43 the date of the application and stating whether he or she has been the subject of a founded
44 complaint of child abuse or neglect within or outside the Commonwealth of Virginia and
45 consent forms signed by the applicant and each adult who resides in the proposed facility
46 giving consent to the Director of the Office for Children to obtain a copy of the results of
47 a search of the central registry maintained pursuant to Va. Code § 63.2-1515, and any
48 child abuse and neglect registry or equivalent registry maintained by any other state in
49 which the applicant or any adult who resides in the proposed facility has resided in the
50 previous five years for any founded complaint of child abuse or neglect; the applicant
51 shall also provide sworn statements from a parent, guardian or legal custodian on behalf
52 of all minors age 14 and older who reside in the proposed facility stating whether the
53 minor has been the subject of a founded complaint of child abuse or neglect and consent
54 forms signed the parent, guardian or legal custodian of all minors age 14 and older who
55 reside in the proposed facility, giving consent to the Director of the Office for Children
56 to obtain a copy of the results of a search of the central registry maintained pursuant to
57 Va. Code § 63.2-1515 for any founded complaint of child abuse or neglect;
- 58 (vii) Copies of the applicant's current certifications in first aid and cardiopulmonary
59 resuscitation (CPR);
- 60 (viii) Proof of the applicant's compliance with the training requirements established in
61 Section 30-3-4(b), which shall consist of records provided by the trainer or, if none are
62 provided by the trainer, records maintained by the applicant;
- 63 (ix) A description of the structure in which the home child care facility is proposed to be
64 operated, including a description of all places and areas to which the children shall have
65 access;
- 66 (x) The proposed hours of operation;
- 67 (xi) A statement of whether the applicant is 18 or more years old;
- 68 (xii) A certificate from a physician, physician's designee, or Health Department official
69 stating that acceptable screening methods (tuberculin skin test and/or tuberculosis risk
70 and symptom screen and/or chest X-ray), singly or in combination as determined
71 appropriate by the signatory, indicate that the applicant and all adult household residents
72 are currently free from communicable tuberculosis. The screen must be performed every
73 two years or more frequently as recommended by a physician or the local health
74 department;
- 75 (xiii) A written policy describing what the applicant will do with children in care who are
76 sick and a written emergency preparedness plan;
- 77 (xiv) Such other information, including, but not limited to, information concerning
78 applicant's child care training and special skills, as the Director of the Office for Children
79 may deem appropriate;
- 80 (xv) The application fee of \$14, which is in addition to any business or occupation license
81 tax imposed by the County, and any other taxes or fees that may be required to engage in
82 the business.

83 If the information the provider submits in accordance with subsections (iv), (v), (vi), and (xii)
84 changes during the term of the permit, the provider must report the change to the Director of the
85 Office for Children within 21 days and must promptly submit updated information and documents.

86 (b) Upon submission of an application to the Office for Children:

87 (i) The Director of the Office for Children shall inspect the proposed facility to determine
88 whether it is in compliance with this Article and all applicable Virginia law that may
89 affect the health and safety of the children who may attend or be present at the facility.

90 (ii) The Fire Code Official shall conduct a fire safety inspection of the proposed facility and
91 advise the Director of the Office for Children of any noncompliance with this Article or
92 any applicable Virginia law that may affect the health and safety of the children who may
93 attend or be present at the facility.

94 (iii) If the applicant does not hold a permit under this Article at the time of the application,
95 the Director of the Office for Children shall require that the fingerprints and personal
96 descriptive information for the applicant and each adult who resides in the proposed
97 facility be forwarded to the Central Criminal Records Exchange and request a search of
98 the Central Criminal Records Exchange and a national criminal history search by the
99 Federal Bureau of Investigation to determine whether the applicant or any persons who
100 reside in the home have committed any crimes that constitute barrier offenses. If the
101 applicant does not hold a permit under this Article at the time of the application, the
102 Director of the Office for Children shall request a copy of the results of a criminal history
103 record information check and sex offender registry check from any other state in which
104 the applicant or any adult who resides in the proposed facility has resided in the preceding
105 five years for the applicant and all adults who reside in the proposed facility; however, if
106 the applicant or other adult who resides in the proposed facility resided during the
107 preceding five years in a state that participates in the National Fingerprint File through
108 the Federal Bureau of Investigation then the Director is not required to request a copy of
109 the criminal history record information check from that state. Otherwise, the Director
110 may request a criminal records search if five or more years have passed since the last
111 records search on an individual, or upon receipt of new information submitted in
112 accordance with this section, or as the Director deems appropriate in extenuating
113 circumstances.

114 (iv) If the applicant does not hold a permit under this Article at the time of the application,
115 the Director of the Office for Children shall request a copy of the results of a search of
116 the central registry maintained pursuant to Va. Code § 63.2-1515 for the applicant and all
117 individuals age 14 and older that reside in the proposed facility, and a copy of the results
118 of a search of any child abuse and neglect registry or equivalent registry maintained by
119 any other state in which the applicant or any adult who resides in the proposed facility
120 has resided in the preceding five years for the applicant and all adults who reside in the
121 proposed facility, for any founded complaint of child abuse or neglect. Otherwise, the
122 Director may request a copy of the central registry maintained pursuant to Va. Code §
123 63.2-1515 if five or more years have passed since the last records search on an individual,
124 or upon receipt of new information submitted in accordance with this section, or as the
125 Director deems appropriate in extenuating circumstances.

126 (c) The Director of the Office for Children shall issue a permit to an applicant if the Director
127 determines from the information contained in the permit application, the facility inspections,
128 and the records searches that (i) the applicant is an adult; (ii) neither the applicant nor any
129 person who resides in the facility has committed any barrier offense; and (iii) both the
130 applicant and the proposed facility are in compliance with this Article and all applicable
131 Virginia laws that may affect the health and safety of the children who may attend or be
132 present at the proposed facility. The permit shall be displayed in the home child care facility
133 by the provider.

134 (d) The Director of the Office for Children shall deny a permit to any applicant if the Director
135 determines from the information contained in the permit application, the facility inspections,
136 and the records searches that (i) the applicant is not an adult; (ii) the applicant or any person
137 who resides in the facility has committed any barrier offense; or (iii) either the applicant or
138 the proposed facility is not in compliance with this Article and all applicable Virginia laws
139 that may affect the health and safety of the children who may attend or be present at the
140 proposed facility. If the denial is based on the results of the searches of the records of the
141 Central Criminal Records Exchange, the national criminal background check, or the
142 Department of Social Services, the Director shall provide the applicant a copy of the
143 information upon which the denial was based.

144
145 **2. All providers that are permitted under Article 3 of Chapter 30 of the Fairfax County**
146 **Code on the effective date of this ordinance, and all adults who reside in the provider’s**
147 **facility, must provide the consent forms required in Fairfax County Code Section 30-3-**
148 **2(a)(v) authorizing the Director of the Office for Children to obtain the results of the**
149 **criminal history record information check and sex offender registry check from any state**
150 **in which the applicant or any adult who resides in the proposed facility lived five years**
151 **prior to the date of the consent form, as well as any applicable fee required thereunder, to**
152 **the Office for Children by December 31, 2020. The failure to comply with this requirement**
153 **will result in a suspension of the provider’s permit. Upon receipt of the sworn statements**
154 **and forms, the Director will request the criminal history record information checks and sex**
155 **offender registry checks required in Section 30-3-2(b)(iii).**

156 **3. That the provisions of this ordinance are severable, and if any provision of this**
157 **ordinance or any application thereof is held invalid, that invalidity shall not affect the other**
158 **provisions or applications of this ordinance that can be given effect without the invalid**
159 **provision or application.**

160 **4. That this Ordinance will become effective upon adoption.**

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GIVEN under my hand this _____ day of _____, 2020

Clerk for the Board of Supervisors

Board Agenda Item
September 15, 2020

ADMINISTRATIVE - 8

Approval of Traffic Calming Measures as Part of the Residential Traffic Administration Program (Mason District)

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 for Lakewood Drive and Columbia Pike Service Road (Attachment I and Attachment II) consisting of the following:

- One speed hump on Lakewood Drive (Mason District)
- Two speed humps on Columbia Pike Service Road (Mason 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 calming measures as soon as possible.

TIMING:

Board action is requested on September 15, 2020.

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 July 28, 2020, FCDOT received verification from the Mason District Supervisor's office confirming community support for the Lakewood Drive and Columbia Pike Service

Board Agenda Item
September 15, 2020

Road traffic calming plan.

FISCAL IMPACT:

Funding in the amount of \$30,000 is necessary to fund the traffic calming measures associated with this traffic calming project. Funds are currently available in Project 2G25-076-042, Lakewood Drive & Columbia Pike Service Road, Fund 300-30050, Transportation Improvements.

ENCLOSED DOCUMENTS:

Attachment I: Traffic Calming Resolution for Lakewood Drive and Columbia Pike Service Road

Attachment II: Traffic Calming Plan for Lakewood Drive and Columbia Pike Service Road

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
LAKEWOOD DRIVE & COLUMBIA PIKE SERVICE ROAD
MASON 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, September 15, 2020, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, the residents in the vicinity of Lakewood Drive and Columbia Pike Service Road have requested the Mason District Supervisor's Office of Fairfax County to consider remedial measures to reduce the speed of traffic on Lakewood Drive and Columbia Pike Service Road; and

WHEREAS, an engineering study by the Fairfax County Department of Transportation (FCDOT) for Lakewood Drive and Columbia Pike Service Road indicates that all basic traffic calming criteria are met pertaining to functional classification of the roadway, 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 area for their review and consideration; and

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

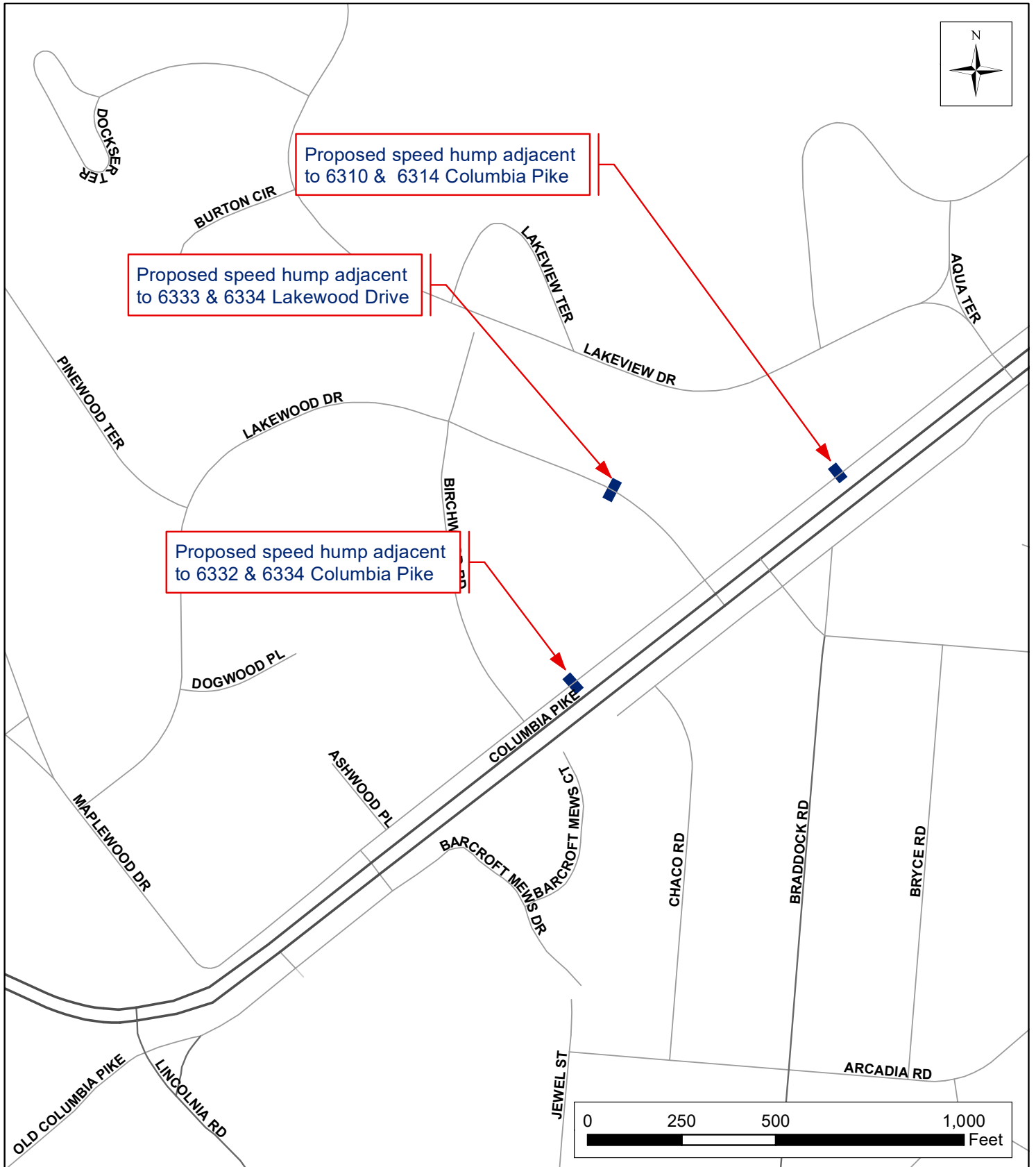
WHEREAS, the intended source of funding for the Traffic Calming Plan is Fairfax County.

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 Lakewood Drive and Columbia Pike Service Road as part of FCDOT's Residential Traffic Administration Program.

ADOPTED this 15th day of September, 2020.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors



Tax Map: 61-3

AUGUST 2020

**Fairfax County Department of Transportation
Residential Traffic Administration Program
Traffic Calming Plan
Lakewood Drive & Columbia Pike Service Road
Mason District**



Board Agenda Item
September 15, 2020

ADMINISTRATIVE - 9

Authorization to Advertise Public Hearings on a Proposed Amendment to Chapter 104 (Erosion and Sedimentation Control) of *The Code of the County of Fairfax, Virginia* (County Code) Re: Enforcement

ISSUE:

Board of Supervisors (Board) authorization to advertise public hearings on a proposed amendment to Chapter 104 (Erosion and Sedimentation Control) of *The Code of the County of Fairfax, Virginia* (County Code) that addresses monitoring, inspections, stop work orders, penalties, injunctions, and other legal actions related to enforcement of the ordinance. The amendments are necessary to align the ordinance with our current process for issuing violations and the Virginia Erosion and Sediment Control Law and to add provisions for civil penalties.

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of the proposed amendment as set forth in the Staff Report dated September 15, 2020.

The proposed amendment has been prepared by Land Development Services (LDS) in coordination with the Office of the County Attorney.

TIMING:

Board action is requested on September 15, 2020, to provide sufficient time to advertise public hearings before the Planning Commission on October 7, 2020, at 7:30 p.m. and before the Board on November 17, 2020, at 4:00 p.m.

BACKGROUND:

LDS seeks to improve Chapter 104, the Erosion and Sedimentation Control Ordinance, by aligning it with enabling legislation and clarifying and strengthening the enforcement and penalty provisions. Violations of the Erosion and Sedimentation Control Ordinance are Class 1 misdemeanors, punishable by fines and jail time. LDS wishes to add civil penalties to its enforcement authority, because the long-term impact of a criminal conviction on a person's record and the need to rely on the Commonwealth's Attorney to prosecute a violation hinder enforcement efforts. Section 62.1-44.15:54.K of the Code of Virginia authorizes the County to seek civil penalties in the amount of \$100 to \$1,000 for violations of the Erosion and Sedimentation Control Ordinance or any condition of a permit. Each day during which the violation exists is a separate offense, but the total

penalty may not exceed \$10,000. County staff and the County Attorney's Office will collaborate to enforce the ordinance and seek civil penalties, as appropriate. Once civil penalties are assessed by the court, criminal prosecution is precluded under the enabling legislation.

In addition to the civil penalty provisions, staff revised the ordinance to align it with Land Development Services' current process for issuing violations and incorporated changes to reflect changes in the enabling legislation that have occurred over the years.

LDS also revised the ordinance to clarify the process for inspecting and issuing violations for land disturbing activities under two scenarios: first, on a site subject to permits and an approved grading plan; and, second, when land disturbance is performed without permits or plans. The proposed revisions align the ordinance with current procedures and enabling legislation.

PROPOSED AMENDMENT:

The proposed amendment includes revisions to the provisions for monitoring, inspections, notices, stop work orders, violations, penalties, injunctions, and other legal actions related to enforcement of the ordinance.

The proposed amendment includes revisions to the following sections:

- Section 104-1-5 Monitoring and Inspections.
- Section 104-1-12 Penalties, injunctions, and other legal actions.

The revisions:

- 1) Reorganize the above sections for clarity and align the ordinance with the current process for issuing inspection reports, notices of violations, and stop work orders.
- 2) Eliminate or revise outdated language to reflect current language in the Virginia Erosion and Sediment Control Law and associated regulations.
- 3) Add an explicit statement, new Subsection 104-1-5(c), that failure to comply with an approved plan, including any plan alterations is a violation, and the permittee or the person responsible for carrying out the plan is subject to penalties provided in the ordinance.
- 4) Delete a redundant requirement from Subsection 104-1-5(a) that an individual holding a certificate of competence, as provided by Virginia Code, § 62.1-44.15:52, will be in charge of and responsible for carrying out the land-disturbing activity. This requirement appears in two other sections of the ordinance that are not included in the amendment.

Board Agenda Item
September 15, 2020

- 5) Incorporate a provision for the use of civil penalties as an option in lieu of criminal sanctions for violations of any regulation or order of the State Water Control Board, any provision of the County Erosion and Sedimentation Control Ordinance, any condition of a permit, or any provision of the Virginia Erosion and Sediment Control Law. The civil penalty for any one violation ranges from \$100 to \$1,000 and each day during which the violation exists is a separate offense with a maximum total penalty of \$10,000. The County would decide on a case by case basis whether to pursue a civil penalty or criminal sanctions.
- 6) Make editorial and minor revisions including changing “shall” to “will” or “must” or “may” throughout the sections of the ordinance being amended.

The proposed amendment is included as Attachment A to the Staff Report.

REGULATORY IMPACT:

The proposed amendment provides for the use of civil penalties in lieu of criminal sanctions as an option in addressing violations of the Erosion and Sedimentation Control Ordinance. The penalty for any one violation ranges from \$100 to \$1,000 and each day during which the violation exists is a separate offense. There is a maximum total penalty of \$10,000. The reorganization of the enforcement provisions in the ordinance to align them with our current process for issuing violations will provide clarity and promote efficiency in the enforcement of the ordinance.

FISCAL IMPACT:

Implementation of the proposed amendment will have no impact on the County budget. Any civil penalties assessed by the court will be paid to the Treasury of Fairfax County.

ENCLOSED DOCUMENTS:

Attachment 1 – The Staff Report can be found online at:

<https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/assets/documents/pdf/pfm/staff-report-chpt-104.pdf>

STAFF:

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

ASSIGNED COUNSEL:

Marc E. Gori, Assistant County Attorney

Board Agenda Item
September 15, 2020

ADMINISTRATIVE - 10

Authorization to Advertise a Public Hearing on a Proposal to Vacate and Abandon a Portion of White Spruce Way (Mount Vernon District)

ISSUE:

Authorization of a public hearing on a proposal to vacate and abandon a portion of White Spruce Way.

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of a public hearing to consider the vacation and abandonment of the subject right-of-way.

TIMING:

The Board should take action on September 15, 2020, to provide sufficient time to advertise the public hearing for October 20, 2020, at 4:30 p.m.

BACKGROUND:

The applicant, McGuire Woods LLP, is requesting that a portion of White Spruce Way be vacated under §15.2-2272(2) of the Virginia Code and abandoned under Virginia Code §33.2-909. The applicant is seeking this request as part of the Laurel Hill Adaptive Reuse development (RZ 2012-MV-008 & PCA 2012-MV-008). This vacation request is part of the implementation of the proffers approved with RZ 2012-MV-008 & PCA 2012-MV-008.

The subject portion of White Spruce Way, west of the intersection of White Spruce Way and Silverbrook Road, is currently improved and continues to Mountain Larkspur Drive. The construction of the subject portion of White Spruce Way was proffered as part of a preceding development application for the Laurel Hill Adaptive Reuse project (RZ 2002-MV-040). The subject portion of White Spruce Way is in the VDOT Secondary System of Highways. The subject portion of White Spruce Way will be incorporated in the surrounding Laurel Hill Adaptive Reuse project as a privately maintained street after the vacation and abandonment, if approved.

Traffic Circulation and Access

The vacation and abandonment will have no long-term impact on pedestrian, transit, or vehicle circulation and access.

Board Agenda Item
September 15, 2020

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 Development, Fairfax County Park Authority, Fairfax County Water Authority, Fairfax County School Board, Fire and Rescue, Virginia Department of Transportation, Dominion Virginia Power, Washington Gas, and Verizon. None of these indicated any opposition to the proposal.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I: Application Letter and Justification/Background
Attachment II: Notice of Intent to Abandon
Attachment III: Notice of Intent to Vacate
Attachment IV: Order of Abandonment
Attachment V: Ordinance of Vacation
Attachment VI: Metes and Bounds Description of Vacation
Attachment VII: Metes and Bounds Description of Abandonment
Attachment VIII: Vacation and Abandonment Plats
Attachment IX: Vicinity Map

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Jeff Hermann, Division Chief, FCDOT
Marc Dreyfuss, FCDOT
Michelle Guthrie, FCDOT
Jeffrey Edmondson, FCDOT

ASSIGNED COUNSEL:

Pamela K. Peltó, Assistant County Attorney

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 Phone: 703.712.5000
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 www.mcguirewoods.com

Scott Adams
 Direct: 703.712.5461

McGUIREWOODS

sadams@mcguirewoods.com

February 25, 2020

Michelle Guthrie
 Fairfax County Department of Transportation
 4050 Legato Road, 4th Floor
 Fairfax, Virginia 22033

Re: Vacation/Abandonment of White Spruce Way

Dear Ms. Guthrie:

Enclosed please find the required documents to accompany this request to vacate and abandon a portion of White Spruce Way in conformance with Code of Virginia Sections 15.2-2272(1) and 33.2-909. White Spruce Way was dedicated pursuant to the Deed of Dedication recorded in Deed Book 16772, at Page 1059, among the land records of Fairfax County, Virginia (the "Land Records").

The portion of White Spruce Way for which the vacation/abandonment is requested is located on the site of the former Lorton Penitentiary and is part of Laurel Hill. This area is shown as a new private road on the approved CDPA/FDPA associated with PCA 2012-MV-008, approved by the Board of Supervisors on February 20, 2018. This new private road will connect the surrounding property to Silverbrook Road. Easements for ingress and egress and existing utilities will be granted to Fairfax County as part of the site plan process. A record plat showing these easements has already been submitted to Plan Control. Replacement of the public street with a private street will not impact access to Spring Hill. The Spring Hill development already has a primary access on Laurel Crest Drive and will continue to have access to Silverbrook Road via the new private street.

Enclosed with this request, please find the following:

- One (1) copy of the Deed of Dedication recorded in Deed Book 16772, Page 1059 dedicating White Spruce Way.
- \$150.00 Processing Fee
- Recordable Plat (18 copies) showing the location of all known utilities within the subject area and County Assessment Map Reference Number
- Metes and Bounds legal description of the area to be vacated (18 copies)
- Combined Notice of Public Hearing (Original + 18 copies)
- Vacation Ordinance (Original + 18 copies)
- Order of Abandonment (Original + 18 copies)

- Vicinity Map/Fairfax County Assessment Map (18 copies)
- Accompanying site plan/development plan (18 copies)

Please let me know if you have any questions regarding this request or if additional information is required.

Sincerely,

Scott Adams

Enclosures: A/S

White Spruce Way Vacation and Abandonment – Background/Justification

On May 5, 2003, the Board of Supervisors approved RZ 2002-MV-040 which allowed the development of senior housing on property located to the northwest of what is now White Spruce Way. The development is currently known as Spring Hill. The property was owned by the Board of Supervisors at the time of the rezoning and the development was proceeding as part of the PPEA for the Laurel Hill Adaptive Reuse project. The right-of-way for White Spruce Way was shown on the approved development plan and construction of the road/cul-de-sac was committed to in the proffers associated with RZ 2002-MV-040.

On June 3, 2014, the Board of Supervisors approved RZ 2012-MV-008 for the portion of the Laurel Hill Adaptive Reuse development known as Liberty, adjacent to Spring Hill. The vacation of White Spruce Way was proposed with the development of Liberty and the adopted proffers commit to the vacation of White Spruce Way prior to the issuance of any residential or non-residential use permit for the development.

On February 20, 2018, the Board of Supervisors approved PCA 2012-MV-008 which altered the trigger for the vacation of White Spruce Way in order that certain residential use and non-residential use permits could be issued prior to the vacation.

The vacation of White Spruce Way was intensively reviewed during the processing of both RZ 2012-MV-008 and PCA 2012-MV-008. This request is merely the implementation of the proffers which were the result of those public hearing processes.

NOTICE OF INTENT TO ABANDON

(White Spruce Way)

Mount Vernon DISTRICT,
Fairfax County, Virginia

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on October 20, 2020, at 4:30 PM during its regular meeting in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia, pursuant to Virginia Code Ann. § 15.2-2204 on the proposed abandonment of a public road known as White Spruce Way, from Silverbrook Road to Mountain Larkspur Drive, a distance of approximately 169.35 feet, pursuant to Virginia Code § 33.2-909. The road is located on Tax Map - 107-1, and is described and shown on the metes and bounds schedule and plat prepared by Walter L. Phillips, Incorporated, dated June 23, 2020, 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.

MOUNT VERNON DISTRICT.

§ 33.2-909

NOTICE OF INTENT TO
ADOPT AN ORDINANCE VACATING
A PART OF A PLAT ON WHICH IS SHOWN

(White Spruce Way)

Mount Vernon District,
Fairfax County, Virginia

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on October 20, 2020, at 4:30 PM during its regular meeting in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia, pursuant to Virginia Code Ann. § 15.2-2204, vacating a part of the plat of White Spruce Way, recorded in Deed Book 16772, at Page 1059, on which is shown White Spruce Way from Silverbrook Road to Mountain Larkspur Drive, a distance of approximately 169.35 feet. The road is located on Tax Map 107-1 and is described and shown on the metes and bounds schedule and plat prepared by Walter L. Phillips, Incorporated, dated August 4, 2020, both of which are on file in the Fairfax County Department of Transportation, 4050 Legato Road, Suite 400, Fairfax, Virginia 22033, Telephone Number (703) 877-5600. 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.

MOUNT VERNON DISTRICT.

§ 15.2-2272(2)

ORDER OF ABANDONMENT

(White Spruce Way)

Mount Vernon DISTRICT
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held this 20th day of October 2020, 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 White Spruce Way from Silverbrook Road to Mountain Larkspur Drive, a distance of 169.35 feet, located on Tax Map107-1, and described on the plat and metes and bounds schedule prepared by Walter Phillips, Incorporated dated June 23, 2020, which is attached hereto and incorporated herein, be and the same is hereby abandoned as a public road pursuant to Virginia Code §33.2-909.

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

(White Spruce Way)

Mount Vernon District,
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax County, Virginia, on October 20, 2020, 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 ORDAINED by the Board of Supervisors of Fairfax County, Virginia: that Part of the Plat of White Spruce Way, recorded in Deed Book 16772 at Page 1059, on which is shown White Spruce Way, from Silverbrook Road, to Mountain Larkspur Drive, a distance of 169.35 feet, located on Tax Map 107-1, and described and shown on the metes and bounds schedule and plat prepared by Walter Phillips, Incorporated, dated August 4, 2020, and attached hereto and incorporated herein, be and the same is hereby vacated, pursuant to Virginia Code Ann. §15.2-2272(2).

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

§15.2-2272(2)

Description of a portion of White Spruce Way, a dedicated public street as recorded in Deed Book 16772 at Page 1059, proposed to be vacated, Mount Vernon District, Fairfax County, Virginia:

"Beginning at a point in the west right-of-way line of Silverbrook Road – Route 600, as widened in Deed Book 16772 at Page 1059, said point being the southeast corner of Parcel E, Phase I, Spring Hill Senior Campus as recorded in Deed Book 16822 at Page 1709; thence with the west right-of-way line of Silverbrook Road – Route 600 and continuing with the right-of-way line of White Spruce Way, 4.40 feet with the arc of a curve bearing to the left having a radius of 857.00 feet (tangent length 2.20 feet, chord length 4.40 feet, chord bearing S 44° 48' 49" E); thence 68.62 feet with the arc of a curve bearing to the right and having a radius of 40.00 feet (tangent length 46.25 feet, chord length 60.51 feet, chord bearing S 04°11'12" W) to the True Point of Beginning; thence through White Spruce Way, S 36° 39' 58" E, 56.00 feet to a point; thence the right-of-way line of White Spruce Way – Route 10402, a distance of 72.73 feet with the arc of a curve bearing to the right and having a radius of 563.00 feet (tangent length 36.42 feet, chord length 72.68 feet, chord bearing S 57° 02' 06" W) to a point; thence 28.72 feet with the arc of a curve bearing to the left and having a radius of 25.00 feet (tangent length 16.18 feet, chord length 27.16 feet, chord bearing S 27° 49' 44" W) to a point; thence 137.96 feet with the arc of a curve bearing to the right and having a radius of 55.00 feet (tangent length 167.84 feet, chord length 104.53 feet, chord bearing S 66° 46' 44" W) to a point; thence 17.28 feet with the arc of a curve bearing to the left and having a radius of 25.00 feet (tangent length 9.00 feet, chord length 16.94 feet, chord bearing N 61° 09' 52" W) to a point; thence N 80° 57' 53" W, 6.32 feet to a point; thence N 09° 02' 07" E, 84.00 feet to a point, said point being in the south line of Parcel E, Phase I, Spring Hill Senior Campus as recorded in Deed Book 16822 at Page 1709; thence continuing with the right-of-way line of White Spruce Way, S 80° 57' 53" E, 26.15 feet to a point; thence 13.98 feet with the arc of a curve bearing to the left and having a radius of 25.00 feet (tangent length 7.18 feet, chord length 13.80 feet, chord

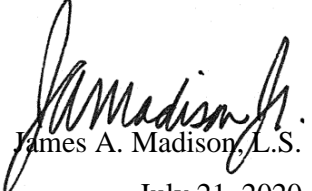


Description of a portion of White Spruce Way, a dedicated public street as recorded in Deed Book 16772 at Page 1059, proposed to be vacated, Mount Vernon District, Fairfax County, Virginia:

Page 2

bearing N 83° 01' 03" E) to a point; thence 120.92 feet with the arc of a curve bearing to the left and having a radius of 507.00 feet (tangent length 60.75 feet, chord length 120.64 feet, chord bearing N 60° 10' 00" E) to the True Point of Beginning and containing an area of 15,605 square feet, or 0.3582 acres, more or less."

This description does not constitute a vacation of the aforesaid property.


James A. Madison, L.S.
July 21, 2020



Description of a portion of White Spruce Way, a dedicated public street as recorded in Deed Book 16772 at Page 1059, proposed to be abandoned, Mount Vernon District, Fairfax County, Virginia:

"Beginning at a point at the intersection of the the west right-of-way line of Silverbrook Road – Route 600, as widened in Deed Book 16772 at Page 1059, with the north right-of-way line of White Spruce Way, a dedicated public street as recorded in Deed Book 16772 at Page 1059; thence 52.11 feet with the arc of a curve bearing to the left and having a radius of 850.69 feet, (tangent length 26.07 feet, chord length 52.11 feet, chord bearing S 46°42'43" E) to a point; thence S 48°27'16" E, 56.79 feet to a point; thence 25.40 feet with the arc of a curve bearing to the left and having a radius of 39.85 feet, (tangent length 13.15 feet, chord length 24.97 feet, chord bearing S 67°55'08" W) to a point; thence 108.86 feet with the arc of a curve bearing to the right and having a radius of 563.00 feet, (tangent length 54.60 feet, chord length 108.69 feet, chord bearing S 55°11'47" W) to a point; thence 28.72 feet with the arc of a curve bearing to the left and having a radius of 25.00 feet, (tangent length 16.18 feet, chord length 27.16 feet, chord bearing S 27°49'44" W) to a point; thence 137.96 feet with the arc of a curve bearing to the right and having a radius of 55.00 feet, (tangent length 167.84 feet, chord length 104.53 feet, chord bearing S 66°46'44" W) to a point; thence 17.28 feet with the arc of a curve bearing to the left and having a radius of 25.00 feet, (tangent length 9.00 feet, chord length 16.94 feet, chord bearing N 61°09'52" W) to a point; thence N 80°57'53" W, 6.32 feet to a point; thence N 09°02'07"E, 84.00 feet to a point; thence S 80°57'53" E, 26.15 feet to a point; thence 13.98 feet with the arc of a curve bearing to the left and having a radius of 25.00 feet, (tangent length 7.18 feet, chord length 13.80 feet, chord bearing N 83°01'03" E) to a point; thence 120.92 feet with the arc of a curve bearing to the left and having a radius of 507.00 feet, (tangent length 60.75 feet, chord length 120.64 feet, chord bearing N 60°10'00" E) to a point; thence 68.63 feet with the arc of a curve bearing to the left and having a radius of 40.00 feet, (tangent length 46.26 feet, chord length 60.52 feet, chord bearing N 04°10'56" E) the point of beginning and containing an area of 19,088 square feet or 0.4382 acres, more or less."

James A. Madison, L.S.

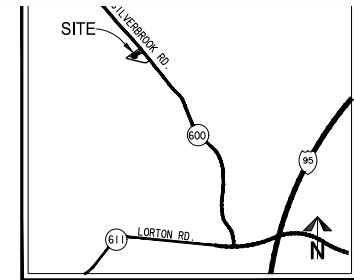
July 21, 2020

NOTES:

1. THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON TAX MAP 107-1 AND IS ZONED PDC.
2. THIS PROPERTY IS SUBJECT TO ALL DEDICATIONS, EASEMENTS, COVENANTS AND RESTRICTIONS EXISTING IN THE CHAIN OF TITLE.
3. ENGINEERING, GEOLOGY AND/OR SOILS REPORTS HAVE BEEN REVIEWED AND APPROVED BY THE DIRECTOR FOR THE PROPERTY DESCRIBED HEREIN AND ARE AVAILABLE FOR REVIEW IN THE LAND DEVELOPMENT SERVICES (LDS). SITE CONDITIONS ARE OF SUCH NATURE THAT LAND SLIPPAGE OR FOUNDATION PROBLEM POSSIBILITIES REQUIRED THE SUBMITTAL OF SOIL REPORTS. A COPY OF SOIL REPORT 1183-SR-035-1, APPROVED OCTOBER 10, 2019, IS AVAILABLE FROM LDS.
4. THIS PROPERTY IS SUBJECT TO PROFFERS AS SET FORTH IN REZONING CASE NUMBER RZ 2012-MV-008 APPROVED JANUARY 11, 2017.
5. THE PRIVATE STREET IN THIS DEVELOPMENT DOES NOT MEET THE STANDARDS NECESSARY FOR INCLUSION IN THE SYSTEM OF STATE HIGHWAYS AND WILL NOT BE MAINTAINED BY THE VIRGINIA DEPARTMENT OF TRANSPORTATION OR FAIRFAX COUNTY, AND ARE NOT ELIGIBLE FOR RURAL ADDITION FUNDS OR ANY OTHER FUNDS APPROPRIATED BY THE GENERAL ASSEMBLY OF VIRGINIA AND ALLOCATED BY THE COMMONWEALTH TRANSPORTATION BOARD.*
6. THERE ARE NO RPAS LOCATED ON THIS SITE PER CHESAPEAKE BAY PRESERVATION AREA MAP NUMBER 107-1 DATED AUGUST 1, 2005.
7. THIS PLAT IS BASED ON EXISTING RECORDS (DEED BOOK 16772 AT PAGE 1059). THE BOUNDARY OF THE LAND DELINEATED HEREON HAS A MATHEMATICAL CLOSURE THAT MEETS THE REQUIREMENT SET FORTH IN FAIRFAX COUNTY CODE 101-2-5.(C)(3).
8. ANY FUTURE EASEMENT OR AUTHORIZATION FOR ELECTRIC, CABLE, TELEPHONE OR GAS SERVICE TO BE FURNISHED TO THE PROPERTY MUST COMPLY WITH THE PROVISIONS OF VIRGINIA CODE 15.2-2241(6).
9. INDIVIDUAL PARCELS SHALL BE DEVELOPED IN ACCORDANCE WITH THE APPROVED STORMWATER MANAGEMENT PLAN FOR THE SUBDIVISION.
10. THE PLAT OF THE PROPERTY SHOWN HEREON IS REFERENCED TO THE VIRGINIA COORDINATE SYSTEM OF 1983, [NAD 83(2011) (EPOCH:2010.0000)] AS COMPUTED FROM A FIELD RUN BOUNDARY AND HORIZONTAL CONTROL SURVEY THAT TIES THIS BOUNDARY TO NOAA/NGS MONUMENT PID NUMBER HV2419; SILVER RM 2. THE COMBINED FACTOR APPLIED TO THE FIELD DISTANCES TO DERIVE THE REFERENCED COORDINATES IS 0.99994373. THE FOOT DEFINITION USED FOR CONVERSION OF THE MONUMENT COORDINATES AND IN THE PERFORMANCE OF THIS SURVEY IS THE U.S. SURVEY FOOT.
11. THE PERIMETER OF THE LAND HEREON PLATTED WILL BE MONUMENTED USING IRON PIPE OR OTHER PERMANENT MARKERS.
12. THIS PLAT IS ASSOCIATED WITH PLAN NUMBER 1183-SP-026.

AREA TABULATION

WHITE SPRUCE WAY VACATION 15,605 SQ.FT. OR 0.3583 ACRES



VICINITY MAP SCALE: 1"=2000'

ADJOINING OWNERS:

PARCEL E: LORTON AL INVESTORS, LLC
DEED BOOK 24625 PAGE 1497

PARCEL H-4: LAUREL HILL RETAIL, INC.
DEED BOOK 25546 PAGE 1234

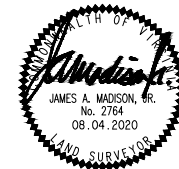
APPROVED COUNTY OF FAIRFAX	
<small>LAND DEVELOPMENT SERVICES ADDRESSING REVIEW</small>	
<small>BY</small>	<small>Addressing Reviewer</small>
<small>Date</small>	<small>Addressing Reviewer</small>
FINAL PLAT	
<small>RECOMMENDED FOR APPROVAL FAIRFAX COUNTY LAND DEVELOPMENT SERVICES</small>	
<small>ALL STREET LOCATIONS AND/OR EASEMENTS CONFORM TO THE REQUIREMENTS OF THIS OFFICE.</small>	
<small>THIS APPROVAL IS NOT A COMMITMENT TO PROVIDE PUBLIC SANITARY SEWER.</small>	
<small>BY</small>	<small>Director, Site Development and Inspection Division or Agent</small>
<small>Date</small>	<small>Director, Site Development and Inspection Division or Agent</small>
APPROVED FOR	
<small>BOARD OF SUPERVISORS FAIRFAX COUNTY, VIRGINIA</small>	
<small>BY</small>	<small>Director, Land Development Services or Agent</small>
<small>Date</small>	<small>Director, Land Development Services or Agent</small>
<small>APPROVAL VOID IF PLAT IS NOT OFFERED FOR RECORD ON OR BEFORE _____</small>	

SURVEYOR'S CERTIFICATE

I, JAMES A. MADISON, JR., A DULY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT I HAVE CAREFULLY SURVEYED THE PROPERTY DELINEATED ON THIS PLAT OF SUBDIVISION, THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, THE PROPERTY IS IN THE NAME OF THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, AS RECORDED IN DEED BOOK 16772 AT PAGE 1059 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.

THIS PLAT IS REFERENCED TO THE VIRGINIA COORDINATE SYSTEM: VCS 1983 - NORTH ZONE.

GIVEN UNDER MY HAND THIS 4TH DAY OF AUGUST, 2020



WETLANDS PERMITS CERTIFICATION

I HEREBY CERTIFY THAT ALL WETLANDS PERMITS REQUIRED BY LAW WILL BE OBTAINED PRIOR TO COMMENCING WITH LAND DISTURBING ACTIVITIES.

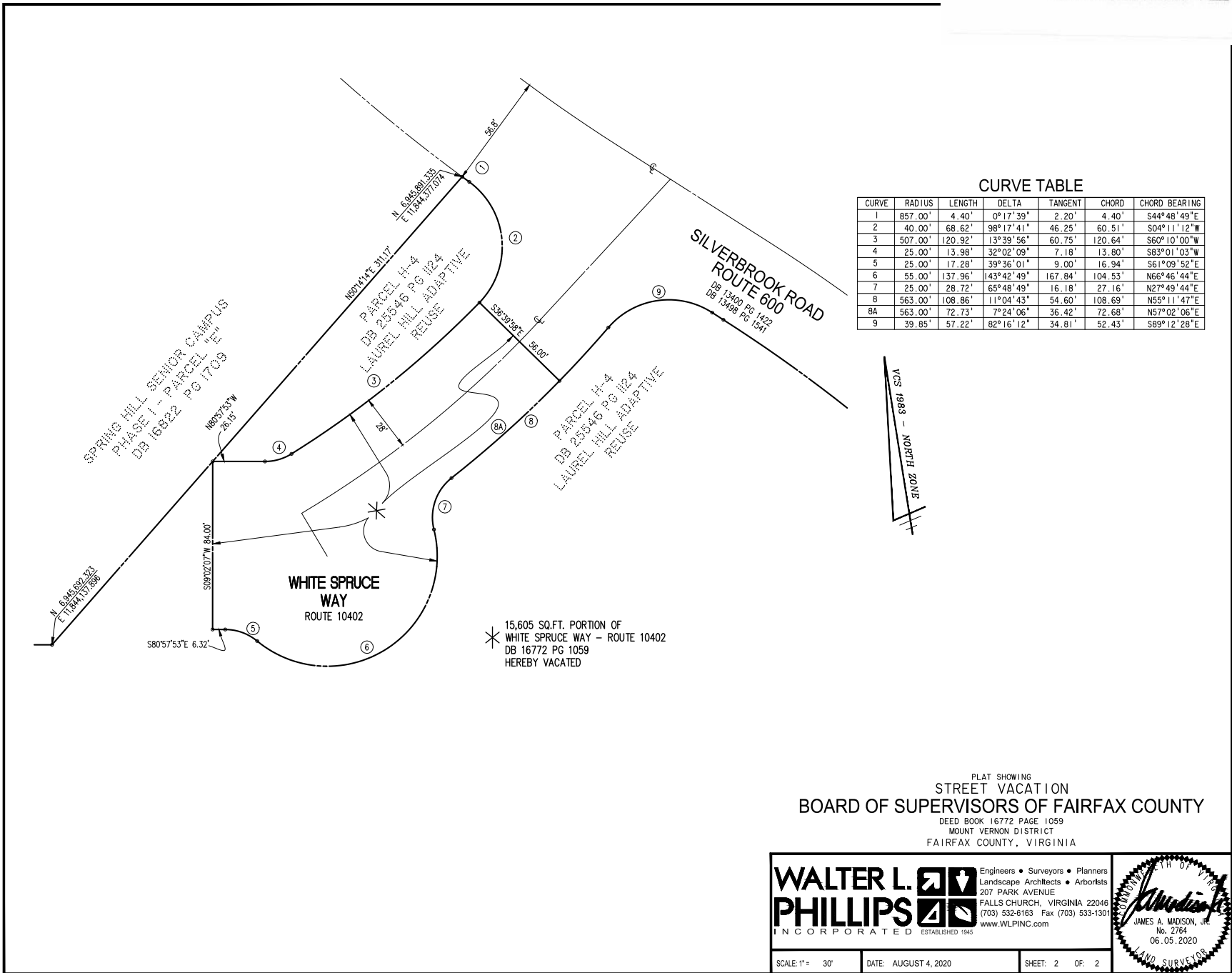
OWNER/DEVELOPER James K. Perry Vice-President Elm Creek Communications, Inc.

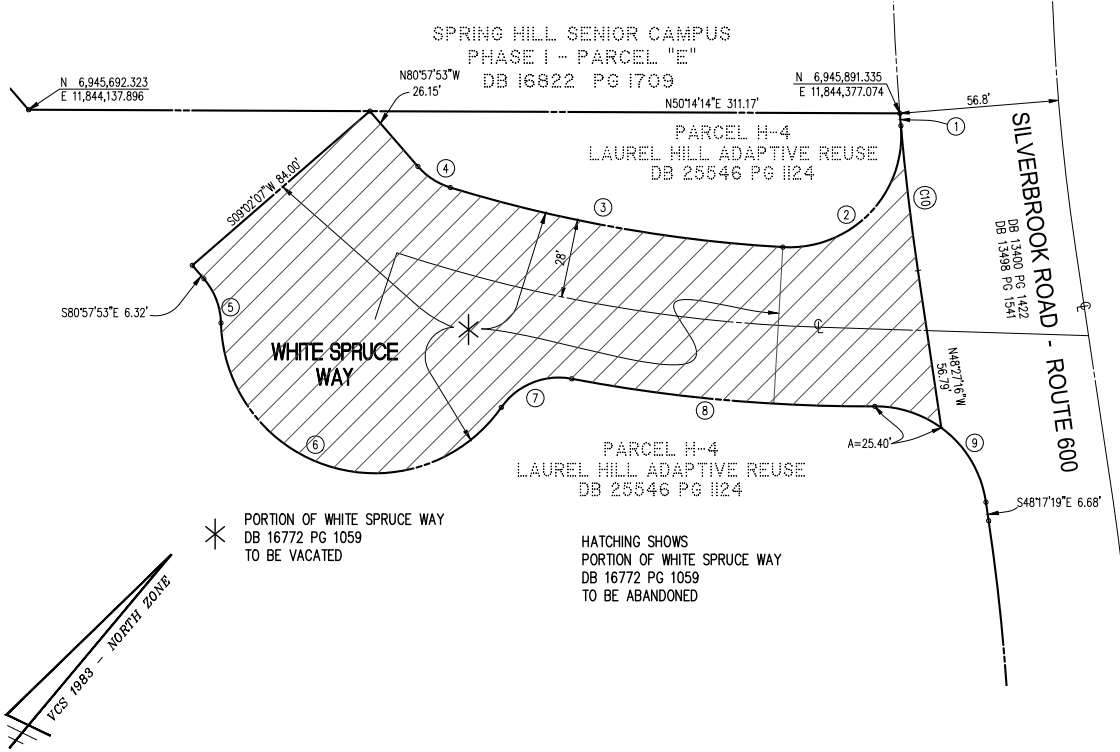
NOTE: PERMITS MUST BE PRESENTED TO THE COUNTY INSPECTOR PRIOR TO LAND DISTURBANCE.

PLAT SHOWING
STREET VACATION
BOARD OF SUPERVISORS OF FAIRFAX COUNTY
DEED BOOK 16772 PAGE 1059
MOUNT VERNON DISTRICT
FAIRFAX COUNTY, VIRGINIA

WALTER L. PHILLIPS <small>INCORPORATED ESTABLISHED 1945</small>		Engineers • Surveyors • Planners Landscape Architects • Arborists 207 PARK AVENUE FALLS CHURCH, VIRGINIA 22046 (703) 532-6163 Fax (703) 533-1301 www.WLPINC.com

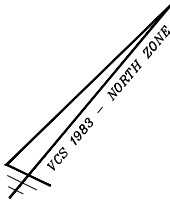
SCALE: 1"= 30' DATE: AUGUST 4, 2020 SHEET: 1 OF 2





PORTION OF WHITE SPRUCE WAY
DB 16772 PG 1059
TO BE VACATED

HATCHING SHOWS
PORTION OF WHITE SPRUCE WAY
DB 16772 PG 1059
TO BE ABANDONED

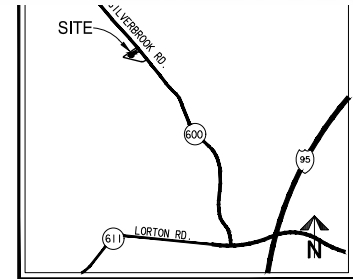


CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA	TANGENT	CHORD	CHORD BEARING
1	857.00'	4.40'	0°17'39"	2.20'	4.40'	S44°48'49"E
2	40.00'	68.62'	98°17'41"	46.25'	60.51'	S04°11'12"W
3	507.00'	120.92'	13°39'56"	60.75'	120.64'	S60°10'00"W
4	25.00'	13.98'	32°02'09"	7.18'	13.80'	S83°01'03"W
5	25.00'	17.28'	39°36'01"	9.00'	16.94'	S61°09'52"E
6	55.00'	137.96'	143°42'49"	167.84'	104.53'	N66°46'44"E
7	25.00'	29.72'	65°48'49"	16.18'	27.16'	N27°49'44"E
8	563.00'	108.86'	11°04'43"	54.60'	108.69'	N55°11'47"E
9	39.85'	57.22'	82°16'12"	34.81'	52.43'	S89°12'28"E

CURVE TABLE

NO.	RADIUS	LENGTH	DELTA	TANGENT	CHORD	CHORD BEARING
C10	856.83'	52.11'	03°29'05"	26.06'	52.10'	N46°42'44"W



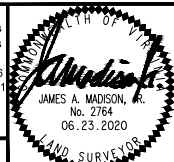
VICINITY MAP SCALE: 1"=2000'

NOTES:

1. THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON FAIRFAX COUNTY TAX MAP 107-1.
2. THIS PLAT IS BASED ON EXISTING RECORDS (DEED BOOK 16772 AT PAGE 1059).
3. THE PLAT OF THE PROPERTY SHOWN HEREON IS REFERENCED TO THE VIRGINIA COORDINATE SYSTEM OF 1983, [NAD 83(2011) (EPOCH:2010.0000)] AS COMPUTED FROM A FIELD RUN BOUNDARY AND HORIZONTAL CONTROL SURVEY THAT TIES THIS BOUNDARY TO NOAA/NGS MONUMENT PID NUMBER HV2419; SILVER RM 2. THE COMBINED FACTOR APPLIED TO THE FIELD DISTANCES TO DERIVE THE REFERENCED COORDINATES IS 0.99994373. THE FOOT DEFINITION USED FOR CONVERSION OF THE MONUMENT COORDINATES AND IN THE PERFORMANCE OF THIS SURVEY IS THE U.S. SURVEY FOOT.
4. THIS PLAT IS ASSOCIATED WITH FAIRFAX COUNTY PLAN NUMBER 1183-SP-026.

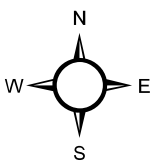
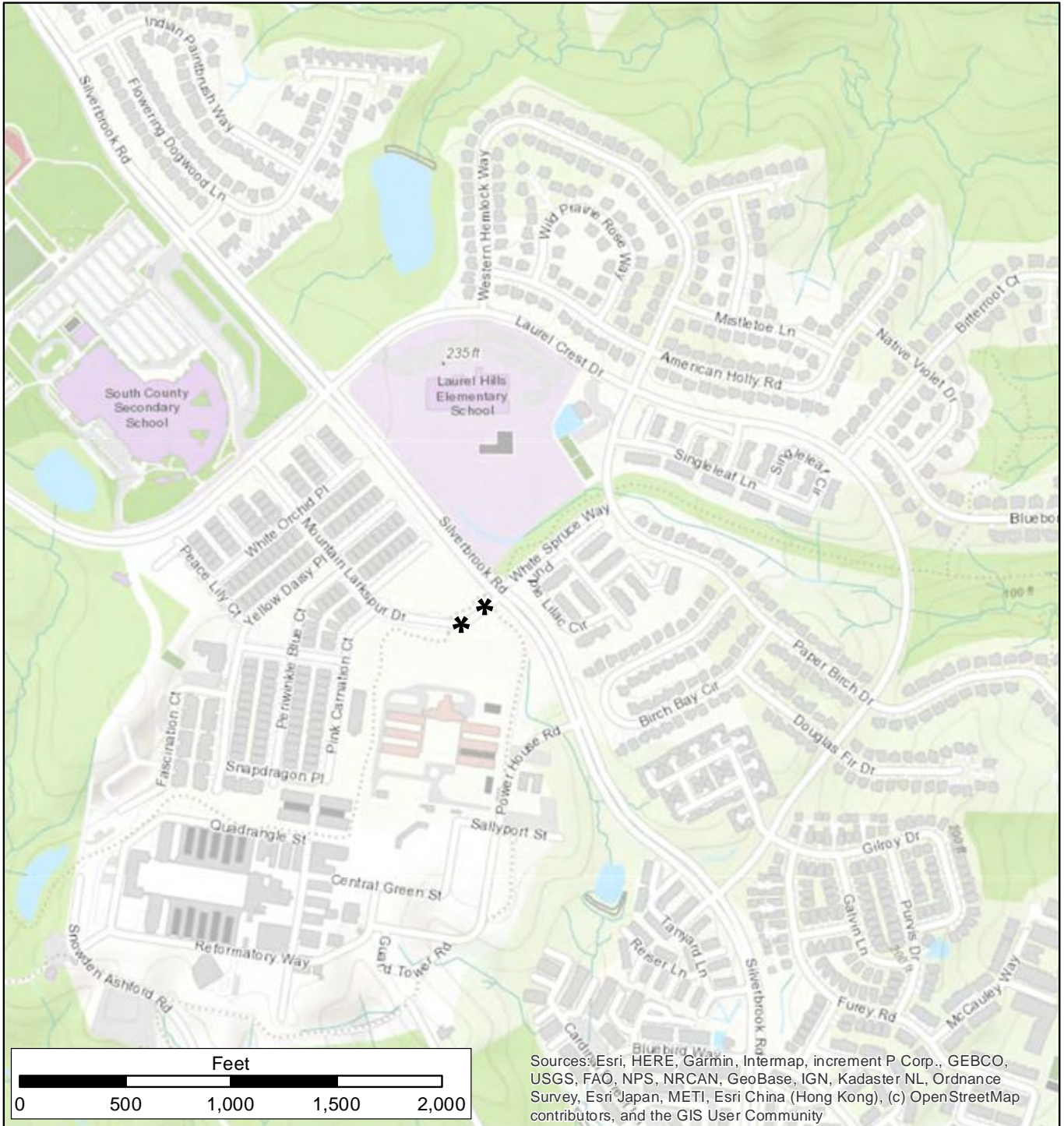
PLAT SHOWING
AREA OF ABANDONMENT
PROPERTY OF BOARD OF SUPERVISORS OF FAIRFAX COUNTY
KNOWN AS WHITE SPRUCE WAY
DEED BOOK 16772 PAGE 1059
MOUNT VERNON DISTRICT
FAIRFAX COUNTY, VIRGINIA

WALTER L. PHILLIPS INCORPORATED ESTABLISHED 1945
 Engineers • Surveyors • Planners
 Landscape Architects • Arborists
 207 PARK AVENUE
 FALLS CHURCH, VIRGINIA 22046
 (703) 532-6163 Fax (703) 533-1307
 www.WLPINC.com



SCALE: 1"= 30' DATE: JUNE 23, 2020 SHEET: 1 OF: 1

White Spruce Way Right-of-Way Vacation/Abandonment Mount Vernon District



Tax Map 107-1

* Symbol Denotes Area of Right-of-Way to be Vacated

Board Agenda Item
September 15, 2020

ADMINISTRATIVE - 11

Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance to Establish the Idylwood Community Parking District (Providence District)

ISSUE:

Board authorization to advertise a public hearing to consider a proposed amendment to Appendix M of *the Code of the County of Fairfax, Virginia* (Fairfax County Code), to establish the Idylwood Community Parking District (CPD).

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for October 6, 2020, at 3:30 p.m. to consider adoption of a Fairfax County Code amendment (Attachment I) to establish the Idylwood CPD.

TIMING:

The Board of Supervisors should take action on September 15, 2020, to provide sufficient time for advertisement of the public hearing on October 6, 2020, at 3:30 p.m.

BACKGROUND:

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

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

Board Agenda Item
September 15, 2020

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

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

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

FISCAL IMPACT:

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

ENCLOSED DOCUMENTS:

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

Attachment II: Area Map of Proposed Idylwood CPD

STAFF:

Rachel Flynn, Deputy County Executive

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

Gregg Steverson, Deputy Director, FCDOT

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

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Henri Stein McCartney, Sr. Transportation Planner, FCDOT

Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Patrick Foltz, Assistant County Attorney

PROPOSED CODE AMENDMENT
THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA
APPENDIX M

M-93 Idylwood Community Parking District

(a) *District Designation.*

- (1) The restricted parking area is designated as the Idylwood Community Parking District.
- (2) Blocks included in the Idylwood Community Parking District are described below:

Colonel Lindsay Court (Route 10027)
From Idylwood Road to the cul-de-sac inclusive.

Colonel Lindsay Drive (Route 10028)
From Colonel Lindsay Court to the end.

Idylwood Road (Route 695)
From the eastern boundary of Fairfax County Park Authority property, Ruckstuhl Park, to the western boundary of parcel 40-3 01 0125 (south side).

(b) *District Provisions.*

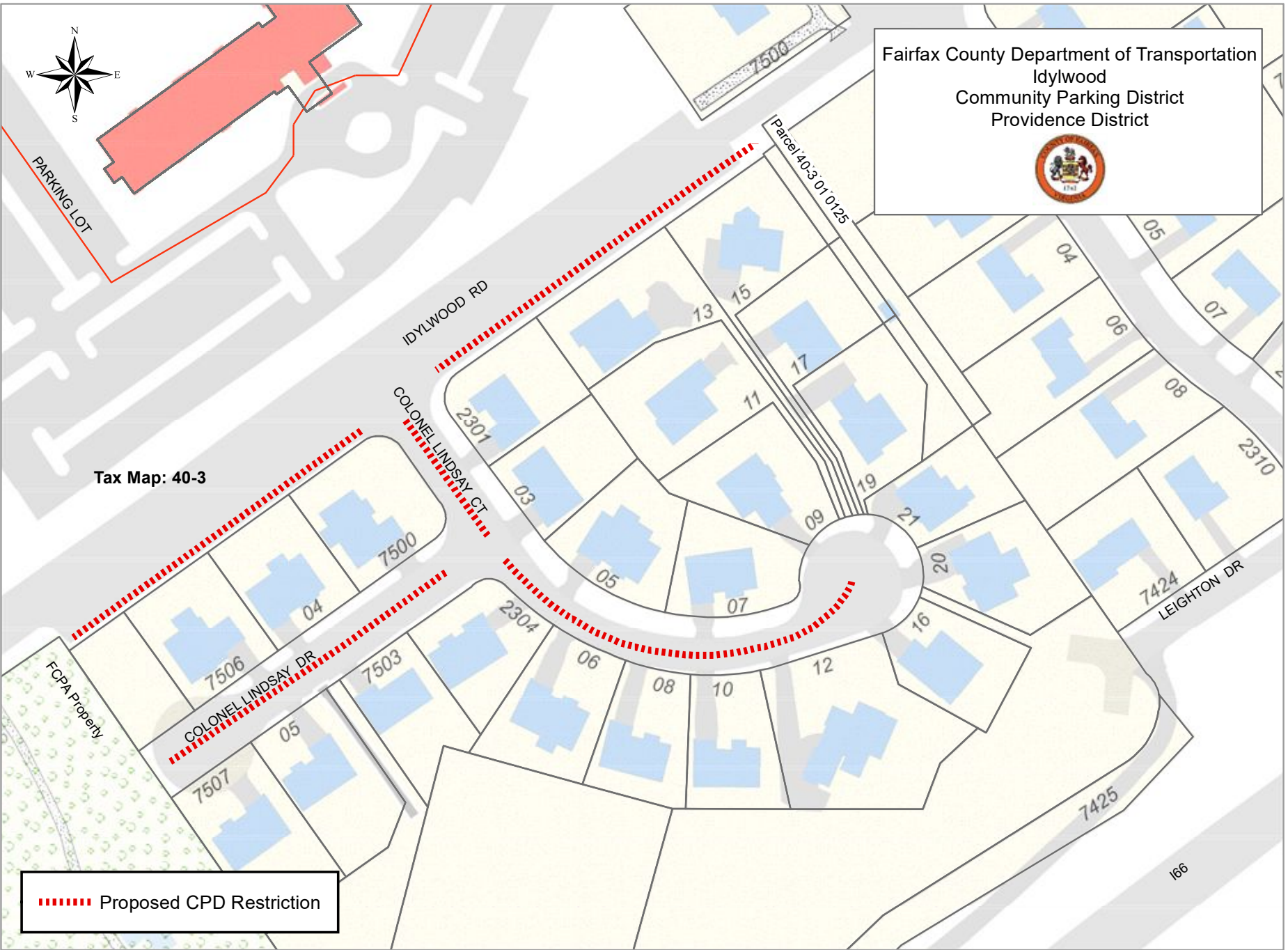
- (1) This District is established in accordance with and is subject to the provisions set forth in Article 5B of Chapter 82.
- (2) Parking of watercraft; boat trailers; motor homes; camping trailers; any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds except school buses used on a current and regular basis to transport students; any vehicle designed to transport 16 or more passengers including the driver, except school buses used on a current and regular basis to transport students; and any vehicle of any size that is being used in the transportation of hazardous materials as defined in Virginia Code § 46.2-341.4 is prohibited at all times on the above-described streets within the Idylwood Community Parking District.
- (3) No such Community Parking District shall apply to (i) any commercial vehicle when discharging passengers or when

temporarily parked pursuant to the performance of work or service at a particular location or (ii) utility generators located on trailers and being used to power network facilities during a loss of commercial power or (iii) restricted vehicles temporarily parked on a public street within any such District for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip or (iv) restricted vehicles that are temporarily parked on a public street within any such District for use by federal, state, or local public agencies to provide services.

- (c) *Signs.* Signs delineating the Idylwood Community Parking District shall indicate community specific identification and/or directional information in addition to the following:

NO PARKING
Watercraft
Trailers, Motor Homes
Vehicles \geq 3 Axles
Vehicles GVWR \geq 12,000 lbs.
Vehicles \geq 16 Passengers

FAIRFAX COUNTY CODE §82-5B



Board Agenda Item
September 15, 2020

ADMINISTRATIVE - 12

Authorization to Advertise a Public Hearing to Extend Parking Restrictions on Sullyfield Circle (Sully District)

ISSUE:

Board authorization to advertise a public hearing to consider a proposed amendment to Appendix R of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to extend parking restrictions on Sullyfield Circle in the Sully District.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for October 6, 2020, at 3:30 p.m. to consider adoption of an amendment (Attachment I) to Appendix R of the Fairfax County Code. The amendment will prohibit commercial vehicles, recreational vehicles and trailers as defined, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50) from parking on portions of Sullyfield Circle from 9:00 p.m. to 6:00 a.m., seven days per week.

TIMING:

The Board of Supervisors should act on September 15, 2020 to provide sufficient time for advertisement of the public hearing on October 6, 2020 at 3:30 p.m.

BACKGROUND:

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

A representative of the properties along Sullyfield Circle contacted the Sully District office seeking relief from the long-term parking that is occurring and impacting their businesses. They specifically requested that the existing parking restrictions posted on the inner circle of Sullyfield Circle prohibiting all commercial vehicles, recreational vehicles, and all trailers from 9:00 p.m. to 6:00 a.m., seven days per week, be extended to additional portions of the outer loop of Sullyfield Circle, as shown on the attached map (Attachment II).

Staff has viewed this area over a period of time in excess of 30 days and has observed long term parking of out-of-area large commercial vehicles, recreational vehicles and trailers.

Board Agenda Item
September 15, 2020

FISCAL IMPACT:

The cost of sign installation is estimated to be \$500. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

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

Attachment II: Area Map of Proposed Parking Restriction

STAFF:

Rachel Flynn, Deputy County Executive

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

Gregg Steverson, Deputy Director, FCDOT

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

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Henri Stein McCartney, Sr. Transportation Planner, FCDOT

Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Patrick Foltz, Assistant County Attorney

PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA
APPENDIX R

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

Sullyfield Circle (Route 7680).

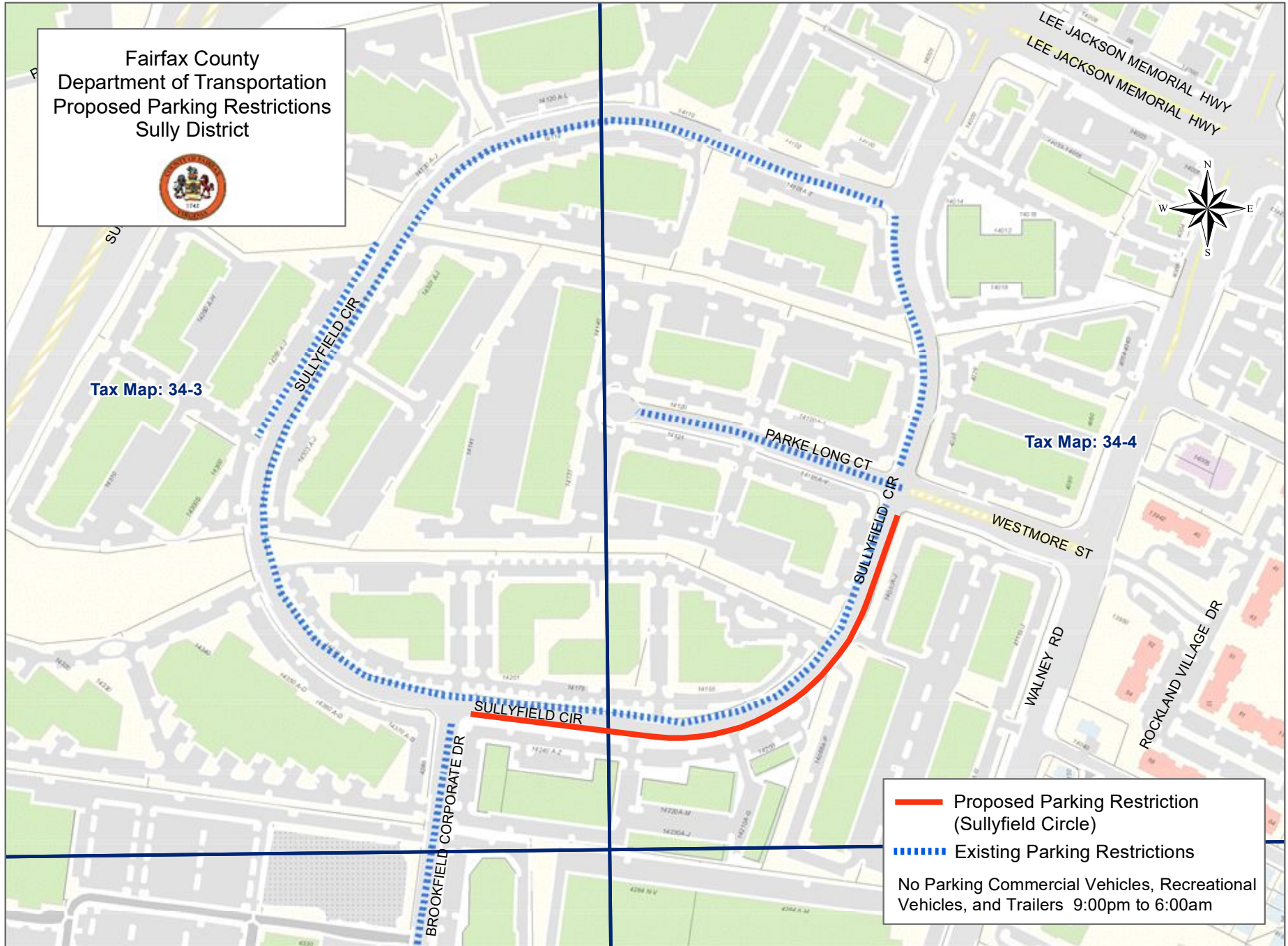
Commercial vehicles, recreational vehicles, and trailers as defined in ~~Fairfax County Code Chapter 82, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50)~~, shall be restricted from parking on the entire inner circle of Sullyfield Circle, and as well as the outer circle of Sullyfield Circle along the entire road frontage with 14280 Sullyfield Circle and from Brookfield Corporate Drive to Westmore Street, from 9:00 p.m. to 6:00 a.m., seven days per week.

Fairfax County
Department of Transportation
Proposed Parking Restrictions
Sully District



Tax Map: 34-3

Tax Map: 34-4



ADMINISTRATIVE - 13

Authorization to Advertise a Public Hearing for Interim Agreement with Alpine-X LLC for Fairfax Peak Development at I-95 Lorton Landfill (Mount Vernon District)

ISSUE:

Authorization from the Board of Supervisors (the Board) to advertise a public hearing for an Interim Agreement between the Board and Alpine-X LLC regarding the potential indoor ski facility and related development on the I-95 Lorton landfill, Fairfax County Tax Map 113-1 ((1)), Parcel 14 (the Site).

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of a public hearing for the Interim Agreement with Alpine-X LLC to occur on October 6, 2020.

TIMING:

Board action is requested on September 15, 2020, to provide sufficient notice for the public hearing to be held on October 6, 2020 at 3:30 p.m.

BACKGROUND:

On December 21, 2018, Alpine-X LLC (Developer) submitted an unsolicited proposal (Proposal) to the County for the redevelopment of portions of the Board-owned I-95 Lorton landfill, pursuant to the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 et seq., as amended (PPEA).

The Proposal named the project “Fairfax Peak” and generally envisions the construction of an indoor ski facility, hotel and commercial development, and other complimentary recreational facilities (Project), as listed below:

- Multiple ski slopes, inside a structure, at approximately a 20-degree angle, including a slope compliant with the Fédération Internationale de Ski’s standards, ensuring it can be used for competitions;
- A specially designed area for skiing and snowboarding with a variety of ramps, jumps, rails, boxes and other features, capable for use in national snowboarding and freestyle skiing competitions;

Board Agenda Item
September 15, 2020

- A bunny slope for beginners, snow tubing run and area for skiers and snowboarders to perform tricks;
- Restaurants, ski shop and dining terrace at the summit;
- A 100-plus room hotel at the base of the indoor snow facility;
- A gravity-powered, mountain coaster that will slide from the summit to Occoquan Regional Park; and,
- A ropes course and other outdoor activity areas.

The proposal also envisions other amenities that could be added in the future, including a water park, a “gravity ropes course” and passive recreation areas. Additional detail on the Project scope can be found online (Attachment 1).

In May 2019, the County accepted the Proposal for review and, pursuant to the PPEA, issued a “Request for Competing Proposals” (RCP). The RCP sought competing proposals for the development of recreational uses on portions of the Property. The County did not receive any responses to the RCP that were determined as responsive.

Due to the complexity of the Project, the Developer needs to perform feasibility and other studies to confirm the construction viability of the Project. To that end, the County approved a Right of Entry Agreement on May 11, 2020 (“ROE”) to permit the Developer and its contractors to enter onto portions of the Property and to perform limited initial due diligence work on the site through December 31, 2020.

The proposed Interim Agreement (Attachment 2) establishes certain additional terms to allow the Developer to advance its due diligence for the Project. Those include:

- Extends the term of the ROE until December 31, 2021.
- Confirms the potential area of study for the Project as a portion of Fairfax County Tax Map 113-1 ((1)), Parcel 14 (Attachment 3);
 - The Agreement also allows – upon mutual agreement of the County and the Developer – to expand the study area to the remainder of Parcel 14 as well as the adjacent Parcel 15.
- Provides an exclusive negotiation period in which the County agrees to not convey nor lease any portion of the Project Area to a third party before December 31, 2021;
 - The County and the Developer may mutually agree to extend the exclusive period, as well as the ROE term, for up to one year, through December 31, 2022.
 - The Developer also acknowledges the County is considering the use of land adjacent to the Project for a solar power generation facility.

Board Agenda Item
September 15, 2020

Future development of the project will be contingent on the Developer successfully achieving future regulatory review and permission for the Project, which will include any required land use entitlements and state regulatory requirements, which are not included in the scope of the proposed Interim Agreement and no rights to apply for these are granted to the Developer at this time under the Interim Agreement.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – Alpine-X Unsolicited PPEA Proposal can be found online at:

<https://www.fairfaxcounty.gov/procurement/ppea/fairfaxpeak/alpinexproposal>

Attachment 2 – Interim Agreement between Board of Supervisors and Alpine-X LLC

Attachment 3 – Extent of Area within the Interim Agreement

STAFF:

Rachel Flynn, Deputy County Executive

Randy Bartlett, Director, Dept. of Public Works and Environmental Services (DPWES)

Rebecca Moudry, Director, Department of Economic Initiatives

John Kellas, Deputy Director, Solid Waste Management, DPWES

Eric Forbes, Division Director, Solid Waste Compliance, DPWES

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

Chase Suddith, Management Analyst, Department of Economic Initiatives

ASSIGNED COUNSEL:

Cynthia Bailey, Deputy County Attorney

Ryan Wolf, Assistant County Attorney

INTERIM AGREEMENT

THIS **INTERIM AGREEMENT** (“Agreement”) is made this ___ day of November, 2020 (“Effective Date”), by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“County”), and **ALPINE-X LLC**, a Virginia limited liability company (“Developer”; together with the County, the “Parties”).

RECITALS

- R-1. The County is the fee simple owner of an approximately 490-acre parcel of land located in Fairfax County, Virginia, having Fairfax County Tax Map # 113-1 ((1)), parcel 14 and further described on Exhibit A (“Parcel 14”) and an adjacent, approximately 418-acre parcel of land located in Fairfax County, Virginia, having Fairfax County Tax Map # 113-1 ((1)), parcel 15 and further described on Exhibit B (“Parcel 15”; together with Parcel 14, the “Property”).
- R-2. The County acquired the Property, together with other property, from the federal government, acting through the General Services Administration (“GSA”) pursuant to that certain Quitclaim Deed dated July 11, 2002, and recorded among the Fairfax County land records in Deed Book 13112, at Page 2169 (the “GSA Master Deed”).
- R-3. The County currently uses Parcel 14 as the I-95 Landfill Complex and has ground leased the majority of Parcel 15 to the Northern Virginia Regional Park Authority (“NVRPA”) for use as a regional park, pursuant to that certain Deed of Ground Lease, dated December 22, 2010 and recorded among the Fairfax County land records in Deed Book 21521 at Page 1147 (as such lease may be amended from time to time, the “NVRPA Lease”).
- R-4. On December 21, 2018, Developer submitted an unsolicited proposal to the County for the redevelopment of portions of the Property (the “Proposal”), pursuant to the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 et seq., as amended (“PPEA”). The Proposal preliminarily named the project “Fairfax Peak” and generally envisioned the construction of an indoor ski facility and related hotel and commercial space, as well as other recreational facilities, such as a wave pool, a ropes course, and zip lines (collectively, the “Project”).
- R-5. In May of 2019, the County formally accepted the Proposal for review. Pursuant to the PPEA, the County then issued a “Request for Competing Proposals” also in May of 2019 (the “RCP”). The RCP sought competing proposals for the development of recreational uses on portions of the Property. The County did not receive any responsive responses to the RCP.
- R-6. The Parties entered into that certain Right of Entry Agreement on May 11, 2020 (“ROE”) to permit the Developer and its contractors to enter onto portions of the Property and to perform certain initial due diligence work on the site.

R-7. The Parties desire to enter into this Agreement to initiate certain additional actions, set forth below, in furtherance of the Proposal and the Project and the negotiations conducted to date. In recognition of the complexity of the Proposal and the Project, the Parties wish to begin these efforts prior to entering into a final Comprehensive Agreement pursuant to the PPEA.

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

Section 1: Property & Project Area.

- A. Project Area. The development area for the Project will be limited to those portions of the Parcel 14 as described on Exhibit C (the “Project Area”). The Parties may agree in writing to expand the Project Area to the remainder of Parcel 14 and/or – with the consent of NVRPA, to the extent required by the NVRPA Lease – some or all of Parcel 15.
- B. Solar Project. The Developer acknowledges that the County is considering the possibility of developing land adjacent to the Project Area (and/or potentially portions of the Project Area) as a solar power generation facility (the “Solar Project”), as further described in the Landfill Solar Feasibility Memo from HDR Engineering, Inc., dated July 3, 2019 (the “Solar Memo”), and that Developer has received a copy of the Solar Memo from the County. In designing the Project, the Developer will not seek any easements or other rights through the Solar Project area, except as may be specifically approved by the County in writing. In designing the Solar Project, the County reserves the right to locate the Solar Project and/or easements or other rights supporting the Solar Project through the Project Area. The County will provide regular updates on the Solar Project to the Developer and promptly notify the Developer of any potential encroachments of the Solar Project onto the Project Area.
- C. NVRPA Lease. The County has leased a portion of Parcel 15 to NVRPA pursuant to the NVRPA Lease. Developer acknowledges that it has received a copy of the NVRPA Lease and that, except for certain limited development rights retained by the County, it will need to obtain NVRPA’s approval for any portion of the Project to be located on land subject to the NVRPA Lease. The Parties agree to coordinate on outreach to NVRPA regarding the Project.
- D. DEQ Coordination. Developer acknowledges that the Project will require the Virginia Department of Environmental Quality (“DEQ”) to approve a “Major Permit Modification” for the Property. The Parties agree to coordinate on outreach to DEQ regarding the Project.
- E. GSA Master Deed. Developer acknowledges that the Property is subject to the GSA Master Deed. The Parties agree to coordinate on outreach to the applicable entities regarding the Project as may be required by the GSA Master Deed.

Section 2: Exclusive Negotiation Period.

- A. No County Transfer. Except as permitted in Section 2(A)(i) below, the County will neither convey or lease nor agree to convey or lease any portion of the Project Area to a third party before December 31, 2021 (the “Outside Date”), without the prior written consent of the Developer.
- i. Notwithstanding Section 2(A), the County may (a) convey such interests in the Project Area as are reasonably necessary in connection with the Solar Project, as discussed in Section 1(B) above, (b) so long as the term of such agreement is not extended past March 1, 2023, agree to allow the Northern Virginia Radio Control Club (the “Airplane Club”) the use of the runway, “pits area”, and parking area identified in that certain “Memorandum of Agreement-RC Model Aircraft Use at the I-95 Sanitary Landfill”, dated February 23, 2015 (collectively, the “Airplane Area”) for radio controlled airplane uses, and (c) convey such interests in the Project Area as may be reasonably necessary in connection with the operation of the landfill.
 - ii. The County and the Developer may mutually agree to extend the Outside Date for up to one year (i.e., up to December 31, 2022), neither party being under any obligation to do so.
- B. Exclusive Negotiation Period. The County will not negotiate with any third party regarding the development of the Project Area until December 31, 2021. For purposes of this Section 2(B), “the County” means each of Scott Sizer, P3 / Joint-Ventures Policy Coordinator, Office of Economic Initiatives; John Kellas, Deputy Director of Solid Waste Management, Department of Public Works and Environmental Services; and Jose Comayagua, Director, Department of Facilities Management.
- C. The Parties intend to negotiate in good faith to reach subsequent agreements regarding the actual development of the Property. Neither the County nor the Developer, however, is under no obligation to enter into any subsequent agreement. It is anticipated that further development of the Project will involve at least two separate additional agreements. The first agreement, which is anticipated to be an amendment to this Agreement (“Second Interim Agreement”), will address the pursuit of the land use actions for the Project. While land use approvals are pursued under the terms of the Second Interim Agreement, the Parties will negotiate in good faith to reach a Comprehensive Agreement for the actual physical implementation of the redevelopment. The Second Interim Agreement and the Comprehensive Agreement (which may consist of one or more contracts) will be presented to the Board of Supervisors for approval in accordance with the provisions of the PPEA.

Section 3: Developer Diligence Work in Project Area.

- A. ROE. The ROE is attached to this Agreement as Exhibit D and remains in full force and effect in accordance with its terms, except (i) that its term shall be extended to the

Outside Date (as may be extended pursuant to Section 2(A)(ii)), and (ii) in accordance with Section 3(B) of this Agreement.

- B. Coordination with Airplane Club regarding Airplane Area. Notwithstanding anything in the ROE, the Developer will use reasonable efforts to avoid performing Feasibility Studies in the Airplane Area. If the Developer nonetheless determines that it must perform one or more of the Feasibility Studies in the portion of the Airplane Area that is within the Project Area, it will provide the County with at least seven (7) business days' advance notice. The Developer acknowledges that if Developer is required by the ROE to restore any portion of the Airplane Area that is within the Project Area to its pre-existing condition following a Feasibility Study, that the pre-existing condition of such area (e.g., runway) may be different than elsewhere on the Project Area site.

Section 4: Notice.

- A. Except as set forth in Paragraph 3 of the ROE, all notices, demands or other communications sent under this Agreement ("Notice") must be in writing. Notices must be given by (i) personal delivery or (ii) a nationally recognized, next-day courier service, addressed as follows:

If to the County:

Fairfax County Department of Public Works & Environmental Services
12000 Government Center Parkway, Suite 548
Fairfax, VA 22035
Attention: John Kellas, Director of Solid Waste & Recycling
john.kellas@fairfaxcounty.gov

With a copy to:

Fairfax County Facilities Management Department
12000 Government Center Parkway, Suite 424
Fairfax, VA 22035
Attention: Michael Lambert, Assistant Director
michael.lambert@fairfaxcounty.gov

and

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035
Attention: County Attorney
ryan.wolf@fairfaxcounty.gov

If to the Developer:

Niels ten Berge
1308 Vincent Place
McLean, VA 22101
Niels@alpine-X.com

and:

Brad Ryan
1308 Vincent Place
McLean, VA22101
Brad@alpine-X.com

With a copy to:

Cooley LLP
11951 Freedom Drive, Suite 1400
Reston, VA 20190
Attention: Mark C. Looney
mlooney@cooley.com

- B. A Notice given in accordance with this Agreement will be effective upon receipt or refusal by the Party to which it is given.
- C. For convenience, Notices may be sent via email; however, such email Notice will not be considered effective until the original Notice is received by the Party to which it is given pursuant to one of the delivery methods described in Section 11(a) above.
- D. Either Party may change its Notice address from time to time by informing the other Party in writing of such new address.

Section 5: Miscellaneous.

- A. Entire Agreement. This Agreement, together with its Recitals and the attached Exhibits, all of which are incorporated by reference, is the entire agreement between the Parties. The terms of this Agreement may be amended or modified only by a written instrument executed by the Parties.
- B. Severability. If any provision of this Agreement or its application to any party or circumstances is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, will not be affected, and each provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law.
- C. Applicable Law. This Agreement and any dispute, controversy, or proceeding arising out of or relating to this Agreement (whether in contract, tort, common or statutory law, equity

or otherwise) will be governed by Virginia law, without regard to conflict of law principles of Virginia or of any other jurisdiction that would result in the application of laws of any jurisdiction other than Virginia.

- D. Venue. All claims and litigation arising out of or related to this Agreement must be brought and resolved in the courts of the Commonwealth of Virginia located in the County of Fairfax, Virginia, or U.S. District Court for the Eastern District of Virginia, Alexandria Division.
- E. Assignability. The Developer does not have the right to assign this Agreement. An “assignment” for purposes of this Section 5(E) will include any change in the direct or indirect control of the Developer.
- F. Captions; Interpretation. The captions of this Agreement are for reference only and do not describe the intent of this Agreement or otherwise alter the terms of this Agreement. When a reference is made in this Agreement to an Article, a Section, or an Exhibit, such reference is to an Article of, a Section of, or an Exhibit to this Agreement. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” The definitions contained in this Agreement are applicable to the singular as well as to the plural forms of such terms and to the masculine, feminine, and non-genders of such terms. Whenever the context requires, any pronouns used in this Agreement include the corresponding masculine, feminine, or non-gender forms.
- G. No Partnership. Nothing contained in this Agreement will be construed to create a partnership or joint venture between the Parties or their successors or permitted assigns.
- H. Time of Essence. Time is of the essence with respect to the performance of the obligations of the Parties under this Agreement.
- I. Counterparts and Distribution. This Agreement may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.
- J. Waiver. No waiver of any breach of this Agreement will be deemed a waiver of any preceding or succeeding breach under this Agreement or any other agreement. No extension of time for the performance of any obligation or act will be deemed an extension of time for the performance of any other obligation or act.
- K. Business Days. If any date set forth in this Agreement for the performance of any obligations by the Parties or for the delivery of any instrument or notice falls on a Saturday, Sunday, Legal Holiday, or day in which Fairfax County governmental offices are closed, the compliance with such obligations or delivery will be deemed acceptable on the next business day following such Saturday, Sunday, Legal Holiday, or closing. The term “Legal

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

- L. Waiver of Jury Trial. The Parties each waive all rights to a trial by jury in any claim, action, proceeding or counterclaim arising out of or in any way connected with this Agreement.
- M. Disclosure of Materials and Studies. Unless approved in writing by the County, the Developer may not sell or give to any individual or organization (exempting the Developer’s consultants, partners, and agents involved in the Project and its design) any information, reports, or other materials given to, prepared or assembled by the Developer or its consultants under this Agreement or otherwise publicize Developer’s role and involvement with the Property. Any public announcement of the proposed Project must be fully coordinated with the County.
- N. Americans with Disabilities Act.
 - 1. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities, and services. Fairfax County government contractors, subcontractors, vendors, and suppliers are subject to this ADA policy. The Developer must make the same commitment and the Developer’s execution of this Agreement is an express acknowledgement of the Developer’s commitment and compliance with ADA.
 - 2. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Anyone requesting special accommodations should call the Department ADA representative at 703-324-3201 or TTY 1-800-828-1140. Please allow seven working days in advance of the event to make the necessary arrangements.
- O. Authorization to Conduct Business in the Commonwealth. In accordance with mandatory County policy, the Developer shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. The Developer shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of this Agreement. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this Section.
- P. Drug Free Workplace. During the performance of this Agreement, the Developer agrees to (i) provide a drug-free workplace for the Developer’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or

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

- Q. Immigration Reform and Control Act. The Developer agrees that it does not, and shall not during the performance of this Agreement in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
- R. Survival. All representations, warranties, and indemnities contained in this Agreement or in any instrument, document, or agreement delivered pursuant to this Agreement will survive termination of this Agreement unless otherwise provided herein.

Signatures appear on the following page.

[Signature Page to Interim Agreement – Fairfax Peak]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

COUNTY:

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

By: _____
Name:
Title:

DEVELOPER:

ALPINE-X LLC,
a Virginia limited liability company

By: _____
Name:
Title:

EXHIBIT A – PARCEL 14

Please see the attached document.



GENERAL CIVIL
 TRANSPORTATION
 ENVIRONMENTAL
 GEOGRAPHIC SCIENCES

January 10, 2002

**METES AND BOUNDS DESCRIPTION OF
 PARCEL "H"
 LORTON CORRECTIONAL COMPLEXES (LCC)
 PLAT OF DIVISION
 BASED ON THE BOUNDARY SURVEY PREPARED BY
 GREENHORNE & O'MARA, INC.
 MOUNT VERNON DISTRICT
 FAIRFAX COUNTY, VIRGINIA**

Beginning at a corner to the lands of George M. Neall II, Trustee ~ Deed Book 7139 at Page 1987, said point also being the northwest corner of Lot 27, Section 1, Shirley Acres ~ Deed Book 966 at Page 128, and a corner of Parcel "E" of the Plat of Division; thence departing said lands of George M. Neall II, Trustee, and said Parcel "E", and with said Shirley Acres, Section 1, and then with the lands of Edward Katz, Trustee, ~ Deed Book 7198 at Page 1068, and then with the lands of Furnace Associates, Inc. ~ Deed Book 4777 at Page 164,

South 03°09'19" East, a distance of 1899.18 feet (passing through a found concrete monument at 343.62 feet, through a found concrete monument at 693.62 feet, through a found concrete monument at 1099.25 feet, and through a found concrete monument at 1499.13 feet) to a point, said point being South 60°39'16" East, 2.00 feet from a twin Maple tree; thence continuing with said lands of Furnace Associates, Inc.

South 37°21'19" West, a distance of 2387.36 feet (passing through a set concrete monument at 600.00 feet, through a set concrete monument at 1195.74 feet, through a found concrete monument at 1242.11 feet, through a found concrete monument at 1422.24 feet, and through a found concrete monument at 1922.24 feet) to an iron pipe set, said pipe being a corner to Parcel "T" of the Plat of Division; thence departing the lands of Furnace Associates, Inc. and with the lands of said Parcel "T" the following thirty four (34) courses and distances:

North 55°56'38" West, a distance of 271.77 feet; thence
 South 37°54'47" West, a distance of 295.00 feet; thence
 North 52°30'56" West, a distance of 229.91 feet; thence
 South 88°23'40" West, a distance of 520.61 feet; thence
 South 24°59'42" West, a distance of 1418.18 feet; thence
 South 47°46'12" East, a distance of 480.18 feet; thence
 South 37°20'28" West, a distance of 42.32 feet; thence
 South 52°24'19" East, a distance of 57.08 feet; thence

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Parcel "H"
Lorton Correctional Complexes (LCC)
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North 37°51'08" East, a distance of 41.01 feet; thence
South 37°16'07" East, a distance of 28.10 feet; thence
South 20°08'55" West, a distance of 543.64 feet; thence
South 67°27'15" West, a distance of 533.64 feet; thence
North 50°35'38" West, a distance of 91.54 feet; thence
North 74°44'56" West, a distance of 545.00 feet; thence
South 84°42'12" West, a distance of 538.01 feet; thence
South 07°27'10" West, a distance of 256.37 feet; thence
North 79°31'19" West, a distance of 300.26 feet; thence
North 08°45'40" East, a distance of 166.22 feet; thence
South 80°24'03" West, a distance of 212.78 feet; thence
South 76°40'38" West, a distance of 54.54 feet; thence
South 67°24'52" West, a distance of 98.52 feet; thence
South 19°26'56" West, a distance of 45.63 feet; thence
South 62°32'56" West, a distance of 71.18 feet; thence
North 54°36'03" West, a distance of 139.55 feet; thence
South 85°11'41" West, a distance of 63.29 feet; thence
North 43°07'53" West, a distance of 357.74 feet; thence
North 14°48'40" West, a distance of 364.50 feet; thence
North 03°49'08" East, a distance of 539.91 feet; thence
North 12°05'16" East, a distance of 1020.06 feet; thence
North 19°46'56" East, a distance of 664.11 feet; thence
North 10°21'43" East, a distance of 221.13 feet; thence
North 05°08'31" West, a distance of 228.25 feet; thence
North 15°14'38" West, a distance of 607.84 feet; thence

North 22°24'06" East, a distance of 568.17 feet to an iron pipe set, said pipe being a corner to Parcel "G" of the Plat of Division; thence departing the lands of said Parcel "T" and with the lands of said Parcel "G" the following four (4) courses and distances:

North 00°29'44" West, a distance of 290.34 feet; thence
North 06°53'35" West, a distance of 261.70 feet; thence
North 55°15'02" East, a distance of 486.80 feet; thence

North 01°42'33" West, a distance of 445.36 feet to an iron pipe set, said pipe being a corner to Parcel "E" of the Plat of Division; thence departing the lands of said Parcel "G" and with the lands of said Parcel "E" the following three (3) courses:

South 89°16'28" East, a distance of 980.05 feet; thence
South 77°59'25" East, a distance of 1633.25 feet; thence

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Parcel "H"
Lorton Correctional Complexes (LCC)
January 10, 2002

North 59°16'42" East, a distance of 1291.92 feet to a point in the centerline of Furnace Road ~ Virginia State Route #611 ~ 30' prescriptive right-of-way, thence departing centerline of said Furnace Road and continuing with the lands of said Parcel "E",

North 80°18'59" East, a distance of 1122.32 feet to the Point of Beginning

Containing 512.6690 ACRES of land, more or less.

DMD/em

EXHIBIT B – PARCEL 15

Please see the attached document.



GENERAL CIVIL
 TRANSPORTATION
 ENVIRONMENTAL
 GEOGRAPHIC SCIENCES

January 10, 2002

**METES AND BOUNDS DESCRIPTION OF
 PARCEL "G"
 LORTON CORRECTIONAL COMPLEXES (LCC)
 PLAT OF DIVISION
 BASED ON THE BOUNDARY SURVEY PREPARED BY
 GREENHORNE & O'MARA, INC.
 MOUNT VERNON DISTRICT
 FAIRFAX COUNTY, VIRGINIA**

Beginning at a point in the centerline of Ox Road ~ Virginia State Route #123 ~ 30' prescriptive right-of-way, said point being a corner to the lands of Fairfax County Water Authority and Parcel "G" of the Plat of Division; thence departing the centerline of said Ox Road and the lands of said Fairfax County Water Authority and with the lands of said Parcel "G" the following two (2) courses:

South 77°50'42" East, a distance of 33.77 feet; thence

South 64°43'24" East, a distance of 923.51 feet to an iron pipe set, said pipe being a corner to Parcel "H" of the Plat of Division; thence departing said Parcel "G" and with the lands of said Parcel "H" the following thirty five (35) courses and distances:

South 22°24'06" West, a distance of 568.17 feet; thence
 South 15°14'38" East, a distance of 607.84 feet; thence
 South 05°08'31" East, a distance of 228.25 feet; thence
 South 10°21'43" West, a distance of 221.13 feet; thence
 South 19°46'56" West, a distance of 664.11 feet; thence
 South 12°05'16" West, a distance of 1020.06 feet; thence
 South 03°49'08" West, a distance of 539.91 feet; thence
 South 14°48'40" East, a distance of 364.50 feet; thence
 South 43°07'53" East, a distance of 357.74 feet; thence
 North 85°11'41" East, a distance of 63.29 feet; thence
 South 54°36'03" East, a distance of 139.55 feet; thence
 North 62°32'56" East, a distance of 71.18 feet; thence
 North 19°26'56" East, a distance of 45.63 feet; thence
 North 67°24'52" East, a distance of 98.52 feet; thence
 North 76°40'38" East, a distance of 54.54 feet; thence
 North 80°24'03" East, a distance of 212.78 feet; thence
 South 08°45'40" West, a distance of 166.22 feet; thence

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Parcel 'T'
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South 79°31'19" East, a distance of 300.26 feet; thence
North 07°27'10" East, a distance of 256.37 feet; thence
North 84°42'12" East, a distance of 538.01 feet; thence
South 74°44'56" East, a distance of 545.00 feet; thence
South 50°35'38" East, a distance of 91.54 feet; thence
North 67°27'15" East, a distance of 533.64 feet; thence
North 20°08'55" East, a distance of 543.64 feet; thence
North 37°16'07" West, a distance of 28.10 feet; thence
South 37°51'08" West, a distance of 41.01 feet; thence
North 52°24'19" West, a distance of 57.08 feet; thence
North 37°20'28" East, a distance of 42.32 feet; thence
North 47°46'12" West, a distance of 480.18 feet; thence
North 24°59'42" East, a distance of 1418.18 feet; thence
North 88°23'40" East, a distance of 520.61 feet; thence
South 52°30'56" East, a distance of 229.91 feet; thence
North 37°54'47" East, a distance of 295.00 feet; thence

South 55°56'38" East, a distance of 271.77 feet to an iron pipe set in the line of the lands of Furnace Associates, Inc. ~ Deed Book 4777 at Page 164; thence departing said Parcel "HP" and with the lands of said Furnace Road Associates,

South 37°21'19" West, a distance of 35.13 feet to a set concrete monument; thence continuing with said lands of Furnace Associates, Inc. the following two (2) courses and distances:

South 41°58'22" East, a distance of 443.56 feet; thence

South 42°25'22" East, a distance of 673.99 feet (passing 1.27 feet right of a found concrete monument at 299.87 feet, and through a set concrete monument at 650.00 feet) to a point in the centerline of Furnace Road ~ Virginia State Route #611 ~ variable width and prescriptive right-of-way; thence with the centerline of said Furnace Road the following five (5) courses and distances:

South 01°18'52" East, a distance of 105.29 feet; thence
South 05°01'05" East, a distance of 95.61 feet; thence
South 07°31'01" East, a distance of 100.92 feet; thence
South 12°48'08" East, a distance of 98.08 feet; thence

South 22°37'27" East, a distance of 66.96 feet to a point; thence departing the centerline of said Furnace Road, and with the lands of W. & N. Company ~ Deed Book 6404 at Page 331, and then with another parcel of the lands of W. & N. Company ~ Deed Book 6404 at Page 331,

Page 3
Parcel "T"
Lorton Correctional Complexes (LCC)
January 10, 2002

South 41°44'13" West, a distance of 950.11 feet (passing through a found iron pipe at 16.69 feet, and through a found concrete monument at 450.17 feet) to a point, said point being North 42°31'18" East, 0.26 feet from a found iron pipe; thence continuing with the lands of W. & N. Company, and then with another parcel of the lands of Furnace Associates, Inc. ~ Deed Book 5227 at Page 780,

South 82°20'26" East, a distance of 1123.85 feet (passing through a found concrete monument at 79.84 feet, through a found concrete monument at 500.01 feet, 0.22 feet left of a disturbed found concrete monument at 975.47 feet, and through a found concrete monument at 1100.46 feet) to a point in the centerline of the aforesaid Furnace Road; thence with the centerline of said Furnace Road the following eight (8) courses and distances:

South 27°39'53" East, a distance of 30.20 feet; thence
South 30°07'37" East, a distance of 329.82 feet; thence
South 31°46'16" East, a distance of 259.93 feet; thence
South 29°54'30" East, a distance of 83.90 feet; thence
South 23°59'33" East, a distance of 92.22 feet; thence
South 19°40'27" East, a distance of 91.41 feet; thence
South 16°27'08" East, a distance of 85.45 feet; thence

South 13°52'07" East, a distance of 37.20 feet to a point; thence departing the centerline of said Furnace Road, and with the lands of Colchester Land Company, L.L.C. ~ Deed Book 9445 at Page 109, the following twenty-one (21) courses and distances:

South 53°09'11" West, a distance of 3130.36 feet (passing through a found concrete monument at 21.29 feet, through a found concrete monument at 351.61 feet, through a found concrete monument at 745.88 feet, through a found concrete monument at 1107.55 feet, through a found concrete monument at 1515.88 feet, through a found concrete monument at 2000.95 feet, through a found concrete monument at 2516.05 feet, and through a found concrete monument at 3085.37 feet; thence

North 14°46'18" West, a distance of 183.98 feet; thence
North 27°03'12" West, a distance of 81.00 feet; thence
North 05°56'12" West, a distance of 82.17 feet; thence
North 61°47'22" West, a distance of 30.14 feet; thence
North 60°50'42" West, a distance of 192.62 feet; thence
North 76°29'42" West, a distance of 156.75 feet; thence
North 55°30'02" West, a distance of 84.25 feet; thence
North 65°47'22" West, a distance of 272.55 feet; thence
North 37°39'02" West, a distance of 203.48 feet; thence
North 81°58'02" West, a distance of 32.17 feet; thence
South 45°58'28" West, a distance of 91.19 feet; thence

Page 4
Parcel "P"
Lorton Correctional Complexes (LCC)
January 10, 2002

South 18°27'48" West, a distance of 135.13 feet; thence
South 67°16'38" West, a distance of 148.76 feet; thence
South 30°44'52" East, a distance of 428.59 feet; thence
South 65°03'12" East, a distance of 54.00 feet; thence
South 31°54'32" East, a distance of 206.66 feet (passing through a found concrete monument at
156.66 feet); thence
South 82°54'18" West, a distance of 64.78 feet; thence
South 29°00'18" West, a distance of 355.81 feet; thence
South 13°20'38" West, a distance of 167.10 feet; thence

South 46°50'32" East, a distance of 182.95 feet to a point on the shore line of the Occoquan River;
thence with the shore line of said Occoquan River the following thirty-four (34) courses and distances:

North 82°20'12" West, a distance of 230.20 feet; thence
North 68°37'22" West, a distance of 257.19 feet; thence
North 88°19'02" West, a distance of 187.17 feet; thence
North 75°52'52" West, a distance of 227.31 feet; thence
North 58°11'57" West, a distance of 276.78 feet; thence
North 41°22'51" West, a distance of 105.87 feet; thence
North 01°56'11" East, a distance of 211.90 feet; thence
North 00°21'53" East, a distance of 89.79 feet; thence
North 21°36'37" West, a distance of 306.42 feet; thence
North 06°31'39" East, a distance of 106.97 feet; thence
North 06°46'42" West, a distance of 194.29 feet; thence
North 15°38'46" West, a distance of 94.85 feet; thence
North 02°02'48" West, a distance of 214.07 feet; thence
North 31°12'18" West, a distance of 240.82 feet; thence
North 18°46'13" West, a distance of 92.58 feet; thence
North 29°19'35" West, a distance of 132.29 feet; thence
North 50°10'28" West, a distance of 124.39 feet; thence
North 24°50'24" West, a distance of 129.16 feet; thence
North 59°56'35" West, a distance of 86.38 feet; thence
North 28°31'35" West, a distance of 99.93 feet; thence
North 44°57'08" West, a distance of 114.06 feet; thence
North 46°54'20" West, a distance of 122.60 feet; thence
North 38°49'36" West, a distance of 460.53 feet; thence
North 27°20'38" West, a distance of 70.45 feet; thence
North 39°30'51" West, a distance of 132.59 feet; thence
North 38°32'03" West, a distance of 334.42 feet; thence
North 22°40'25" West, a distance of 166.84 feet; thence
North 41°56'50" West, a distance of 87.14 feet; thence
North 47°42'17" West, a distance of 58.00 feet; thence
North 47°00'18" West, a distance of 78.64 feet; thence

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Page 5
Parcel "P"
Lorton Correctional Complexes
January 10, 2002

North 52°12'39" West, a distance of 61.84 feet; thence
North 44°09'33" West, a distance of 243.03 feet; thence
North 52°25'52" West, a distance of 169.70 feet; thence

North 60°04'15" West, a distance of 123.27 feet to a point on the eastern right-of-way line of Ox Road ~ Virginia State Route #123 ~ variable right-of-way and prescriptive right-of-way; thence departing shoreline of said Occoquan River, and with eastern right-of-way line of said Ox Road the following six (6) courses and distances:

North 05°55'12" East, a distance of 144.04 feet; thence
North 23°00'49" East, a distance of 142.57 feet; thence
North 04°24'36" West, a distance of 153.14 feet; thence
North 02°39'12" West, a distance of 284.03 feet; thence
North 05°33'04" East, a distance of 239.80 feet; thence

North 01°27'04" West, a distance of 45.60 feet to a found concrete monument, said monument being a corner of the lands of Newton Asphalt Company Incorporated of Virginia ~ Deed Book 5431 at Page 1105; thence departing eastern right-of-way line of said Ox Road, and with lands of said Newton Asphalt Company Incorporated of Virginia and then with the lands of Virginia Public Service Company ~ Deed Book C-11 at Page 279,

North 24°15'38" East, a distance of 1959.29 feet (passing through a set concrete monument at 458.62 feet, through a found concrete monument at 958.55 feet, and through a found concrete monument at 1458.51 feet) to a found concrete monument; thence continuing with the lands of said Virginia Public Service Company,

North 65°07'31" West, a distance of 553.88 feet to a point in the centerline of the aforesaid Ox Road, said point also being a corner of the lands of Fairfax County Water Authority ~ Deed Book 10373 at Page 1122; thence departing said Virginia Public Service Company and with the centerline of said Ox Road and the lands of said Fairfax County Water Authority the following ten (10) courses and distances:

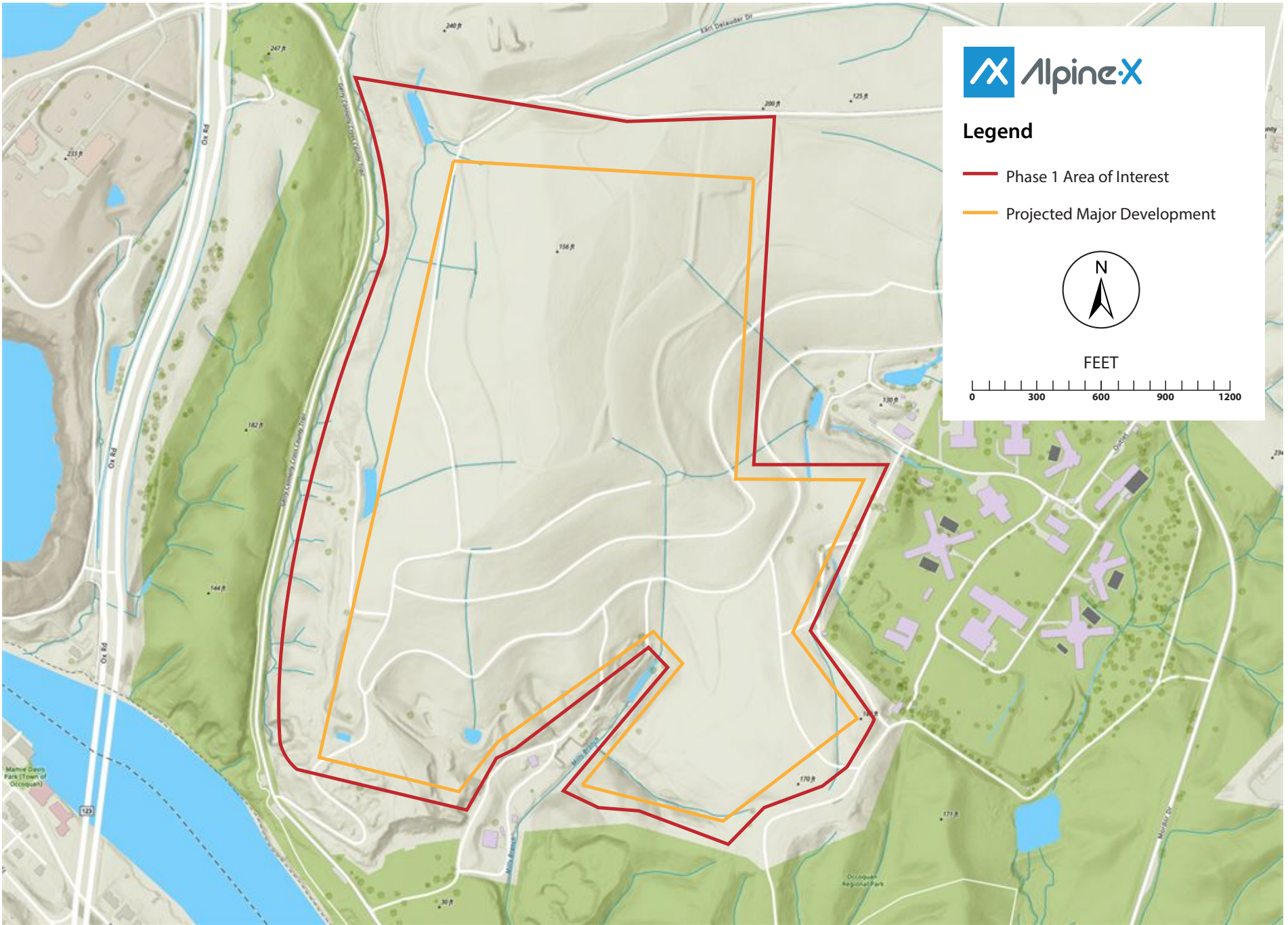
North 17°25'01" East, a distance of 135.23 feet; thence
North 08°58'36" East, a distance of 140.49 feet; thence
North 01°57'18" West, a distance of 94.46 feet; thence
North 05°25'49" West, a distance of 237.79 feet; thence
North 08°37'53" West, a distance of 66.29 feet; thence
North 18°54'17" West, a distance of 107.03 feet; thence
North 25°41'36" West, a distance of 84.80 feet; thence
North 20°25'45" West, a distance of 61.62 feet; thence
North 07°47'07" West, a distance of 51.65 feet; thence
North 06°41'12" East, a distance of 48.34 feet to the Point of Beginning

Containing 417.5254 ACRES of land, more or less.

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EXHIBIT C – PROJECT AREA

The “Project Area” is the area within the yellow boundary on the attached document.



Legend

- Phase 1 Area of Interest
- Projected Major Development



FEET

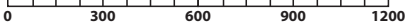


EXHIBIT D – RIGHT OF ENTRY AGREEMENT

Please see the attached document.

EFFECTIVE DATE: May 11, 2020

**FAIRFAX COUNTY
RIGHT OF ENTRY AGREEMENT**

RE: I-95 Landfill Complex, Lorton

THIS RIGHT OF ENTRY AGREEMENT (“Agreement”) by and between **THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA** (the “County”) and **ALPINE-X LLC** (the “Developer”).

RECITALS

WHEREAS, the County owns that certain parcel of real property having Fairfax County Tax Map Parcel Number 113-1 ((1)), Parcel 14 (“Parcel 14”); and

WHEREAS, Developer desires to enter that portion of Parcel 14 contained within the golden boundary line on graphic on the attached Exhibit A (such portion, the “Property”) for the purpose of performing certain Feasibility Studies (as defined below) in anticipation of negotiating an agreement with the County for the development of the Property pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002, Chapter 22.1 of Title 56 of the Virginia Code (“PPEA”).

NOW, THEREFORE, in consideration of the Recitals, which are incorporated into this Agreement by reference, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Right of Entry. Subject to the terms and conditions of this Agreement, starting on the Effective Date and continuing until the Expiration Date, the County grants the Developer and its employees, agents, contractors, and invitees (collectively, “Agents”) the right to enter the Property at any time during daylight hours Monday through Saturday for performing the tasks described on Exhibit B to this Agreement (the “Feasibility Studies”). For clarity, the Property includes only those portions of Parcel 14 within the golden boundary line on the graphic on Exhibit A; it does not include other areas within Parcel 14 that are outside the golden line on Exhibit A. Other than the Feasibility Studies, Developer shall make no other use of the Property and shall perform no other activities on the Property without the County’s prior written approval.

2. Expiration; Termination. This Agreement will automatically expire (without further action by the County) at 11:59 p.m. on December 31, 2020 (the “Expiration Date”). The County and the Developer may mutually agree in writing to extend the Expiration Date, but neither party is under any obligation to do so. Notwithstanding the foregoing, the County may revoke this Agreement

at any time by notice delivered to Developer at the address set forth in Section 11 of this Agreement.

3. Prerequisites to Entry. Before entering the Property for each component of the Feasibility Studies (whether conducted individually or collectively), Developer must:

a. Provide proof of insurance as required in Section 10 of this Agreement; and

b. Provide advance notice (via email to each of John Kellas (john.kellas@fairfaxcounty.gov), Eric Forbes (eric.forbes@fairfaxcounty.gov), and Robert Glenn (robert.glenn@fairfaxcounty.gov)) and receive the County's approval (by email from one of the three named recipients) to proceed, such approval not to be unreasonably withheld or delayed.

4. Performance of Feasibility Studies.

a. During initial clearing and grubbing, Developer and its Agents will identify all County monitoring wells, whether active or abandoned, that are located within the areas of actual work or investigation pursuant to the Feasibility Studies and surround them with orange construction fencing to prevent disturbance.

b. If, as a result of Developer's Feasibility Studies, subsurface trash or waste is disturbed or exposed, Developer will document, photograph, and locate via GPS each area of exposed trash, including the depth discovered and the surface area of the waste. The Developer will remove at its cost any such exposed or disturbed trash to an active portion of the landfill, if any, the adjacent resource recovery facility, or to another facility appropriate to receive the material(s). Developer and its Agents will use its best efforts to cap areas of exposed waste by the end of each working day with clay or synthetic material to seal the waste areas. The cap will comply with the Property's closure plan and applicable permits. When daily cap repair is not practically achievable, the Developer will provide a temporary cover of either 6" of dirt, a tarp or other approved material to minimize infiltration and prevent surface litter, provided that such temporary measure is replaced with a permanent cap within three (3) days. No stock piling of waste is authorized. Developer and its Agents must notify the County at the close of business of each working day of the discovery of any subsurface waste or trash disturbed or exposed by Developer or its Agents.

c. The Developer and its Agents will coordinate with the County to allow the County to arrange for site inspection during all work associated with the Feasibility Studies. The Developer and its Agents will, upon request, (i) allow the County and its designated consultant(s) (as identified by the County to the Developer) such access to the Feasibility Study work areas as the County or its consultant may deem necessary from time to time to monitor the work of the Feasibility Studies and (ii) provide the County's consultant with such information regarding the work of the Feasibility Studies as the consultant may reasonably require.

d. Developer and its Agents will coordinate with the County for any temporary modifications to the existing drainage systems if impacted by the Feasibility Studies. Developer

and/or its Agents will modify and connect any underground pipes that become exposed to daylight by new slopes to new project drainage features that meet County and DEQ requirements.

e. Encountering methane should be expected. When conducting the Feasibility Studies, Developer and its Agents will employ appropriate methane detection and mitigation measures at all times in accordance with industry standards for comparable studies or investigative work.

f. The County will provide Developer with a copy of the I-95 safety plan. Developer and its Agents must immediately stop work upon notification from County staff that work is being conducted in an unsafe manner and, in the view of the County, poses a risk to the Property and/or the surrounding area. In such event, Developer and its Agents may not resume work until County staff and the Developer agree upon modifications or measures intended to address the alleged deficiencies.

g. Developer and its Agents will comply with all applicable laws, ordinances and OSHA safety protocols related to construction-related activities while conducting the Feasibility Studies on the Property. Developer and its Agents will provide and adequately maintain any barricades, fences, signs, lanterns and other suitable devices as deemed necessary by OSHA guidelines for employee and public safety with respect to the Feasibility Studies performed under this Agreement.

h. During periods of actual work related to the Feasibility Studies, Developer and its Agents will maintain the security of each of its work sites on the Property to the reasonable satisfaction of the County for the purpose of limiting access to the Feasibility Study work areas to only Developer and its Agents. Developer and its Agents will each maintain all its work areas on the Property in a clean and presentable manner.

i. The County and the Developer may add to the scope of the Feasibility Studies by amending this Agreement (including Exhibits A and B) in writing, neither party being under any obligation to do so.

j. Notwithstanding anything in this Agreement to the contrary, Developer and its Agents will not dig or drill to, or otherwise disturb, existing subgrade or landfill base. If the depth of the subgrade and/or landfill base cannot be determined at given location, Developer and its Agents will not dig or drill in or otherwise disturb such location without the County's prior written approval.

5. Restoration. Except as provided in Section 4 above regarding the potential installation of new caps, Developer, at its own expense, will promptly restore, as near as reasonably possible, those portions of the Property disturbed by Developer and/or its Agents to their original condition(s) in accordance with the Property's closure plan and applicable permits. Developer and its Agents will coordinate with the County before commencing any such restoration work.

6. Hazardous Materials.

a. Developer acknowledges that the Property is the site of a closed landfill and may contain Hazardous Materials (as defined below). If Developer or its Agents discovers any Hazardous Materials on the Property that would not otherwise reasonably be expected to be discovered when conducting the Feasibility Studies on a closed landfill, such as evidence of potential chemical contamination or leak, it or they will immediately notify the County.

b. "Hazardous Materials" means (a) asbestos and any asbestos containing material and any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law (as defined below) or any other applicable law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (b) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (c) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be detrimental to the Property or hazardous to health or the environment.

i. "Environmental Law" means any present and future law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities applicable to the Property and relating to the environment and environmental conditions or to any Hazardous Material (including, without limitation, CERCLA, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 1101 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; and any so-called "Super Fund" or "Super Lien" law, any law requiring the filing of reports and notices relating to hazardous substances, environmental laws administered by the Environmental Protection Agency and any similar state and local Laws, all amendments thereto and all regulations, orders, decisions and decrees now or hereafter promulgated thereunder concerning the environment, industrial hygiene or public health or safety

7. Election Not to Proceed; Reports. In the event either the County or the Developer notifies the other of its intent not to proceed with execution of a Interim Agreement pursuant to the PPEA process, Developer must, promptly following such notice, deliver to the County or destroy all materials or reports in Developer's possession prepared or obtained through the Feasibility Studies and must deliver to the County a certified statement that all work that could give rise to a lien against the Property has been paid in full. Before any such notice, the County may request information and/or reports prepared or obtained through the Feasibility Studies as part of PPEA negotiations.

8. Equipment.

a. Developer and its Agents may store equipment on the Property during the term of this Agreement; provided, however, that Developer and its Agents shall be solely responsible for securing such equipment on the Property, and the County will not be liable for any theft or damage to any equipment stored by Developer on the Property.

b. At the expiration or termination of this Agreement, the Developer will remove all tools, equipment, and other personal property from the Property at its sole cost. This provision survives the expiration or earlier termination of this Agreement.

9. Indemnification. Developer will indemnify and hold harmless the County and its officials, officers, employees, and agents:

a. From and against any and all claims, demands, damages, suits, actions, proceedings, judgments, decrees, orders, fines, costs, and expenses (including reasonable attorney's fees) due to any damage to property, injury or death of any person, or otherwise as a result of the entry upon or activities within the Property by the Developer, its employees, Agents, or independent contractors occurring in connection with, or arising out of the performance of the work permitted by this Agreement; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of the County;

b. From all liabilities, remedial costs, environmental claims, fees, or other expenses directly related to, arising from, or attributable to (i) any Hazardous Materials introduced by the Developer on the Property or (ii) Developer's activities involving Hazardous Materials on the Property, to the extent that Developer is either negligent in such activities or in breach of the terms of this Agreement (e.g., failure to appropriately install a cap). The foregoing indemnity excludes any claims or liabilities caused by the gross negligence or willful misconduct of the County; and

c. From any claims by contractors or subcontractors who perform any activity on the Property; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of the County. This Agreement must not be construed as granting the Developer or any contractor of the Developer the right to place any lien, mechanic's lien, or any charge on the Property.

10. Insurance.

a. Developer and/or its Agents will obtain and maintain throughout the term of this Agreement the following types of insurance:

i. Statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$1,000,000 to protect from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.

ii. Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Developer, its Agents, and the interest of the County, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work.

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

b. The County and its officials, officers, employees, and agents will be named as “additional insured” on the General Liability and automobile policies.

c. Each of the insurance policies required by this Section 10 must be issued by companies licensed and authorized to do business in the Commonwealth of Virginia and having a Best’s Key Rating of at least A:VII.

d. For so long as this Agreement remains effective, Developer may not cancel, terminate or modify (except to increase the amount of coverage) the required insurance policies without providing thirty (30) days’ prior written notice from Developer to the County. If the required insurance policies should be canceled, terminated, or modified, so that the insurance is not in full force and effect, then the County may terminate this Agreement immediately, without prior notice or right to cure by the Developer

e. Evidence of the requisite insurance policies in the form of certificates of insurance must be submitted to the County before entry by Developer or its Agents onto the Property and from time to time at the County’s request. The insurance certificates must state that the coverage “is primary to all other coverage the County may possess.”

11. Notice.

a. Except as set forth in Paragraph 3 above, all notices, demands or other communications sent under this Agreement (“Notice”) must be in writing. Notices must be given by (i) personal delivery or (ii) a nationally recognized, next-day courier service, addressed as follows:

If to the County:

Fairfax County Department of Public Works & Environmental Services
12000 Government Center Parkway, Suite 548
Fairfax, VA 22035
Attention: John Kellas, Director of Solid Waste & Recycling
john.kellas@fairfaxcounty.gov

With a copy to:

Fairfax County Facilities Management Department
12000 Government Center Parkway, Suite 424
Fairfax, VA 22035
Attention: Michael Lambert, Assistant Director
michael.lambert@fairfaxcounty.gov

and

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035
Attention: County Attorney
ryan.wolf@fairfaxcounty.gov

If to the Developer:

Niels ten Berge
1308 Vincent Place
McLean, VA22101
Niels@alpine-X.com

and:

Brad Ryan
1308 Vincent Place
McLean, VA22101
Brad@alpine-X.com

With a copy to:

Cooley LLP
11951 Freedom Drive, Suite 1400
Reston, VA 20190
Attention: Mark C. Looney
mlooney@cooley.com

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

c. For convenience, Notices may be sent via email; however, such email Notice will not be considered effective until the original Notice is received by the party to which it is given pursuant to one of the delivery methods described in Section 11(a) above.

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

12. Miscellaneous.

a. Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia without regard to its conflict of laws statutes.

b. Survival. The obligations of Sections 4(b), 5, 8(b), and 9 will survive the expiration or other termination of this Agreement.

c. Waiver, Modification. Failure by either party to insist upon or enforce any of its rights hereto shall not constitute a waiver thereof, except where non-action is expressly described herein as such a waiver. This Agreement shall not be modified, amended, or altered except by a written agreement signed by the County and the Developer.

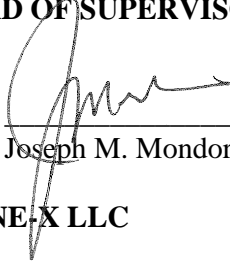
d. No Right, Title, or Interest. Nothing contained in this Agreement and no action or inaction by the County shall be deemed or construed to mean that the County has granted the Developer any right, power, or permission to do any act or make any agreement that may create, give rise to, or be the foundation for any right, title, interest, lien, or charge to the Property, including, but not limited to, the grant of an easement in the Property.

e. Time. With respect to all time periods contained in this Agreement, it is expressly understood that time is of the essence.

f. Appropriations. To the extent this Agreement is construed to impose any financial obligations upon the County, any such financial obligations shall be binding to the extent of appropriations by the Fairfax County Board of Supervisors.

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

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: 

Joseph M. Mondoro, Chief Financial Officer

ALPINE X LLC

By: _____
Niels ten Berge, Chief Executive Officer

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BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: _____
Joseph M. Mondoro, Chief Financial Officer

ALPINE-X LLC

By:  _____
Niels ten Berge, Chief Executive Officer

EXHIBIT A

DESCRIPTION OF PROPERTY

Please see attached graphic.

EXHIBIT B

SCOPE OF WORK

Please see attached document.



The current scope of the project is marked with the burgundy red line. The yellow area will be used for further exploration of the feasibility of building large construction on the landfill.

Expected Feasibility Surveys:

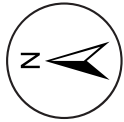
- ALTA (American Land Title Association) Survey
- UAV (unmanned aerial vehicle) topographical survey
- Ground Penetrating Radar (GPR) and Electrical Resistivity Testing
- Cone penetrometer test (CPT)
- Standard Penetration Testing
- Test pits (not expected)
- Geotechnical sampling of waste properties
- In-situ Permeability Testing and Evaluation (Pumping Tests)
- Soil/Groundwater/Surface Water/Leachate Sampling and Analysis
- Confirm access to utilities (grey water, water, heat, sewer, etc.)
- Groundwater and Seepage Analysis and Design
- Lateral Earth Pressure Estimates (Field Load Tests)
- Settlement Analyses and Monitoring
- Hydrologic Investigation and Analyses
- Erosion Inspections
- Hydraulic Analyses of Pipes, Channels, Ditches, etc.
- Phase 1 ESA (Environmental Site Assessments)



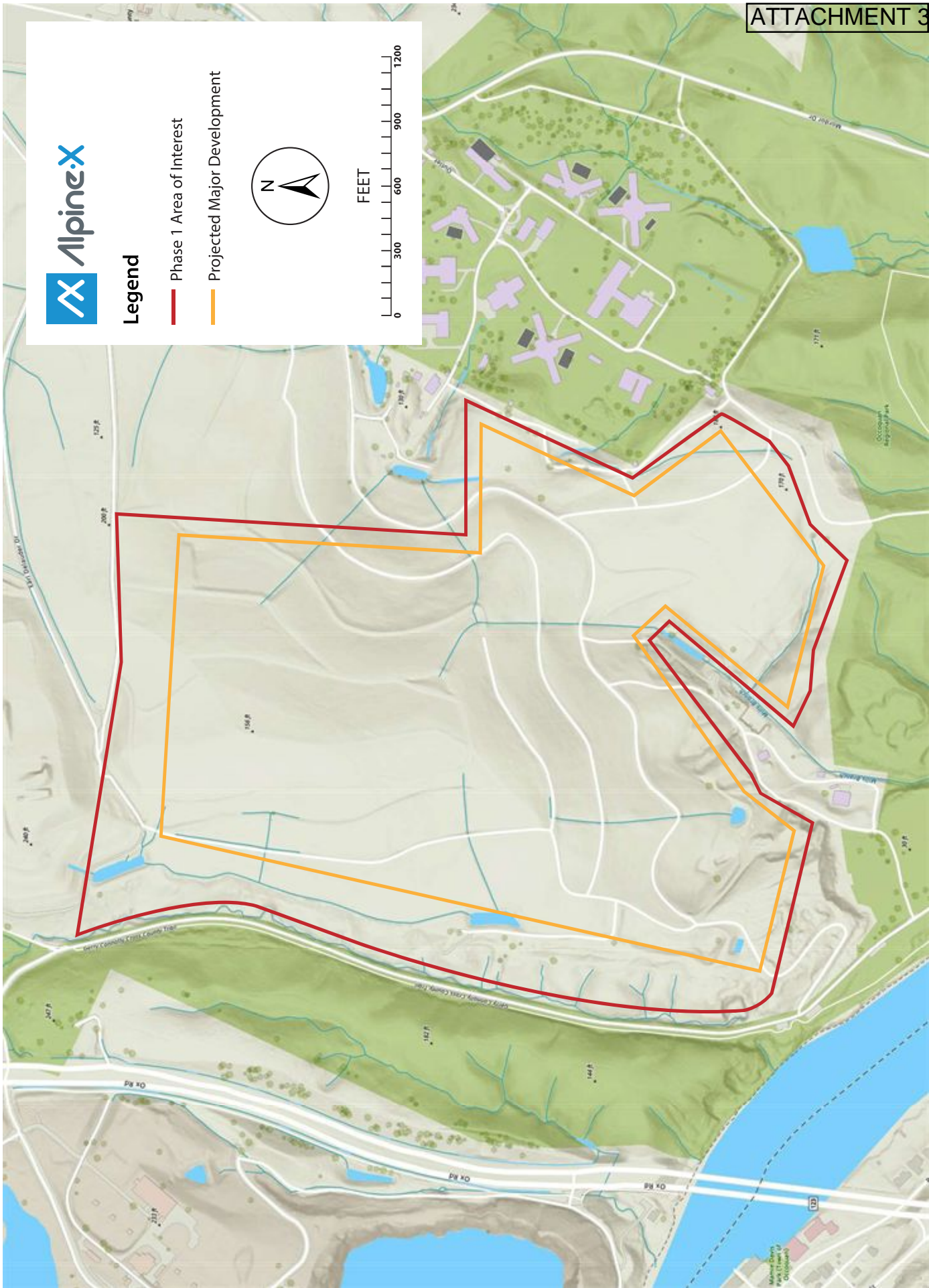
Legend

— Phase 1 Area of Interest

— Projected Major Development



FEET



ADMINISTRATIVE - 14

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

ISSUE:

Board of Supervisors' authorization to advertise a Public Hearing for the Enlargement and De-Creation of Small and Local Sanitary Districts for Refuse/Recycling and Vacuum Leaf Collection Services.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize advertisement of a public hearing at 4:00 p.m. on Tuesday, October 20, 2020, to consider the following change to small and local sanitary districts for refuse/recycling and/or leaf collection service in accordance with the Board of Supervisors' adopted criteria for the creation of Small or Local Sanitary Districts.

<u>Sanitary District</u>	<u>Action</u>	<u>Service</u>	<u>Recommendation</u>
Mason District (Falls Gate Area)	De-Create	Refuse, Recycling, & Vacuum Leaf	Approve
Small District 4 Within Mason District (6467 Overlook Drive)	Enlarge	Refuse, Recycling, & Vacuum Leaf	Approve

TIMING:

Board of Supervisors' authorization to advertise on September 15, 2020, is required for a Public Hearing to be held on October 20, 2020, at 4:00 p.m.

BACKGROUND:

The administrative responsibility for the Creation/Enlargement/De-Creation/Re-Creation of Small and Local Sanitary Districts in the County of Fairfax for refuse/recycling and/or

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

The submitted petitions have been reviewed, and it has been determined that the petitions meet the Board of Supervisors' Adopted Criteria. Staff recommends that both authorizations to advertise a public hearing for the enlargement and de-creation of small and/or local sanitary districts for refuse/recycling and/or leaf collection be approved. If approved, the modification will become permanent on January 1, 2021. The Falls Gate area owners will be provided a refund for the two years of service through the Department of Tax Administration.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1: Summary Sheet
Attachment 2: Data Sheet with Proposed Resolution and Map (Falls Gate Area)
Attachment 3: Data Sheet with Proposed Resolution and Map (6467 Overlook Drive)

STAFF:
Rachel Flynn, Deputy County Executive
Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)
John W. Kellas, Deputy Director, DPWES, Solid Waste Management Program

SUMMARY SHEET

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

1. De-Create Mason District for the purpose of discontinuing refuse/recycling and vacuum leaf Collection Services to Falls Gate Area.
2. Enlarge Small District 4 within Mason District for the purpose of providing refuse/recycling and vacuum leaf Collection Services to 6467 Overlook Drive.

DATA SHEET
De-Create
Mason District
Within the Mason District

Purpose: To discontinue County Refuse/Recycling and Vacuum Leaf Collection Service to the Falls Gate Area.

- Petition requesting service received March 25, 2020.
- Petition Area: 19 Properties.
- 17 Property Owners in favor.
- 0 property owners opposed.
- 2 Non-responsive / unable to contact.
- The owners will be provided a refund for the two years of service through the Department of Tax Administration.
- The Department of Public Works and Environmental Services recommends that the proposed action be approved effective January 1, 2021.

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

TO DE-CREATE
MASON DISTRICT
WITHIN MASON DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday the 15th day of September, 2020, it was proposed by said Board to adopt a resolution to de-create a district known as Mason District within Mason District to include Falls Gate area for the purpose of discontinuing refuse/recycling and vacuum leaf collection to be effective January 1, 2021, and the Clerk of said Board was directed to cause notice thereof by publication once a week for two consecutive weeks in a newspaper published in or having general circulation in said County, together with a notice that at a regular meeting of said Board to be held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

TUESDAY
OCTOBER 20, 2020
COMMENCING AT 4:00 P.M.

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

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

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

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

The de-creation of Mason District within Mason District to include Falls Gate area located in the County of Fairfax, Virginia, and as shown on the attached map.

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

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

Given under my hand this ____ day of September, 2020

Jill G. Cooper
Clerk for the Board

DATA SHEET
Enlarge
Small District 4
Within the Mason District

Purpose: To provide County Refuse/Recycling and Vacuum Leaf Collection Service to 6467 Overlook Drive.

- Petition requesting service received August 26, 2019.
- Petition Area: 1 Property.
- 1 Property Owners in favor.
- 0 property owners opposed.
- 0 Non-responsive / unable to contact.
- The Department of Public Works and Environmental Services can provide the requested service using existing equipment.
- The Department of Public Works and Environmental Services recommends that the proposed action be approved effective January 1, 2021.

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

TO ENLARGE
SMALL DISTRICT 4
WITHIN MASON DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday the 15th day of September, 2020, it was proposed by said Board to adopt a resolution to enlarge a small district known as Small District 4 within Mason District to include 6467 Overlook Drive for the purpose of providing for refuse/recycling and vacuum leaf collection to be effective January 1, 2021, and the Clerk of said Board was directed to cause notice thereof by publication once a week for two consecutive weeks in a newspaper published in or having general circulation in said County, together with a notice that at a regular meeting of said Board to be held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

TUESDAY
OCTOBER 20, 2020
COMMENCING AT 4:00 P.M.

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

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

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

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the advertisement for the proposed enlargement of a small sanitary district, pursuant to Virginia Code Section 15.2-858, as amended, to be known as Small District 4 within Mason District, Fairfax County, Virginia, which said enlargement of the small sanitary district shall be described as follows:

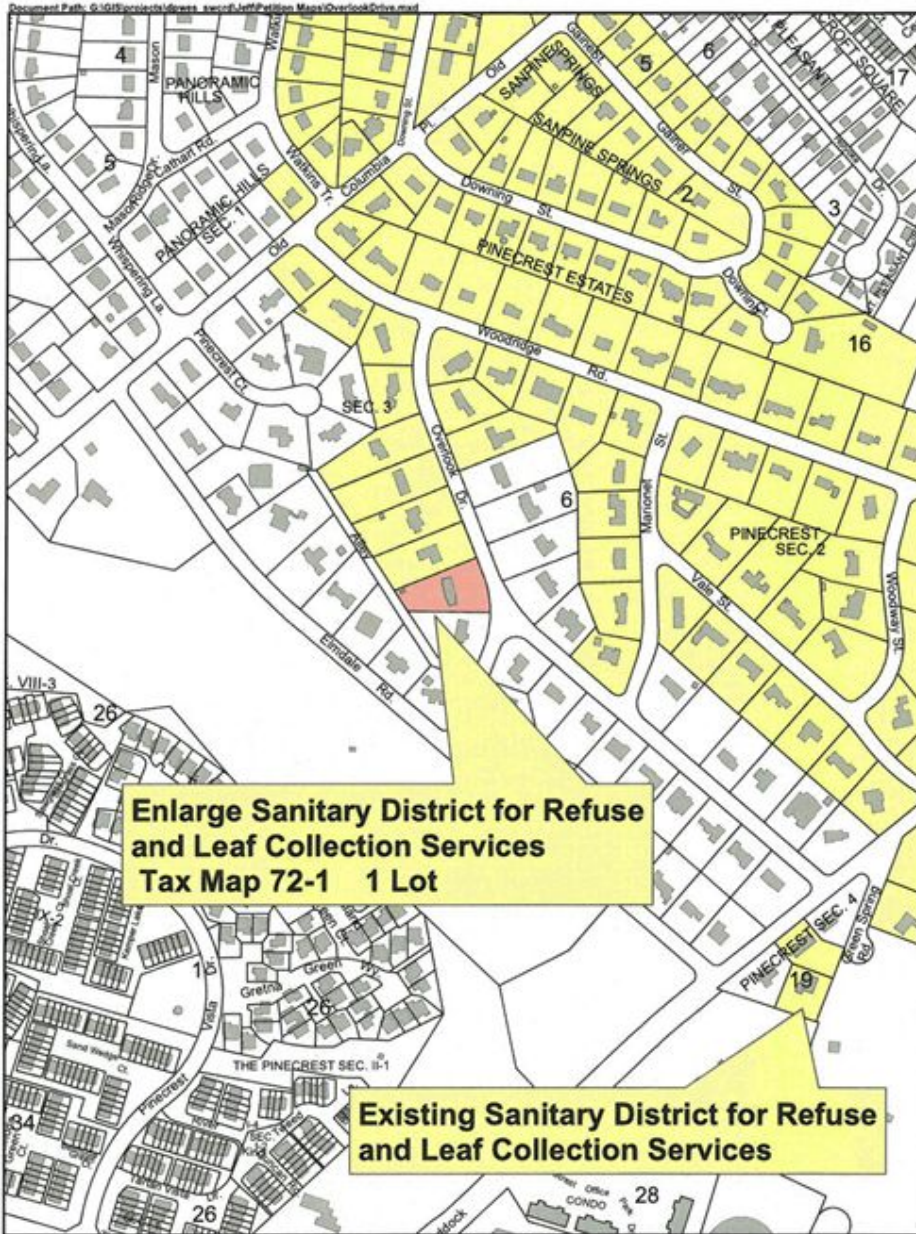
The enlargement of Small District 4 within Mason District to include 6467 Overlook Drive located in the County of Fairfax, Virginia, and as shown on the attached map.

AND BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Small District 4 within Mason District is hereby created to wit:

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

Given under my hand this ____ day of September, 2020

Jill G. Cooper
Clerk for the Board



**Enlarge Sanitary District for Refuse and Leaf Collection Services
Tax Map 72-1 1 Lot**

Existing Sanitary District for Refuse and Leaf Collection Services

TAX MAP 72-1

6467 OVERLOOK DRIVE

ADMINISTRATIVE - 15

Authorization to Advertise a Public Hearing for the Enlargement of Small and Local Sanitary Districts for Refuse/Recycling and Vacuum Leaf Collection Services (Providence District)

ISSUE:

Board of Supervisors' authorization to advertise a Public Hearing for the Enlargement of Small and Local Sanitary Districts for Refuse/Recycling and Vacuum Leaf Collection Services.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize advertisement of a public hearing at 4:00 p.m. on Tuesday, October 20, 2020, to consider the following change to small and local sanitary districts for refuse/recycling and/or leaf collection service in accordance with the Board of Supervisors' adopted criteria for the creation of Small or Local Sanitary Districts.

<u>Sanitary District</u>	<u>Action</u>	<u>Service</u>	<u>Recommendation</u>
Small District 8 Within Providence District (Stonewall Manor – 2421 Williams Avenue)	Enlarge	Refuse, Recycling, & Vacuum Leaf	Approve

TIMING:

Board of Supervisors' authorization to advertise on September 15, 2020, is required for a Public Hearing to be held on October 20, 2020, at 4:00 p.m.

BACKGROUND:

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

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Creation/Enlargement/De-Creation/Re-Creation of Small and Local Sanitary Districts.

The submitted petition has been reviewed, and it has been determined that the petition meets the Board of Supervisors' Adopted Criteria. Staff recommends that the authorization to advertise a public hearing for the enlargement of small and/or local sanitary districts for refuse/recycling and/or leaf collection be approved. If approved, the modification will become permanent on January 1, 2021.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Summary Sheet

Attachment 2: Data Sheet with Proposed Resolution and Map

STAFF:

Rachel Flynn, Deputy County Executive

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

John W. Kellas, Deputy Director, DPWES, Solid Waste Management Program

SUMMARY SHEET

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

1. Enlarge Small District 8 within Providence District for the purpose of providing refuse/recycling and vacuum leaf Collection Services to Stonewall Manor - 2421 Williams Avenue.

DATA SHEET
Enlarge
Small District 8
Within the Providence District

Purpose: To provide County Refuse/Recycling and Vacuum Leaf Collection Service to Stonewall Manor - 2421 Williams Avenue.

- Petition requesting service received November 1, 2019.
- Petition Area: 1 Property.
- 1 Property Owner in favor.
- 0 Property Owners opposed.
- 0 Non-responsive / unable to contact.
- The Department of Public Works and Environmental Services can provide the requested service using existing equipment.
- The Department of Public Works and Environmental Services recommends that the proposed action be approved effective January 1, 2021.

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

TO ENLARGE
SMALL DISTRICT 8
WITHIN PROVIDENCE DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday the 15th day of September, 2020, it was proposed by said Board to adopt a resolution to enlarge a small district known as Small District 8 within Providence District to include Stonewall Manor - 2421 Williams Avenue for the purpose of providing for refuse/recycling and vacuum leaf collection to be effective January 1, 2021, and the Clerk of said Board was directed to cause notice thereof by publication once a week for two consecutive weeks in a newspaper published in or having general circulation in said County, together with a notice that at a regular meeting of said Board to be held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

TUESDAY
October 20, 2020
COMMENCING AT 4:00 P.M.

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

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

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

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the advertisement for the proposed enlargement of a small sanitary district, pursuant to Virginia Code Section 15.2-858, as amended, to be known as Small District 8 within Providence District, Fairfax County, Virginia, which said enlargement of the small sanitary district shall be described as follows:

The enlargement of Small District 8 within Providence District to include Stonewall Manor - 2421 Williams Avenue located in the County of Fairfax, Virginia, and as shown on the attached map.

AND BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Small District 8 within Providence District is hereby created to wit:

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

Given under my hand this ____ day of September, 2020

Jill G. Cooper
Clerk for the Board

ADMINISTRATIVE - 16

Authorization to Advertise a Public Hearing for the Enlargement of Small and Local Sanitary Districts for Refuse/Recycling and/or Vacuum Leaf Collection Services (Dranesville District)

ISSUE:

Board of Supervisors' authorization to advertise a Public Hearing for the Enlargement of Small and Local Sanitary Districts for Refuse/Recycling and/or Vacuum Leaf Collection Services.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize advertisement of a public hearing at 4:00 p.m. on Tuesday, October 20, 2020, to consider the following changes to small and local sanitary districts for refuse/recycling and/or leaf collection service in accordance with the Board of Supervisors' adopted criteria for the creation of Small or Local Sanitary Districts.

<u>Sanitary District</u>	<u>Action</u>	<u>Service</u>	<u>Recommendation</u>
Small District 7 Within Dranesville District (Boxwood and Beacon Area)	Enlarge	Refuse, Recycling, & Vacuum Leaf	Approve
Small District 11 Within Dranesville District (Cliff Edge Drive Area)	Enlarge	Refuse & Recycling	Approve
Small District 13 Within Dranesville District (El Nido Area)	Enlarge	Refuse & Recycling	Approve
Local District 1-Y Within Dranesville District (Churchill Area)	Enlarge	Refuse & Recycling	Approve

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Local District 1-A1 Within Dranesville District (Birchwood Area)	Enlarge	Refuse & Recycling	Approve
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TIMING:

Board of Supervisors' authorization to advertise on September 15, 2020, is required for a Public Hearing to be held on October 20, 2020, at 4:00 p.m.

BACKGROUND:

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

The submitted petitions have been reviewed, and it has been determined that the petitions meets the Board of Supervisors' Adopted Criteria. Staff recommends that all authorizations to advertise a public hearing for the enlargement of small and/or local sanitary districts for refuse/recycling and/or leaf collection be approved. If approved, the modifications will become permanent on January 1, 2021.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Summary Sheet

Attachment 2: Data Sheet with Proposed Resolution and Map (Boxwood and Beacon Area)

Attachment 3: Data Sheet with Proposed Resolution and Map (Cliff Edge Drive Area)

Attachment 4: Data Sheet with Proposed Resolution and Map (El Nido Area)

Attachment 5: Data Sheet with Proposed Resolution and Map (Churchill Area)

Attachment 6: Data Sheet with Proposed Resolution and Map (Birchwood Area)

Board Agenda Item
September 15, 2020

STAFF:

Rachel Flynn, Deputy County Executive

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

John W. Kellas, Deputy Director, DPWES, Solid Waste Management Program

SUMMARY SHEET

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

1. Enlarge Small District 7 within Dranesville District for the purpose of providing refuse/recycling and vacuum leaf Collection Services to Boxwood and Beacon Area.
2. Enlarge Small District 11 within Dranesville District for the purpose of providing refuse and recycling Collection Services to Cliff Edge Drive Area.
3. Enlarge Small District 13 within Dranesville District for the purpose of providing refuse and recycling Collection Services to El Nido Area.
4. Enlarge Local District 1-Y within Dranesville District for the purpose of providing refuse and recycling Collection Services to Churchill Area.
5. Enlarge Local District 1-A1 within Dranesville District for the purpose of providing refuse and recycling Collection Services to Birchwood Area.

DATA SHEET
Enlarge
Small District 7
Within the Dranesville District

Purpose: To provide County Refuse/Recycling and Vacuum Leaf Collection Service to the Boxwood and Beacon Area.

- Petition requesting service received October 8, 2019.
- Petition Area: 5 Properties.
- 5 Property Owners in favor.
- 0 Property Owners opposed.
- 0 Non-responsive / unable to contact.
- The Department of Public Works and Environmental Services can provide the requested service using existing equipment.
- The Department of Public Works and Environmental Services recommends that the proposed action be approved effective January 1, 2021.

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

TO ENLARGE
SMALL DISTRICT 7
WITHIN DRANESVILLE DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday the 15th day of September, 2020, it was proposed by said Board to adopt a resolution to enlarge a small district known as Small District 7 within Dranesville District to include Boxwood and Beacon area for the purpose of providing for refuse/recycling and vacuum leaf collection to be effective January 1, 2021, and the Clerk of said Board was directed to cause notice thereof by publication once a week for two consecutive weeks in a newspaper published in or having general circulation in said County, together with a notice that at a regular meeting of said Board to be held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

TUESDAY
OCTOBER 20, 2020
COMMENCING AT 4:00 P.M.

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

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

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

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the advertisement for the proposed enlargement of a small sanitary district, pursuant to Virginia Code Section 15.2-858, as amended, to be known as Small District 7 within Dranesville District, Fairfax County, Virginia, which said enlargement of the small sanitary district shall be described as follows:

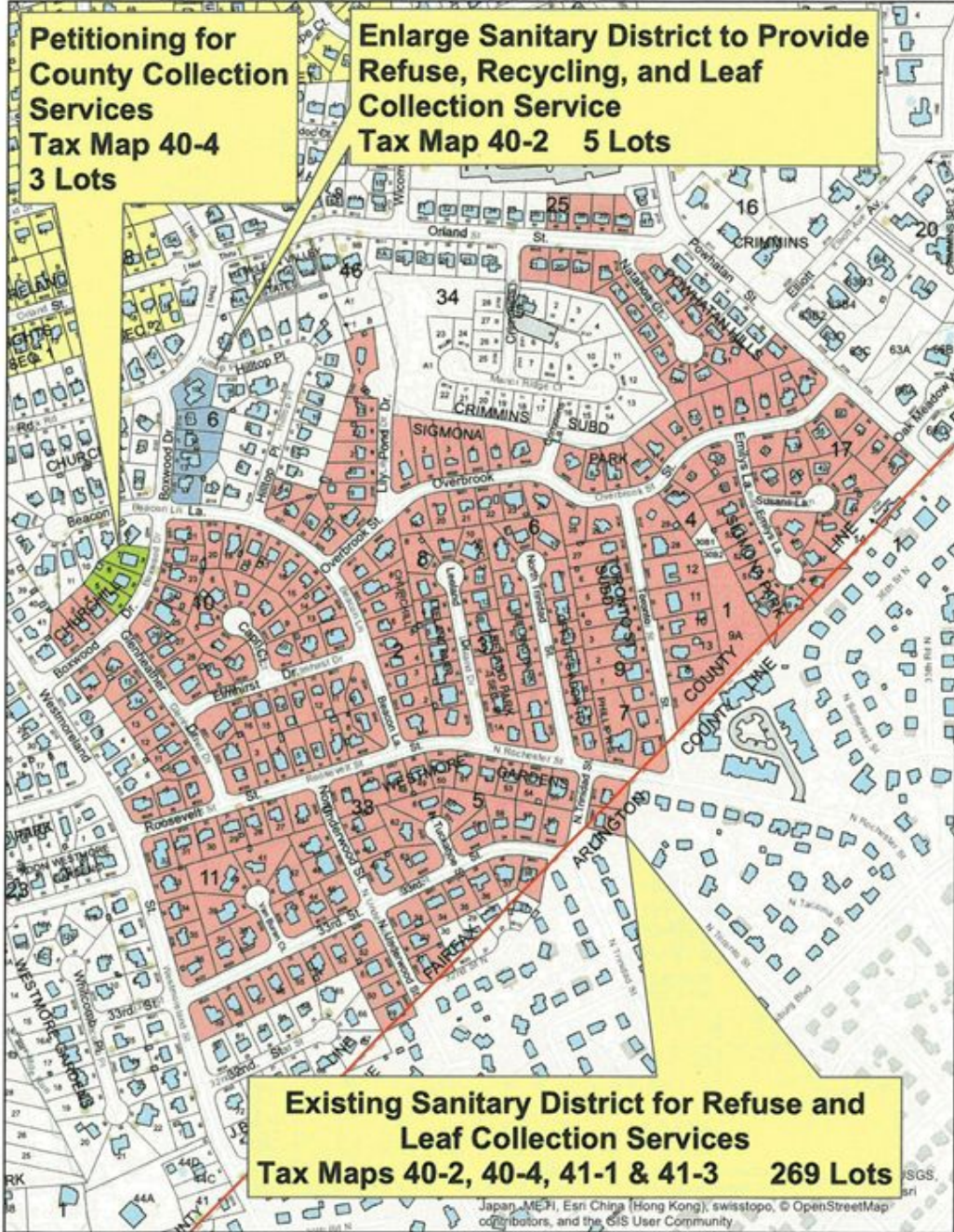
The enlargement of Small District 7 within Dranesville District to include Boxwood and Beacon area located in the County of Fairfax, Virginia, and as shown on the attached map.

AND BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Small District 7 within Dranesville District is hereby created to wit:

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

Given under my hand this ____ day of September, 2020

Jill G. Cooper
Clerk for the Board



TAX MAP 40-2, 40-4, 41-1 & 41-3

BOXWOOD AND BEACON AREA

DATA SHEET
Enlarge
Small District 11
Within the Dranesville District

Purpose: To provide County Refuse and Recycling Collection Service to the Cliff Edge Drive Area.

- Petition requesting service received July 10, 2019.
- Petition Area: 7 Properties.
- 5 Property Owners in favor.
- 0 Property Owners opposed.
- 2 Non-responsive / unable to contact.
- The Department of Public Works and Environmental Services can provide the requested service using existing equipment.
- The Department of Public Works and Environmental Services recommends that the proposed action be approved effective January 1, 2021.

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

TO ENLARGE
SMALL DISTRICT 11
WITHIN DRANESVILLE DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday the 15th day of September, 2020, it was proposed by said Board to adopt a resolution to enlarge a small district known as Small District 11 within Dranesville District to include Cliff Edge Drive area for the purpose of providing for refuse and recycling collection to be effective January 1, 2021, and the Clerk of said Board was directed to cause notice thereof by publication once a week for two consecutive weeks in a newspaper published in or having general circulation in said County, together with a notice that at a regular meeting of said Board to be held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

TUESDAY
OCTOBER 20, 2020
COMMENCING AT 4:00 P.M.

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

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

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

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the advertisement for the proposed enlargement of a small sanitary district, pursuant to Virginia Code Section 15.2-858, as amended, to be known as Small District 11 within Dranesville District, Fairfax County, Virginia, which said enlargement of the small sanitary district shall be described as follows:

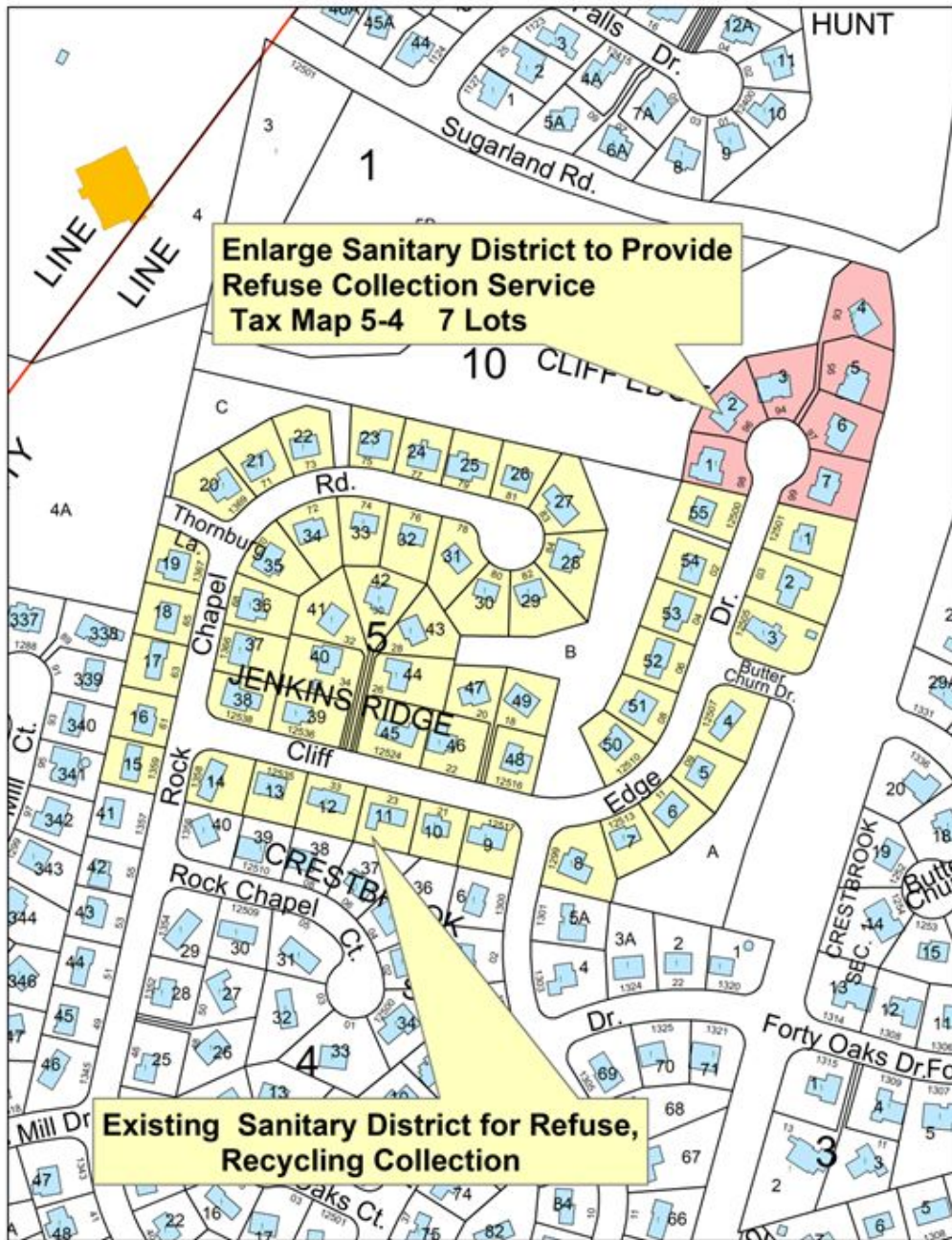
The enlargement of Small District 11 within Dranesville District to include Cliff Edge Drive area located in the County of Fairfax, Virginia, and as shown on the attached map.

AND BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Small District 11 within Dranesville District is hereby created to wit:

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

Given under my hand this ____ day of September, 2020

Jill G. Cooper
Clerk for the Board



TAX MAP 5-4

CLIFF EDGE DR AREA

DATA SHEET
Enlarge
Small District 13
Within the Dranesville District

Purpose: To provide County Refuse and Recycling Collection Service to El Nido area.

- Petition requesting service received August 27, 2019.
- Petition Area: 20 Properties..
- 11 Property Owners in favor.
- 4 Property Owners opposed.
- 5 Non-responsive / unable to contact.
- The Department of Public Works and Environmental Services can provide the requested service using existing equipment.
- The Department of Public Works and Environmental Services recommends that the proposed action be approved effective January 1, 2021.

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

TO ENLARGE
SMALL DISTRICT 13
WITHIN DRANESVILLE DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday the 15th day of September, 2020, it was proposed by said Board to adopt a resolution to enlarge a small district known as Small District 13 within Dranesville District to include El Nido Area for the purpose of providing for refuse and recycling collection to be effective January 1, 2021, and the Clerk of said Board was directed to cause notice thereof by publication once a week for two consecutive weeks in a newspaper published in or having general circulation in said County, together with a notice that at a regular meeting of said Board to be held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

TUESDAY
OCTOBER 20, 2020
COMMENCING AT 4:00 P.M.

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

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

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

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the advertisement for the proposed enlargement of a small sanitary district, pursuant to Virginia Code Section 15.2-858, as amended, to be known as Small District 13 within Dranesville District, Fairfax County, Virginia, which said enlargement of the small sanitary district shall be described as follows:

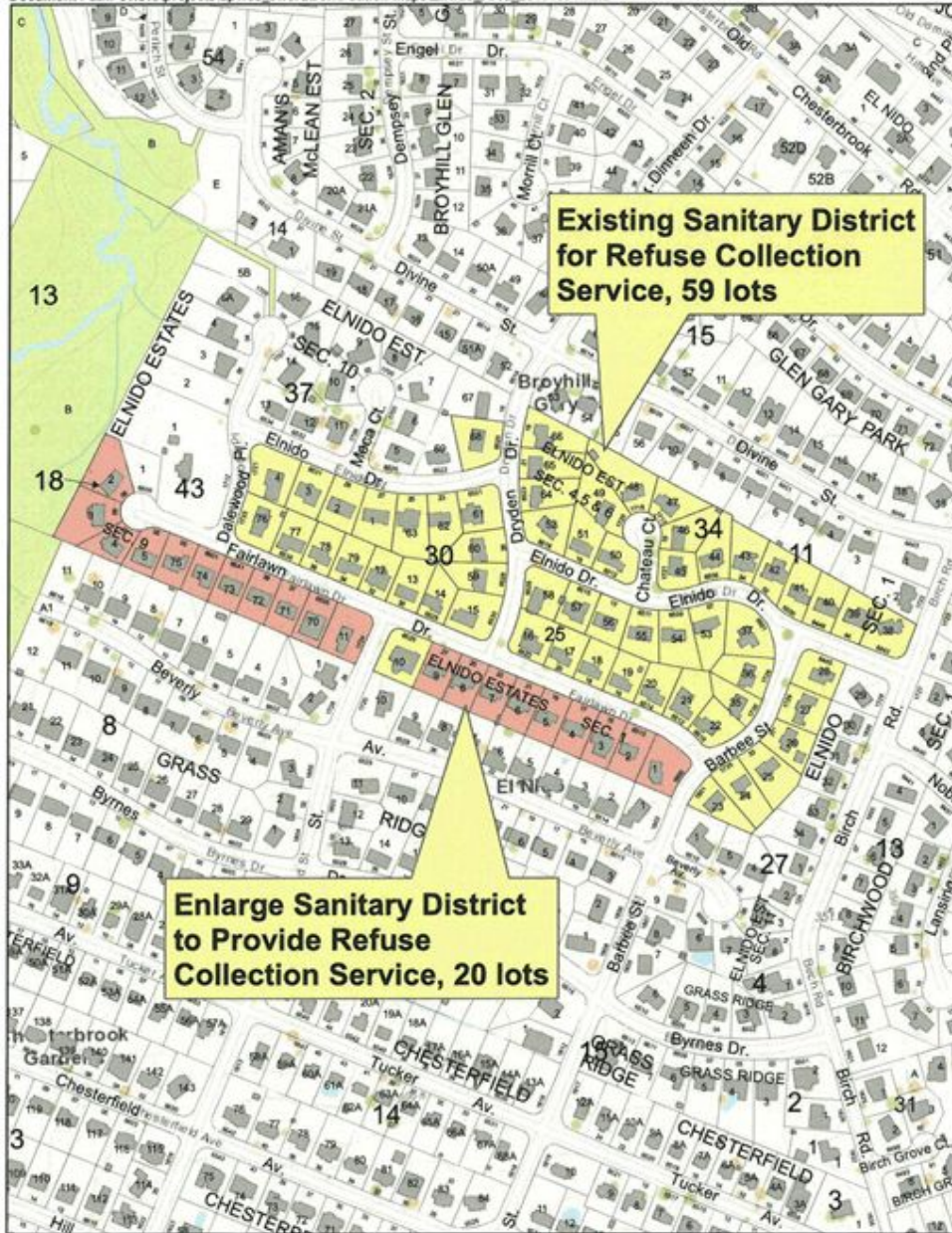
The enlargement of Small District 13 within Dranesville District to include El Nido Area located in the County of Fairfax, Virginia, and as shown on the attached map.

AND BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Small District 13 within Dranesville District is hereby created to wit:

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

Given under my hand this ____ day of September, 2020

Jill G. Cooper
Clerk for the Board



TAX MAPS; 30-4 & 31-3

EL NIDO AREA

DATA SHEET
Enlarge
Local District 1-Y
Within the Dranesville District

Purpose: To provide County Refuse and Recycling Collection Service to the Churchill Area.

- Petition requesting service received September 9, 2019.
- Petition Area: 3 Properties.
- 3 Property Owners in favor.
- 0 Property Owners opposed.
- 0 Non-responsive / unable to contact.
- The Department of Public Works and Environmental Services can provide the requested service using existing equipment.
- The Department of Public Works and Environmental Services recommends that the proposed action be approved effective January 1, 2021.

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

TO ENLARGE
LOCAL DISTRICT 1-Y
WITHIN DRANESVILLE DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday the 15th day of September, 2020, it was proposed by said Board to adopt a resolution to enlarge a local district known as Local District 1-Y within Dranesville District to include Churchill area for the purpose of providing for refuse and recycling collection to be effective January 1, 2021, and the Clerk of said Board was directed to cause notice thereof by publication once a week for two consecutive weeks in a newspaper published in or having general circulation in said County, together with a notice that at a regular meeting of said Board to be held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

TUESDAY
OCTOBER 20, 2020
COMMENCING AT 4:00 P.M.

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

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

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

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the advertisement for the proposed enlargement of a local sanitary district, pursuant to Virginia Code Section 15.2-858, as amended, to be known as Local District 1-Y within Dranesville District, Fairfax County, Virginia, which said enlargement of the local sanitary district shall be described as follows:

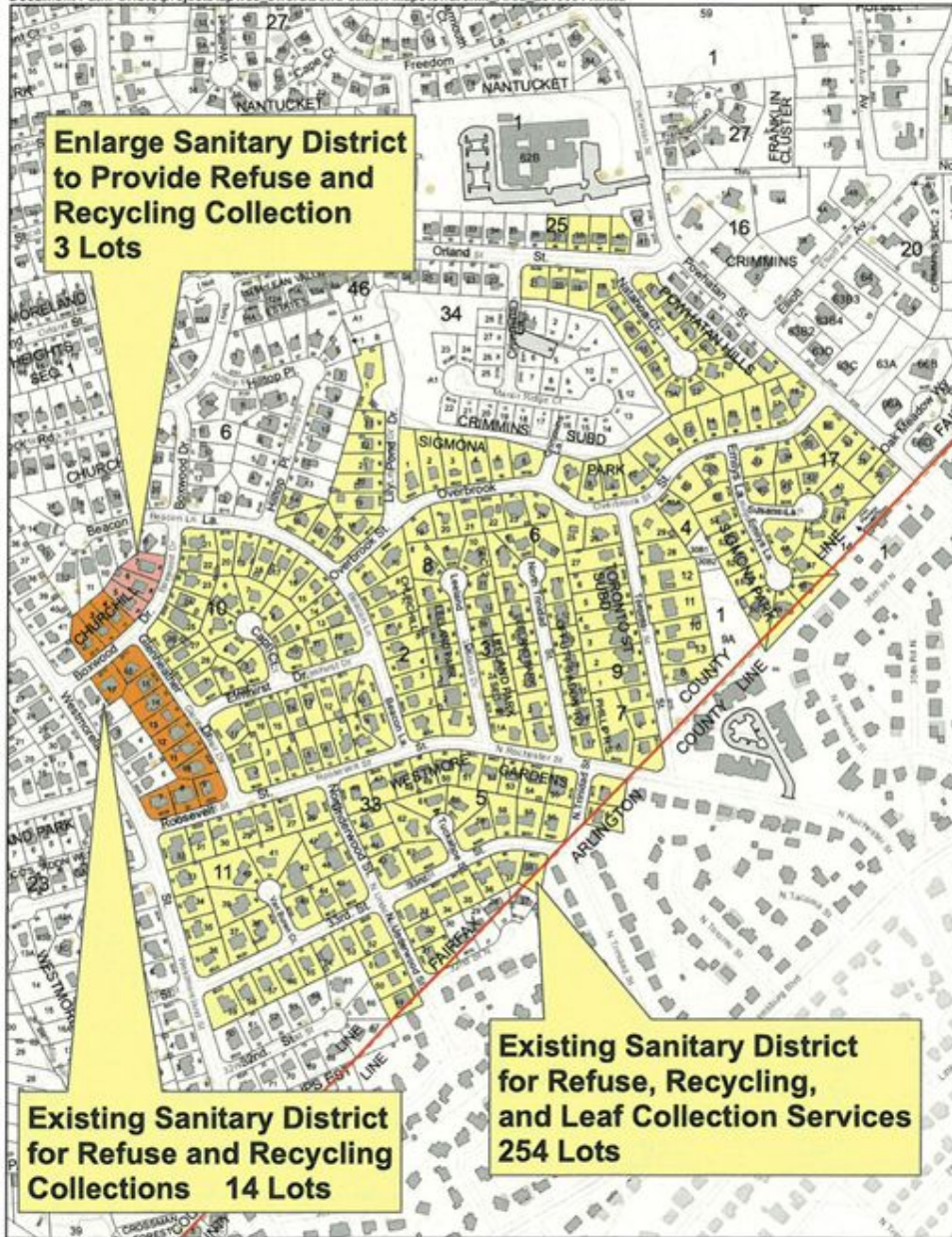
The enlargement of Local District 1-Y within Dranesville District to include Churchill area located in the County of Fairfax, Virginia, and as shown on the attached map.

AND BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Local District 1-Y within Dranesville District is hereby created to wit:

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

Given under my hand this ____ day of September, 2020

Jill G. Cooper
Clerk for the Board



TAX MAPS; 40-2, 40-4, 41-1 & 41-3

CHURCHILL AREA

DATA SHEET
Enlarge
Local District 1-A1
Within the Dranesville District

Purpose: To provide County Refuse and Recycling Collection Service to Birchwood area.

- Petition requesting service received October 25, 2019.
- Petition Area: 9 Properties.
- 7 Property Owners in favor.
- 1 Property Owners opposed.
- 1 Non-responsive / unable to contact.
- The Department of Public Works and Environmental Services can provide the requested service using existing equipment.
- The Department of Public Works and Environmental Services recommends that the proposed action be approved effective January 1, 2021.

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

TO ENLARGE
LOCAL DISTRICT 1-A1
WITHIN DRANESVILLE DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday the 15th day of September, 2020, it was proposed by said Board to adopt a resolution to enlarge a local district known as Local District 1-A1 within Dranesville District to include Birchwood Area for the purpose of providing for refuse and recycling collection to be effective January 1, 2021, and the Clerk of said Board was directed to cause notice thereof by publication once a week for two consecutive weeks in a newspaper published in or having general circulation in said County, together with a notice that at a regular meeting of said Board to be held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

TUESDAY
OCTOBER 20, 2020
COMMENCING AT 4:00 P.M.

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

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

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

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the advertisement for the proposed enlargement of a local sanitary district, pursuant to Virginia Code Section 15.2-858, as amended, to be known as Local District 1-A1 within Dranesville District, Fairfax County, Virginia, which said enlargement of the local sanitary district shall be described as follows:

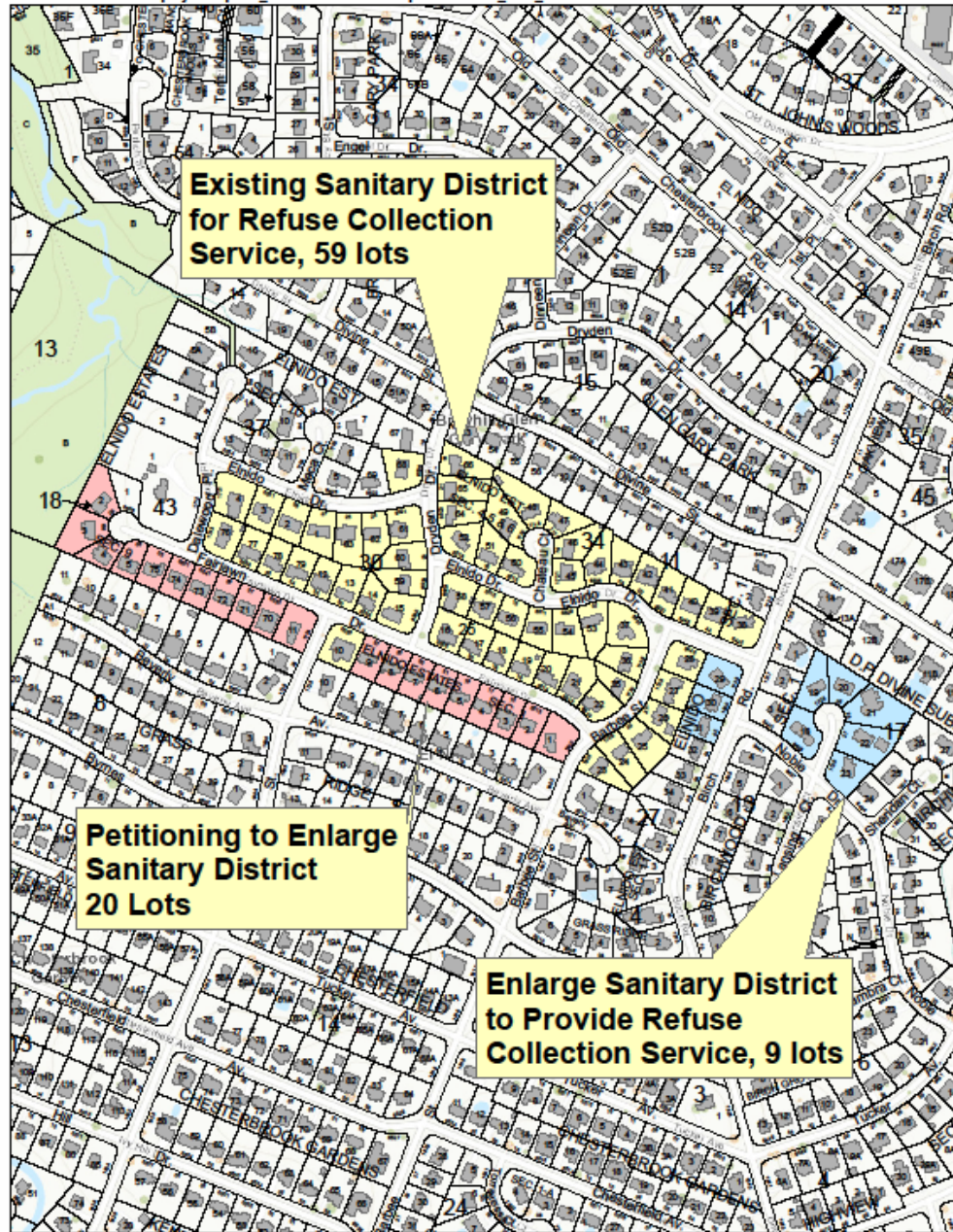
The enlargement of Local District 1-A1 within Dranesville District to include Birchwood Area located in the County of Fairfax, Virginia, and as shown on the attached map.

AND BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Local District 1-A1 within Dranesville District is hereby created to wit:

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

Given under my hand this ____ day of September, 2020

Jill G. Cooper
Clerk for the Board



TAX MAPS; 30-4 & 31-3

BIRCHWOOD AREA

ADMINISTRATIVE - 17

Authorization to Advertise a Public Hearing for the De-Creation/Re-Creation of Small and Local Sanitary Districts for Refuse/Recycling and Vacuum Leaf Collection Services (Lee District)

ISSUE:

Board of Supervisors' authorization to advertise a Public Hearing for the De-Creation/Re-Creation of Small and Local Sanitary Districts for Refuse/Recycling and Vacuum Leaf Collection Services.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize advertisement of a public hearing at 4:00 p.m. on Tuesday, October 20, 2020, to consider the following change to small and local sanitary districts for refuse/recycling and/or leaf collection service in accordance with the Board of Supervisors' adopted criteria for the creation of Small or Local Sanitary Districts.

<u>Sanitary District</u>	<u>Action</u>	<u>Service</u>	<u>Recommendation</u>
Local District 1-B Within Lee District (5403 Hopark Drive)	De-Create/ Re-Create	Refuse, Recycling, & Adding Vacuum Leaf	Approve
Local District 1-B Within Lee District (5402 Hopark Drive)	De-Create/ Re-Create	Refuse, Recycling, & Adding Vacuum Leaf	Approve

TIMING:

Board of Supervisors' authorization to advertise on September 15, 2020, is required for a Public Hearing to be held on October 20, 2020, at 4:00 p.m.

BACKGROUND:

The administrative responsibility for the Creation/Enlargement/De-Creation/Re-Creation of Small and Local Sanitary Districts in the County of Fairfax for refuse/recycling and/or

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

The submitted petitions have been reviewed, and it has been determined that the petitions meet the Board of Supervisors' Adopted Criteria. Staff recommends that all authorizations to advertise a public hearing for the de-creation/re-creation of small and/or local sanitary districts for refuse/recycling, adding vacuum leaf collection be approved. If approved, the modification will become permanent on January 1, 2021.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Summary Sheet

Attachment 2: Data Sheet with Proposed Resolution and Map (5403 Hopark Drive)

Attachment 3: Data Sheet with Proposed Resolution and Map (5402 Hopark Drive)

STAFF:

Rachel Flynn, Deputy County Executive

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

John W. Kellas, Deputy Director, DPWES, Solid Waste Management Program

SUMMARY SHEET

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

1. De-Create/Re-Create Local District 1-B within Lee District for the purpose of providing refuse/recycling and adding vacuum leaf Collection Services to 5403 Hopark Drive.
2. De-Create/Re-Create Local District 1-B within Lee District for the purpose of providing refuse/recycling and adding vacuum leaf Collection Services to 5402 Hopark Drive.

DATA SHEET
De-Create/Re-Create
Local District 1-B
Within the Lee District

Purpose: To provide County Refuse/Recycling and add Vacuum Leaf Collection Service to 5403 Hopark Drive.

- Petition requesting service received February 19, 2020.
- Petition Area: 1 Property.
- 1 Property Owners in favor.
- 0 Property Owners opposed.
- 0 Non-responsive / unable to contact.
- The Department of Public Works and Environmental Services can provide the requested service using existing equipment.
- The Department of Public Works and Environmental Services recommends that the proposed action be approved effective January 1, 2021.

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

TO DE-CREATE/RE-CREATE
LOCAL DISTRICT 1-B
WITHIN LEE DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday the 15th day of September, 2020, it was proposed by said Board to adopt a resolution to de-create/re-create a local district known as Local District 1-B within Lee District to include 5403 Hopark Drive for the purpose of providing for refuse/recycling and adding vacuum leaf collection to be effective January 1, 2021, and the Clerk of said Board was directed to cause notice thereof by publication once a week for two consecutive weeks in a newspaper published in or having general circulation in said County, together with a notice that at a regular meeting of said Board to be held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

TUESDAY
OCTOBER 20, 2020
COMMENCING AT 4:00 P.M.

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

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

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

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the advertisement for the proposed de-creation/re-creation of a local sanitary district, pursuant to Virginia Code Section 15.2-858, as amended, to be known as Local District 1-B within Lee District, Fairfax County, Virginia, which said de-creation/re-creation of the local sanitary district shall be described as follows:

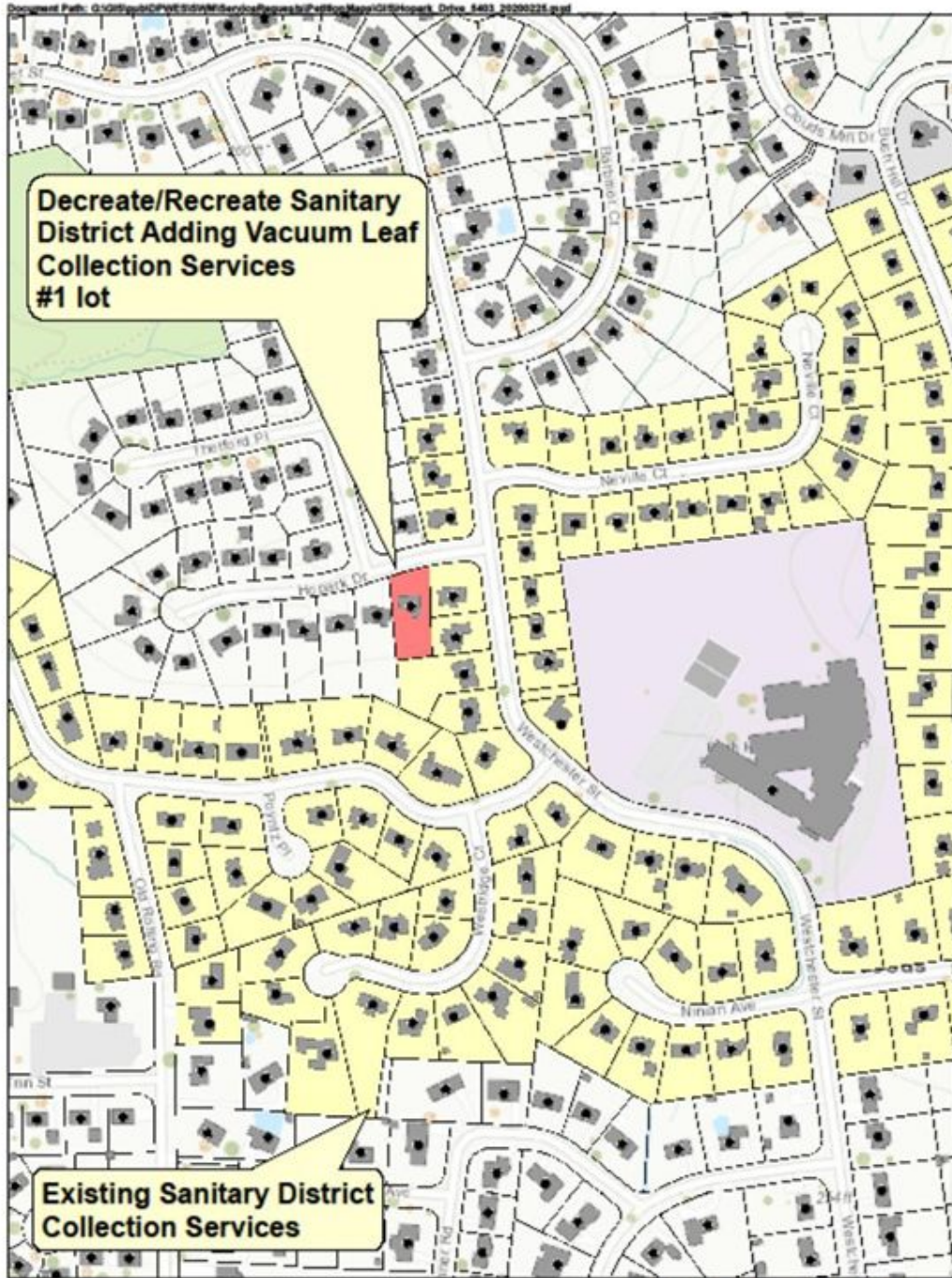
The de-creation/re-creation of Local District 1-B within Lee District to include 5403 Hopark Drive located in the County of Fairfax, Virginia, and as shown on the attached map.

AND BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Local District 1-B within Lee District is hereby created to wit:

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

Given under my hand this ____ day of September, 2020

Jill G. Cooper
Clerk for the Board



Tax Maps 81-4

5403 Hopark Drive

DATA SHEET
De-Create/Re-Create
Local District 1-B
Within the Lee District

Purpose: To provide County Refuse/Recycling and add Vacuum Leaf Collection Service to 5402 Hopark Drive.

- Petition requesting service received December 5, 2019.
- Petition Area: 1 Property.
- 1 Property Owners in favor.
- 0 Property Owners opposed.
- 0 Non-responsive / unable to contact.
- The Department of Public Works and Environmental Services can provide the requested service using existing equipment.
- The Department of Public Works and Environmental Services recommends that the proposed action be approved effective January 1, 2021.

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

TO DE-CREATE/RE-CREATE
LOCAL DISTRICT 1-B
WITHIN LEE DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday the 15th day of September, 2020, it was proposed by said Board to adopt a resolution to de-create/re-create a local district known as Local District 1-B within Lee District to include 5402 Hopark Drive for the purpose of providing for refuse/recycling and adding vacuum leaf collection to be effective January 1, 2021, and the Clerk of said Board was directed to cause notice thereof by publication once a week for two consecutive weeks in a newspaper published in or having general circulation in said County, together with a notice that at a regular meeting of said Board to be held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

TUESDAY
OCTOBER 20, 2020
COMMENCING AT 4:00 P.M.

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

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

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

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the advertisement for the proposed de-creation/re-creation of a local sanitary district, pursuant to Virginia Code Section 15.2-858, as amended, to be known as Local District 1-B within Lee District, Fairfax County, Virginia, which said de-creation/re-creation of the local sanitary district shall be described as follows:

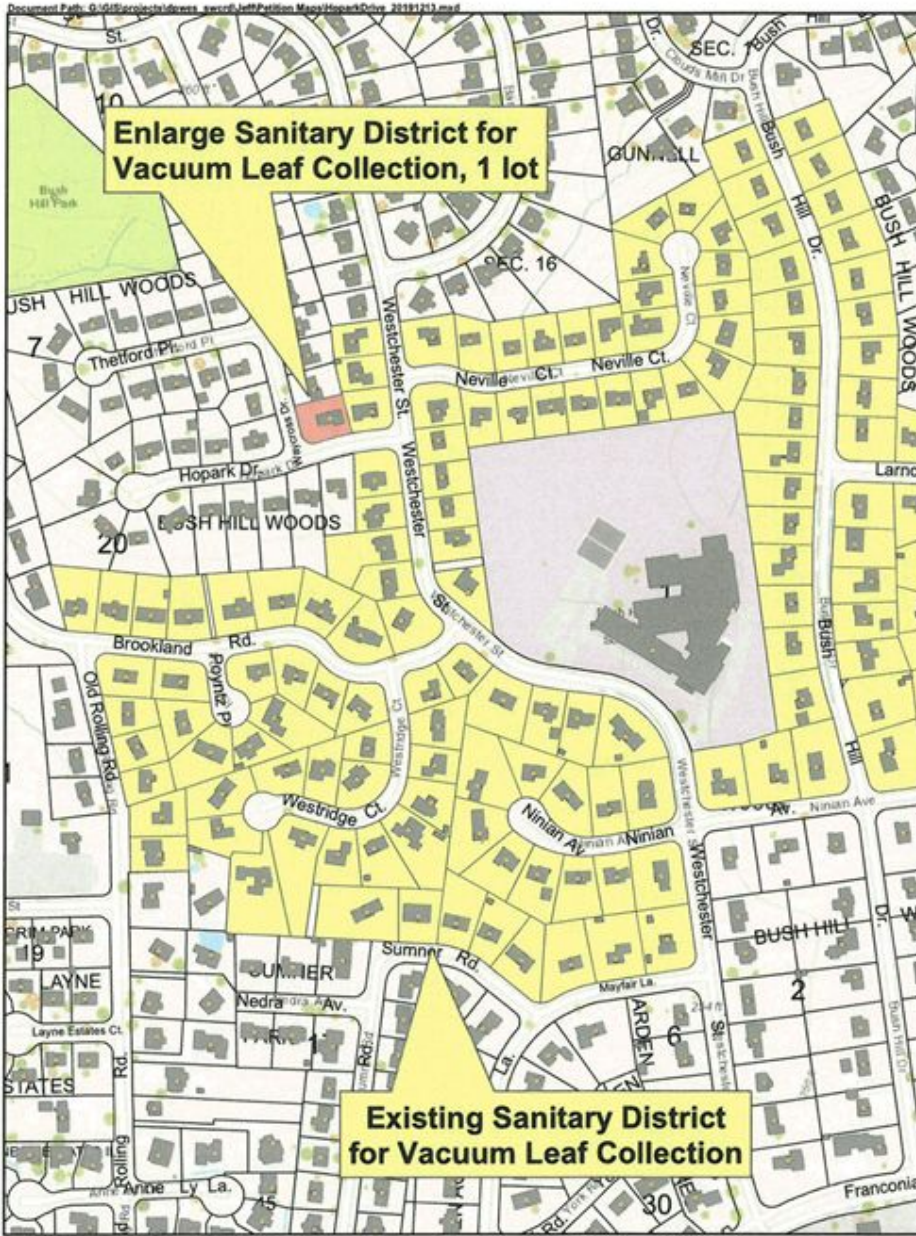
The de-creation/re-creation of Local District 1-B within Lee District to include 5402 Hopark Drive located in the County of Fairfax, Virginia, and as shown on the attached map.

AND BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Local District 1-B within Lee District is hereby created to wit:

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

Given under my hand this ____ day of September, 2020

Jill G. Cooper
Clerk for the Board



Tax Maps 81-4

5402 HOPARK DRIVE

Board Agenda Item
September 15, 2020

ACTION - 1

Approval of a Resolution to Extend the Cable Franchise Term of Verizon Virginia LLC

ISSUE:

Adoption of a resolution (Attachment 1) authorizing the County Executive to execute an agreement extending the term of Verizon's cable franchise through March 31, 2021 (Attachment 2).

RECOMMENDATION:

The County Executive recommends that the Board authorize him to enter into an agreement with Verizon extending the term of Verizon's cable franchise without change in the terms and conditions of the franchise.

TIMING:

The Verizon cable franchise should be extended prior to its scheduled expiration on September 30, 2020.

BACKGROUND:

Section 546 of the federal Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 521 *ff.*, governs the process by which a local community may renew a cable franchise. The process normally used requires negotiation between the cable operator and the community regarding the terms and conditions of a new franchise agreement, consistent with federal and state law.

Verizon and County staff are currently engaged in active discussions regarding renewal of the Franchise. A renewal agreement has not yet been reached. A limited six-month extension of the term will maintain the parties' existing rights and obligations while they seek to develop a renewal agreement.

FISCAL IMPACT:

None.

Board Agenda Item
September 15, 2020

ENCLOSED DOCUMENTS:

Attachment 1 – Proposed resolution

Attachment 2 – Proposed agreement with Verizon

STAFF:

Joseph M. Mondoro, Chief Financial Officer

Michael S. Liberman, Director, Department of Cable and Consumer Services (DCCS)

Frederick E. Ellrod III, Director, Communications Policy and Regulation Division, DCCS

ASSIGNED COUNSEL:

Erin C. Ward, Deputy County Attorney

Joanna L. Faust, Assistant County Attorney

**RESOLUTION AUTHORIZING THE COUNTY EXECUTIVE TO SIGN A
LETTER AGREEMENT WITH VERIZON VIRGINIA LLC**

At a regular meeting of the Fairfax County Board of Supervisors of Fairfax County, Virginia ("Board of Supervisors"), held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, September 15, 2020, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS:

1. Section 2.3 of the Cable Franchise Agreement by and between Fairfax County, Virginia, and Verizon Virginia Inc., the predecessor-in-interest of Verizon Virginia LLC, approved by the Fairfax County Board of Supervisors on September 26, 2005 ("Franchise Agreement"), established the term of the Franchise as 15 years from the effective date, defined in Section 2.3 as October 1, 2005, and therefore the cable franchise ("Franchise") granted in accordance with the Franchise Agreement would expire after October 1, 2020, unless the Franchise is renewed or extended by mutual agreement; and
2. No renewal agreement has been reached and the parties are continuing to pursue the renewal procedures set forth in 47 U.S.C. § 546;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors that the County Executive is authorized to sign the attached agreement, in which the parties agree to extend the term of the Franchise Agreement through March 31, 2021.

ADOPTED this 15th day of September 2020.

A Copy – Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

**AGREEMENT EXTENDING
THE TERM OF THE CABLE FRANCHISE GRANTED TO
VERIZON VIRGINIA LLC**

This Agreement is made this _____ day of September, 2020, by and between the County of Fairfax, Virginia (hereinafter the “County”), and Verizon Virginia LLC (hereinafter “Verizon”).

WHEREAS, the County has granted a franchise (“Franchise”) to Verizon pursuant to the Cable Franchise Agreement by and between Fairfax County, Virginia, and Verizon Virginia Inc., the predecessor-in-interest of Verizon Virginia LLC, approved by the Fairfax County Board of Supervisors on September 26, 2005 (“Franchise Agreement), and Chapter 9.2 of the County Code, as amended, collectively referred to as the “Franchise Documents”; and

WHEREAS, the Franchise is scheduled to expire on September 30, 2020; and

WHEREAS, Verizon initiated the franchise renewal process consistent with Section 626 of the Cable Communications Policy Act of 1984, as amended (“Cable Act”), via letter to the County dated February 15, 2020; and

WHEREAS, the County and Verizon are currently engaged in active discussions regarding renewal of the Franchise; and

WHEREAS, the County and Verizon each desire to enter into an amendment extending the term of the Franchise as set forth herein in order to complete negotiations and reach agreement on the renewal of the Franchise; and

WHEREAS, Section 2.3 of the Franchise Agreement provides that it may be extended by mutual agreement;

NOW, THEREFORE, in consideration of the promises and undertakings herein, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. The Franchise is hereby extended through March 31, 2021 (the “extension period”).

Section 2. During the extension period, all the terms and conditions set forth in the Franchise Documents shall remain in full force and effect.

Section 3. This extension shall be without prejudice to any rights of either party under the Cable Act, the Franchise, or applicable law. No claim that either party may have against the other shall be released or otherwise affected by this extension.

Section 4. Nothing in this Agreement obliges the County to grant Verizon a renewal franchise, and this Agreement shall not be interpreted as a renewal of the Franchise or as a commitment to renew.

Section 5. Counterparts: This Agreement may be executed in several counterparts, each of which when so executed 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 parties shall not have signed the same counterpart.

IN WITNESS WHEREOF, the parties hereto have set their respective hands and seals on the day first above written.

County of Fairfax, Virginia

By

Bryan J. Hill
County Executive

Verizon Virginia LLC

By

Christopher Childs
Region President - Consumer & Mass Business Markets

Board Agenda Item
September 15, 2020

ACTION - 2

Approval of Revisions to Chapters 1, 5, 7, and 16 of the Personnel Regulations due to Legislation Passed by the 2020 Session of the Virginia General Assembly

ISSUE:

Revisions to the Fairfax County Personnel Regulations are proposed to ensure compliance with Va. Code § 15.2-1500.1 which took effect July 1, 2020.

RECOMMENDATION:

The County Executive recommends the Board of Supervisors approve the proposed revisions to Chapters 1, 5, 7, and 16 of the Personnel Regulations, as specified below.

TIMING:

Board action is requested on September 15, 2020, and the revisions are retroactive to the date Va. Code § 15.2-1500.1 took effect, July 1, 2020.

BACKGROUND:

During the 2020 session of the General Assembly, SB868 was passed, signed into law by the Governor, and took effect July 1, 2020. SB868 added a new code section, Va. Code § 15.2-1500.1, which provides in subsection (B):

No department, office, board, commission, agency, or instrumentality of local government shall discriminate in employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, gender identity, or status as a veteran.

Revisions to Chapters 1, 5, 7, and 16 of the Personnel Regulations are required to align with the newly enacted code section, Va. Code § 15.2-1500.1. An additional revision to Chapter 1 was made to reflect the correct citation to the Fairfax County Code, and an additional revision was made to Chapter 7 to reflect the correct reference to another section of the Personnel Regulations.

Following an advertised public hearing held on August 11, 2020, the Civil Service Commission considered the below referenced proposed revisions to the Personnel

Board Agenda Item
September 15, 2020

Regulations. The Office of the County Attorney reviewed all proposed revisions. At the hearing, the Department of Human Resources gave an overview of the proposed revisions for each chapter. There was no testimony offered by employees, management, or employee groups.

The following content highlights proposed changes, by chapter:

Chapter 1 — Authority and Scope of Fairfax County Merit System Ordinance and Personnel Regulations (Attachment 1)

The reference in Section 1.2-3 to the Fairfax County Code was corrected to Fairfax County Code 3-1-1(c)(2). Added pregnancy or related medical conditions, gender identity, sexual orientation, and veteran status to Section 1.9-2.

Chapter 5 — Recruitment and Examination (Attachment 2)

Added pregnancy or related medical conditions, gender identity, and sexual orientation to Section 5.1-1.

Chapter 7 — Certification and Appointment (Attachment 3)

Added pregnancy or related medical conditions, gender identity, and sexual orientation to Section 7.8-1. The reference in Section 7.8-1 was corrected from 7.7-5 to 7.5-5.

Addendum No. 1 to Chapter 16, Standards of Conduct (Attachment 4)

Under *Employees are expected to*, added pregnancy or related medical conditions, and gender identity; under *Employees are prohibited from*, added pregnancy or related medical conditions and gender identity in two provisions, and creed in one provision.

In accordance with the Merit System Ordinance, the proposed revisions were forwarded to the Civil Service Commission for public hearing. The public hearing was held on August 11, 2020, and the Commission's comments are included as Attachment Five (5).

FISCAL IMPACT:
None noted.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Revisions to Chapter 1 of the Personnel Regulations
Attachment 2: Proposed Revisions to Chapter 5 of the Personnel Regulations
Attachment 3: Proposed Revisions to Chapter 7 of the Personnel Regulations
Attachment 4: Proposed Revisions to Chapter 16 of the Personnel Regulations
Attachment 5: Civil Service Commissioners' Memorandum

Board Agenda Item
September 15, 2020

STAFF:

Catherine Spage, Director, Department of Human Resources

ASSIGNED COUNSEL:

Karen Gibbons, Deputy County Attorney

CHAPTER 1

Authority and Scope of Fairfax County Merit System Ordinance and Personnel Regulations

1.1 Authority

- 1 The Fairfax County Merit System is established by the Merit System Ordinance (Article 1, Chapter 3, Code of Fairfax County).
- 2 The Ordinance provides for adoption of Personnel Regulations and amendments thereto by the Board of Supervisors after consideration of the views of the County Executive, Human Resources Director, Employees Advisory Council and the Civil Service Commission. The Commission shall advertise and conduct a public hearing on each proposed change to the Personnel Regulations before submitting its recommendation to the Board of Supervisors. The Board of Supervisors also may amend the Personnel Regulations on its own motion without following the above procedure; however, any amendment adopted on the Board's own motion shall be referred to the County Executive, Human Resources Director, Employees Advisory Council and Civil Service Commission for comment, and the Civil Service Commission shall advertise and hold a public hearing before submitting its recommendations to the Board of Supervisors for further consideration by the Board.
- 3 To the extent that they are consistent with the Code of Virginia and the Fairfax County Merit System Ordinance, Personnel Regulations adopted by the Board of Supervisors have the force of law. Any provision of the Personnel Regulations which conflicts with the Code of Virginia or the Merit System Ordinance, or with any future amendment to the Code or Ordinance, shall be without effect until it has been amended to conform. Such suspension of effect shall relate only to those specific provisions which are in conflict with the Code or Ordinance and shall not affect other provisions of the Personnel Regulations which are not so in conflict.

1.2 Scope

- 1 These Regulations apply to all positions and persons in the competitive service, as defined in the Ordinance.
- 2 Portions of these Regulations also may apply to the exempt service. Provisions, which apply to the exempt service, shall so state, or may be applied by reference in administrative directives issued by the County Executive as provided in the Ordinance.

-3 In accordance with ~~Art. 3-1-2(e)~~ Section 3-1-1(c)(2) of the Ordinance, the Personnel Regulations also may be applied to designated employees of other public agencies within the County, pursuant to written agreements between the heads or governing bodies 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 the Ordinance and Personnel Regulations in the same manner as if those employees were in the administrative service of the County.

Commented [AJ1]: Corrected Section numbering

-4 Whenever a person is designated by his or her position by these regulations to take an action or to approve or disapprove an action, the person's deputy, if any; the person, if any, who has been designated to act in an acting capacity for that position; and his or her superiors are authorized to take, approve, or disapprove the action.

1.3 Administration of Program

-1 The Fairfax County Merit System shall be administered by the Human Resources Director.

-2 The objective of the Department of Human Resources shall be to provide those services to County officials and employees, which can best be obtained through a central office, staffed with specially trained personnel. This goal is dependent on the establishment and recognition of certain procedures, which will assist supervisors in maintaining high standards of performance while protecting employees from arbitrary and capricious actions. The Regulations which outline these procedures are based on the assumption that a sound public personnel program can best be developed by the delegation of specified powers to appointing authorities, while making the Human Resources Director responsible for provision of necessary advice, leadership and support, and for ensuring that the standards contained in the Personnel Regulations are met.

1.4 Final Administrative Authority

Final administrative authority shall rest with the County Executive for all Merit System employees except as otherwise provided in the Code of Virginia. When necessary to continue County operations, the County Executive may suspend any rule in these Personnel Regulations to address catastrophic emergency situations (such as pandemic flu) following a Declaration of Emergency consistent with the County's Comprehensive Emergency Management Program, State and Federal law. The Board of Supervisors may revise or rescind such rule suspension at any time following the County Executive's action when deemed to be in the best interest of the County. The rule suspension will automatically end at the close of the declared emergency, if not revoked or rescinded earlier by the County Executive or Board of Supervisors.

1.5 Civil Service Commission

The Civil Service Commission shall have the composition, responsibilities, authority and duties prescribed in the Ordinance, plus such other responsibilities, authority and duties as may be prescribed in these Regulations or by the Board of Supervisors.

1.6 Human Resources Director

- 1 The Human Resources Director shall have such qualifications and shall perform such duties as are specified in the Merit System Ordinance.
- 2 The Human Resources Director shall perform such additional functions as are specified in these Regulations or as may be directed by the Board of Supervisors and the County Executive, provided that such functions are consistent with the Code of Virginia and the Code of Fairfax County.
- 3 The Human Resources Director is authorized to issue procedural directives to implement these Regulations.

1.7 Department Heads

- 1 The department head is the appointing authority for the employees working in his or her department. A department head is responsible for personnel administration in his or her department.
- 2 In accordance with the provisions of these Personnel Regulations, a department head may delegate the authority to act with respect to certain matters of personnel administration to his or her deputy or designee. When a department head delegates such authority, he or she still retains the management responsibility for actions taken or not taken pursuant to such delegation of authority.

1.8 Employees Advisory Council

- 1 The Merit System Ordinance establishes an Employees Advisory Council, the purpose of which shall be to provide a continuing medium through which all employees in the competitive service may contribute their advice and suggestions for the improvement of a career merit system and other aspects of the government of Fairfax County.
- 2 The operation of the Employees Advisory Council shall be in accordance with the rules and procedures adopted by the Civil Service Commission and concurred in by the Board of Supervisors.

1.9 Equal Employment Opportunity

- 1 It is the policy of Fairfax County to provide equal opportunity to all employees and potential employees.
- 2 No officer or employee of the County shall discriminate against any employee or applicant for employment with regard to recruitment, application, testing, certification, appointment, assignment, performance evaluation, training, working conditions, promotion, demotion, discipline, lay-off, discharge, retirement, or any other aspect of employment on the basis of race, color, sex, creed, religion, national origin, age, disability, pregnancy or related medical conditions, gender identity, sexual orientation, genetic information, or veteran status.
- 3 No officer or employee of the County shall retaliate against any employee with regard to recruitment, application, testing, certification, appointment, assignment, performance evaluation, training, working conditions, promotion, demotion, discipline, lay-off, discharge, retirement, or any other aspect of employment because the employee has used or has participated in the County's grievance procedure, has complied with any law of the United States, or of the Commonwealth, or has reported any violation of such law to a governmental authority, or has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement to the Board of Supervisors, the County Executive, or other governmental authority.
- 4 The Human Resources Director shall maintain a current Diversity Plan to achieve equal employment opportunity goals.

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Commented [AJ3]: Added veteran status.

1.10 Veterans' Preference

Consistent with the requirements and obligations to protected classes under federal and Virginia law and the requirements of Fairfax County Code Section 3-1-21 and Section 1.9 of this chapter, in making initial appointments to the County service appointing authorities shall take into consideration or give preference to an applicant's status as an honorably discharged veteran of the armed forces of the United States, provided that such veteran meets all of the knowledge, skills, and eligibility requirements for the applied for position. Appointing authorities shall give additional consideration to veterans who have a service-connected disability rating fixed by the United States Department of Veterans Affairs. Such consideration or preference shall be limited to initial appointments to County service and shall not be required in demotions, promotions or transfers.

CHAPTER 5

Recruitment and Examination

5.1 *Overview of the Process*

- 1 By law, appointments to positions in the competitive service of Fairfax County must be on a competitive basis, free of discrimination on the basis of race, color, national origin, religion, sex, age, political affiliation, disability, pregnancy or related medical conditions, gender identity, sexual orientation, genetic information, veterans' status, or disabled veterans' status, and on the basis of ability, training and experience of the appointees which fit them for the work which they are to perform.
- 2 To accomplish this end:
 - a. Positions in the competitive service are advertised periodically in a manner designed to reach a broad sector of qualified potential applicants. Applications are accepted for an individual position or specified group of positions.
 - b. In the case of positions for which vacancies occur with some frequency or periodically in large numbers, applications may be accepted at intervals for specific classes rather than for specific positions and qualified applicants may be placed on eligibility lists and certified from such lists for consideration by department heads or deputies as vacancies occur;
 - c. Applicants are selected from certification lists for further screening, which usually includes either a personal or panel interview.
 - d. Applicants are screened through a variety of processes which usually includes either a personal or panel interview and may include written, oral, and performance testing, and evaluation of education and experience. The best qualified are certified for only those positions advertised.
 - e. Family members, members of households and extended relationships (as defined in Chapter 2) of an applicant/employee shall not participate in any part of the screening or selection process (including development of the process) in which the applicant/employee is on the eligible list.
 - f. Successful applicants are appointed and serve a one-year probation period.
- 3 When an adequate number of well qualified potential applicants for a position exist within the competitive service, competition may be restricted to County employees unless doing so would create or perpetuate a serious imbalance of the work force in terms of race or sex, in which case the position will be advertised for open

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competition. However, when there are an adequate number of well qualified applicants for a particular position in an agency, the Human Resources Director may restrict admission to the examination for that position to current employees of the department.

- 4 The Human Resources Director is responsible for all aspects of the recruitment and certification process, except those aspects delegated by him/her to department heads as authorized in these regulations; and for ensuring that all appointments to positions in the competitive service comply with the Merit System Ordinance and these regulations. Periodically, the Human Resources Director will offer training on laws, regulations and techniques pertinent to interviewing potential employees.
- 5 Any applicant who believes that his/her failure to receive an appointment was the result of illegal discrimination as defined in the Merit System Ordinance has certain appeal rights defined herein.

5.2 Announcement of Vacancies

- 1 In the interest of minimizing delay in filling vacancies, department heads or designee should inform the Human Resources Director of actual or impending vacancies as soon as this information becomes available.
 - a. This is accomplished by reviewing and updating the class specification and position description, as needed, in advance of submitting an on-line personnel requisition to advertise the vacancy.
 - b. Once the class specification and position description have been reviewed and approved, the department shall submit an on-line personnel requisition including a position number, job description, physical requirements, number of vacancies, a list of special or preferred qualifications, required background checks, supplemental questions for screening the preferred qualifications, the selection procedure to be used, and the length of the announcement
 - c. A vacancy may be advertised and applicants certified before the vacancy occurs, but no appointment may become effective more than three pay periods before the position is vacant unless dual encumbrance has been authorized by the County Executive or his/her designee.
- 2 The announcement period for job vacancies shall be at least two weeks unless otherwise authorized by the Human Resources Director, or designee.
 - a. If, in the opinion of the Human Resources Director, or designee, there is an adequate pool of potential applicants and there is an urgent need to fill the position the announcement period may be reduced to one week but in no case shall the announcement period be less than five business days.

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- b. Except for public safety uniformed jobs, the Human Resources Director may accept applications after the closing date if the eligibility or certification list for a position has not been issued.
 - c. Positions for which a continuing need for applicants exists or for which recruitment is particularly difficult may be announced with an open or indefinite closing date, and applicants may be placed on an eligibility list or certified at any time after the announcement has been open for five business days.
- 3 Each announcement of a vacancy shall include information on the position (e.g., number of vacancies, title, salary, duties, minimum and preferred qualifications, supplemental questions, screening process, closing date) so applicants have sufficient information to be able to consider whether to apply for the position.
- 4 Job announcements shall be available through multiple online sources and may include printed communications, which are likely to reach a large and varied population.

5.3 Evaluation of Applicants

- 1 The Human Resources Director or his/her designee may investigate any applicant's statements regarding their qualifications and experience to ensure their accuracy and completeness.
- 2 The content of all evaluations, including interviews, shall be based on bona fide occupational qualifications pertinent to the duties to be performed. Department heads or deputies shall ensure that all interviewers are aware of legal restrictions on the types of questions, which may be asked of applicants.
- 3 The Human Resources Director may delegate some or all of the actions described in this section to department heads.

5.4 Disqualification of Applicants

- 1 In addition to failure to meet basic qualifications, a finding of any of the following facts may be cause for rejection of an applicant.
 - a. The applicant has falsely stated any material fact or has attempted to practice deception or fraud in his/her application.
 - b. The applicant has any disqualifying condition (mental or physical); although the mere finding of such shall not be disqualifying if reasonable accommodation can be made.

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- c. The applicant currently is a substance abuser, except that a history of substance abuse shall not in itself disqualify a person in recovery.
 - d. The applicant has been found guilty of a felony, misdemeanor, or crime involving moral turpitude, or has committed disgraceful conduct, such as to render him/her presently unfit, in the judgment of the Human Resources Director, for a position in the class for which he/she is applying or for County service.
 - e. The applicant has a recent record of previous unsatisfactory service in County employment or elsewhere of such a nature as to demonstrate unsuitability for employment in a position of the class for which he/she is applying.
 - f. The applicant has used or attempted to use, prior to, during or subsequent to the examination, fraud or pressure of any kind for the purpose of bettering his/her grade on the examination or to obtain certification to any position.
 - g. The applicant has received a dishonorable discharge from the Armed Forces resulting from conviction by a general court martial for an offense which renders him/her presently unfit, in the judgment of the Human Resources Director, for a position in the class for which he/she is applying or the County service.
 - h. The applicant has received a bad conduct discharge from the Armed Forces resulting from conviction by a special court martial for an offense which renders him/her presently unfit, in the judgment of the Human Resources Director, for a position in the class for which he/she is applying or for County service.
- 2 When such finding is made, the Human Resources Director may reject the application and may cancel the eligibility of the applicant if he/she already has been certified or has attained a place on an eligible list. In the event the applicant has already received an appointment, the Human Resources Director may take appropriate action to remove him/her from the County service. The applicant shall be informed in writing of the action taken under this provision and of the reason therefore, and shall be advised of the method of appeal outlined in the following subsection.
- 3 Any person whose application is rejected by order of the Human Resources Director, whose eligibility is canceled or who is removed from any position under the provisions of this rule may make a written request to the Human Resources Director for reconsideration, giving his/her reasons therefore, within fifteen business days of the date on which he/she received notice of this action. The decision of the Human Resources Director is final, except that an employee in the competitive

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service who is dismissed in accordance with this section after having completed his/her initial probationary period may grieve his/her dismissal under the provisions of Chapter 17.

5.5 Investigations and Fingerprinting

- 1 Department heads or their designees are responsible for verifying references and claimed veteran status of prospective appointees.
- 2 Investigations of the backgrounds of candidates for public safety positions will be conducted by the various public safety agencies. The backgrounds of candidates for other sensitive positions may be investigated at the request of a department head or designee with the concurrence of the Human Resources Director.
- 3 Selected candidates receiving a conditional offer of employment in a sensitive position will be fingerprinted and the prints forwarded to the Federal Bureau of Investigation for checking against its records. Any such candidate who refuses to be fingerprinted shall be disqualified. Candidates with a conviction or convictions on their record that are incompatible with the nature of employment in the sensitive position may be denied employment and the conditional offer of employment rescinded.
- 4 Selected candidates receiving a conditional offer of employment into a position identified by the agency director as a position of trust shall be required to submit for a credit check. Any candidate who refuses to do so shall be disqualified and the conditional offer of employment shall be rescinded. The agency director or designee shall review credit reports of candidates who receive an unfavorable report and take action in accordance with Personnel/Payroll Administration Policies and Procedures, Memorandum No. 56, Credit Check Requirements for Positions of Trust.
- 5 All appointees will be required to present evidence of United States citizenship or, in the case of non-citizens, evidence of eligibility to work in the United States as required by law. All appointees who have claimed veteran status will be required to present evidence of the status claimed.

5.6 Medical Examinations

- 1 The Human Resources Director shall designate classes for which a pre-employment medical examination shall be required.
- 2 Candidates who fail such examinations shall be disqualified, but such failure shall not disqualify any individual from consideration for a position for which the physical qualification he/she failed to meet does not apply.

5.7 Security and Retention of Applications and Related Records

- 1 Applications of successful and unsuccessful candidates and selection process shall be securely retained in accordance with the Library of Virginia Retention Schedule GS-3.
- 2 Individual applicant performance and records shall not be discussed or shared outside of the Human Resources Director or designee, department director or designee and interview panel.
- 3 Retention of records may be in paper, photographic or electronic form.

5.8 Promotional Public Safety/Uniformed Employee Examinations

- 1 Qualifying Scores
 - a. In establishing qualifying scores, the Human Resources Director or his/her designee may consider the following factors: minimum standards of job performance, distribution of candidates' raw scores in a particular examination, standard deviation of test scores, test reliability, adverse impact, validity and standard error of measurement.
 - b. When an exam consists of several components, such as written, performance and physical portions, a candidate may be required to attain a qualifying score in each portion of the exam.
- 2 Method of Breaking Ties
 - a. If two or more candidates attain the same final score, the tie shall be resolved in favor of the applicant who receives the highest score in the most heavily weighted portion of the examination. If a tie still exists, scores on the remaining portions of the examination will be considered in order of their relative weight. If a tie still exists, the tie shall be resolved in favor of the applicant, who is a veteran. If the tie is between an applicant who is a veteran and an applicant who is a veteran with a service-connected disability rating, the tie will be resolved in favor of the latter applicant for the veteran with a service-connected disability rating.
 - b. For promotional examinations for uniformed public safety job classes, if the tie extends beyond the procedure noted above, the tie shall be resolved in favor of the employee having the longest period of continuous service in the class series, beginning with date of appointment to the public safety class series (police, fire, sheriff).

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-3 Notice of Examination Results for Public Safety Examinations

If an examination was conducted for the purpose of establishing a continuing eligibility list, all successful candidates will be advised of the results as soon as practicable after establishment of the list. Such notice shall include the following information:

- a. The position class,
- b. The length of time the list will be maintained,
- c. The number of persons on the list, except in the case of open announcements where the individual's position on the list may change from time to time as other applicants are found eligible, and
- d. The individual's position on the list as determined by applicable sections of Chapter 6 of these Regulations, except in the case of open announcements where the individual's position on the list may change from time to time as other applicants are found eligible.

-4 Examination Security

- a. Family members, members of households and extended relationships (as defined in Chapter 2) of candidates eligible to participate in an examination shall not serve on a promotional examination committee, as a pre-tester, nor in the administration of the examination.
- b. Committee members, pre-testers and personnel who participate in test administration are prohibited from discussing any component of an examination except as authorized by the Human Resources Director.

-5 Examination Reevaluations

- a. For written multiple choice exams that test the candidate's technical knowledge (such as departmental operating manuals, standard operating procedures, etc.), candidates may request a reevaluation of their examination papers with a view towards obtaining a higher score providing such request is made to the Human Resources Director within 15 business days following written notification of the examination results. Other types of written exams (including but not limited to situational judgment tests, multiple choice in-baskets, etc.) that measure other abilities are not subject to reevaluation.
- b. When a request for reevaluation results in a candidate obtaining a higher score so that the relative standing of the candidate on an eligible list is changed, the

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Human Resources Director shall review certifications made subsequent to the promulgation of the eligible list and determine whether or not the initial and incorrect score resulted in the candidate's losing certification. When, as a result of error, a certification has been lost to an eligible candidate, the Human Resources Director shall place the name of the candidate on the eligible list so that he/she benefits from the next certification. Appointments already made from such eligible lists shall not be affected by such correction.

- c. Reevaluation of performance-based examinations (including but not limited to practical examinations and assessment centers) shall not be allowed. However, candidates may request an explanation of their performance rating in such exams providing such request is made to the Human Resources Director within 15 business days following written notification of the examination results. The explanation shall be provided by the examining staff of the Employment Division and the Agency Test Evaluators, if any. Staff shall answer questions of the candidate, including information on how the test was graded and how scores were obtained in general. Staff shall not normally reveal individual scores on specific dimension ratings.

-6 Eligible Lists

- a. The names of applicants who meet minimum qualifications as determined by an examination, which is numerically scored, shall be placed on the appropriate eligible list in order of their total scores or grouped into bands. Candidates will be grouped into bands based on similar scores. If grouped into bands, at least two bands (well-qualified and qualified) are required and within each band all eligible candidates will be considered tied.
- b. In the event of a tie in scores, veterans, shall be listed ahead of non-veterans, and veterans with a service connected disability rating shall be listed ahead of other veterans. Within each band all eligible applicants within the band will be considered tied.

CHAPTER 7

Certification and Appointment

7.1 Appointments to the Competitive Service

- 1 Merit appointment indicates that the employee has been selected for appointment in accordance with the provisions of Chapters 5 and 6 of the Regulations. Merit employees shall receive annual and sick leave and other fringe benefits.
- 2 Merit positions may be filled from within or outside the merit system. Appointments from within the system may be promotions, lateral transfers or demotions.
- 3 Merit employees scheduled for 20 or more hours per week, including those in more than one merit position, shall have all the benefits of full-time merit employees, including:
 - A. Leave Accrual: Annual and sick leave will accrue as stated in Chapter 10 of the Fairfax County Personnel Regulations.
 - B. Health Benefits: Employees scheduled to work less than 31 hours per week may be subject to higher premium payments for certain benefits, in accordance with county benefits policy.
 - C. Performance Pay Increases: Employees holding more than one merit position are eligible to receive pay increases in all positions.

7.2 Status of Employees and Positions

- 1 Merit employees normally occupy positions in the competitive service and exempt employees normally occupy positions in the exempt service. In exceptional circumstances, however, particularly when it is urgent that a position be filled without delay, a merit employee may occupy a position in the exempt service or an exempt employee may occupy a position in the competitive service.
- 2 Except as provided in 7.2-3 below, a merit employee shall not have his/her status changed to exempt while assigned to a position in the exempt service when there has been no break in service. There shall be no change in the merit employee's rights and benefits entitlement while serving in an exempt service a position. When a merit employee is appointed to an exempt service a position, the personnel action request form shall indicate in what manner it is planned to return the employee to a merit position. The rules governing temporary acting promotion or demotion shall apply. Upon return to the merit position, the

employee's grade, salary and performance pay increase date shall be determined as if the exempt appointment had not occurred.

- 3 A merit employee may occupy an exempt position without a change in status for no longer than ninety days. A merit employee who accepts an appointment in excess of ninety days to an exempt position loses his/her merit status, but may be reinstated to a position in the competitive service at his/her former merit grade and salary within one calendar year of the end of the exempt appointment.

7.3 Certification of Applicants

- 1 Upon receipt of a personnel requisition, the Human Resources Director or designee shall promptly announce the vacancy and certify applicants following the procedures specified in Chapters 5 and 6.
- 2 Following the closing date of the job announcement, the Human Resources Director or designee will establish a certification list of the best qualified applicants and submit it to the agency contact

When creating the certification list, in addition to the employment standards, necessary knowledge, skills and abilities as defined in the class specification and position description, consideration shall be given to the following: the number of vacant positions to be filled from that list, applicant responses to supplemental application questions, preferred qualifications considered critical to successful performance in the job when approved by the Human Resources Director or designee, as well as the diversity needs as identified in the agency's Diversity Plan. Where possible, the certification list should contain at least ten applicants.

- 3 Applicants shall be certified in accordance with the following rules.
 - a. If a position has been announced exclusively as a promotional opportunity open only to current employees, only current County employees shall be certified.
 - b. Applicants shall be listed in alphabetical order on certification lists furnished to departments. The certification list shall identify the applicants who are veterans and veterans with a service-connected disability rating.
- 4 The Human Resources Director may delegate some or all of the actions described in this section to department heads.

7.4 Selection and Appointment

- 1 Before making any appointment, the department head or his/her designee shall review the applications of all certified applicants and shall interview at least one more than half of those certified.
- 2 For the purpose of this subsection, the department head's designee may be either an individual or a panel. Department heads are encouraged to use panels for all positions. When panels are used, either to review applications or to conduct interviews, they should be constituted with due regard for the demographic characteristics of the certified applicants. Due to the scope and rigorous nature of the selection procedures used for public safety job classes, interviews are not required for these job classes except when deemed appropriate at the discretion of the department head or deputy.
- 3 The department head or his/her designee should review and consider the performance records of current and former employees who are finalists for a job vacancy.
- 4 Department heads or deputies normally should complete the process of screening, interviewing and appointing within 30 calendar days of receipt of a certification list. If a period longer than 30 days is required to make a selection, department heads or deputies shall consider the likelihood that the best qualified applicants may no longer be available. This subsection does not apply to applicants for uniformed public safety positions, who are required to undergo additional screening after initial certification and whose appointments may be timed to coincide with the convening dates of training academy classes.
- 5 Appointment to a vacancy in the competitive service shall be made by the proper department head or deputy from those applicants certified by the Human Resources Director or designee. Such appointment shall be indicated by the completion of a personnel action request form.
- 6 No applicant shall seek or attempt to use any political endorsement in connection with any merit system appointment and no consideration shall be given to political or partisan affiliation, activity or endorsement in selecting candidates for original or promotional appointment in the merit service.
- 7 Every appointee shall be required to show proof of identity and proof of eligibility to work in the United States, before his/her appointment becomes effective.

7.5 Probationary Period

- 1 Except as noted in 7.5-2 below every merit appointee shall serve a probationary period of twelve months after original appointment (initial probationary period) or promotion (promotional probationary period). The probationary period shall be

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used for closely observing the employee's work, for obtaining the most effective adjustment of a new employee to his/her position, and for separating any new employee or demoting any promoted employee whose performance does not meet the performance requirements.

- 2 Sworn police officers, animal protection police officers, deputy sheriffs, and uniformed firefighters shall serve an initial probationary period of twelve months commencing with the date of graduation from the appropriate training academy. Public safety communicators shall serve an initial probationary period of twelve months commencing upon graduation from the Department of Public Safety Communications Academy and the completion of a 10 week on the job training program. The performance pay increase date shall be determined by the date of original appointment. For all other merit employees, the initial probationary period shall commence with the date of appointment.
- 3 With the approval of the Human Resources Director, a department head or deputy may extend the initial or promotional probationary period in limited circumstances situations where the employee has been unable to perform the duties for which he or she was hired due to extended absence or extended period of restricted duty for medical reasons due to FMLA for a period not to exceed 120 calendar days.
 - a. Requests for extension of the probationary period must be made in writing to the Human Resources Director stating the specific facts and circumstances justifying the request. The request for extension must be made in advance of the expiration of the employee's probationary period and may be granted under the following circumstances:
 - (1) when an employee is absent from work on an approved absence in excess of 30 calendar days during the probationary period;
 - (2) when an employee is unable to perform the assigned duties of the job for which he/she was hired for a period in excess of 30 days, such as when serving in a temporary light duty assignment to accommodate a medical condition.
 - b. Such extension shall commence on the date the employee resumes the assigned duties of the job for which he/she was hired.
- 4 An employee serving in the initial probationary period is eligible to apply for, be certified to, and be appointed to a class of a higher level. Under such circumstances, a promotional probationary period begins with the date of the promotion but the initial probationary period expires twelve months from initial appointment date unless extended in accordance with the provisions of this action.
- 5 Unless alleging illegal discrimination, an employee serving an initial appointment probationary period including extensions authorized in accordance with this

section has no right to grieve or appeal under these rules. Any employee who has satisfactorily completed an initial probationary period and who is serving a probationary period following promotion retains his/her grievance rights.

7.6 Underfill Appointments

- 1 With the approval of the Human Resources Director or designee, an applicant who does not meet all the employment standards as outlined in the class specification and approved position description for a merit class may be appointed competitively to fill a position in that class at a lower grade than that of the class under the conditions specified in this section.
- 2 Underfills are appropriate under the following circumstances:
 - a. When recruitment difficulties exist for a class at the authorized grade.
 - b. When appointees require specialized training and work experience within a particular function to meet the performance standards for the position at the authorized grade.
 - c. When underfilling a position is part of an authorized upward mobility program for career employees.
 - d. A reclassification action changes the classification of the position and the incumbent does not meet the minimum qualifications.
- 3 When it is planned or likely that a position will be underfilled, the vacancy announcement will so state.
- 4 Before making a formal offer of an underfill appointment, the department head or deputy shall prepare a written underfill agreement, which must be approved by the Human Resources Director or designee in advance of the offer. The agreement shall include at least the following information:
 - a. The specific training and experience requirements the employee must meet before promotion to the authorized grade.
 - b. The manner in which they are to be met and the time frame within which the appointee is expected to meet the performance standards for the position, which standards shall be included within the agreement.
 - c. A statement to the effect that promotion will be made without further competition when the appointee meets the terms of the agreement and the performance standards of the authorized position; and that if the appointee fails to do so within the allotted time the department head or deputy will

effect a transfer, demotion, dismissal or unsatisfactory service separation or a statement to the effect that after successfully completing the terms of the agreement, the employee will be required to compete for promotion to the higher level position and if not selected, the department head or deputy will effect a transfer, demotion, dismissal or unsatisfactory service separation.

- d. A statement that the employee's pay shall revert to its pre-agreement level if the employee, before satisfying the agreement's terms and conditions, discontinues performance under the agreement or takes a position with the County different than the one authorized under the agreement.
- 5 Underfill agreements normally will be for a period of not more than one year but may be for periods of up to four years in multi-tiered underfill agreements. The department head or deputy may extend an underfill agreement without the Human Resources Director approval if the employee necessarily is absent for more than 30 consecutive calendar days or because of the unavailability of required training. The department head or deputy must inform the Human Resources Director of all such extensions.

7.7 Appointment of Family Members, Members of Household or Extended Relationships

- 1 Except as provided herein, no applicant/employee shall be hired, reinstated, reemployed, transferred, promoted or demoted to a position which places him/her in a direct supervisory line as defined herein or otherwise permits them to participate in any personnel action relative to a family member or members of his/her household or extended relationships.
- 2 This prohibition may also be extended to positions, in which the duties involve access, review, verification, authorization, or approval of the transactions of family members, members of household, or extended relationships in financial, personnel, purchasing, or other sensitive matters, even though the respective functions are in different departments. Such positions will be identified by an affected department head or designee, with the approval of the Human Resources Director.
- 3 For purposes of this regulation, the definition of 'Extended Family Including Household Member' is defined in Chapter 2.
- 4 For the purposes of this regulation, "Extended Relationships" is defined as those personal relationships creating a potential conflict of interest or having the possibly of creating adverse impact (actual or perceived) on supervision, safety, and security. Additionally, a direct supervisory line is defined as those situations where an employee, regardless of job description or title, has authority to hire,

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transfer, promote, assign, reward, discipline or terminate other employees or has responsibility to direct their work or conduct their performance evaluation. This also includes those situations where an employee effectively is able to recommend these actions where such recommendations are given substantive weight in the final decisions being made.

- 5 If a change occurs which causes employees to be in conflict with this regulation, one of the employees shall be transferred to a vacant position within the County. In the absence of an agreement which is satisfactory to all the concerned parties, the employee with the lower grade, or, if they are of the same grade, the employee with the fewer years of County service shall be transferred.
- 6 Requests for exceptions to this policy shall be submitted in writing to the Human Resources Director, who has the authority to waive this regulation when it is in the best interest of the County to do so. The approved exception request shall be maintained in each employee's respective personnel file.

7.8 Applicant Right of Appeal on Discriminatory Practices

- 1 An applicant who is not employed by the County at the time of his/her application and who believes he/she has been discriminated against on the basis of race, sex, color, religion, national origin, age, disability, pregnancy or related medical conditions, gender identity, sexual orientation, political affiliation, genetic information or his or her status as a veteran or disabled veteran during the selection process may file an appeal on the alleged discriminatory practice. A bona fide occupational requirement for any position, the minimum age qualifications for public safety occupations, and the exclusion of family members, members of household, or extended relationships as defined in Section 7.7 shall not be appealable except as provided in Sec. ~~7.7-5~~ 7.5-5.
- 2 Such an appeal stating the alleged discriminatory practice and the corrective action desired must be filed in writing with the Director of the Office of Human Rights and Equity Programs within fifteen business days of the date the applicant knew or should have known that he/she was not selected for employment.
- 3 The Director of the Office of Human Rights and Equity Programs shall investigate the allegations and respond in writing to the applicant within twenty business days.
- 4 Should the applicant believe the Director of the Office of Human Rights and Equity Programs' response to be unsatisfactory, the applicant may file a written request for a hearing with the Civil Service Commission. The applicant's request for a hearing must contain a complete statement of the alleged discriminatory practice and the corrective action desired, and must be filed within fifteen business days of receipt of the Director of the Office of Human Rights and Equity Programs' response.

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- 5 The Civil Service Commission shall set a time and place for such hearing to be held not more than thirty workdays after receipt of such request. At its discretion, the Commission may appoint a hearing officer to hear the appeal.
- 6 The hearing shall be conducted in accordance with hearing procedures adopted by the Civil Service Commission.
- 7 After the hearing, the Commission shall forward an advisory finding on the merit of the appeal and disposition of the case to the County Executive. The Commission does not have the authority to award or recommend monetary damages.

DRAFT

CHAPTER 16
Conduct and Discipline

16.1 Purpose and Scope

The purpose of this Chapter is to establish the standards of conduct for County employees and to prescribe procedures for warning and the progressive discipline of such employees.

16.2 Policy

It shall be the policy of Fairfax County government to ensure that all employees observe the Code of Ethics and the Standards of Conduct as prescribed herein. It shall be the policy of the County to ensure that all department heads and supervisors treat and discipline employees under their respective jurisdictions in a fair and equitable manner. Employees who feel they have not been so treated have a right to present their grievances following the procedures outlined in Chapter 17.

16.3 Definitions

-1 Informal Warnings

Oral Warnings - such actions are excluded under the grievance procedure

-2 Formal Warnings

Written Reprimands

-3 Formal Disciplinary Actions

a. Suspensions

b. Dismissals

c. Disciplinary Demotions

16.4 Responsibilities

-1 Each employee will:

a. Observe the Standards of Conduct, code of ethics, and other workplace rules.

- b. Conduct him/herself, both on and off the job, in a manner, which will reflect credit on the County government, and respective departments.

-2 Department heads and supervisors will:

- a. Inform employees of rules governing conduct and discipline as well as other workplace rules and special requirements;
- b. Treat employees in a fair and equitable manner;
- c. Investigate apparent employee offenses, by following the county's policy on harassment, discrimination, and retaliation;
- d. Administer appropriate disciplinary action when warranted and as described in this Chapter; and
- e. Consult with the Human Resources Director or his/her designees if necessary where disciplinary action involving loss of pay is contemplated.

-3 Human Resources Director and his/her staff will:

- a. Provide information and guidance to supervisors at all levels on standards of conduct and effective use of progressive discipline;
- b. Provide advice and assistance to supervisors in the uniform and equitable interpretation and application of the provisions of this Chapter;
- c. Ensure that the workplace rules and special requirements established by department heads and supervisors are not in conflict with the provisions of this Chapter;
- d. Evaluate management practices in the administration of discipline and compliance with standards of conduct within departments and provide recommendations to department heads when such management practices require changes; and
- e. Advise department heads on policies, procedures, the outcome of bullying investigations, and recommend appropriate action.

- 4 Department heads will make the final decision on issuance of formal disciplinary actions of suspension, dismissal, or disciplinary demotions.

16.5 Disciplinary Actions

Disciplinary action will be taken only for good cause and after careful review of allegations with a goal, where appropriate, of correcting problem situations. However, disciplinary action must be taken when warranted to promote the efficiency of the Fairfax County

service. The severity of the disciplinary action will be determined by the severity of the misconduct and review of the employee's work record.

- 1 Oral Reprimand or Warning. When a supervisor deems that an informal oral reprimand or warning is warranted, he/she will:
 - a. Advise the employee, in private, of the specific infraction of the rule or breach of conduct and the date it occurred;
 - b. Allow the employee an opportunity to explain and weigh the explanation;
 - c. If warranted, administer the reprimand or warning informally; and
 - d. Maintain an informal record of the discussion with the employee's knowledge of such a record.
- 2 Written Reprimand. When a supervisor determines that an offense is of such a nature that a record should be placed in an employee's personnel file maintained within the Department of Human Resources, a letter of reprimand will be prepared. The letter will contain:
 - a. Statement of charges in sufficient written detail to enable the employee to understand fully the violation, infraction, conduct, or offense for which he/she is being disciplined;
 - b. Statement that it is an official letter of reprimand and that it will be placed in the employee's official personnel folder;
 - c. Previous offenses in those cases where the letter is considered a continuation of progressive discipline; and
 - d. Statement that similar occurrences could result in a proposal that more severe disciplinary action be initiated, up to and including dismissal.
- 3 Suspension. When a supervisor determines that an offense requires a more severe disciplinary action than a written reprimand, he/she will:
 - a. Investigate alleged employee offenses promptly; obtain all pertinent facts in the case (time, place, events and circumstances) including, but not limited to, making contact with persons involved or having knowledge of the incident;
 - b. Discuss the case including the length of suspension with higher levels of supervision, where appropriate;
 - c. Consult with the Human Resources Director or his/her designee if necessary when

suspensions are contemplated;

- d. Prepare and submit advance notice letter to appropriate levels for review and approval; and
 - e. Consider employee's reply to the advance notice letter and make final recommendation to department head. The department head will make the final decision.
- 4 Dismissal. The dismissal of an employee shall constitute the most severe type of disciplinary action authorized under this Chapter. This action should only be taken when a department head has determined that an employee is unsuited for employment in Fairfax County. When this determination has been made, the procedures outlined in the preceding paragraphs under Suspensions will be followed.
- 5 Disciplinary Demotion. Separate and apart from disciplinary actions described in the preceding paragraphs, a department head may initiate a non-job performance demotion when an employee willfully violates or fails to comply with the requirements imposed by the Standards of Conduct or when an employee willfully participates in prohibited conduct as described by this Chapter. When such action is contemplated, the procedure outlined in the preceding paragraphs under Suspensions will be followed.
- 6 When disciplinary action is necessary, the department head may enter into an Employee Assistance Program Disciplinary Diversion Agreement under conditions set forth in procedures established by the Human Resources Director.

16.6 Criteria for Advance Notice Letter

- 1 The advance notice letter must include:
 - a. Statement of charges in sufficient detail to enable the employee to understand fully the violation, infraction, conduct, or offense for which he/she is being disciplined;
 - b. Type of disciplinary action (suspension, dismissal, or disciplinary demotion);
 - c. A list of previous offenses, if any, which have been considered in arriving at the current disciplinary action;
 - d. Effective date of disciplinary action (no sooner than ten (10) business days from the date of advance notice letter) and employee's right to reply (five (5)) business days from receipt of the letter);
 - e. Employee's right to grieve should the final decision result in a suspension, dismissal or disciplinary demotion; and

- f. Statement that the action proposed, if implemented, will become a permanent part of his/her personnel file.

16.7 Circumstances When Administrative Leave Is Appropriate Prior to Compliance with Advance Notice Letter Provisions

When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed or when circumstances are such that the retention of the employee in an active duty status may result in damage to County property or may be detrimental to the interests of the County or injurious to the employee, his/her fellow workers, or the general public, the department head or designee may temporarily assign him/her to duties in which these conditions will not exist or place the employee on administrative leave until appropriate disciplinary action, if any, is determined and the provisions of Section 16.6 have been followed.

16.8 Probationary Employees

- 1 The disciplinary procedures prescribed herein shall be applicable to those employees of the competitive service assigned to a merit position. Employees are not covered by the rules of progressive discipline until they have completed a probationary period of twelve (12) months and any extensions authorized in accordance with the provisions of Chapter 7 after original appointment and may be terminated without benefit of this procedure.
- 2 All employees are required to observe the Code of Ethics and Standards of Conduct prescribed herein.

ADDENDUM NUMBER 1 TO CHAPTER 16

STANDARDS OF CONDUCT

All employees, regardless of grade, title or length of county service **are expected to adhere to the following Standards of Conduct**. Violation of the Standards of Conduct is grounds for disciplinary action up to and including dismissal.

Leave and Attendance

Employees are expected to:

Comply with rules and regulations governing hours of work, absences, use of leave.

Employees are prohibited from:

Failing to report to work as scheduled without proper notice to supervisor;

Leaving work without permission;

Arriving late for work on a consistent basis.

Personal Behavior and Conduct

Employees are expected to:

Demonstrate professionalism and support the county's commitment to excellent customer service at all times;

Exercise courtesy, respect and tact when dealing with fellow employees and the public regardless of age, race, color, religion, sex, creed, national origin, marital status, disability, pregnancy or related medical conditions, gender identity, sexual orientation, genetic information, union or political affiliation, veterans' status, disabled veterans' status, or any other factor unrelated to the impartial conduct of county business.

Commented [AJ1]: Added pregnancy or related medical conditions, gender identity

Comply with a proper order of an authorized supervisor.

Employees are prohibited from:

Harassing fellow employees, county vendors, or members of the public on the basis of race, color, religion, sex, creed, sexual orientation, national origin, age, marital status, disability, pregnancy or related medical conditions, gender identity, genetic information, or any other characteristic now or hereafter protected by federal, state or county law. This prohibition includes, but is not limited to, sexual harassment;

Commented [AJ2]: Added creed

Commented [AJ3]: Added pregnancy or related medical conditions, gender identity

Engaging in rude or unprofessional behavior or disorderly conduct even if the behavior is not expressly forbidden by regulation or law;

Engaging in bullying, as defined in Chapter 2 of these regulations.

Using racial, sexist or ethnic slurs or other language that disparages any person on the basis of age, race, color, religion, sex, national origin, marital status, disability, pregnancy or related medical conditions, gender identity, sexual orientation, creed, genetic information, union or political affiliation, veterans' status, or disabled veterans' status.

Commented [AJ4]: Added pregnancy or related medical conditions, gender identity

Being convicted of a crime that is committed on the job or a felony in Virginia of such nature that the public or other employees may be endangered if the employee remains in his or her position or of such nature that reasonably undermines the public trust in the employee's ability to perform his or duties.

Engaging in conduct on or off duty that violates federal or state law, county ordinances or policies when the violation is related to the employee's activity as a county employee or to county business or when it undermines public trust in the county or the employee's ability to perform his or her duties.

Manufacturing, distributing, possessing, using or being under the influence of alcohol or illegal drugs while at work or on county premises with the exception of attendance at events where alcohol is permitted during off duty hours;

Threatening, assaulting, intimidating, or harassing another employee or a member of the public;

Using obscene language toward fellow employees, supervisors, subordinates and/or members of the public;

Abusing supervisory authority through favoritism, harassment, discrimination, or mistreatment of employees.

Protection and proper use of County data, property, funds, and records

Employees are expected to:

Use public property, resources, and funds in accordance with established procedures;

Maintain confidentiality with regard to client or customer information in accordance with state and federal law, county ordinance and county policy;

Maintain employee confidentiality by preventing the disclosure of personal information to any unauthorized party.

Employees are prohibited from:

Using County data, facilities, equipment, property or employees for other than officially approved activities, except as permitted under County policy or procedure;

Engaging in any action prohibited by county information technology policy or procedure;

Carelessly or willfully causing destruction of county property;

Knowingly falsifying or conspiring to falsify any county record or report whether paper or electronic, (e.g., resume, time and attendance reports, workers' compensation claims, travel and/or expense vouchers).

Driving

Employees are expected to:

Operate all county vehicles in accordance with federal, state and local driving laws;

Operate privately owned vehicles being used in the performance of County business in accordance with state and local driving laws;

Remain aware of status of operator's license and report any suspension or revocation of driving privileges to their supervisor immediately if job duties require the operation of a vehicle for county business.

Employees are prohibited from:

Knowingly operating a vehicle on county business without a valid operator's license;

Possessing, using, or being under the influence of alcohol, illegal drugs, or prescription drugs that might adversely affect one's ability to drive, while driving a county vehicle or while driving a personal vehicle on county business.

Safety

Employees are expected to:

Promote safe and healthy working environment by complying with all appropriate safety and health regulations;

Promptly report safety and health hazards so that they can be corrected before injuries result;

Dress in appropriate attire, uniform or safety equipment as specified by the standards and work rules for the agency and position;

Immediately report workplace violence to your supervisor or appropriate authority.

Employees are prohibited from:

Bringing a gun, either concealed or displayed, to work or onto county premises, with the exception that employees of county agencies may store a lawfully possessed firearm and ammunition in a locked motor vehicle on county premises. This prohibition shall apply to all employees, except those authorized to carry a firearm at work or onto county premises based on the nature of their work. Such employees may do so only if specifically authorized by their appointing authority.

Bringing any weapon (except a gun as expressly permitted above), either concealed or displayed, to work or onto county premises, unless specifically authorized to do so by the appointing authority. For the purposes of this standard of conduct, the term weapon includes instruments of combat, or any object carried for the purpose of inflicting or threatening bodily injury.

Outside Employment/Conflict of Interest/Political Activities of Employees

Employees are expected to:

Disqualify themselves in any decision where a conflict of interest may be presumed to exist;

Obtain permission from their appointing authority prior to engaging in any private business activity, employment or other activity outside of work that conflicts or interferes with full discharge of their official duties or the work they perform as a county employee.

Employees are prohibited from:

Accepting anything of value for performing, or refraining from performing, an official job-related act; or accepting anything of value in order to assist another person in obtaining a county job, promotion, or contract;

Using information obtained in connection with county employment in order to obtain financial gain for the employee or others;

Accepting anything that might tend to influence the manner of performance of county employment or that might be intended to influence the manner in which a county employee performs his or her job;

Having a personal interest in any contract with the county;

Participating in matters related to their employment in which the interests of the county employee, or the interests of the county employee's family members or business associates, might be affected.

Engaging in political activities, as defined in state law and County ordinance, while on duty, in uniform, or on the premises of their employment with the County.¹

Using their official authority to coerce or attempt to coerce a subordinate employee to pay, lend, or contribute anything of value to a political party, candidate, or campaign or to discriminate against any employee or applicant for employment because of that person's political affiliations or participation in permitted political activities or failure to participate in political activities, whether permitted or not.²

Discriminating in the provision of public services, including, but not limited to, firefighting, emergency medical, or law enforcement services, or responding to requests for such services, on the basis of the political affiliation or political activities of the person or organization for which such services are provided or requested.³

Suggesting or implying that the County has officially endorsed a political party, candidate, or campaign.⁴

¹ See Va. Code Ann. § 15.2-1512.2(B).

² Va. Code Ann. § 15.2-1512.2(D).

³ Va. Code Ann. § 15.2-1512.2(E).

⁴ Va. Code Ann. § 15.2-1512.2(F).

ADDENDUM NUMBER 2 TO CHAPTER 16

CODE OF ETHICS FOR THE MERIT SERVICE OF FAIRFAX COUNTY, VIRGINIA

Fairfax County Code of Ethics is intended to inspire a superior level of conduct, sensitivity and sound judgment for all employees.⁵ The code is intended to complement, not replace, all professional code of ethics. Employees should be aware of and abide by their respective professional values and requirements. All employees must perform their designated function in a manner that reflects the highest standards of ethical behavior. All employees must uphold their responsibility as trusted public servants. All employees are obligated to respect, honor, and uphold the Constitution, laws and legal regulations, policies and procedures of the United States, the Commonwealth of Virginia, and the County of Fairfax.

The Code of Ethics is supported by six core principles that form the ethical foundation of the organization: Honesty, Public Service, Respect, Responsibility, Stewardship, and Trust.

- I. **Honesty:** Be truthful in all endeavors; be honest and forthright with each other and the general public.
- II. **Public Service:** Ensure all actions taken and decisions made are in the best interest of the general public and enrich and protect quality of life.
- III. **Respect:** Treat all individuals with dignity; be fair and impartial; affirm the value of diversity in the workplace and in Fairfax County; appreciate the uniqueness of each individual; create a work environment that enables all individuals to perform to the best of their abilities.
- IV. **Responsibility:** Take responsibility for actions; work a full day; conduct all workplace actions with impartiality and fairness; report concerns in the workplace, including violations of laws, policies and procedures; seek clarification when in doubt; ensure that all decisions are unbiased.
- V. **Stewardship:** Exercise financial discipline with assets and resources; make accurate, clear and timely disclosures to the public; maintain accurate and complete records; demonstrate commitment to protecting entrusted resources.
- VI. **Trust:** Build regard for one another through teamwork and open communication; develop confidence with the public by fulfilling commitments and delivering on promises.

⁵ For the purpose of this document, the term employee includes all persons, volunteers and all elected and appointed officials working on behalf of Fairfax County.
County of Fairfax, Virginia-Personnel Regulations

July 1, 2020




County of Fairfax, Virginia

MEMORANDUM

DATE: August 11, 2020

TO: Catherine Spage, Director
Department of Human Resources

FROM: Nicole Rawlings, Executive Director
Civil Service Commission 

SUBJECT: Public Hearing on Proposed Revisions to the Personnel Regulations - 1, 5, 7, and 16

Following an advertised electronic public hearing held on August 11, 2020, the Civil Service Commission considered revisions to the above referenced chapters of the Personnel Regulations. Members of the Commission participating in the public hearing included, Thomas Garnett, John Harris, Vanessa R. Jordan, Patrick Morrison, Nancy Rice, Sara Simmons, John Townes and Deborah Woolen. Commissioners Jason Fong, Farzin Farzad and Herb Kemp did not participate.

Cathy Spage, Director, Department of Human Resources (DHR) provided an overview of the proposed changes for each chapter. Ms. Spage shared that the proposed changes were largely to update the Fairfax County Personnel Regulations consistent with recent legislative changes by the Virginia General Assembly prohibiting discrimination based on pregnancy or related medical conditions, gender identity and sexual orientation.

Ms. Spage was accompanied by Shelley Scianna, Deputy Director, DHR and Diane Roteman, Employee Relations Division Director, DHR.

The proposed changes were presented as follows:

Chapter 1

The proposed changes to Chapter 1 correct the numbering for the regulation section referenced in Section 1.2-3 and add the language pregnancy or related medical conditions, sexual orientation and gender identity to Section 1.9-2.

Chapter 5

The proposed changes to Chapter 5 add the language pregnancy or related medical conditions, sexual orientation and gender identity to Section 5.1-1.

Civil Service Commission
12000 Government Center Parkway, Suite 258
Fairfax, Virginia 22035
Phone 703-324-2930 Fax 703-653-9431
www.fairfaxcounty.gov

Chapter 7

The proposed changes to Chapter 7 add the language pregnancy or related medical conditions, sexual orientation, gender identity, and veteran status to Section 7.8-1 and correct the reference from 7.7-5 to 7.5-5 in Section 7.8-1.

Chapter 16

The proposed changes to Chapter 16 add the language pregnancy or related medical conditions and gender identity to the *Employees are expected to* subsection under the Personal Behavior and Conduct heading; add the language creed, pregnancy or related medical conditions and gender identity to the *Employees are prohibited from* subsection under the Personal Behavior and Conduct heading in the first paragraph and the language pregnancy or related medical conditions, gender identity to the fourth paragraph.

No one registered to speak in advance of the public hearing. No one requested to make comments during the hearing.

The members of the Civil Service Commission participating in the public hearing voted unanimously, without further discussion, to recommend that the Board of Supervisors approve the proposed changes for Chapters 1, 5, 7, and 16 as advertised and presented.

If the Commission can be of further assistance in clarifying these proposed changes, please let me know.

cc: Board of Supervisors
Commissioners, Civil Service Commission
Bryan J. Hill, County Executive
Karen Gibbons, Deputy County Attorney
Vicki Kammerude, Chair, EAC
Ron Kuley, President, Local 2068
Joseph Abbate, President, Fairfax Deputy Sheriff's Union, SEIU
Brad Carruthers, President, Fraternal Order of Police, Lodge 77
Sean Corcoran, IUPA, Local 5000
Tammie Wondong, President, FCEGU, SEIU
Kirt Cleveland, Fairfax Workers Coalition
Brenda C. Zwack, Esq., AFSCME Local 3001
Karen Conchar, SEIU 512

ACTION - 3

Presentation of the Delinquent Tax List for Tax Year 2019 (FY 2020)

ISSUE:

Presentation to the Board of the annual list of delinquent real estate, personal property, and business, professional, occupational license (BPOL) taxes; presentation of the annual list of small uncollectable accounts. Review of delinquent collection program.

RECOMMENDATION:

The County Executive recommends that (1) staff continue to pursue the collection of delinquent taxes found in Attachment A and continue collection of non-tax delinquencies; and, (2) the Board removes certain small uncollectable overdue accounts listed in Attachments B and C pursuant to Virginia Code § 58.1-3921.

TIMING:

Routine

BACKGROUND:

In accordance with State Code, the Department of Tax Administration (DTA) has prepared a list of delinquent taxpayers for tax year 2019 (FY 2020) for Board consideration (Attachment A). DTA and its agents will continue to pursue the collection of all taxes and other charges due that are within the statute of limitations in accordance with Virginia Code §§ 58.1-3933 and 58.1-3940.

Presented below is a summary of delinquent taxes still outstanding for Tax Year 2019, as of June 30, 2020:

	<u>Tax year 2019 (FY 2020)</u>	Local
	<u>Accounts</u>	<u>Tax Amount</u>
Real Estate	2,368	\$ 8,229,475
Personal Property – Vehicles	41,777	\$ 7,302,556
Business Personal Property	2,486	\$ 2,500,691
Public Service Corp. Properties	3	\$ 11,038
BPOL	<u>1,692</u>	<u>\$ 3,833,395</u>
Total	48,326	\$ 21,877,155

Board Agenda Item
September 15, 2020

The list being presented to the Board is a "snapshot" of outstanding delinquent taxes as of June 30, 2020. This includes delinquent taxpayers who may already be on a payment plan, and delinquencies of taxpayers in bankruptcy.

For perspective, the total amount of all unpaid current year taxes, or \$21.8 million, represents less than 1% of the levy for Tax Year 2019 (FY 2020). Of the \$7,302,556 in delinquent vehicle taxes, \$1,545,415 is from business owned and used vehicles and \$5,757,141 is from personal property taxes on personally owned and used vehicles.

With outstanding support from the Sheriff's Office, the Police Department, and the Office of the County Attorney, DTA and its collection agents utilized a broad array of collection tools throughout FY 2020 to pursue delinquent accounts. Among other things, these tools include the use of computer-generated letters; telephone calls; statutory summons authority; payment plans; bank and wage liens; set-offs against income tax refunds; booting and towing of vehicles; and, the seizure of equipment.

In accordance with Virginia law, DTA also has an agreement with the Virginia Department of Motor Vehicles (DMV) whereby vehicle registrations are withheld from citizens who have delinquent personal property taxes. A total of 50,030 accounts with DMV holds were successfully collected in FY 2020.

As noted, DTA engages in major outsourcing for delinquent collections. Pursuant to Virginia Code § 58.1-3958 and by prior Board action, the private collection agents are compensated by a 20% fee added to the total delinquency, enabling the County to reduce program expenditures. DTA still provides substantial account research, reconciliation, adjudication, and oversight in support of the collection efforts. Outsourcing the bulk of collections continues to be a very productive and successful partnership.

The collection agent for personal property, BPOL, and parking tickets is a Fairfax County company, Nationwide Credit Corporation (NCC). NCC collected \$14.8 million in delinquent personal property taxes and vehicle registration fees and \$1.4 million in delinquent BPOL revenue in FY 2020.

These results were achieved through a robust collection program that included more than 1.7 million telephone calls using automated outbound dialing technology. In addition, NCC sent more than 116,432 dunning letters, issued approximately 23,202 bank and wage liens, processed just over 2,070 boot and tow orders in concert with the Sheriff's Office, and pursued judgments in General District Court. DTA staff provides the review and direct authorization of all NCC seizure activities.

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September 15, 2020

In addition to delinquent taxes, parking ticket collections are also outsourced. Until April 30, 2020, Citation Management, a division of Duncan Solutions, handled front end ticket processing and current collections for DTA. Effective May 1, 2020, DTA has contracted out the front-end ticket processing and current collections to United Public Safety. NCC pursues the collection of delinquent parking tickets. FY 2020 ticket collections totaled approximately \$2.1 million.

The private law firm of Taxing Authority and Consulting Services (TACS), based in Richmond, Virginia, handles delinquent real estate accounts. With coordination and oversight from DTA, TACS collected approximately \$8.6 million in delinquent real estate taxes for Fairfax County in FY 2020. Of this amount, \$999,468 came as a result of litigation being initiated and/or from the sale of properties at auction. TACS also collected \$64,658 in zoning violations fees.

Although most of the County Attorney collections have likewise been outsourced to TACS, the County Attorney's Office still directly handles bankruptcy collection cases. A total of 196 new bankruptcy collection cases were opened in FY 2020, and \$1,248,190 was collected from all bankruptcy matters.

Thanks to these combined efforts, the County collected more than \$37 million in net delinquent taxes in FY 2020 for all prior tax years. Strong collection efforts are also reflected in the current year tax collection rates:

	<u>FY 2020</u>
Real Estate	99.73 %
Personal Property (local share)	97.48 %
BPOL	98.89 %

To mitigate the spread of COVID-19, the Governor of Virginia issued an executive stay at home order on March 30, 2020. In response, DTA suspended the use of more aggressive collection tools such as liens in favor of dunning letters, telephone calls, and payment plans. This was done to alleviate the concerns of County residents facing financial hardship due to the shutdown. When the executive order was issued, only three months remained in FY 2020. Though DTA ceased all lien activity, the impact to revenue in FY 2020 was insignificant. However, in next year's report to the Board we expect to see a significant reduction to delinquent revenue for tax year 2020.

FY 2020 was the seventh full year of the non-tax delinquent collection program in DTA. In addition to collections, DTA continues to work with agencies to improve billing operations, clarify the potential collection actions to be taken, and standardize the use of Set-Off Debt opportunities and referrals to NCC. The individual agencies, and in some cases DTA, pursue initial collection efforts. After the statutory period of 90 days,

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September 15, 2020

delinquent accounts are referred to NCC. Working together, we collected approximately \$1.8 million in FY 2020.

Finally, Virginia Code §§ 58.1-3921 and 58.1-3924 state that upon submission to the Board of a list of small tax amounts for which no bills were sent (Attachment B) and a list of small uncollected balances of previously billed taxes (Attachment C), credit shall be given for these uncollected taxes. The lists presented in Attachments B and C average \$2.00 per account:

	<u>Accounts</u>	<u>Dollars</u>
Real Estate	5,298	\$ 1,130
Personal Property	<u>21,472</u>	\$ <u>53,758</u>
TOTAL	26,770	\$ 54,888

FISCAL IMPACT:

None. Collection agents collect their fee directly from the delinquent taxpayers, not to exceed 20% of the amount collected plus administrative costs as specified by law.

ENCLOSED DOCUMENTS:

Attachment A - Delinquent Taxpayers for Tax Year 2019 (FY 2020)

Attachment B - Tax Year 2019 accounts valued less than \$5 that were not billed

Attachment C - Tax Year 2019 "balance due" accounts of less than five dollars

(Attachments A, B, and C listed above are computer printouts which will be made available in the Board Conference Room on September 15, 2020, from 11:00 A.M. - 4:30 P.M.)

STAFF:

Joseph M. Mondoro, Chief Financial Officer

Jaydeep "Jay" Doshi, Director, Department of Tax Administration (DTA)

Kimberly Seburnia, Assistant Director, Revenue Collection Division, DTA

Tsega Netsanet, Manager, Delinquent Collections, Revenue Collection Division, DTA

ASSIGNED COUNSEL:

Corinne Lockett, Senior Assistant County Attorney

Board Agenda Item
September 15, 2020

ACTION - 4

Approval of the FY 2019 and FY 2020 Community Services Performance Contract Amendment and Extension Agreement Between the Fairfax-Falls Church Community Services Board and the Virginia Department of Behavioral Health and Developmental Services

ISSUE:

Board of Supervisors approval for the Fairfax-Falls Church Community Services Board's acceptance of FY 2021 funds and approval of the FY 2019 and FY 2020 Community Services Performance Contract Amendment and Extension Agreement with the Virginia Department of Behavioral Health and Developmental Services.

RECOMMENDATION:

The County Executive recommends that the Board approve the FY 2019 and FY 2020 Community Services Performance Contract Amendment and Extension Agreement between the Virginia Department of Behavioral Health and Developmental Services and the associated acceptance of FY 2021 funds.

TIMING:

Board action is requested on September 15, 2020.

BACKGROUND:

The Community Services Performance Contract delineates the responsibilities between the Virginia Department of Behavioral Health and Developmental Services (DBHDS) and the community services boards and behavioral health authority for the purpose of providing local public mental health, developmental and substance abuse services. It specifies the conditions to be met for a Community Services Board (CSB) to receive State-controlled funds, identifies the groups of consumers to be served with State-controlled funds and includes requirements to ensure accountability to the State.

As specified in the Code of Virginia, the CSB must make its proposed performance contract available for public review and comment prior to approving and submitting the biennial contract. Due to the public health emergency presented by the COVID-19 virus, DBHDS has extended the FY 2019 and FY 2020 Performance Contract through December 31, 2020 with amendments. The proposed FY 2019 and FY 2020 Community Services Performance Contract Amendment and Extension Agreement was available for thirty days for public review and comment. Notices of the comment period

Board Agenda Item
September 15, 2020

were posted at various public facilities, sent electronically through numerous distribution lists and posted on the CSB's web page. Comments were received until August 1, 2020.

On August 26, 2020, the CSB Board approved the FY 2019 and FY 2020 Community Services Performance Contract Amendment and Extension Agreement, and the contract was presented to the Cities of Fairfax and Falls Church for review and approval.

The contract transfers \$49,645,082 in State-controlled funds to the CSB for FY 2021, which is the total estimate of \$29,409,228 in State funds, \$4,759,509 in Federal funds, \$6,938,845 in Medicaid State Plan Option funds and \$8,537,500 in Medicaid Waiver funds.

FISCAL IMPACT:

This is the contractual mechanism used by the State to transfer \$49,645,082 in State-controlled funds to the CSB. This is an increase of \$4,406,934 or 9.74 percent from the FY 2020 contract amount of State-controlled funds, largely attributable to the estimated revenues from Medicaid State Plan Option funds.

ENCLOSED DOCUMENTS:

- Attachment 1: FY 2019 and FY 2020 Community Services Performance Contract Amendment and Extension Agreement
- Attachment 2: FY 2019 and FY 2020 Community Services Performance Contract

STAFF:

Daryl Washington, Executive Director, Fairfax-Falls Church Community Services Board

Virginia Department of Behavioral Health and Developmental Services
Office of Management Services ATTACHMENT 1
Memorandum

TO: CSB Executive Directors

FROM: Chaye Neal-Jones

RE: CSB FY19-20 Performance Contract Amendment and Extension Agreement

DATE: June 30, 2020

Dear CSB Executive Directors,

Thank you for partnering with the Department to finalize the amendment and extension agreement referenced above. I cannot stress enough the necessity for the CSBs to work with the Department to meet the requirements as outlined in Exhibit M (DOJ SA Requirements). Compliance with the requirements is the only way that we will be able to meet the expectations of the DOJ to exit the settlement agreement in a timely manner. We all must work in partnership to resolve the concerns of the DOJ and comply with the requirements so that the Department and the CSBs can continue to provide better services to the community.

It is imperative that the CSBs reach out to the Department as soon as possible to address any technical assistance needs, questions, and concerns regarding the DOJ SA requirements. We will establish a DBHDS DOJ SA support email box and share this information with the CSB Executive Directors by 7/1/2020. All technical assistance will be handled through this email box to ensure the support needs are addressed accurately and in a timely manner. The CSBs can also reach out to Commissioner Land directly if they are not getting the support that they need.

The Department will be closely monitoring the CSBs for compliance with the DOJ SA requirement and status reports will be provided to the Commissioner on a regular basis. If it is determined that the CSBs are not working with the Department to meet these requirements the Commissioner will seek remedies currently existing in the performance contract to enforce compliance which may include withholding future payment disbursements.

Regarding the execution of this extension agreement. The extension agreement and any Exhibits D can be signed electronically. Both pages of the extension agreement and any Exhibits D must be emailed back to the performancecontractsupport@dbhds.virginia.gov email box. Please do not mail any signed documents to Central Office.

We are looking for the CSBs to have the signed extension agreement back to our office by **August 3, 2020**. We understand that there are some CSBs such as Policy-advisory and Administrative Policy CSBs that may have local government processes and procedures they must follow and we ask that these CSBs provide the extension agreement back to us as soon as they possibly can or contact OMS directly to address their specific needs.

Attached to this email you will find the following documents that need to be reviewed and executed:

1. **Amendment No. 1 FY19-20 Performance Contract:** The FY2019 and FY2020 performance contract term will be extended effective July 1, 2020 through December 31, 2020. The CSBs should complete the areas marked in red and obtain the necessary signatures. Electronic

6.30.2020
OMS

Virginia Department of Behavioral Health and Developmental Services
Office of Management Services ATTACHMENT 1
Memorandum

signatures are acceptable. The CSBs must scan and email the signed copy back to the Department through the performancecontractsupport@dbhds.virginia.gov email box. OMS (Office of Management Services) will have the Commissioner to sign and email a fully executed copy back to the CSBs. In addition, during this timeframe, the Department will be actively working internally and collaborating with the VACSB to determine next steps prior to the end of the extension period.

2. **Exhibit M Department of Justice Settlement Agreement Requirements:** This is a new exhibit for the DOJ SA. This information was included in the terms and conditions of the current FY 2019 and FY 2020 contract. The Department determined that it was necessary to have a stand alone exhibit that is inclusive of the existing requirements in the current contract and the new requirements established in January 2020. Nothing to sign or return, please keep for your records.
3. **FY 2021 Exhibit A Resources and Services:** This exhibit was revised by Finance and OMS to reflect any changes to the mental health, developmental, and substance use disorder services provided or contracted by the CSBs. This document is completed through CARS and reflects any changes made to services or funding for FY21. Nothing to sign or return, please keep for your records.
4. **Exhibit E Performance Contract Process:** This exhibit was revised by Finance and OMS to reflect the revised reporting schedule for FY2021 and FY2022. Nothing to sign or return, please keep for your records.
5. **Exhibit F Federal Grant Compliance Requirements:** This exhibit is titled in the current performance contract as *Exhibit F: Federal Compliances*. The Department determined that revisions to this exhibit was necessary to ensure compliance with the federal grant requirements and APA audit findings. Nothing to sign or return, please keep for your records.

All other terms and conditions of the FY 19-20 performance contract, Administrative Requirements, Partnership Agreement, and other applicable documents not amended through this extension remain in full force and effect during the extension period.

Revised Timeline for Execution of the FY19-20 Performance Contract Amendment and Extension by August 3rd

1. The VACSB Performance Contract Committee will be responsible for sharing the extension agreement, amended documents and this communication with the CSB Executive Directors. The CSBs will post for public comments, share with their boards and local government for review and approval.
2. Any questions from the CSBs regarding these documents **must** be submitted directly to the performancecontractsupport@dbhds.virginia.gov email box for response. OMS will provide a response within 48 hours.
3. The Department is looking to have the signed extension returned to our office by August 3, 2020. We understand that some CSBs may require additional time and we request these CSBs have the signed document back to us as soon as possible or contact OMS to discuss their specific needs.

6.30.2020
OMS

Virginia Department of Behavioral Health and Developmental Services
Office of Management Services ATTACHMENT 1
Memorandum

4. The extension agreement can be signed electronically and **both pages** must be scanned and emailed back to the Department using the performancecontractsupport@dbhds.virginia.gov email box. **Please do not mail any signed documents to Central Office.** OMS will obtain the Commissioner's signature and send a fully executed copy back to the CSBs.
5. The local match waiver process will not apply for this extended term for those CSBs that obtained a waiver for FY2020. We are extending the contract term, which extends the local match waivers that are currently in place from FY2020. If a CSB does not currently have a waiver and needs one now they must follow the normal waiver process.

The Department would like to thank you all for your service to the community and partnering with us as we work together through this crisis.

6.30.2020
OMS

AMENDMENT NO. 1
FY2019 and FY2020 COMMUNITY SERVICES
PERFORMANCE CONTRACT
FAIRFAX-FALLS CHURCH COMMUNITY SERVICES BOARD

ATTACHMENT 1

This Agreement amends the FY2019 and FY2020 Community Services Performance Contract (the “Contract”) bearing the effective date of July 1, 2019 between the Department of Behavioral Health and Developmental Services (the “Department” or “Agency”) and the Fairfax-Falls Church Community Services Board (the “CSB”), (referred to collectively as the “Parties”).

RECITALS

WHEREAS, the public health emergency presented by the COVID-19 virus has warranted the need for flexibility with CSB requirements; and

WHEREAS, these flexibilities are relevant to the delivery of services related to COVID-19 detection and treatment, as well as maximizing access to care and minimizing viral spread through community contact; and

WHEREAS, the CSB desires to extend the term of their FY2019 and FY2020 Community Services Performance Contract; and

As provided for under the terms of this Contract, the Department and the CSB agree to amend the following provisions:

1. **Section 3: Contract Term** shall be amended to extend the term effective July 1, 2020 through and ending on December 31, 2020 (the “Amendment Term”).
2. **Section 4.q.: Department of Justice Settlement Agreement Requirements** shall be deleted in its entirety and replaced with Exhibit M: Department of Justice Settlement Agreement Requirements as attached hereto.
3. **Exhibit A: Resources and Services** shall be deleted in its entirety and replaced as attached hereto.
4. **Exhibit E: Performance Contract Process** shall be deleted in its entirety and replaced as attached hereto.
5. **Exhibit F: Federal Compliances** shall be deleted in its entirety and replaced with Exhibit F: Federal Grant Compliance Requirements as attached hereto.
6. This amendment shall be retroactive to July 1, 2020, and shall be binding upon any funds advanced by the Department since that date as provided in this agreement.

All other terms and conditions that are not hereby amended shall remain in full force and effect.

Counterparts and Electronic Signatures: Except as may be prohibited by applicable law or regulation, this Agreement and any amendment may be signed in counterparts, by facsimile, PDF, or other electronic means, each of which will be deemed an original and all of which when taken together will constitute one agreement. Facsimile and electronic signatures will be binding for all purposes.

AMENDMENT NO. 1
FY2019 and FY2020 COMMUNITY SERVICES
PERFORMANCE CONTRACT
FAIRFAX-FALLS CHURCH COMMUNITY SERVICES BOARD

ATTACHMENT 1

Signatures: In witness thereof, the Department and the CSB have caused this Agreement to be executed by the following duly authorized Parties.

**Virginia Department of Behavioral
Health and Developmental Services**

**Fairfax-Falls Church Community Services
Board**

By: _____

By: _____

Name: Alison G. Land, FACHE

Name: _____

Title: Commissioner

Title: CSB Chairperson

Date: _____

Date: _____

By: _____

Name: _____

Title: CSB Executive Director

Date: _____

FY2021 And FY2022 Community Services Performance Contract

FY 2021 Exhibit A: Resources and Services

Fairfax-Falls Church Community Services Board

Consolidated Budget (Pages AF-3 through AF-12)

Funding Sources	Mental Health (MH) Services	Developmental (DV) Services	Substance Use Disorder (SUD) Services	TOTAL
State Funds	17,533,325	6,645,149	4,857,080	29,035,554
Local Matching Funds	63,802,762	54,730,986	27,520,951	146,054,699
Total Fees	7,287,410	12,365,344	686,239	20,338,993
Transfer Fees In/(Out)	0	0	0	0
Federal Funds	1,688,924	0	3,070,585	4,759,509
Other Funds	0	0	0	0
State Retained Earnings	0	0	0	0
Federal Retained Earnings	0		0	0
Other Retained Earnings	0	0	0	0
Subtotal Ongoing Funds	90,312,421	73,741,479	36,134,855	200,188,755
State Funds One-Time	0	0	0	0
Federal Funds One-Time	0		0	0
Subtotal One -Time Funds	0	0	0	0
TOTAL ALL FUNDS	90,312,421	73,741,479	36,134,855	200,188,755
Cost for MH/DV/SUD Services	75,077,942	61,152,810	24,956,221	161,186,973
Cost for Emergency Services (AP-4)				12,193,398
Cost for Ancillary Services (AP-4)				25,098,186
Total Cost for Services				198,478,557

Local Match Computation	
Total State Funds	29,035,554
Total Local Matching Funds	146,054,699
Total State and Local Funds	175,090,253
Total Local Match % (Local / Total State + Local)	83.42%

CSB Administrative Percentage	
Administrative Expenses	29,174,015
Total Cost for Services	198,478,557
Admin / Total Expenses	14.70%

*FY2021 And FY2022 Community Services Performance Contract
 FY 2021 Exhibit A: Resources and Services
 Fairfax-Falls Church Community Services Board
 Financial Comments*

<i>Comment1</i>	MH Fee Other: \$1,861,790 Program/Client Fees, \$858,673 CSA,
<i>Comment2</i>	\$29,100 Courts/Fines, \$180,000 Svcs Bed Fee, \$136,677 Gift & Misc
<i>Comment3</i>	MH Regional Transfer In/Out is detailed on the Regional Funds Worksheet
<i>Comment4</i>	MH COLA Regional Adjustment: \$26,545 MH Acute Care, \$106,902 MH Regional DAP
<i>Comment5</i>	\$13,432 MH Crisis Stab, \$6,986 MH Recovery, \$12,319 MH Other Merged
<i>Comment6</i>	MH COLA Regional Adjustment has been reduced from MH State Funds
<i>Comment7</i>	DV Fee Other: \$620,874 Program/Client Fees
<i>Comment8</i>	DV COLA Regional Adjustment: \$22,133 DV Cris Stab, \$22,134 DV Children's Cris St
<i>Comment9</i>	DV COLA Regional Adjustment has been reduced from DV State Funds
<i>Comment10</i>	SUD Regional Transfer In/Out is detailed on the Regional Funds Worksheet
<i>Comment11</i>	
<i>Comment12</i>	
<i>Comment13</i>	
<i>Comment14</i>	
<i>Comment15</i>	
<i>Comment16</i>	
<i>Comment17</i>	
<i>Comment18</i>	
<i>Comment19</i>	
<i>Comment20</i>	
<i>Comment21</i>	
<i>Comment22</i>	
<i>Comment23</i>	
<i>Comment24</i>	
<i>Comment25</i>	

FY2021 And FY2022 Community Services Performance Contract

FY2021 Exhibit A: Resources and Services

Mental Health (MH) Services

Fairfax-Falls Church Community Services Board

Funding Sources	Funds
<u>FEES</u>	
MH Medicaid Fees	4,221,170
MH Fees: Other	3,066,240
Total MH Fees	<u>7,287,410</u>
MH Transfer Fees In/(Out)	0
MH Net Fees	<u>7,287,410</u>
<u>FEDERAL FUNDS</u>	
MH FBG SED Child & Adolescent (93.958)	268,084
MH FBG Young Adult SMI (93.958)	397,203
MH FBG SMI (93.958)	989,357
MH FBG SMI PACT (93.958)	0
MH FBG SMI SWVBH Board (93.958)	0
Total MH FBG SMI Funds	<u>989,357</u>
MH FBG Geriatrics (93.958)	0
MH FBG Peer Services (93.958)	0
Total MH FBG Adult Funds	<u>989,357</u>
MH Federal PATH (93.150)	34,280
MH Federal COVID Emergency Grant (93.665)	
MH Other Federal - DBHDS	0
MH Other Federal - COVID Support	
MH Other Federal - CSB	0
Total MH Federal Funds	<u>1,688,924</u>
<u>STATE FUNDS</u>	
<u>Regional Funds</u>	
MH Acute Care (Fiscal Agent)	3,526,545
MH Acute Care Transfer In/(Out)	0
Total MH Net Acute Care - Restricted	<u>3,526,545</u>
MH Regional DAP (Fiscal Agent)	6,521,288
MH Regional DAP Transfer In/(Out)	-2,961,504
Total MH Net Regional DAP - Restricted	<u>3,559,784</u>
MH Regional Residential DAP - Restricted	0
MH Crisis Stabilization (Fiscal Agent)	861,364
MH Crisis Stabilization - Transfer In/(Out)	-152,198
Total Net MH Crisis Stabilization - Restricted	<u>709,166</u>
MH Transfers from DBHDS Facilities (Fiscal Agent)	0
MH Transfers from DBHDS Facilities - Transfer In/(Out)	0
Total Net MH Transfers from DBHDS Facilities	<u>0</u>
MH Expanded Community Capacity (Fiscal Agent)	0
MH Expanded Community Capacity Transfer In/(Out)	0
Total MH Net Expanded Community Capacity	<u>0</u>

Report Date 6/24/2020

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FY2021 And FY2022 Community Services Performance Contract

FY2021 Exhibit A: Resources and Services

Mental Health (MH) Services

Fairfax-Falls Church Community Services Board

Funding Sources	Funds
MH First Aid and Suicide Prevention (Fiscal Agent)	125,000
MH First Aid and Suicide Prevention Transfer In/(Out)	-24,000
Total MH Net First Aid and Suicide Prevention	<u>101,000</u>
MH STEP-VA Outpatient (Fiscal Agent)	308,000
MH STEP-VA Outpatient Transfer In/Out	0
Total Net MH STEP-VA Outpatient	<u>308,000</u>
MH STEP-VA Crisis (Fiscal Agent)	1,736,529
MH STEP-VA Crisis Transfer In/Out	-1,342,000
Total Net MH STEP-VA Crisis	<u>394,529</u>
MH Forensic Discharge Planning (Fiscal Agent)	0
MH Forensic Discharge Planning Transfer In/(Out)	0
Total Net MH Forensic Discharge Planning	<u>0</u>
MH Permanent Supportive Housing (Fiscal Agent)	0
MH Permanent Supportive Housing Transfer In/(Out)	0
Total Net MH Permanent Supportive Housing	<u>0</u>
MH Recovery (Fiscal Agent)	550,178
MH Other Merged Regional Funds (Fiscal Agent)	789,844
MH State Regional Deaf Services (Fiscal Agent)	23,750
MH Total Regional Transfer In/(Out)	-11,518
Total MH Net Unrestricted Regional State Funds	<u>1,352,254</u>
Total MH Net Regional State Funds	9,951,278
<u>Children State Funds</u>	
MH Child & Adolescent Services Initiative	515,529
MH Children's Outpatient Services	75,000
MH Juvenile Detention	111,724
Total MH Restricted Children's Funds	<u>702,253</u>
MH State Children's Services	0
MH Demo Proj-System of Care (Child)	0
Total MH Unrestricted Children's Funds	<u>0</u>
MH Crisis Response & Child Psychiatry (Fiscal Agent)	0
MH Crisis Response & Child Psychiatry Transfer In/(Out)	0
Total MH Net Restricted Crisis Response & Child Psychiatry	<u>0</u>
Total State MH Children's Funds (Restricted for Children)	702,253
<u>Other State Funds</u>	
MH Law Reform	530,387
MH Pharmacy - Medication Supports	1,455,990
MH Jail Diversion Services	321,050
MH Rural Jail Diversion	0

Report Date 6/24/2020

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FY2021 And FY2022 Community Services Performance Contract

FY2021 Exhibit A: Resources and Services

Mental Health (MH) Services

Fairfax-Falls Church Community Services Board

Funding Sources	Funds
MH Docket Pilot JMHP Match	0
MH Adult Outpatient Competency Restoration Services	0
MH CIT-Assessment Sites	570,709
MH Expand Telepsychiatry Capacity	3,249
MH PACT	900,000
MH PACT - Forensic Enhancement	0
MH Gero-Psychiatric Services	0
MH STEP-VA - SDA, Primary Care Screening, Ancillary Services, and Clinicians Crisis	676,072
MH Young Adult SMI	572,428
Total MH Restricted Other State Funds	<u>5,029,885</u>
MH State Funds	1,849,909
MH State NGRI Funds	0
MH Geriatrics Services	0
Total MH Unrestricted Other State Funds	<u>1,849,909</u>
Total MH Other State Funds	6,879,794
TOTAL MH STATE FUNDS	17,533,325
MH Other Funds	0
MH Federal Retained Earnings	0
MH State Retained Earnings	0
MH State Retained Earnings - Regional Programs	0
MH Other Retained Earnings	0
Total MH Other Funds	<u>0</u>
<u>LOCAL MATCHING FUNDS</u>	
MH Local Government Appropriations	63,802,762
MH Philanthropic Cash Contributions	0
MH In-Kind Contributions	0
MH Local Interest Revenue	0
Total MH Local Matching Funds	<u>63,802,762</u>
Total MH Funds	90,312,421
<u>MH ONE TIME FUNDS</u>	
MH FBG SMI (93.958)	0
MH FBG SED Child & Adolescent (93.958)	0
MH FBG Peer Services (93.958)	0
MH State Funds	0
MH One-Time Restricted State Funds	0
Total One Time MH Funds	<u>0</u>
Total MH All Funds	90,312,421

Report Date 6/24/2020

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FY2021 And FY2022 Community Services Performance Contract

FY2021 Exhibit A: Resources and Services

Developmental Services (DV)

Fairfax-Falls Church Community Services Board

<u>Funding Sources</u>	<u>Funds</u>
<u>FEES</u>	
DV Medicaid DD Waiver Fees	8,537,500
DV Other Medicaid Fees	3,206,970
DV Medicaid ICF/IDD Fees	0
DV Fees: Other	620,874
Total DV Fees	<u>12,365,344</u>
DV Transfer Fees In/(Out)	0
DV NET FEES	<u>12,365,344</u>
<u>FEDERAL FUNDS</u>	
DV Other Federal - DBHDS	0
DV Other Federal - CSB	0
DV Other Federal - COVID Support	0
Total DV Federal Funds	<u>0</u>
<u>STATE FUNDS</u>	
DV State Funds	161,550
DV OBRA Funds	0
Total DV Unrestricted State Funds	<u>161,550</u>
DV Trust Fund (Restricted)	0
DV Rental Subsidies	0
DV Guardianship Funding	0
DV Crisis Stabilization (Fiscal Agent)	3,471,876
DV Crisis Stabilization Transfer In(Out)	0
DV Net Crisis Stabilization	<u>3,471,876</u>
DV Crisis Stabilization-Children (Fiscal Agent)	3,011,723
DV Crisis Stabilization-Children Transfer In(Out)	0
DV Net Crisis Stabilization -Children	<u>3,011,723</u>
DV Transfers from DBHDS Facilities (Fiscal Agent)	0
DV Transfers from DBHDS Facilities - Transfer In/(Out)	0
Total Net DV Transfers from DBHDS Facilities	<u>0</u>
Total DV Restricted State Funds	6,483,599
Total DV State Funds	6,645,149

Report Date 6/24/2020

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FY2021 And FY2022 Community Services Performance Contract

FY2021 Exhibit A: Resources and Services

Developmental Services (DV)

Fairfax-Falls Church Community Services Board

<u>Funding Sources</u>	<u>Funds</u>
<u>OTHER FUNDS</u>	
DV Workshop Sales	0
DV Other Funds	0
DV State Retained Earnings	0
DV State Retained Earnings-Regional Programs	0
DV Other Retained Earnings	0
Total DV Other Funds	0
<u>LOCAL MATCHING FUNDS</u>	
DV Local Government Appropriations	54,730,986
DV Philanthropic Cash Contributions	0
DV In-Kind Contributions	0
DV Local Interest Revenue	0
Total DV Local Matching Funds	54,730,986
Total DV Funds	73,741,479
<u>DV ONE TIME FUNDS</u>	
DV One-Time Restricted State Funds	0
Total One Time DV Funds	0
Total DV All Funds	73,741,479

FY2021 And FY2022 Community Services Performance Contract

FY2021 Exhibit A: Resources and Services

Substance Use Disorder (SUD) Services

Fairfax-Falls Church Community Services Board

Funding Sources	Funds
<u>FEES</u>	
SUD Medicaid Fees	418,080
SUD Fees: Other	268,159
Total SUD Fees	686,239
SUD Transfer Fees In/(Out)	0
SUD NET FEES	686,239
<u>FEDERAL FUNDS</u>	
SUD FBG Alcohol/Drug Treatment (93.959)	1,659,779
SUD FBG SARPOS (93.959)	207,611
SUD FBG Jail Services (93.959)	159,802
SUD FBG Co-Occurring (93.959)	115,716
SUD FBG New Directions (93.959)	0
SUD FBG Recovery (93.959)	0
SUD FBG MAT - Medically Assisted Treatment (93.959)	0
Total SUD FBG Alcohol/Drug Treatment Funds	2,142,908
SUD FBG Women (includes LINK at 6 CSBs) (93.959)	443,444
Total SUD FBG Women Funds	443,444
SUD FBG Prevention (93.959)	484,233
SUD FBG Prev-Family Wellness (93.959)	0
Total SUD FBG Prevention Funds	484,233
SUD Federal VA Project LINK/PPW (93.243)	0
SUD Federal Strategic Prevention (93.243)	0
SUD Federal COVID Emergency Grant (93.665)	0
SUD Federal YSAT – Implementation (93.243)	0
SUD Federal OPT-R - Prevention (93.788)	0
SUD Federal OPT-R - Treatment (93.788)	0
SUD Federal OPT-R - Recovery (93.788)	0
Total SUD Federal OPT-R Funds (93.788)	0
SUD Federal Opioid Response – Recovery (93.788)	0
SUD Federal Opioid Response – Treatment (93.788)	0
SUD Federal Opioid Response – Prevention (93.788)	0
Total SUD Federal Opioid Response Funds (93.788)	0
SUD Other Federal - DBHDS	0
SUD Other Federal - CSB	0
SUD Other Federal - COVID Support	0
TOTAL SUD FEDERAL FUNDS	3,070,585

Report Date 6/24/2020

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FY2021 And FY2022 Community Services Performance Contract

FY2021 Exhibit A: Resources and Services

Substance Use Disorder (SUD) Services

Fairfax-Falls Church Community Services Board

Funding Sources	Funds
<u>STATE FUNDS</u>	
<u>Regional Funds</u>	
SUD Facility Reinvestment (Fiscal Agent)	0
SUD Facility Reinvestment Transfer In/(Out)	0
Total SUD Net Facility Reinvestment	0
SUD Transfers from DBHDS Facilities (Fiscal Agent)	0
SUD Transfers from DBHDS Facilities - Transfer In/(Out)	0
Total Net SUD Transfers from DBHDS Facilities	0
SUD Community Detoxification (Fiscal Agent)	115,000
SUD Community Detoxification – Transfer In/(Out)	-55,769
Total Net SUD Community Detoxification	59,231
SUD STEP-VA (Fiscal Agent)	886,861
SUD STEP-VA - Transfer In/(Out)	0
Total SUD Net STEP-VA - Restricted	886,861
Total SUD Net Regional State Funds	946,092
<u>Other State Funds</u>	
SUD Women (includes LINK at 4 CSBs) (Restricted)	4,200
SUD Recovery Employment	0
SUD MAT - Medically Assisted Treatment	130,000
SUD Peer Support Recovery	0
SUD Permanent Supportive Housing Women	0
SUD SARPOS	148,528
SUD Recovery	0
Total SUD Restricted Other State Funds	282,728
SUD State Funds	3,339,198
SUD Region V Residential	0
SUD Jail Services/Juvenile Detention	243,526
SUD HIV/AIDS	45,536
Total SUD Unrestricted Other State Funds	3,628,260
Total SUD Other State Funds	3,910,988
TOTAL SUD STATE FUNDS	4,857,080
<u>OTHER FUNDS</u>	
SUD Other Funds	0
SUD Federal Retained Earnings	0
SUD State Retained Earnings	0
SUD State Retained Earnings-Regional Programs	0
SUD Other Retained Earnings	0
Total SUD Other Funds	0
<u>LOCAL MATCHING FUNDS</u>	
SUD Local Government Appropriations	27,520,951
SUD Philanthropic Cash Contributions	0

Report Date 6/24/2020

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FY2021 And FY2022 Community Services Performance Contract

FY2021 Exhibit A: Resources and Services

Substance Use Disorder (SUD) Services

Fairfax-Falls Church Community Services Board

<u>Funding Sources</u>	<u>Funds</u>
SUD In-Kind Contributions	0
SUD Local Interest Revenue	0
Total SUD Local Matching Funds	27,520,951
Total SUD Funds	36,134,855
<u>SUD ONE-TIME FUNDS</u>	
SUD FBG Alcohol/Drug Treatment (93.959)	0
SUD FBG Women (includes LINK-6 CSBs) (93.959)	0
SUD FBG Prevention (93.959)	0
SUD FBG Recovery (93.959)	0
SUD State Funds	0
Total SUD One-Time Funds	0
Total All SUD Funds	36,134,855

FY2021 And FY2022 Community Services Performance Contract**FY 2021 Exhibit A: Resources and Services****Local Government Tax Appropriations****Fairfax-Falls Church Community Services Board**

City/County	Tax Appropriation
Fairfax City	1,957,610
Fairfax County	143,209,790
Falls Church City	887,299
Total Local Government Tax Funds:	146,054,699

*Report Date 6/24/2020***AF-11**

FY2021 And FY2022 Community Services Performance Contract

FY2021 Exhibit A: Resources and Services

Supplemental Information

Reconciliation of Projected Resources and Core Services Costs by Program Area

Fairfax-Falls Church Community Services Board

	MH Services	DV Services	SUD Services	Emergency Services	Ancillary Services	Total
Total All Funds (Page AF-1)	90,312,421	73,741,479	36,134,855			200,188,755
Cost for MH, DV, SUD, Emergency, and Ancillary Services	75,077,942	61,152,810	24,956,221	12,193,398	25,098,186	198,478,557
Difference	15,234,479	12,588,669	11,178,634	-12,193,398	-25,098,186	1,710,198

Difference results from

Other: 1,710,198

Explanation of Other in Table Above:

MH Acute Care attributed to other CSBs.

FY2021 And FY2022 Community Services Performance Contract

FY2021 Exhibit A: Resources and Services

CSB 100 Mental Health Services

Fairfax-Falls Church Community Services Board

Report for Form 11

Core Services	Projected Service Capacity	Projected Numbers of Individuals Receiving Services	Projected Total Service Costs
250 Acute Psychiatric Inpatient Services	2.8 Beds	110	\$1,861,300
310 Outpatient Services	36.75 FTEs	2000	\$8,442,806
312 Medical Services	40.52 FTEs	4500	\$13,055,128
350 Assertive Community Treatment	11.89 FTEs	100	\$2,506,707
320 Case Management Services	101.55 FTEs	3600	\$19,183,350
410 Day Treatment or Partial Hospitalization	20 Slots	150	\$1,443,723
420 Ambulatory Crisis Stabilization Services	1 Slots	10	\$94,066
425 Mental Health Rehabilitation	128 Slots	260	\$2,984,680
465 Group Supported Employment	4 Slots	4	\$141,713
460 Individual Supported Employment	11.01 FTEs	675	\$1,481,407
501 Highly Intensive Residential Services	25 Beds	50	\$2,154,031
510 Residential Crisis Stabilization Services	16 Beds	350	\$5,496,809
521 Intensive Residential Services	16 Beds	16	\$1,854,211
551 Supervised Residential Services	155 Beds	160	\$9,554,487
581 Supportive Residential Services	13.31 FTEs	300	\$3,961,378
610 Prevention Services	2.75 FTEs		\$862,146
Totals		12,285	\$75,077,942

Form IIA: Pharmacy Medication Supports	Number of Consumers
803 Total Pharmacy Medication Supports Consumers	2000

FY2021 And FY2022 Community Services Performance Contract

FY2021 Exhibit A: Resources and Services

CSB 200 Developmental Services

Fairfax-Falls Church Community Services Board

Report for Form 21

Core Services	Projected Service Capacity	Projected Numbers of Individuals Receiving Services	Projected Total Service Costs
320 Case Management Services	60.68 FTEs	1300	\$9,972,427
420 Ambulatory Crisis Stabilization Services	3 Slots	30	\$694,417
425 Developmental Habilitation	290 Slots	450	\$21,795,311
430 Sheltered Employment	34 Slots	40	\$1,406,296
465 Group Supported Employment	224 Slots	250	\$7,453,370
460 Individual Supported Employment	0 FTEs	180	\$454,986
510 Residential Crisis Stabilization Services	12 Beds	40	\$2,146,764
521 Intensive Residential Services	53 Beds	53	\$12,435,694
551 Supervised Residential Services	56 Beds	56	\$4,200,410
581 Supportive Residential Services	0 FTEs	180	\$593,135
Totals		2,579	\$61,152,810

FY2021 And FY2022 Community Services Performance Contract

FY2021 Exhibit A: Resources and Services

CSB 300 Substance Use Disorder Services

Fairfax-Falls Church Community Services Board

Report for Form 31

Core Services	Projected Service Capacity	Projected Numbers of Individuals Receiving Services	Projected Total Service Costs
250 Acute Substance Use Disorder Inpatient Services	0.9 Beds	20	\$394,635
260 Community-Based Substance Use Disorder Medical Detoxification Inpatient Services	14 Beds	350	\$3,715,140
310 Outpatient Services	2.29 FTEs	200	\$426,053
312 Medical Services	0.5 FTEs	150	\$82,427
313 Intensive Outpatient Services	12.48 FTEs	420	\$1,957,090
335 Medication Assisted Treatment Services	12.67 FTEs	260	\$2,552,821
320 Case Management Services	0.03 FTEs	25	\$7,324
501 Highly Intensive Residential Services (Medically Managed Withdrawal Services)	10 Beds	300	\$2,222,730
521 Intensive Residential Services	120.4 Beds	300	\$10,804,018
551 Supervised Residential Services	45 Beds	120	\$1,402,549
610 Prevention Services	8.38 FTEs		\$1,391,434
Totals		2,145	\$24,956,221

FY2021 And FY2022 Community Services Performance Contract

FY2021 Exhibit A: Resources and Services

CSB 400 Emergency and Ancillary Services

Fairfax-Falls Church Community Services Board

Report for Form 01

Core Services	Projected Service Capacity	Projected Numbers of Individuals Receiving Services	Projected Total Service Costs
100 Emergency Services	49.05 FTEs	5900	\$12,193,398
318 Motivational Treatment Services	6.49 FTEs	500	\$1,175,695
390 Consumer Monitoring Services	52.26 FTEs	5500	\$9,650,222
720 Assessment and Evaluation Services	67.4 FTEs	11000	\$12,466,886
730 Consumer Run Services (No. Individuals Served)			\$1,805,383
Totals		22,900	\$37,291,584

FY2021 And FY2022 Community Services Performance Contract

Table 2: Board Management Salary Costs

Name of CSB: Fairfax-Falls Church Community Services Board		FY 2021			
Table 2a:		FY 2021	Salary Range	Budgeted Tot.	Tenure
Management Position Title		Beginning	Ending	Salary Cost	(yrs)
Executive Director		\$201,555.17	\$201,555.17	\$201,555.17	2.20

Table 2: Integrated Behavioral and Primary Health Care Questions

1. Is the CSB participating in a partnership with a federally qualified health center, free clinic, or local health department to integrate the provision of behavioral health and primary health care?

Yes

2. If yes, who is the partner?

- a federally qualified health center
Name: Neighborhood Health & HealthWorks of Northern Virginia
- a free clinic
Name:
- a local health department, or
Name:
- another organization
Name:

3. Where is primary health (medical) care provided?

- on-site in a CSB program,
- on-site at the primary health care provider, or
- another site --specify:

4. Where is behavioral health care provided?

- on-site in a CSB program,
- on-site at the primary health care provider, or
- another site --specify:

Exhibit E: FY21 and FY22 Performance Contract Process

ATTACHMENT 1

DUE DATE	DESCRIPTION
5-22-20	<ol style="list-style-type: none"> 1. The Department distributes the FY 2021 Letters of Notification to CSBs by this date electronically with enclosures that show tentative allocations of state and federal block grant funds. <i>This is contingent on the implementation of the fiscal year budget as passed by the General Assembly and signed into law by the Governor. The Code of Virginia allows the Governor to make certain adjustments to the Budget. Changes in Federal legislation, inclement weather and uncertain revenue collections, are just a few examples of events that may require adjustments to the budget in order to maintain the balanced budget as required by Virginia's constitution.</i> 2. Contracts shall conform to Letter of Notification allocations of state and federal funds or amounts subsequently revised by or negotiated with the OMS and confirmed in writing and shall contain actual appropriated amounts of local matching funds. 3. The Department distributes the amendment and extension of the FY 2019 and FY 2020 Community Services Performance Contract. 4. The Department's Office of Information Services and Technology (OIS&T) distributes the FY 2021 Performance Contract package software in the Community Automated Reporting System (CARS) to CSBs. 5. CSB Financial Analysts in the Department's Office of Fiscal and Grants Management (OFGM) During June and July, prepare electronic data interchange transfers for the first two semi- monthly payments (July) of state and federal funds for all CSBs.
06-24-20	<p>FY 2021 Exhibit A submitted electronically in CARS, are due in the OIS&T by this date. Table 2 Board Management and Salary Cost and Integrated Behavioral and Primary Health Care Questions of Exhibit A shall be submitted with in CARS.</p>
07-01-20	<ol style="list-style-type: none"> 1. All required signature pages for the amendment to extend the term of the FY19-20 performance contract shall be signed and submitted electronically. This shall include the AMENDMENT NO. 1 FY2019 and FY2020 COMMUNITY SERVICES PERFORMANCE CONTRACT and any applicable Exhibits D that may be due at this time to the Office of Management Services (OMS) attached by email and sent to the performancontractsupport@dbhds.virginia.gov email address. 2. If the CSB has not included the minimum 10 percent local matching funds in the contract, it shall submit a written request for a waiver of the matching funds requirement, pursuant to § 37.2-509 of the Code and State Board Policy 4010, to the OMS with its contract. However, if a local match waiver has been granted for the FY19-20 Contract, this waiver shall be extended. <i>For example: If a CSB was granted a waiver for its FY 2020 contract, that waiver is extended for the FY 2020 contract extension. However, if a CSB did not need a waiver for its original FY 2020 contract and now needs one for the contract extension, it shall include a waiver request for its FY 2020 contract extension.</i> 3. If the amount of CSBs local match in their end of year report results in reducing the local match below the required 10%, then this requirement also applies to end of the fiscal year performance contract reports. The waiver shall conform to the Minimum Ten Percent Matching Funds Waiver Request Guidelines.

Exhibit E: FY21 and FY22 Performance Contract Process

ATTACHMENT 1

DUE DATE	DESCRIPTION
	<ol style="list-style-type: none"> 4. The CSB Financial Analysts prepares the transfers for payments 3 and 4 during July and August (August payments) of state and federal funds. CSB Financial Analysts prepare the transfers for payments 5 and 6 during August and September (September payments) of state and federal funds. 5. Payments may not be released without complete contracts. Once the completed contract is received transfers for these two semi-monthly payments will be processed and funds will be disbursed with the next scheduled payment.
07-13-20	The OIS&T distributes FY 2020 end of the fiscal year performance contract report.
07-31-20	CSBs submit their June Community Consumer Submission 3 (CCS 3) extract files for June to the OIS&T in time to be received by this date.
08-21-20	CSBs submit their complete CCS 3 reports for total (annual) FY 2020 CCS 3 service unit data to the OIS&T in time to be received by this date. The Department will not accept any corrections to the FY2020 end of year CCS report after this date.
08-31-20	<ol style="list-style-type: none"> 1. CSBs send complete FY 2020 end of the fiscal year electronic CARS performance contract reports to the OIS&T in time to be received by this date. 2. The OMS reviews services sections of the reports for correctness, completeness, consistency, and acceptability; resolves discrepancies with CSBs; and communicates necessary changes to CSBs. 3. OFGM CSB Financial Analysts review financial portions of reports for arithmetic accuracy, completeness, consistency, and conformity with state funding actions; resolve discrepancies with CSBs; and communicate necessary changes to CSBs. 4. Once they complete their reviews of a CSB's reports, the OMS and OFGM CSB Financial Analysts notify the CSB to submit new reports reflecting only those approved changes to OIS&T. 5. CSBs submit new reports to correct errors or inaccuracies no later than 09-18-2020. The Department will not accept CARS report corrections after this date. 6. Submitting a report without correcting errors identified by the CARS error checking program may result in the imposition by the Department of a one- time, one percent reduction not to exceed \$15,000 of state funds apportioned for CSB administrative expenses. 7. CSBs shall submit their July 2021 CCS 3 monthly extract files for July to the OIT&S in time to be received by this date.

Exhibit E: FY21 and FY22 Performance Contract Process

ATTACHMENT 1

DUE DATE	DESCRIPTION
09-30-20	<ol style="list-style-type: none"> 1. Department staff complete reviews by this date of contracts received by the due date that are complete and acceptable. 2. The OFGM analyzes the revenue information in the contract for conformity to Letter of Notification allocations and advises the CSB to revise and resubmit financial forms in Exhibit A of its contract if necessary. 3. The Offices of Community Behavioral Health, Child and Family, and Developmental Services review and approve new service proposals and consider program issues related to existing services based on Exhibit A. 4. The OMS assesses contract completeness, examines maintenance of local matching funds, integrates new service information, makes corrections and changes on the service forms in Exhibit A, negotiates changes in Exhibit A, and finalizes the contract for signature by the Commissioner. The OMS notifies the CSB when its contract is not complete or has not been approved and advises the CSB to revise and resubmit its contract. 5. The OIS&T receives CARS and CCS 3 submissions from CSBs, maintains the community services database, and processes signed contracts into that database as they are received from the OMS. 6. CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for August to the OIT&S in time to be received by this date.
10-02-20	<ol style="list-style-type: none"> 1. After the Commissioner signs the contracts, a fully executed copy of the Contract will be send to the CSBs. 2. CSB Financial Analysts prepare transfers for payments 7 and 8 during September and October (October payments). 3. Payment 7 or 8 may not be released without receipt of a CSB’s final FY 2020 CCS 3 consumer, type of care, service, diagnosis, and outcomes extract files and FY 2020 end of the fiscal year by the due date. 4. CSB Financial Analysts prepare transfers for payments 9 and 10 during October and November (November payments).
10-16-20	<p>CSBs submit Federal Balance Reports to the OFGM in time to be received by this date.</p>
10-31-20	<ol style="list-style-type: none"> 1. CSBs submit CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for September to the OIT&S in time to be received by this date. 2. CSB Financial Analysts prepare transfers for payments 11 and 12 During November and December (December payments), Payments may not be released without receipt of September CCS 3 submissions and final Federal Balance Reports.
11-30-20	<p>CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for October to the OIT&S in time to be received by this date.</p>

Exhibit E: FY21 and FY22 Performance Contract Process

ATTACHMENT 1

DUE DATE	DESCRIPTION
12-04-20	<ol style="list-style-type: none"> 1. CSBs that are not local government departments or included in local government audits send one copy of the Certified Public Accountant (CPA) audit reports for the previous fiscal year on all CSB operated programs to the Department's Office of Budget and Financial Reporting (OBFR) by this date. 2. CSBs submit a copy of CPA audit reports for all contract programs for their last full fiscal year, ending on June 30th, to the OBFR by this date. For programs with different fiscal years, reports are due three months after the end of the year. 3. The CSBs shall have a management letter and plan of correction for deficiencies which must be sent with these reports. 4. Audit reports for CSBs that are local government departments or are included in local government audits are submitted to the Auditor of Public Accounts (APA) by the local government. 5. The CSB must forward a plan of correction for any audit deficiencies to the OBFR by this date. 6. To satisfy federal block grant sub-recipient monitoring requirements imposed on the Department under the Single Audit Act, a CSB that is a local government department or is included in its local government audit shall contract with the same CPA audit firm that audits its locality to perform testing related to the federal Mental Health Services and Substance Abuse Prevention and Treatment Block Grants. Alternately, the local government's internal audit department can work with the CSB and the Department to provide the necessary sub-recipient monitoring information. 7. If the CSB receives an audit identifying material deficiencies or containing a disclaimer or prepares the plan of correction referenced in the preceding paragraph, the CSB and the Department may negotiate an Exhibit D that addresses the deficiencies or disclaimer and includes a proposed plan with specific timeframes to address them.
12-31-20	<ol style="list-style-type: none"> 1. CSB Financial Analysts prepare transfers for payment 13 through 16 (January and February payments). For CSBs whose FY 2020 end of the fiscal year performance contract reports have been not verified as accurate and internally consistent, and whose CCS 3 monthly extracts for October have been not received, payments may not be released. 2. CSBs submit their CCS 3 monthly extract files for November to the OIT&S in time to be received by this date.
01-08-21	The OIS&T distributes FY 2021 mid-year performance contract report software in CARS
01-29-21	CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for December to the OIS&T in time to be received by this date.
02-19-21	<ol style="list-style-type: none"> 1. CSBs send complete mid-year performance contract reports and a revised Table 1: Board of Directors Membership Characteristics to the OIS&T electronically in CARS. 2. CSB Financial Analysts prepare transfers during February for payment 17 and 18 (March payments) for CSBs whose monthly CCS3 extract for December and CARS reports not received by the end of January; payments may not be released. 3. CSB Financial Analysts prepare transfers during March for payments 19 and 20 (April payments) for CSBs whose complete FY 2020 mid-year performance contract reports not

Exhibit E: FY21 and FY22 Performance Contract Process

ATTACHMENT 1

DUE DATE	DESCRIPTION
	received by the due date, payments may not be released.
02-26-21	CSBs submit their CCS3 extract files for January to the OIS&T in time to be received by this date, for CSBs whose monthly CCS3 extract files for January were not received by the end of the month, payments may not be released.
03-31-21	<ol style="list-style-type: none"> 1. CSBs submit their CCS 3 extract files for February to the OIS&T in time to be received by this date. 2. CSB Financial Analysts prepare transfers during March for payments 21 and 22 (May payments) for CSBs whose mid-year performance contract reports have not been verified as accurate and internally consistent and whose monthly CCS3 extract files for February were not received by the end of the month. Payments may not be released.
04-30-21	<ol style="list-style-type: none"> 1. CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for March to the OIS&T in time to be received by this date. 2. CSB Financial Analysts prepare transfers during May for payment 23 and 24 (June payments) for CSBs whose monthly CCS3 extract files for March were not received by the end of April, payments may not be released.
05-31-21	<ol style="list-style-type: none"> 1. CSBs submit their CCS 3 monthly extract files for April to the OIS&T in time to be received by this date, for CSBs whose monthly CCS 3 extract files for April were received by the end of May. 2. If April CCS 3 extract files are not received by May 31st, this may delay or even eliminate payment 24 due to time restrictions on when the Department can send transfers to the Department of Accounts for payment 24.
06-30-21	CSBs submit their CCS 3 monthly extract files for May to the OIS&T by this date.

Background

State agencies often administer federal awards received as pass-through funds to other non-federal entities. These non-federal recipient entities are called Subrecipients and they assist in carrying out various federally-funded programs. Subrecipients are typically units of local government (i.e. city and county agencies) but also include other entities such as Native American tribes, institutions of higher education, special districts and non-profits. The nature of these relationships are governed by federal statute, regulations, and policies in addition to state laws and regulations. The source of the funding determines the regulations and policies that govern the provision of the funds. The Substance Abuse and Mental Health Services Administration (SAMHSA) is the primary source of federal funds awarded to DBHDS. DBHDS also receives funds from the U.S. Department of Justice and the U.S. Department of Education.

As a primary recipient of federal funds, state agencies serve a pass-through role in which funds are subawarded to Subrecipients. Federal regulations require that pass-through entities provide monitoring of their Subrecipients which is outlined in Sections 200.330 through 200.345 in 2 C.F.R. Part 200 and Sections 75.300 through 75.391 in 45 C.F.R. Part 200 for SAMHSA awards. Further, audit requirements contained in 2 C.F.R. Part 200, Subpart F and 45 C.F.R. Part 75, Subpart F for SAMHSA awards, require that pass-through entities monitor the activities of their Subrecipient, as necessary, to ensure that federal awards are used appropriately and that performance goals are achieved.

In order to further the provision of necessary goods and services to the community, DBHDS may enter into federally-funded subrecipient relationships with Community Service Boards (CSBs). This exhibit provides compliance requirements for the federal grants that DBHDS serves as the pass-through entity to the CSBs.

Defined Terms

Drug-free Workplace – A site for the performance of work done in connection with a specific agreement awarded to a Subrecipient, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the agreement.

Intangible Property – Property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Major Medical Equipment – An item intended for a medical use that has a cost of more than \$1,000 per unit.

Minor Renovation, Remodeling, Expansion, and Repair of Housing – Improvements or renovations to existing facilities or buildings that do not total more than \$5,000.

Notice of Award (NOA) – The formal documentation received from the federal awarding entity that notifies the recipient of a grant award. The document also typically outlines grant-specific compliance and reporting requirements.

Pass-Through Entity - Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Recipient – The non-federal entity that receives a grant award from a federal entity. The recipient may be the end user of the funds or may serve as a pass-through to subrecipient entities.

Subaward - An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

Subrecipient - A non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Unliquidated Obligations – An invoice for which the Subrecipient has already been allocated funding to pay by the pass-through entity that falls within timeframe for expending unliquidated obligations provided in Section III of this Exhibit. Unliquidated Obligations cannot include personnel costs and are limited to goods or services that were purchased or contracted for prior to the end of the Period of Performance but were not yet expensed as the goods or services were not yet received or the Subrecipient had not yet received an invoice.

I. Federal Grant Requirements for DBHDS as the Pass-through Entity

As the pass-through entity for federal grant funds, DBHDS must comply and provide guidance to the subrecipient in accordance with U.S. C.F.R. 2 § 200.331 and CFR 45 § 75.352 (for SAMHSA awards):

- A.** Ensure every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward. If any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward:
1. Subrecipient name (which must match the name associated with its unique entity identifier);
 2. Subrecipient's unique entity identifier;
 3. Federal Award Identification Number (FAIN);
 4. Federal Award Date (see § 75.2 Federal award date) of award to the recipient by the HHS awarding agency;
 5. Subaward Period of Performance Start and End Date;
 6. Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
 7. Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;
 8. Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
 9. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
 10. Name of HHS awarding agency, pass-through entity, and contract information for awarding official of the pass-through entity;
 11. CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
 12. Identification of whether the award is R&D; and
 13. Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 75.414).
- B.** Comply with all Federal statutes, regulations and the terms and conditions of the Federal award.
- C.** The Department shall negotiate with the subrecipient an approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in § 75.414(f).
- D.** The Department is responsible for monitoring the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include, but not limited to the following:
1. Reviewing financial and performance reports required by the pass-through entity.
 2. Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
 3. Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by § 75.521.
 4. The Department shall evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring.

5. The Department shall verify that every subrecipient is audited as required by subpart F when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 75.501.
6. The Department shall consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

II. General Federal Grant Requirements for the Department and CSBs

The federal grants listed in Section IV of this Exhibit have requirements that are general to the federal agency that issues the funds. Included below are the general grant terms and conditions for each of the federal agencies for which DBHDS is the pass-through entity to the CSBs.

A. SAMHSA GRANT

1. **Grant Oversight:** The CSBs and the Department are legally and financially responsible for all aspects of this award including funds provided to sub-recipients, in accordance with 45 CFR §§ 75.351 – 75.352, Sub-recipient monitoring and management.
2. **Non-Supplant:** Federal award funds must supplement, not replace (supplant) nonfederal funds. All recipients who receive awards under programs that prohibit supplanting by law must ensure that federal funds do not supplant funds that have been budgeted for the same purpose through non-federal sources. Applicants or award recipients may be required to demonstrate and document that a reduction in non-federal resources occurred for reasons other than the receipt of expected receipt of federal funds.
2. **Unallowable Costs:** All costs incurred prior to the award issue date and costs not consistent with the Funding Opportunity Announcement (FOA), 45 CFR Part 75, and the HHS Grants Policy Statement, are not allowable under this award.
3. **Availability of Funds:** It is understood and agreed between the Subrecipient and DBHDS that DBHDS shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
4. **Improper Payments:** Any item of expenditure by Subrecipient under the terms of this Agreement which is found by auditors, investigators, and other authorized representatives of DBHDS, the Commonwealth of Virginia, the U.S. Department of Health and Human Services, the U.S. Government Accountability Office or the Comptroller General of the United States to be improper, unallowable, in violation of federal or state law or the terms of the Notice of Award, Funding Opportunity Announcement, or this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of the Subrecipient, shall become Subrecipient's liability, to be paid by Subrecipient from funds other than those provided by DBHDS under this Agreement or any other agreements between DBHDS and the Subrecipient. This provision shall survive the expiration or termination of this Agreement.
5. **Conflicts of Interest Policy:** Recipients must establish written policies and procedures to prevent employees, consultants, and others (including family, business, or other ties) involved in grant supported activities, from involvement in actual or perceived conflicts of interest. The policies and procedures must:
 - a) Address conditions under which outside activities, relationships, or financial
 - b) interests are proper or improper;
 - c) Provide for advance disclosure of outside activities, relationships, or financial
 - d) interests to a responsible organizational official;
 - e) Include a process for notification and review by the responsible official of

- f) potential or actual violations of the standards; and
- g) Specify the nature of penalties that may be imposed for violations.

6. **Restriction on Executive Pay**: The Consolidated Appropriations Act, 2019 (Pub. L.115-245) signed into law on September 28, 2018, limits the salary amount that may be awarded and charged to SAMHSA grants and cooperative agreements.

Award funds may not be used to pay the salary of an individual at a rate in excess of Executive Level II or \$192,300 annually. This amount reflects an individual's base salary exclusive of fringe and any income that an individual may be permitted to earn outside of the duties to the applicant organization. This salary limitation also applies to sub awards/subcontracts under a SAMHSA grant or cooperative agreement.

7. **Treatment of Property and Equipment**: If the Program permits the Subrecipient or entities that receive funding from the Subrecipient to purchase real property or equipment with grant funds, the Program retains a residual financial interest, enabling the Program to recover the assets or determine final disposition. This will be accomplished on a case-by-case basis, according to the federal grant guidelines applicable to the grant that is funding the service(s). Per 2 CFR 200.33 and 45 CFR 75.2, Equipment is defined as tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.
8. **Program Income**: Program income accrued under this grant award must be reported to the Recipient and must be used to further the objectives of the grant project and only for allowable costs.
9. **Travel**: Funds used to attend meetings, conferences or implement the activities of this grant must support the per diem applied to Federal travel costs for Meal and Incidental expenses. If meals are provided, the per diem must be reduced by the allotted meal cost(s).
10. **Fraud, Waste and Abuse Reporting**: The Subrecipient shall report any fraud, waste or abuse to the HHS Inspector General.
11. **Financial Management**: Subrecipient shall maintain a financial management system and financial records and shall administer funds received pursuant to this agreement in accordance with all applicable federal and state requirements, including without limitation: 1) the Uniform Guidance, 45 C.F.R. Part 75; 2) the Notice of Award; and 3) Funding Opportunity Announcement. The Subrecipient shall adopt such additional financial management procedures as may from time to time be prescribed by DBHDS if required by applicable laws, regulations or guidelines from its federal and state government funding sources. Subrecipient shall maintain detailed, itemized documentation and records of all income received and expenses incurred pursuant to this Agreement.
12. **Audit of Financial Records**: The Subrecipient shall comply with the audit and reporting requirements defined by the Federal Office of Management and Budget (OMB) 2 CFR 200 (Audits of States, Local, Governments and Non-Profit organizations) and 45 CFR 75-500 – 75.521 as applicable. The Subrecipient will, if total federal funds expended are \$750,000 or more a year, have a single or program specific financial statement audit conducted for the annual period in compliance with the General Accounting Office audit standards (45 CFR 75-501(a)). Within thirty 30 days of the effective date of this Agreement, the Subrecipient will provide the Federal Grants Manager at DBHDS with a copy of its most recent (last) single audit. If any findings were noted in the audit report, corrective actions taken to fully resolve the finding must also be provided. If there are no audit findings, a letter indicating no findings shall be submitted. If a 2 CFR 200 or 45 CFR 75 audit occurs during the term of this Agreement, a copy of that audit and response to any findings must be provided to DBHDS' Federal Grants Manager within 30 days of the completion of the audit.

If total federal funds expended are less than \$750,000 for a year the Subrecipient is exempt from federal audit requirements (45 CFR 75-501(d)), however, the Subrecipient's records must be made available to the pass-through agency and appropriate officials of HHS, SAMHSA, the U.S. Government Accountability Office and the Comptroller General of the United States upon request, and it must still have a financial audit performed for that year by an independent Certified Public Accountant. Further, if applicable, within 30 days of the effective date of this Agreement, the Subrecipient must submit to DBHDS' Federal Grants Manager a written statement of exemptions to the single audit requirement and a copy of the most recent audited financial statement along with any findings and corrective action plans.

Should an audit by authorized state or federal official result in disallowance of amounts previously paid to the Subrecipient, the Subrecipient shall reimburse the ass-Through Agency upon demand.

Pursuant to 45 CFR 75.361, the Subrecipient shall retain all books, records, and other documents relative to this agreement for three (3) years from the date of the final expenditure report provided by the Department. In the event that any litigation, claim, or audit is initiated prior to the expiration of the 3 year period, all records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. DBHDS, its authorized agents, and/or federal or state auditors shall have full access to and the right to examine any of said materials during said period.

13. **Standards for Documentation of Personnel Expenses:** The Subrecipient shall comply with 2 CFR 200.430 and 45 CFR 75.430 Compensation-Personal Services and 2 CFR 200.431 and 45 CFR 75.431 Compensation-Fringe Benefits as required by the Federal Office of Management and Budget (OMB) Circular 2 CFR 200 (Cost Principles for State, Local and Indian Tribal Government). Per Standards for Documentation of Personnel Expenses 45 CFR 75.430(x)(3) in accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR Part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section (45 CFR 75.430), must also be supported by records indicating the total number of hours worked each day. As a result, all nonexempt employees paid in whole or in part from grant funds should prepare a timesheet indicating the hours worked on each specific project for each pay period. Based on these times sheets and hourly payroll cost for each employee, a statement indicating the distribution of payroll charges should be prepared and placed in the appropriate files and shall be made available for inspection.
17. **Accounting Records and Disclosures:** The Subrecipient must maintain records which adequately identify the source and application of funds provided for financially assisted activities, including awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. The Subrecipient should expect that the Recipient and SAMHSA may conduct a financial compliance audit and on-site program review of this project.
18. **Federal Funding Accountability and Transparency Act (FFATA):** The Subrecipient will meet the following conditions in compliance with FFATA:
 - a) Maintain registration in the federal System Award Management (SAM) throughout the duration of this project, or at least five years;
 - b) Maintain a DUNS number and share it with DBHDS;
 - c) Provide address for primary Virginia service location(s), including nine digit zip code;
 - d) Provide Executive compensation information for five most highly compensated officers if all of the following apply:
 - i. The organization receives more than 80 percent of its annual gross revenues in Federal awards,
 - ii. The organization receives \$25,000,000 or more in annual gross revenues from Federal awards,

- iii. Executive compensation has not previously been reported to any Federal Agency through any other reporting system.
19. **Mandatory Disclosures**: Pursuant to 45 CFR 75.113, the Subrecipient must report to the pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. These reports must be made in writing in a timely manner.
 20. **English Language**: All communication between the pass-through entity and the Subrecipient must be in the English language and must utilize the terms of U.S. dollars. Information may be translated into other languages. Where there is inconsistency in meaning between the English language and other languages, the English language meaning shall prevail.
 21. **Restrictions on Lobbying**: Pursuant to 45 CFR 75.215, no portion of these funds may be used to engage in activities that are intended to support or defeat the enactment of legislation before the Congress or Virginia General Assembly, or any local legislative body, or to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any federal, state or local government, except in presentation to the executive branch of any State or local government itself. No portion of these funds can be used to support any personnel engaged in these activities. These prohibitions include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
 22. **Confidentiality of Alcohol and Drug Abuse Patient Records**: Regulations specified in 42 CFR Part 2 are applicable to any information about patients that are participating in a “program” as defined in 42 CFR 2.11 if the program is federally assisted in any manner (42 CFR 2.2b(1)(2)). Information may only be disclosed in accordance with 42 CFR Part 2, and the Subrecipient is responsible for assuring security and confidentiality of all electronically transmitted patient material.
 23. **Intangible Property Rights** (Pursuant to 2 CFR 200.315 and 45 CFR 75.322):
 - i. Title to intangible property acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally authorized purpose, and must not encumber the property without approval of the Federal awarding agency (SAMHSA). When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 CFR 200.313(e) and 45 CFR 75.320(e).
 - ii. The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes and to authorize others to do so.
 - iii. The non-Federal entity is subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401.
 - iv. The Federal Government has the right to: 1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal Award; and 2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
 - v. Freedom of Information Act:
 - i. In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the

Federal Government in developing an agency action that has the force and effect of law, the HHS awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the HHS awarding agency obtains the research data solely in response to a FOIA request, the HHS awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the HHS awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

- ii. Published research findings means when:
 - a. Research findings are published in a peer-reviewed scientific or technical journal; or
 - b. A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. “Used by the Federal Government in developing an agency action that has the force and effect of law” is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.
 - iii. Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). Research data also do not include:
 - a. Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and
 - b. Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.
 - vi. The requirements set forth in paragraph (v)(i) of this section do not apply to commercial organizations.
 - vii. The pass-through agency reserves the irrevocable right to utilize any Intangible Property described above, royalty-free, for the completion of the terms of this Grant and Agreement.
24. **Crediting Grant on Publications and Conference Materials:** Conference materials and other publications funded by this agreement must include language that conveys the following:
- i. The publication, event or conference was funded [in part or in whole] by SAMHSA Grant #[APPLICABLE GRANT NUMBER MUST BE PROVIDED];
 - ii. The views expressed in written materials or by conference speakers and moderators do not necessarily reflect the official policies of the U.S. Department of Health and Human Services or the Executive Branch of the Commonwealth of Virginia;
 - iii. Mention of trade names, commercial practices or organizations does not imply endorsement by the U.S. Government or the Commonwealth of Virginia.
25. **Trafficking Victims Protection Act:** This agreement is subject to the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104). See <http://www.samhsa.gov/grants/grants-management/policies-regulations/additional-directives>.
26. **National Historical Preservation Act and Executive Order 13287, Preserve America:** The Subrecipient must comply with this federal legislation and executive order.

27. **Executive Order 13410 Promoting Quality and Efficient Health Care in Federal Government Administered or Sponsored Health Care Programs**: In the exchange of patient level health information to external entities, the Subrecipient must:
- i. Use recognized health information interoperability standards at the time of any HIT system update, acquisition, or implementation, in all relevant information technology systems supported, in whole or in part, through this agreement; and
 - ii. Use Electronic Health Record systems (EHRs) that are certified by agencies authorized by the Office of the National Coordinator for Health Information Technology (ONC), or that will be certified during the life of this agreement.
28. **Welfare-to-Work**: The Subrecipient is encouraged to hire welfare recipients and to provide additional needed training and mentoring as needed.
29. **Applicable Laws and Courts**: This agreement shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Subrecipient shall comply with all applicable federal, state and local laws, rules and regulations.
30. **Drug Free Workplace**: During the performance of this agreement, the Subrecipient agrees to 1) provide a drug-free workplace for the Subrecipient's employees; 2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Subrecipient's workplace and specifying the actions that will be taken against employees for violations of such prohibition; 3) state in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient that the Subrecipient maintains a drug-free workplace; and 4) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
31. **Confidentiality of Alcohol and Drug Abuse Patient Records**: Pursuant to 45 CFR 2 all project patients' records are confidential and may be disclosed and used only in accordance with 42 CFR 2. The Subrecipient is responsible for assuring compliance with these regulations and principles including responsibility for assuring the security and confidentiality of all electronically transmitted patient material.
32. **Prohibition on the use of Marijuana for Treatment**: Grant funds may not be used, directly or indirectly, to purchase, prescribe, or provide marijuana or treatment using marijuana. Treatment in this context includes the treatment of opioid use disorder. Grant funds also cannot be provided to any individual who or organization that provides or permits marijuana use for the purposes of treating substance use or mental disorders. See, e.g., 45 C.F.R. § 75.300(a) (requiring HHS to "ensure that federal funding is expended . . . in full accordance with U.S. statutory . . . requirements."); 21 U.S.C. §§ 812(c)(10) and 841 (prohibiting the possession, manufacture, sale, purchase or distribution of marijuana). This prohibition does not apply to those providing such treatment in the context of clinical research permitted by the DEA and under an FDA-approved investigational new drug application where the article being evaluated is marijuana or a constituent thereof that is otherwise a banned controlled substance under federal law.
33. **Accessibility Provisions**: The Subrecipient must administer their programs in compliance with Federal civil rights law. This means that the Subrecipient must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age, and in some circumstances, sex and religion. This includes ensuring the programs are accessible to persons with limited English proficiency.

34. **Immigration Reform and Control Act of 1986**: By entering into a written agreement with the Commonwealth of Virginia, the Subrecipient certifies that the Subrecipient does not, and shall not during the performance of the agreement for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
35. **Same-Sex Marriage Requirements**: Consistent with HHS policy and the purposes of SAMHSA programs, same-sex spouses/marriages are to be recognized in this program. This means that, as a recipient of these funds you are required to treat as valid the marriages of same-sex couples whose marriage was legal when entered into. This applies regardless of whether the couple now lives in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriage. Any same-sex marriage legally entered into in one of the 50 states, the District of Columbia, a U.S. territory or a foreign country will be recognized. However, this does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law as something other than a marriage.
36. **Intent to Utilize Funding to Enter into a Procurement/Contractual Relationship**: If the Subrecipient utilizes any of these funds to contract for any goods or services, the Subrecipient must ensure that the resultant contract complies with the terms of Appendix II, 45 C.F.R. 75 which governs the contractual provisions for non-federal entity contracts under federal awards issued by the Department of Health and Human Services.
37. **Compliance with Federal Regulations/Statute/Policy**: The Subrecipient agrees to enforce, administer, and comply with any applicable federal regulations, statutes, or policies that are not otherwise mentioned in this agreement including 2 C.F.R. § 200, 45 C.F.R. § 75, the Department of Health and Human Services Grant Policy Statement, SAMHSA Grant Administration Policies and Regulations, the relevant Funding Opportunity Announcement (FOA), relevant Notice of Award (NOA), or any other source.
38. **Equal Treatment for Faith-Based Organizations**: The Subrecipient assures that it is and will continue to be in full compliance with the applicable provisions of 45 CFR Part 54, Charitable Choice Regulations, and 45 CFR Part 87, Equal Treatment for Faith- Based Organizations Regulations, in its receipt and use of federal Mental Health Services and SABG funds and federal funds for Projects for Assistance in Transitions from Homelessness programs. The regulations prohibit discrimination against religious organizations, provide for the ability of religious organizations to maintain their religious character, and prohibit religious organizations from using federal funds to finance inherently religious activities.

III. Federal Grant Specific Requirements

There are additional requirements to the grants included in Section IV of this Exhibit that are not universal to all grants that DBHDS administers. Included below, by grant name, is a list of the grant specific requirements as required by federal statute, regulation, and policy.

A. SAMHSA GRANTS

1. **State Opioid Response Grant (SUD Federal Opioid Response)**

Pursuant to the Notice of Award received by DBHDS and the Funding Opportunity Announcement (TI-18-015) associated with the State Opioid Response Grant, the following are requirements of the funding distributed to the Subrecipient as a result of this agreement.

- a. **Restrictions on Expenditures**: State Opioid Response Grant funds may not be used to:
- i. Pay for any lease beyond the project period.

- ii. Pay for the purchase or construction of any building or structure to house any part of the program. (Applicants may request up to \$75,000 for renovations and alterations of existing facilities, if necessary and appropriate to the project.)
- iii. Provide residential or outpatient treatment services when the facility has not yet been acquired, sited, approved, and met all requirements for human habitation and services provision. (Expansion or enhancement of existing residential services is permissible.)
- iv. Provide detoxification services unless it is part of the transition to MAT with extended release naltrexone.
- v. Make direct payments to individuals to enter treatment or continue to participate in prevention or treatment services. Note: A recipient or treatment or prevention provider may provide up to \$30 non-cash incentive to individuals to participate in required data collection follow up. This amount may be paid for participation in each required follow-up interview.
- vi. Meals are generally unallowable unless they are an integral part of a conference grant or specifically stated as an allowable expense in the Funding Opportunity Announcement. Grant funds may be used for light snacks, not to exceed \$3.00 per person.
- vii. Support non-evidence-based treatment approaches.
- viii. For services that can be supported through other accessible sources of funding such as other federal discretionary and formula grant funds, e.g. HHS (CDC, CMS, HRSA, and SAMHSA), DOJ (OJP/BJA) and non-federal funds, 3rd party insurance, and sliding scale self-pay among others.
- ix. To provide a grant or subaward to any agency which would deny any eligible client, patient, or individual access to their program because of their use of FDA-approved medications for the treatment of substance use disorders.
- x. To provide incentives to any health care professional for receipt of data waiver or any type of professional training development.
- xi. Directly or indirectly, purchase, prescribe, or provide marijuana or treatment using marijuana. Treatment in this context includes the treatment of opioid use disorder. Grant funds also cannot be provided to any individual who or organization that provides or permits marijuana use for the purposes of treating substance use or mental health disorders. This prohibition does not apply to those providing such treatment in the context of clinical research permitted by the DEA and under and FDA-approved investigational new drug application where the article being evaluated is marijuana or a constituent thereof that is otherwise a banned controlled substance under federal law.

b. Expenditure Guidelines:

- i. Grant funds:
 - a) Shall be used to fund services and practices that have a demonstrated evidence-base, and that are appropriate for the population(s) of focus.
 - b) For treatment and recovery support services grant funds shall only be utilized to provide services to individuals with a diagnosis of an opioid use disorder or to individuals with a demonstrated history of opioid overdose problems.
 - c) May only fund FDA approved products.

c. **Limitations on Reimbursements:** Subrecipient shall not be reimbursed or otherwise compensated for any expenditures incurred or services provided prior to the Effective Date of this agreement, or following 40 days after the end of the Period of Performance provided on the initial signature page of Exhibit D.

DBHDS shall only reimburse or otherwise compensate the Subrecipient for documented expenditures incurred during this period that are: 1) reasonable and necessary to carry out the agreed upon scope of service outlined in Exhibit D, 2) documented by contracts or other evidence of liability consistent with established DBHDS and Subrecipient procedures; and 3) incurred in accordance with all applicable requirements for the expenditure of funds payable under this agreement

d. **Closeout:** Final payment request(s) under this Agreement must be received by DBHDS no later than thirty (30) days from the end of the Period of Performance referenced in the Exhibit D. No payment request will be accepted by DBHDS after this date without authorization from DBHDS. The Subrecipient may continue to expend retained funds until 40 days after the end of the Period of Performance to pay for unliquidated obligations as defined in this agreement

Any funds remaining unexpended and unobligated at the end of the Period of Performance shall be returned to DBHDS within 30 days of the end of the Period of Performance. Any funds distributed to the Subrecipient by the pass-through entity that remain unexpended by 40 days after the end of the Period of Performance shall be returned to DBHDS. The Subrecipient will send these funds to DBHDS by no later than the end of the 75th day after the end of the Performance Period. Unexpended funds should be returned in the form of a check made payable to the Treasurer of Virginia and sent to:

DBHDS

PO Box 1797

Richmond, VA 23218-1797

C/O Ramona Howell

Failure to return unexpended funds in a prompt manner may result in a denial of future federal Subrecipient awards from DBHDS.

In consideration of the execution of this agreement by DBHDS, the Subrecipient agrees that acceptance of final payment from DBHDS will constitute an agreement by the Subrecipient to release and forever discharge DBHDS, its agents, employees, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which Subrecipient has at the time of acceptance of final payment or may thereafter have, arising out of or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this agreement. Subrecipient's obligations to DBHDS under this agreement shall not terminate until all closeout requirements are completed to the satisfaction of DBHDS. Such requirements shall include, without limitation, submitting final reports to DBHDS and providing any closeout-related information requested by DBHDS by the deadlines specified by DBHDS. This provision shall survive the expiration or termination of this agreement.

2. Substance Abuse Prevention and Treatment Block Grant (SUD FBG)

Pursuant to the Substance Abuse Prevention and Treatment Block Grant (SAPTBG) Funding Agreement and relevant federal statutes, the following are requirements of the funding distributed to the Subrecipient as a result of this agreement.

a. **Restrictions on Expenditures:** No SAPTBG funds may not be used for any of the following purposes:

- i. To provide inpatient hospital services unless it has been determined, in accordance with the guidelines issued by the Secretary of Health and Human Services, that such treatment is a medical necessity for the individual involved and that the individual cannot be effectively treated in a community-based, non-hospital, residential program of treatment;
 - ii. To make cash payments to intended recipients of health services;
 - iii. To purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling with DBHDS, Federal Grants Manager approval) any building or other facility, or purchase major medical equipment as defined in the Defined Terms section of this Exhibit.
 - iv. To satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds; or
 - v. To provide financial assistance to any entity other than a public or non-profit entity.
 - vi. To carry out any program that provides individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for acquired immune deficiency syndrome. (42 US Code § 300x-31(a))
- b. **Grant Guidelines:**
1. In the case of an individual for whom grant funds are expended to provide inpatient hospital services, as outlined above (A.a.), the Subrecipient shall not incur costs that are in excess of the comparable daily rate provided for community-based, non-hospital, residential programs of treatment for substance abuse (42 US Code § 300x-31(b)(2)).
 2. No entity receiving SAPTBG funding may participate in any form of discrimination on the basis of age as defined under the Age Discrimination Act of 1975 (42 US Code § 6101), on the basis of handicap as defined under section 504 of the Rehabilitation Act of 1973 (29 US Code § 794), on the basis of sex as defined under Title IX of the Education Amendments of 1972 (20 US Code § 1681) or on the basis of race, color, or national origin as defined under Title VI of the Civil Rights Act of 1964 (42 US Code § 2000) (42 US Code § 300x-57(a)(1)).
 3. No person shall on the ground of sex, or on the ground of religion, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part with funds made available under section 300x or 300x-21 of title 42 US Code (42 US Code § 300x-57(a)(2)).
 4. The Subrecipient agrees to comply with the provisions of the Hatch Act (5 US Code § 1501-1508 and 7324-7328) which limits the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.
 5. The Subrecipient will comply, as applicable with the provisions of the Davis-Bacon Act (40 US Code § 276(a) – 276(a)-7), the Copeland Act (40 US Code § 276(c) and 18 US Code § 874), and the Contract Work Hours and Safety Standards Act (40 US Code § 327-333), regarding labor standards for federally assisted construction subagreements.
- c. **Limitations on Reimbursements:** Subrecipient shall not be reimbursed or otherwise compensated for any expenditures incurred or services provided following the end of the Period of Performance provided in Exhibit D.

DBHDS shall only reimburse or otherwise compensate the Subrecipient for documented expenditures incurred during this period that are: 1) reasonable and necessary to carry out the agreed upon scope of service outlined in Exhibit D, 2) documented by contracts or other evidence of liability consistent with established DBHDS and Subrecipient procedures; and 3) incurred in accordance with all applicable requirements for the expenditure of funds payable under this agreement.

- d. **Closeout:** Final payment request(s) under this Agreement must be received by DBHDS no later than thirty (30) days prior to the end of the Period of Performance referenced in the Exhibit D. No payment request will be accepted by DBHDS after this date without authorization from DBHDS. The Subrecipient may continue to expend retained funds until the end of the Period of Performance to pay for remaining allowable costs.

Any funds remaining unexpended at the end of the Period of Performance shall be returned to DBHDS within 30 days of the end of the Period of Performance. Unexpended funds should be returned in the form of a check made payable to the Treasurer of Virginia and sent to:

DBHDS
 PO Box 1797
 Richmond, VA 23218-1797
 C/O Ramona Howell

Failure to return unexpended funds in a prompt manner may result in a denial of future federal Subrecipient awards from DBHDS.

In consideration of the execution of this agreement by DBHDS, the Subrecipient agrees that acceptance of final payment from DBHDS will constitute an agreement by the Subrecipient to release and forever discharge DBHDS, its agents, employees, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which Subrecipient has at the time of acceptance of final payment or may thereafter have, arising out of or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this agreement. Subrecipient’s obligations to DBHDS under this agreement shall not terminate until all closeout requirements are completed to the satisfaction of DBHDS. Such requirements shall include, without limitation, submitting final reports to DBHDS and providing any closeout-related information requested by DBHDS by the deadlines specified by DBHDS. This provision shall survive the expiration or termination of this agreement.

3. Community Mental Health Services Block Grant (MH FBG)

Pursuant to the Community Mental Health Services Block Grant (CMHSBG) Funding Agreement and relevant federal statutes, the following are requirements of the funding distributed to the Subrecipient as a result of this agreement.

- a. **Restrictions on Expenditures:** CMHSBG funds may not be used for any of the following purposes:
 - 1. To provide inpatient services;
 - 2. To make cash payments to intended recipients of health services;
 - 3. To purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling with DBHDS, Federal Grants Manager approval) any building or other facility, or purchase major medical equipment (as defined in the Definitions section of this Exhibit);
 - 4. To satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds; or
 - 5. To provide financial assistance to any entity other than a public or non-profit entity. (42 US Code § 300x-5(a))
- b. **Grant Guidelines:**
 - 1. No entity receiving CMHSBG funding may participate in any form of discrimination on the basis of age as defined under the Age Discrimination Act of 1975 (42 US Code § 6101), on the basis of handicap as defined under section 504 of the Rehabilitation Act of 1973 (29 US Code § 794), on the basis of sex as defined under Title IX of the Education Amendments of 1972 (20 US Code § 1681) or

on the basis of race, color, or national origin as defined under Title VI of the Civil Rights Act of 1964 (42 US Code § 2000) (42 US Code § 300x-57(a)(1)).

2. No person shall on the ground of sex, or on the ground of religion, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part with funds made available under section 300x or 300x-21 of title 42 US Code (42 US Code § 300x-57(a)(2)).
 3. The Subrecipient must provide the services through appropriate, qualified community programs, which may include community mental health centers, child mental-health programs, psychosocial rehabilitation programs, mental health peer-support programs, and mental-health primary consumer-directed programs. Services may be provided through community mental health centers only if the centers provide: 1) Services principally to individuals residing in a defined geographic area (hereafter referred to as a “service area”); 2) Outpatient services, including specialized outpatient services for children, the elderly, individuals with a Serious Mental Illness (SMI), and residents of the service areas of the center who have been discharged from inpatient treatment at a mental health facility; 3) 24-hour-a-day emergency care services; 4) Day treatment or other partial hospitalization services, or psychosocial rehabilitation services; 5) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of such admission; 6) Services within the limits of the capacities of the centers, to any individual residing or employed in the service area of the center regardless of ability to pay; and 7) Services that are accessible promptly, as appropriate, and in a manner which preserves human dignity and assures continuity of high quality care (42 US Code § 300x-2(c)).
 4. The Subrecipient agrees to comply with the provisions of the Hatch Act (5 US Code § 1501-1508 and 7324-7328) which limits the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.
 5. The Subrecipient will comply, as applicable with the provisions of the Davis-Bacon Act (40 US Code § 276(a) – 276(a)-7), the Copeland Act (40 US Code § 276(c) and 18 US Code § 874), and the Contract Work Hours and Safety Standards Act (40 US Code § 327-333), regarding labor standards for federally assisted construction subagreements.
 6. Treatment and competency restoration services may be provided to individuals with a serious mental illness or serious emotional disturbance who are involved with the criminal justice system or during incarceration.
- c. **Limitations on Reimbursements:** Subrecipient shall not be reimbursed or otherwise compensated for any expenditures incurred or services provided following the end of the Period of Performance provided in Exhibit D.

DBHDS shall only reimburse or otherwise compensate the Subrecipient for documented expenditures incurred during this period that are: 1) reasonable and necessary to carry out the agreed upon scope of service outlined in Exhibit D, 2) documented by contracts or other evidence of liability consistent with established DBHDS and Subrecipient procedures; and 3) incurred in accordance with all applicable requirements for the expenditure of funds payable under this agreement.

- d. **Closeout:** Final payment request(s) under this Agreement must be received by DBHDS no later than thirty (30) days prior to the end of the Period of Performance referenced in the Exhibit D. No payment request will be accepted by DBHDS after this date without authorization from DBHDS. The Subrecipient may continue to expend retained funds until the end of the Period of Performance to pay for remaining allowable costs.

Any funds remaining unexpended at the end of the Period of Performance shall be returned to DBHDS within 30 days of the end of the Period of Performance. Unexpended funds should be returned in the form of a check made payable to the Treasurer of Virginia and sent to:

DBHDS

PO Box 1797

Richmond, VA 23218-1797

C/O Ramona Howell

Failure to return unexpended funds in a prompt manner may result in a denial of future federal Subrecipient awards from DBHDS.

In consideration of the execution of this agreement by DBHDS, the Subrecipient agrees that acceptance of final payment from DBHDS will constitute an agreement by the Subrecipient to release and forever discharge DBHDS, its agents, employees, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which Subrecipient has at the time of acceptance of final payment or may thereafter have, arising out of or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this agreement. Subrecipient's obligations to DBHDS under this agreement shall not terminate until all closeout requirements are completed to the satisfaction of DBHDS. Such requirements shall include, without limitation, submitting final reports to DBHDS and providing any closeout-related information requested by DBHDS by the deadlines specified by DBHDS. This provision shall survive the expiration or termination of this agreement.

4. Projects for Assistance in Transition from Homelessness (PATH)

Pursuant to the Notice of Award received by DBHDS, Funding Opportunity Announcements (SM-19-F2 and SM-20-F2), and relevant statutes associated with the Project for Assistance in Transition from Homelessness (PATH) Grant, the following are requirements of the funding distributed to the Subrecipient as a result of this agreement.

- a. **Restrictions on Expenditures:** PATH funds may not be used for any of the following purposes:
 1. To support emergency shelters or construction of housing facilities;
 2. For inpatient psychiatric treatment costs or inpatient substance use disorder treatment costs; or
 3. To make cash payments to intended recipients of mental health or substance use disorder services (42 U.S. Code § 290cc-22(g)).
 4. For lease arrangements in association with the proposed project utilizing PATH funds beyond the project period nor may the portion of the space leased with PATH funds be used for purposes not supported by the grant.

- b. **Grant Guidelines:**
 1. All funds shall be used for the purpose of providing the following:
 - i. Outreach services;
 - ii. Screening and diagnostic treatment services;
 - iii. Habilitation and rehabilitation services;
 - iv. Community mental health services;
 - v. Alcohol or drug treatment services;
 - vi. Staff training including the training of individuals who work in shelters, mental health clinics, substance use disorder programs, and other sites where homeless individuals require services;
 - vii. Case management services including:
 1. Preparing a plan for the provision of community mental health services to the eligible homeless individual involved and reviewing such plan not less than once every three months;

2. Providing assistance in obtaining and coordinating social and maintenance services for the eligible homeless individuals, including services relating to daily living activities, personal financial planning, transportation services, and habilitation and rehabilitation services, prevocational and vocational services, and housing services;
 3. Providing assistance to the eligible homeless individual in obtaining income support services, including housing assistance, supplemental nutrition assistance program benefits, and supplemental security income benefits;
 4. Referring the eligible homeless individual for such other services as may be appropriate; and
 5. Providing representative payee services in accordance with section 1631(a)(2) of the Social Security Act (42 U.S. Code § 1383(a)(2)) if the eligible homeless individual is receiving aid under Title XVI of such act (42 U.S. Code § 1381 et seq.) and if the applicant is designated by the Secretary to provide such services;
- viii. Supportive and supervisory services in residential settings;
 - ix. Referrals for primary health services, job training, educational services, and relevant housing services;
 - x. Minor renovation, expansion, and repair of housing (as defined in the Definitions section of this Exhibit);
 - xi. Planning of housing;
 - xii. Technical assistance in applying for housing assistance;
 - xiii. Improving the coordination of housing services;
 - xiv. Security deposits;
 - xv. The costs associated with matching eligible homeless individuals with appropriate housing situations;
 - xvi. One-time rental payments to prevent eviction;
 - xvii. Other appropriate services as determined by the Secretary of Health and Human Services (42 U.S. Code § 290cc-22(b)).
2. All funds shall only be utilized for providing the services outlined above to individuals who:
 - i. Are suffering from a serious mental illness; or
 - ii. Are suffering from a serious mental illness and from a substance use disorder; and
 - iii. Are homeless or at imminent risk of becoming homeless (42 U.S. Code § 290cc-22(a)).
 3. Funding may not be allocated to an entity that:
 - i. Has a policy of excluding individuals from mental health services due to the existence or suspicion of a substance use disorder; or
 - ii. Has a policy of excluding individuals from substance use disorder services due to the existence or suspicion of mental illness (42 U.S. Code § 290cc-22(e)).
 4. Match amounts agreed to with DBHDS may be:
 - i. Cash;
 - ii. In-kind contributions, that are fairly evaluated, including plant, equipment, or services.

Amounts provided by the federal government or services assisted or subsidized to any significant extent by the Federal Government, shall not be included in determining the amount of match (42 U.S. Code § 290cc-23(b)).
 5. Subrecipients may not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S. Code § 6101 et seq.), on the basis of handicap under section 504 of the Rehabilitation Act of 1973 (29 U.S. Code § 794), on the basis of sex under Title IX of the Education Amendments of 1972 (20 U.S. Code § 1681 et seq.), or on the basis of race, color, or national origin under Title VI of the Civil Rights Act of 1964 (42 U.S. Code § 2000d et seq.)(42 U.S. Code § 290cc-33(a)(1)).
 6. The Subrecipient shall not exclude from participation in, deny benefits to, or discriminate against any individuals that are otherwise eligible to participate in any program or activity funded from the PATH grant (42 U.S. Code § 290cc-33(a)(2)).
- c. **Limitations on Reimbursements:** Subrecipient shall not be reimbursed or otherwise compensated for any expenditures incurred or services provided following the end of the Period of Performance provided in Exhibit D.

DBHDS shall only reimburse or otherwise compensate the Subrecipient for documented expenditures incurred during this period that are: 1) reasonable and necessary to carry out the agreed upon scope of service outlined in Exhibit D, 2) documented by contracts or other evidence of liability consistent with established DBHDS and Subrecipient procedures; and 3) incurred in accordance with all applicable requirements for the expenditure of funds payable under this agreement.

- d. **Closeout:** Final payment request(s) under this Agreement must be received by DBHDS no later than thirty (30) days from the end of the Period of Performance referenced in the Exhibit D. No payment request will be accepted by DBHDS after this date without authorization from DBHDS. The Subrecipient may continue to expend retained funds until 365 days after the end of the Period of Performance to pay for remaining allowable costs.

Any funds remaining unexpended and unobligated at the end of the Period of Performance shall be returned to DBHDS within 30 days of the end of the Period of Performance. Any funds distributed to the Subrecipient by the pass-through entity that remain unexpended by 365 days after the end of the Period of Performance shall be returned to DBHDS. The Subrecipient will send these funds to DBHDS by no later than the end of the 395th day after the end of the Performance Period. Unexpended funds should be returned in the form of a check made payable to the Treasurer of Virginia and sent to:

DBHDS

PO Box 1797

Richmond, VA 23218-1797

C/O Ramona Howell

Failure to return unexpended funds in a prompt manner may result in a denial of future federal Subrecipient awards from DBHDS.

In consideration of the execution of this agreement by DBHDS, the Subrecipient agrees that acceptance of final payment from DBHDS will constitute an agreement by the Subrecipient to release and forever discharge DBHDS, its agents, employees, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which Subrecipient has at the time of acceptance of final payment or may thereafter have, arising out of or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this agreement. Subrecipient's obligations to DBHDS under this agreement shall not terminate until all closeout requirements are completed to the satisfaction of DBHDS. Such requirements shall include, without limitation, submitting final reports to DBHDS and providing any closeout-related information requested by DBHDS by the deadlines specified by DBHDS. This provision shall survive the expiration or termination of this agreement.

5. Strategic Prevention Framework Partnerships For Success (SPF-PFS) Grant

Pursuant to the Notice of Award received by DBHDS and the Funding Opportunity Announcement (SP-15-003) associated with the Strategic Prevention Framework Partnerships for Success Grant, the following are requirements of the funding distributed to the Subrecipient as a result of this agreement.

- a. **Restrictions on Expenditures:** SPF-PFS Grant funds may not be used for any of the following purposes:
1. Pay for any lease beyond the project period.
 2. Provide services to incarcerated populations (defined as those persons in jail, prison, detention facilities, or in custody where they are not free to move about in the community).
 3. Pay for the purchase or construction of any building or structure to house any part of the program. (Subrecipients may request up to \$75,000 for renovations and alterations of existing facilities, if necessary and appropriate to the project.)

4. Pay for housing other than residential mental health and/or substance use disorder treatment.
 5. Provide residential or outpatient treatment services when the facility has not yet been acquired, sited, approved, and met all requirements for human habitation and services provision. (Expansion or enhancement of existing residential services is permissible.)
 6. Provide inpatient treatment or hospital-based detoxification services. Residential services are not considered to be inpatient or hospital-based services.
 7. Only allowable costs associated with the use of federal funds are permitted to fund EBPs. Other sources of funds may be used for unallowable costs (e.g. meals, sporting events, entertainment). Other support is defined as funds or resources, whether federal, non-federal or institutional, in direct support of activities through fellowships, gifts, prizes, or in-kind contributions.
 8. Make direct payments to individuals to induce them to enter prevention or treatment services. However, grant funds may be used for non-clinical support services (e.g. bus tokens, child care) designed to improve access to and retention in prevention and treatment programs.
 9. Make direct payments to individuals to encourage attendance and/or attainment of prevention or treatment goals. However, grant funds may be used for non-cash incentives of up to \$30 to encourage attendance and/or attainment of prevention or treatment goals when the incentives are built into the program design and when the incentives are the minimum amount that is deemed necessary to meet program goals. SAMHSA policy allows an individual participant to receive more than one incentive over the course of the program. However, non-cash incentives should be limited to the minimum number of times deemed necessary to achieve program outcomes. A grantee or treatment or prevention provider may also provide up to \$30 cash or equivalent (coupons, bus tokens, gifts, child care, and vouchers) to individuals as incentives to participate in required data collection follow-up. This amount may be paid for participation in each required interview.
 10. Meals are generally unallowable unless they are an integral part of a conference grant or specifically stated as an allowable expense in the Performance Contract. Grant funds may be used for light snacks, not to exceed \$2.50 per person.
 11. Funds may not be used to distribute sterile needles or syringes for the hypodermic injection of any illegal drug.
 12. Pay for pharmacologies for HIV antiretroviral therapy, Sexually Transmitted Diseases (STD)/Sexually Transmitted Illnesses (STI), TB, and hepatitis B and C, or for psychotropic drugs.
- b. **Grant Guidelines:**
1. Subrecipients must use the grant money to fund comprehensive, data-driven substance disorder use prevention strategies to continue to accomplish the following goals:
 - i. Prevent the onset and reduce the progression of substance use disorder;
 - ii. Reduce substance use disorder-related problems;
 - iii. Strengthen prevention capacity/infrastructure at the state, tribal, and community levels and;
 - iv. Leverage, redirect and align state/tribal-wide funding streams and resources for prevention.
- c. **Limitations on Reimbursements:** Subrecipient shall not be reimbursed or otherwise compensated for any expenditures incurred or services provided following the end of the Period of Performance provided in Exhibit D.
- DBHDS shall only reimburse or otherwise compensate the Subrecipient for documented expenditures incurred during this period that are: 1) reasonable and necessary to carry out the agreed upon scope of service outlined in Exhibit D, 2) documented by contracts or other evidence of liability consistent with established DBHDS and Subrecipient procedures; and 3) incurred in accordance with all applicable requirements for the expenditure of funds payable under this agreement.
- d. **Closeout:** Final payment request(s) under this Agreement must be received by DBHDS no later than thirty (30) days from the end of the Period of Performance referenced in the Exhibit D. No payment request will be accepted by DBHDS after this date without authorization from DBHDS. The Subrecipient may continue to expend retained funds until 40 days after the end of the Period of Performance to pay for unliquidated obligations as defined in this agreement

Any funds remaining unexpended and unobligated at the end of the Period of Performance shall be returned to DBHDS within 30 days of the end of the Period of Performance. Any funds distributed to the Subrecipient by the pass-through entity that remain unexpended by 40 days after the end of the Period of Performance shall be returned to DBHDS. The Subrecipient will send these funds to DBHDS by no later than the end of the 75th day after the end of the Performance Period. Unexpended funds should be returned in the form of a check made payable to the Treasurer of Virginia and sent to:

DBHDS
PO Box 1797
Richmond, VA 23218-1797
C/O Ramona Howell

Failure to return unexpended funds in a prompt manner may result in a denial of future federal Subrecipient awards from DBHDS.

In consideration of the execution of this agreement by DBHDS, the Subrecipient agrees that acceptance of final payment from DBHDS will constitute an agreement by the Subrecipient to release and forever discharge DBHDS, its agents, employees, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which Subrecipient has at the time of acceptance of final payment or may thereafter have, arising out of or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this agreement. Subrecipient's obligations to DBHDS under this agreement shall not terminate until all closeout requirements are completed to the satisfaction of DBHDS. Such requirements shall include, without limitation, submitting final reports to DBHDS and providing any closeout-related information requested by DBHDS by the deadlines specified by DBHDS. This provision shall survive the expiration or termination of this agreement.

6. Young Adult Substance Abuse Treatment Implementation Grant

Pursuant to the Notice of Award received by DBHDS and the Funding Opportunity Announcement (TI-17-002) associated with the Youth Treatment Implementation Grant, the following are requirements of the funding distributed to the Subrecipient as a result of this agreement.

- a. **Restrictions on Expenditures:** Young Adult Substance Abuse Treatment Implementation Grant funds may not be used for any of the following purposes:
1. Pay for any lease beyond the project period.
 2. Provide services to incarcerated populations (defined as those persons in jail, prison, detention facilities, or in custody where they are not free to move about in the community).
 3. Pay for the purchase or construction of any building or structure to house any part of the program. (Subrecipients may request up to \$75,000 for renovations and alterations of existing facilities, if necessary and appropriate to the project.)
 4. Pay for housing other than residential mental health and/or substance use disorder treatment.
 5. Provide residential or outpatient treatment services when the facility has not yet been acquired, sited, approved, and met all requirements for human habitation and services provision. (Expansion or enhancement of existing residential services is permissible.)
 6. Provide inpatient treatment or hospital-based detoxification services. Residential services are not considered to be inpatient or hospital-based services.
 7. Only allowable costs associated with the use of federal funds are permitted to fund EBPs. Other sources of funds may be used for unallowable costs (e.g. meals, sporting events, entertainment). Other support is defined as funds or resources, whether federal, non-federal or institutional, in direct support of activities through fellowships, gifts, prizes, or in-kind contributions.
 8. Make direct payments to individuals to induce them to enter prevention or treatment services. However, grant funds may be used for non-clinical support services (e.g. bus tokens, child care) designed to improve access to and retention in prevention and treatment programs.

9. Make direct payments to individuals to encourage attendance and/or attainment of prevention or treatment goals. However, grant funds may be used for non-cash incentives of up to \$30 to encourage attendance and/or attainment of prevention or treatment goals when the incentives are built into the program design and when the incentives are the minimum amount that is deemed necessary to meet program goals. SAMHSA policy allows an individual participant to receive more than one incentive over the course of the program. However, non-cash incentives should be limited to the minimum number of times deemed necessary to achieve program outcomes. A grantee or treatment or prevention provider may also provide up to \$30 cash or equivalent (coupons, bus tokens, gifts, child care, and vouchers) to individuals as incentives to participate in required data collection follow-up. This amount may be paid for participation in each required interview.
 10. Meals are generally unallowable unless they are an integral part of a conference grant or specifically stated as an allowable expense in the Performance Contract. Grant funds may be used for light snacks, not to exceed \$3.00 per person.
 11. Consolidated Appropriations Act, 2016, Division H states, SEC. 520, notwithstanding any other provision of this Act, no funds appropriated in this Act shall be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug. Provided, that such limitation does not apply to the use of funds for elements of a program other than making such purchases if the relevant state or local health department, in consultation with the Centers for Disease Control and Prevention, determines that the state or local jurisdiction, as applicable, is experiencing, or is at risk for, a significant increase in hepatitis infections or an HIV outbreak due to injection drug use, and such program is operating in accordance with state and local law.
 12. Pay for pharmacologies for HIV antiretroviral therapy, Sexually Transmitted Diseases (STD)/Sexually Transmitted Illnesses (STI), TB, and hepatitis B and C, or for psychotropic drugs.
- b. **Grant Guidelines:**
1. Funds must be used to improve capacity to increase access to treatment and to improve the quality of treatment for adolescents and transitional youth aged 16-25, and their families/primary caregivers through:
 - i. Expanding and enhancing SUD treatment services for adolescents and transitional youth aged 16-25;
 - ii. Involving families, adolescents, and transitional aged youth at the state/territorial/tribal/local levels to inform policy, program, and effective practice;
 - iii. Expanding the qualified workforce;
 - iv. Disseminating Evidence-Based Practices (EBPs);
 - v. Developing funding and payment strategies that support EBPs in the current funding environment; and
 - vi. Improving interagency collaboration.
 2. Subrecipients must address each of the following required activities:
 - i. Provide outreach and other engagement strategies to increase participation in, and provide access to, treatment for diverse populations (i.e. ethnic, racial, sexual orientation, gender identity, etc.).
 - ii. Provide direct treatment including screening, assessment, care management, and recovery support for diverse populations at risk. Treatment must be provided in outpatient, intensive outpatient, or day treatment settings. Clients must be screened and assessed for the presence of substance use disorders and/or co-occurring mental and substance use disorders, using an assessment instrument(s) that is evidence-based, and use the information obtained from the screening and assessment to develop appropriate treatment approaches for the persons identified as having such disorders.
 - iii. Provide youth recovery support services and supports (e.g. recovery coaching, vocational, educational, and transportation services) designed to support recovery and improve access and retention.
 - iv. Provide the EBPs in assessment(s) and treatment intervention(s), selected in consultation with DBHDS for the population of focus.

- v. Participate in a provider collaborative, managed by DBHDS, that, at a minimum, provides the following:
 - 1. Direct treatment for SUD and/or co-occurring substance use and mental disorders and recovery support services to the population of focus;
 - 2. Identifies and addresses common provider-level administrative challenges in providing substance abuse treatment and recovery support services to the population of focus;
 - 3. Develops and implements a common continuous quality improvement/quality assurance plan across the providers in the collaborative to improve the services provided;
 - 4. Identifies and addresses common barriers faced by the population of focus in accessing services; and
 - 5. Promotes coordination and collaboration with family support organizations to assist in the development of peer support services and strengthen services for the population of focus who have, or are at risk of SUD and/or co-occurring substance use and mental disorders.
- 3. Subrecipients must screen and assess clients for the presence of SUD and/or co-occurring mental and substance use disorders and use the information obtained from the screening and assessment to develop appropriate treatment approaches for the persons identified as having such co-occurring disorders.
- 4. Subrecipients must utilize third party and other revenue realized from the provision of services to the extent possible and use Youth Treatment Implementation Grant funds only for services to individuals who are not covered by public or commercial eHealth insurance programs, individuals for whom coverage has been formally determined to be unaffordable, or for services that are not sufficiently covered by an individual's health insurance plan. Subrecipients are also expected to facilitate the health insurance application and enrollment process for eligible uninsured clients. Subrecipients should also consider other systems from which a potential service recipient may be eligible for services if appropriate for and desired by that individual to meet his/her needs. In addition, subrecipients are required to implement policies and procedures that ensure other sources of funding are utilized first when available for that individual.
- c. **Limitations on Reimbursements:** Subrecipient shall not be reimbursed or otherwise compensated for any expenditures incurred or services provided following the end of the Period of Performance provided in Exhibit D.

DBHDS shall only reimburse or otherwise compensate the Subrecipient for documented expenditures incurred during this period that are: 1) reasonable and necessary to carry out the agreed upon scope of service outlined in Exhibit D, 2) documented by contracts or other evidence of liability consistent with established DBHDS and Subrecipient procedures; and 3) incurred in accordance with all applicable requirements for the expenditure of funds payable under this agreement.

- d. **Closeout:** Final payment request(s) under this Agreement must be received by DBHDS no later than thirty (30) days from the end of the Period of Performance referenced in the Exhibit D. No payment request will be accepted by DBHDS after this date without authorization from DBHDS. The Subrecipient may continue to expend retained funds until 40 days after the end of the Period of Performance to pay for unliquidated obligations as defined in this agreement

Any funds remaining unexpended and unobligated at the end of the Period of Performance shall be returned to DBHDS within 30 days of the end of the Period of Performance. Any funds distributed to the Subrecipient by the pass-through entity that remain unexpended by 40 days after the end of the Period of Performance shall be returned to DBHDS. The Subrecipient will send these funds to DBHDS by no later than the end of the 75th day after the end of the Performance Period. Unexpended funds should be returned in the form of a check made payable to the Treasurer of Virginia and sent to:

DBHDS

PO Box 1797
Richmond, VA 23218-1797
C/O Ramona Howell

Failure to return unexpended funds in a prompt manner may result in a denial of future federal Subrecipient awards from DBHDS.

In consideration of the execution of this agreement by DBHDS, the Subrecipient agrees that acceptance of final payment from DBHDS will constitute an agreement by the Subrecipient to release and forever discharge DBHDS, its agents, employees, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which Subrecipient has at the time of acceptance of final payment or may thereafter have, arising out of or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this agreement. Subrecipient's obligations to DBHDS under this agreement shall not terminate until all closeout requirements are completed to the satisfaction of DBHDS. Such requirements shall include, without limitation, submitting final reports to DBHDS and providing any closeout-related information requested by DBHDS by the deadlines specified by DBHDS. This provision shall survive the expiration or termination of this agreement.

7. State Pilot Grant Program for Treatment for Pregnant and Postpartum Women (PPW)

Pursuant to the Notice of Award received by DBHDS and the Funding Opportunity Announcement (TI-17-016) associated with the PPW-PLT Grant, the following are requirements of the funding distributed to the Subrecipient as a result of this agreement.

- a. **Restrictions on Expenditures:** PPW Grant funds may not be used for any of the following purposes:
1. Pay for any lease beyond the project period.
 2. Provide services to incarcerated populations (defined as those persons in jail, prison, detention facilities, or in custody where they are not free to move about in the community).
 3. Pay for the purchase or construction of any building or structure to house any part of the program. (Subrecipients may request up to \$75,000 for renovations and alterations of existing facilities, if necessary and appropriate to the project.)
 4. Pay for housing other than residential mental health and/or substance use disorder treatment.
 5. Provide residential or outpatient treatment services when the facility has not yet been acquired, sited, approved, and met all requirements for human habitation and services provision. (Expansion or enhancement of existing residential services is permissible.)
 6. Provide inpatient treatment or hospital-based detoxification services. Residential services are not considered to be inpatient or hospital-based services.
 7. Only allowable costs associated with the use of federal funds are permitted to fund EBPs. Other sources of funds may be used for unallowable costs (e.g. meals, sporting events, entertainment). Other support is defined as funds or resources, whether federal, non-federal or institutional, in direct support of activities through fellowships, gifts, prizes, or in-kind contributions.
 8. Make direct payments to individuals to induce them to enter prevention or treatment services. However, grant funds may be used for non-clinical support services (e.g. bus tokens, child care) designed to improve access to and retention in prevention and treatment programs.
 9. Make direct payments to individuals to encourage attendance and/or attainment of prevention or treatment goals. However, grant funds may be used for non-cash incentives of up to \$30 to encourage attendance and/or attainment of prevention or treatment goals when the incentives are built into the program design and when the incentives are the minimum amount that is deemed necessary to meet program goals. SAMHSA policy allows an individual participant to receive more than one incentive over the course of the program. However, non-cash incentives should be limited to the minimum number of times deemed necessary to achieve program outcomes. A grantee or treatment or prevention provider may also provide up to \$30 cash or equivalent (coupons, bus tokens, gifts, child care, and vouchers) to individuals as incentives to participate in required data collection follow-up. This amount may be paid for participation in each required interview.

10. Meals are generally unallowable unless they are an integral part of a conference grant or specifically stated as an allowable expense in this Performance Contract. Grant funds may be used for light snacks, not to exceed \$3.00 per person.
11. Consolidated Appropriations Act, 2016, Division H states, SEC. 520, notwithstanding any other provision of this Act, no funds appropriated in this Act shall be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug. Provided, that such limitation does not apply to the use of funds for elements of a program other than making such purchases if the relevant state or local health department, in consultation with the Centers for Disease Control and Prevention, determines that the state or local jurisdiction, as applicable, is experiencing, or is at risk for, a significant increase in hepatitis infections or an HIV outbreak due to injection drug use, and such program is operating in accordance with state and local law.
12. Pay for pharmacologies for HIV antiretroviral therapy, Sexually Transmitted Diseases (STD)/Sexually Transmitted Illnesses (STI), TB, and hepatitis B and C, or for psychotropic drugs.

b. **Grant Guidelines:**

1. Subrecipients must utilize third party and other revenue realized from the provision of services to the extent possible and use grant funds only for services to individuals who are not covered by public or commercial health insurance programs, individuals for whom coverage has been formally determined to be unaffordable, or for services that are not sufficiently covered by an individual’s health insurance plan.

c. **Limitations on Reimbursements:** Subrecipient shall not be reimbursed or otherwise compensated for any expenditures incurred or services provided following the end of the Period of Performance provided in Exhibit D.

DBHDS shall only reimburse or otherwise compensate the Subrecipient for documented expenditures incurred during this period that are: 1) reasonable and necessary to carry out the agreed upon scope of service outlined in Exhibit D, 2) documented by contracts or other evidence of liability consistent with established DBHDS and Subrecipient procedures; and 3) incurred in accordance with all applicable requirements for the expenditure of funds payable under this agreement.

d. **Closeout:** Final payment request(s) under this Agreement must be received by DBHDS no later than thirty (30) days from the end of the Period of Performance referenced in the Exhibit D. No payment request will be accepted by DBHDS after this date without authorization from DBHDS. The Subrecipient may continue to expend retained funds until 40 days after the end of the Period of Performance to pay for unliquidated obligations as defined in this agreement

Any funds remaining unexpended and unobligated at the end of the Period of Performance shall be returned to DBHDS within 30 days of the end of the Period of Performance. Any funds distributed to the Subrecipient by the pass-through entity that remain unexpended by 40 days after the end of the Period of Performance shall be returned to DBHDS. The Subrecipient will send these funds to DBHDS by no later than the end of the 75th day after the end of the Performance Period. Unexpended funds should be returned in the form of a check made payable to the Treasurer of Virginia and sent to:

DBHDS
 PO Box 1797
 Richmond, VA 23218-1797
 C/O Ramona Howell

Failure to return unexpended funds in a prompt manner may result in a denial of future federal Subrecipient awards from DBHDS.

In consideration of the execution of this agreement by DBHDS, the Subrecipient agrees that acceptance of final payment from DBHDS will constitute an agreement by the Subrecipient to release and forever

discharge DBHDS, its agents, employees, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which Subrecipient has at the time of acceptance of final payment or may thereafter have, arising out of or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this agreement. Subrecipient’s obligations to DBHDS under this agreement shall not terminate until all closeout requirements are completed to the satisfaction of DBHDS. Such requirements shall include, without limitation, submitting final reports to DBHDS and providing any closeout-related information requested by DBHDS by the deadlines specified by DBHDS. This provision shall survive the expiration or termination of this agreement.

IV. List of Federal Grants

Provided in the chart below is a current list of the federal grants that DBHDS passes-through to CSBs and the required identifying information that should be used to categorize and track these funds.

SAMHSA GRANTS	
<p>GRANT NAME: State Opioid Response Grant (SUD Federal Opioid Response) FEDERAL AWARD IDENTIFICATION NUMBER (FAIN): H79TI081682 FEDERAL AWARD DATE: 2/19/2018 FEDERAL AWARDDING AGENCY: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) FEDERAL AWARD PASS-THROUGH ENTITY: Virginia Department of Behavioral Health and Developmental Services CFDA NUMBER: 93.788 RESEARCH AND DEVELOPMENT AWARD: YES OR <input checked="" type="checkbox"/> NO FEDERAL GRANT AWARD YEAR: FFY 2019 AWARD PERIOD: 9/30/2019 – 9/29/2020</p>	<p>GRANT NAME: Substance Abuse Prevention and Treatment Block Grant (SUD FBG) FEDERAL AWARD IDENTIFICATION NUMBER (FAIN): B08TI010053-19 FEDERAL AWARD DATE: 6/12/2019 FEDERAL AWARDDING AGENCY: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) FEDERAL AWARD PASS-THROUGH ENTITY: Virginia Department of Behavioral Health and Developmental Services CFDA NUMBER: 93.959 RESEARCH AND DEVELOPMENT AWARD: YES OR <input checked="" type="checkbox"/> NO FEDERAL GRANT AWARD YEAR: FFY 2019 AWARD PERIOD: 10/1/2018 – 9/30/2020</p>
<p>GRANT NAME: Substance Abuse Prevention and Treatment Block Grant (SUD FBG) FEDERAL AWARD IDENTIFICATION NUMBER (FAIN): B08TI010053-20 FEDERAL AWARD DATE: TBD FEDERAL AWARDDING AGENCY: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) FEDERAL AWARD PASS-THROUGH ENTITY: Virginia Department of Behavioral Health and Developmental Services CFDA NUMBER: 93.959 RESEARCH AND DEVELOPMENT AWARD: YES OR <input checked="" type="checkbox"/> NO INDIRECT COST RATE: Federally Negotiated Rate or 10% if None Exists FEDERAL GRANT AWARD YEAR: FFY 2020 AWARD PERIOD: 10/1/2019 – 9/30/2021</p>	<p>GRANT NAME: Community Mental Health Services Block Grant (MH FBG) FEDERAL AWARD IDENTIFICATION NUMBER (FAIN): B09SM010053-19 FEDERAL AWARD DATE: 12/26/2018 FEDERAL AWARDDING AGENCY: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) FEDERAL AWARD PASS-THROUGH ENTITY: Virginia Department of Behavioral Health and Developmental Services CFDA NUMBER: 93.958 RESEARCH AND DEVELOPMENT AWARD: YES OR <input checked="" type="checkbox"/> NO INDIRECT COST RATE: Federally Negotiated Rate or 10% if None Exists FEDERAL GRANT AWARD YEAR: FFY 2019 AWARD PERIOD: 10/1/2018 – 9/30/2020</p>

<p>GRANT NAME: Community Mental Health Services Block Grant (MH FBG) FEDERAL AWARD IDENTIFICATION NUMBER (FAIN): B09SM010053-20 FEDERAL AWARD DATE: TBD FEDERAL AWARDDING AGENCY: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) FEDERAL AWARD PASS-THROUGH ENTITY: Virginia Department of Behavioral Health and Developmental Services CFDA NUMBER: 93.958 RESEARCH AND DEVELOPMENT AWARD: <u> </u> YES OR <u> X </u> NO FEDERAL GRANT AWARD YEAR: FFY 2020 AWARD PERIOD: 10/1/2019 – 9/30/2021</p>	<p>GRANT NAME: Projects for Assistance in Transition from Homelessness (PATH) FEDERAL AWARD IDENTIFICATION NUMBER (FAIN): X06SM016047-19 FEDERAL AWARD DATE: 8/28/2019 FEDERAL AWARDDING AGENCY: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) FEDERAL AWARD PASS-THROUGH ENTITY: Virginia Department of Behavioral Health and Developmental Services CFDA NUMBER: 93.15 RESEARCH AND DEVELOPMENT AWARD: <u> </u> YES OR <u> X </u> NO FEDERAL GRANT AWARD YEAR: FFY 2019 AWARD PERIOD: 9/1/2019 – 8/31/2020</p>
<p>GRANT NAME: Projects for Assistance in Transition from Homelessness (PATH) FEDERAL AWARD IDENTIFICATION NUMBER (FAIN): X06SM016047-20 FEDERAL AWARD DATE: TBD FEDERAL AWARDDING AGENCY: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) FEDERAL AWARD PASS-THROUGH ENTITY: Virginia Department of Behavioral Health and Developmental Services CFDA NUMBER: 93.15 RESEARCH AND DEVELOPMENT AWARD: <u> </u> YES OR <u> X </u> NO FEDERAL GRANT AWARD YEAR: FFY 2020 AWARD PERIOD: 9/1/2020 – 8/31/2021</p>	<p>GRANT NAME: Strategic Prevention Framework Partnerships For Success (SPF-PFS) Grant FEDERAL AWARD IDENTIFICATION NUMBER (FAIN): SP020791 FEDERAL AWARD DATE: 2/8/2016 FEDERAL AWARDDING AGENCY: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) FEDERAL AWARD PASS-THROUGH ENTITY: Virginia Department of Behavioral Health and Developmental Services CFDA NUMBER: 93.243 RESEARCH AND DEVELOPMENT AWARD: <u> </u> YES OR <u> X </u> NO FEDERAL GRANT AWARD YEAR: FFY 2020 AWARD PERIOD: 9/30/2019 – 9/29/2020</p>
<p>GRANT NAME: Young Adult Substance Abuse Treatment Implementation Grant (YSAT) FEDERAL AWARD IDENTIFICATION NUMBER (FAIN): H79TI080197 FEDERAL AWARD DATE: 5/16/2017 FEDERAL AWARDDING AGENCY: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) FEDERAL AWARD PASS-THROUGH ENTITY: Virginia Department of Behavioral Health and Developmental Services CFDA NUMBER: 93.243 RESEARCH AND DEVELOPMENT AWARD: <u> </u> YES OR <u> X </u> NO INDIRECT COST RATE: Federally Negotiated Rate or 10% if None Exists FEDERAL GRANT AWARD YEAR: FFY 2020 AWARD PERIOD: 9/30/2019 – 9/29/2020</p>	<p>GRANT NAME: Young Adult Substance Abuse Treatment Implementation Grant (YSAT) FEDERAL AWARD IDENTIFICATION NUMBER (FAIN): H79TI080197 FEDERAL AWARD DATE: TBD FEDERAL AWARDDING AGENCY: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) FEDERAL AWARD PASS-THROUGH ENTITY: Virginia Department of Behavioral Health and Developmental Services CFDA NUMBER: 93.243 RESEARCH AND DEVELOPMENT AWARD: <u> </u> YES OR <u> X </u> NO INDIRECT COST RATE: Federally Negotiated Rate or 10% if None Exists FEDERAL GRANT AWARD YEAR: FFY 2021 AWARD PERIOD: 9/30/2020 – 9/29/2021</p>

<p>GRANT NAME: State Pilot Grant Program for Treatment for Pregnant and Postpartum Women (PPW)</p> <p>FEDERAL AWARD IDENTIFICATION NUMBER (FAIN): TI080766</p> <p>FEDERAL AWARD DATE: 9/14/2017</p> <p>FEDERAL AWARING AGENCY: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA)</p> <p>FEDERAL AWARD PASS-THROUGH ENTITY: Virginia Department of Behavioral Health and Developmental Services</p> <p>CFDA NUMBER: 93.243</p> <p>RESEARCH AND DEVELOPMENT AWARD: <u> </u> YES OR <u> X </u> NO</p> <p>INDIRECT COST RATE: Federally Negotiated Rate or 10% if None Exists</p> <p>FEDERAL GRANT AWARD YEAR: FFY 2020</p> <p>AWARD PERIOD: 9/30/2019 – 9/29/2020</p>	
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Exhibit M**Department of Justice Settlement Agreement Requirements**

The CSB and the Department agrees to comply with the following requirements in the Settlement Agreement for Civil Action No: 3:12cv00059-JAG between the U.S. Department of Justice (DOJ) and the Commonwealth of Virginia, entered in the U. S. District Court for the Eastern District of Virginia on August 23, 2012 [section IX.A, p. 36], and in compliance indicators agreed to by the parties and filed with the Court on January 14, 2020.

Sections identified in text or brackets refer to sections in the agreement requirements apply to the target population defined in section III.B of the Agreement: individuals with developmental disabilities who currently reside in training centers, (ii) meet criteria for the DD Waiver waiting list, including those currently receiving DD Waiver services, or (iii) reside in a nursing home or an intermediate care facility (ICF).

- 1.) Case Managers or Support Coordinators shall provide anyone interested in accessing DD Waiver Services with a DBHDS provided resource guide that contains information including but not limited to case management eligibility and services, family supports including the IFSP Funding Program, family and peer supports, information on how to access REACH services, and information on where to access general information. [section III.C.2. a-f, p. 1].
- 2.) Case management services, defined in section III.C.5.b, shall be provided to all individuals receiving Medicaid Home and Community-Based Waiver services under the Agreement by case managers or support coordinators who are not directly providing or supervising the provision of Waiver services to those individuals [section III.C.5.c, p. 8].
- 3.) For individuals receiving case management services pursuant to the Agreement, the individual's case manager or support coordinator shall meet with the individual face-to-face on a regular basis and shall conduct regular visits to the individual's residence, as dictated by the individual's needs [section V.F.1, page 26].
 - a. At these face-to-face meetings, the case manager or support coordinator shall: observe the individual and the individual's environment to assess for previously unidentified risks, injuries, needs, or other changes in status; assess the status of previously identified risks, injuries, needs, or other changes in status; assess whether the individual's individual support plan (ISP) is being implemented appropriately and remains appropriate for the individual; and ascertain whether supports and services are being implemented consistent with the individual's strengths and preferences and in the most integrated setting appropriate to the individual's needs.
 - b. The case manager or support coordinator shall document in the ISP the performance of these observations and assessments and any findings, including any changes in status or significant events that have occurred since the last face-to-face meeting.
 - c. If any of these observations or assessments identifies an unidentified or inadequately addressed risk, injury, need, or change in status, a deficiency in the individual's support plan or its implementation, or a discrepancy between the implementation of supports and services and the individual's strengths and preferences, then the case manager or support coordinator shall report and document the issue in accordance with Department policies and regulations, convene the individual's service planning team to address it, and document its resolution.
- 4.) DBHDS shall develop and make available training for CSB case managers and leadership staff on how to assess change in status and that ISPs are implemented appropriately. DBHDS shall provide a tool with elements for the case managers to utilize during face-to-face visits to assure that changes in status as well as ISP are implemented appropriately and documented.
 - a. CSB shall ensure that all case managers and case management leadership complete the training that helps to explain how to identify change in status and that elements of the ISP are implemented appropriately. The CSB shall deliver the contents of the DBHDS training through support coordinator

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- supervisors or designated trainers to ensure case managers understand the definitions of a change in status or needs and the elements of appropriately implemented services, as well as how to apply and document observations and needed actions.
- b. CSB shall ensure that all case managers use the DBHDS On-Site Visit Tool during one face-to-face visit each quarter to assess at whether or not each person receiving targeted case management under the waiver experienced a change in status and to assess whether or not the ISP was implemented appropriately.
- 5.) Using the process developed jointly by the Department and Virginia Association of Community Services Boards (VACSB) Data Management Committee (DMC), the CSB shall report the number, type, and frequency of case manager or support coordinator contacts with individuals receiving case management services [section V.F.4, p. 27].
 - 6.) The CSB shall report key indicators, selected from relevant domains in section V.D.3 on page 24, from the case manager's or support coordinator's face-to-face visits and observations and assessments [section V.F.5, p 27]. Reporting in WaMS shall include the provision of data and actions related to DBHDS defined elements regarding a change in status or needs and the elements of appropriately implemented services in a format, frequency, and method determined by DBHDS [section III.C.5.b.i.].
 - 7.) The individual's case manager or support coordinator shall meet with the individual face-to-face at least every 30 days (including a 10 day grace period but no more than 40 days between visits), and at least one such visit every two month must be in the individual's place of residence, for any individuals who [section V.F.3, pages 26 and 27]:
 - a. Receive services from providers having conditional or provisional licenses;
 - b. Have more intensive behavioral or medical needs as defined by the Supports Intensity Scale category representing the highest level of risk to individuals
 - c. Have an interruption of service greater than 30 days;
 - d. Encounter the crisis system for a serious crisis or for multiple less serious crises within a three-month period;
 - e. Have transitioned from a training center within the previous 12 months; or
 - f. Reside in congregate settings of five or more individuals. Refer to Enhanced Case Management Criteria Instructions and Guidance issued by the Department.
 - 8.) Case managers or support coordinators shall give individuals a choice of service providers from which they may receive approved DD Waiver services, present all options of service providers based on the preferences of the individuals, including CSB and non-CSB providers, and document this using the Virginia Informed Choice Form in the waiver management system (WaMS) application. [section III.C.5.c, p. 8].
 - 9.) The CSB shall complete the Support Coordinator Quality Review process for a statistically significant sample size as outlined in the Support Coordinator Quality Review Process.
 - a. DBHDS shall annually pull a statistically significant stratified sample of individuals receiving HCBBS waiver services and send this to the CSB to be utilized to complete the review.
 - b. Each quarter, the CSB shall complete the number of Support Coordinator Quality Reviews and provide data to DBHDS as outlined by the process.
 - c. DBHDS shall analyze the data submitted to determine the following elements are met:
 - i. The CSB offered each person the choice of case manager/provider
 - ii. The case manager assesses risk, and risk mitigation plans are in place

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- iii. The case manager assesses whether the person's status or needs for services and supports have changed and the plan has been modified as needed.
 - iv. The case manager assists in developing the person's ISP that addresses all of the individual's risks, identified needs and preferences.
 - v. The ISP includes specific and measurable outcomes, including evidence that employment goals have been discussed and developed, when applicable.
 - vi. The ISP was developed with professionals and nonprofessionals who provide individualized supports, as well as the individual being served and other persons important to the individual being served.
 - vii. The ISP includes the necessary services and supports to achieve the outcomes such as medical, social, education, transportation, housing, nutritional, therapeutic, behavioral, psychiatric, nursing, personal care, respite, and other services necessary.
 - viii. Individuals have been offered choice of providers for each service.
 - ix. The case manager completes face-to-face assessments that the individual's ISP is being implemented appropriately and remains appropriate to the individual by meeting their health and safety needs and integration preferences.
 - x. The CSB has in place and the case manager has utilized where necessary, established strategies for solving conflict or disagreement within the process of developing or revising ISPs, and addressing changes in the individual's needs, including, but not limited to, reconvening the planning team as necessary to meet the individuals' needs.
- d. DBHDS shall review the data submitted and complete a semi-annual report that includes a review of data from the Support Coordinator Quality Reviews and provide this information to the CSB. To assure consistency between reviewers, DBHDS shall complete an inter-rater reliability process.
- e. If 2 or more records do not meet 86% compliance for two consecutive quarters, the CSB shall receive technical assistance provided by DBHDS.
- f. The CSB shall cooperate with DBHDS and facilitate its completion of on-site annual retrospective reviews at the CSB to validate findings of the CSB Support Coordinator Quality Review to provide technical assistance for any areas needing improvement.
- 10.) Case managers or support coordinators shall offer education about integrated community options to any individuals living outside of their own or their families' homes and, if relevant, to their authorized representatives or guardians [section III.D.7, p. 14]. Case managers shall offer this education at least annually and at the following times:
- a. At enrollment in a DD Waiver
 - b. When there is a request for a change in Waiver service provider(s)
 - c. When an individual is dissatisfied with a current Waiver service provider,
 - d. When a new service is requested
 - e. When an individual wants to move to a new location, or
 - f. When a regional support team referral is made as required by the Virginia Informed Choice Form
- 11.) For individuals receiving case management services identified to have co-occurring mental health conditions or engage in intense behaviors, the individual's case manager or support coordinator shall assure that effective community based behavioral health and/or behavioral supports and services are identified and accessed where appropriate and available.
- a. If the case manager or support coordinator incurs capacity issues related to accessing needed behavioral support services in their designated Region, every attempt to secure supports should be made to include adding the individual to several provider waitlists (e.g. based upon individualized needs, this may be inclusive of psychotherapy, psychiatry, counseling, applied behavior analysis/positive behavior support providers, etc.) and following up with these providers quarterly to determine waitlist status.

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- 12.) The CSB shall identify children and adults who are at risk for crisis through the standardized crisis screening tool or through the utilization of the elements contained in the tool at intake, and if the individual is identified as at risk for crisis or hospitalization, shall refer the individual to REACH. [SA. Provision: III.C.6.a.i-iii Filing reference: 7.2]
- 13.) For individuals that receive enhanced case management, the case manager or support coordinator shall utilize the standardized crisis screening tool during monthly visits; for individuals that receive targeted case management, the case manager or support coordinator shall use the standardized crisis screening tool during quarterly visits. Any individual that is identified as at risk for crisis shall be referred to REACH. [S.A. Provision: III.C.6.a.i-iii Filing reference: 7.3]
- 14.) The CSB shall ensure that CSB Executive Directors, Developmental Disability Directors, case management or support coordination supervisors, case managers or support coordinators, and intake workers participate in training on how to identify children and adults who are at risk for going into crisis.
- a. CSBs shall ensure that training on identifying risk of crisis for intake workers and case managers (or support coordinators) shall occur within 6 months of hire. [S.A. Provision: III.C.6.a.i-iii Filing reference: 7.5]
- 15.) The CSB shall provide data on implementation of the crisis screening tool as requested by DBHDS when it is determined that an individual with a developmental disability has been hospitalized and has not been referred to the REACH program.
- a. The CSB shall provide to DBHDS a “statistically significant” number of the times the CSB utilized of the crisis screening tools, or documentation of utilization of the elements contained within the tool during a crisis screening, completed during the 1st six months and annually thereafter for the Department to review to ensure the tool is being implemented as designed and is appropriately identifying people at risk of crisis. [S.A. Provision: III.C.6.a.i-iii Filing reference: 7.6]
 - b. DBHDS shall develop the risk of crisis/hospitalization elements and tool in partnership with the VACSB.
 - c. DBHDS shall develop a training on assessing risk of crisis/hospitalization for the CSB to utilize to train staff. The CSB shall utilize this training to train staff.
 - d. DBHDS shall initiate a quality review process monthly to include requesting documentation for anyone hospitalized who was not referred to the REACH program and either actively receiving case manager during the time frame or for whom an intake was completed prior to hospitalization. The CSB shall promptly, but within no more than 5 business days, provide the information requested.
- 16.) CSB Case manager shall work with the REACH program to identify a community residence within 30 days of admission to the program including making a referral to RST when the system has been challenged unable to find an appropriate provider within this timeframe.
- 17.) CSB emergency services shall be available 24 hours per day and seven days per week, staffed with clinical professionals who shall be able to assess crises by phone, assist callers in identifying and connecting with local services, and, where necessary, dispatch at least one mobile crisis team member adequately trained to address the crisis for individuals with developmental disabilities [section III.C.6.b.i.A, p. 9].
- a. The mobile crisis team shall be dispatched from the Regional Education Assessment Crisis Services Habilitation (REACH) program that is staffed 24 hours per day and seven days per week by qualified persons able to assess and assist individuals and their families during crisis situations and has mobile crisis teams to address crisis situations and offer services and support on site to

Exhibit M**Department of Justice Settlement Agreement Requirements**

- individuals and their families within one hour in urban areas and two hours in rural areas as measured by the average annual response time [section III.C.6.b.ii, pages 9 and 10].
- b. All Emergency services staff and their supervisors shall complete the REACH training, created and made available by DBHDS, that is part of the emergency services training curriculum.
 - c. DBHDS shall create and update a REACH training for emergency staff and make available through the agency training website.
 - d. CSB emergency services shall notify the REACH program of any individual suspected of having a developmental disability who is experiencing a crisis and seeking emergency services as soon as possible, preferably prior to the initiation of a preadmission screening evaluation.
 - e. Early notification would allow REACH and emergency services to appropriately divert the individual from admission to psychiatric inpatient services when possible.
 - f. If the CSB has an individual receiving services in the REACH Crisis Therapeutic Home (CTH) program with no plan for placement and a length of stay that shall soon exceed 30 concurrent days, the CSB Executive Director or his or her designee shall provide a weekly update describing efforts to achieve an appropriate discharge for the individual to the Director of Community Support Services in the Department's Division of Developmental Services or his/her designee.
 - g. DBHDS shall notify the CSB executive director when it is aware of a person at the REACH CTH who is nearing a 30-day concurrent stay.
- 18.) Comply with State Board Policy 1044 (SYS) 12-1 Employment First [section III.C.7.b, p. 11]. This policy supports identifying community-based employment in integrated work settings as the first and priority service option offered by case managers or support coordinators to individuals receiving day support or employment services.
- a. CSB case managers shall take the on line case management training modules and review the case management manual.
 - b. CSB case managers shall initiate meaningful employment conversations with individuals starting at the age of 14 until the age of retirement 65.
 - c. CSB case managers shall discuss employment with all individuals, including those with intense medical or behavioral support needs, as part of their ISP planning processes.
 - d. CSB case managers shall document goals for or toward employment for all individuals 18-64 or the specific reasons that employment is not being pursued or considered.
 - e. DBHDS shall create training and tools for case managers around meaningful conversation around employment including for people with complex medical and behavioral support needs. The CSB shall utilize this training with its staff and document its completion.
- 19.) CSB case managers or support coordinators shall liaise with the Department's regional community resource consultants in their regions [section III.E.1, p. 14].
- 20.) Case managers or support coordinators shall participate in discharge planning with individuals' personal support teams (PSTs) for individuals in training centers for whom the CSB is the case management CSB, pursuant to § 37.2-505 and § 37.2-837 of the Code that requires the CSB to develop discharge plans in collaboration with training centers [section IV.B.6, p. 16].
- 21.) In developing discharge plans, CSB case managers or support coordinators, in collaboration with facility PSTs, shall provide to individuals and, where applicable, their authorized representatives, specific options for types of community placements, services, and supports based on the discharge plan and the opportunity to discuss and meaningfully consider these options [section IV.B.9, p. 17].
- 22.) CSB case managers or support coordinators and PSTs shall coordinate with specific types of community providers identified in discharge to provide individuals, their families, and, where applicable,

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their authorized representatives with opportunities to speak with those providers, visit community placements (including, where feasible, for overnight visits) and programs, and facilitate conversations and meetings with individuals currently living in the community and their families before being asked to make choices regarding options [section IV.B.9.b, p. 17].

- 23.) CSB case managers or support coordinators and PSTs shall assist individuals and, where applicable, their authorized representatives in choosing providers after providing the opportunities described in subsection 13 above and ensure that providers are timely identified and engaged in preparing for individuals' transitions [section IV.B.9.c, p.17].
- 24.) Case managers or support coordinators shall provide information to the Department about barriers to discharge for aggregation and analysis by the Department for ongoing quality improvement, discharge planning, and development of community-based services [IV.B.14, p. 19].
- 25.) In coordination with the Department's Post Move Monitor, the CSB shall conduct post- move monitoring visits within 30, 60, and 90 days following an individual's movement from a training center to a community setting [section IV.C.3, p.19]. The CSB shall provide information obtained in these post move monitoring visits to the Department within seven business days after the visit.
- 26.) If a CSB provides day support or residential services to individuals in the target population, the CSB shall implement risk management and quality improvement processes, including establishment of uniform risk triggers and thresholds that enable it to adequately address harms and risks of harms, including any physical injury, whether caused by abuse, neglect, or accidental causes [section V.C.1, p. 22].
- 27.) Using the protocol and the real-time, web-based incident reporting system implemented by the Department, the CSB shall report any suspected or alleged incidents of abuse or neglect as defined in § 37.2-100 of the Code, serious injuries as defined in 12 VAC 35- 115-30 of the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services* or deaths to the Department within 24 hours of becoming aware of them [section V.C.2, p. 22].
- 28.) Participate with the Department to collect and analyze reliable data about individuals receiving services under this Agreement from each of the following areas:

a. safety and freedom from harm	e. community inclusion, health and well-being
b. physical, mental, and behavioral	f. access to services
c. avoiding crises	g. provider capacity
d. choice and self-determination	h. stability, [section V.D.3, pgs. 24 & 25]
- 29.) Participate in the regional quality council established by the Department that is responsible for assessing relevant data, identifying trends, and recommending responsive actions in its region [section V.D.5.a, p. 25].
- 30.) Provide access and assist the Independent Reviewer to assess compliance with this Agreement. The Independent Reviewer shall exercise his access in a manner that is reasonable and not unduly burdensome to the operation of the CSB and that has minimal impact on programs or services being provided to individuals receiving services under the Agreement [section VI.H, p. 30 and 31].
- 31.) Participate with the Department and any third party vendors in the implementation of the National Core

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Indicators (NCI) Surveys and Quality Service Reviews (QSRs) for selected individuals receiving services under the Agreement. This includes informing individuals and authorized representatives about their selection for participation in the NCI individual surveys or QSRs; providing the access and information requested by the vendor, including health records, in a timely manner; assisting with any individual specific follow up activities; and completing NCI surveys [section V.I, p. 28].

- a. During FY 21, the QSR process will be accelerated and will require the CSB to fully participate in the completion of QSR implementation twice during a nine-month period. This will ensure that the Commonwealth can show a complete improvement cycle intended by the QSR process by June 30, 2021. The attached GANTT details the schedule for the QSR reviews of 100% of providers, including support coordinators, for two review cycles.

- 32.) The CSB shall notify the community resource consultant (CRC) and regional support team (RST) in the following circumstances to enable the RST to monitor, track, and trend community integration and challenges that require further system development:
 - a. within five calendar days of an individual being presented with any of the following residential options: an ICF, a nursing facility, a training center, or a group home/congregate setting with a licensed capacity of five beds or more;
 - b. if the CSB is having difficulty finding services within 30 calendar days after the individual's enrollment in the waiver; or
 - c. immediately when an individual is displaced from his or her residential placement for a second time [sections III.D.6 and III.E, p. 14].
- 33.) DBHDS shall provide data to CSBs on their compliance with the RST referral and implementation process.
 - a. DBHDS shall provide information quarterly to the CSB on individuals who chose less integrated options due to the absence of something more integrated at the time of the RST review and semi-annually
 - b. DBHDS shall notify CSBs of new providers of more integrated services so that individuals who had to choose less integrated options can be made aware of these new services and supports.
 - c. CSBs shall offer more integrated options when identified by the CSB or provided by DBHDS.
 - d. CSBs shall accept technical assistance from DBHDS if the CSB is not meeting expectations.
- 34.) Case managers or support coordinators shall collaborate with the CRC to ensure that person-centered planning and placement in the most integrated setting appropriate to the individual's needs and consistent with his or her informed choice occur [section III.E.1- 3, p. 14].
 - a. CSBs shall collaborate with DBHDS CRCs to explore community integrated options including working with providers to create innovative solutions for people.

The Department encourages the CSB to provide the Independent Reviewer with access to its services and records and to individuals receiving services from the CSB; however, access shall be given at the sole discretion of the CSB [section VI.G, p. 31].

- 35.) Developmental Case Management Services
 - a. Case managers or support coordinators employed or contracted by the CSB shall meet the knowledge, skills, and abilities qualifications in the Case Management Licensing Regulations, 12 VAC 35-105-1250. During its inspections, the Department's Licensing Office may verify compliance as it reviews personnel records.
 - b. Reviews of the individual support plan (ISP), including necessary assessment updates, shall be conducted with the individual quarterly or every 90 days and include modifications in the ISP when the individual's status or needs and desires change.

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- c. During its inspections, the Department’s Licensing Office may verify this as it reviews the ISPs including those from a sample identified by the CSB of individuals who discontinued case management services.
- d. The CSB shall ensure that all information about each individual, including the ISP and VIDES, is imported from the CSB’s electronic health record (EHR) to the Department within five (5) business days through an electronic exchange mechanism mutually agreed upon by the CSB and the Department into the electronic waiver management system (WaMS).
- e. If the CSB is unable to submit via the data exchange process, it shall enter this data directly through WaMS, when the individual is entered the first time for services, or when his or her living situation changes, her or his ISP is reviewed annually, or whenever changes occur, including information about the individual’s:
 - i. full name
 - ii. social security number
 - iii. Medicaid number
 - iv. level of care information
 - v. change in status
 - vi. terminations
 - vii. CSB unique identifier
 - viii. transfers
 - ix. current physical residence address
 - x. waiting list information
 - xi. living situation (e.g., group home
 - xii. bed capacity of the group home if that is chosen
 - xiii. family home, or own home)
- f. Case managers or support coordinators and other CSB staff shall comply with the SIS® Administration Process and any changes in the process within 30 calendar days of notification of the changes.
- g. Case managers or support coordinators shall notify the Department’s service authorization staff that an individual has been terminated from all DD waiver services within 10 business days of termination.
- h. Case managers or support coordinators shall assist with initiating services within 30 calendar days of waiver enrollment and shall submit Request to Retain Slot forms as required by the Department. All written denial notifications to the individual, and family/caregiver, as appropriate, shall be accompanied by the standard appeal rights (12VAC30-110).
- i. Case managers or support coordinators shall complete the level of care tool for individuals requesting DD Waiver services within 60 calendar days of application for individuals expected to present for services within one year.
- j. Case managers or support coordinators shall comply with the DD waitlist process and slot assignment process and implement any changes in the processes within 30 calendar days of written notice from the Department.

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PLAN TO MEET COMPLIANCE BY JUNE 30, 2021					PERIOD:													
	MILESTONES	PLAN START	PLAN DURATION	COMPLETE DATE	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21
					Phase 1	Vendor Contract Tools/Definitions/ Methodology Refined and Delivered to IR/Consultant Review and Approval	4/1/2020	1 Month	4/27/2020	█								
Finalize Tools and Train Reviewers	5/1/2020	1 Month	5/22/2020			█												
Group 1 Reviews Begin (290)	5/22/2020	2 Weeks	6/5/2020				█											
Group 2 Reviews (290)	6/5/2020	4 Weeks	6/30/2020					█										
Group 2 Reviews (290)	7/1/2020	45 Days	8/15/2020						█									
Phase 2	Group 1 Data Analysis and Reports Developed and Delivered	8/16/2020	1 Month	9/15/2020				█										
	Group 1 Technical Assistance Developed and Delivered	7/1/2020	1 Month/ Ongoing	9/15/2020	█	█	█	█	█	█	█	█	█	█	█	█	█	█
	Group 2 Data Analysis and Reports Developed and Delivered	10/1/2020	1 Month	10/31/2020							█							
	Group 2 Technical Assistance Developed and Delivered	9/16/2020	45 Days/ Ongoing	10/31/2020	█	█	█	█	█	█	█	█	█	█	█	█	█	█
Phase 3	Group 1 Improvements Implemented	9/16/2020	2 Months	11/15/2020							█							
	Group 2 Improvements Implemented	11/1/2020	2 Months	12/31/2020								█						
Phase 4	Group 1 Re-Review	11/15/2020	45 Days	12/31/2020									█					
	Group 2 Re-Review	1/1/2021	45 Days	2/15/2021										█				
	Group 1 Data Analysis and Report Generation to Evaluate Impact	1/1/2021	1 Month	1/31/2021											█			
	Group 2 Data Analysis and Report Generation to Evaluate Impact	2/16/2021	1 Month	3/15/2021												█		
	Group 1 Report Delivered to IR	2/1/2021	N/A	2/1/2021													█	
	Group 2 Report Delivered to IR	3/16/2021	N/A	3/16/2021														█
	Specific Activity																	
	Ongoing Activity																	

**FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
RENEWAL AND REVISIONS**

ATTACHMENT 2

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1. Contract Purpose

The Department of Behavioral Health and Developmental Services (the “Department”) and the Community Service Boards (the “CSBs”) enter into this contract for the purpose of funding services provided directly or contractually by the CSB in a manner that ensures accountability to the Department and quality of care for individuals receiving services and implements the mission of supporting individuals by promoting recovery, self-determination, and wellness in all aspects of life. The CSB and the Department agree as follows.

Title 37.2 of the Code of Virginia, hereafter referred to as the Code, establishes the Virginia Department of Behavioral Health and Developmental Services, hereafter referred to as the Department, to support delivery of publicly funded community mental health, developmental, and substance abuse, hereafter referred to as substance use disorder, services and supports and authorizes the Department to fund those services.

Sections 37.2-500 through 37.2-512 of the Code require cities and counties to establish community services boards for the purpose of providing local public mental health, developmental, and substance use disorder services; §§ 37.2-600 through 37.2-615 authorize certain cities or counties to establish behavioral health authorities that plan and provide those same local public services. This contract refers to the community services board, local government department with a policy-advisory community services board, or behavioral health authority named in section 10 as the CSB. Section 37.2-500 or 37.2-601 of the Code requires the CSB to function as the single point of entry into publicly funded mental health, developmental, and substance use disorder services. The CSB fulfills this function for any person who is located in the CSB’s service area and needs mental health, developmental, or substance use disorder services.

Sections 37.2-508 and 37.2-608 of the Code and State Board Policy 4018, available at the Internet link in Exhibit L, establish this contract as the primary accountability and funding mechanism between the Department and the CSB, and the CSB is applying for the assistance provided under Chapter 5 or 6 of Title 37.2 by submitting this contract to the Department.

The CSB Administrative Requirements document is incorporated into and made a part of this contract by reference; it includes or incorporates by reference ongoing statutory, regulatory, policy, and other requirements that are not contained in this contract. The CSB shall comply with all provisions and requirements in that document. If there is a conflict between provisions in that document and this contract, the language in this contract shall prevail. The document is available at the Internet link in Exhibit L.

2. Relationship

The Department functions as the state authority for the public mental health, developmental, and substance use disorder services system, and the CSB functions as the local authority for that system. The relationship between and the roles and responsibilities of the Department and the CSB are described in the Partnership Agreement between the parties, which is incorporated into and made a part of this contract by reference. The Agreement is available at the Internet link in Exhibit L. This contract shall not be construed to establish any employer- employee or principal-agent relationship between employees of the CSB or its board of directors and the Department.

3. Contract Term

Both parties mutually agree to the renewal and revisions of the FY 2019 and FY 2020 Performance Contract and Exhibits A, E, and J. This contract shall be in effect for a term of one year, commencing

on July 1, 2019 and ending on June 30, 2020.

4. Scope of Services

a. Services

Exhibit A of this contract includes all mental health, developmental, and substance use disorder services provided or contracted by the CSB that are supported by the resources described in section 5 of this contract. Services and certain terms used in this contract are defined in the current Core Services Taxonomy, which is incorporated into and made a part of this contract by reference and is available at the Internet link in Exhibit L.

The CSB shall notify the Department 30 days prior to seeking to provide a new category or subcategory or stops providing an existing category or subcategory of core services if the service is funded with more than 30 percent of state or federal funds or both. The CSB shall provide sufficient information to the Office of Management Services (OMS) in the Department for its review and approval of the change, and the CSB shall receive the Department's approval before implementing the new service or stopping the existing service. Pursuant to 12VAC35-105-60 of the *Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services*, available at the Internet link in Exhibit L, the CSB shall not modify a licensed service without submitting a modification notice to the Office of Licensing in the Department at least 45 days in advance of the proposed modification.

The CSB operating a residential crisis stabilization unit (RCSU) shall not increase or decrease the licensed number of beds in the RCSU or close it temporarily or permanently without providing 30 days advance notice to the Office of Licensing and the OMS, and receiving the Department's approval prior to implementing the change.

The CSB shall comply with the requirements in Appendix H for Regional Local Inpatient Purchase of Services (LIPOS) funds.

b. Populations Served

The CSB shall provide needed services to adults with serious mental illnesses, children with or at risk of serious emotional disturbance, individuals with developmental disabilities, or individuals with substance use disorders to the greatest extent possible within the resources available to it for this purpose. The current Core Services Taxonomy defines these populations.

c. Expenses for Services

The CSB shall provide those services funded within the funds and for the costs set forth in Exhibit A and documented in the CSB's financial management system. The CSB shall distribute its administrative and management expenses across the three program areas (mental health, developmental, and substance use disorder services), emergency services, and ancillary services on a basis that is auditable and satisfies Generally Accepted Accounting Principles. CSB administrative and management expenses shall be reasonable and subject to review by the Department.

d. Continuity of Care

The CSB shall follow the Continuity of Care Procedures in Appendix A of the CSB Administrative Requirements. The CSB shall comply with regional emergency services protocols.

e. Coordination of Developmental Disability Waiver Services

The CSB shall provide case management, also referred to as support coordination, services directly or through contracts to all individuals who are receiving services under Medicaid

Developmental Disability Home and Community-Based Waivers (DD Waivers). In its capacity as the case manager for these individuals and in order to receive payment for services from the Department of Medical Assistance Services (DMAS), the CSB shall coordinate the development of service authorization requests for DD Waiver services and submit them to the Department for authorization, pursuant to the current DMAS/Department Interagency Agreement, under which the Department authorizes waiver services as a delegated function from the DMAS. As part of its specific case management responsibilities for individuals receiving DD Waiver services, the CSB shall coordinate and monitor the delivery of all services to individuals it serves, including monitoring the receipt of services in an individual's individual support plan (ISP) that are delivered by independent providers who are reimbursed directly by the DMAS, to the extent that the CSB is not prohibited from doing so by such providers (refer to the DMAS policy manuals for the DD Waivers). The CSB shall raise issues regarding its efforts to coordinate and monitor services provided by independent vendors to the applicable funding or licensing authority, such as the Department, DMAS, or Virginia Department of Social Services. In fulfilling this service coordination responsibility, the CSB shall not restrict or seek to influence an individual's choice among qualified service providers. This section does not, nor shall it be construed to, make the CSB legally liable for the actions of independent providers of DD Waiver services.

f. Intensive Care Coordination for the Comprehensive Services Act

As the single point of entry into publicly funded mental health, developmental, and substance use disorder services pursuant to § 37.2-500 of the Code and as the exclusive provider of Medicaid rehabilitative mental health and developmental case management services and with sole responsibility for targeted DD case management services, the CSB is the most appropriate provider of intensive care coordination (ICC) services through the Children's Services Act (CSA), § 2.2-5200 et seq. of the Code. The CSB and the local community policy and management team (CPMT) in its service area shall determine collaboratively the most appropriate and cost-effective provider of ICC services for children who are placed in or are at risk of being placed in residential care through the CSA program in accordance with guidelines developed by the State Executive Council and shall develop a local plan for ICC services that best meets the needs of those children and their families. If there is more than one CPMT in the CSB's service area, the CPMTs and the CSB may work together as a region to develop a plan for ICC services.

If the CSB is identified as the provider of ICC services, it shall work in close collaboration with its CPMT(s) and family assessment and planning team(s) to implement ICC services, to assure adequate support for these services through local CSA funds, and to assure that all children receive appropriate assessment and care planning services. Examples of ICC activities include: efforts at diversion from more restrictive levels of care, discharge planning to expedite return from residential or facility care, and community placement monitoring and care coordination work with family members and other significant stakeholders. If it contracts with another entity to provide ICC services, the CSB shall remain fully responsible for ICC services, including monitoring the services provided under the contract.

g. Linkages with Health Care

When it arranges for the care and treatment of individuals in hospitals, inpatient psychiatric facilities, or psychiatric units of hospitals, the CSB shall assure its staff's cooperation with those hospitals, inpatient psychiatric facilities, or psychiatric units of hospitals, especially emergency rooms and emergency room physicians, to promote continuity of care for those individuals. Pursuant to subdivision A.4 of § 37.2-505, the CSB shall provide information using a template provided by the Department about its substance use disorder services for minors to all hospitals in its service area that are licensed pursuant to Article 1 of Chapter 5 of Title 32.1.

h. Medical Screening and Medical Assessment

When it arranges for the treatment of individuals in state hospitals or local inpatient psychiatric facilities or psychiatric units of hospitals, the CSB shall assure that its staff follows the current Medical Screening and Medical Assessment Guidance Materials, available at the Internet link in Exhibit L. The CSB staff shall coordinate care with emergency rooms, emergency room physicians, and other health and behavioral health providers to ensure the provision of timely and effective medical screening and medical assessment to promote the health and safety of and continuity of care for individuals receiving services.

i. Coordination with Local Psychiatric Hospitals

When the CSB performed the preadmission screening evaluation for an individual admitted involuntarily and when referral to the CSB is likely upon the discharge, the CSB shall coordinate or, if it pays for the service, approve an individual's admission to and continued stay in a psychiatric unit or psychiatric hospital. The CSB shall collaborate with the unit or hospital to assure appropriate treatment and discharge planning to the least restrictive setting and to avoid the use of these facilities when the service is no longer needed.

j. Targeted Case Management Services

In accordance with the Community Mental Health Rehabilitative Services manual and the policy manuals for the DD Waivers issued by the DMAS, the CSB shall be the only provider of rehabilitative mental health case management services and shall have sole responsibility for targeted DD case management services, whether the CSB provides them directly or subcontracts them from another provider.

k. Choice of Case Managers

Individuals receiving case management services shall be offered a choice of case managers to the extent possible, and this shall be documented by a procedure to address requests for changing a case manager or for receiving case management services at another CSB or from a contracted case management services provider. The CSB shall provide a copy of this procedure to the Department upon request. During its inspections, the Department's Licensing Office may verify this as it reviews services records and examines the procedure.

l. Access to Services

The CSB shall not establish or implement policies that deny or limit access to services funded in part by state or local matching funds or federal block grant funds only because an individual: a.) is not able to pay for services, b.) is not enrolled in Medicaid, or c.) is involved in the criminal justice system. The CSB shall not require an individual to receive case management services in order to receive other services that it provides, directly or contractually, unless it is permitted to do so by applicable regulations or the person is an adult with a serious mental illness, a child with or at risk of serious emotional disturbance, or an individual with a developmental disability or a substance use disorder, the person is receiving more than one other service from the CSB, or a licensed clinician employed or contracted by the CSB determines that case management services are clinically necessary for that individual. Federal Medicaid targeted case management regulations forbid using case management to restrict access to other services by Medicaid recipients or compelling Medicaid recipients to receive case management if they are receiving another service.

m. Virginia Psychiatric Bed Registry

The CSB shall participate in and utilize the Virginia Psychiatric Bed Registry required by § 37.2-308.1 of the Code to access local or state hospital psychiatric beds or residential crisis stabilization beds whenever necessary to comply with requirements in § 37.2-809 of the Code that govern the temporary detention process. If the CSB operates residential crisis stabilization services, it shall

update information about bed availability included in the registry whenever there is a change in bed availability for the facility or, if no change in bed availability has occurred, at least daily.

n. Preadmission Screening

The CSB shall provide preadmission screening services pursuant to § 37.2-505 or § 37.2-606, § 37.2-805, § 37.2-809 through § 37.2-813, § 37.2-814, and § 16.1-335 et seq. of the Code and in accordance with the Continuity of Care Procedures in Appendix A of the CSB Administrative Requirements for any person who is located in the CSB's service area and may need admission for involuntary psychiatric treatment. The CSB shall ensure that persons it designates as preadmission screening clinicians meet the qualifications established by the Department per section 4.h and have received required training provided by the Department.

o. Discharge Planning

The CSB shall provide discharge planning pursuant to § 37.2- 505 or § 37.2-606 of the Code and in accordance with State Board Policies 1035 and 1036, the Continuity of Care Procedures, Exhibit K of this contract, and the current *Collaborative Discharge Protocols for Community Services Boards and State Hospitals Adult & Geriatric or Child & Adolescent* and the *Training Center - Community Services Board Admission and Discharge Protocols for Individuals with Intellectual Disabilities* issued by the Department that are incorporated into and made a part of this contract by reference. The protocols and State Board policies are available at the Internet links in Exhibit L. The CSB shall monitor the state hospital extraordinary barriers to discharge list and strive to achieve community placements for individuals on the list for whom it is the case management CSB as soon as possible.

p. Retention in Services

The CSB shall attempt to contact and re-engage any individual who (i) was admitted to the mental health or substance use disorder services program area, (ii) has not received any mental health or substance use disorder service within 100 days since the last service he or she received, and (iii) has not been discharged. The CSB may attempt to contact and re-engage an individual sooner than 100 days. If it cannot contact or re-engage the individual within 30 days from the end of the 100-day period, the CSB shall discharge the individual and report the discharge using a Community Consumer Submission 3 (CCS 3) type of care record with a through date of the date of the last service she or he received. The CSB may discharge an individual sooner than this if discharge is clinically or administratively appropriate, for example if the individual moves out of the service area, terminates services, or dies.

q. Department of Justice Settlement Agreement Requirements

The CSB agrees to comply with the following requirements in the Settlement Agreement for Civil Action No: 3:12cv00059-JAG between the U.S. Department of Justice (DOJ) and the Commonwealth of Virginia, entered in the U. S. District Court for the Eastern District of Virginia on August 23, 2012 [section IX.A, p. 36] and available at the Internet link in Exhibit L. Sections identified in text or brackets refer to sections in the Agreement. Requirements apply to the target population in section III.B: individuals with developmental disabilities who currently reside in training centers, (ii) meet criteria for the DD Waiver waiting list, (iii) reside in a nursing home or an intermediate care facility (ICF), or (iv) receive DD Waiver services.

- 1.) Case management services, defined in section III.C.5.b, shall be provided to all individuals receiving Medicaid Home and Community-Based Waiver services under the Agreement by case managers or support coordinators who are not directly providing or supervising the provision of Waiver services to those individuals [section III.C.5.c, p. 8].

2.) For individuals receiving case management services pursuant to the Agreement, the individual's case manager or support coordinator shall meet with the individual face-to-face on a regular basis and shall conduct regular visits to the individual's residence, as dictated by the individual's needs [section V.F.1, page 26]. At these face-to-face meetings, the case manager or support coordinator shall: observe the individual and the individual's environment to assess for previously unidentified risks, injuries, needs, or other changes in status; assess the status of previously identified risks, injuries, needs, or other changes in status; assess whether the individual's individual support plan (ISP) is being implemented appropriately and remains appropriate for the individual; and ascertain whether supports and services are being implemented consistent with the individual's strengths and preferences and in the most integrated setting appropriate to the individual's needs. The case manager or support coordinator shall document in the ISP the performance of these observations and assessments and any findings, including any changes in status or significant events that have occurred since the last face-to-face meeting. If any of these observations or assessments identifies an unidentified or inadequately addressed risk, injury, need, or change in status, a deficiency in the individual's support plan or its implementation, or a discrepancy between the implementation of supports and services and the individual's strengths and preferences, then the case manager or support coordinator shall document the issue, convene the individual's service planning team to address it, and document its resolution.

3.) Using a process developed jointly by the Department and Virginia Association of Community Services Boards (VACSB) Data Management Committee, the CSB shall report the number, type, and frequency of case manager or support coordinator contacts with individuals receiving case management services [section V.F.4, p. 27].

4.) The CSB shall report key indicators, selected from relevant domains in section V.D.3 on page 24, from the case manager's or support coordinator's face-to-face visits and observations and assessments [section V.F.5, p 27].

5.) The individual's case manager or support coordinator shall meet with the individual face-to-face at least every 30 days, and at least one such visit every two months must be in the individual's place of residence, for any individuals who [section V.F.3, pages 26 and 27]:

- a.) Receive services from providers having conditional or provisional licenses;
- b.) Have more intensive behavioral or medical needs as defined by the Supports Intensity Scale category representing the highest level of risk to individuals
- c.) Have an interruption of service greater than 30 days;
- d.) Encounter the crisis system for a serious crisis or for multiple less serious crises within a three-month period;
- e.) Have transitioned from a training center within the previous 12 months; or
- f.) Reside in congregate settings of five or more individuals.

Refer to Enhanced Case Management Criteria Instructions and Guidance issued by the Department, available at the Internet link in Exhibit L, for additional information.

6.) Case managers or support coordinators shall give individuals a choice of service providers from which they may receive approved DD Waiver services, present all options of service providers based on the preferences of the individuals, including CSB and non-CSB providers, and document this using the Virginia Informed Choice Form in the waiver management system (WaMS) application. [section III.C.5.c, p. 8].

7.) Case managers or support coordinators shall offer education about integrated community

options to any individuals living outside of their own or their families' homes and, if relevant, to their authorized representatives or guardians [sec. III.D.7, p. 14]. Case managers shall offer this education at least annually and at the following times:

- a.) at enrollment in a DD Waiver,
- b.) when there is a request for a change in Waiver service provider(s),
- c.) when an individual is dissatisfied with a current Waiver service provider,
- d.) when a new service is requested,
- e.) when an individual wants to move to a new location, or
- f.) when a regional support team referral is made as required by the Virginia Informed Choice Form.

8.) CSB emergency services shall be available 24 hours per day and seven days per week, staffed with clinical professionals who shall be able to assess crises by phone, assist callers in identifying and connecting with local services, and, where necessary, dispatch at least one mobile crisis team member adequately trained to address the crisis [section III.C.6.b.i.A, p. 9]. This requirement shall be met through the Regional Education Assessment Crisis Services Habilitation (REACH) program that is staffed 24 hours per day and seven days per week by qualified persons able to assess and assist individuals and their families during crisis situations and has mobile crisis teams to address crisis situations and offer services and support on site to individuals and their families within one hour in urban areas and two hours in rural areas as measured by the average annual response time [section III.C.6.b.ii, pages 9 and 10]. Emergency services staff shall receive consistent training from the Department on the REACH crisis response system.

CSB emergency services shall notify the REACH program of any individual suspected of having a developmental disability who is experiencing a crisis and seeking emergency services as soon as possible, preferably at the onset of a preadmission screening evaluation. When possible, this would allow REACH and emergency services to appropriately divert the individual from admission to psychiatric inpatient services when possible. If the CSB has an individual receiving services in the REACH program with no plan for placement and a length of stay that will soon exceed 30 concurrent days, the CSB Executive Director or his or her designee shall provide a weekly update describing efforts to achieve an appropriate disposition for the individual to the Director of Community Support Services in the Department's Division of Developmental Services.

9.) Comply with State Board Policy 1044 (SYS) 12-1 Employment First, available at the Internet link in Exhibit L [section III.C.7.b, p. 11]. This policy supports identifying community-based employment in integrated work settings as the first and priority service option offered by case managers or support coordinators to individuals receiving day support or employment services.

10.) CSB case managers or support coordinators shall liaise with the Department's regional community resource consultants in their regions [section III.E.1, p. 14].

11.) Case managers or support coordinators shall participate in discharge planning with individuals' personal support teams (PSTs) for individuals in training centers for whom the CSB is the case management CSB, pursuant to § 37.2-505 and § 37.2-837 of the Code that requires the CSB to develop discharge plans in collaboration with training centers [section IV.B.6, p. 16].

12.) In developing discharge plans, CSB case managers or support coordinators, in

collaboration with PSTs, shall provide to individuals and, where applicable, their authorized representatives, specific options for types of community placements, services, and supports based on the discharge plan and the opportunity to discuss and meaningfully consider these options [section IV.B.9, p. 17].

13.) CSB case managers or support coordinators and PSTs shall coordinate with specific types of community providers identified in discharge plans as providing appropriate community-based services for individuals to provide individuals, their families, and, where applicable, their authorized representatives with opportunities to speak with those providers, visit community placements (including, where feasible, for overnight visits) and programs, and facilitate conversations and meetings with individuals currently living in the community and their families before being asked to make choices regarding options [section IV.B.9.b, p. 17].

14.) CSB case managers or support coordinators and PSTs shall assist individuals and, where applicable, their authorized representatives in choosing providers after providing the opportunities described in subsection 13 above and ensure that providers are timely identified and engaged in preparing for individuals' transitions [section IV.B.9.c, p.17].

15.) Case managers or support coordinators shall provide information to the Department about barriers to discharge for aggregation and analysis by the Department for ongoing quality improvement, discharge planning, and development of community-based services [IV.B.14, p. 19].

16.) In coordination with the Department's Post Move Monitor, the CSB shall conduct post-move monitoring visits within 30, 60, and 90 days following an individual's movement from a training center to a community setting [section IV.C.3, p.19]. The CSB shall provide information obtained in these post move monitoring visits to the Department within seven business days after the visit.

17.) If it provides day support or residential services to individuals in the target population, the CSB shall implement risk management and quality improvement processes, including establishment of uniform risk triggers and thresholds that enable it to adequately address harms and risks of harms, including any physical injury, whether caused by abuse, neglect, or accidental causes [section V.C.1, p. 22].

18.) Using the protocol and the real-time, web-based incident reporting system implemented by the Department, the CSB shall report any suspected or alleged incidents of abuse or neglect as defined in § 37.2-100 of the Code, serious injuries as defined in 12 VAC 35- 115-30 of the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services*, available at the Internet link in Exhibit L, or deaths to the Department within 24 hours of becoming aware of them [section V.C.2, p. 22].

19.) Participate with the Department to collect and analyze reliable data about individuals receiving services under this Agreement from each of the following areas:

- | | |
|---|------------------------------------|
| a.) safety and freedom from harm, | e.) choice and self-determination, |
| b.) physical, mental, and behavioral health and well-being, | f.) community inclusion, |
| c.) avoiding crises, | g.) access to services, |
| d.) stability, | h.) provider capacity |
- [section V.D.3, pgs. 24 & 25].

20.) Participate in the regional quality council established by the Department that is

responsible for assessing relevant data, identifying trends, and recommending responsive actions in its region [section V.D.5.a, p. 25].

21.) Provide access to and assist the Independent Reviewer to assess compliance with this Agreement. The Independent Reviewer shall exercise his access in a manner that is reasonable and not unduly burdensome to the operation of the CSB and that has minimal impact on programs or services being provided to individuals receiving services under the Agreement [section VI.H, p. 30 and 31].

22.) Participate with the Department and its third party vendors in the implementation of the National Core Indicators (NCI) Surveys and Quality Service Reviews (QSRs) for selected individuals receiving services under the Agreement. This includes informing individuals and authorized representatives about their selection for participation in the NCI individual surveys or QSRs; providing the access and information requested by the vendor, including health records, in a timely manner; assisting with any individual specific follow up activities; and completing NCI surveys [section V.I, p. 28].

23.) The CSB shall notify the community resource consultant (CRC) and regional support team (RST) in the following circumstances to enable the RST to monitor, track, and trend community integration and challenges that require further system development:

a.) within five calendar days of an individual being presented with any of the following residential options: an ICF, a nursing facility, a training center, or a group home with a licensed capacity of five beds or more;

b.) if the CSB is having difficulty finding services within 30 calendar days after the individual's enrollment in the waiver; or

c.) immediately when an individual is displaced from his or her residential placement for a second time

[sections III.D.6 and III.E, p. 14].

24.) Case managers or support coordinators shall collaborate with the CRC to ensure that person-centered planning and placement in the most integrated setting appropriate to the individual's needs and consistent with his or her informed choice occur [section III.E.1- 3, p. 14].

The Department encourages the CSB to provide the Independent Reviewer with access to its services and records and to individuals receiving services from the CSB; however, access shall be at the sole discretion of the CSB [section VI.G, p. 31].

r. Emergency Services Availability

The CSB shall have at least one local telephone number, and where appropriate one toll-free number, for emergency services telephone calls that is available to the public 24 hours per day and seven days per week throughout its service area. The number(s) shall provide immediate access to a qualified emergency services staff member. Immediate access means as soon as possible and within no more than 15 minutes. If the CSB uses an answering service to fulfill this requirement, the service must be able to contact a qualified CSB emergency services staff immediately to alert the staff member that a crisis call has been received. Using (1) an answering service with no immediate transfer to a qualified CSB emergency services staff, (2) the CSB's main telephone number that routes callers to a voice mail menu, (3) 911, or (4) the local sheriff's or police department's phone number does not satisfy this requirement. The CSB shall disseminate the phone number(s) widely throughout the service area, including local telephone books and appropriate local government and public service web sites, and the CSB shall display the number(s) prominently on the main page of its web site. The CSB shall implement procedures for

handling emergency services telephone calls that ensure adequate emergency services staff coverage, particularly after business hours, so that qualified staff responds immediately to calls for emergency services, and the procedures shall include coordination and referral to the REACH program for individuals with developmental disabilities. The CSB shall provide the procedures for handling emergency services calls to the Department upon request.

s. Preadmission Screening Evaluations

- 1.) The purpose of preadmission screening evaluations is to determine whether the person meets the criteria for temporary detention pursuant to Article 16 of Chapter 11 of Title 16.1, Chapters 11 and 11.1 of Title 19.2, and Chapter 8 of Title 37.2 in the Code and to assess the need for hospitalization or treatment. Certified preadmission screening clinicians shall perform the evaluations. Preadmission screening evaluations are highly variable and individualized crisis assessments with clinical requirements that will vary based on the nature of the clinical presentation. However, the CSB shall ensure that all preadmission screening evaluations conducted by its staff include at a minimum:
 - a.) A review of past clinical and treatment information if available;
 - b.) Pertinent information from the clinical interview and collateral contacts or documentation of why this information was unavailable at the time of the evaluation;
 - c.) A documented risk assessment that includes an evaluation of the likelihood that, as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any;
 - d.) Thorough and detailed documentation of the clinical disposition and rationale for it; e.) Documentation of all hospitals contacted, including state hospitals;
 - f.) Documentation of contact with the staff's supervisor and CSB leadership about the evaluation when necessary and within 60 minutes once an ECO has expired without locating an appropriate bed; and
 - g.) Documentation of contact with the REACH program for all individuals presenting with a DD diagnosis or a co-occurring DD diagnosis.
- 2.) Preadmission screening reports required by § 37.2-816 of the Code shall comply with requirements in that section and shall state:
 - a.) whether the person has a mental illness, and whether there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or suffer serious harm due to his lack of capacity to protect himself from harm or provide for his basic human needs;
 - b.) whether the person is in need of involuntary inpatient treatment;
 - c.) whether there is no less restrictive alternative to inpatient treatment; and
 - d.) the recommendations for that person's placement, care, and treatment including, where appropriate, recommendations for mandatory outpatient treatment.

t. Certification of Preadmission Screening Clinicians

The CSB and Department prioritize having emergency custody order or preadmission screening evaluations performed pursuant to Article 16 of Chapter 11 of Title 16.1, Chapters 11 and 11.1 of Title 19.2, and Chapter 8 of Title 37.2 in the Code provided by the most qualified, knowledgeable, and experienced CSB staff. These evaluations are face-to-face clinical evaluations performed by designated CSB staff of persons in crisis who may be in emergency custody or who may need involuntary temporary detention or other emergency treatment. The CSB shall comply with the requirements in the current *Certification of Preadmission Screening Clinicians*, a document developed jointly by the Department and CSB representatives and made a part of this contract by reference, to enhance the qualifications, training, and oversight of CSB preadmission screening clinicians and increase the quality, accountability, and standardization of preadmission screening evaluations. This document is available at the Internet link in Exhibit L.

u. Developmental Case Management Services

- 1.) Case managers or support coordinators employed or contracted by the CSB shall meet the knowledge, skills, and abilities qualifications in the Case Management Licensing Regulations, 12 VAC 35-105-1250. During its inspections, the Department's Licensing Office may verify compliance as it reviews personnel records.
- 2.) Reviews of the individual support plan (ISP), including necessary assessment updates, shall be conducted with the individual quarterly or every 90 days and include modifications in the ISP when the individual's status or needs and desires change. During its inspections, the Department's Licensing Office may verify this as it reviews ISPs including those from a sample identified by the CSB of individuals who discontinued case management services.
- 3.) The CSB shall ensure that all information about each individual, including the ISP and VIDES, is imported from the CSB's electronic health record (EHR) to the Department within five (5) business days through an electronic exchange mechanism mutually agreed upon by the CSB and the Department into the electronic waiver management system (WaMS) when the individual is entered the first time for services, his or her living situation changes, her or his ISP is reviewed annually, or whenever changes occur, including information about the individual's:
 - a.) full name,
 - b.) social security number,
 - c.) Medicaid number,
 - d.) CSB unique identifier,
 - e.) current physical residence address,
 - f.) living situation (e.g., group home, family home, or own home),
 - g.) level of care information,
 - h.) terminations,
 - i.) transfers,
 - j.) waiting list information,
 - k.) diagnosis, and
 - l.) bed capacity of the group home if that is chosen.
- 4.) Case managers or support coordinators and other CSB staff shall comply with the SIS[®] Administration Process, available at the Internet link in Exhibit L, and any changes in the process within 30 calendar days of notification of the changes.
- 5.) Case managers or support coordinators shall notify the Department's service authorization staff that an individual has been terminated from all DD waiver services within 10 business days of termination.
- 6.) Case managers or support coordinators shall submit the Request to Retain a Slot form available in WaMS to the appropriate Department staff to hold a slot open within 10 business days of it becoming available.
- 7.) Case managers or support coordinators shall complete the level of care tool for individuals requesting DD Waiver services within 60 calendar days of application for individuals expected to present for services within one year.
- 8.) Case managers or support coordinators shall comply with the DD waitlist process and slot assignment process and implement any changes in the processes within 30 calendar days of written notice from the Department.
- 9.) The CSB shall report quarterly supervisory review data on a sample of records of individuals receiving services under DD Waivers to determine if key objectives are being met according to the waiver assurances submitted to the Centers for Medicare and Medicaid Services. The CSB shall submit the data in the supervisory review survey questionnaire no

later than three weeks following the end of the quarter through a reporting method mutually approved by CSBs and the Department. The CSB shall complete its record reviews within the required timeframe for reporting the data for each quarter and shall complete all required samples before July 31st of the next fiscal year.

v. PACT Services

- 1.) Design and implement its PACT in accordance with requirements in 12VAC35-105- 1360 through 1410 of the *Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services* available at the Internet link in Exhibit L.
- 2.) Prioritize admission to its PACT for adults with serious mental illnesses who are currently residing in state hospitals, have histories of frequent use of state or local psychiatric inpatient services, or are homeless.
- 3.) Achieve and maintain a minimum caseload of 80 individuals receiving services within two years from the date of initial funding by the Department. When fully staffed, PACT teams shall serve at least 80 but no more than 120 individuals per 12VAC35-105-1370. If the caseload of the PACT is not growing at a rate that will achieve this caseload, the CSB shall provide a written explanation to and seek technical assistance from the Office of Adult Community Behavioral Health Services in the Department.
- 4.) Reduce use of state hospital beds by individuals receiving PACT services by at least eight beds (2,920 bed days) within two years from the date of initial funding by the Department.
- 5.) Maximize billing and collection of funds from other sources including Medicaid and other fees to enable state funds to expand services in the PACT.
- 6.) Assist Department staff as requested with any case-level utilization review activities, making records of individuals receiving PACT services available and providing access to individuals receiving PACT services for interviews.
- 7.) Ensure staff participate in PACT network meetings with other PACT teams as requested by the Department. PACT staff shall participate in technical assistance provided through the Department and shall obtain individual team-level training and technical assistance at least quarterly for the first two years of operation from recognized experts approved by the Department.
- 8.) Track and report expenditure of restricted PACT state mental health funds separately in the implementation status reports required in subsection 10 below. Include applicable information about individuals receiving PACT services and the services they receive in its information system and CCS 3 monthly extracts.
- 9.) Reserve any current restricted PACT state mental health funds for the PACT that remain unspent at the end of the fiscal year to be used only for the PACT in subsequent fiscal years as authorized by the Department.
- 10.) Submit monthly data extracts using the Department-provided database that include information on staffing, events involving individuals receiving services in the PACT, and outcomes. The Department shall provide the data collection and reporting database, submission due dates, and reporting protocols to the CSB in sufficient time to allow it to comply with them.

w. Crisis Intervention Team (CIT) Services

- 1.) Work with community stakeholders, agencies, and partners across systems to coordinate the implementation and operation of the CIT Assessment Site and provide related access to appropriate services in accordance with its RFP response approved by the Department.
- 2.) Submit narrative semi-annual progress reports on these services through the Department's sFTP server and upload them to the Jail Diversion Folder within 45 calendar days of the end of the second quarter and within 60 days of the end of the fiscal year. Reports shall include a brief narrative of program activities for all CIT aspects of the services, implementation progress against milestones identified in the approved RFP response, and specific site-related challenges and successes for the reporting period.
Instructions for naming the files are in the Data Reporting Manual provided by the Department to CSBs that received CIT funds.
- 3.) Include all funds, expenditures, and costs associated with these services provided to individuals residing in the CSB's service area in its Community Automated Reporting System (CARS) reports and applicable data about individuals receiving these services and service units received in its monthly CCS 3 extracts submitted to the Department.
- 4.) Submit quarterly data files as instructed by the Department using the Excel Data Template provided by the Department to CSBs that received CIT funds. Submit quarterly data reports within 45 calendar days of the end of the first three quarters and within 60 days of the end of the fiscal year. Submit the data files through the Department's sFTP server and upload them to the Jail Diversion Folder. Instructions for naming the files are in the Data Reporting Manual provided by the Department.
- 5.) Cooperate with the Department in annual site visits and agree to participate in scheduled assessment site meetings.

x. Permanent Supportive Housing (PSH)

If the CSB receives state mental health funds for PSH for adults with serious mental illness, it shall fulfill these requirements:

- 1.) Comply with requirements in the PSH Initiative Operating Guidelines and any subsequent additions or revisions to the requirements agreed to by the participating parties. The Guidelines are incorporated into and made a part of this contract by reference and are available at the Internet link in Exhibit L. If the implementation of the program is not meeting its projected implementation schedule, the CSB shall provide a written explanation to and seek technical assistance from the Office of Adult Community Behavioral Health Services in the Department.
- 2.) Ensure that individuals receiving PSH have access to an array of clinical and rehabilitative services and supports based on the individual's choice, needs, and preferences and that these services and supports are closely coordinated with the housing-related resources and services funded through the PSH initiative.
- 3.) Maximize billing and collection of funds from other sources including Medicaid and other fees to increase the funds available for individuals receiving services funded through the PSH initiative.
- 4.) Assist Department staff as requested with any case-level utilization review activities, making records of individuals receiving PSH available and providing access to individuals receiving PSH for interviews.
- 5.) Track and report the expenditure of restricted state mental health PSH funds separately in

the implementation status reports required in subsection 7 below. Based on these reports, the Department may adjust the amount of state funds on a quarterly basis up to the amount of the total allocation to the CSB. The CSB shall include applicable information about individuals receiving PSH services and the services they receive in its information system and CCS 3 monthly extracts.

6.) Reserve any current restricted state mental health funds for PSH that remain unspent at the end of the fiscal year to be used only for PSH activities in subsequent fiscal years as authorized by the Department.

7.) Submit implementation status reports for PSH within 45 days after the end of the quarter for the first three quarters and within 60 days of the end of the fiscal year to the Department. Submit data about individuals following guidance provided by the Office of Adult Community Behavioral Health and using the tools, platforms, and data transmission requirements provided by the Department. Establish mechanisms to ensure the timely and accurate collection and transmission of data. The Department shall provide the data collection and reporting database, submission due dates, and reporting protocols to the CSB in sufficient time to allow it to comply with them.

8.) Participate in PSH training and technical assistance in coordination with the Office of Adult Community Behavioral Health Services and any designated training and technical assistance providers.

y. Same Day Access (SDA)

SDA means an individual may walk into or contact a CSB to request mental health or substance use disorder services and receive a comprehensive clinical behavioral health assessment, not just a screening, from a licensed or license-eligible clinician the same day. Based on the results of the comprehensive assessment, if the individual is determined to need services, the goal of SDA is that he or she receives an appointment for face-to-face or other direct services in the program offered by the CSB that best meets his or her needs within 10 business days, sooner if indicated by clinical circumstances. SDA emphasizes engagement of the individual, uses concurrent EHR documentation during the delivery of services, implements techniques to reduce appointment no shows, and uses centralized scheduling. If it has received state mental health funds to implement SDA, the CSB shall report SDA outcomes through the CCS 3 outcomes file. The CSB shall report the date of each SDA comprehensive assessment, whether the assessment determined that the individual needed services offered by the CSB, and the date of the first service offered at the CSB for all individuals seeking mental health or substance use disorder services from the CSB. The Department shall measure SDA by comparing the date of the comprehensive assessment that determined the individual needed services and the date of the first CSB face-to-face or other direct service offered to the individual.

z. Family Wellness Initiative

If the CSB receives federal Substance Abuse Prevention and Treatment Block Grant funds to implement the Family Wellness Initiative, it shall fulfill these requirements.

1.) Use these funds only to implement this initiative as described in the CSB proposal approved by the Department. All Family Wellness Initiative CSBs have two adverse childhood experiences (ACE) interface master trainers in their communities and shall begin incorporating the science of ACE and resiliency into all family wellness initiatives described in the approved proposal.

2.) Include all funds, expenditures, and costs associated with these services provided to individuals residing in the CSB's service area in its CARS reports, and include applicable data

monthly about individuals receiving these services and the service units received in its data entry in the Department's designated prevention data system. Report all staff hours of service program activity and participant data in the Department's designated prevention data system on a weekly basis.

- 3.) Submit quarterly reports in the format developed by the Department's Family Wellness Manager within 45 days after the end of the quarter for the first three quarters and within 60 days of the end of the fiscal year. Reports shall include:
 - a.) evidence of participant attendance in aspects of the CSB program and activities such as copies of log-in sheets for evidenced-based program and wellness activities;
 - b.) the status of achieving benchmarks;
 - c.) reporting on logic models and measures of performance; d.) evidence of social media transmissions;
 - e.) strategies to recruit, engage, and retain families;
 - f.) copies of sign-in sheets and minutes of the Family Wellness Advisory Committee;
 - g.) wellness materials disseminated;
 - h.) an updated budget and budget narrative with each quarterly report on all revenues received and total expenditures made;
 - i.) sustainability efforts; and
 - j.) how cultural and linguistic competence is implemented.
- 4.) Maintain a Family Wellness Advisory Committee that includes representative community key stakeholders critical to the integration and sustainability of the initiative.
- 5.) Deliver at least 12 ACE presentations in the community and report data on those presentations to the Family Wellness Coordinator in the format provided by the Department.
- 6.) Orient and train all program staff associated with the Family Wellness Initiative. Use only staff trained in the program and ACE to facilitate classes.

5. Resources

Exhibit A of this contract includes the following resources: state funds and federal funds appropriated by the General Assembly and allocated by the Department to the CSB; balances of unexpended or unencumbered state and federal funds retained by the CSB and used in this contract to support services; local matching funds required by § 37.2-509 or § 37.2-611 of the Code to receive allocations of state funds; Medicaid Clinic, Targeted Case Management, Rehabilitative Services, GAP, ARTS, and DD Home and Community-Based Waiver payments and any other fees, as required by § 37.2-504 or § 37.2-605 of the Code; and any other funds associated with or generated by the services shown in Exhibit A. The CSB shall maximize billing and collecting Medicaid payments and other fees in all covered services to enable more efficient and effective use of the state and federal funds allocated to it.

a. Allocations of State General and Federal Funds

The Department shall inform the CSB of its state and federal fund allocations in a letter of notification. The Department may adjust allocation amounts during the term of this contract. The

Department may reduce restricted or earmarked state or federal funds during the contract term if the CSB reduces significantly or stops providing services supported by those funds as documented in CCS 3 or CARS reports. These reductions shall not be subject to provisions in sections 9.c or 9.f of this contract. The Commissioner or his designee shall communicate all adjustments to the CSB in writing. Allocations of state and federal funds shall be based on state and federal statutory and regulatory requirements, provisions of the Appropriation Act, State Board policies, and previous allocation amounts.

b. Disbursement of State or Federal Funds

Continued disbursement of semi-monthly payments of restricted or earmarked state or federal funds by the Department to the CSB may be contingent on documentation in the CSB's CCS 3 and CARS reports that it is providing the services supported by these funds.

c. Conditions on the Use of Resources

The Department can attach specific conditions or requirements for use of funds, separate from those established by other authorities, only to the state and federal funds that it allocates to the CSB and not more than the 10 percent local matching funds that are required to obtain the CSB's state fund allocations.

6. CSB Responsibilities

a. State Hospital Bed Utilization

In accordance with § 37.2-508 or § 37.2-608 of the Code, the CSB shall develop jointly with the Department and with input from private providers involved with the public mental health, developmental, and substance use disorder services system mechanisms, such as the Discharge Protocols, Extraordinary Barriers to Discharge lists, and regional utilization management procedures and practices, and employ these mechanisms collaboratively with state hospitals that serve it to manage the utilization of state hospital beds. Utilization will be measured by bed days received by individuals for whom the CSB is the case management CSB.

The CSB shall implement procedures or utilize existing local or regional protocols to ensure appropriate management of each admission to a state hospital under a civil temporary detention order recommended by the CSB's preadmission screening clinicians to identify the cause of the admission and the actions the CSB may take in the future to identify alternative facilities. The CSB shall provide copies of the procedures and analyses to the Department upon request.

b. Quality of Care

1.) Department CSB Performance Measures: CSB staff shall monitor the CSB's outcome and performance measures in Exhibit B, identify and implement actions to improve its ranking on any measure on which it is below the benchmark, and present reports on the measures and actions at least quarterly during scheduled meetings of the CSB board of directors.

2.) Quality Improvement and Risk Management: The CSB shall develop, implement, and maintain a quality improvement plan, itself or in affiliation with other CSBs, to improve services, ensure that services are provided in accordance with current acceptable professional practices, and address areas of risk and perceived risks. The quality improvement plan shall be reviewed annually and updated at least every four years. The CSB shall develop, implement, and maintain, itself or in affiliation with other CSBs, a risk management plan or participate in a local government's risk management plan. The CSB shall work with the Department to identify how the CSB will address quality improvement

activities.

The CSB shall implement, in collaboration with other CSBs in its region, the state hospital(s) and training centers serving its region, and private providers involved with the public mental health, developmental, and substance use disorder services system, regional utilization management procedures and practices that reflect the Regional Utilization Management Guidance document that is incorporated into and made a part of this contract by reference and is available at the Internet link in Exhibit L.

3.) Critical Incidents: The CSB shall implement procedures to insure that the executive director is informed of any deaths, serious injuries, or allegations of abuse or neglect as defined in the Department's Licensing (12VAC35-105-20) and Human Rights (12VAC35-115-30) Regulations when they are reported to the Department. The CSB shall provide a copy of its procedures to the Department upon request.

4.) Individual Outcome and CSB Provider Performance Measures

a.) Measures: Pursuant to § 37.2-508 or § 37.2-608 of the Code, the CSB shall report the data for individual outcome and CSB provider performance measures in Exhibit B of this contract to the Department.

b.) Individual CSB Performance Measures: The Department may negotiate specific, time-limited measures with the CSB to address identified performance concerns or issues. The measures shall be included as Exhibit D of this contract.

c.) Individual Satisfaction Survey: Pursuant to § 37.2-508 or § 37.2-608 of the Code, the CSB shall participate in the Annual Survey of Individuals Receiving MH and SUD Outpatient Services, the Annual Youth Services Survey for Families (i.e., Child MH survey), and the annual QSRs and the NCI Survey for individuals covered by the DOJ Settlement Agreement.

5.) Prevention Services

a.) Strategic Prevention Framework (SPF): The CSB, in partnership with local community coalitions, shall use the evidenced-based Strategic Prevention Framework (SPF) planning model to: complete a needs assessment using community, regional, and state data; build capacity to successfully implement prevention services; develop logic models and a strategic plan with measurable goals, objectives, and strategies; implement evidenced-based programs, practices, and strategies that are linked to data and target populations; evaluate program management and decision making for enabling the ability to reach outcomes; plan for the sustainability of prevention outcomes; and produce evidence of cultural competence throughout all aspects of the SPF process.

b.) Logic Models: The CSB shall use logic models that identify individual (i.e., youth, families, and parents) -, community-, and population-level strategies (e.g., environmental approaches). One logic model shall outline CSB federal substance abuse block grant (SABG) prevention set aside-funded services. The other model(s) shall be the CSB partnership coalition's logic model(s) reflecting the collaborative relationship of the CSB with the coalition in the implementation of community-level and environmental approaches. The CSB shall use the Institute of Medicine model to identify target populations based on levels of risk: universal, selective, and indicated. Substance abuse prevention services may not be delivered to persons who have substance use disorders in an effort to prevent continued substance use. The CSB shall utilize the six federal Center for Substance Abuse Prevention evidenced- based strategies: information dissemination, education and skill building, alternatives,

problem identification and referral, community-based process, and environmental approaches. Community-based process and coalitions and environmental approaches that impact the population as a whole are keys to achieving successful outcomes and are Department priorities.

c.) Program, Practice, and Strategy Selection and Implementation: The Department prioritizes programs, practices, and strategies that target the prevention of substance use disorders and suicide and promotes mental health wellness across the lifespan using data to identify specific targets. The current prevention model best practice and a Department priority is environmental strategies complemented by programs that target the highest risk populations: selective and indicated (refer to subsection 5.b). All programs, practices, and strategies must link to a current local needs assessment and align with priorities set forth by the Department. The CSB must select programs, practices, and strategies from the following menu: Office of Juvenile Justice and Delinquency Prevention Effective, Blueprints Model Programs, Blueprints Promising Programs, Suicide Prevention Resource Center Section 1, or Centers for Disease Control and Prevention Evidence-Based Practices, and the CSB must select them based on evidence and effectiveness for the community and target population. All programs, practices, and strategies must be approved by the Department prior to implementation.

d.) Regional Suicide Prevention Initiatives: The CSB shall work with the regional suicide prevention team to provide a regionally developed suicide prevention plan using the Strategic Prevention Framework model. The plan developed by the team shall identify suicide prevention policies and strategies using the most current data to target populations with the highest rates of suicide. If selected by the region, the CSB shall act as the fiscal agent for the state funds supporting the suicide prevention services.

e.) Prevention Services Evaluations: The CSB shall work with OMNI Institute, the Department's evaluation contractor, to develop an evaluation plan for its SABG prevention set aside-funded prevention services.

f.) SYNAR Activities and Merchant Education: In July 1992, Congress enacted P.L.

102-321 section 1926, the SYNAR Amendment, to decrease youth access to tobacco. To stay in compliance with the SABG, states must meet and sustain the merchant retail violation rate (RVR) under 20 percent or face penalties to the entire SABG, including funds for treatment. Merchant education involves educating local merchants about the consequences of selling tobacco products to youth. This strategy has been effective in keeping state RVR rates under the required 20 percent. The CSB shall conduct merchant education activities with all merchants deemed by the Alcoholic Beverage Control Board to be in violation of selling tobacco products to youth in the CSB's service area. Other merchants shall be added if deemed to be at higher risk due to factors such as being in proximity to schools. The CSB, itself or in collaboration with the local coalition, shall continuously update the verified list of tobacco retailers, including all retailers selling vapor products, by conducting store audits. The CSB shall conduct store audits of and merchant education with 100 percent of tobacco retailers in its service area over a two year period. Beginning in FY 2003, the Department allocated \$10,000 annually to the CSB to complete SYNAR-related tasks. All store audit and merchant education activities shall be documented in the Counter Tools system and recorded in the prevention data system planned and implemented by the Department in collaboration with the VACSB Data Management Committee (DMC). Tobacco education programs for youth with the goal of reducing prevalence

or use are not to be identified as SYNAR activities.

6.) Case Management Services Training: The CSB shall ensure that all direct and contract staff that provide case management services have completed the case management curriculum developed by the Department and that all new staff complete it within 30 days of employment. The CSB shall ensure that developmental disability case managers or support coordinators complete the ISP training modules developed by the Department within 60 days of their availability on the Department's web site or within 30 days of employment for new staff.

7.) Developmental Case Management Services Organization: The CSB shall structure its developmental case management or support coordination services so that a case manager or support coordinator does not provide a DD Waiver service other than services facilitation and a case management or support coordination service to the same individual. This will ensure the independence of services from case management or service coordination and avoid perceptions of undue case management or support coordination influence on service choices by an individual.

8.) Program and Service Reviews: The Department may conduct or contract for reviews of programs or services provided or contracted by the CSB under this contract to examine their quality or performance at any time as part of its monitoring and review responsibilities or in response to concerns or issues that come to its attention, as permitted under 45 CFR § 164.512 (a), (d), and (k) (6) (ii) and as part of its health oversight functions under § 32.1-127.1:03 (D) (6) and § 37.2-508 or § 37.2-608 of the Code or with a valid authorization by the individual receiving services or his authorized representative that complies with the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services*, available at the Internet link in Exhibit L, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule. The CSB shall provide ready access to any records or other information necessary for the Department to conduct program or service reviews or investigations of critical incidents.

9.) Response to Complaints: Pursuant to § 37.2-504 or § 37.2-605 of the Code, the CSB shall implement procedures to satisfy the requirements for a local dispute resolution mechanism for individuals receiving services and to respond to complaints from individuals receiving services, family members, advocates, or other stakeholders as expeditiously as possible in a manner that seeks to achieve a satisfactory resolution and advises the complainant of any decision and the reason for it. The CSB shall acknowledge complaints that the Department refers to it within five business days of receipt and provide follow up commentary on them to the Department within 10 business days of receipt. The CSB shall post copies of its procedures in its public spaces and on its web site, provide copies to all individuals when they are admitted for services, and provide a copy to the Department upon request.

10.) Access to Substance Abuse Treatment for Opioid Abuse: The CSB shall ensure that individuals requesting treatment for opioid drug abuse, including prescription pain medications, regardless of the route of administration, receive rapid access to appropriate treatment services within 14 days of making the request for treatment or 120 days after making the request if the CSB has no capacity to admit the individual on the date of the request and within 48 hours of the request it makes interim services, as defined in 45 CFR § 96.126, available until the individual is admitted.

11.) Residential Crisis Stabilization Units: The CSB operating a RCSU shall staff and operate the unit so that it can admit individuals 24 hours per day and seven days per week. The unit shall accept any appropriate individuals under temporary detention orders (TDOs) and establish clinical criteria specifying the types of individuals under TDOs that it will accept. The CSB shall provide a copy of the criteria to the Department upon request for its review and approval. The unit shall implement a written schedule of clinical programming that covers at least eight hours of services per day and seven days per week that is appropriate for the individuals receiving crisis services and whenever possible incorporates evidence-based and best practices. The RCSU shall provide a mix of individual, group, or family counseling or therapy, case management, psycho-educational, psychosocial, relaxation, physical health, and peer- run group services; access to support groups such as Alcoholics Anonymous or Narcotics Anonymous; access to a clinical assessment that includes ASAM Level of Care and medically monitored highly intensive residential services that have the capacity for medication assisted treatment when a substance use disorder is indicated; and other activities that are appropriate to the needs of each individual receiving services and focuses on his or her recovery. The CSB shall comply with the requirements in the Department's current Residential Crisis Stabilization Unit Expectations document that is incorporated into and made a part of this contract by reference and is available at the Internet link in Exhibit L.

c. Reporting Requirements

- 1.) CSB Responsibilities:** For purposes of reporting to the Department, the CSB shall comply with State Board Policy 1030 and shall:
- a.) provide monthly Community Consumer Submission 3 (CCS 3) extracts that report individual characteristic and service data to the Department, as required by § 37.2- 508 or § 37.2-608 of the Code, the federal Substance Abuse and Mental Health Services Administration, and Part C of Title XIX of the Public Health Services Act - Block Grants, § 1943 (a) (3) and § 1971 and § 1949, as amended by Public Law 106- 310, and as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (a) (1) and (d) of the HIPAA regulations and §32.1-127.1:03.D (6) of the Code, and as defined in the current CCS 3 Extract Specifications, including the current Business Rules, that are available at the Internet link in Exhibit L and are incorporated into and made a part of this contract by reference;
 - b.) follow the current Core Services Taxonomy and CCS 3 Extract Specifications, when responding to reporting requirements established by the Department;
 - c.) complete the National Survey of Substance Abuse Treatment Services (N-SSATS) annually that is used to compile and update the National Directory of Drug and Alcohol Abuse Treatment Programs and the on-line Substance Abuse Treatment Facility Locator;
 - d.) follow the user acceptance testing process described in Appendix D of the CSB Administrative Requirements for new CCS 3 releases and participate in the user acceptance testing process when requested to do so by the Department;
 - e.) report service data on substance abuse prevention and mental health promotion services provided by the CSB that are supported wholly or in part by the SABG set aside for prevention services through the prevention data system planned and implemented by the Department in collaboration with the VACSB DMC, but report funding, expenditure, and cost data on these services through CARS per subsection 2.a.); and report service, funding, expenditure, and cost data on any other mental health prevention services through CCS 3 and CARS;
 - f.) supply information to the Department's Forensics Information Management System for

individuals adjudicated not guilty by reason of insanity (NGRI), as required under § 37.2-508 or § 37.2-608 of the Code and as permitted under 45 CFR §§ 164.506 (c) (1) and (3), 164.512 (d), and 164.512 (k) (6) (ii);

g.) report data and information required by the current Appropriation Act; and

h.) report data identified collaboratively by the Department and the CSB working through the VACSB DMC on the REACH program if the CSB is the fiscal agent for this program.

2.) Routine Reporting Requirements: The CSB shall account for all services, funds, expenses, and costs accurately and submit reports to the Department in a timely manner using current CARS, CCS 3, or other software provided by the Department. All reports shall be provided in the form and format prescribed by the Department. The CSB shall provide the following information and meet the following reporting requirements:

a.) types and service capacities of services provided, costs for services provided, and funds received by source and amount and expenses paid by program area and for emergency and ancillary services semi-annually in CARS, and state and federal block grant funds expended by core service with the end-of-the-fiscal year CARS report;

b.) demographic characteristics of individuals receiving services and types and amounts of services provided to each individual monthly through the current CCS 3;

c.) Federal Balance Report (October 15);

d.) PATH reports (mid-year and at the end of the fiscal year);

e.) amounts of state, local, federal, Medicaid, other fees, other funds used to pay for services by core service in each program area and emergency and ancillary services in the end of the fiscal year CARS report; and

f.) other reporting requirements in the current CCS 3 Extract Specifications.

3.) Subsequent Reporting Requirements: In accordance with State Board Policy 1030, available at the Internet link in Exhibit L, the CSB shall work with the Department through the VACSB DMC to ensure that current data and reporting requirements are consistent with each other and the current Core Services Taxonomy, the current CCS 3, and the federal substance abuse Treatment Episode Data Set (TEDS) and other federal reporting requirements. The CSB also shall work with the Department through the VACSB DMC in planning and developing any additional reporting or documentation requirements beyond those identified in this contract to ensure that the requirements are consistent with the current taxonomy, the current CCS 3, and the TEDS and other federal reporting requirements.

4.) Data Elements: The CSB shall work with the Department through the DMC to standardize data definitions, periodically review existing required data elements to eliminate elements that are no longer needed, minimize the addition of new data elements to minimum necessary ones, review CSB business processes so that information is collected in a systematic manner, and support efficient extraction of required data from CSB electronic health record systems whenever this is possible.

a. Service Process Quality Management (SPQM) is a data collection and reporting platform. The CSBs shall use SPQM and work with the Department through the DMC to ensure all necessary SPQM data elements are available to assess the efficacy of the services received as well as the overall effectiveness of clinical interventions provided by CSBs in support of improving client functioning.

5.) Streamlining Reporting Requirements: The CSB shall work with the Department

through the VACSB DMC to review existing reporting requirements including the current CCS 3 to determine if they are still necessary and, if they are, to streamline and reduce the number of portals through which those reporting requirements are submitted as much as possible; to ensure reporting requirements are consistent with the current CCS 3 Extract Specifications and Core Services Taxonomy; and to maximize the interoperability between Department and CSB data bases to support the electronic exchange of information and comprehensive data analysis.

d. Data Quality

The CSB shall review data quality reports from the Department on the completeness and validity of its CCS 3 data to improve data quality and integrity. When requested by the Department, the CSB executive director shall develop and submit a plan of correction to remedy persistent deficiencies in the CSB's CCS 3 submissions and, upon approval of the Department, shall implement the plan of correction.

e. Providing Information

The CSB shall provide any information requested by the Department that is related to the services, funds, or expenditures in this contract or the performance of or compliance with this contract in a timely manner, considering the type, amount, and availability of information requested. Provision of information shall comply with applicable laws and regulations governing confidentiality, privacy, and security of information regarding individuals receiving services from the CSB.

f. Compliance Requirements

The CSB shall comply with all applicable federal, state, and local laws and regulations, including those contained or referenced in the CSB Administrative Requirements and Exhibits F and J of this contract, as they affect the operation of this contract. Any substantive change in the CSB Administrative Requirements, except changes in statutory, regulatory, policy, or other requirements or in other documents incorporated by reference in it, which changes are made in accordance with processes or procedures associated with those statutes, regulations, policies, or other requirements or documents, shall constitute an amendment of this contract, made in accordance with applicable provisions of the Partnership Agreement, that requires a new contract signature page signed by both parties. If any laws or regulations that become effective after the execution date of this contract substantially change the nature and conditions of this contract, they shall be binding upon the parties, but the parties retain the right to exercise any remedies available to them by law or other provisions of this contract.

The CSB shall comply with the HIPAA and the regulations promulgated thereunder by their compliance dates, except where the HIPAA requirements and applicable state law or regulations are contrary and state statutes or regulations are more stringent, as defined in 45 CFR § 160.202, than the related HIPAA requirements. The CSB shall execute a Business Associate Agreement (BAA) initiated by the Department for any HIPAA- or 42 CFR Part 2- protected health information (PHI), personally identifiable information (PII), and other confidential data that it exchanges with the Department and its state facilities that is not covered by section 6.c.1.) a.) and f.) or 2.)c.) to ensure the privacy and security of sensitive data. The CSB shall ensure sensitive data, including HIPAA-PHI, PII, and other confidential data, exchanged electronically with the Department, its state hospitals and training centers, other CSBs, other providers, or persons meets the requirements in the FIPS 140-2 standard and is encrypted using a method supported by the Department.

The CSB shall follow the procedures and satisfy the requirements in the Performance Contract Process and the Administrative Performance Standards in Exhibits E and I of this contract and shall comply with the applicable provisions in all other Exhibits of this contract. The CSB shall document compliance with § 37.2-501 or § 37.2-602 of the Code in the end-of-the-fiscal year

CARS report.

g. Regional Programs

The CSB shall manage or participate in the management of, account for, and report on regional programs in accordance with the Regional Program Operating Principles and the Regional Program Procedures in Appendices E and F of the Core Services Taxonomy. The CSB agrees to participate in any utilization review or management activities conducted by the Department involving services provided through a regional program. Protected health information, personally identifiable information, or other information may be disclosed as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (k) (6) (ii) of the HIPAA regulations and under §32.1-127.1:03.D (6) of the Code.

h. Electronic Health Record

The CSB shall implement and maintain an electronic health record (EHR) that has been fully certified and is listed by the Office of the National Coordinator for Health Information Technology-Authorized Testing and Certification Body to improve the quality and accessibility of services, streamline and reduce duplicate reporting and documentation requirements, obtain reimbursement for services, and exchange data with the Department and its state hospitals and training centers and other CSBs.

i. Reviews

The CSB shall participate in the periodic, comprehensive administrative and financial review of the CSB conducted by the Department to evaluate the CSB's compliance with requirements in the contract and CSB Administrative Requirements and the CSB's performance. The CSB shall address recommendations in the review report by the dates specified in the report or those recommendations may be incorporated in an Exhibit D.

j. Consideration of Department Comments or Recommendations

The executive director and CSB board members shall consider significant issues or concerns raised by the Commissioner of the Department at any time about the operations or performance of the CSB and shall respond formally to the Department, collaborating with it as appropriate, about these issues or concerns.

7. Department Responsibilities

a. Funding

The Department shall disburse state funds displayed in Exhibit A prospectively on a semi-monthly basis to the CSB, subject to the CSB's compliance with the provisions of this contract. Payments may be revised to reflect funding adjustments. The Department shall disburse federal grant funds that it receives to the CSB in accordance with the requirements of the applicable federal grant and, wherever possible, prospectively on a semi-monthly basis. The Department shall make these payments in accordance with Exhibit E of this contract.

b. State Facility Services

1.) Availability: The Department shall make state facility services available, if appropriate, through its state hospitals and training centers when individuals located in the CSB's service area meet the admission criteria for these services.

2.) Bed Utilization: The Department shall track, monitor, and report on the CSB's utilization

of state hospital and training center beds and provide data to the CSB about individuals receiving services from its service area who are served in state hospitals and training centers as permitted under 45 CFR §§ 164.506 (c) (1), (2), and (4) and 164.512

(k) (6) (ii). The Department shall distribute reports to CSBs on state hospital and training center bed utilization by the CSB for all types of beds (adult, geriatric, child and adolescent, and forensic) and for TDO admissions and bed day utilization.

3.) Continuity of Care: The Department shall manage its state hospitals and training centers in accordance with State Board Policy 1035, available at the Internet link in Exhibit L, to support service linkages with the CSB, including adherence to the applicable provisions of the Continuity of Care Procedures, attached to the CSB Administrative Requirements as Appendix A, and the current *Collaborative Discharge Protocols for Community Services Boards and State Hospitals –Adult & Geriatric or Child & Adolescent* and the current *Training Center - Community Services Board Admission and Discharge Protocols for Individuals with Intellectual Disabilities*, available at the Internet links in Exhibit L. The Department shall assure state hospitals and training centers use teleconferencing technology to the greatest extent practicable to facilitate the CSB’s participation in treatment planning activities and fulfillment of its discharge planning responsibilities for individuals in state hospitals and training centers for whom it is the case management CSB.

4.) Medical Screening and Medical Assessment: When working with CSBs and other facilities to arrange for treatment of individuals in the state hospital, the state hospital shall assure that its staff follows the current *Medical Screening and Medical Assessment Guidance Materials*, available at the Internet link in Exhibit L. The state hospital staff shall coordinate care with emergency rooms, emergency room physicians, and other health and behavioral health providers to ensure the provision of timely and effective medical screening and medical assessment to promote the health and safety of and continuity of care for individuals receiving services.

5.) Planning: The Department shall involve the CSB, as applicable and to the greatest extent possible, in collaborative planning activities regarding the future role and structure of state hospitals and training centers.

6.) Virginia Psychiatric Bed Registry: The Department shall participate in the Virginia Psychiatric Bed Registry required by § 37.2-308.1 of the Code, and state hospitals shall update information about bed availability included in the registry whenever there is a change in bed availability for the hospital or, if no change in bed availability has occurred, at least daily.

c. Quality of Care

1.) Measures: The Department in collaboration with the VACSB Data Management and Quality Leadership Committees and the VACSB/DBHDS Quality and Outcomes Committee shall identify individual outcome, CSB provider performance, individual satisfaction, individual and family member participation and involvement measures, and quality improvement measures, pursuant to § 37.2-508 or § 37.2-608 of the Code, and shall collect information about these measures and work with the CSB to use them as part of the Continuous Quality Improvement Process described in Appendix E of the CSB Administrative Requirements to improve services.

2.) Department CSB Performance Measures Data Dashboard: The Department shall develop a data dashboard to display the CSB Performance Measures in Exhibit B, developed in collaboration with the CSB, and disseminate it to CSBs. The Department shall work with the CSB to identify and implement actions to improve the CSB’s ranking on any outcome or

performance measure on which it is below the benchmark.

3.) Utilization Management: The Department shall work with the CSB, state hospitals and training centers serving it, and private providers involved with the public mental health, developmental, and substance use disorder services system to implement regional utilization management procedures and practices reflected in the Regional Utilization Management Guidance document that is incorporated into and made a part of this contract by reference and is available at the Internet link in Exhibit L.

4.) Continuity of Care: In order to fulfill its responsibilities related to discharge planning, the Department shall comply with § 37.2-837 of the Code, State Board Policy 1036, the current *Collaborative Discharge Protocols for Community Services Boards and State Hospitals – Adult & Geriatric or Child & Adolescent* and the current *Training Center - Community Services Board Admission and Discharge Protocols for Individuals with Intellectual Disabilities*, available at the Internet links in Exhibit L, and the Continuity of Care Procedures, included in the CSB Administrative Requirements as Appendix A.

5.) Human Rights: The Department shall operate the statewide human rights system described in the current *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services*, available at the Internet link in Exhibit L, by monitoring compliance with the human rights requirements in those regulations.

6.) Licensing: The Department shall license programs and services that meet the requirements in the current *Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services*, available at the Internet link in Exhibit L, and conduct licensing reviews in accordance with the provisions of those regulations. The Department shall respond in a timely manner to issues raised by the CSB regarding its efforts to coordinate and monitor services provided by independent providers licensed by the Department.

d. Reporting Requirements

1.) Subsequent Reporting Requirements: In accordance with State Board Policy 1030, the Department shall work with CSBs through the VACSB DMC to ensure that current data and reporting requirements are consistent with each other and the current Core Services Taxonomy, the current CCS 3, and the Treatment Episode Data Set (TEDS) and other federal reporting requirements. The Department also shall work with CSBs through the DMC in planning and developing any additional reporting or documentation requirements beyond those identified in this contract to ensure that the requirements are consistent with the current taxonomy, current CCS 3, and TEDS and other federal reporting requirements. The Department shall work with the CSB through the DMC to develop and implement any changes in data platforms used, data elements collected, or due dates for existing reporting mechanisms, including CCS 3, CARS, WaMS, FIMS, and the current prevention data system and stand-alone spreadsheet or other program-specific reporting processes.

2.) Community Consumer Submission: The Department shall collaborate with CSBs through the DMC in the implementation and modification of the current CCS 3, which reports individual characteristic and service data that is required under § 37.2-508 or § 37.2-608 of the Code, the federal Substance Abuse and Mental Health Services Administration, and Part C of Title XIX of the Public Health Services Act - Block Grants, §1943 (a) (3) and § 1971 and § 1949, as amended by Public Law 106-310, to the Department and is defined in the current CCS 3 Extract Specifications, including the current Business Rules. The Department will receive and use individual characteristic and service data disclosed by the CSB through CCS 3 as permitted under 45 CFR §§ 164.506 (c) (1) and (3)

and 164.512 (a) (1) of the HIPAA regulations and § 32.1- 127.1:03.D (6) of the Code and shall implement procedures to protect the confidentiality of this information pursuant to § 37.2-504 or § 37.2-605 of the Code and HIPAA. The Department shall follow the user acceptance testing process described in Appendix D of the CSB Administrative Requirements for new CCS 3 releases.

3.) Data Elements: The Department shall work with CSBs through the DMC to standardize data definitions, periodically review existing required data elements to eliminate elements that are no longer needed, minimize the addition of new data elements to minimum necessary ones, review CSB business processes so that information is collected in a systematic manner, and support efficient extraction of required data from CSB electronic health record systems whenever this is possible. The Department shall work with the CSB through the DMC to develop, implement, maintain, and revise or update a mutually agreed upon electronic exchange mechanism that will import all information related to the support coordination or case management parts of the ISP (parts I-IV) and VIDES about individuals who are receiving DD Waiver services from CSB EHRs into WaMS. If the CSB does not use or is unable to use the data exchange, it shall enter this data directly into WaMS.

4.) Surveys: The Department shall ensure that all surveys and requests for data have been reviewed for cost effectiveness and developed through a joint Department and CSB process. The Department shall comply with the Procedures for Approving CSB Surveys, Questionnaires, and Data Collection Instruments and Establishing Reporting Requirements, reissued by Interim Commissioner S. Hughes Melton, MD, MBA on April 18, 2019 and available at the Internet link in Exhibit L.

5.) Streamlining Reporting Requirements: The Department shall work with CSBs through the DMC to review existing reporting requirements including the current CCS 3 to determine if they are still necessary and, if they are, to streamline and reduce the number of portals through which those reporting requirements are submitted as much as possible; to ensure reporting requirements are consistent with the current CCS 3 Extract Specifications and Core Services Taxonomy; and to maximize the interoperability between Department and CSB data bases to support the electronic exchange of information and comprehensive data analysis.

e. Data Quality

The Department shall provide data quality reports to the CSB on the completeness and validity of its CCS 3 data to improve data quality and integrity. The Department may require the CSB executive director to develop and implement a plan of correction to remedy persistent deficiencies in the CSB's CCS 3 submissions. Once approved, the Department shall monitor the plan of correction and the CSB's ongoing data quality. The Department may address persistent deficiencies that are not resolved through this process with an Individual CSB Performance Measure in Exhibit D.

f. Compliance Requirements

The Department shall comply with all applicable state and federal statutes and regulations, including those contained or referenced in the CSB Administrative Requirements, as they affect the operation of this contract. Any substantive change in the CSB Administrative Requirements, except changes in statutory, regulatory, policy, or other requirements or in other documents incorporated by reference in it, which changes are made in accordance with processes or procedures associated with those statutes, regulations, policies, or other requirements or documents, shall constitute an amendment of this contract, made in accordance with applicable provisions of the Partnership Agreement, that requires a new contract signature page signed by both parties. If any laws or regulations that become effective after the execution date of this

contract substantially change the nature and conditions of this contract, they shall be binding upon the parties, but the parties retain the right to exercise any remedies available to them by law or other provisions of this contract.

The Department and its state hospitals and training centers shall comply with HIPAA and the regulations promulgated thereunder by their compliance dates, except where the HIPAA requirements and applicable state law or regulations are contrary and state statutes or regulations are more stringent, as defined in 45 CFR § 160.202, than the related HIPAA requirements. The Department shall initiate a BAA with the CSB for any HIPAA- or 42 CFR Part 2-PHI, PII, and other confidential data that it and its state facilities exchange with the CSB that is not covered by section 6.c.1.) a.) and f.) or 2.)c.) to ensure the privacy and security of sensitive data. The Department shall execute a BAA with FEI, its WaMS contractor, for the exchange of PHI, PII, and other confidential data that it or the CSB exchanges with FEI to ensure the privacy and security of sensitive data. The Department and its state hospitals and training centers shall ensure that any sensitive data, including HIPAA-PHI, PII, and other confidential data, exchanged electronically with CSBs, other providers, or persons meets the requirements in the FIPS 140-2 standard and is encrypted using a method supported by the Department and CSB.

g. Communication

The Department shall provide technical assistance and written notification to the CSB regarding changes in funding source requirements, such as regulations, policies, procedures, and interpretations, to the extent that those changes are known to the Department. The Department shall resolve, to the extent practicable, inconsistencies in state agency requirements that affect requirements in this contract. The Department shall provide any information requested by the CSB that is related to performance of or compliance with this contract in a timely manner, considering the type, amount, and availability of the information requested. The Department shall issue new or revised policy, procedure, and guidance documents affecting CSBs via letters, memoranda,

or emails from the Commissioner, Deputy Commissioner, or applicable Assistant Commissioner to CSB executive directors and other applicable CSB staff and post these documents in an easily accessible place on its web site within 10 business days of the date on which the documents are issued via letters, memoranda, or emails.

h. Regional Programs

The Department may conduct utilization review or management activities involving services provided by the CSB through a regional program. If such activities involve the disclosure of PHI, PII, or other information, the information may be used and disclosed as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (k) (6) (ii)) of the HIPAA regulations and §32.1-127.1:03.D (6) of the Code. If the CSB's receipt of state funds as the fiscal agent for a regional program, as defined in the Regional Program Principles and the Regional Program Procedures in Appendices E and F of the current Core Services Taxonomy, including regional DAP, acute inpatient care (LIPOS), or state facility reinvestment project funds, causes it to be out of compliance with the 10 percent local matching funds requirement in § 37.2-509 of the Code, the Department shall grant an automatic waiver of that requirement related to the funds for that regional program allocated to the other participating CSBs as authorized by that Code section and State Board Policy 4010, available at the Internet link in Exhibit L.

i. Peer Review Process

The Department shall implement a process in collaboration with volunteer CSBs to ensure that at least five percent of community mental health and substance abuse programs receive independent peer reviews annually, per federal requirements and guidelines, to review the quality and appropriateness of services. The Department shall manage this process to ensure that peer reviewers do not monitor their own programs.

j. Electronic Health Record

The Department shall implement and maintain an EHR in its central office and state hospitals and training centers that has been fully certified and is listed by the Office of the National Coordinator for Health Information Technology- Authorized Testing and Certification Body to improve the quality and accessibility of services, streamline and reduce duplicate reporting and documentation requirements, obtain reimbursement for services, and exchange data with CSBs.

k. Reviews

The Department shall review and take appropriate action on audits submitted by the CSB in accordance with the provisions of this contract and the CSB Administrative Requirements. The Department may conduct a periodic, comprehensive administrative and financial review of the CSB to evaluate the CSB's compliance with requirements in the contract and CSB Administrative Requirements and the CSB's performance. The Department shall present a report of the review to the CSB and monitor the CSB's implementation of any recommendations in the report.

l. Department Comments or Recommendations on CSB Operations or Performance

The Commissioner of the Department may communicate significant issues or concerns about the operations or performance of the CSB to the executive director and CSB board members for their consideration, and the Department agrees to collaborate as appropriate with the executive director and CSB board members as they respond formally to the Department about these issues or concerns.

8. Subcontracting

The CSB may subcontract any requirements in this contract. The CSB shall remain fully and solely responsible and accountable for meeting all of its obligations and duties under this contract, including all services, terms, and conditions, without regard to its subcontracting arrangements. Subcontracting shall comply with applicable statutes, regulations, and guidelines, including the Virginia Public Procurement Act, § 2.1-4300 et seq. of the Code. All subcontracted activities shall be formalized in written contracts between the CSB and subcontractors. The CSB agrees to provide copies of contracts or other documents to the Department on request. A subcontract means a written agreement between the CSB and another party under which the other party performs any of the CSB's obligations. Subcontracts, unless the context or situation supports a different interpretation or meaning, also may include agreements, memoranda of understanding, purchase orders, contracts, or other similar documents for the purchase of services or goods by the CSB from another organization or agency or a person on behalf of an individual. If the CSB hires an individual not as an employee but as a contractor (e.g., a part-time psychiatrist) to work in its programs, this does not constitute subcontracting under this section. CSB payments for rent or room and board in a non-licensed facility (e.g., rent subsidies or a hotel room) do not constitute subcontracting under this section, and the provisions of this section, except for compliance with the Human Rights regulations, do not apply to the purchase of a service for one individual.

a. Subcontracts

The written subcontract shall, as applicable and at a minimum, state the activities to be performed, the time schedule and duration, the policies and requirements, including data reporting, applicable to the subcontractor, the maximum amount of money for which the CSB may become obligated, and the manner in which the subcontractor will be compensated, including payment time frames. Subcontracts shall not contain provisions that require a subcontractor to make payments or contributions to the CSB as a condition of doing business with the CSB.

b. Subcontractor Compliance

The CSB shall require that its subcontractors comply with the requirements of all applicable federal and state statutes, regulations, policies, and reporting requirements that affect or are applicable to the services included in this contract. The CSB shall require that its subcontractors submit to the CSB all required CCS 3 data on individuals they served and services they delivered in the applicable format so that the CSB can include this data in its CCS 3 submissions to the Department. The CSB shall require that any agency, organization, or person with which it intends to subcontract services that are included in this contract is fully qualified and possesses and maintains current all necessary licenses or certifications from the Department and other applicable regulatory entities before it enters into the subcontract and places individuals in the subcontracted service. The CSB shall require all subcontractors that provide services to individuals and are licensed by the Department to maintain compliance with the Human Rights Regulations adopted by the State Board.

The CSB shall, to the greatest extent practicable, require all other subcontractors that provide services purchased by the CSB for individuals and are not licensed by the Department to develop and implement policies and procedures that comply with the CSB's human rights policies and procedures or to allow the CSB to handle allegations of human rights violations on behalf of individuals served by the CSB who are receiving services from such subcontractors. When it funds providers such as family members, neighbors, individuals receiving services, or others to serve individuals, the CSB may comply with these requirements on behalf of those providers, if both parties agree.

c. Subcontractor Dispute Resolution

The CSB shall include contract dispute resolution procedures in its contracts with subcontractors.

d. Quality Improvement Activities

The CSB shall, to the extent practicable, incorporate specific language in its subcontracts regarding the quality improvement activities of subcontractors. Each vendor that subcontracts with the CSB should have its own quality improvement system in place or participate in the CSB's quality improvement program.

9. Terms and Conditions

a. Availability of Funds

The Department and the CSB shall be bound by the provisions of this contract only to the extent of the funds available or that may hereafter become available for the purposes of the contract.

b. Compliance

The Department may utilize a variety of remedies, including requiring a corrective action plan, delaying payments, reducing allocations or payments, and terminating the contract, to assure CSB compliance with this contract. Specific remedies, described in Exhibit I of this contract, may be taken if the CSB fails to satisfy the reporting requirements in this contract.

c. Disputes

Resolution of disputes arising from Department contract compliance review and performance management efforts or from actions by the CSB related to this contract may be pursued through the dispute resolution process in section 9.f, which may be used to appeal only the following conditions:

- 1.) reduction or withdrawal of state general or federal funds, unless funds for this activity are withdrawn by action of the General Assembly or federal government or by adjustment of allocations or payments pursuant to section 5 of this contract;
- 2.) termination or suspension of the contract, unless funding is no longer available;
- 3.) refusal to negotiate or execute a contract modification;
- 4.) disputes arising over interpretation or precedence of terms, conditions, or scope of the contract; or
- 5.) determination that an expenditure is not allowable under this contract.

d. Remediation Process

The Department and the CSB shall use the remediation process mentioned in subsection E of § 37.2-508 or § 37.2-608 of the Code to address a particular situation or condition identified by the Department or the CSB that may, if unresolved, result in termination of all or a portion of the contract in accordance with the provisions of section 9.e. The parties shall develop the details of this remediation process and add them as an Exhibit D of this contract. This exhibit shall:

- 1.) describe the situation or condition, such as a pattern of failing to achieve a satisfactory level of performance on a significant number of major outcome or performance measures in the contract, that if unresolved could result in termination of all or a portion of the contract;
- 2.) require implementation of a plan of correction with specific actions and timeframes approved by the Department to address the situation or condition; and
- 3.) include the performance measures that will document a satisfactory resolution of the situation or condition.

If the CSB does not implement the plan of correction successfully within the approved timeframes, the Department, as a condition of continuing to fund the CSB, may request changes in the management and operation of the CSB's services linked to those actions and measures in order to obtain acceptable performance. These changes may include realignment or re-distribution of state-controlled resources or restructuring the staffing or operations of those services. The Department shall review and approve any changes before their implementation. Any changes shall include mechanisms to monitor and evaluate their execution and effectiveness.

e. Termination

- 1.) The Department may terminate all or a portion of this contract immediately at any time during the contract period if funds for this activity are withdrawn or not appropriated by the General Assembly or are not provided by the federal government. In this situation, the obligations of the Department and the CSB under this contract shall cease immediately. The CSB and Department shall make all reasonable efforts to ameliorate any negative consequences or effects of contract termination on individuals receiving services and CSB staff.
- 2.) The CSB may terminate all or a portion of this contract immediately at any time during the contract period if funds for this activity are withdrawn or not appropriated by its local government(s) or other funding sources. In this situation, the obligations of the CSB and the Department under this contract shall cease immediately. The CSB and Department shall make all reasonable efforts to ameliorate any negative consequences or effects of contract termination on individuals receiving services and CSB staff.
- 3.) In accordance with subsection E of § 37.2-508 or § 37.2-608 of the Code, the Department may terminate all or a portion of this contract, after unsuccessful use of the remediation process

described in section 9.d and after affording the CSB an adequate opportunity to use the dispute resolution process described in section 9.f of this contract. The Department shall deliver a written notice specifying the cause to the CSB's board chairperson and executive director at least 75 days prior to the date of actual termination of the contract. In the event of contract termination under these circumstances, only payment for allowable services rendered by the CSB shall be made by the Department.

f. Dispute Resolution Process

Disputes arising from any of the conditions in section 9.c of this contract shall be resolved using the following process:

- 1.) Within 15 calendar days of the CSB's identification or receipt of a disputable action taken by the Department or of the Department's identification or receipt of a disputable action taken by the CSB, the party seeking resolution of the dispute shall submit a written notice to the Department's OMS Director, stating its desire to use the dispute resolution process. The written notice must describe the condition, nature, and details of the dispute and the relief sought by the party.
- 2.) The OMS Director shall review the written notice and determine if the dispute falls within the conditions listed in section 9.c. If it does not, the OMS Director shall notify the party in writing within seven days of receipt of the written notice that the dispute is not subject to this dispute resolution process. The party may appeal this determination to the Commissioner in writing within seven days of its receipt of the Director's written notification.
- 3.) If the dispute falls within the conditions listed in section 9.c, the OMS Director shall notify the party within seven days of receipt of the written notice that a panel will be appointed within 15 days to conduct an administrative hearing.
- 4.) Within 15 days of notification to the party, a panel of three or five disinterested persons shall be appointed to hear the dispute. The CSB shall appoint one or two members; the Commissioner shall appoint one or two members; and the appointed members shall appoint the third or fifth member. Each panel member will be informed of the nature of the dispute and be required to sign a statement indicating that he has no interest in the dispute. Any person with an interest in the dispute shall be relieved of panel responsibilities and another person shall be selected as a panel member.
- 5.) The OMS Director shall contact the parties by telephone and arrange for a panel hearing at a mutually convenient time, date, and place. The panel hearing shall be scheduled not more than 15 days after the appointment of panel members. Confirmation of the time, date, and place of the hearing will be communicated to all parties at least seven days in advance of the hearing.
- 6.) The panel members shall elect a chairman and the chairman shall convene the panel. The party requesting the panel hearing shall present evidence first, followed by the presentation of the other party. The burden shall be on the party requesting the panel hearing to establish that the disputed decision or action was incorrect and to present the basis in law, regulation, or policy for its assertion. The panel may hear rebuttal evidence after the initial presentations by the CSB and the Department. The panel may question either party in order to obtain a clear understanding of the facts.
- 7.) Subject to provisions of the Freedom of Information Act, the panel shall convene in closed session at the end of the hearing and shall issue written recommended findings of fact within seven days of the hearing. The recommended findings of fact shall be submitted to the Commissioner for a final decision.
- 8.) The findings of fact shall be final and conclusive and shall not be set aside by the Commissioner unless they are (a.) fraudulent, arbitrary, or capricious; (b.) so grossly erroneous as to imply bad faith; (c.) in the case of termination of the contract due to failure to perform, the criteria for performance measurement are found to be erroneous, arbitrary, or capricious; or

(d.) not within the CSB's purview.

9.) The final decision shall be sent by certified mail to both parties no later than 60 days after receipt of the written notice from the party invoking the dispute resolution process.

10.) Multiple appeal notices shall be handled independently and sequentially so that an initial appeal will not be delayed by a second appeal.

11.) The CSB or the Department may seek judicial review of the final decision to terminate the contract in the Circuit Court for the City of Richmond within 30 days of receipt of the final decision.

g. Contract Amendment

This contract, including all exhibits and incorporated documents, constitutes the entire agreement between the Department and the CSB. The services identified in Exhibit A of this contract may be revised in accordance with the performance contract revision instructions contained in Exhibit E of this contract. Other provisions of this contract may be amended only by mutual agreement of the parties, in writing and signed by the parties hereto.

h. Liability

The CSB shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance of this contract. The CSB shall obtain and maintain sufficient liability insurance to cover claims for bodily injury and property damage and suitable administrative or directors and officers liability insurance. The CSB may discharge these responsibilities by means of a proper and sufficient self-insurance program operated by the state or a city or county government. The CSB shall provide a copy of any policy or program to the Department upon request. This contract is not intended to and does not create by implication or otherwise any basis for any claim or cause of action by a person or entity not a party to this contract arising out of any claimed violation of any provision of this contract, nor does it create any claim or right on behalf of any person to services or benefits from the CSB or the Department.

i. Constitution of the CSB

The resolutions or ordinances currently in effect that were enacted by the governing body or bodies of the local government or governments to establish the CSB are consistent with applicable statutory requirements in §§ 37.2-500, 37.2- 501, and 37.2-502 or §§ 37.2-601, 37.2-602, and 37.2-603 of the Code and accurately reflect the current purpose, roles and responsibilities, local government membership, number and type of CSB board member appointments from each locality, the CSB's relationship with its local government or governments, and the name of the CSB.

j. Severability

Each paragraph and provision of this contract is severable from the entire contract, and the remaining provisions shall nevertheless remain in full force and effect if any provision is declared invalid or unenforceable.

10. Signatures

In witness thereof, the Department and the CSB have caused this performance contract to be executed by the following duly authorized officials.

FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
RENEWAL AND REVISIONS

ATTACHMENT 2

Virginia Department of Behavioral
Health and Developmental Services

CSB

By: _____ By: _____

Name: S. Hughes Melton, MD, MBA
FAAFP, FABAM
Title: Commissioner

Name: _____
Title: CSB Chairperson

Date: _____ Date: _____

By: _____

Name: _____

Title: CSB Executive Director

Date: _____

**FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
RENEWAL AND REVISIONS**

ATTACHMENT 2

FY 2020 Exhibit A: Resources and Services

**Exhibit A: Resources and Services
CSB:**

Consolidated Budget (Pages AF-3 Through AF-8)				
Funding Sources	Mental Health (MH) Services	Developmental (DV) Services	Substance Use Disorder (SUD) Services	TOTAL
State Funds				
Local Matching Funds				
Total Fees				
Transfer Fees (In)/Out				
Federal Funds				
Other Funds				
State Retained Earnings				
Federal Retained Earnings				
Other Retained Earnings				
Subtotal: Ongoing Funds				
State Funds One-Time				
Federal Funds One-Time				
Subtotal: One-Time Funds				
Total: All Funds				

Cost for MH, DV, SUD Services				
	Cost for Emergency Services (AP-4)			
	Cost for Ancillary Services (AP-4)			
	Total Cost for Services			

Local Match Computation	
Total State Funds	
Total Local Matching Funds	
Total State and Local Funds	
Total Local Match Percentage (Local ÷ Total State + Local Funds)	

CSB Administrative Percentage	
Administrative Expenses	
Total Cost for Services	
Administrative Percentage (Admin ÷ Total Expenses)	

Note: Exhibit A is submitted to the Department by the CSB electronically using the CARS software application.

**FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
RENEWAL AND REVISIONS**

ATTACHMENT 2

FY 2020 Exhibit A: Resources and Services

CSB: __

Financial Comments

Comment 1	
Comment 2	
Comment 3	
Comment 4	
Comment 5	
Comment 6	
Comment 7	
Comment 8	
Comment 9	
Comment 10	
Comment 11	
Comment 12	
Comment 13	
Comment 14	
Comment 15	
Comment 16	
Comment 17	
Comment 18	
Comment 19	
Comment 20	
Comment 21	
Comment 22	
Comment 23	
Comment 24	
Comment 25	

Use of Retained Earnings

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**FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
RENEWAL AND REVISIONS**

ATTACHMENT 2

FY 2020 Exhibit A: Resources and Services for Mental Health (MH) Services

CSB:

Funding Sources	Funds
FEES	
MH Medicaid Fees	
MH Fees: Other	
Total MH Fees	
MH Fees Transfer In/(Out)	
MH NET FEES <u>FEDERAL FUNDS</u>	
MH FBG SED Child & Adolescent (93.958)* MH	
FBG Young Adult SMI (93.958)*	
MH FBG SMI (93.958) ¹	
MH FBG SMI PACT (93.958) ¹	
MH FBG SMI SWVBH Board (93.958) ¹	_____
Total MH FBG SMI Funds*	
MH FBG Geriatrics (93.958)*	
MH FBG Peer Services (93.958)*	
Total MH FBG Adult Funds*	_____
MH Federal PATH (93.150)* MH	
Federal CABHI (93.243)*	
MH Federal Pre-Trial Diversion Initiative (16.745) MH	
Other Federal - DBHDS*	
MH Other Federal - CSB* _____	TOTAL MH FEDERAL
FUNDS	
<u>STATE FUNDS</u>	
<u>Regional Funds</u>	
MH Acute Care (Fiscal Agent)* ²	
MH Acute Care Transfer In/(Out)	
Total MH Net Acute Care - Restricted	_____
MH Regional DAP (Fiscal Agent)* ²	
MH Regional DAP Transfer In/ (Out)	
Total MH Net Regional DAP - Restricted MH	_____
Regional Residential DAP - Restricted MH Crisis	
Stabilization (Fiscal Agent)* ²	
MH Crisis Stabilization Transfer In/(Out)	
Total MH Net Crisis Stabilization – Restricted	_____
MH Transfers from DBHDS Facilities (Fiscal Agent)	
MH Transfers from DBHDS Facilities - Transfer In/(Out)	
Total Net MH Transfers from DBHDS Facilities	_____
MH Recovery (Fiscal Agent)+	
MH Other Merged Regional Funds (Fiscal Agent)+	
MH Total Regional Transfer In/(Out)	
MH Net Unrestricted Regional Funds	_____
Total MH Net Regional State Funds	_____

FY 2020 Exhibit A: Resources and Services for Mental Health (MH) Services

CSB: _____

Funding Sources	Funds
Children's State Funds	
MH Child & Adolescent Services Initiative*	
MH Children's Outpatient Services*	
MH Juvenile Detention*	
Total MH Restricted Children's Funds	_____
MH State Children's Services‡	
MH Demo Project - System of Care (Child) ‡	
Total MH Unrestricted Children's Funds	_____
MH Crisis Response & Child Psychiatry (Fiscal Agent) *	
MH Crisis Response & Child Psychiatry Transfer In/(Out)	_____
Total MH Net Crisis Response & Child Psychiatry _____	Total MH Children's State Funds (Restricted)

Other State Funds

MH Law Reform*	
MH Pharmacy - Medication Supports*	
MH Jail Diversion Services*	
MH Rural Jail Diversion*	
MH Forensic Discharge Planning*	
MH Assisted Living Facility Support*	
MH Docket Pilot JMHCP Match	
MH Adult Outpatient Competency Restoration Services*	
MH CIT Assessment Sites*	
MH Expand Tele-psychiatry Capacity*	
MH Young Adult SMI*	
MH PACT*	
MH PACT Forensic Enhancement*	
MH Gero-Psychiatric Services*	
MH Permanent Supportive Housing*	
MH Step VA*	
MH Expanded Community Capacity (Fiscal Agent) *	
MH Expanded Community Capacity Transfer In/(Out)	_____
Total MH Net Expanded Community Capacity	
MH First Aid and Suicide Prevention (Fiscal Agent)*	
MH First Aid and Suicide Prevention Transfer In/(Out)	_____
Total MH Net First Aid and Suicide Prevention _____	Total MH Restricted Other State Funds
MH State Funds‡	
MH State Regional Deaf Services‡ MH State NGRI Funds‡	
MH Geriatric Services‡ _____	
Total MH Unrestricted Other State Funds _____	Total MH Other State Funds _____
TOTAL MH STATE FUNDS	_____

OTHER FUNDS

MH Other Funds*
 MH Federal Retained Earnings*
 MH State Retained Earnings*
 MH State Retained Earnings - Regional Programs* MH
Other Retained Earnings*

**FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
RENEWAL AND REVISIONS**

ATTACHMENT 2

FY 2020 Exhibit A: Resources and Services for Mental Health (MH) Services

CSB: _____

Funding Sources	Funds
TOTAL MH OTHER FUNDS	
<u>LOCAL MATCHING FUNDS</u>	
MH Local Government Appropriations‡ MH Philanthropic Cash Contributions‡ MH In-Kind Contributions‡ MH Local Interest Revenue‡	
TOTAL MH LOCAL MATCHING FUNDS	TOTAL MH FUNDS
<u>ONE-TIME FUNDS</u>	
MH FBG SMI (93.958)*	
MH FBG SED Child & Adolescent (93.958)* MH	
FBG Peer Services (93.958) *	
MH State Funds*	
TOTAL MH ONE-TIME FUNDS	_____

TOTAL MH ALL FUNDS	

- ¹ These funds are earmarked but not restricted; they are part of MH FBG SMI.
- ² MH acute care (LIPOS), regional DAP, and crisis stabilization funds are restricted, but each type of funds can be used for the other purposes in certain situations approved by the Department.
- * These funds are restricted and expenditures of them are tracked and reported separately.
- ‡ These funds are earmarked but not restricted; expenditures are reported for the total amount.
- + Funds are earmarked in a pool of Regional Funds; expenditures are reported for the total amount.

**FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
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ATTACHMENT 2

FY 2020 Exhibit A: Resources and Services for Developmental (DV) Services

CSB: _____

Funding Sources	Funds
FEES	
DV Medicaid DD Waiver Fees DV Medicaid ICF/IDD Fees DV Other Medicaid Fees	
DV Fees: Other	

Total DV Fees	
DV Fees Transfer In/(Out)	

DV NET FEES	
 <u>FEDERAL FUNDS</u>	
DV Other Federal - DBHDS* DV Other Federal - CSB*	

TOTAL DV FEDERAL FUNDS	
 <u>STATE FUNDS</u>	
DV State Funds‡ DV OBRA Funds‡	

Total DV Unrestricted State Funds	
DV Rental Subsidies*	
DV Guardianship Funding*	
DV Crisis Stabilization (Fiscal Agent)*	
DV Crisis Stabilization Transfer In/(Out) _____	
DV Net Crisis Stabilization*	
DV Crisis Stabilization - Children (Fiscal Agent)*	
DV Crisis Stabilization - Children Transfer In/(Out) _____	
DV Net Crisis Stabilization - Children _____	
DV Transfers from DBHDS Facilities (Fiscal Agent)	
DV Transfers from DBHDS Facilities - Transfer In/(Out) _____	
Total Net DV Transfers from DBHDS Facilities _____	
Total DV Restricted State Funds _____	TOTAL DV STATE FUNDS
 <u>OTHER FUNDS</u>	
DV Workshop Sales* DV Other Funds*	
DV State Retained Earnings*	
DV State Retained Earnings - Regional Programs*	
DV Other Retained Earnings* _____	TOTAL DV OTHER FUNDS

FY 2020 Exhibit A: Resources and Services for Developmental (DV) Services

CSB: _____
Funding Sources **Funds**

LOCAL MATCHING FUNDS

DV Local Government Appropriations‡ DV Philanthropic Cash Contributions‡ DV In-Kind Contributions‡
DV Local Interest Revenue‡

TOTAL DV LOCAL MATCHING FUNDS _____

ONE-TIME FUNDS

DV State Funds*

TOTAL DV ONE-TIME FUNDS _____

TOTAL DV All FUNDS

* These funds are restricted and expenditures of them are tracked and reported separately.

‡ These funds are earmarked but not restricted; expenditures are reported for the total amount.

FY 2020 Exhibit A: Resources and Services for Developmental (DV) Services

CSB: _____

FEES	Funding Sources	Funds
SUD Medicaid Fees		
SUD Fees: Other		
Total SUD Fees		
SUD Fees Transfer In/(Out)		
SUD NET FEES FEDERAL FUNDS		
SUD FBG Alcohol/Drug Treatment (93.959)‡ ¹		
SUD FBG SARPOS (93.959)‡		
SUD FBG Jail Services (93.959)‡ SUD		
FBG Co-Occurring (93.959)‡ SUD FBG		
New Directions (93.959)‡ SUD FBG		
Recovery (93.959)‡		
SUD FBG Medically Assisted Treatment (93.959)		_____
Total SUD FBG Alcohol/Drug Treatment Funds		
SUD FBG Women (Includes LINK at 6 CSBs) (93.959)*		
SUD FBG Prevention-Women (LINK) (93.959)*		_____
Total SUD FBG Women Funds		
SUD FBG Prevention (93.959) ²		
SUD FBG Prevention Family Wellness (93.959)		_____
Total SUD FBG Prevention Funds SUD Federal		
VA Project LINK/PPW (93.243)* SUD Federal		
CABHI (93.243)*		
SUD Federal Strategic Prevention (93.243)*		
SUD Federal YSAT – Implementation (93.243)* SUD		
Federal OPT-R Recovery (93.788)*		
SUD Federal OPT-R Prevention (93.788)*		
SUD Federal OPT-R Treatment (93.788)*		_____
Total SUD Federal OPT-(93.788)*		
SUD Federal Opioid Response Recovery (93.788)*		
SUD Federal Opioid Response Prevention (93.788)*		
SUD Federal Opioid Response Treatment (93.788)*		
Total SUD Federal Opioid Response (93.788)*		
SUD Other Federal - DBHDS*		
SUD Other Federal - CSB* _____		TOTAL SUD FEDERAL
FUNDS		
STATE FUNDS		
Regional Funds		
SUD Facility Reinvestment (Fiscal Agent)*		
SUD Facility Reinvestment Transfer In/(Out)		_____
SUD Net Facility Reinvestment Funds		
SUD Transfers from DBHDS Facilities (Fiscal Agent)		
SUD Transfers from DBHDS Facilities – Transfer In/(Out)		_____
Total Net DV Transfers from DBHDS Facilities		
Other State Funds		
SUD Community Detoxification*		

FY 2020 Exhibit A: Resources and Services for Developmental (DV) Services

CSB: _____

Funding Sources	Funds
SUD Women (Includes LINK - 4 CSBs) ^{3*} SUD Recovery Employment*	
SUD Peer Support Recovery*	
SUD MAT - Medically Assisted Treatment*	
SUD SARPOS*	
SUD Step VA*	
SUD Recovery*	
SUD Permanent Supportive Housing Women*	_____
Total SUD Restricted Other State Funds	
SUD State Funds ^{4‡}	
SUD Region V Residential‡	
SUD Jail Services/Juvenile Detention‡	
SUD HIV/AIDS‡	
Total SUD Unrestricted Other State Funds	_____
TOTAL SUD STATE FUNDS	Total SUD Other State Funds
<u>OTHER FUNDS</u>	
SUD Other Funds*	
SUD Federal Retained Earnings*	
SUD State Retained Earnings*	
SUD State Retained Earnings - Regional Programs*	
SUD Other Retained Earnings*	_____
TOTAL SUD OTHER FUNDS	
<u>LOCAL MATCHING FUNDS</u>	
SUD Local Government Appropriations‡	
SUD Philanthropic Cash Contributions‡ SUD In-Kind Contributions‡	
SUD Local Interest Revenue‡	_____
TOTAL SUD LOCAL MATCHING FUNDS	_____
TOTAL SUD FUNDS	
<u>ONE-TIME FUNDS</u>	
SUD FBG Alcohol/Drug Treatment (93.959) *	
SUD FBG Women (includes LINK - 6 CSBs) (93.959) *	
SUD FBG Prevention (93.959) *	
SUD State Funds	_____
TOTAL SUD ONE-TIME FUNDS	TOTAL SUD ALL FUNDS

¹ Includes former SUD FBG Crisis Intervention. SUD FBG Alcohol/Drug Treatment funds are restricted, all of the following funds are also SUD FBG Alcohol/Drug Treatment funds but are only earmarked; the total amount of SUD FBG Alcohol/Drug Treatment expenditures shall be tracked and reported.

² While SUD FBG Prevention funds are restricted, these funds are also SUD FBG Prevention funds but are only earmarked; and the total amount of SUD FBG Prevention expenditures shall be tracked and reported.

³ Includes former SUD Postpartum Women funds.

⁴ Includes former SUD Facility Diversion funds.

FY 2020 Exhibit A: Resources and Services for Developmental (DV) Services

CSB:

Funding Sources

Funds

* These funds are restricted and expenditures of them are tracked and reported separately.

‡ These funds are earmarked but not restricted; expenditures are reported for the total amount.

**FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
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ATTACHMENT 2

FY 2020 Exhibit A: Resources and Services for Developmental (DV) Services

CSB: _____

Funding Sources

Funds

Local Government Tax Appropriations

CSB:

City or County	Tax Appropriation
Total Local Government Tax Funds	

Reconciliation of Projected Resources and Core Services Costs by Program Area CSB:

	MH Services	DV Services	SUD Services	Emergency Services	Ancillary Services	Total
Total All Funds (Page AF-1)						
Cost for MH, DV, SUD, Emergency, and Ancillary Services (Page AF-1)						
Difference						

FY 2020 Exhibit A: Resources and Services for Developmental (DV) Services

CSB: Difference results from Explanation of Other in Table Above

Other:	Funding Sources	Funds

FY 2020 Exhibit A: Resources and Services for Developmental (DV) Services

CSB: _____

Funding Sources

Funds

CSB 100 Mental Health Services

CSB:

Form 11: Mental Health (MH) Services Program Area (100)			
Core Services	Projected Service Capacity	Projected Numbers of Individuals Receiving Services	Projected Total Service Costs
250 Acute Psychiatric Inpatient Services	Beds		
310 Outpatient Services	FTEs		
312 Medical Services	FTEs		
350 Assertive Community Treatment	FTEs		
320 Case Management Services	FTEs		
410 Day Treatment or Partial Hospitalization	Slots		
420 Ambulatory Crisis Stabilization Services	Slots		
425 Mental Health Rehabilitation	Slots		
430 Sheltered Employment	Slots		
465 Group Supported Employment	Slots		
460 Individual Supported Employment	FTEs		
501 MH Highly Intensive Residential Services (MH Residential Treatment Centers)	Beds		
510 Residential Crisis Stabilization Services	Beds		
521 Intensive Residential Services	Beds		
551 Supervised Residential Services	Beds		
581 Supportive Residential Services	FTEs		
610 Prevention Services	FTEs		
Totals			

Form 11 A: Pharmacy Medication Supports	Number of Consumers
803 Total Pharmacy Medication Supports Consumers	

FY 2020 Exhibit A: Resources and Services for Developmental (DV) Services

CSB: _____

Funding Sources

Funds

CSB 200 Developmental Services

CSB:

Form 21: Developmental (DV) Services Program Area (200)			
Core Services	Projected Service Capacity	Projected Numbers of Individuals Receiving Services	Projected Total Service Costs
310 Outpatient Services	FTEs		
312 Medical Services	FTEs		
320 Case Management Services	FTEs		
420 Ambulatory Crisis Stabilization Services	Slots		
425 Developmental Habilitation	Slots		
430 Sheltered Employment	Slots		
465 Group Supported Employment	Slots		
460 Individual Supported Employment	FTEs		
501 Highly Intensive Residential Services (Community-Based ICF/IDD Services)	Beds		
510 Residential Crisis Stabilization Services	Beds		
521 Intensive Residential Services	Beds		
551 Supervised Residential Services	Beds		
581 Supportive Residential Services	FTEs		
610 Prevention Services	FTEs		
Totals			

FY 2020 Exhibit A: Resources and Services for Developmental (DV) Services

CSB: _____

Funding Sources

Funds

CSB 300 Substance Use Disorder Services

CSB:

Form 31: Substance Use Disorder (SUD) Services Program Area (300)			
Core Services	Projected Service Capacity	Projected Numbers of Individuals Receiving Services	Projected Total Service Costs
250 Acute Substance Use Disorder Inpatient Services	Beds		
260 Community-Based Substance Use Disorder Medical Detoxification Inpatient Services	Beds		
310 Outpatient Services	FTEs		
312 Medical Services	FTEs		
313 Intensive Outpatient Services	FTEs		
335 Medication Assisted Treatment	FTEs		
320 Case Management Services	FTEs		
410 Day Treatment or Partial Hospitalization	Slots		
420 Ambulatory Crisis Stabilization Services	Slots		
425 Substance Use Disorder Rehabilitation	Slots		
430 Sheltered Employment	Slots		
465 Group Supported Employment	Slots		
460 Individual Supported Employment	FTEs		
501 Highly Intensive Residential Services (Medically Managed Withdrawal Services)	Beds		
510 Residential Crisis Stabilization Services	Beds		
521 Intensive Residential Services	Beds		
551 Supervised Residential Services	Beds		
581 Supportive Residential Services	FTEs		
610 Prevention Services	FTEs		
Totals			

FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
RENEWAL AND REVISIONS ATTACHMENT 2
FY 2020 Exhibit A: Resources and Services

CSB 400 Emergency and Ancillary Services

CSB:

Form 01: Emergency and Ancillary Services (400)			
Core Services	Projected Service Capacity	Projected Numbers of Individuals Receiving Services	Projected Total Service Costs
100 Emergency Services	FTEs		
Ancillary Services			
318 Motivational Treatment Services	FTEs		
390 Consumer Monitoring Services	FTEs		
720 Assessment and Evaluation Services	FTEs		
620 Early Intervention Services	FTEs		
730 Consumer-Run Services			
Ancillary Services Totals			

Exhibit B: Continuous Quality Improvement (CQI) Process and CSB Performance Measures

The Department shall continue to work with CSBs to achieve a welcoming, recovery-oriented, integrated services system for individuals receiving services and their families in which CSBs, state facilities, programs, and services staff, in collaboration with individuals and their families, are becoming more welcoming, recovery-oriented, and integrated. The process for achieving this goal within limited resources is to build a system-wide CQI process in a partnership among CSBs, the Department, and other stakeholders in which there is a consistent shared vision combined with a measurable and achievable implementation process for each CSB to make progress toward it.

Appendix E in the CSB Administrative Requirements provides further clarification for those implementation activities, so that each CSB can be successful in designing a performance improvement process at the local level. Pursuant to Section 7: Accountability in the Community Services Performance Contract Partnership Agreement, the CSB provides the affirmations in Appendix E of the CSB Administrative Requirements of its compliance with the performance expectations and goals in that appendix. If the CSB cannot provide a particular affirmation, it shall attach an explanation to this exhibit with a plan for complying with the identified expectation or goal, including specific actions and target dates. The Department will review this plan and negotiate any changes with the CSB, whereupon, it will be part of this exhibit.

The CSB and Department agree to implement, monitor, and take appropriate action on the following performance measures.

I. Exhibit B Performance Measures

A. Continuity of Care for Local Psychiatric Inpatient Discharges

- 1. Measure:** Percent of individuals for whom the CSB purchased or managed local inpatient psychiatric services from a private psychiatric hospital or psychiatric unit in a public or private hospital who keep a face-to-face (non-emergency) mental health outpatient service appointment within seven calendar days after discharge.
- 2. Benchmark: At least 70 percent** of these individuals shall receive a face-to-face (non-emergency) mental health outpatient service from the CSB within seven calendar days after discharge.
- 3. Monitoring:** The Department shall monitor this measure through comparing CCS 3 data on individuals receiving local inpatient services funded through LIPOS, otherwise purchased, or managed (e.g., free bed days included in LIPOS contracts) by the CSB and the next date on which those individuals received mental health outpatient services after the end date for the inpatient services and work with the CSB to achieve this benchmark if it did not meet it.

B. Continuity of Care for State Hospital Discharges

- 1. Measure:** Percent of individuals for whom the CSB is the identified case management CSB who keep a face-to-face (non-emergency) mental health outpatient service appointment within seven calendar days after discharge from a state hospital.
- 2. Benchmark: At least 80 percent** of these individuals shall receive a face-to-face (non-emergency) mental health outpatient service from the CSB within seven calendar days after discharge.
- 3. Monitoring:** The Department shall monitor this measure through comparing AVATAR data on individuals discharged from state hospitals to the CSB with CCS 3 data about their dates of mental health outpatient services after discharge from the state hospital and work with the CSB to achieve this benchmark if it did not meet it.

C. Residential Crisis Stabilization Unit (RCSU) Utilization

- 1. Measure:** Percent of all available RCSU bed days for adults and children utilized annually.
- 2. Benchmark:** The CSB that operates an RCSU shall ensure that the RCSU, once it is fully operational, achieves an annual average utilization rate of **at least 75 percent** of available bed days.
- 3. Monitoring:** The Department shall monitor this measure using data from CCS 3 service records and CARS service capacity reports and work with the CSB to achieve this benchmark if it did not meet it.

D. Regional Discharge Assistance Program (RDAP) Service Provision

- 1. Measure:** Percentage of the total annual state RDAP fund allocations to a region obligated and expended by the end of the fiscal year.
- 2. Benchmark:** CSBs in a region shall **obligate at least 95 percent and expend at least 90 percent** of the total annual ongoing state RDAP fund allocations on a regional basis by the end of the fiscal year. The benchmark does not include one-time state RDAP allocations provided to support ongoing DAP plans for multiple years.
- 3. Monitoring:** The Department shall monitor this measure using reports from regional managers and CARS reports. If CSBs in a region cannot accomplish this measure, the Department may work with the regional management group (RMG) and participating CSBs to transfer state RDAP funds to other regions to reduce extraordinary barriers to discharge lists (EBLs) to the greatest extent possible, unless the CSBs through the regional manager provide acceptable explanations for greater amounts of unexpended or unobligated state RDAP funds. See Exhibit C for additional information.

E. Local Inpatient Purchase of Services (LIPOS) Provision

- 1. Measure:** Percentage of the total annual regional state mental health LIPOS fund allocations to a region expended by the end of the fiscal year.
- 2. Benchmark:** CSBs in a region shall **expend at least 85 percent** of the total annual regional state mental health LIPOS fund allocations by the end of the fiscal year.
- 3. Monitoring:** The Department shall monitor this measure using reports from regional managers and CARS reports. If CSBs in a region cannot accomplish this measure, the Department may work with the regional management group (RMG) and participating CSBs to transfer regional state mental health LIPOS funds to other regions to expand the availability of local inpatient psychiatric hospital services to the greatest extent possible, unless the CSBs through the regional manager provide acceptable explanations for greater amounts of unexpended regional state mental health LIPOS funds. See Exhibit H for additional information.

F. PACT Caseload

- 1. Measure:** Average number of individuals receiving services from the PACT team during the preceding quarter.
- 2. Benchmark:** The CSB that operates a PACT team shall serve **at least 75 percent** of the number of individuals who could be served by the available staff providing services to individuals at the ratio of 10 individuals per clinical staff on average (ref. 12VAC35-105- 1370 in the Department's licensing regulations) in the preceding quarter.
- 3. Monitoring:** The Department shall monitor this measure using data from the CCS 3 consumer and service files and the PACT data system and work with the CSB to achieve

this benchmark if it did not meet it.

G. Provision of Developmental Enhanced Case Management Services

- 1. Measures:** Percentage of individuals receiving DD Waiver services who meet the criteria for receiving enhanced case management (ECM) services who:
 - a. Receive at least one face-to-face case management service monthly with no more than 40 days between visits, and
 - b. Receive at least one face-to-face case management service visit every other month in the individual's place of residence.
 - 2. Benchmark:** The CSB shall provide the case management service visits in measures 1.a and b to **at least 90 percent** of the individuals receiving DD Wavier services who meet the criteria for ECM.
 - 3. Monitoring:** The Department shall use data from CCS 3 consumer, type of care, and service files to monitor these measures and work with the CSB to achieve this benchmark if it did not meet it.
- II.** The CSB agrees to monitor the percentage of adults (age 18 or older) receiving developmental case management services from the CSB whose case managers discussed integrated, community-based employment with them during their annual case management individual supports plan (ISP) meetings. The Department agrees to monitor this measure through using CCS 3 data and work with the CSB to increase this percentage. Refer to State Board Policy (SYS) 1044 Employment First for additional information and guidance. Integrated, community-based employment does not include sheltered employment.
- III.** The CSB agrees to monitor the percentage of adults (age 18 or older) receiving developmental case management services from the CSB whose ISPs, developed or updated at the annual ISP meeting, contained employment outcomes, including outcomes that address barriers to employment. The Department agrees to monitor this measure through using CCS 3 data and work with the CSB to increase this percentage. Employment outcomes do not include sheltered employment or prevocational services.
- IV.** The CSB agrees to monitor and report data through CCS 3 about individuals who are receiving case management services from the CSB and are receiving DD Waiver services whose case managers discussed community engagement or community coaching opportunities with them during their most recent annual case management individual support plan (ISP) meeting. Community engagement or community coaching supports and fosters the ability of an individual to acquire, retain, or improve skills necessary to build positive social behavior, interpersonal competence, greater independence, employability, and personal choice necessary to access typical activities and functions of community life such as those chosen by the general population; it does not include community opportunities with more than three individuals with disabilities.
- V.** The CSB agrees to monitor and report data through CCS 3 about individuals who are receiving case management services from the CSB and are receiving DD Waiver services whose individual support plans (ISPs), developed or updated at the annual ISP meeting, contained community engagement or community coaching goals.
- VI. CSB Performance Measures:** The CSB and Department agree to use the CSB Performance Measures, developed by the Department in collaboration with the VACSB Data Management, Quality Leadership, and VACSB/DBHDS Quality and Outcomes Committees to monitor outcome and performance measures for CSBs and improve the CSB's performance on measures where the CSB falls below the benchmark. These performance measures include:

**FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
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- A. intensity of engagement of adults receiving mental health case management services,
- B. adults who are receiving mental health or substance use disorder outpatient or case management services or mental health medical services and have a new or recurrent diagnosis of major depressive disorder who received suicide risk assessments,
- C. children ages seven through 17 who are receiving mental health or substance use disorder outpatient or case management services or mental health medical services and have a new or recurrent diagnosis of major depressive disorder who received suicide risk assessments,
- D. adults with SMI who are receiving mental health case management services who received a complete physical examination in the last 12 months,
- E. adults who are receiving mental health medical services, had a Body Mass Index (BMI) calculated, and had a BMI outside of the normal range who had follow-up plans documented, and
- F. initiation, engagement, and retention in substance use disorder services for adults and children who are 13 years old or older with a new episode of substance use disorder services.

The last five measures are defined in Appendix H of CCS 3 Extract Specifications Version 7.5.

VII. Access to Substance Abuse Services for Pregnant Women

Source of Requirement	SABG Block Grant
Type of Measure	Aggregate
Data Needed For Measure	Number of Pregnant Women Requesting Service
	Number of Pregnant Women Receiving Services Within 48 Hours
Reporting Frequency	Annually
Reporting Mechanism	Performance Contract Reports (CARS)

Signature: In witness thereof, the CSB provides the affirmations in Appendix E of the CSB Administrative Requirements and agrees to monitor and collect data and report on the measures in sections I, II, and III, and use data from the Department or other sources to monitor accomplishment of performance measures in this Exhibit and the expectations, goals, and affirmations in Appendix E, as denoted by the signatures of the CSB’s Chairperson and Executive Director.

CSB

By: _____ By: _____

Name: _____ Name: _____

Title: CSB Chairperson Title: CSB Executive Director

Date: _____ Date: _____

Exhibit C: Regional Discharge Assistance Program (RDAP) Requirements

The Department and the CSB agree to implement the following requirements for management and utilization of all current state regional discharge assistance program (RDAP) funds to enhance monitoring of and financial accountability for RDAP funding, decrease the number of individuals on state hospital extraordinary barriers to discharge lists (EBLs), and return the greatest number of individuals with long lengths of state hospital stays to their communities.

1. The Department shall work with the VACSB, representative CSBs, and regional managers to develop clear and consistent criteria for identification of individuals who would be eligible for individualized discharge assistance program plans (IDAPPs) and acceptable uses of state RDAP funds and standard terminology that all CSBs and regions shall use for collecting and reporting data about individuals, services, funds, expenditures, and costs.
2. The CSB shall comply with the current Discharge Assistance Program Manual issued by the Department, which is incorporated into and made a part of this contract by reference and is available at the Internet link in Appendix L. If there are conflicts or inconsistencies between the manual and this contract, applicable provisions of this contract shall control.
3. All state RDAP funds allocated within the region shall be managed by the regional management group (RMG) and the regional utilization management and consultation team (RUMCT) on which the CSB participates in accordance with Appendices E and F of Core Services Taxonomy 7.3.
4. The CSB, through the RMG and RUMCT on which it participates, shall ensure that other funds such as Medicaid payments are used to offset the costs of approved IDAPPs to the greatest extent possible so that state RDAP funds can be used to implement additional IDAPPs to reduce EBLs.
5. On behalf of the CSBs in the region, the regional manager funded by the Department and employed by a participating CSB shall submit mid-year and end of the fiscal year reports to the Department in a format developed by the Department in consultation with regional managers that separately displays the total actual year-to-date expenditures of state RDAP funds for ongoing IDAPPs and for one-time IDAPPs and the amounts of obligated but unspent state RDAP funds.
6. The CSB and state hospital representatives on the RMG on which the CSB participates shall have authority to reallocate state RDAP funds among CSBs from CSBs that cannot use them in a reasonable time to CSBs that need additional state RDAP funds to implement more IDAPPs to reduce EBLs.
7. If CSBs in the region cannot obligate at least 95 percent and expend at least 90 percent of the total annual ongoing state RDAP fund allocations on a regional basis by the end of the fiscal year, the Department may work with the RMG and participating CSBs to transfer state RDAP funds to other regions to reduce EBLs to the greatest extent possible, unless the CSBs through the regional manager provide acceptable explanations for greater amounts of unexpended or unobligated state RDAP funds. This does not include one-time allocations to support ongoing DAP plans for multiple years.
8. On behalf of the CSBs in a region, the regional manager shall continue submitting the quarterly summary of IDAPPs to the Department in a format developed by the Department in consultation with regional managers that displays year-to-date information about ongoing and one-time IDAPPs, including data about each individual receiving DAP services, the amounts of state RDAP funds approved for each IDAPP, the total number of IDAPPs that have been

implemented, and the projected total net state RDAP funds obligated for these IDAPPs.

9. The Department, pursuant to sections 6.f and 7.g of this contract, may conduct utilization reviews of the CSB or region at any time to confirm the effective utilization of state RDAP funds and the implementation of all approved ongoing and one-time IDAPPs.

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Signatures: In witness thereof, the Department and the CSB have caused this performance contract amendment to be executed by the following duly authorized officials.

Virginia Department of Behavioral
Health and Developmental Services

CSB

By: _____

Name: S. Hughes Melton, MD, MBA
FAAFP, FABAM

Chairperson Title:

By: _____

Name: _____

Title: CSB

Commissioner

Date: _____

Date: _____

By: _____

Name: _____

Title: CSB Executive Director

Date: _____

Exhibit E: Performance Contract Process

5-22-2019: The Department distributes the FY 2020 Letters of Notification to CSBs by this date electronically with enclosures that show tentative allocations of state and federal block grant funds.

06-12-19: The Department distributes the FY 2019 and FY 2020 Community Services Performance Contract, hereafter referred to as the FY 2020 Performance Contract, by this date electronically. An Exhibit D may list performance measures that have been negotiated with a CSB to be included in the contract. The Department's Office of Information Services and Technology (OIS&T) distributes the FY 2020 Performance Contract package software in the Community Automated Reporting System (CARS) to CSBs.

During June and July, CSB Financial Analysts in the Department's Office of Fiscal and Grants Management (OFGM) prepare electronic data interchange (EDI) transfers for the first two semi-monthly payments (July) of state and federal funds for all CSBs and send the transfers to the Department of Accounts.

07-10-19: The OIS&T distributes FY 2019 end of the fiscal year performance contract report software in CARS.

7-10-19: Exhibit A and other parts of the FY 2020 Performance Contract, submitted electronically in CARS, are due in the OIS&T by this date. Table 2 of the Performance Contract Supplement (also in CARS) shall be submitted with the contract.

07-31-19: CSBs submit their Community Consumer Submission 3 (CCS 3) consumer, type of care, service, diagnosis, and outcomes extract files for June to the sFTP folder in time to be received by this date.

8-7-2019: While a paper copy of the entire contract is not submitted, paper copies of the following completed pages with signatures where required are due in the Office of Management Services (OMS) by this date: signature pages of the contract body and Exhibit B, Exhibit D if applicable, Exhibit F (two pages), and Exhibit G. Contracts shall conform to Letter of Notification allocations of state and federal funds or amounts subsequently revised by or negotiated with the OMS and confirmed in writing and shall contain actual appropriated amounts of local matching funds. If the CSB cannot include the minimum 10 percent local matching funds in the contract, it shall submit a written request for a waiver of the matching funds requirement, pursuant to § 37.2-509 of the Code and State Board Policy 4010, to the OMS with its contract. This requirement also applies to end of the fiscal year performance contract reports if the reports reflect less than the minimum 10 percent local matching funds.

During July and August, CSB Financial Analysts prepare EDI transfers for payments 3 and 4 (August) of state and federal funds and send the transfers to the Department of Accounts.

During August and September, CSB Financial Analysts prepare EDI transfers for payments 5 and 6 (September) of state and federal funds for CSBs whose contracts were received by **08-07-19** and determined to be complete by **08-14-19** and, after the OMS Director authorizes their release, send the transfers to the Department of Accounts. Payments shall not be released without complete contracts, as defined in Exhibit E and item 1 of Exhibit I. For a CSB whose contract is received

after this date, EDI transfers for these two semi-monthly payments will be processed when the contract is complete and funds will be disbursed with the next scheduled payment.

08-14-19: CSBs submit their complete CCS 3 reports for total (annual) FY 2019 CCS 3 service unit data to the sFTP folder in time to be received by this date. This later date for final CCS service unit data allows the inclusion of all units of services delivered in that fiscal year that might not be in local information systems in July.

08-28-19: CSBs send complete FY 2019 end of the fiscal year performance contract reports electronically in CARS to the OIS&T in time to be received by this date.

OIS&T staff places the reports in a temporary data base for OMS and OFGM staff to access them. The OMS Director reviews services sections of the reports for correctness, completeness, consistency, and acceptability; resolves discrepancies with CSBs; and communicates necessary changes to CSBs. OFGM CSB Financial Analysts review financial portions of reports for arithmetic accuracy, completeness, consistency, and conformity with state funding actions; resolve discrepancies with CSBs; and communicate necessary changes to CSBs.

Once they complete their reviews of a CSB's reports, the OMS Director and OFGM CSB Financial Analysts notify the CSB to submit new reports reflecting only those approved changes to OIS&T. CSBs submit new reports to correct errors or inaccuracies no later than **09-14-2019**. The Department will not accept CARS report corrections after this date. Upon receipt, the process described above is repeated to ensure the new reports contain only those changes identified by OFGM and OMS staff. If the reviews document this, OMS and OFGM staff approves the reports, and OIS&T staff processes final report data into the Department's community services database.

Late report submission or submitting a report without correcting errors identified by the CARS error checking program may result in the imposition by the Department of a one-time, one percent reduction not to exceed \$15,000 of state funds apportioned for CSB administrative expenses. See Exhibit I for additional information.

08-31-19: CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for July to the sFTP folder in time to be received by this date.

09-30-19: Department staff complete reviews by this date of contracts received by the due date that are complete and acceptable. Contracts received after the due date shall be processed in the order in which they are received.

1. The OFGM analyzes the revenue information in the contract for conformity to Letter of Notification allocations and advises the CSB to revise and resubmit financial forms in Exhibit A of its contract if necessary.
2. The Offices of Adult Behavioral Health, Child and Family, and Developmental Services review and approve new service proposals and consider program issues related to existing services based on Exhibit A.
3. The OMS assesses contract completeness, examines maintenance of local matching funds, integrates new service information, makes corrections and changes on the service forms in Exhibit A, negotiates changes in Exhibit A, and finalizes the contract

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for signature by the Commissioner. The OMS Community Director notifies the CSB when its contract is not complete or has not been approved and advises the CSB to revise and resubmit its contract.

4. The OIS&T receives CARS and CCS 3 submissions from CSBs, maintains the community services database, and processes signed contracts into that database as they are received from the OMS.

09-30-19: CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for August to the sFTP folder in time to be received by this date.

10-02-19: After the Commissioner signs it, the OMS sends a copy of the approved contract Exhibit A to the CSB with the signature page containing the Commissioner's signature. The CSB shall review this Exhibit A, which reflects all changes negotiated by Department staff; complete the signature page, which documents its acceptance of these changes; and return the completed signature page to the OMS Director.

During September and October, CSB Financial Analysts prepare EDI transfers for payments 7 and 8 (October) and, after the OMS Director authorizes their release, send the transfers to the Department of Accounts. Payment 7 shall not be released without receipt of a CSB's final FY 2019 CCS 3 consumer, type of care, service, diagnosis, and outcomes extract files by the due date. Payment 8 shall not be released without receipt of a CSB's complete, as defined in item 2.a. of Exhibit I, FY 2019 end of the fiscal year CARS reports by the due date and without a contract signed by the Commissioner.

During October and November, CSB Financial Analysts prepare EDI transfers for payments 9 and 10 (November), and, after the OMS Director authorizes their release, send the transfers to the Department of Accounts for CSBs whose complete CCS 3 submissions for the first two months of FY 2020 and the completed contract signature page were received from the CSB.

10-16-19: CSBs submit Federal Balance Reports to the OFGM in time to be received by this date.

10-31-19: CSBs submit CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for September to the sFTP folder in time to be received by this date.

During November and December, CSB Financial Analysts prepare EDI transfers for payments 11 and 12 (December), and, after the OMS Director authorizes their release, send the transfers to the Department of Accounts. Payments shall not be released without receipt of September CCS 3 submissions.

11-30-19: CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for October to the sFTP folder in time to be received by this date.

12-04-19: A. CSBs that are not local government departments or included in local government audits send one copy of the audit report for the preceding fiscal year on all CSB operated programs to the Department's Office of Budget and Financial Reporting (OBFR) by this date. A management letter and plan of correction for deficiencies

must be sent with this report. CSBs submit a copy of C.P.A. audit reports for all contract programs for their last full fiscal year, ending on June 30th, to the OBFR by this date. For programs with different fiscal years, reports are due three months after the end of the year. Management letters and plans of correction for deficiencies must be included with these reports.

- B.** Audit reports for CSBs that are local government departments or are included in local government audits are submitted to the Auditor of Public Accounts by the local government. Under a separate cover, the CSB must forward a plan of correction for any audit deficiencies that are related to or affect the CSB to the OBFR by this date. Also, to satisfy federal block grant sub-recipient monitoring requirements imposed on the Department under the Single Audit Act, a CSB that is a local government department or is included in its local government audit shall contract with the same CPA audit firm that audits its locality to perform testing related to the federal Mental Health Services and Substance Abuse Prevention and Treatment Block Grants. Alternately, the local government's internal audit department can work with the CSB and the Department to provide the necessary sub-recipient monitoring information.

If the CSB receives an audit identifying material deficiencies or containing a disclaimer or prepares the plan of correction referenced in the preceding paragraph, the CSB and the Department shall negotiate an Exhibit D that addresses the deficiencies or disclaimer and includes a proposed plan with specific timeframes to address them, and this Exhibit D and the proposed plan shall become part of this contract.

During December CSB Financial Analysts prepare EDI transfers for payment 13 (1st January), and, after the OMS Director authorizes their release, send the transfers to the Department of Accounts for CSBs whose FY 2019 end of the fiscal year performance contract reports have been verified as accurate and internally consistent, per items 2.b. through d. of Exhibit I, and whose CCS 3 monthly extracts for October have been received. Payments shall not be released without verified reports and CCS 3 submissions for October.

- 12-31-19:** CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for November to the sFTP folder in time to be received by this date.

During January and early February, CSB Financial Analysts prepare EDI transfers for payments 14 through 16 (2nd January, February), and, after the OMS Director authorizes their release, send the transfers to the Department of Accounts for CSBs whose monthly CCS 3 consumer, type of care, and service extract files for November were received by the end of December. Payments shall not be released without receipt of these monthly CCS 3 submissions and receipt of audit reports with related management letters and plans of corrections (A at 12-03-19) or sub-recipient monitoring information and plans of corrections (B at 12-03-19).

- 01-8-20:** The OIS&T distributes FY 2020 mid-year performance contract report software in CARS.

- 01-31-20:** CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for December to the sFTP folder in time to be received by this date.

02-12-20: CSBs send complete mid-year performance contract reports and a revised Table 1 in Exhibit H to the OIS&T electronically in CARS within 45 calendar days after the end of the second quarter in time to be received by this date. OIT&S staff places the reports on a shared drive for OMS and OFGM staff to access them. The offices review and act on the reports using the process described for the end of the fiscal year reports. When reports are acceptable, OIS&T staff processes the data into the community services data base.

During late February, CSB Financial Analysts prepare EDI transfers for payment 17 (1st March), and, after the OMS Director authorizes their release, send the transfers to the Department of Accounts for CSBs whose monthly CCS 3 consumer, type of care, service, diagnosis, and outcomes extract files for December were received by the end of January; payments shall not be released without these monthly CCS 3 submissions.

During March, CSB Financial Analysts prepare EDI transfers for payments 18 and 19 (2nd March, 1st April) and, after the OMS Director authorizes their release, send the transfers to the Department of Accounts for CSBs whose complete FY 2020 mid-year performance contract reports were received by the due date. Payments shall not be released without complete reports, as defined in item 2.a. of Exhibit I.

02-28-20: CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for January to the sFTP folder in time to be received by this date.

03-31-20: CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for February to the sFTP folder in time to be received by this date.

During April and early May, CSB Financial Analysts prepare EDI transfers for payments 20 through 22 (2nd April, May) and, after the OMS Director authorizes their release, send the transfers to the Department of Accounts for CSBs whose mid-year performance contract reports have been verified as accurate and internally consistent, per items 2.b. through d. of Exhibit I, and whose monthly CCS 3 consumer, type of care, service, diagnosis, and outcomes extract files for January and February were received by the end of the month following the month of the extract. Payments shall not be released without verified reports and these monthly CCS 3 submissions.

04-30-20: CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for March to the sFTP folder in time to be received by this date.

During late May, CSB Financial Analysts prepare EDI transfers for payment 23 (1st June), and, after the OMS Director authorizes their release, send transfers to the Department of Accounts for CSBs whose monthly CCS 3 consumer, type of care, service, diagnosis, and outcomes extract files for March were received by the end of April. Payments shall not be released without these monthly CCS 3 submissions.

05-30-20: CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for April to the sFTP folder in time to be received by this date.

During early June, CSB Financial Analysts prepare EDI transfers for payment 24 (2nd June) and, after the OMS Director authorizes their release, send the transfers to the Department of Accounts, after the Department has made any final adjustments in the CSB's state and federal funds allocations, for CSBs whose monthly CCS 3 consumer, type of care, service, diagnosis, and outcomes extract files for April were received by the end of May. If April CCS 3 extract files are not received by May 31, this may delay or even eliminate payment 24 due to time restrictions on when the Department can send EDI transfers to DOA for payment 24. Payments shall not be released without these monthly CCS 3 submissions.

06-30-20: CSBs submit their CCS 3 monthly consumer, type of care, service, diagnosis, and outcomes extract files for May to the sFTP folder by this date.

Performance Contract Revision Instructions

The CSB may revise Exhibit A of its signed contract only in the following circumstances:

1. a new, previously unavailable category or subcategory of core services is implemented;
2. an existing category or subcategory of core services is totally eliminated;
3. a new program offering an existing category or subcategory of core services is implemented;
4. a program offering an existing category or subcategory of core services is eliminated;
5. new restricted or earmarked state or federal funds are received to expand an existing service or establish a new one;
6. state or federal block grant funds are moved among program (mental health, developmental, or substance use disorder) areas or emergency or ancillary services (an exceptional situation);
7. allocations of state, federal, or local funds change; or
8. a major error is discovered in the original contract.

Revisions of Exhibit A shall be submitted using the CARS software and the same procedures used for the original performance contract.

Exhibit F: Federal Compliances

Certification Regarding Salary: Federal Mental Health and Substance Abuse Prevention and Treatment Block Grants

Check One

- _____ 1. The CSB has no employees being paid totally with Federal Mental Health Block Grant funds or Federal Substance Abuse Block Grant (SABG) funds at a direct annual salary (not including fringe benefits and operating costs) in excess of Level II of the federal Executive Schedule.

- _____ 2. The following employees are being paid totally with Federal Mental Health or SABG funds at a direct annual salary (not including fringe benefits and operating costs) in excess of Level II of the federal Executive Schedule.

Name	Title
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____

Assurances Regarding Equal Treatment for Faith-Based Organizations

The CSB assures that it is and will continue to be in full compliance with the applicable provisions of 45 CFR Part 54, Charitable Choice Regulations, and 45 CFR Part 87, Equal Treatment for Faith-Based Organizations Regulations, in its receipt and use of federal Mental Health Services and SABG funds and federal funds for Projects for Assistance in Transitions from Homelessness programs. Both sets of regulations prohibit discrimination against religious organizations, provide for the ability of religious organizations to maintain their religious character, and prohibit religious organizations from using federal funds to finance inherently religious activities.

Assurances Regarding Restrictions on the Use of Federal Block Grant Funds

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The CSB assures that it is and will continue to be in full compliance with the applicable provisions of the federal Mental Health Services Block Grant (CFDA 93.958) and the federal Substance Abuse Block Grant (CFDA 93.959), including those contained in Appendix B of the CSB Administrative Requirements and the following requirements. Under no circumstances shall Federal Mental Health Services and Substance Abuse Block Grant (SABG) funds be used to:

1. provide mental health or substance abuse inpatient services¹;
2. make cash payments to intended or actual recipients of services;
3. purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;
4. satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds;
5. provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs;
6. provide financial assistance to any entity other than a public or nonprofit private entity; or
7. provide treatment services in penal or correctional institutions of the state.

Also, no SABG prevention set-aside funds shall be used to prevent continued substance use by anyone diagnosed with a substance use disorder.

[Source: 45 CFR § 96.135]

Signature of CSB Executive Director

Date

¹ However, the CSB may expend SABG funds for inpatient hospital substance abuse services only when all of the following conditions are met:

- a. the individual cannot be effectively treated in a community-based, non-hospital residential program;
- b. the daily rate of payment provided to the hospital for providing services does not exceed the comparable daily rate provided by a community-based, non-hospital residential program;
- c. a physician determines that the following conditions have been met: (1) the physician certifies that the person's primary diagnosis is substance abuse, (2) the person cannot be treated safely in a community-based, non-hospital residential program, (3) the service can reasonably be expected to improve the person's condition or level of functioning, and (4) the hospital-based substance abuse program follows national standards of substance abuse professional practice; and
- d. the service is provided only to the extent that it is medically necessary (e.g., only for those days that the person cannot be safely treated in a community-based residential program).

[Source: 45 CFR § 96.135]

Exhibit G: Local Contact for Disbursement of Funds

Exhibit G: Local Contact for Disbursement of Funds

1. Name of the CSB: _____
2. City or County designated
as the CSB's Fiscal Agent: _____

If the CSB is an operating CSB and has been authorized by the governing body of each city or county that established it to receive state and federal funds directly from the Department and act as its own fiscal agent pursuant to Subsection A.18 of § 37.2-504 of the Code, do not complete items 3 and 4 below.

3. Name of the Fiscal Agent's City Manager or County Administrator or Executive:

Name: _____ Title: _____

4. Name of the Fiscal Agent's County or City Treasurer or Director of Finance:

Name: _____ Title: _____

5. Name, title, and address of the Fiscal Agent official or the name and address of the CSB if it acts as its own fiscal agent to whom checks should be electronically transmitted:

Name: _____ Title: _____

Address: _____

This information should agree with information at the top of the payment document e-mailed to the CSB, for example: Mr. Joe Doe, Treasurer, P.O. Box 200, Winchester, VA 22501.

Exhibit H: Regional Local Inpatient Purchase of Services (LIPOS) Requirements

The Department and the CSB agree to implement the following requirements for management and utilization of all regional state mental health acute care (LIPOS) funds to enhance monitoring of and financial accountability for LIPOS funding, divert individuals from admission to state hospitals when clinically appropriate, and expand the availability of local inpatient psychiatric hospital services.

1. All regional state mental health LIPOS funds allocated within the region shall be managed by the regional management group (RMG) and the regional utilization management and consultation team (RUMCT) on which the CSB participates in accordance with Appendices E and F of Core Services Taxonomy 7.3.
2. The CSB, through the RMG and RUMCT on which it participates, shall ensure that other funds or resources such as pro bono bed days offered by contracting local hospitals and Medicaid or other insurance payments are used to offset the costs of local inpatient psychiatric bed days or beds purchased with state mental health LIPOS funds so that regional state mental health LIPOS funds can be used to obtain additional local inpatient psychiatric bed days or beds.
3. On behalf of the CSBs in the region, the regional manager funded by the Department and employed by a participating CSB shall use the core elements of the LIPOS contract template and submit the standardized LIPOS data collection tool developed by the regional managers and distributed by the Department on March 16, 2016 or subsequent revisions of the template or tool.
4. The CSB and state hospital representatives on the RMG on which the CSB participates shall have authority to reallocate regional state mental health LIPOS funds among CSBs from CSBs that cannot use them in a reasonable time to CSBs that need additional regional state mental health LIPOS funds to meet their local inpatient psychiatric hospital service needs.
5. If CSBs in the region cannot expend at least 85 percent of the total annual regional state mental health LIPOS fund allocations on a regional basis by the end of the fiscal year, the Department may work with the RMG and participating CSBs to transfer regional state mental health LIPOS funds to other regions to expand the availability of local inpatient psychiatric hospital services to the greatest extent possible, unless the CSBs through the regional manager provide acceptable explanations for greater amounts of unexpended regional state mental health LIPOS funds.
6. The Department, pursuant to sections 6.f and 7.g of this contract, may conduct utilization reviews of the CSB or region at any time to confirm the effective utilization of regional state mental health LIPOS funds.

Exhibit I: Administrative Performance Requirements

The CSB shall meet these administrative performance requirements in submitting its performance contract, contract revisions, and mid-year and end-of-the-fiscal year performance contract reports in the CARS, and monthly CCS 3 extracts to the Department.

1. The performance contract and any revisions submitted by the CSB shall be:
 - a. complete, that is all required information is displayed in the correct places and all required Exhibits, including applicable signature pages, are included;
 - b. consistent with Letter of Notification allocations or figures subsequently revised by or negotiated with the Department;
 - c. prepared in accordance with instructions in the Department-provided CARS software and any subsequent instructional memoranda; and
 - d. received by the due dates listed in Exhibit E of this contract.

If the CSB does not meet these performance contract requirements, the Department may delay future semi-monthly payments of state and federal funds until satisfactory performance is achieved.

2. Mid-year and end-of-the-fiscal year performance contract reports submitted by the CSB shall be:
 - a. complete, that is all required information is displayed in the correct places, all required data are included in the electronic CARS application reports, and any required paper forms that gather information not included in CARS are submitted;
 - b. consistent with the state and federal block grant funds allocations in the Letter of Notification or figures subsequently revised by or negotiated with the Department;
 - c. prepared in accordance with instructions;
 - d. (i) internally consistent and arithmetically accurate: all related funding, expense, and cost data are consistent, congruent, and correct within a report, and (ii) submitted only after errors identified by the CARS error checking programs are corrected; and
 - e. received by the due dates listed in Exhibit E of this contract.

If the CSB does not meet these requirements for its mid-year and end-of-the-fiscal year CARS reports, the Department may delay future semi-monthly payments state and federal funds until satisfactory performance is achieved. The Department may impose one-time reductions of state funds apportioned for CSB administrative expenses¹ on a CSB for its failure to meet the following requirements in its end-of-the-fiscal year CARS report:

- a one percent reduction not to exceed \$15,000 for failure to comply with requirement 2.d; and
- a one percent reduction not to exceed \$15,000 for failure to comply with requirement 2.e, unless an extension has been obtained from the Department through the process on the next page.

3. The CSB shall submit monthly consumer, type of care, service, diagnosis, and outcomes files by the end of the month following the month for which the data is extracted in accordance with the CCS 3 Extract Specifications, including the current Business Rules. The submissions shall satisfy the requirements in sections 6.d and 7.e of the contract body and the Data Quality.

Performance Expectation Affirmations in Appendix E of the CSB Administrative Requirements. If the CSB fails to meet the extract submission requirements in Exhibit E of this contract, the Department may delay semi-monthly payments until satisfactory performance is achieved, unless the Department has not provided the CCS 3 extract application to the CSB in time for it to transmit its monthly submissions.

4. If the Department negotiates an Exhibit D with a CSB because of unacceptable data quality, and the CSB fails to satisfy the requirements in Exhibit D by the end of the contract term, the Department may impose a one-time one percent reduction not to exceed a total of \$15,000 of state funds apportioned for CSB administrative expenses¹ on the CSB.
5. Substance abuse prevention units of service data and quarterly reports shall be submitted to the Department through the prevention data system planned and implemented by the Department in collaboration with the VACSB DMC.

¹ The Department will calculate state funds apportioned for CSB administrative expenses by multiplying the total state funds allocated to the CSB by the CSB's administrative percentage displayed on page AF-1 of the contract.

The CSB shall not allocate or transfer a one-time reduction of state funds apportioned for administrative expenses to direct service or program costs.

Process for Obtaining an Extension of the End-of-the-Fiscal Year CARS Report Due Date

The Department will grant an extension only in very exceptional situations such as a catastrophic information system failure, a key staff person's unanticipated illness or accident, or a local emergency or disaster situation that makes it impossible to meet the due date.

1. It is the responsibility of the CSB to obtain and confirm the Department's approval of an extension of the due date within the time frames specified below. Failure of the CSB to fulfill this responsibility constitutes prima facie acceptance by the CSB of any resulting one-time reduction in state funds apportioned for administrative expenses.
2. As soon as CSB staff becomes aware that it cannot submit the end-of-the-fiscal year CARS report in time to be received in the Department by 5:00 p.m. on the due date, the executive director must inform the Office of Management Services (OMS) Director that it is requesting an extension of this due date. This request should be submitted as soon as possible and it shall be in writing, describe completely the reason(s) and need for the extension, and state the date on which the report will be received by the Department.
3. The written request for an extension must be received in the OMS no later than 5:00 p.m. on the fourth business day before the due date. A facsimile transmission of the request to the OMS fax number (804-371-0092), received by that time and date, is acceptable if receipt of the transmission is confirmed with a return facsimile memo from the OMS no later than 5:00 p.m. on the third business day before the due date. Telephone extension requests are not acceptable and will not be processed.

**FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
RENEWAL AND REVISIONS**

ATTACHMENT 2

4. The OMS will act on all requests for due date extensions that are received in accordance with this process and will notify the requesting CSBs by facsimile transmission of the status of their requests by 5:00 p.m. on the second business day before the due date.

Exhibit J: Other CSB Accountability Requirements

These requirements apply to the CSB board of directors or staff and the services included in this contract. Additional requirements are contained in the CSB Administrative Requirements.

I. Compliance with State Requirements

A. General State Requirements: The CSB shall comply with applicable state statutes and regulations, State Board regulations and policies, and Department procedures, including the following requirements.

1. **Conflict of Interests:** Pursuant to § 2.2-3100.1 of the Code, the CSB shall ensure that new board members are furnished with receive a copy of the State and Local Government Conflict of Interests Act by the executive director or his or her designee within two weeks following a member's appointment, and new members shall read and become familiar with provisions of the act. The CSB shall ensure board members and applicable CSB staff receive training on the act. If required by § 2.2-3115 of the Code, CSB board members and staff shall file annual disclosure forms of their personal interests and such other information as is specified on the form set forth in § 2.2-3118 of the Code. Board members and staff shall comply with the Conflict of Interests Act and related policies adopted by the CSB board of directors.
2. **Freedom of Information:** Pursuant to § 2.2-3702 of the Code, the CSB shall ensure that new board members are furnished with a copy of the Virginia Freedom of Information Act by the executive director or his or her designee within two weeks following a member's appointment, and new members shall read and become familiar with provisions of the act. The CSB shall ensure board members and applicable staff receive training on the act. Board members and staff shall comply with the Freedom of Information Act and related policies adopted by the CSB by the CSB board of directors.

B. Protection of Individuals Receiving Services

1. **Human Rights:** The CSB shall comply with the current *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services*, available at the Internet link in Exhibit L. In the event of a conflict between any of the provisions in this contract and provisions in these regulations, the applicable provisions in the regulations shall apply. The CSB shall cooperate with any Department investigation of allegations or complaints of human rights violations, including providing any information needed for the investigation as required under state law and as permitted under 45 CFR § 164.512 (d) in as expeditious a manner as possible.
2. **Disputes:** The filing of a complaint as outlined in the Human Rights Regulations by an individual or his or her family member or authorized representative shall not adversely affect the quantity, quality, or timeliness of services provided to that individual unless an action that produces such an effect is based on clinical or safety considerations and is documented in the individual's individualized services plan.
3. **Licensing:** The CSB shall comply with the *Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services*, available at the Internet link in Exhibit L. The CSB shall establish a system to ensure ongoing

compliance with applicable licensing regulations. CSB staff shall provide copies of the results of licensing reviews, including scheduled reviews, unannounced visits, and complaint investigations, to all members of the CSB board of directors in a timely manner and shall discuss the results at a regularly scheduled board meeting. The CSB shall adhere to any licensing guidance documents published by the Department.

C. CSB and Board of Directors Organization and Operations

1. **CSB Organization:** The CSB's organization chart shall be consistent with the current board of directors and staff organization. The organization chart shall include the local governing body or bodies that established the CSB and the board's committee structure.
2. **Board Bylaws:** Board of directors (BOD) bylaws shall be consistent with local government resolutions or ordinances establishing the CSB, board policies, and the CSB's organization chart and shall have been reviewed and revised in the last two years.
3. **CSB Name Change:** If the name of an operating CSB changes, the CSB shall attach to this contract copies of the resolutions or ordinances approving the CSB's new name that were adopted by the boards of supervisors or city councils (local governing bodies) that established the CSB. If the number of appointments made to the CSB by its local governing bodies changes, the CSB shall attach to this contract copies of the resolutions or ordinances adopted by the local governing bodies that changed the number of appointments.

If the name of an administrative policy CSB that is not a local government department or that serves more than one city or county changes, the CSB shall attach to this contract copies of the resolutions or ordinances approving the CSB's new name that were adopted by the boards of supervisors or city councils (local governing bodies) that established the CSB. If the number of appointments made to the CSB by its local governing bodies changes, the CSB shall attach to this contract copies of the resolutions or ordinances adopted by the local governing bodies that changed the number of appointments.

4. **BOD Member Job Description:** The BOD and executive director shall develop a board member position description, including qualifications, duties and responsibilities, and time requirements that the CSB shall provide to its local governing bodies to assist them in board appointments.
5. **BOD Member Training:** The executive director shall provide new board members with training on their legal, fiduciary, regulatory, policy, and programmatic powers and responsibilities and an overview of the performance contract within one month of their appointment. New board members shall receive a board manual before their first board meeting with the information needed to be an effective board member.
6. **BOD Policies:** The BOD shall adopt policies governing its operations, including board-staff relationships and communications, local and state government relationships and communications, committee operations, attendance at board meetings, oversight and monitoring of CSB operations, quality improvement, conflict of interests, freedom of information, board member training, privacy, security, and employment and evaluation of and relationship with the executive director.
7. **FOIA Compliance:** The BOD shall comply with the Virginia Freedom of Information Act (FOIA) in the conduct of its meetings, including provisions governing executive sessions or closed meetings, electronic communications, and notice of meetings.

8. **BOD Meeting Schedule:** The BOD shall adopt an annual meeting schedule to assist board member attendance.
 9. **Meeting Frequency:** The BOD shall meet frequently enough (at least six times per year) and receive sufficient information from the staff to discharge its duties and fulfill its responsibilities. This information shall include quarterly reports on service provision, funds and expenditures, and staffing in sufficient detail and performance on the behavioral health and developmental performance measures and other performance measures in Exhibit B. Board members shall receive this information at least one week before a scheduled board meeting.
- D. Reporting Fraud:** Fraud is an intentional wrongful act committed with the purpose of deceiving or causing harm to another party. Upon discovery of circumstances suggesting a reasonable possibility that a fraudulent transaction has occurred, the CSB's executive director shall report this information immediately to any applicable local law enforcement authorities and the Department's Internal Audit Director. All CSB financial transactions that are the result of fraud or mismanagement shall become the sole liability of the CSB, and the CSB shall refund any state or federal funds disbursed by the Department to it that were involved in those financial transactions. The CSB shall ensure that new CSB board members receive training on their fiduciary responsibilities under applicable provisions of the Code and this contract and that all board members receive annual refresher training on their fiduciary responsibilities.
- E. Financial Management:** The CSB shall comply with the following requirements, as applicable.
1. To avoid any appearance of conflict or impropriety, the CSB shall provide complete annual financial statements to its Certified Public Accountant (CPA) for audit. If the CSB does not produce its annual financial statements internally, it should not contract production of the statements to the same CPA that conducts its annual independent audit.
 2. Operating CSBs and the BHA shall rebid their CPA audit contracts at least every three years once the current CPA contracts expire. If the Department determines in its review of the CPA audit provided to it or during its financial review of the CSB that the CSB's CPA audit contains material omissions or errors and informs the CSB of this situation, this could be grounds for the CSB to cancel its audit contract with the CPA.
 3. A designated staff person shall review all financial reports prepared by the CSB for the reliance of third parties before the reports are presented or submitted and the reviews shall be documented.
 4. All checks issued by the CSB that remain outstanding after one year shall be voided.
 5. All CSB bank accounts shall be reconciled regularly, and a designated staff person not involved in preparing the reconciliation shall approve it.
 6. A contract administrator shall be identified for each contract for the purchase of services entered into by the CSB, and every contract shall be signed by a designated staff person and each other party to the contract, where applicable.
 7. A designated staff person shall approve and document each write-off of account

receivables for services to individuals. The CSB shall maintain an accounts receivable aging schedule, and debt that is deemed to be uncollectable shall be written off periodically. The CSB shall maintain a system of internal controls including separation of duties to safeguard accounts receivable assets. A designated staff person who does not enter or process the CSB's payroll shall certify each payroll.

8. The CSB shall maintain documentation and reports for all expenditures related to the federal Mental Health Block Grant and federal Substance Abuse Prevention and Treatment Block Grant funds contained in Exhibit A sufficient to substantiate compliance with the restrictions, conditions, and prohibitions related to those funds.
9. The CSB shall maintain an accurate list of fixed assets as defined by the CSB. Assets that are no longer working or repairable or are not retained shall be excluded from the list of assets and written off against accumulated depreciation, and a designated staff person who does not have physical control over the assets shall document their disposition. The current location of or responsibility for each asset shall be indicated on the list of fixed assets.
10. Access to the CSB's information system shall be controlled and properly documented. Access shall be terminated in a timely manner when a staff member is no longer employed by the CSB to ensure security of confidential information about individuals receiving services and compliance with the Health Insurance Portability and Accountability Act of 1996 and associated federal or state regulations.
11. If it is an operating CSB or the BHA, the CSB shall maintain an operating reserve of funds sufficient to cover at least two months of personnel and operating expenses and ensure that the CSB's financial position is sound. An operating reserve consists of available cash, investments, and prepaid assets. At any point during the term of this contract, if it determines that its operating reserve is less than two months, the CSB shall notify the Department within 10 calendar days of the determination and develop and submit a plan to the Department within 30 business days that includes specific actions and timeframes to increase the reserve to at least two months in a reasonable time. Once it approves the plan, the Department shall incorporate it as an Exhibit D of this contract and monitor the CSB's implementation of it. The CSB's annual independent audit, required by section II.A.2.c of the CSB Administrative Requirements, presents the CSB's financial position, the relationship between the CSB's assets and liabilities. If its annual independent audit indicates that the CSB's operating reserve is less than two months, the CSB shall develop a plan that includes specific actions and timeframes to increase the reserve to at least two months in a reasonable time and submit the plan to the Department within 30 calendar days of its receipt of the audit for the Department's review and approval. Once it approves the plan, the Department shall incorporate it as an Exhibit D of this contract and monitor the CSB's implementation of it.

F. Employment of a CSB Executive Director or BHA Chief Executive Officer (CEO)

1. When an operating CSB executive director or behavioral health authority (BHA) chief executive officer (CEO) position becomes vacant, the CSB or BHA board of directors

(BOD) shall conduct a broad and thorough public recruitment process that may include internal candidates and acting or interim executive directors. The CSB or BHA shall work with the Department's Human Resources Department (HR) in its recruitment and selection process in order to implement applicable provisions of § 37.2-504 or § 37.2-605 of the Code and to ensure selection of the most qualified candidate. The CSB or BHA shall provide a current position description and salary and the advertisement for the position to the HR for review and approval prior to advertising the position. The CSB or BHA BOD shall invite HR staff to meet with it to review the board's responsibilities and to review and comment on the board's screening criteria for applicants and its interview and selection procedures before the process begins. The CSB or BHA BOD shall follow the steps outlined in the current CSB Executive Director Recruitment Process Guidance issued by the Department, adapting the steps to reflect its unique operating environment and circumstances where necessary, to have a legally and professionally defensible recruitment and selection process. Department staff shall work with the BOD search committee to help it use the Guidance document in its process.

The CSB or BHA BOD shall include an HR staff as a voting member of its search committee to provide the Department's perspective and feedback directly to the committee.

Prior to employing a new executive director or CEO, the CSB or BHA shall provide a copy of the application and resume of the successful applicant and the proposed salary to the HR for review and approval for adherence to minimum qualifications and the salary range established by the Department pursuant to § 37.2-504 or § 37.2-605 and contained in the current CSB Executive Director Recruitment Process Guidance. If the CSB or BHA proposes employing the executive director or CEO above the middle of the salary range, the successful applicant shall meet the preferred qualifications in addition to the minimum qualifications in the Guidance. This review does not include Department approval of the selection or employment of a particular candidate for the position. Section 37.2-504 or § 37.2-605 of the Code requires the CSB or BHA to employ its executive director or CEO under an annually renewable contract that contains performance objectives and evaluation criteria. The CSB or BHA shall provide a copy of this employment contract to the HR for review and approval prior to employment of the new executive director or CEO or before the contract is executed.

2. When an administrative policy CSB executive director position becomes vacant, the CSB may involve staff in the Department's HR in its recruitment and selection process in order to implement applicable provisions of § 37.2-504 or § 37.2-605 of the Code. The CSB shall provide a current position description and the advertisement for the position to the HR for review prior to the position being advertised pursuant to § 37.2-504 of the Code. Prior to employing the new executive director, the CSB shall provide a copy of the application and resume of the successful applicant to the HR for review and approval for adherence to minimum qualifications established by the Department pursuant to § 37.2-504. This review does not include Department approval of the selection or employment of a particular candidate for the position. While § 37.2-504 of the Code does not require an administrative policy CSB to employ its executive director under an annually renewable contract that contains performance objectives and evaluation criteria, the CSB should follow this accepted human resource management practice.

II. Compliance with Federal Requirements

A. General Federal Compliance Requirements: The CSB shall comply with all applicable federal statutes, regulations, policies, and other requirements, including applicable provisions of the federal Project for Assistance in Transition from Homelessness (CFDA 93.150), Mental Health Services Block Grant (CFDA 93.958), Substance Abuse Block Grant (CFDA 93.959), Virginia Road2Home Project (CFDA 93.243), and VA Strategic Prevention Framework Prescription Drug Abuse & Heroin Overdose Prevention (CFDA 93.243) and requirements contained in Appendix C of the CSB Administrative Requirements and the:

1. Federal Immigration Reform and Control Act of 1986; and
2. Confidentiality of Alcohol and Substance Abuse Records, 42 C.F.R. Part 2.

Non-federal entities, including CSBs, expending \$750,000 or more in a year of federal awards shall have a single or program-specific audit conducted for that year in accordance with Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards – 2 CFR Chapter I, Chapter II, Part 200 et seq.

CSBs shall prohibit the following acts by themselves, their employees, and agents performing services for them:

1. the unlawful or unauthorized manufacture, distribution, dispensation, possession, or use of alcohol or other drugs; and
2. any impairment or incapacitation from the use of alcohol or other drugs, except the use of drugs for legitimate medical purposes.

Identifying information for these federal grants is listed below.

CFDA 93.150

Project for Assistance in Transition from Homelessness (PATH)

Federal Award Identification Number (FAIN): SM016047-16 Federal

Award Period 09/01/2018 – 08/31/2019

Federal Awarding Agency: Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services

CFDA 93.958

Community Mental Health Services - Mental Health Block Grant (MHBG)

Federal Award Identification Number (FAIN): SM010053-16

Federal Award Period 10/01/2017 - 09/30/2019

Federal Awarding Agency: Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services

CFDA 93.959

Prevention and Treatment of Substance Abuse - Substance Abuse Block Grant (SABG)

Federal Award Identification Number (FAIN): TI010053-16

Federal Award Period 10/01/2017 - 09/30/2019

Federal Awarding Agency: Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment

CFDA 93.243

Virginia Road2Home Project (CABHI – Cooperative Agreement to Benefit Homeless

Individuals)

Federal Award Identification Number (FAIN): TI026051

Federal Award Period 09/30/2018 – 09/29/2019

Federal Awarding Agency: Department of Health and Human Services
Substance Abuse and Mental Health Services Administration
Center for Substance Abuse Treatment

VA SPF PFS Prescription Drug Abuse & Heroin Overdose Prevention

Federal Award Identification Number (FAIN): SP020791 Federal

Award Period 09/30/2018 – 09/29/2019

Federal Awarding Agency: Department of Health and Human Services Substance Abuse and
Mental Health Services Administration Center for Substance Abuse Prevention

B. Disaster Response and Emergency Service Preparedness Requirements: The CSB agrees to comply with section 416 of Public Law 93-288 (the Stafford Act) and § 44-146.13 through § 44-146.28 of the Code regarding disaster response and emergency service preparedness. These Code sections authorize the Virginia Department of Emergency Management, with assistance from the Department, to execute the *Commonwealth of Virginia Emergency Operations Plan*, as promulgated through Executive Order 50 (2012).

Disaster behavioral health assists with mitigation of the emotional, psychological, and physical effects of a natural or man-made disaster affecting survivors and responders. Disaster behavioral health support is most often required by Emergency Support Function No. 6: Mass Care, Emergency Assistance, Temporary Housing, and Human Services; Emergency Support Function No. 8: Health and Medical Services; and Emergency Support Function No. 15: External Affairs. The CSB shall:

1. provide the Department with and keep current 24/7/365 contact information for disaster response points of contact at least three persons deep;
2. report to the Department all disaster behavioral health recovery and response activities related to a disaster;
3. comply with all Department directives coordinating disaster planning, preparedness, response, and recovery to disasters; and
4. coordinate with local emergency managers, local health districts, the Department, and all appropriate stakeholders in developing a Disaster Behavioral Health Annex template for each locality's Emergency Operations Plan.

The Disaster Behavioral Health Annex template shall address: listing behavioral health services and supports, internal to CSB and at other organizations in the community, available to localities during the preparedness, response, and recovery phases of a disaster or emergency event and designating staff to provide disaster behavioral health services and supports during emergency operations.

To implement this plan, the CSB shall:

1. Develop protocols and procedures for providing behavioral health services and supports during emergency operations;
2. Seek to participate in local, regional, and statewide planning, preparedness, response, and recovery training and exercises;
3. Negotiate disaster response agreements with local governments and state facilities; and

4. Coordinate with state facilities and local health departments or other responsible local agencies, departments, or units in preparing all hazards disaster plans.

C. Federal Certification Regarding Lobbying for the Mental Health and Substance Abuse Block Grants: The CSB certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the CSB, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the CSB shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The CSB shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, or cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 or more than \$100,000 for each failure.

III. Compliance with State and Federal Requirements

A. Employment Anti-Discrimination: The CSB shall conform to the applicable provisions of Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, Sections 503 and 504 of the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Act of 1974, the Age Discrimination in Employment Act of 1967, the Americans With Disabilities Act of 1990, the Virginians With Disabilities Act, the Virginia Fair Employment Contracting Act, the Civil Rights Act of 1991, regulations issued by Federal Granting Agencies, and other applicable statutes and regulations, including § 2.2-4310 of the Code. The CSB agrees as follows.

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

of the CSB, will state that it is an equal opportunity employer.

3. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. Service Delivery Anti-Discrimination: The CSB shall conform to the applicable provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act of 1990, the Virginians With Disabilities Act, the Civil Rights Act of 1991, regulations issued by the U.S. Department of Health and Human Services pursuant thereto, other applicable statutes and regulations, and paragraphs 1 and 2 below.

1. Services operated or funded by the CSB have been and will continue to be operated in such a manner that no person will be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under such services on the grounds of race, religion, color, national origin, age, gender, or disability.
2. The CSB and its direct and contractual services will include these assurances in their services policies and practices and will post suitable notices of these assurances at each of their facilities in areas accessible to individuals receiving services.
3. The CSB will periodically review its operating procedures and practices to insure continued conformance with applicable statutes, regulations, and orders related to non-discrimination in service delivery.

Exhibit K: State Hospital Census Management Admission and Discharge Requirements

- 1. Admission-Related Requirements:** The CSB shall implement and adhere to the following procedures to meet these admission-related requirements and supplement procedures in the current Collaborative Discharge Protocols for Community Services Boards and State Hospitals, available at the Internet link in Exhibit L.
 - a. Notification of Admission:** Emergency services clinicians who perform pre-admission screening evaluations shall notify the CSB discharge planner of every admission to a state hospital within 24 hours of the issuance of the temporary detention order (TDO).
 - b. Documentation of Bed Search:** Emergency services clinicians shall make every effort to gain admission of an individual under a TDO to a private psychiatric hospital or an inpatient psychiatric unit of a general hospital before recommending admission to a state hospital. Emergency services clinicians shall complete the attached form or otherwise gather the information contained in the attached form including use of the same denial codes to document all contacts with private psychiatric hospitals or inpatient units about admission prior to seeking an admission to a bed of last resort in a state hospital. If the emergency services clinician seeks admission to a bed of last resort, the clinician shall transmit the completed form or the information contained in the attached form to the receiving state hospital with the preadmission screening evaluation form.
- 2. Discharge-Related Requirements:** The CSB shall implement and adhere to the following procedures to meet these discharge-related requirements and supplement procedures in the current Collaborative Discharge Protocols for Community Services Boards and State Hospitals.
 - a. Notification of Discharge Planning Personnel:** The CSB shall provide a list to the Director of Acute Care Services in the Department with the name of each CSB staff who provides discharge planning services for individuals in state hospitals, his or her role and title, and the FTE equivalency for the hours he or she spends in discharge planning. The CSB shall notify the Director of Acute Care Services whenever it makes changes to this list, including adjustments in the hours spent providing discharge planning.
 - b. List of Available Community Housing Resources:** The CSB, with the other CSBs in its region, shall implement and maintain a process for communicating and updating a list of available CSB and regional housing resources, including willing private providers, funded by the Department for individuals being discharged from state hospitals using a format provided by the Department. The CSB, with the other CSBs in its region, shall review and update this list at each regional discharge planning meeting to ensure that all resource options are explored for individuals who are ready for discharge or on the extraordinary barriers to discharge list.
 - c. Standardized Data Review:** The Department shall provide CSB executive directors and the regional manager with standardized data by the 16th of each month for the preceding month about each CSB and the region that includes the monthly bed use per 100,000 adults (18 - 64 years old) and older adults (65 years old plus). The CSB, with the other CSBs in its region, shall incorporate a review of this data in its regional discharge planning, mental health services council, emergency services council, and executive director meetings. Meeting minutes of each council or group shall reflect this review and any actions taken in response to it.
 - d. Resolution Process for Outstanding Issues:** In order to facilitate solution-oriented

communications and establish timely and effective problem solving processes, the CSB, with the other CSBs in its region, shall implement and maintain a bidirectional process with time frames and clearly defined steps for notification, discussion, and resolution of issues at the CSB, state hospital, regional, or Departmental levels.

3. Additional Discharge-Related Requirements for CSBs with an Average Daily State Hospital Census of More Than Eight Beds: The Department shall calculate each CSB's average daily census per 100,000 adults and older adults for individuals with the following admission legal statuses:

- civil temporary detention order (TDO), ● court-mandated voluntary,
- civil commitment, ● voluntary, and
- not guilty by reason of insanity with 48-hour unescorted community visit privileges.

If the CSB's bed use is at or below the established threshold of an average daily census of eight or less beds per 100,000 adults and older adults, the Department shall exempt it from the following additional requirements at the time of the quarterly review. If an exempt CSB's average monthly bed use for the prior quarter is above the established threshold, it will have a grace period of the next three months to reduce its bed use to the exemption threshold. If the exempt CSB is unsuccessful in meeting this threshold over this six-month period, it shall comply with the following additional requirements. During the third week of each quarter, the Department shall review each CSB's use of beds per 100,000 adults and older adults for the prior three months to determine if the CSB meets the exemption threshold for complying with the following requirements. State hospital actions related to these requirements are in *italics*.

a. Notification of Ready for Discharge (RFD) and Placement on the Extraordinary Barriers to Discharge List (EBL): All CSB staff involved in discharge planning shall use Cisco encryption to communicate about an individual in a state hospital who is RFD or is on the EBL. No communication about these individuals shall occur by facsimile or U.S. mail. The individual's CSB discharge liaison, the discharge liaison's immediate supervisor, the CSB behavioral health director or equivalent position, and the CSB executive director shall receive notification of the individual being determined to be RFD or on the EBL from the state hospital social worker within the timeframes described below.

- 1.) **RFD Notification:** *Every Wednesday, the state hospital social worker will use Cisco-encrypted email to provide notification of every individual who is RFD but will not be discharged within 72 hours of being found to be RFD.*
- 2.) **EBL Notification:** *Within one business day of an individual being placed on the EBL, the state hospital social worker will use Cisco-encrypted email to provide notification of the individual's placement on the EBL.*

b. Transportation Requirement: When transportation is the only remaining barrier to an individual's discharge, the CSB shall implement and maintain a process with the applicable state hospital for resolving transportation issues so that discharge occurs within 72 hours of the individual being determined to be RFD.

c. Referral Time Frame Requirements: The CSB shall implement and maintain a process for meeting the following referral requirements.

- 1.) **CSB Mental Health Services and Housing:** The state hospital treatment team will review the discharge needs for each of the services listed below in the development of an individual's comprehensive treatment plan. If referrals for these services are needed for

an individual, the state hospital social worker will refer the individual to the case management CSB for screening of eligibility for these services within two business days of the treatment team identifying and agreeing with the need for the service or resource.

Once the state hospital social worker makes the referral, the CSB shall complete the assessment with the individual within eight business days of the referral. The CSB shall share the outcome of the assessment and the date(s) when the services will be available with the state hospital treatment team immediately upon completion of the assessment.

- a.) Psychosocial rehabilitation services
- b.) Case management services
- c.) Mental health skill building services
- d.) Permanent supportive housing
- e.) Assertive community treatment (PACT/ICT)
- f.) Other residential services or placements operated by the CSB or in its region

2.) Individuals Adjudicated Not Guilty by Reason of Insanity

- a.) *The state hospital will complete and submit a packet requesting an increase in privilege level within 10 business days of the treatment team identifying the individual as being eligible for an increase in privilege level.*
- b.) The CSB shall review, edit, sign, and return to the state hospital a risk management plan for the individual within five business days of receipt of the plan so as not to delay progression of the individual through the graduated release process.
- c.) The CSB shall develop and transmit to the state hospital a conditional release plan within 10 business days of being notified by the state hospital that it has recommended an individual for conditional release.

3.) Guardianship

- a.) *Within two business days of the treatment team determining that an individual needs a guardian, the state hospital social worker will notify the discharge planner at the individual's case management CSB of the need. Within two business days of this notification, the CSB shall explore potential individuals to serve in that capacity.*
- b.) If it cannot locate a suitable candidate within 10 business days who agrees to serve as the guardian, the CSB shall initiate steps to secure a guardian from the public guardianship program.
- c.) These activities shall start and continue regardless of the individual's discharge readiness level.

4.) Individuals with Developmental Disabilities

- a.) Within two business days of admission to a state hospital of an individual with a developmental disability with a moderate, severe, or profound intellectual disability for whom it is the case management CSB, the CSB shall determine and report to the state hospital if the individual:
 - is receiving developmental services,
 - is receiving Medicaid development disability (DD) waiver services,
 - is on a DD waiver waiting list, or
 - should be screened for the DD waiver.

- b.) Within five business days of admission, the CSB shall complete a REACH referral for anyone with a developmental disability diagnosis if the REACH program is not already following the individual.
- c.) When indicated based on the above information, the CSB shall complete the VIDES within 10 business days of the individual's admission to a state hospital.
- d.) *When the CSB does not complete requested referrals or assessments within five business days of the request, the state hospital director will contact the CSB executive director to resolve delays in the referral and assessment processes.*

5.) Assisted Living Facilities (ALFs)

- a.) When an individual's ability to live independently is unclear, the state hospital will ensure that an Independent Living Skills (ILS) assessment is made and completed within five working days of referral. Referrals for ILS assessments when indicated should be made when the individual is at Discharge Ready Level 2.
- b.) As soon as a supervised ALF setting is being considered for an individual in a state hospital, the CSB shall obtain releases from the individual or his or her substitute decision maker in order to contact potential ALFs and begin initial contacts regarding bed availability and willingness to consider the individual for placement. The CSB shall start this process prior to the individual being determined to be RFD.
- c.) The state hospital will complete the uniform assessment instrument (UAI) within five business days of the individual being found to be at Discharge Ready Level 2
- d.) The CSB shall send referral packets to potential ALF placements identified above within two business days after the individual is determined to be RFD. The CSB shall send multiple applications simultaneously.

6.) Nursing Homes

- a.) As soon as a supervised nursing home setting is being considered for an individual in a state hospital, the CSB shall obtain releases from the individual or his or her substitute decision maker in order to contact potential nursing homes and begin initial contacts regarding bed availability and willingness to consider the individual for placement.
- b.) *The state hospital will complete the UAI within five business days of the individual being found to be at Discharge Ready Level 2.*
- c.) *Within two business days of being found to be at Discharge Ready Level 1, the state hospital will send the packet to Ascend for Level 2 nursing home screening.*
- d.) The CSB shall send applications to potential nursing homes identified above within two business days of the Level 2 response from Ascend.

- 4. Regional Protocols:** The CSB, with the other CSBs in its region, shall incorporate the requirements in sections 1 through 3 of this exhibit in applicable regional protocols and submit the revised draft regional protocols to the Department's Director of Acute Care Services for review and approval.

**FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
RENEWAL AND REVISIONS**

ATTACHMENT 2

State hospital notified of ECO (time, contact, initials): _____

Bed Search Tracking Form		Client:	Date:		CSB Staff:	
Name of Facility	Address/ Phone#/Fax#	Time of contact	Name of contact	Time info faxed/sent	Time of follow up contact	Results of Contacts (List Denial Code for Each Facility)
Private Facilities						Notes: Include additional information.
						<input type="checkbox"/> Denied:
						<input type="checkbox"/> Denied:
						<input type="checkbox"/> Denied:
						<input type="checkbox"/> Denied:
						<input type="checkbox"/> Denied:
						<input type="checkbox"/> Denied:
						<input type="checkbox"/> Denied:
State-funded Contract Facilities						Notes:
						<input type="checkbox"/> Denied:
State Facility						Notes:

Denial reason codes/Declined admission codes:

- | | | |
|------------------------------------|---------------------------------|-----------------------|
| 1. Medical complications/clearance | 4. Client illness chronicity | 7. No timely response |
| 2. No available beds | 5. Milieu issues/acuity of unit | 8. Other (specify) |
| 3. Acuity of client | 6. Diagnosis | |

**FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
RENEWAL AND REVISIONS**

ATTACHMENT 2

Exhibit L: Alphabetical Listing of Documents Referenced in the Performance Contract With Internet Links
Current CSB Administrative Requirements http://www.dbhds.virginia.gov/office-of-management-services under Performance Contract - Documents
Current Central Office, State Facility, and Community Services Board Partnership Agreement http://www.dbhds.virginia.gov/office-of-management-services under Performance Contract - Documents
Current Community Consumer Submission 3 (CCS 3) Extract Specifications http://www.dbhds.virginia.gov/office-of-management-services under Community Consumer Submission 3 (CCS 3)
Current Core Services Taxonomy http://www.dbhds.virginia.gov/office-of-management-services under Community Consumer Submission 3 (CCS 3)
Procedures for Approving CSB Surveys, Questionnaires, and Data Collection Instruments and Establishing Reporting Requirements http://www.dbhds.virginia.gov/office-of-management-services under Performance Contract Resources
Discharge Assistance Program Manual This document is not available yet on the Department's web page.
Collaborative Discharge Protocols for Community Services Boards and State Hospitals - Adult & Geriatric or Child & Adolescent This document is not available yet on the Department's web page.
Training Center - Community Services Board Admission and Discharge Protocols for Individuals with Intellectual Disabilities http://23.29.59.140/assets/Developmental-Services/training-centers/ods-admission-discharge-protocol.pdf
Enhanced Case Management Criteria Instructions and Guidance This document is not available yet on the Department's web page.
<i>Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services</i> https://law.lis.virginia.gov/admincode/title12/agency35/chapter115/
<i>Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services</i> https://law.lis.virginia.gov/admincode/title12/agency35/chapter105/
<i>Medical Screening and Medical Assessment Guidance Materials</i> This document is not available yet on the Department's web page.
Certification of Preadmission Screening Clinicians This document is not available yet on the Department's web page.
Permanent Supportive Housing Initiative Operating Guidelines This document is not available yet on the Department's web page.
Regional Utilization Management Guidance document http://www.dbhds.virginia.gov/office-of-management-services under Performance Contract Resources
Residential Crisis Stabilization Unit Expectations This document is not available yet on the Department's web page.

**FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
RENEWAL AND REVISIONS**

ATTACHMENT 2

Exhibit L: Alphabetical Listing of Documents Referenced in the Performance Contract With Internet Links			
SIS [®] Administration Process; http://www.dbhds.virginia.gov/library/developmental%20services/dbhds-sis%20standard%20operating%20procedures%20and%20review%20process%2002-21-17%20final.pdf			
State Board Policy 1030 (SYS) 90-3 Consistent Collection and Use of Data About Individuals and Services http://www.dbhds.virginia.gov/assets/doc/about/boards/BHDS/1030-(SYS)-9-05-April-2013.pdf			
State Board Policy 1035 (SYS) 05-2 Community Services Board Single Point of Entry and Case Management Services http://www.dbhds.virginia.gov/assets/doc/about/boards/BHDS/State-Board-Policy-1035-(SYS)-05-2-final-July-2013.pdf			
State Board Policy 1036 (SYS) 05-3 Vision Statement http://www.dbhds.virginia.gov/assets/doc/about/boards/BHDS/1036-(SYS)-05-3-December-2016.pdf			
State Board Policy 1044 (SYS) 12-1 Employment First http://www.dbhds.virginia.gov/assets/doc/about/boards/BHDS/1044-(SYS)-12-1.pdf			
State Board Policy 4010 (CSB) 83-6 Local Matching Requirements for Community Services Boards and Behavioral Health Authorities http://www.dbhds.virginia.gov/assets/doc/about/boards/BHDS/4010-(CSB)-83-6-10-2016-FINAL.pdf			
State Board Policy 4018 (CSB) 86-9 Community Services Performance Contracts http://www.dbhds.virginia.gov/about-dbhds/Boards-Councils/state-board-of-BHDS/bhds-policies			
Settlement Agreement for Civil Action No: 3:12cv00059-JAG between the U.S. Department of Justice and the Commonwealth of Virginia http://23.29.59.143/assets/document-library/archive/library/developmental%20services/dds_final%20edva%20order%20and%20settlement%20agreement.pdf			
Exhibit L: Listing of Acronyms			
Acronym	Name	Acronym	Name
ACE	Adverse Childhood Experiences	NCI	National Core Indicators
BAA	Business Associate Agreement (for HIPAA compliance)	NGRI	Not Guilty by Reason of Insanity
CARS	Community Automated Reporting System	OMS	Office of Management Services
CCS 3	Community Consumer Submission 3	PACT	Program of Assertive Community Treatment
CFR	Code of Federal Regulations	PATH	Projects for Assistance in Transition from Homelessness
CIT	Crisis Intervention Team	PHI	Protected Health Information
CPMT	Community Policy and Management Team (CSA)	PII	Personally Identifiable Information
CQI	Continuous Quality Improvement	PSH	Permanent Supportive Housing
CRC	Community Resource Consultant (DD Waivers)	QSR	Quality Service Reviews
CSA	Children's Services Act (§ 2.2-5200 et seq. of the Code)	RCSU	Residential Crisis Stabilization Unit
CSB	Community Services Board	RDAP	Regional Discharge Assistance Program
DAP	Discharge Assistance Program	REACH	Regional Education Assessment Crisis Services Habilitation
DBHDS	Department	RFP	Request for Proposal

**FY 2019 AND FY 2020 COMMUNITY SERVICES PERFORMANCE CONTRACT
RENEWAL AND REVISIONS**

ATTACHMENT 2

Exhibit L: Listing of Acronyms			
Acronym	Name	Acronym	Name
DD	Developmental Disabilities	RMG	Regional Management Group
Department	Department of Behavioral Health and Developmental Services	RST	Regional Support Team (DD Waivers)
DMAS	Department of Medical Assistance Services (Medicaid)	RUMCT	Regional Utilization Management and Consultation Team
DOJ	Department of Justice (U.S.)	SABG	Federal Substance Abuse Block Grant
EBL	Extraordinary Barriers to Discharge List	SDA	Same Day Access
EHR	Electronic Health Record	sFTP	Secure File Transfer Protocol
FTE	Full Time Equivalent	SPF	Strategic Prevention Framework
HIPAA	Health Insurance Portability and Accountability Act of 1996	TDO	Temporary Detention Order
ICC	Intensive Care Coordination (CSA)	VACSB	Virginia Association of Community Services Boards
ICF	Intermediate Care Facility	VIDES	Virginia Individual DD Eligibility Survey
IDAPP	Individualized Discharge Assistance Program Plan	WaMS	Waiver Management System (DD Waivers)
LIPOS	Local Inpatient Purchase of Services	SPQM	Service Process Quality Management

Board Agenda Item
September 15, 2020

ACTION - 5

Approval of Use of Tysons Grid of Streets Road Fund Revenue for Center Street Land Acquisition Purchase in Tysons (Providence District)

ISSUE:

Board approval of use of Tysons Grid of Street Road Fund revenue for the funding of land acquisition for Center Street in Tysons.

RECOMMENDATION:

The County Executive recommends that the Board approve the use of up to \$2,790,000 in Tysons Grid of Streets Road Fund revenues for acquisition of a perpetual street easement and a temporary construction easement for Center Street in Tysons.

TIMING:

The Board should act on this item on September 15, 2020, so that staff can acquire this easement prior to the September 30, 2020, which marks the end of the federal fiscal year.

BACKGROUND:

The acquisition of easements for Center Street has been an ongoing joint effort between Fairfax County Department of Transportation (FCDOT), the U.S. Government, and representatives from the adjacent Tysons Central mixed-use development (RZ 2011-PR-005) to facilitate an important grid street, completing a connection between Route 7 and Greensboro Drive. Approved in 2013, the Tysons Central development proffered to construct on and off-site portions of Center Street, in conjunction with certain phases of their development. The offsite portion of Center Street falls partially on US government property, administered by the US Army Corps of Engineers, which requires localities to provide compensation for obtaining land rights such as perpetual street easements for road construction. Appraisals were performed to determine the land value and cost associated with the perpetual street easement and temporary construction easement, and the US Army Corps of Engineers has agreed to the above referenced amount for the land rights. A map of the area showing the location of Center Street has been included as an attachment.

Board Agenda Item
September 15, 2020

FISCAL IMPACT:

Funding in the amount of up to \$2,790,000 for this request is available in Fund 30040 – Contributed Roadway Improvements, Project 2G40-057-000, Tysons Grid of Streets Developer Contributions. There is no impact to the General Fund.

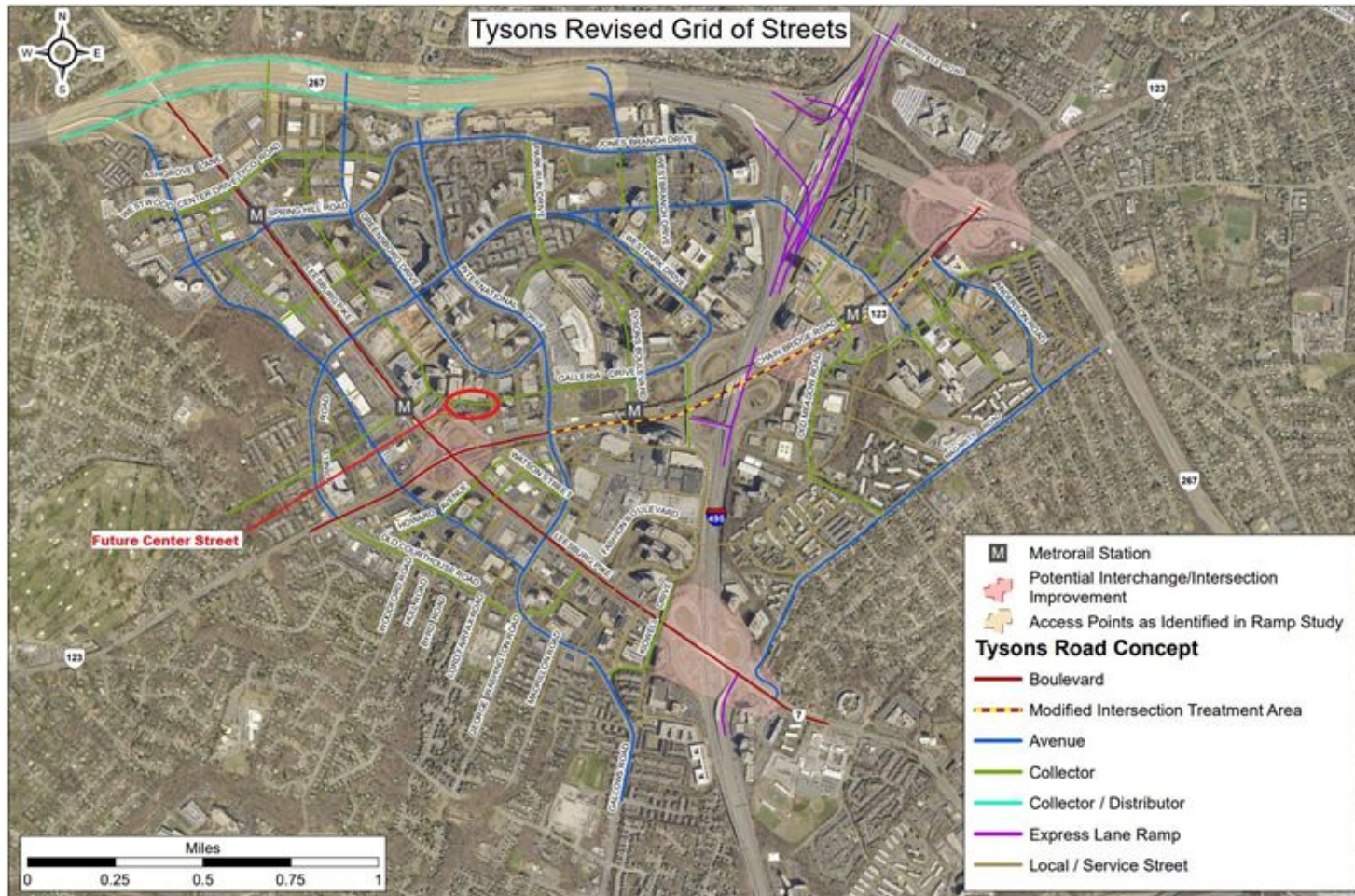
ENCLOSED DOCUMENTS:

Attachment 1 – Map of Center Street Location

STAFF:

Rachael Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Chief, Coordination and Funding Division (CFD), FCDOT
Ray Johnson, Chief, Funding Section, CFD, FCDOT
Smitha Chellappa, Transportation Planner, CFD, FCDOT
Mei Fang, Transportation Planner, CFD, FCDOT
Ricky Foley, Senior Transportation Planner, Capital Projects Division, FCDOT
Greg Fuller, Senior Transportation Planner, Transportation Planning Division, FCDOT
Julie Cline, Director, Land Acquisition Division, Department of Public Works and Environmental Services (DPWES)
Dennis Cate, Branch Chief, Land Acquisition Division, DPWES

Map of Center Street Location



Board Agenda Item
September 15, 2020

ACTION - 6

Approval of a Resolution Endorsing the Mason Neck Trail Project for Submission to the United States Department of Transportation's Federal Highway Administration Virginia Federal Lands Access Program (FLAP) for Fiscal Years 2020-2022 Grant Funding (Mount Vernon District)

ISSUE:

Board of Supervisors' authorization is requested for the Department of Transportation (FCDOT) to apply for funding from the United States Department of Transportation's (USDOT) Federal Highway Administration (FHWA) Fiscal Years 2020-2022 Virginia Federal Lands Access Program (FLAP).

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize the FCDOT to apply for funding in the amount of \$586,393, including \$117,279 in Local Cash Match and to adopt the project endorsement resolution (substantially in the form of Attachment 1).

TIMING:

Board of Supervisors' approval is requested on September 15, 2020, to meet the USDOT submission deadline of October 15, 2020.

BACKGROUND:

The USDOT has recently solicited applications for the FLAP program. The FLAP program was established in 23 U.S.C. 204 to improve transportation facilities that provide access to, are adjacent to, or are located within Federal lands. The Access Program supplements state and local resources for public roads, transit systems, and other transportation facilities, with an emphasis on high-use recreation sites and economic generators.

The Access Program is funded by contract authority from the Highway Trust Fund and allocated among the states using a statutory formula based on road mileage, number of bridges, land area, and visitation. Projects are selected by a Programming Decision Committee (PDC) established in each state, and total federal funding is capped at 80 percent. A 20 percent local match is required.

Board Agenda Item
September 15, 2020

There is no target date for award announcements; however, USDOT has indicated that awards may be announced in early 2021. If the County is successful in securing FLAP funding for the project, staff will return to the Board requesting approval of grant agreement with FHWA.

The Mason Neck Trail project is a shared use path along Gunston Road from Richmond Highway to just north of the Potomac River. The project has two remaining segments to be constructed, a northern, and southern segment. The northern segment is from Julia Taft Way to the entrance of the Pohick Bay Golf Course. The southern segment would tie into the Potomac Heritage National Scenic Trail at High Point Road and run through Commonwealth of Virginia property as well as along the Elizabeth Hartwell Mason Neck National Wildlife Refuge to the Joseph V. Gartlan Great Marsh Trail trailhead parking lot. This resolution applies to the southern segment of the Mason Neck Trail. The total cost estimate for the southern segment is \$5,108,459. The requested grant funding amount of \$586,393 is for preliminary engineering only. The Mason Neck Trail project is included in the 2014 Countywide Bicycle Master Plan and Fairfax Countywide Trails Plan. The FY2020 - 2025 Transportation Priorities Plan only includes funding for the northern segment.

FISCAL IMPACT:

Total grant funding in the amount of \$586,393, including \$117,279 in Local Cash Match, would be requested through this federal program for the project. Funding for the required Local Cash Match of \$117,279 is available in Fund 40010 - County and Regional Transportation Projects. This grant application has no staff positions associated, nor does it have an impact on the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution for Project Endorsement

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Gregg Steverson, Deputy Director, (FCDOT)
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Lisa Witt, Acting Chief, Administration Section, FCDOT
Michael Guarino, Section Chief, Capital Projects Section, FCDOT
Tad Borkowski, Capital Projects Section, FCDOT
Daniel Stevens, Capital Projects Section, 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 of the Fairfax County Government Center of Fairfax, Virginia, on Tuesday, September 15, 2020, at which meeting a quorum was present and voting, the following resolution was adopted:

PROJECT ENDORSEMENT RESOLUTION

WHEREAS, Fairfax County desires to submit an application for funding of \$586,393, including \$117,279 in Local Cash Match (LCM), through the U.S. Department of Transportation’s Federal Highway Administration Fiscal Year 2020-2022 Virginia Federal Lands Access Program for the Mason Neck Trail Project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby endorses and approves submissions of the Mason Neck Trail project to U.S. Department of Transportation’s Federal Highway Administration Fiscal Year 2020-2022 Virginia Federal Lands Access Program, with a requested amount not to exceed \$586,393.

Adopted this 15th day of September 2020, Fairfax, Virginia

ATTEST _____
Jill G. Cooper
Clerk for the Board of Supervisors

Board Agenda Item
September 15, 2020

ACTION - 7

Approval of Project Agreement Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Fiscal Year (FY) 2021 Transit Operating Assistance Grant Funds

ISSUE:

Approval for the Director of the Department of Transportation to sign a Project Agreement with DRPT to enable the County's receipt of FY 2021 transit operating assistance.

RECOMMENDATION:

The County Executive recommends that the Board authorize the Director of the Department of Transportation to sign the Project Agreement between DRPT and Fairfax County, in substantial form of Attachment 1, for FY 2021 transit operating assistance.

TIMING:

The Board of Supervisors should act on this item on September 15, 2020, so that DRPT can release FY 2021 transit operating assistance funding to Fairfax County.

BACKGROUND:

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

In 2012, Fairfax County and DRPT entered into a Master Agreement for the Use of Commonwealth Transportation Funds (the Master Agreement), which provides the basis for which the County receives numerous transportation project grant funds. NVTC acts as Fairfax County's agent for WMATA regional agreements.

In February 2020, DRPT proposed an updated Master Agreement. County staff worked with DRPT to ensure that the document complied with state law and the County Code. After negotiations were complete, the revised agreement was approved by the Board on July 28, 2020, in substantial form of Attachment 2.

Board Agenda Item
September 15, 2020

HB 30 (2020), the Commonwealth's 2020-2022 biennium budget, included language allowing the existing transportation Six-Year Improvement Program (SYIP) to remain in effect through June 30, 2021, or until a new program can be adopted based on updated revenue forecasts reflecting the impact of COVID-19. The language also allowed transit operating funding to be maintained up to funding levels in the existing SYIP until a new program is adopted. Understanding that operating assistance offsets a portion of transit agency operating expenses in a typical year, and that there is significant uncertainty as transit agencies in Virginia adopted their FY 2021 budgets even with federal CARES Act funding, the Commonwealth Transportation Board (CTB) allocated funding equivalent to one quarter of the FY 2020 operating assistance allocation to transit agencies for the first quarter of FY 2021 and agreed to reevaluate the situation in September, 2020.

To facilitate the approval of the agreements by local boards, DRPT has provided the operating assistance agreement for the first quarter of FY 2021, in substantial form of Attachment 1. DRPT will countersign the agreement after the new Master Agreement has been fully executed. FCDOT continues to monitor the availability of assistance for the remaining three quarters of FY 2021 and will return with a subsequent action item when additional funds are approved by the CTB.

FISCAL IMPACT:

This operating assistance agreement will provide State grant funding in the amount of \$3,903,977 for the first quarter of FY 2021. This state grant funding will be received by NVTC and then transferred to Fund 40000, County Transit Systems. This state aid transfer is already included in Fund 40000. There is no General Fund impact.

ENCLOSED DOCUMENTS:

Attachment 1 – Project Grant # 72021-22: Fiscal Year 2021 Operating Assistance for Transit Operations

Attachment 2 – DRPT's Master Agreement (Board Approved)

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, Chief, Coordination Section, FCDOT

Malcolm Watson, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Joanna Faust, Assistant County Attorney

**Project Agreement for Use of
Commonwealth Transportation Funds
Fiscal Year 2021
Six Year Improvement Program Approved Project
Grant Number 72021-22**

This Project Agreement, effective July 1, 2020, by and between the Department and Grantee is for the provision of funding for the Project.

WHEREAS, on February 3, 2020, the Grantee submitted an Application for the Project; and

WHEREAS, the Department has approved partial funding for the Project; and on June 17, 2020, the CTB allocated partial funding for the Project; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of the Parties, the manner of performing the necessary work, the method and time of payment, and other terms and conditions associated with the Project.

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

ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET

1. Under the terms of this Project Agreement, the Grantee shall:
 - a. Provide Fiscal Year 2021 transit operations.
2. The Department agrees to provide funding as detailed below:
 - a. State grant funding in the amount of \$3,903,977 for the Project approved in the amended Fiscal Year 2020 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Project Agreement.
3. The Project Agreement may be amended only upon written agreement of the Parties prior to the Project Expiration Date identified in Appendix 1.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly and allocation by the CTB.

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

The Master Agreement for Use of Commonwealth Mass Transportation Funds agreed and executed by the Parties dated ____, 2020 ("Master Agreement"), is hereby incorporated by reference as if set out in full herein. Terms not defined in this Project Agreement are defined in the Master Agreement.

Appendix 1

Grantee: Fairfax County

**Project: Fiscal Year 2021 Operating Assistance for
the Grantee's Transit Operations**

State Project Agreement

Project Number: 72021-22

Project Start Date: July 1, 2020

Project Expiration Date: June 30, 2021

Operating Assistance Payment Schedule

Payment No.	Estimated Payment Date	Payment Amount
1	July 15, 2020	\$3,903,977
TOTAL GRANT AMOUNT		\$3,903,977

In no event shall this grant exceed \$3,903,977.

MASTER AGREEMENT

FOR USE OF

COMMONWEALTH TRANSPORTATION FUNDS

COUNTY OF FAIRFAX

This Master Agreement (“Agreement”), is made and executed as of the ____ day of _____, 2020 between the Virginia Department of Rail and Public Transportation (“Department”), acting by and through its Director, and the County of Fairfax (“Grantee”) (collectively Department and Grantee referred to as “Parties”). On a case by case basis, the Parties will enter into a project specific agreement (“Project Agreement”) that includes the overall purpose for which grants are awarded (“Project”), the total cost of a Project, the Department and Grantee participation, Project time period, and any subsequent amendments thereto. This Agreement constitutes the terms and conditions governing receipt of grants supported by Commonwealth transportation funds and governs and is incorporated by reference in all Project Agreements approved by the Department. The terms of this Agreement shall apply to all actions such as executing a Project Agreement, requesting reimbursement, requesting extensions or other actions taken pursuant to complete a Project (“Grant Transactions”) from the date of this Agreement until a new Master Agreement for the use of Commonwealth transportation funds is executed by the Department and the Grantee.

ARTICLE 1. PROGRAMS AND FUNDING

§ 1.1 This Agreement contains requirements that must be adhered to by the Grantee for all grants received from the Department.

§ 1.2 Funding is subject to annual appropriation by the Virginia General Assembly (“General Assembly”), allocation by the Commonwealth Transportation Board (“CTB”), and execution by the Parties of this Agreement and an associated Project Agreement. For any grants administered by the Department, the CTB or the General Assembly may change the percentage of the local share that can be financed by Commonwealth transportation funds to a higher or lower percentage than set forth in the Project Agreement. In the event such a change occurs, the applicable percentage will be the new

percentage set by the CTB or the General Assembly. All Eligible Project Costs incurred prior to the date of the change will be governed by the previous percentage.

§ 1.3 In the event that the Grantee receives a subsequent allocation of funding from the Commonwealth of Virginia (“Commonwealth”) other than the Department, or receives Federal funding for a Project, the allocation of grant funds originally allocated for that Project shall be reduced by the amount of the subsequent allocation of Commonwealth or Federal funding. Within thirty (30) days of receipt, the Grantee shall notify the Department in writing when a subsequent allocation of Commonwealth or Federal funding is received.

§ 1.4 The Grantee shall provide funds from sources other than Federal funds, except as may otherwise be authorized by Federal statute, in an amount sufficient, together with the grant funding governed by this Agreement, to assure payment of the total cost of the Project. The Grantee further agrees that no refund or reduction of the amount so provided will be made at any time, unless there is at the same time a refund and/or de-obligation to the Department of a proportional amount of the grant funds paid or to be paid by the Department. The Grantee is obligated to provide its share of Project cost as detailed in the Project Agreement.

§ 1.5 Payment of funds by the Department pursuant to a Project Agreement shall not exceed the Department funding amount identified in the applicable Project Agreement.

ARTICLE 2. ELIGIBLE PROJECT COSTS

§ 2.1 The Grantee agrees to incur costs in accordance with Project Agreements and this Agreement (“Eligible Project Costs”). The Department shall provide reimbursement of Eligible Project Costs submitted by the Grantee in proportion to the percentage of total funding to be provided by the Department pursuant to the Project Agreement. All expenses for which the Grantee seeks reimbursement by the Department shall be charged at the actual cost(s) to the Grantee with no Grantee markup.

§ 2.2 Eligible Project Costs must meet the following requirements:

- A. Be necessary in order to accomplish the Project as identified in an associated Project Agreement;
- B. Be reasonable for the goods or services purchased;
- C. Be actual net costs charged to the Grantee (i.e., the price paid minus any refunds, rebates, salvage, or other items of value received by the Grantee which have the effect of reducing the cost actually incurred and paid);
- D. Be incurred during the time period specified in the associated Project Agreement;
- E. Be in accordance with 2 C.F.R. Pt. 200 Subpart E;
- F. Be based on a cost allocation plan that has been approved in advance by the Department if the costs are indirect costs;
- G. Be documented in accordance with the terms of this Agreement;
- H. Be treated uniformly and consistently under generally accepted accounting principles; and
- I. There must be sufficient remaining allocated Commonwealth transportation funds pursuant to the associated Project Agreement to make the requested reimbursement.

Costs incurred by the Grantee to correct deficiencies in a Project, including costs related to the Grantee's failure to comply with the terms of this Agreement or a Project Agreement, do not qualify as Eligible Project Cost.

The Department shall make the final determination as to whether costs submitted for reimbursement qualify as Eligible Project Costs.

ARTICLE 3. REIMBURSEMENT OF GRANTEE

§ 3.1 Some Projects involving operating costs will require payment based on a schedule. Payment schedules for such projects will be detailed in the Project Agreement. The Department will make payment to the Grantee of the Department's share of scheduled payments as outlined in the Project Agreement. For other Projects not subject to a schedule of payments, grant funds will be distributed by the Department to the Grantee on a reimbursement basis.

§ 3.2 The Grantee shall submit requests for reimbursement using the form ("Project Reimbursement Form") provided by the Department through the Department Online Grant Administration System ("OLGA"). The Grantee shall submit Project Reimbursement Forms no more frequently than once a month and within 90 days from incurrence of Eligible Project Costs. Project Reimbursement Forms must be supported by third party evidence. The Department shall have the right to request additional details. The Grantee shall provide information within 30 days of the Department's request for additional information. The Department will make reimbursement of approved Eligible Project Costs within 30 days of the Department's receipt and approval of Grantee's Project Reimbursement Form. The Grantee shall submit its final reimbursement request to the Department within 90 days of expiration of funding for the Project Agreement.

§ 3.3 The Department shall have the right, in its sole discretion, to withhold reimbursement for Project Reimbursement Forms or line items in Project Reimbursement Forms found to be incomplete or not in conformance with the requirements of this Agreement or the associated Project Agreement. The Department will notify the Grantee of the basis for withholding total or partial reimbursement and will work with the Grantee to resolve disputed items.

§ 3.4 Reimbursement by the Department is not a waiver of Department's claim that said cost violates this Agreement or Project Agreement. Reimbursement is not a final decision by the Department as to validity of the cost as an Eligible Project Cost.

§ 3.5 Any reimbursement paid to the Grantee by the Department not in accordance with the provisions of this Agreement, associated Project Agreement, or Federal, State, or local law, shall be repaid to the Department by the Grantee within 60 days of the Department's written notice to the Grantee of the repayment obligation.

§ 3.6 The Grantee is responsible for payment of all third-parties performing work on behalf of the Grantee ("Contractors"). The Grantee shall attach copies of Contractors' invoices to each Reimbursement request.

§ 3.7 The Grantee shall remit payment to Contractors within five business days of receipt of reimbursement from Department. If, for any reason, the Grantee cannot remit payment to Contractor within five days, the Grantee shall immediately notify the Chief Financial Officer of the Department ("CFO") in writing, inform the CFO of the date Grantee will remit payment to its Contractors, and deposit the reimbursement funds received in an interest bearing account. The Grantee shall use all interest proceeds toward the Project, reducing the funding obligation of the Department outlined in the Project Agreement. Depending upon the Grantee's revised Contractor payment date, the Department may require the Grantee to repay the funds to the Department. If the Grantee fails to comply with this provision, the Department will require the Grantee to prepay Contractors prior to submitting Project Reimbursement Forms.

§ 3.8 With the exception of debt service specifically identified in a Project Agreement, the Grantee may not seek reimbursement for interest payments or charges on debt financing vehicles used to fund Projects.

ARTICLE 4. LAPSE OF FUNDS

§ 4.1 A Project Agreement obligates the Grantee to undertake and complete a Project within the period from the Project Start Date to the Project Expiration Date as identified in the Project Agreement. The Department shall not provide any Reimbursement for any expenses incurred after the Project Expiration Date.

§ 4.2 The Grantee's submission of a Project Reimbursement Form marked "Final," is Grantee's certification that it has completed the Project.

§ 4.3 The Department will withdraw any remaining Commonwealth transportation funds allocated for the Grantee's Project for which a final Project Reimbursement Form has been submitted and paid. Withdrawn funds will be allocated to other projects.

ARTICLE 5. MAINTENANCE OF RECORDS

§ 5.1 The Grantee shall maintain all books, accounting records, and any other documents supporting the Grantee's activities and costs for every Project Agreement. The Grantee shall maintain such records for four years from the end of the state fiscal year (June 30) in which the final payment is made.

The Grantee shall maintain records pertaining to facilities for the Useful Life of the facility. The Grantee shall maintain records pertaining to land in perpetuity. The Grantee shall require Contractors to similarly maintain their books, accounting records, and any other documents supporting the Contractors' activities and costs incurred, and require Contractors contain a similar provision in their contracts with subcontractors.

ARTICLE 6. AUDIT AND INSPECTION OF RECORDS

§ 6.1 The Grantee and Contractors shall permit the authorized representatives of the Department to inspect and audit their records related to the performance of this Agreement. Acceptable records are original documents (such as timesheets, travel reimbursements, invoices, receipts, etc.) that are the basis

of entries on the Payment Reimbursement Forms. The Department may require the Grantee to furnish certified reports of all expenditures under any contracts or subcontracts.

§ 6.2 The Grantee must follow the requirements of 2 C.F.R. pt. 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” A Single Audit¹ is required when an entity spends \$750,000 or more of Federal funds in a year. The Grantee must maintain auditable records and adequate supporting documentation. Grantees spending less than \$750,000 of Federal assistance during any one fiscal year are not required to undergo a Single Audit unless specifically requested by the Department. The Department reserves the right to require any recipient of State funds to undergo an audit the scope of which will be defined by the Department and performed on any matter relating to a Project Agreement.

§ 6.3 If an independent Certified Public Accountant, other auditor, the Department, or any other party conducting an authorized audit finds the Grantee to be out of compliance with any provision of this Agreement, any Project Agreement, or any relevant Federal, State, or local law or regulation, the Grantee must provide a satisfactory corrective action plan to the Department within 60 days of notification of that finding. The scope of any audit conducted must include expenditures made by Contractors and any other recipients of pass-through funds.

§ 6.4 The Grantee agrees if any audit finds payments by the Department were (1) unsupported by acceptable records, or (2) in violation of any other provisions of this Agreement or associated Project Agreement, within 60 days of audit findings, the Grantee will promptly refund unsupported payments or payments found in violation.

¹ Single Audit is an annual audit where all non-Federal entities that expend \$750,000 or more of Federal awards in a year are required to obtain an annual audit in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq.*, and applicable U.S. DOT “Single Audit” requirements of 2 C.F.R. pt. 1201, which incorporate by reference 2 C.F.R. part 200.

§ 6.5 The Grantee must submit audited financial statements to the Department within six months following the end of the Grantee’s fiscal year to:

Virginia Department of Rail and Public Transportation
Attention: Audit Manager
600 East Main Street, Suite 2102
Richmond, VA 23219

§ 6.6 The Grantee shall include language consistent with this Article in its contracts with Contractors to provide the Department the same access to Contractors’ books and records, and requiring the Contractors to include language consistent with this Article in all subcontracts.

ARTICLE 7. PROCUREMENT OF SERVICES

§ 7.1 If the Grantee is not subject to the Virginia Public Procurement Act, then the Grantee shall utilize, and require its Contractors to utilize, competitive processes as follows:

- .1 for procurement of professional services as defined by § 2.2-4301 of the *Code of Virginia* (1950), as amended – a competitive negotiation process acceptable to the Department that is similar to applicable portions of the process set forth in §§ 2.2-4302.2 and 2.2-4303.B of the *Code of Virginia* (1950), as amended. Additional information regarding procedures for procurement of professional services can be found at §§ 2.2 and 3.1 of the most recent edition of the Commonwealth’s Construction and Professional Services Manual (“CPSM”);
- .2 for procurement of construction services, a nonprofessional service as defined by § 2.2-4301 of the *Code of Virginia* (1950), as amended – a competitive bidding process acceptable to the Department that is similar to applicable portions of the process set forth in §§ 2.2-4302.1 and 2.2-4303.D of the *Code of Virginia* (1950), as amended. Additional information regarding procedures for procurement of construction services can be found at § 7.1 of the most recent edition of the CPSM; and

.3 for procurement of nonprofessional services other than construction services as defined by § 2.2-4301 of the *Code of Virginia* (1950), as amended – a competitive sealed bidding or a competitive negotiation process acceptable to the Department that is similar to applicable portions of the processes set forth in §§ 2.2-4302.1, 2.2-4302.2, and 2.2-4303.C of the *Code of Virginia* (1950), as amended.

§ 7.2 The Department reserves the right to review and approve, in advance, any request for proposals or solicitation to bid. The Department also reserves the right to require that the Grantee not execute any contract, amendment, or change order thereto, or to obligate itself in any manner with any third party with respect to the Grantee’s rights, duties, obligations, or responsibilities under this Agreement or any Project Agreement unless and until authorized to do so in writing by the Department.

ARTICLE 8. ASSIGNMENTS

§ 8.1 Assignment of any portion of this Agreement or of any Project Agreement must be preapproved by the Department in writing.

ARTICLE 9. TERM, ENTIRE AGREEMENT, AND AMENDMENT

§ 9.1 This Agreement shall be effective immediately upon its execution.

§ 9.2 This Agreement, and associated Project Agreements, constitute the entire and exclusive agreement between the Parties relating to all specific matters covered therein. All prior or contemporaneous verbal or written agreements, understandings, representations, and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

§ 9.3 The execution of this Agreement and any associated Project Agreements may include electronic signatures using Personal Identification Number (PIN) based access.

§ 9.4 In order to effect a uniform set of terms governing Grant Transactions, effective as of the date of this Agreement, the Grantee and Department agree the terms of this Agreement supersede any and all

previous Master Agreements previously entered between the parties. Any ongoing Project Agreements will be governed by the terms of this Agreement.

ARTICLE 10. NOTICES AND DESIGNATED REPRESENTATIVE

§ 10.1 All notices or communications with respect to this Agreement and associated Project Agreements shall be in writing and shall be deemed delivered (a) by hand, upon day of delivery, (b) by prepaid overnight delivery service, upon the next business day or (c) by U.S. Mail, certified, postage prepaid, return receipt requested, on the third business day following mailing. All notices or communications with respect to this Agreement and associated Project shall be delivered to the addresses set forth below or such other addresses as may be specified by a party.

Designated
Representative:

Department:

Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219
Attention: Chief Financial Officer
Chief of Public Transportation

Grantee:

Tom Biesiadny, Director
NAME AND TITLE
Fairfax County Department of Transportation
4050 Legato Road, Fairfax, VA 22033
ADDRESS
Tom.Biesiadny@fairfaxcounty.gov
E-MAIL ADDRESS

ARTICLE 11. TERMINATION OF PROJECT AGREEMENT

§ 11.1 **Grantee's Termination for Convenience.** At any time, the Grantee may terminate a Project Agreement for its convenience by providing written notice to the Department. The termination will be

effective 30 days after the Department's receipt of the Grantee's notice. Upon such termination, the Grantee will repay all funds received from the Department pursuant to the Project Agreement.

§ 11.2 Grantee's Termination for Cause

§ 11.2.1 The Grantee may terminate a Project Agreement for cause by providing written notice to the Department.

§ 11.2.2 The Department will have 90 days from receipt of the Grantee's notice, or such longer time as agreed by the Parties, to cure the breach ("Department's Cure Period"). If the breach remains uncured at the end of the Department's Cure Period, the termination shall be effective the day after expiration of the Department's Cure Period.

§ 11.2.3 If a Project Agreement is validly terminated pursuant to Section 11.2, the Grantee will not be required to repay funds disbursed by the Department and are confirmed as Eligible Project Costs by the Department's audit.

§ 11.3 Department's Termination for Convenience

§ 11.3.1 At any time, the Department may terminate a Project Agreement for its convenience by providing written notice of termination to the Grantee. Upon receipt of notice, the Grantee shall cease all Project work as soon as is practicable and refrain from entering into contracts in furtherance of the Project. The termination shall be effective 10 Days after the Grantee's receipt of the Department's notice.

§ 11.3.2 If the Department terminates a Project Agreement pursuant to Section 11.3, the Grantee will not be required to repay funds disbursed by the Department prior to the effective date of the termination and are confirmed Eligible Project Costs by the Department's audit. The Grantee may seek reimbursement for Eligible Project Costs for which it has not previously sought reimbursement incurred prior to the effective date of the termination.

§ 11.3.3 The Grantee waives all claims for damages and expenses related to a termination by the Department pursuant to Section 11.3.

§ 11.4 Department's Termination for Cause

§ 11.4.1 The Department may terminate a Project Agreement for cause by written notice to the Grantee upon the Grantee's breach, insolvency, or assignment for benefit of creditors.

§ 11.4.2 The Grantee shall have 30 Days from receipt of notice, or such longer time as agreed by the Parties, to cure or provide assurances acceptable to Department of solvency ("Grantee's Cure Period"). If the breach remains uncured at the end of the Grantee's Cure Period, the termination shall be effective the day after expiration of the Department's Cure Period.

§ 11.4.3 If the Department terminates a Project Agreement for cause, the Grantee shall repay the Department all funds received pursuant to a Project Agreement, and shall not be entitled to further repayment. The Grantee shall make such payment within 60 days following effective day of termination.

ARTICLE 12: FORCE MAJEURE

§ 12.1 Force Majeure Event means fire, flood, war, rebellion, terrorism, riots, strikes, or acts of God, which may affect or prevent either Party from timely or properly performing its obligations under this Agreement.

§ 12.2 Delays caused by a Force Majeure Event shall not be deemed a breach or default under this Agreement. A Force Majeure Event will automatically result in a day-for-day extension to the performance period if any is specified in the Project Agreement. If the Department determines a Force Majeure Event renders Project Completion impossible or impractical, the Department may terminate the Project Agreement pursuant to Section 11.3.

§ 12.3 Within five days of occurrence, the Grantee will provide the Department written notice and documentation of the Force Majeure Event requesting relief necessary, and detailing required additional investigation, and analysis to determine extent of delay and remedy. Within 15 days of receipt of the Grantee's submission, the Department shall review the submission and determine whether the Grantee is entitled to the requested relief. Within 30 days of the Department's determination, the Grantee may appeal by requesting Director review. The Director's written decision is final.

ARTICLE 13. LIABILITY AND INSURANCE

§ 13.1 The Grantee shall be responsible for damage to life and property, including environmental pollution and/or contamination, arising from (a) its Contractors, subcontractors, agents and employees activities related to this Agreement or any associated Project Agreement and (b) any subsequent use of the Project.

§ 13.2 The Grantee shall carry sufficient insurance or have a sufficient self-insurance program to cover the risks for work performed under this Agreement and any associated Project Agreement. If the Grantee's insurance fails to cover agents, Contractors or subcontractors, the Grantee will require agents, Contractors and subcontractors performing work on Projects to carry insurance sufficient to cover risks associated with activities associated with a Project. Insurance purchased by the Grantee, its agents, Contractors, or subcontractors, shall list the Commonwealth, the Department, the Virginia Department of Transportation, and the officers, agents and employees of these entities as additional insureds.

§ 13.3 To the extent allowable by law, the Grantee shall indemnify, defend and hold harmless the Commonwealth, the Department, the Virginia Department of Transportation, and their officers, agents, and employees of these entities from and against all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any act or omission by the Grantee, its Contractors, subcontractors, agents or employees in the performance of the work

covered by this Agreement or associated Project Agreement. Nothing in this Agreement shall constitute a waiver of sovereign immunity of any Party.

§ 13.4 The obligations of this Article shall survive the termination or completion of this Agreement and any Project Agreement and the Department's payment.

ARTICLE 14. CONFLICT OF INTEREST

§ 14.1 The State and Local Government Conflict of Interests Act, § 2.2-3100 *et seq.* of the *Code of Virginia* (1950), as amended, shall apply if the Grantee is a local or state government, or a local or state governmental agency, commission, or authority.

§ 14.2 The following shall apply if the Grantee is not subject to the State and Local Government Conflict of Interests Act, § 2.2-3100 *et seq.* of the *Code of Virginia* (1950), as amended:

.1 The following definitions shall apply concerning conflict of interest provisions in this Agreement and any associated Project Agreement:

“Contract” or “agreement” means any agreement, including any contract or subcontract, whether written or not, to which the Grantee is a party, or any agreement on behalf of the Grantee, including any contract or subcontract, which involves the payment of funds appropriated by the General Assembly of Virginia distributed pursuant to or subject to this Agreement or any associated Project Agreement.

“Employee” means any person employed by the Grantee, whether full time or part time.

“Thing of pecuniary value” means any thing having a monetary value including gifts, loans, services, securities, tangible objects, and business and professional opportunities.

.2 Other than the salary and remuneration received from the Grantee as a normal attribute of employment with the Grantee, no employee of the Grantee shall solicit, offer to accept, or accept, any money or other thing of pecuniary value or financial benefit or advantage, for the employee or for any other person, especially for any of the following reasons:

- a. in consideration of the use of the employee's position or status with the Grantee to obtain for any person or business any employment with or any contract with the Grantee or with any Contractor, subcontractor, or supplier of the Grantee, including any consulting or professional services contract.
- b. from any person or business other than the Grantee for performing any services for the Grantee in connection with any projects funded pursuant to or subject to this Agreement or any Project Agreement written hereunder.
- c. from any person or business other than the Grantee for rendering any decision or directing any course of action in connection with any Projects funded pursuant to or subject to this Agreement or any Project Agreement.

.3 If any contract is obtained in violation of this Article or if the terms of this Article are violated, the Department may require the Grantee to take whatever legal action is necessary to rescind, void, invalidate, or cancel such contract or other action taken and/or to recover any funds paid in violation of the provisions of this Article, and remit recovered funds to the Department.

ARTICLE 15. COVENANT AGAINST CONTINGENT FEES

§ 15.1 The Grantee warrants that it has not, and shall not, employ or retain any company or person, other than a bona fide employee working solely for the Grantee, to solicit or secure a Project Agreement, and that it has not, and shall not, pay or agree to pay any company or person, other than a bona fide

employee working solely for the Grantee, any fee, commission, percentage, brokerage fee, or other considerations, contingent upon or resulting from the award or making of a Project Agreement. Upon breach or violation of this Article, the Department shall have the right to terminate this Agreement or any Project Agreement pursuant to Section 11.4 of this Agreement.

ARTICLE 16. NON-DISCRIMINATION

§ 16.1 In the solicitation or awarding of any contracts directly related to this Agreement or any associated Project Agreement, the Grantee shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by Virginia law relating to discrimination in employment.

§ 16.2 During the performance of this Agreement or any associated Project Agreement, the Grantee agrees as follows: (a) the Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by Virginia law relating to discrimination in employment. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; (b) the Grantee, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, will state that the Grantee, where applicable, is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

§ 16.3 In all solicitations, either by competitive bidding or negotiation made by the Grantee for work to be performed under a contract, including procurement of materials or equipment, each potential Contractor shall be notified by the Grantee of the Grantee's obligations under this Agreement and the

regulations relative to nondiscrimination on the grounds of age, race, religion, sex, color, disability or national origin.

ARTICLE 17. DRUG-FREE WORKPLACE

§ 17.1 During the performance of this Agreement and any Project Agreement, the Grantee agrees to (a) provide a drug-free workplace for its employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of the Grantee that the Grantee maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

ARTICLE 18. SMALL, WOMEN, AND MINORITY (SWAM) BUSINESSES

§ 18.1 The Grantee is encouraged to seek and use Small, Women, and Minority (“SWAM”) enterprises in relation to any Project Agreement issued pursuant to this Agreement. § 2.2-4310 of the *Code of Virginia* (1950), as amended, addresses SWAM enterprises.

ARTICLE 19. PERSONS WITH DISABILITIES

§ 19.1 The Grantee, its agents, employees, assigns or successors, and Contractors, shall comply with the provisions of the Virginians with Disabilities Act (§ 51.5-40 through § 51.5-46 of the *Code of Virginia* (1950), as amended), the terms of which are incorporated herein by reference.

ARTICLE 20. NONRESTRICTIVE CLAUSE

§ 20.1 Solicitation documents will be based upon clear and accurate descriptions of the technical requirements for the material, product, or service to be procured. The descriptions will not contain features that unduly restrict competition.

ARTICLE 21. SPECIFIC PROJECT CONSIDERATIONS

§ 21.1 The Americans with Disabilities Act (“ADA”) established universal access by requiring complementary paratransit services to be provided for visitors if they have been certified as “ADA paratransit eligible” by a public entity. If the Grantee provides paratransit services, the Grantee must honor the certification of a visitor qualified by another public entity for a period of 60 days during a calendar year. The visiting rider shall not have to provide any additional documentation, or participate in interviews or any other reviews to gain the complementary certification. If the visitor needs service beyond the 60 days in a calendar year, the visitor must go through the paratransit system’s qualification process.

§ 21.2 Any motor vehicles purchased under this grant shall comply with Motor Vehicle Safety Standards as established by the United States Department of Transportation and with the Motor Vehicle Standards of the *Code of Virginia* (Title 46.2).

§ 21.3 The Department requires a systematic, multi-disciplined approach design to optimize the value of each dollar spent on a Project through the engagement of a team of architects, engineers or other professionals to identify, analyze and establish a value for a function of an item or system Value

Engineering (“VE”) for any project with a total cost in excess of \$10 million (“Major Capital Projects”). A Major Capital Project is usually identified during the application review process. VE for a Project should be performed early in the design process before major decisions have been completely incorporated into the design, at or near the end of preliminary engineering (“PE”) or at 30 percent of design. Some large or complex projects may require more than one VE study over their duration. For Major Capital Projects, upon completion of the VE phase, the Grantee shall submit the VE report to the Department. The Department may also require that VE be performed on individual Projects that do not qualify as Major Capital Projects. The Grantee is encouraged to conduct VE on all Projects for construction, including bus maintenance and storage facilities, as well as on those Projects regarding revenue railcar acquisition and rehabilitation.

§ 21.4 The Department encourages the Grantee to confer with other transit operations and maintenance experts in order to benefit from their experiences and to improve the performance of the process or product being reviewed (“Peer Review”). Although the Grantee is encouraged to conduct a Peer Review with all capital projects, the Department may require Peer Review in some instances.

§ 21.5 The Grantee is encouraged to perform crime prevention reviews during the design phase of all Department-funded transit facilities with particular focus on the incorporation and use of crime prevention through environmental design techniques. This review should be carried out as a project intended to improve and increase the safety and security of an existing or planned transit system or facility for both transit patrons and transit employees. The level of the review should complement the size and scope of the Project. Local crime prevention professionals should be included in the review process. Review documentation should remain on file by the Grantee and be available for Department review upon request.

ARTICLE 22. SPECIAL CAPITAL PROVISIONS

§ 22.1 The purchase of all equipment and services, and the construction of any facilities financed in whole or in part pursuant to a Project Agreement (“Project Equipment” and “Project Facilities”), shall be undertaken by the Grantee in accordance with Article 7 of this Agreement, Virginia law, and accepted good business practices. All plans, specifications, estimates of costs, award of contracts, performance and acceptance of work, and procedures in general are subject at all times to all applicable laws, rules, regulations, and orders. The Department reserves the right to review and approve all solicitations for purchase of equipment, facilities, and services prior to their issuance by the Grantee.

§ 22.2 The Grantee agrees that the Project Equipment and Project Facilities shall remain in service in the area and be used for the purpose for which they were purchased for the duration of the Useful Life. Useful Life will be defined by the Grantee utilizing Generally Accepted Accounting Principles, Internal Revenue Service or other industry practice standard agreeable to Department. If any Project Equipment or Project Facilities is not used for the intended purpose defined in the Project Agreement during the Project Equipment’s and Project Facilities’ Useful Life, the Grantee shall immediately notify the Department. In the case of Project Equipment, the Department shall have the option of requiring the Grantee either to transfer title to the Project Equipment to the Department or to remit to the Department an amount equal to a proportional share of the fair market value remaining in the Project Equipment based upon the Department’s ratio of participation detailed in the Project Agreement. In the case of Project Facilities, the Grantee shall remit to the Department the proportional share of the remaining fair market value of the Project Facilities based upon the ratio of the Department’s participation detailed in the Project Agreement. The Grantee shall keep records of the use of the Project Equipment and Project Facilities for review by the Department upon request.

§ 22.3 At any time, the Grantee shall permit the Department or its authorized representatives to inspect all vehicles, Project Facilities and Project Equipment; all transportation services rendered by the Grantee using such vehicles, Project Facilities or Project Equipment; and all relevant Project data and records.

§ 22.4 The Grantee shall maintain, in amount and form satisfactory to the Department, and in accordance with the laws of the Commonwealth, such insurance or self-insurance adequate to protect Project Facilities or Project Equipment and persons using such Project Facilities or Project Equipment throughout their use. The Department will be named as an additional insured.

§ 22.5 With regard to contracts for construction or facility improvement totaling less than \$250,000, the Grantee shall follow its own requirements relating to bid guarantees, performance and payment bonds. For contracts in excess of \$250,000, the Grantee shall adhere to the following minimum requirements:

- A bid bond from each bidder from a surety company legally authorized to do business in Virginia. The amount of the bid bond shall not exceed five percent (5%) of the bid price. This bid bond is a guarantee that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- A performance bond for 100% of the contract price.
- A payment bond for 100% of the contract price.
- In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check in the amount required for the bond.
- The Grantee shall seek Department approval of its bonding policy and requirements if they do not comply with these criteria.

§ 22.6 When any motor vehicle is purchased with funds supplied by the Department pursuant to this Agreement or any associated Project Agreement, the Department reserves the right, in its sole discretion, to require that a lien or security interest be placed upon the title of said vehicle to secure the amount of

the funds supplied by the Department, with the lien or security interest to be perfected and recorded upon the certificate of title in the manner prescribed by law, with the certificate of title to be sent to the Department.

ARTICLE 23. MISCELLANEOUS PROVISIONS

§ 23.1 This Agreement and any Project Agreement shall, in all respects, be governed by the laws of the Commonwealth without giving effect to its principles of conflicts of law. Nothing in this Agreement or any Project Agreement shall constitute a waiver of sovereign immunity. Any legal action concerning this Agreement or any Project Agreement shall be brought in a Circuit Court of the Commonwealth.

§ 23.2 The Grantee shall comply with all of the requirements specified in an associated Project Agreement, as well as all related and relevant Federal, State, and local law and regulations.

§ 23.3 If any term or provision of this Agreement or any Project Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality, validity, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement or any Project Agreement shall be binding upon the Parties.

§ 23.4 All provisions of this Agreement and any Project Agreement shall be binding upon the Parties and their respective successors and assigns.

§ 23.5 Upon the Department's request, the Grantee shall appoint one principal representative selected by the Department to the oversight board of any public transit service provider on which the Commonwealth is not already represented by a principal member and which benefits from state funding provided to the Grantee. If the members of an oversight board are determined through public election, or if complying with this requirement will violate a federal or state statute or General Assembly authorization, this provision shall not apply.

§ 23.6 The Grantee shall adhere to the current grant administration requirements issued by the Department and if required by the Department maintenance of asset inventory and performance reporting through OLGA.

§ 23.7 Any repayment by the Grantee to the Department for funds granted by the Department pursuant to this Agreement and any associated Project Agreement shall also require the payment of interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly, calculated from the date Reimbursement was made by the Department to date of repayment by the Grantee.

§ 23.8 All covenants and provisions of this Agreement shall be made expressly a part of any contracts executed by the Grantee, and shall be binding on the Contractors, their agents, and employees.

ARTICLE 24. UNAUTHORIZED ALIENS

§ 24.1 The Grantee certifies that it does not, and that it shall not, during the performance of this Agreement and any Project Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 (the Act). The Grantee will also contractually require any Contractors who participate in any Project funded pursuant to this Agreement and any Project Agreement to comply with this provision. Unauthorized alien means, with respect to the employment of an alien (which is defined as any person not a citizen or national of the United States), at a particular time, that the alien is not at that time either (a) an alien lawfully admitted for permanent residence, or (b) authorized to be so employed by the Act or by the United States Attorney General.

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

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION**

BY: _____
DIRECTOR DATE

WITNESS: _____
(NAME AND TITLE) DATE

COUNTY OF FAIRFAX

BY: _____
Director, Fairfax County Department of Transportation DATE

WITNESS: _____
(NAME AND TITLE) DATE

Board Agenda Item
September 15, 2020

ACTION - 8

Approval of the Fairfax County Department of Transportation's Major Service Change, Disparate Impact, and Disproportionate Burden Policies for the Fairfax Connector

ISSUE:

Board approval of the attached proposed Major Service Change, Disparate Impact, and Disproportionate Burden Policies for the Fairfax Connector (Attachments 1 & 2), as part of the Department of Transportation's forthcoming Title VI Plan triennial update.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the attached Major Service Change, Disparate Impact, Disproportionate Burden Policies for the Fairfax Connector substantially in the form of the attached documents (Attachments 1 & 2).

TIMING:

The Board of Supervisors is requested to act on this item on September 15, 2020, so that the County can complete a full Title VI Plan, pursuant to FTA Circular 4702.1B. FTA regulations require that the Board consider and approve separately these proposed Major Service Change, Disparate Impact, and Disproportionate Burden Policies in advance of consideration of the full Title VI Plan update, which is updated triennially. The Fairfax County Department of Transportation anticipates submitting a complete Title VI Plan to the Board of Supervisors for consideration on September 29, 2020, to comply with FTA's October 1, 2020, deadline.

BACKGROUND:

All recipients of any federal financial assistance (e.g., states, local governments, transit providers) are subject to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the United States Department of Transportation's (USDOT) implementing regulations. To document Title VI Compliance, all recipients of federal financial assistance must maintain a valid Title VI Plan that demonstrates how the recipient is complying with Title VI requirements which prohibit discrimination on the basis of race, color, or national origin. Although not directly prohibited by Title VI, preventing discrimination on the basis of economic status is also part of a Title VI Plan. Integral to a valid Title VI Plan is the separate adoption of Major Service Change, Disparate Impact, and Disproportionate Burden Policies. These policies help ensure that the needs of minority populations and

low-income communities are fully and fairly evaluated when changes to Fairfax Connector services are being considered.

FTA requires Fairfax County to submit a Title VI Plan update 60 days before the current plan expires on October 1, 2020. The last Fairfax County's Title VI Program update was submitted on August 1, 2017. Due to COVID-19, FTA extended the deadline for the submittal of a Title VI Plan update for all transit providers by two additional months. A critical element of a full Title VI Plan is the adoption of Major Service Change, Disparate Impact, and Disproportionate Burden Policies. The proposed policies and thresholds, which are unchanged from the existing Title VI Plan adopted by the Board in 2017, are summarized below.

- **Major Service Change (MSC)** - A major service change is defined as either an increase or a decrease of 25 percent or more in either daily revenue service hours, revenue service miles, or both for the individual route being modified. A major service change is a numerical threshold in change of service that determines when changes are large enough in scale for the individual transit system to require a subsequent service equity analysis.
- **Disparate Impact (DI)** - A disparate impact occurs when the difference between minority riders and non-minority riders affected by a proposed service change or fare change is 10 percent or greater.
- **Disproportionate Burden (DB)** - A disproportionate burden occurs when the difference between low-income riders and non-low-income riders affected by a proposed service change or fare change is 10 percent or greater.

Per Federal regulations, these policies underwent a 30-day public comment period from June 29 to July 31, 2020. The public comment period was advertised on the Fairfax Connector website, social media (i.e., posts to Fairfax Connector's Facebook page and Twitter feed), and through the Connector Info email listserv.

To receive feedback on the proposed policies, FCDOT created an online webinar on the Fairfax Connector website to educate the public, and provided an online survey, which was made available in the top ten languages spoken in Fairfax County. Approximately 111 persons completed the survey. In addition, FCDOT also invited approximately 120 according to the Attachment 2 representatives of social service organizations that work with Title VI communities (i.e., minority, low-income, and limited English proficient populations) to participate in one of four focus group sessions. In addition to electronic media, members of the public also were invited to provide public comment to FCDOT by U.S. mail as well.

Board Agenda Item
September 15, 2020

To analyze the policies, they first were evaluated in terms how well they met the objectives of the policies, as described in Circular 4702.1B, namely that thresholds would neither be so low as to always identify an impact, nor so high as to never identify an impact. FCDOT also analyzed the proposed Major Service Change, Disparate Impact, and Disproportionate Burden Policies with how these same policies have performed over the past three years. Based on these analyses and the fact that the public was generally supportive of the proposed policies for the next three-year period, FCDOT determined that the proposed policies should remain unchanged from the current ones adopted in 2017 for the next three years.

FISCAL IMPACT:

Obtaining Title VI Compliance will allow Fairfax County to be eligible to receive future FTA grant and other USDOT funding, including possible New Starts funding to support the Richmond Highway Bus Rapid Transit Project.

ENCLOSED DOCUMENTS:

Attachment 1: Summary of Proposed Major Service Change, Disparate Impact, and Disproportionate Burden Policies

Attachment 2: Major Service Change, Disparate Impact, and Disproportionate Burden Policies

STAFF:

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SUMMARY OF PROPOSED MAJOR SERVICE CHANGE, DISPARATE IMPACT, AND DISPROPORTIONATE BURDEN POLICY POLICIES

The use of these policies to evaluate proposed service and fare changes prior to implementation is designed to determine whether those changes will have a discriminatory impact based on race, color, or national origin.

A major service change is a numerical threshold in change of service that determines when changes are large enough in scale for the individual transit system to require a subsequent service equity analysis.

The proposed major service change, disparate impact, and disproportionate burden policies are as follows:

Major Service Change Policy

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

Disparate Impact/Disproportionate Burden Policies

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

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

Major Service Change, Disparate Impact, and Disproportionate Burden Policies

In accordance with the requirements of Federal Transit Administration (FTA) Circular 4702.1B, *Title VI Requirements for Federal Transit Administration Recipients*, the Fairfax County Department of Transportation (FCDOT) must establish policies and thresholds for what constitutes a Major Service Change, Disparate Impact, and Disproportionate Burden for use in future service equity and fare equity analyses. The Board of Supervisors approved the current policies and their accompanying thresholds in July 2017. According to the Circular, the County must revisit these policies every three years and make revisions as necessary. While a new analysis was completed to ensure these thresholds continue to meet FTA guidelines, the proposed policies and thresholds for FY 2021-2023 are unchanged.

The use of these policies to evaluate proposed service and fare changes prior to implementation is designed to determine whether those changes will have a discriminatory impact based on race, color, or national origin.

A major service change is a numerical threshold in change of service that determines when changes are large enough in scale for the individual transit system to require a subsequent service equity analysis.

FTA C 4702.1B defines disparate impact and disproportionate burden as follows:

“The transit provider shall develop a policy for measuring **disparate impacts**. The policy shall establish a threshold for determining when adverse effects of service changes are borne disproportionately by minority populations. The disparate impact threshold defines statistically significant disparity and may be presented as a statistical percentage of impacts borne by minority populations compared to impacts borne by non-minority populations. The disparate impact threshold must be applied uniformly, regardless of mode, and cannot be altered until the next Title VI Program submission.” (FTA C 4702.1B, Chap. IV-13)

“The transit provider shall develop a policy for measuring **disproportionate burdens** on low-income populations. The policy shall establish a threshold for determining when adverse effects of service changes are borne disproportionately by low-income populations. The disproportionate burden threshold defines statistically significant disparity and may be presented as a statistical percentage of impacts borne by low-income populations as compared to impacts borne by non-low-income populations. The disproportionate burden threshold must be applied uniformly, regardless of mode.” (FTA C 4702.1B, Chap. IV-17).

FTA C 4702.1B requires that if a disparate impact on minority communities is found, Fairfax County must determine ways to avoid, minimize, or mitigate the impact. Fairfax County can only implement a proposed change that results in a disparate impact, if substantial legitimate justification exists, and there are no alternatives meeting the same legitimate objectives. FCDOT is committed to adequately addressing any adverse impacts that result in a disproportionate burden to low-income communities.

Title VI Policies

FCDOT’s current major service change, disparate impact, and disproportionate burden policies for Fairfax Connector FY 2021-2023 are as follows:

Major Service Change (MSC)

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

FCDOT Major Service Change Policy Key Definitions:

- *Daily Revenue Service Hours*: The number of hours a bus operates while carrying paying passengers.
- *Revenue Service Miles*: The number of miles a bus operates while carrying paying passengers.

Disparate Impact (DI)

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

Disproportionate Burden (DB)

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

The Disproportionate Burden and Disparate Impact thresholds were evaluated by examining Service Equity Analyses performed since the approval of the previous Title VI Program, as described in the Service Equity Analyses section of this report. It was decided that there was no need to change the thresholds. These policies establish a threshold for determining when adverse effects of service changes or fare changes are disparate or disproportionate. FTA's Title VI Circular 4702.1B requires FCDOT to prepare and submit service and fare equity analysis for major service changes and all fare changes prior to implementing service and/or fare changes. Every Major Service Change requires a Service Equity Analysis. Changes can have a Disparate Impact (DI) on minority riders. Changes can have a Disproportionate Burden (DB) on low-income riders.

The analysis are to determine whether the planned changes will have a disparate impact on the basis of race, color, or national origin, or if low-income populations will bear a disproportionate burden of the changes. DI/DB Policies help determine when a Major Service Change creates these inequities.

Major Service Change, Disparate Impact, and Disproportionate Burden Policy Development

To develop the new major service change, disparate impact, and disproportionate burden policies and thresholds, FCDOT first reviewed the policies and thresholds established in 2017 and the methodology used in their establishment. Staff also employed a variety of informational items and data, including:

- Census data analysis on the demographic and socio-economic composition of the population living within a quarter mile of a Fairfax Connector route, which is the distance recommended by FTA.
- Ridership survey data collected in 2019.
- Policies in place at peer transit agencies in the Washington, D.C. metropolitan area and across the United States.

Data availability and ease of application to determine when a major service change is proposed is important for creating these policies and thresholds, as transparency is critical for the public input process required in their development.

To estimate future service needs, FCDOT conducts periodic surveys of passengers. In 2019, FCDOT contracted with WBA Research and Cambridge Systematics to conduct the Fairfax Connector Origin & Destination Study among Fairfax Connector customers. Surveys were conducted on a sampling of 25 percent of trips representing one weekday, one Saturday, and one Sunday of travel.

The purpose of the 2019 On-Board Survey was three-fold:

- Collect information on the demographic characteristics and travel patterns of Fairfax Connector riders to comply with FTA Title VI reporting requirements and guidelines;
- Obtain information on Fairfax Connector passenger behavioral tendencies and preferences (e.g., fare payment methods, information sources used for travel decisions, etc.) to inform Fairfax Connector's efforts to increase ridership and improve the customer experience; and
- Obtain origin & destination information for future planning purposes.

FTA requires that the major service change policy address both service reductions and service increases for all fixed modes of service. Like FCDOT's current policy, the proposed major service change policy therefore considers the availability of daily revenue service miles and hours. Revenue service hours and revenue service miles were both included in the major service change policy, due to the different types of service offered by the Fairfax Connector; some Fairfax Connector routes run for short periods of time over long distances, while other routes run for many hours in revenue service, but operate over a small geographic area. Ultimately, FCDOT's Service Equity Analysis of the past three years re-confirmed that the current policy of 25 percent in either revenue service reductions or increases as the threshold for constituting a major service change. The 25 percent threshold triggered nine Major Service Change designations, six of which were entirely new routes. The remaining three service changes were also generally well above the established threshold. Route modifications below the 25 percent threshold impacted very few riders and did not cause significant negative public reactions. Public input for the proposed Major Service Change policy also corroborated this policy.

The disproportionate burden and disparate impact thresholds were evaluated by examining service equity analyses performed since the approval of the previous Title VI Program (for a full discussion of these analyses, see Major Service Changes Implemented from FY 2018 to FY 2020 section below). The minority and low-income percentages of the population living within a quarter mile of routes affected by major service changes were compared with the minority and low-income percentages of the population living within the entire Fairfax Connector survey area. The Service Equity Analysis showed that a 10 percent threshold for both disproportionate burden and disparate impact would again meet the goal of FTA Title VI Circular 4702.1B, in that it is not so low as to always identify an impact, nor so high as to never identify an impact. Public input generally agreed with the proposed 10 percent threshold for non-adverse changes, but were less confident in the same proposed threshold for adverse changes.

Major Service Change, Disparate Impact, and Disproportionate Burden Public Comment

A public comment period on the proposed major service change, disparate impact, and disproportionate burden policies was held from June 29, 2020, to July 31, 2020. *Figure 1* shows FCDOT's press release initiating the public comment period. Members of the public were offered several different options for providing comment, including:

- An online survey;
- Virtual focus groups for representatives of community organizations serving minority and low-income populations; and
- A webpage featuring both the proposed written policies as well as a recorded presentation video explaining the Major Service Change and Disparate Impact/Disproportionate Burden policies.

A summary of the public responses collected by FCDOT during the comment period are contained in *Appendix A – Major Service Change Policies – Public Presentation and Comments*.

Figure 1: Fairfax County Department of Transportation Requests Feedback on Proposed Update to Title VI Policies

[Fairfax County Department of Transportation Requests Feedback on Proposed Update to Title VI Policies](#)

Release
June 29, 2020

[Fairfax County Department of Transportation \(FCDOT\)](#) invites you to provide feedback on the [proposed update of its Title VI program](#). Title VI policies ensure equitable distribution of transit service changes and as part of the update process the public is encouraged to give input on:

- **Proposed Major Service Changes** – Service changes that are significant enough to require special analysis that ensure the proposed changes will not have discriminatory effects on minority or low-income areas
- **Disparate Impacts** – Service changes that have discriminatory effects on minority areas
- **Disproportionate Burdens** – Service changes that have discriminatory effects on low income areas.

Disparate Impacts and **Disproportionate Burdens** are determined by comparing minority and low-income percentages of the population with non-minority and non-low-income percentages of the population affected by the proposed changes in Fairfax County.

- [View video presentation of the proposed changes.](#)

Proposed Major Service Change Policy
A major service change is a numerical threshold in change of service that determines when changes are large enough in scale to require the individual transit system to perform a service equity analysis. **FCDOT’s proposed Major Service Change Policy is as follows:** *A major service change is defined as either an increase or a decrease of 25 percent or more in either daily revenue service hours, revenue service miles, or both for the individual route being modified.*

Major Service Change Key Definitions:

- **Daily Revenue Service Hours:** Number of hours bus operates while carrying paying passengers.
- **Revenue Service Miles:** Number of miles a bus operates while carrying paying passengers.

Proposed Disparate Impact/Disproportionate Burden Policy
A Disparate Impact/Disproportionate Burden policy defines a numerical threshold that determines when a “major service change” impacts minority riders or burdens low-income riders at a rate greater than non-minority or non-low-income riders. **FCDOT’s proposed Disparate Impact is as follows:** *A disparate impact occurs when the difference between minority riders and non-minority riders affected by a proposed service change or fare change is 10 percent or greater.*

FCDOT’s proposed Disproportionate Policy is as follows: *A disproportionate burden occurs when the difference between low-income riders and non-low-income riders affected by a proposed service change or fare change is 10 percent or greater.*

Ways to Provide Feedback Through July 31, 2020.

We invite you to share your thoughts on these important policies through July 31, 2020. You can provide feedback by:

1. Taking a brief survey available in the languages below:
 - a. [English](#)
 - b. [Amharic](#)
 - c. [Arabic](#)
 - d. [Chinese](#)
 - e. [Farsi](#)
 - f. [Hindi](#)
 - g. [Korean](#)
 - h. [Spanish](#)
 - i. [Tagalog](#)
 - j. [Urdu](#)
 - k. [Vietnamese](#)
2. Emailing your comments to dotinfo@fairfaxcounty.gov
3. Calling 703-877-5600, TTY 711
4. Mailing your comments to: Fairfax County Department of Transportation, Attention: Title VI Plan Update/B. Atsem, [4050 Legato Road, Suite 400, Fairfax, VA 22033-2895](#)

If you have additional questions or would like material in another language, please contact FCDOT at 703-877-5600, TTY 711.

Fairfax County Transportation News and Information

Sign-up for alerts at <http://www.fairfaxcounty.gov/alerts>

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Media Relations

Robin P. Geiger, Head of Communications, [Fairfax County Department of Transportation](#),
via [e-mail](#)

Call 703-877-5602, TTY 711 (direct); 703-826-6457, TTY 711 (cell); 703-268-8953, TTY 711 (after hours)

Accessibility

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

Online Survey

To solicit feedback on the proposed policies, FCDOT offered an online survey in 11 different languages, including English, Spanish, Korean, Amharic, Vietnamese, Tagalog, Chinese, Farsi, Hindi, Urdu, and Arabic. The survey was identical in each language. Using examples to make the concepts more accessible, the survey described FCDOT's current major service change, disparate impact, and disproportionate burden policies and asked survey takers to provide their opinions about them through multiple-choice questions. Survey takers were also provided the opportunity to provide open ended comments about the policies. *Figure 4* provides a screen shot of FCDOT's online survey page. The survey questions are included in *Appendix B – Major Service Change Policies – Online Survey Results*.

Figure 2: Fairfax County Notice of Public Comment Period for Major Service Change, Disparate Impact, and Disproportionate Burden Policies

Fairfax Connector

CONTACT INFORMATION: Our call center is open 5AM-10PM M-F, 7AM-9PM Sat-Sun
 703-338-7200 TTY 711
 fairfaxconnector@fairfaxcounty.gov
 4050 Legato Road, Suite 400, Fairfax, VA 22033
 Dwayne Peffrey, Chief

DEPARTMENT RESOURCES

- Fairfax Connector Homepage
- Contact Us
- Frequently Asked Questions (FAQ)
- BusTracker
- Service Advisories
- Fairfax Connector Operating Status
- Fares and Policies

Title VI Policy 2020 Update

FCDOT is updating its Title VI program and needs your feedback. FCDOT's Title VI policies dictate how we measure equitable distribution of transit service changes. As part of the update process, we are seeking feedback on the proposed Major Service Change and Disparate Impact/Disproportionate Burden policies.

- **Major Service Changes** are changes that are significant enough to require special analysis that ensure that the proposed changes will not have discriminatory effects on minority or low-income areas.
- **Disparate Impact** describes a service change that has discriminatory effects on minority areas
- **Disproportionate Burden** describes a service change that has discriminatory effects on low-income areas.

Provide Feedback Through July XX, 2020
 We invite you to share your thoughts on these important policies through July x, 2020. You can provide feedback by:

1. **Taking a brief survey**

Title VI Notices	Title VI Complaints and Instructions	Survey
English	English	https://www.surveymonkey.com/s/5650557/FCDOT-English
Amharic ማዕቆ	Amharic ማዕቆ	https://www.surveymonkey.com/s/5681536/FCDOT-Amharic
Arabic عربي	Arabic عربي	https://www.surveymonkey.com/s/5677357/FCDOT-Arabic
Chinese 波斯语	Chinese 波斯语	https://www.surveymonkey.com/s/5681918/FCDOT-Chinese
Farsi فارسی	Farsi فارسی	https://www.surveymonkey.com/s/5681856/FCDOT-Farsi
Hindi हिन्दी	Hindi हिन्दी	https://www.surveymonkey.com/s/5681482/FCDOT-Hindi
Korean 한국어	Korean 한국어	https://www.surveymonkey.com/s/5682214/FCDOT-Korean

Department of Transportation
 Benefits PlusSO
 Guaranteed Ride Home
 Metrobus/Metrorail
 WMATA Trip Planner
 Fairfax CUE
 Fastran
 Arlington Transit (ART)
 Loudoun County Transit
 Virginia Railway Express (VRE)
 Amtrak
 PBTC
 Capital Bikeshare

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Language	Language	Link
Korean 한국어	Korean 한국어	https://www.surveymizmo.com/s3/5682214/FCDOT-Korean
Spanish Español	Spanish Español	https://www.surveymizmo.com/s3/5682156/FCDOT-Spanish
Tagalog	Tagalog	https://www.surveymizmo.com/s3/5682273/FCDOT-Tagalog
Urdu اردو	Urdu اردو	https://www.surveymizmo.com/s3/5681441/FCDOT-Urdu
Vietnamese Tiếng Việt	Vietnamese Tiếng Việt	https://www.surveymizmo.com/s3/5682319/FCDOT-Vietnamese

2. **Emailing your comments to dotinfo@fairfaxcounty.gov**
3. **Calling 703-877-5600, TTY 711.**
4. **Mailing your comments to:**

Fairfax County Department of Transportation
 Attention: Title VI Plan Update/B. Atsem
 4050 Legato Road, Suite 400
 Fairfax, VA 22033-2895

If you have additional questions or would like material in another language, please contact FCDOT at 703-877-5600, TTY 711.

A total of 111 responses to the online survey were received. Respondents were generally satisfied with the county’s major service change definition, with 86 percent agreeing with the 25 percent threshold for revenue hours and 78 percent agreeing with the 25 percent threshold for revenue miles. Comments on the major service change policies encouraged the County to focus on the needs of low-income, disabled, and other vulnerable populations when making decisions on what routes to change. In addition, Commenters encouraged the County to take into account not just the total hours and miles, but also the ridership, areas served, and times of day served, as they are impacted by service changes; and asked the County to give riders adequate notice and enough information about service changes when they do occur.

Survey respondents expressed mixed opinions about FCDOT’s 10 percent threshold for disparate impacts and disproportionate burdens. Respondents were asked to evaluate both adverse and non-adverse changes for both disparate impact and disproportionate burden thresholds, based on existing populations of minorities and low-income individuals in Fairfax County. Respondents were generally in favor of the 10 percent thresholds for non-adverse changes for both disparate impacts and disproportionate burdens (42 and 46 percent agreed with these thresholds, respectively). However, respondents generally disagreed with the 10 percent thresholds for adverse changes for both disparate impacts and disproportionate burdens (49 and 48 percent disagreed with these thresholds, respectively). Comments directly addressing these policies stated that the thresholds should be tighter: some respondents suggested that thresholds should be lowered (suggestions for this included five and 7.5 percent), while others went so far as to say that it would be impossible for any reduction in service to be done equitably. Commenters also emphasized the importance of making sure that low-income

residents, people with disabilities, and minority residents are at the table when decisions are made so that service can be truly equitable. To see all the online survey results, see *Appendix B – Major Service Change Policies – Online Survey Results*.

Focus Groups

FCDOT, with the assistance of the Fairfax County Office of Human Rights and Equity Programs (OHREP), organized four focus groups for community-based organizations to solicit feedback directly from community stakeholders serving minority, low-income, and limited English proficient populations. FCDOT invited approximately 120 organizations to the focus group meetings. Representatives from four of the organizations invited participated in the meetings.

Due to COVID-19 pandemic and the social gathering restrictions in place at the time of public comment, all four focus groups were held virtually over Zoom video conferencing platform. Participants signed up for available focus group meeting dates through Sign-up Genius.

Each focus group included a 45-minute presentation that provided an overview of FCDOT’s Title VI Program development process and explained the proposed disparate impact and disproportionate burden and major service change policies and how they would be applied. At key intervals during the presentation, the moderator paused to allow for discussion and comment.

Table 1: Title VI Focus Group Locations

Date and Time	Location	Public Meeting Attendees
Monday, July 13, 2020; 7:00 PM - 8:00 PM	Zoom Web Conference	One attendee (Dulles Regional Chamber of Commerce)
Wednesday, July 15, 2020; 12:00 PM - 1:00 PM	Zoom Web Conference	One attendee (Lorton Community Action Center)
Thursday, July 16, 2020; 12:00 PM - 1:00 PM	Zoom Web Conference	One attendee (Irving Middle School)
Thursday, July 30, 2020; 3:00 PM - 4:00 PM	Zoom Web Conference	One attendee (Hispanic Chamber of Commerce)

Focus Group Feedback Summary

While just four organizations participated in the focus groups, those that did participate provided substantive feedback regarding Fairfax Connector services. The participants also gained an understanding of how FCDOT developed and will apply the major service change, disparate impact, and disproportionate burden policies. Participants asked clarifying questions about the policies and agreed

with the thresholds recommended by FCDOT for major service change, disparate impact, and disproportionate burden policies.

All of the participants noted the importance of partnering and having effective communication between FCDOT and their community members. Suggestions included:

- Having FCDOT provide information in multiple languages about services offered and service changes to riders at bus stops and other places in the community;
- FCDOT participating in activities with the Chamber of Commerce; and
- FCDOT partnering with the county school system to advertise bus services available to students and parents.

Participants also noted specific topics of concern for providing service to minority and low-income residents, including: ensuring that restructuring the bus routes in response to Phase II of the Silver Line opening will not just prioritize commuters traveling to the District of Columbia over lower-wage workers traveling to jobs along the Dulles Toll Road corridor; Lorton area riders lacking fast and frequent options for traveling to Springfield and Richmond Highway; and, student travel to school and parent travel to work via transit during the COVID-19 pandemic and the difficulties in providing enough capacity to allow for social distancing. To view all focus group responses, see *Appendix C – Major Service Change Policies Focus Group Feedback*.

Public Comments Received via Email or US Postal Service

FCDOT received comments electronically via the online survey but did not receive any comments via email. FCDOT did not receive any comments via the US Postal Service.

Overall Responses Received

Due to COVID-19, FTA granted all public transportation agencies in the United States a two-month extension on completing Title VI Program updates, which would ordinarily be due to FTA by August 1, 2020. FTA recognized that many agencies, like FCDOT, would not be able to do traditional face-to-face public outreach to complete the Major Service Change, Disparate Impact, Disproportionate Burden policies, which are a critical element of the Title VI Program requirement. Agencies were permitted to take the additional time to develop and implement their own electronic outreach strategies. FCDOT developed a strategy that included a web page with a pre-recorded presentation detailing the proposed policies, an online survey, and a series of focus group presentations. The public was guided to the website through an intensive social media outreach strategy that utilized multiple platforms. Historically, FCDOT has only provided a static, text-only web page and in-person focus groups to develop these policies.

For the previous three-year period, FCDOT had four individuals participate in the in-person focus group meetings. The results were the same for this year's renewal, although the sessions were all done virtually. FCDOT only received two written comments via email for the previous period.

For this renewal effort, FCDOT had 111 respondents to the online survey, in addition to the four focus group participants. This represents a very significant increase in the total amount of feedback that was received. Going forward, FCDOT will continue to use a similar social media and electronic media

outreach strategy to develop similar policies. However, FCDOT also anticipates incorporating more traditional, face-to-face communications once it is safe again to do so.

Major Service Changes Implemented from FY 2018 to FY 2020

Summary of Analysis Results

The service changes proposed for implementation since the approval of Fairfax County's previous Title VI program in 2017 were reviewed as mandated by the Federal Transit Administration (FTA) in Circular 4702.1B, *Title VI Requirements and Guidelines for Federal Transit Administration Recipients*. Nine routes experienced a major service change in this time period. Of these changes, six involved the creation of a new route, while the remaining three involved extending the area served by, or making service more frequent on, existing routes. These service changes are described in Table 2.

Table 2: List of Major Service Changes, September 2017 to May 2020

Table 3: List of Major Service Changes, September 2017-May 2020

Date of Change	Route	Proposed Service Changes	Percent Changes in Revenue Hours	Percent Changes in Revenue Miles
			Weekday	Weekday
September 2017	321	Increase span of service and frequencies; modify alignment	53%	48%
September 2017	322	Increase span of service and frequencies; modify alignment	51%	65%
September 2017	323	Restructure service as Route 340 and 341; extend service to Boston Boulevard; modify alignment	N/A	33%
December 2017	699	Create new route	100%	100%
January 2019	698	Create new route	100%	100%
March 2019	308	Create new route	100%	100%
March 2019	467	Create new route	100%	100%
January 2020	396	Create new route	100%	100%
May 2020	697	Create new route	100%	100%

Table 3 and *Table 4* below show the disparate impact and disproportionate burden analyses, respectively, using the 10 percent threshold that the Board of Supervisors set in the County's 2017 Title VI Program. Note that since all of the major service changes within the past three years involved adding service, a finding of disparate impact or disproportionate burden requires that the minority or low-income populations in the route's service area be a smaller percentage (the service area average minus 10 percent) of the route's service area population than for the entire Fairfax Connector service area.

The results in *Table 3* and *Table 4* demonstrate that none of the major service changes implemented by FCDOT in the past three years constitute a disparate impact or disproportionate burden. Importantly, the service areas around most of these routes with additions to service contain minority and low-income populations in proportions similar to those found in the entire Fairfax Connector service area. This means that if FCDOT were to adjust the 10 percent threshold to be lower, this would not cause substantially more findings of disparate impact or disproportionate burden. For instance, halving the threshold, from 10 percent to five percent, would generate only one additional finding of disparate impact (the March 2019 change to Route 467) and no additional findings of disproportionate burden. While FCDOT could reduce its thresholds to zero percent to produce more findings of disparate impact and disproportionate burden (three and five findings, respectively), this would be out of touch with regional peer agencies, which have generally set thresholds between five percent and 15 percent.

Table 3: Summary of Corrected FCDOT Service Equity Analyses: Disparate Impact

Date of SEA	Routes Affected	Route Area Population	Route Area Minority Population	Route Area Minority Population Percent (A)	Service Area Minority Population Percent (B)	Difference (B - A)	Threshold	Threshold Exceeded?
September 2017	321 / 322	36,156	20,653	57%	47%	-9.7%	10%	No
September 2017	333	11,490	5,446	47%	47%	0.0%	10%	No
December 2017	699	177,294	80,504	45%	47%	2.0%	10%	No
January 2019	698	477,877	215,441	45%	47%	2.3%	10%	No
March 2019	308	25,717	17,907	70%	47%	-22.2%	10%	No
March 2019	467	15,194	6,426	42%	47%	5.1%	10%	No
January 2020	396	136,188	69,472	51%	47%	-3.6%	10%	No
May 2020	697	186,982	90,370	48%	47%	-0.9%	10%	No

Table 4: Summary of Corrected FCDOT Service Equity Analyses: Disproportionate Burden

Date of SEA	Routes Affected	Route Area Households	Route Area Low-Income Households	Route Area Low-Income Households Percent (A)	Service Area Low-Income Households Percent (B)	Difference (B - A)	Threshold	Threshold Exceeded?
September 2017	321 / 322	13,401	2,448	18%	18%	0%	10%	No
September 2017	333	4,275	900	21%	18%	-3%	10%	No
December 2017	699	60,559	9,007	15%	18%	3%	10%	No
January 2019	698	166,485	28,262	17%	18%	1%	10%	No
March 2019	308	8,666	2,924	34%	18%	-16%	10%	No
March 2019	467	5,853	861	15%	18%	3%	10%	No
January 2020	396	48,795	7,592	16%	18%	2%	10%	No
May 2020	697	72,319	11,070	15%	18%	2%	10%	No

Conclusion

Based on these results, FCDOT does not propose to change the disparate impact or disproportionate burden policies.

Major Fare Changes Implemented from FY 2018 to FY 2020

Requirement for a Fare Equity Analysis

Under *FTA Circular 4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients*, the FCDOT is required to undertake an evaluation of any proposed fare changes, either increase or decrease, to determine whether it has a discriminatory impact on Title VI protected minority populations or on low-income populations. The requirement applies to any and all fare media and fare level changes, whether increases or decreases, and applies to any transit operator with at least 50 vehicles in peak service.

FCDOT did not implement any fare changes during the reporting period, so no additional evaluation is conducted.



County of Fairfax, Virginia

Major Service Change and Disparate Impact/ Disproportionate Burden Policies

Fairfax County Department of
Transportation 2020 Title VI
Program Update



County of Fairfax, Virginia

Agenda

- Introductions & Icebreaker
- Zoom Tips
- Purpose of Today's Focus Group
- Overview of Title VI
- What is a Major Service Change (MSC) Policy?
- FCDOT's MSC Policy
- What is a Disparate Impact/Disproportionate Burden (DI/DB) Policy?
- FCDOT's DIDB Policy
- General Discussion about FCDOT Transit





Introductions

- Your name
- What organization you work for
- How do the people you represent use Fairfax Connector services? Are there specific routes or destinations that are particularly important to them?



Tips for Using Zoom





Purpose

- Assist FCDOT in determining proposed policies and thresholds for Major Service Change, Disparate Impact and Disproportionate Burden
- Gain knowledge of Title VI of Civil Rights Act and how it impacts transit service planning
- **NOTE:** When responding to questions and providing comment, think about it from the perspective of the constituents you serve.



Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 states:

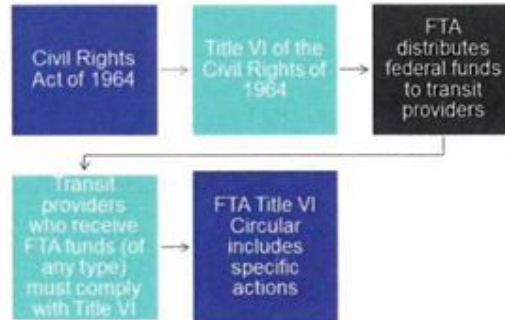
"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."



History – Federal Civil Rights Laws

Civil Rights Act Titles

- Title I – Voting Rights
- Title II – Public Accommodation
- Title III – Public Facilities
- Title IV – Public Education
- Title V – Civil Rights Commission
- **Title VI – Federally Assisted Programs**
- Title VII – Equal Employment
- Title VIII – Voter Registration
- Title IX – Civil Rights Court Cases
- Title X – Community Relations
- Title XI – Miscellaneous



What Does This Mean?

- Public transportation providers that receive federal funds are required to submit an updated Title VI Program to FTA every three years
- Transit providers must document that they are not discriminating based on race, ethnicity, or national origin, as well as the proactive steps they are taking to ensure they do not discriminate in the future

Key Documents & Policies

- Language Access Plan
- Public Participation Plan
- Service Standards and Monitoring
- Major Service Change Policy
- Disparate Impact / Disproportionate Burden Policy

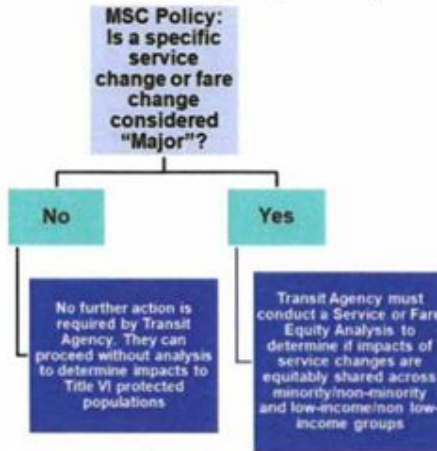




What is a Major Service Change (MSC)?

The **Major Service Change (MSC) Policy** is a defined measure by which a transit agency determines if a change is significant or "major" enough to warrant further analysis

This is a **Service or Fare Equity Analyses**



What is a Major Service Change (MSC)?

- Agencies are allowed to set their own Major Service Change policies
- Major Service Change policies often include modifications to:
 - Service availability (hours and/or service days)
 - Service quantity (frequency and/or revenue miles/hours)
 - Geographic alignments (routes)
 - Fares (any change)
- Changes can be *adverse* or *non-adverse* meaning that adding service or reducing service can be a major service change
- Transit providers are required to revise and conduct outreach on policies with every Title VI Program update





Major Service Change Exemptions

- **Seasonal Service Changes:**
Adding or removing a route or trips due to seasonal demand; must happen in cycles annually
- **Pilots or Demonstration Routes:**
Creation, modification, or discontinuation of a demonstration route within the first 12 months of operation
- **Temporary Service Changes:**
Diversions, frequency changes, or span modifications due to local events, construction, weather, and emergencies



FCDOT Major Service Change Policy

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

- **Key Definitions:**
 - *Daily Revenue Service Hours:* The number of hours a bus operates while carrying paying passengers.
 - *Revenue Service Miles:* The number of miles a bus operates while carrying paying passengers.

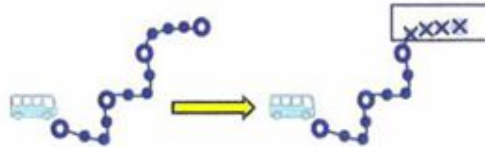




FCDOT Major Service Change Policy

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

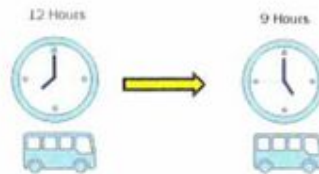
Example 1: A bus that had operated a 12-mile route is shortened, so the route is now only 9 miles.



FCDOT Major Service Change Policy

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

Example 2: A bus route that had operated from 8:00 AM to 8:00 PM with a single vehicle (12-hours of service per day) will now operate from 8:00 AM to 5:00 PM (9-hours of service per day).





Poll Question

- Add in policy description Does this major service change policy meet the needs of the people you represent?

DISCUSSION



Major Service Change Equity Evaluations

- Every Major Service Change requires a **Service Equity Analysis**
 - Changes can have a **Disparate Impact (DI)** on minority riders
 - Changes can have a **Disproportionate Burden (DB)** on low-income riders
- **DI/DB Policies** help determine when a Major Service Change creates these inequities





Disparate Impact/Disproportionate Burden Definitions

Disparate Impact

A policy that appears neutral whose impacts affect racial, ethnic, or national origin groups in a substantially non-neutral way.

Can be *positive* or *negative*:

- **Negative:** Service changes that **take away service** disproportionately used by minority communities OR **fare/fare media changes** that disproportionately negatively impact minority communities
- **Positive:** Service changes that **add service** disproportionately used by non-minority communities OR **fare/fare media changes** that disproportionately benefit non-minority communities

Disproportionate Burden

A policy that appears neutral that impacts low-income populations far more than non low-income populations.

Can be *positive* or *negative*:

- **Negative:** Service changes that **take away service** disproportionately used by low-income communities OR **fare/fare media changes** that disproportionately negatively impact low-income communities
- **Positive:** Service changes that **add service** disproportionately used by non low-income communities OR **fare/fare media changes** that disproportionately benefit non low-income communities



Determining a DI or DB

- How much will a service change impact *minority* populations relative to *non-minority* populations?
- How much will a service change impact *low-income* populations relative to *non low-income* populations?
- **Percentage thresholds** determine what counts as a Disparate Impact or Disproportionate Burden
 - Thresholds are added or subtracted based on whether a change is *adverse* or *non-adverse*
 - Federal guidance: transit provider thresholds should be "tripped" sometimes

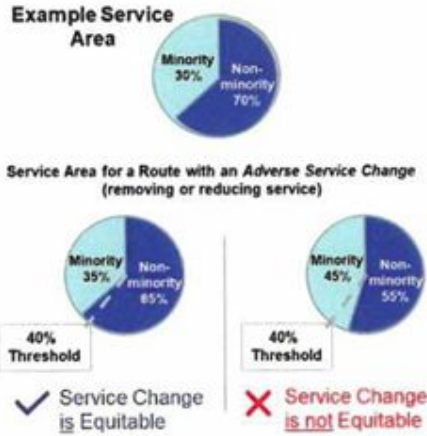




DI/DB Thresholds: Examples

Example 1: Adverse Change

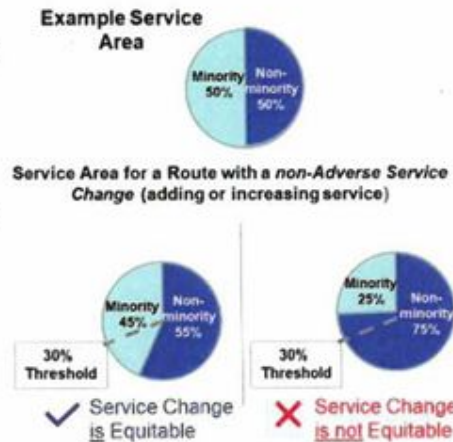
- Service area is **30% minority**, **20% low-income**
- Threshold is +/- 10%
- The transit agency wants to **eliminate** a route (adverse change)
- If fewer than **40% of riders** on the affected route are minority, or fewer than **30% of riders** are low-income, the change passes the service equity test



DI/DB Thresholds: Examples

Example 2: Non-Adverse Change

- Service area is **50% minority**, **25% low-income**
- Threshold is +/-20%
- The transit agency wants to **add** a new route
- If **more than 30%** of potential riders are minority, and **more than 5%** of its potential riders are low-income, the change passes the service equity test





What Happens When a DI or DB is Found?

- When a Service Equity Analysis determines that a proposed Major Service Change will create a Disparate Impact or Disproportionate Burden, it does not mean that a transit provider cannot make this change
- The transit agency can still make the change, if they meet two conditions:
 - ☑ Show the "substantial legitimate justification" for the change
 - ☑ Prove that there are no alternatives that would reduce the harm to the affected community
- The transit provider must provide this documentation as part of its Service Equity Analysis



FCDOT's DI/DB Policies

Disparate Impact

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

Disproportionate Burden

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





Poll Question

- Do these DI/DB policies meet the needs of the people you represent?

DISCUSSION



Discussion Questions:

- What have you heard from your communities about bus service in Fairfax County?
- What can the County do to make it easier for minority and low-income populations to get around?
- What are the best ways to reach the populations you serve to provide them opportunities to participate in transit planning processes?



Public Involvement

- Federal regulations require transit providers to solicit public feedback on its Major Service Change, Disparate Impact, and Disproportionate Burden policies, for *no less than 30 days*
- FCDOT is asking the public to learn more about these policies on our website, and then take the online survey to comment:
<https://www.fairfaxcounty.gov/connector/titlevi/2020-update>
- Your feedback is important and will be considered as FCDOT finalizes its Title VI Program



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4050 Legato Road, Suite 400
Fairfax, Virginia 22033



In addition to the presentation above, FCDOT offered an online survey in 11 different languages, including English, Spanish, Korean, Amharic, Vietnamese, Tagalog, Chinese, Farsi, Hindi, Urdu, and Arabic. The survey was identical in each language. Using examples to make the concepts more accessible, the survey described FCDOT’s current Major Service Change, Disparate Impact, and Disproportionate Burden policies and asked survey takers to provide their opinions about them through multiple-choice questions. Survey takers were also provided the opportunity to provide open ended comments about the policies.

The survey closed midnight on July 31 as planned. In total, there were 111 responses from four different languages, including English.

Table A.1: Survey Response Tally By Language

Language	Complete	Partial	Total
English	92	15	107
Chinese	1	1	2
Spanish	1	0	1
Hindi	1	0	1
Korean	0	0	0
Vietnamese	0	0	0
Tagalog	0	0	0
Farsi	0	0	0
Urdu	0	0	0
Arabic	0	0	0
Amharic	0	0	0
Total	95	16	111

Appendix B – Major Service Change Policies – Online Survey Results

Figure B.1: FCDOT Title VI Survey Results

FCDOT Title VI Survey Results

About

This spreadsheet contains the results of the FCDOT Title VI survey conducted in June-July, 2020. FCDOT offered an online survey in 11 different languages, including English, Spanish, Korean, Amharic, Vietnamese, Tagalog, Chinese, Farsi, Hindi, Urdu, and Arabic. Using examples to make the concepts more accessible, the survey described FCDOT's current Major Service Change, Disparate Impact, and Disproportionate Burden policies and asked survey takers to provide their opinions about them through multiple-choice questions. Survey takers were also provided the opportunity to provide open ended

Table of Contents

Tab Name	Dependencies	Description
Raw Results		Combined results from all four languages which had respondents. Data has been cleaned to remove irrelevant or empty fields, and to remove responses with zero answers. Responses in non-English languages have been translated into English, while also maintaining the original language text.
Response tally by language		Tally of responses by language, including complete and partial responses.
Questions		Question text
Q1 Q2	Pivot table based on Raw Results	Analysis of Q1 and Q2
Q4 Q5	Pivot table based on Raw Results	Analysis of Q4 and Q5
Q6 Q7	Pivot table based on Raw Results	Analysis of Q6 and Q7

Help/Questions

You may direct questions to:

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 INTEGRATED TRANSPORTATION PLANNING

Figure B.2: Survey Questionnaire for MSC or DI/DB Response Tally By Language

Question	MSC or DI/DB	Question Text
Q1	MSC	If a Fairfax Connector route adds or removes 25 percent of its revenue service hours, should this be considered a Major Service Change? For example, a bus route that had operated from 8:00 AM to 8:00 PM (12 hours of service per day) will now operate from 8:00 AM to 5:00 PM (9 hours of service per day). Should this be considered a Major Service Change?
Q2	MSC	If a Fairfax Connector route adds or removes 25 percent of its revenue service miles, should this be considered a Major Service Change? For example, a bus that had operated a 12-mile route is shortened, so the route is now only 9 miles long. Should this be considered a Major Service Change?
Q3	MSC	Do you have any other comments you would like to offer about Fairfax Connector's Major Service Change policy?
Q4	DI/DB	The Fairfax Connector service area is made up of about 47 percent minority residents. With this in mind, do you agree or disagree with this statement? A service change that reduces service does not disparately impact minority riders if less than 57 percent (47 plus 10) of affected riders are minority riders.
Q5	DI/DB	The Fairfax Connector service area is made up of about 47 percent minority residents. With this in mind, do you agree or disagree with this statement? A service change that adds service does not disparately impact minority riders if at least 37 percent (47 minus 10) of affected riders are minority riders.
Q6	DI/DB	The Fairfax Connector service area is made up of about 18 percent low-income residents. With this in mind, do you agree or disagree with this statement? A service change that reduces service does not disproportionately burden low-income riders if less than 28 percent (18 plus 10) of affected riders are low-income riders.
Q7	DI/DB	The Fairfax Connector service area is made up of about 18 percent low-income residents. With this in mind, do you agree or disagree with this statement? A service change that adds service does not disproportionately burden low-income riders if at least 8 percent (18 minus 10) of affected riders are low-income riders.
Q8	DI/DB	Do you have any other comments you would like to offer about Fairfax Connector's disparate impact or disproportionate burden policies?

Figure B.3: Survey Question 1 and 2 Count

Q1				
Row Labels	Count of Response ID	raw	%	
I'm Not Sure	6	6	5%	
No	9	9	8%	
Yes	96	96	86%	
(blank)				
Grand Total	111	111		
Q2				
Row Labels	Count of Response ID	raw	%	
I'm Not Sure	10	10	9%	
No	14	14	13%	
Yes	87	87	78%	
(blank)				
Grand Total	111	111		

Figure B.4: Survey Question 4 and 5 Count

Q4				
Row Labels	Count of Response ID	raw	%	
Agree	29	29	28%	
Disagree	51	51	49%	
Neither Agree nor Disagree	24	24	23%	
(blank)	7			
Grand Total	111	104		
Q5				
Row Labels	Count of Response ID	raw	%	
Agree	42	42	42%	
Disagree	36	36	36%	
Neither Agree nor Disagree	23	23	23%	
(blank)	10			
Grand Total	111	101		

Figure B.5: Survey Question 6 and 7 Count

Q6			
Row Labels	Count of Response ID	raw	%
Agree	34	34	35%
Disagree	47	47	48%
Neither Agree nor Disagree (blank)	16	16	16%
Grand Total	111	97	
Q7			
Row Labels	Count of Response ID	raw	%
Agree	45	45	46%
Disagree	33	33	34%
Neither Agree nor Disagree (blank)	19	19	20%
Grand Total	111	97	

Figure B.6 – Survey Question 8 – Open Ended Responses

<p>I know that 10% is an easy rule of thumb, but I'm not sure its an accurate representation of true "disproportionate" or "disparate" impacts. If there's a 9% difference, that's still a huge disproportionate difference to the people affected. Given Fairfax County's huge population size of over 1 million, we could be talking about 10s of thousands of people affected. Technically, it should be weighted and analyzed for statistical significance. If a rule of thumb must be used though, perhaps 5% or 7% should be used instead. Thanks for looking into this!</p>
<p>No</p>
<p>I'm a low-income person. I work part time and cannot afford high fees on the bus. Please don't raise the bus fares or change the route 950 to Herndon and Reston please, It would be a burden on me to walk or get a cab. Please help me to stay on my bus route. Thank you.</p>
<p>No</p>
<p>keep the same if you can</p>
<p>I prefer relative percentages to absolute ones. A 10 percentage point change to an 18% base is relatively greater than same change to a 45% base.</p>
<p>Any change that reduces availability for low income riders is not appropriate. Changes should be made to reduce adverse impacts on low income riders by reducing routes that serve higher income riders to gain financial efficiencies.</p>
<p>This survey was very confusing. You did not do a good job of explaining the questions. I think if there is one poor person who needs service to be available, that we should do what we can to provide it. As an elderly person, I would not want to wait on the corner for a bus that was not coming.</p>
<p>It is impossible to make a rational decision since the threshold values have no explanation for their selection. Perhaps the best approach is to treat the whole county the same and stop segregating it into groups.</p>
<p>Not clear what the impacts presented would result in what action. Think you are making the whole thing too complicated. If changes are needed make them to provide the the best service possible at the lowest cost period.</p>
<p>I think 10% is too high and you should consider 5% or 7.5% thresholds instead.</p>
<p>I think the entire bus connector system is outdated. A waste of time for anyone who uses the system having to wait for the bus or a connection especially in adverse weather. I say develop a system that utilizes the current taxi/Uber/lyft transportation systems. Vouchers or some other form of reimbursement for services. Riders could call a central dispatch for pickup services rather than trudging to the nearest bus stop to wait for transportation.</p>
<p>The effect of changes in public transportation disproportionately affects lower income residents not only based on numbers or percentages of users, but based on alternatives available to these riders.</p>
<p>Why can't every area be serviced commensurate with the needs of the respective community? Third shift folks need transportation to and from as well.</p>
<p>no</p>
<p>Good grief! I have a college degree and I could NOT figure out what the heck those pie charts were trying to represent! HORRIBLE design! Horrible wording of survey questions (I design surveys!). If you want to say "Do you think weighting low-income areas in favor of fewer cuts to service is the right thing to do?" THEN SAY THAT! Because, yes I do! I suspect that low income areas are more likely to use public transport in Fairfax. Therefore, I would expect it to count more in terms of usage.</p>

The complete removal of a route that services predominately low-income areas.
Fairfax needs to prioritize low income residents, people with disabilities, and Black and Brown residents in making these decisions. They need to be at the table and have their needs placed first. That would be equitable.
I just want to be sure that the routes that connect the areas of lower income/minority ridership still have vital and viable options when it comes to the amount of routes and schedules available to them getting to the places that help them make a living. I grew up riding the public bus and I wholeheartedly understand changes that have to be made from a revenue perspective but how important a service the local bus provides. I just want to make sure the overall effect isn't diminished.
no
adding service supports riders. removing service affects riders. these are no brainers or should be folks
The burden with always be disproportionate. Please try harder to reduce that burden for all marginalized and underrepresented groups.
No
I think it does not matter what the service _area_ of the FC includes but what the _ridership_ statistics might be. Sure, only 18% of the population of the service area is low income, but how many of the riders are low income? I'm sure it's a significantly higher percentage and THAT is a more important number to look at. The service area only tells you a small amount of information, if Fairfax County is 18% low income but the ridership is 58% low income, then you have to make the impact decisions based on a much smaller incremental change because your ridership will be impacted at greater numbers in total.
They survey questions are biased.
No.
I did not understand your convoluted question.
Not now
No 暂无

Appendix C – Major Service Change Policies Focus Group Feedback

Due to COVID-19 pandemic and the social gathering restrictions in place at the time of public comment, all four focus groups were held virtually over Zoom video conferencing platform. Participants requested to fill a focus group attendance slot through Sign-up Genius.

Each focus group included with a 45-minute presentation that provided an overview of FCDOT's Title VI Program development process and explained the proposed disparate impact and disproportionate burden and major service change policies and how they would be applied. At key intervals during the presentation, the moderator paused to allow for discussion and comment.

Table C.1: Title VI Focus Group Locations

Date and Time	Location	Public Meeting Attendees
Monday, July 13, 2020; 7:00 PM - 8:00 PM	Zoom Web Conference	One attendee (Dulles Regional Chamber of Commerce)
Wednesday, July 15, 2020; 12:00 PM - 1:00 PM	Zoom Web Conference	One attendee (Lorton Community Action Center)
Thursday, July 16, 2020; 12:00 PM - 1:00 PM	Zoom Web Conference	One attendee (Irving Middle School)
Thursday, July 30, 2020; 3:00 PM - 4:00 PM	Zoom Web Conference	One attendee (Hispanic Chamber of Commerce)

Table C.2: Fairfax County Title VI/Major Service Change Policies with Dulles Regional Chamber of Commerce

<p>Title VI Major Service Change Policies Zoom Stakeholder Conference with Dulles Regional Chamber - 7/13/2020, 7:00 P.M.</p> <p>Attendance:</p> <ul style="list-style-type: none"> • Brent Riddle, FCDOT • Benjamin Atsem, FCDOT • Stuart Boggs, FCDOT • Sandy Brennan, FITP • John Boylan, President of the Dulles Regional Chamber of Commerce & Longtime resident <ul style="list-style-type: none"> ○ Works with Businesses ○ Interested in transportation and its impact on businesses ○ Affordable housing is a part of traffic, congestion, transit issues. Long commutes for employees. ○ He participated in a task force to help address community-based issues.
<p>Meeting Summary:</p> <ul style="list-style-type: none"> • Mr. Boylan provided some comments about lack of bus service to access the Food Pantry. This means that people are taking ubers or lyfts to pick up food. This is a challenge too for businesses, like food service businesses, having access to transit to get to work. • The chamber is a good resource for disaster preparedness as well. He encourages FCDOT to keep the chamber in mind when thinking about transit and how to build partnerships. • Challenges is with affordable housing being distributed throughout a transit agency's service area means that it is hard to serve these populations. • He also noted that this is a challenge with the Herndon Reston and Silver Line opening, reorganizing routes to get people to the new Metrorail extensions, then it prioritizes commuters going into DC over commuters going to lower-wage jobs along the Dulles Toll Road (as an example). • Fairfax Connector goes above and beyond, but for the Dulles corridor, there are a lot of undocumented workers and others working on the I-66 interchange. They walk or bike to and from work. Would like a bus or safer routes for biking and walking. Additional outreach could be done to these communities to notify them about the FCDOT services. • In Reston and Sterling, there is a lot of mixing between routes and jurisdictions. Would like to see Fairfax Connector connect into the surrounding jurisdictions. • Route 50, at the edge of Fairfax, there are many people crossing into Fairfax to work/shop here. Stuart said the Transit Services Division has recently kicked off the Centerville-Chantilly study to look at this. • Mr. Boylan thinks that when Amazon H2Q moves into Arlington will further push businesses and office space out into Fairfax and will further impact commute times. Also, with Amazon building more Data Centers in Chantilly (?) this will further squeeze transit. Transit routes need to be established to address these new employment centers. • Mr. Boylan also hosts a "Metro Monday" which FCDOT could join. They discuss development around Metro stations and how that is impacting the business and development landscape. • Meeting ended at 7:55 PM.

Table C.3: Fairfax County Title VI/Major Service Change Policies with Lorton Community Action Center

<p>Title VI Major Service Change Policies Zoom Stakeholder Conference with Lorton Community Action Center - 7/15/2020, 12:00 P.M.</p>
<p>Attendance:</p> <ul style="list-style-type: none">• Brent Riddle, FCDOT• Benjamin Atsem, FCDOT• Sandy Brennan, Foursquare ITP• Randy White, FCDOT• Linda Patterson, Executive Director for Lorton Community Action Center<ul style="list-style-type: none">○ Serving low-income households, seniors, veterans.○ Approximately 40% of clients served do not own vehicles.
<p>Meeting Summary:</p> <ul style="list-style-type: none">• Linda asked: How long does the process last (typically) if you need to address Title VI in a major service change? Randy addressed the timeline question to provide context.• Engagement discussion: Linda mentioned that a lot of the people she serves don't speak English as a first language, do not have consistent access to internet and, in general, have very limited spare time so they do not participate in feedback loops. They often don't know about a service change until it happens and impacts them. To reach them better, FCDOT could go to where they are (bus stops, stations, their apartment complexes, etc.) and they really work better with paper forms of communications (like printed notices or flyers).• The threshold, 10%, seems very reasonable for both low-income and minority measures.• For the people her organization serves, they have expressed concerns about how long it takes to go up Richmond Highway to (?) and to Springfield. Something more frequent or faster or fewer transfers. Especially for those going to Springfield because of the transfers.• Thinks another challenge is that Lorton has some pockets of affordable housing so it's a draw, but then their commutes are longer. When the express bus was added to Richmond Highway, their organization did outreach to info folks so they could use it.• In response, Randy explained the Transit Development Plan (now called a Transit Strategic Plan) process that the county undergoes every five years to look at the network, transfers, ridership, etc. They are now moving to doing it every year, but cycling through parts of the County to try to be more proactive to address changing travel patterns and demand.• Brent added that as part of the Strategic Plan for Mobility and Transportation, FCDOT is now thinking about how to bridge gaps through and with other modes (walking/sidewalks, bike infrastructure/trails, etc.).• Meeting ended at 12:55 PM.

Table C.4: Fairfax County Title VI/Major Service Change Policies with Irving Middle School

<p>Title VI Major Service Change Policies Zoom Stakeholder Conference with Irving Middle School – 7/16/20, 12:00 P.M.</p> <p>Attendance:</p> <ul style="list-style-type: none"> • Brent Riddle, FCDOT • Benjamin Atsem, FCDOT • Randy White, FCDOT • Lori Zeller, Foursquare ITP • Cindy Conley, FCPS <ul style="list-style-type: none"> ○ Principal at Irving Middle School. Some of their students use the bus; interested in how to improve service for students. ○ Lori's notes about Irving MS: <ul style="list-style-type: none"> ▪ 8100 Old Keene Mill Rd, Springfield, VA 22152 ▪ FFC 310 serves right in front of school
<p>Meeting Summary:</p> <ul style="list-style-type: none"> • Cindy: Makes sense overall, though 25% seems high for the threshold for a service change. If it is the trigger, how many changes are done a year, and how many of those meet the trigger point? Is it a realistic number to pull the trigger at? • Randy: Some services have exceeded the threshold which causes the need to do a Service Equity Analysis (SEA). Adding a new route is a 100% increase so the SEA needs to be done. Estimating that since 2014, one third of service changes have triggered the need for conducting SEA. • Brent: In 2014 they did initial modeling to see where a good point was for the trigger point. Can't run a SEA for every service change so they've tried to make a good balance. • Cindy: Makes sense. • Cindy: Thinking about elementary school kids who will be getting out at 4:50 now. Some of them are old enough to ride bus. If ridership will be changing in the fall, with Covid19 going on, it will be important to evaluate how well parents are going to be able to pick up their kids' vs bus changes to take care of kids' transportation. Not sure how much this policy impacts her students, will more impact the parents and their transportation choices. • Brent: How many of students and parents use transit in the Irving MS area? • Cindy: They have some kids that use bus after school, but thinking more about colleagues elsewhere in the county. • Randy: Going to need to look at schools they are serving, what are the bell times, so they can make sure there are trips that arrive at school in time for students to make it to class, and trips that pick them up after school. Thinking especially about this in the context of the service changes that will be happening for the new Silver Line. • Cindy: Makes sense, 10% seems reasonable. Likes how there is requirement of showing that there is no harm, and that there are no alternatives, if the service change does go forward. • Cindy: Students being able to ride in non-peak hours has been good, families who used it have been appreciative. For middle-school aged students, it is a good option, because the bus drivers are vetted professionals, as opposed to these students taking Uber or Lyft. • Cindy: Having bus available in more congested areas, like Herndon, McLean, Langley, is really needed because of the traffic. Heard lots of positives from colleagues. • Cindy: Appreciated the advertising a couple years ago about the Fairfax Connector (FFC). Advertising may have fizzled out. Can they have a partnership to advertise together more? Especially thinking of the context of minority and low-income families; may parents will be working come fall, and not all kids can be driven to school. Can there be more promotion of what FFC can offer students in getting to school in a safe way? • Cindy: School is a good way to reach community with messages from the county, through the students. Also, grocery stores, churches, and more. Need to provide a ton of information out there for people.

- Brent: Part of the Title VI program is the Public Participation Plan (PPP), where we look at how do we reach people who don't have digital access, or are Limited English Proficient (LEP) populations, what languages do we translate materials into, how do we make sure that we are able to proactively get input from all Title VI populations? So, your comments are very relevant.
- Cindy: Hand out a bottle of hand sanitizer and a map of nearby buses! A lot of the kids in school are going to be of parents who have to be out of the house for work, and whether it is because of income or not, they are worried about how transportation will look for them.
- Brent: The school system has good resources for reaching out to families speaking all different languages.
- Randy: How will the logistics work for in-person and distance learning?
- Cindy: Monday is up in the air-- either will be all virtual or special populations come in. 684 students have opted to come into the school, so half will come in each for two days a week, dividing by last name. Same for all schools in the division. Tues and Thurs A-K, Wed and Fri L-Z.
- Randy: FCDOT will have to look at this to see if certain extra vehicles will need to run to meet the need of students getting to school. 40ft bus has 39 passenger seats. Lose half of the seating capacity.
- Cindy: Same thing has happened for the division. But there may be more kids with A-K or L-Z so it won't be exactly half. Not sure how it will work. Only up to 25 students can be on a bus with the social distancing requirements. FFC may need to supplement.
- Randy: FFC also only stops at marked bus stops, and they won't be able to just add in extra stops to serve students.
- Cindy: Reach populations through getting participation of business, school, and church leaders.
- Meeting ended at 12:53 PM.

Table C.5: Title VI Major Service Change Policies Zoom Stakeholder Conference with Hispanic Chamber of Commerce of Northern Virginia

<p>Title VI Major Service Change Policies Zoom Stakeholder Conference with Hispanic Chamber of Commerce of Northern Virginia – 7/30/20, 3:00 P.M.</p> <p>Attendees:</p> <ul style="list-style-type: none"> • Hypatia Lorena Rios, President, Hispanic Chamber of Commerce of Northern Virginia • Benjamin Atsem, Fairfax County Department of Transportation • Stuart Boggs, Fairfax County Department of Transportation • Brent Riddle, Fairfax County Department of Transportation
<p>Meeting Summary:</p> <ul style="list-style-type: none"> • Ms. Rios introduced herself and noted that she is the president of the Hispanic Chamber of Commerce, a member of a TPB Advisory Committee, and sits on the Access for All Committee. As part of her introductory comments she noted that housing and transportation are linked. • Mr. Riddle then gave a PowerPoint presentation on the proposed Major Service Change, Disparate Impact, and Disproportionate Burden policies. He noted that the purposed of this meeting, as well as of the previous stakeholder meetings was to solicit input on the proposed policies. • Mr. Riddle described how the Title VI program’s foundation is the Civil Rights Act of 1964. He provided an overview of the history of Federal civil rights laws and described the elements of the Title VI Plan. He defined what was meant by a major service change and how the Federal Transit Administration allows agencies to set their specific Title VI thresholds and outreach/consultation policies. • Ms. Rios asked what data is used in the Title VI analysis. • Mr. Boggs described the data used by the Transit Services Division (TSD) planning staff in the analysis, including socio-economic data from the United States Census, as well as ridership, bus loads, on time performance, travel times, and service headways from Fairfax Connector’s fleet Intelligent Transportation System (ITS). • M. Rios asked if the County was planning any service cuts. • Mr. Riddle replied that no service cuts were planned. He noted that the current service reductions were the result of COVID-19 and would be reinstated in late August. • Ms. Rios suggested that the County may not want to be in a hurry to ramp up bus service since COVID-19 is still impacting ridership. • Mr. Riddle then provided an overview of the service equity analysis undertaken by TSD with each proposed Fairfax Connector service change. He discussed the Disparate Impact/Disproportionate Burden policies and how impacts are evaluated regarding minority and non-minority populations. He noted what process TSD follows when a DI/DB is found, with the County required to identify mitigation measures that can be implemented to address the identified impact. Where mitigation is not feasible, he noted that a change could still be implemented if there is a compelling issue that would justify implementing the change. • Ms. Rios observed that she felt she was not equipped to render an opinion on the proposed DI/DB thresholds but would take the on-line survey and promote the link to her membership. • There being no further discussion, the meeting was adjourned.

Board Agenda Item
September 15, 2020

ACTION - 9

Approval of a Request for a Name Change for the McLean Metrorail Station
(Providence District)

ISSUE:

Board approval of a request for name change for the McLean Metrorail Station (Silver Line) to McLean-Capital One Hall.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the proposed McLean-Capital One Hall Station name and authorize the Chairman of the Board of Supervisors or his designee to forward the recommended station name to the Washington Metropolitan Area Transportation Authority (WMATA) (Attachment 1).

TIMING:

Board action is requested on September 15, 2020, to ensure that WMATA will review and consider the adoption of the station name in conjunction with signage changes related to the opening of the Silver Line Phase II.

BACKGROUND:

Capital One is developing the Capital One Hall on its Tysons campus. The facility will be a state-of-the-art performing arts and corporate center that will serve as an important cultural and economic resource to the Tysons and greater Fairfax County communities. Capital One has entered into a long-term agreement with Fairfax County allowing the County and County-based arts and non-profit organizations significant use of the venue. Capital One Hall is envisioned as a significant component in transforming Tysons into a sustainable, walkable, transit- and pedestrian-oriented second 'downtown' in the Washington Metropolitan region and will attract visitors to the area. Changing the station name will help with way-finding for Metrorail riders.

The proposed change complies with WMATA's official station naming policy, which states station names should be:

Board Agenda Item
September 15, 2020

- Relevant: Identify station locations by geographical features, centers of activity or be derived from the names of cities, communities, neighborhoods or landmarks within one-half mile (walking distance) of the station;
- Brief: Generally compliant with the 19-character limit, including spaces and punctuation, including both primary and secondary names;
- Unique: Distinctive and not easily confused with other station names; and
- Evocative: Evoke imagery in the mind of the patron.

Once a new or revised station name is recommended by the Board of Supervisors, WMATA staff will send the County's recommendation to the WMATA Board of Directors for consideration. If the proposal is approved by the WMATA Board, the station name will be changed at the next available opportunity in coordination with the other station names being revised for the future opening of Silver Line Phase II, i.e. West Falls Church-VT and Tysons.

FISCAL IMPACT:

WMATA's naming policy stipulates that the costs for altering the signage associated with a name change is paid for by the jurisdiction requesting the change. For the McLean-Capital One Hall renaming request, Capital One has indicated that it will cover the costs of the proposed name in the amount of \$335,000 (see Attachment 2), which WMATA estimates is the approximate cost of a name change and the associated signage. Attachment 3 includes additional information provided by WMATA on the estimated costs for replacing signage at a single station. No General Fund resources will be required to implement the changes.

ENCLOSED DOCUMENTS:

Attachment 1: Draft letter recommending station names to the WMATA Board of Directors

Attachment 2: Name change request letter submitted by Capital One

Attachment 3: Estimate for Station Change Signage

STAFF:

Rachel Flynn, Deputy County Executive

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

Christina Jackson, Director, Department of Management and Budget

Todd Wigglesworth, FCDOT

Brent Riddle, FCDOT



JEFFREY C. MCKAY
CHAIRMAN

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
BOARD OF SUPERVISORS
FAIRFAX, VIRGINIA 22035

Suite 530
12000 GOVERNMENT CENTER PARKWAY
FAIRFAX, VIRGINIA 22035-0071

TELEPHONE 703- 324-3151
FAX 703- 324-3955

chairman@fairfaxcounty.gov

September 15, 2020

The Honorable Paul Smedberg
Chairman, Board of Directors
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20005

Reference: Proposed Name Change for the McLean Metrorail Station

Dear Chairman Smedberg:

On behalf of the Fairfax County Board of Supervisors, I am writing to request the renaming of the McLean Metrorail station in Fairfax County. The Board approved this recommendation on September 15, 2020.

McLean-Capital One Hall (currently McLean) – Capital One is developing the Capital One Hall on its Tysons campus. The facility will be a state-of-the-art performing arts and corporate center that will serve as an important cultural and economic resource to the Tysons and greater Fairfax County communities. Capital One has entered into a long-term agreement with Fairfax County allowing the County and County-based arts and non-profit organizations significant use of the venue. Capital One Hall is envisioned as a significant component in transforming Tysons into a sustainable, walkable, transit- and pedestrian-oriented second ‘downtown’ in the Washington, D.C. Metropolitan region and will attract visitors to the area.

The revised station name is in accordance with the Washington Metropolitan Area Transit Authority’s Station Naming Policy. The name is relevant to a station’s location, no more than 19 characters, and is not repetitive. Naming the station “McLean-Capital One Hall” will help direct visitors and increase awareness of this new landmark and cultural destination. Fairfax County believes this name best represents the community and geographic area served by the station and requests the WMATA Board of Directors approve the revised station name.

Thank you for your time and consideration. If you need additional information, please contact Brent Riddle at (703) 877-5659 or Todd Wigglesworth at (703) 877-5685.

Sincerely,

The Honorable Paul Smedberg
September 15, 2020
Page 2 of 2

Jeffrey McKay
Chairman

cc: Members, Board of Supervisors
Members, Washington Metropolitan Area Transit Authority Board of Directors
Paul J. Wiedefeld, WMATA General Manager & CEO
Bryan J. Hill, County Executive
Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Department of Transportation



August 20, 2020

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

Re: Proposal to Rename McLean Metrorail Station

Dear Mr. Biesiadny: *Tom:*

We understand that there is a unique opportunity for Fairfax County to submit a proposal to WMATA to rename stations in connection with the implementation of the Silver Line - Phase II. Capital One requests that Fairfax County submit a proposal to rename the existing McLean station 'McLean-Capital One Hall' to recognize the important regional landmark being developed less than a quarter of a mile from the station.

As you are aware, Capital One is developing the Capital One Hall on its Tysons campus – a state-of-the-art performing arts and corporate center, which, when it opens in late 2021, will serve as an important cultural and economic resource to the Tysons and greater Fairfax County communities. In fact, we entered into a long-term agreement with Fairfax County allowing the County and County-based arts and non-profit organizations significant use of the venue. Capital One Hall will be a significant component in transforming Tysons into a sustainable, walkable, transit- and pedestrian-oriented second 'downtown' in the DMV Metro region and will drive visitors to the area. Naming the nearby Metrorail station 'McLean-Capital One Hall' will help direct visitors and increase awareness of this new landmark and cultural destination.

The proposed revision to the station name is in substantial conformance with the Washington Metropolitan Area Transit Authority's Station Naming Policy; the name is relevant to the station's location, short and not repetitive. We believe that the name 'McLean-Capital One Hall' best represents the community, geographic area and the new cultural resource served by the station.

We understand that there are costs associated with changing a station name of approximately \$335,000. If WMATA agrees to the proposal to rename the station 'McLean-Capital One Hall', Capital One is willing to be responsible for such costs.

We look forward to continuing to work with Fairfax County to make Capital One Hall a go-to destination and Tysons a vibrant, sustainable and transit-oriented community. If you have any questions regarding this request, please do not hesitate to contact me.

Sincerely,

Barry Mark
Vice President, Workplace Solutions

Cc: Dalia Palchik, Providence District Supervisor
Greg Riegler, McGuireWoods



CMCS - ESTIMATING AND SCHEDULING
ENGINEER'S ESTIMATE

CONTRACT NO: FQ1XXXX

PCO/CPN NO: N/A

DESCRIPTION: Station Name Change Signage

EST NO: 19-124

ESTIMATED BY: LEONTE MCDANIEL

DATE: 05/29/19

NARRATIVE

Estimating and Scheduling was asked to provide an independent cost estimate for the subject project.

- CIS.03 Porcelain Enamel 9'-0 x 1'-0"
- P.B Porcelain Enamel 10'-0"x 1'-6"
- P.B Cap Porcelain Enamel w/ Illuminated M and Line Stripes 2'-0"x1'-6"
- P.D Porcelain Enamel 1'-2"x5'9"x 4"
- ADA.02 Formed Tactile 9"x9"
- ADA.01 Formed Tactile 9"x9"
- AL.01 Cast Bronze Lettering Varies Per letter
- SN.03 Porcelain Enamel 8'-0"x1'4"
- P.A Porcelain Enamel 8'x6"x1'-1/2"
- P.A-1 Porcelain Enamel 10'-3"x1'1/2"
- SN.04 Porcelain Enamel 10'-0"x1'-6"

DESIGN COST:	\$	-
CONSTRUCTION COST:	\$	332,000.00
WMATA INDIRECT COST:	\$	-
TOTAL PROJECT COST:	\$	332,000.00

RANGE OF ACCURACY: ± 15 %

ESTIMATE TYPE:	<input checked="" type="checkbox"/> DETAILED I.C.E.	<input type="checkbox"/> BUDGET ESTIMATE	<input type="checkbox"/> ROUGH ORDER OF MAGNITUDE	<input type="checkbox"/> EVALUATION
ESTIMATE METHOD:	<input type="checkbox"/> BOTTOMS-UP	<input type="checkbox"/> PARAMETRIC	<input checked="" type="checkbox"/> ANALOGOUS	<input type="checkbox"/> THREE-POINT



**CMCS - ESTIMATING AND SCHEDULING
ENGINEER'S ESTIMATE**

CONTRACT NO: FQ1XXXX

PCO/CPN NO: N/A

DESCRIPTION: Station Name Change Signage

EST NO: 19-124

ESTIMATED BY: LEONTE MCDANIEL

DATE: 05/29/19

GC SUMMARY

1. DIRECT COSTS	REF	AMOUNT	RATE	SUBTOTALS	
A. Base Labor		\$ -	100%	\$ -	[1A]
B. OT Hours @ 50% Premium	Labor OT = 25%	\$ -	100%	\$ -	[1B]
C. Labor Fringes		\$ -	100%	\$ -	[2]
D. Material		\$ -	100%	\$ -	[3]
E. Equipment		\$ -	100%	\$ -	[4]
G. Subcontractors		\$ 289,802.03	100%	\$ 289,802.03	[5]
TOTAL DIRECT COSTS	SUM [1] to [5]			\$ 289,802.03	[6]

2. JOB OFFICE INDIRECT COSTS	REF	AMOUNT	RATE	SUBTOTALS	
A. Base Labor	[1A] + [1B] x %	\$ -	2.00%	\$ -	[7]
B. Material	[3] x %	\$ -	2.00%	\$ -	[8]
C. Equipment	[4] x %	\$ -	5.00%	\$ -	[9]
D. Small Tools	[1A] + [1B] x %	\$ -	5.00%	\$ -	[10A]
E. Tax on Small Tools	[10A] x %	\$ -	6.00%	\$ -	[10B]
F. Subcontractor	[5] x %	\$ 289,802.03	5.00%	\$ 14,490.10	[11]
G. Payroll Taxes (FICA, FUTA, SUI, WC)	[1A] + [1B] x %	\$ -	17.71%	\$ -	[12]
H. Itemized GC Indirect Costs	GC SHEETS			\$ -	[13]
TOTAL INDIRECT COSTS	SUM [7] to [13]			\$ 14,490.10	[14]

TOTAL FIELD COST [6] + [14] **\$ 304,292.13** [15]

3. HOME OFFICE G & A	REF	AMOUNT	RATE	SUBTOTALS	
A. General and Administrative Costs	[15] x %	\$ 304,292.13	3.00%	\$ 9,128.76	[16]
TOTAL WITH G&A	[15] + [16]			\$ 313,420.90	[17]

4. PROFIT (per GP Article 39)	REF	AMOUNT	RATE	SUBTOTALS	
A. Degree of Risk		20 x	0.06 =	1.20%	
B. Relative Difficulty		15 x	0.03 =	0.45%	
C. Size of Job		15 x	0.12 =	1.80%	
D. Period of Performance		15 x	0.00 =	0.00%	
E. Contractor's Investment		5 x	0.06 =	0.30%	
F. Assistance by Authority		5 x	0.12 =	0.60%	
G. Subcontracting		25 x	0.03 =	0.75%	
		100		5.10%	[18]
H. Profit Subtotal	[17] x [18]	\$ 313,420.90	5.10%	\$ 15,984.47	[19]
TOTAL WITH PROFIT	[17] + [19]			\$ 329,405.36	[20]

5. BOND COST (@ ACTUAL RATE)	REF	AMOUNT	RATE	SUBTOTALS	
A. Bond Cost	[20] x %	\$ 329,405.36	0.87%	\$ 2,865.83	[21]
TOTAL WITH BOND	[20] + [21]			\$ 332,271.19	[22]

6. ALLOWANCES AND CONTINGENCIES	REF	AMOUNT	RATE	SUBTOTALS	
A. Design Contingency			0.00%	\$ -	[23]
B. Construction Contingency			0.00%	\$ -	[24]
C. Escalation (Project Duration in Years)	2.62%	1.00	0.00%	\$ -	[25]
D. Allowance Subtotal	SUM [23] to [25]		0.00%	\$ -	[26]
TOTAL WITH ALLOWANCES	[22] + [26]			\$ 332,271.19	

FINAL PROJECT COST \$ 332,271.19

Board Agenda Item
September 15, 2020

ACTION - 10

Adoption of an Updated Sustainable Development Policy for County Capital Facilities Projects

ISSUE:

Approval by the Board of Supervisors for adoption of an updated Sustainable Development Policy that will be applicable to County capital facilities development projects.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (Board) adopt the updated Sustainable Development Policy (Attachment 1) that will be applicable to County capital facilities development projects.

TIMING:

Approval by the Board is requested on September 15, 2020.

BACKGROUND:

In February 2008, the Board adopted the County Sustainable Development Policy for Capital Facilities Projects. The 2008 Policy established LEED as the standard for County projects and Silver Certification level as the goal for projects over 10,000 square feet (SF) in size. The Policy also established the LEED Certification Level as the goal for projects between 2,500 and 10,000 SF. The 2008 Policy does not include a specific energy performance goal and relies on the holistic application of the LEED program across all areas of sustainability.

Since adoption of the 2008 Policy, the Department of Public Works and Environmental Services (DPWES) has met or exceeded the Policy goals for all projects with 17 LEED Silver Certified projects and 15 LEED Gold Certified projects. Since 2008, the County has made great progress in many areas of sustainability including low impact development for stormwater and landscaping, vegetative roofs, parking reductions, infrastructure for Electric Vehicle (EV) charging stations, recycling and use of recycled content materials, use of locally sourced and rapidly renewable materials, indoor environmental air quality, reduction in domestic water usage, and energy performance improvement.

The 2008 Policy was developed in response to leadership provided by the Board to establish goals and a framework for development of County capital projects in an environmentally consciousness manner. The Sustainable Development Policy also demonstrates Fairfax County's commitment to environmental, economic, and social stewardship through sustainable development practices for County buildings.

The Sustainable Development Policy, including the recommended updates, is intended to further the County's established goals for environmental stewardship, including the Operational Energy Strategy, the Board's Green Initiatives, the Comprehensive Plan goals for Environmental Protection and Energy Conservation, and related County policies. In keeping with these goals, the Policy provides a framework to preserve natural resources; to meet or exceed federal, state, and local standards for water quality, ambient air quality, and other environmental standards; to promote energy efficiency and energy conservation; and to seek ways to use all resources wisely and to protect and enhance the County's natural environment and open space. The Policy also provides a framework to yield cost savings through reduced operating costs; to provide healthy work environments for County employees and visitors to County facilities; to protect, conserve, and enhance the region's environmental resources; and to help establish a community standard of sustainable development for Fairfax County.

Updated Policy Recommendation

Based on recent leadership guidance provided by the Board, staff recommends the Policy be updated to strengthen sustainability goals such that all County building projects over 10,000 SF will, at a minimum:

- Achieve LEED Gold Certification;
- Include solar and Electric Vehicle (EV) readiness;
- Provide an on-site renewable energy generation component, as practicable, with off-site renewable energy generation as a supplement;
- Achieve a minimum 30% energy performance improvement for new construction, and a 25% energy performance improvement for major renovations;
- Achieve a reduction in GHG emissions of 32% for new construction, and 24% for major renovation.

The updated Policy criteria is already being used as a goal for projects in the design phase and will apply for all projects that begin design after Board adoption of the updated Policy. The updated Policy will continue to use LEED as the basis for the County sustainable development program and will continue to promote a holistic approach to sustainability and green building design to encompass all categories of the LEED program.

The updated Policy will strengthen the level of sustainable development requirements exponentially, based on several achievement criteria that will concurrently be increased:

- LEED Certification level increased from Silver to Gold;
- LEED Program performance criteria increasing from the previous LEED v3.0 to LEED v4.0, and then to LEED v4.1;
- energy performance improvement criteria established as 30% for new construction and 25% for renovations.
- The American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE)¹ baseline energy modelling criteria strengthened from ASHRAE 2010 to ASHRAE 2013, and then to adoption of ASHRAE 2016;
- Virginia Energy Conservation Code performance criteria to be strengthened with the impending adoption of the 2018 Code version.

In addition, the updated Policy provides for incremental strengthening of the energy performance improvement criteria and the reduction in GHG emissions in future years FY 2024 and FY 2027, with a target of achieving Net Zero Energy (NZE) eligibility by FY 2031, at the latest.

The updated Policy information and criteria was provided to the Board in a June 10, 2020, memo from the County Executive (Attachment 2), and was presented to the Board Environmental Committee on June 16, 2020.

Life Cycle Energy Performance Management

The updated Policy incorporates a commitment to an ongoing program for monitoring and analysis of actual building energy performance data; identifying existing buildings as priority candidates for systems recommissioning; recommissioning of priority buildings with initial focus on buildings previously certified by LEED; and for more proactive management of building systems and controls.

Proactive management of building systems and controls, and periodic re-commissioning are necessary to optimize the cost, energy, and GHG saving benefits, and recover the first cost investment. This requires a recurring investment to analyze energy consumption, and adjust electronic controls for major building systems and equipment

Path to Net Zero Energy (NZE)

The recommended Policy updates provide a major step toward achieving NZE status for buildings based on the FY 2021 goal of 30% energy performance improvement,

¹ American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standard is used globally as a benchmark to set minimum energy performance standards and energy codes.

incremental future year increases, and the goal of achieving NZE eligibility for all projects beginning design by FY 2031, at the latest.

The ability to achieve the energy performance improvement and NZE goals will require a combination of reducing energy consumption, improving the building’s Energy Use Intensity (EUI), and utilizing renewable solar energy from on or off-site sources. Staff analysis indicates that achieving the updated Policy goals for energy performance improvement and NZE will require use of credits for off-site renewable energy.

Update Policy Summary

The updated Policy will apply to all County building projects, including new construction, and major renovations over 10,000 SF in size. New construction, and major renovations and additions with an occupied area of 5000 to 10,000 SF will be required to engage a LEED certified professional, register with LEED, and to strive to achieve a minimum level of LEED Certified. Appropriate departments are to incorporate the use of the Leadership in Energy and Environmental Design (LEED) rating system into the design, construction, renovation, and operations of County facilities. The Policy will not be applicable to Fairfax County Public School development projects unless separately adopted by the School Board. LEED will continue as the sustainability standard to be used by the County.

The updated Policy identifies the following criteria for buildings over 10,000 SF:

Year(s)	Construction (New/Major Renovation)	Minimum Energy Performance	Minimum GHG Reduction	Minimum Certification Rating
FY 2021	New	30%	32%	Gold
	Renovation	25%	24%	Gold
FY 2024	New	40%	65%	Gold
	Renovation	35%	50%	Gold
FY 2027	New	50%	100%	Gold
	Renovation	45%	80%	Gold
FY 2031	New	NZE	NZE	Gold
	Renovation	NZE	NZE	Gold

The updated Policy also includes the following provisions:

- 1) Annual reporting to the Board on the status of the Sustainable Development Program implementation,
- 2) Allows an exception for projects that cannot practically meet this Policy's LEED achievement goals, due to unique project factors or extenuating circumstances,
- 3) Identified exceptions include single family, town house, and low-rise multi-family developments of residential use. These projects will be required to meet the ENERGY STAR qualification for homes. County staff will evaluate the LEED for Homes program for use on residential projects,
- 4) Provides a "grandfather" provision recognizing that certain active projects may not be able to fully comply with this Policy for various reasons, including funding constraints, and advanced stages of design or construction,
- 5) Recognizes the primary goal of the capital project is the scope and intent defined by the Capital Improvement Program (CIP), and acknowledges the fiscal impact to future CIP projects that will result from adoption of the Policy.

FISCAL IMPACT:

Based on County program experience, consultant feedback and industry published information, staff has identified a fiscal impact of 5-7% for the first cost associated with achieving LEED V4.0 Gold Certification, and a 30% energy performance improvement. This first cost increment is for sustainability achievement in all areas of the LEED program, and achieving the 30% energy performance improvement goal. First cost impacts will vary based on the unique aspects of each project. Staff is continuing to evaluate the estimated life cycle payback associated with the updated Policy goals and the direct annual energy and water savings. The payback period, based on direct energy and water cost savings, is expected to exceed 30 years as the updated Policy provides for first cost investment across all LEED areas of sustainability. The broader, holistic areas provide significant environmental benefit and indirect cost savings.

Budgets for future projects in the Advertised Capital Improvement Program for fiscal years 2021 through 2025 have been adjusted to incorporate this first cost increment. Budget adjustments may also be required for previously approved projects, currently in the design phase, to meet the updated Policy goals.

A request for recurring operational funding will be submitted by Facilities Management Department and/or Office of Environmental and Energy Coordination to fund the annual

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energy monitoring and analysis, building systems recommissioning, and proactive operations and maintenance for management of major systems and equipment controls to optimize the cost, energy, and GHG saving benefits. Recurring utility funding will also be required in future years to fund the cost of off-site renewable energy.

ENCLOSED DOCUMENTS:

Attachment 1 - Updated Sustainable Development Policy

Attachment 2 - County Executive Memo to Board of Supervisors dated June 10, 2020

STAFF:

Rachel Flynn, Deputy County Executive

Joseph Mondoro, Chief Financial Officer

Kambiz Agazi, Director, Office for Environmental and Energy Coordination

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

Tom Biesiadny, Director, Department of Transportation

Jose Comayagua, Director, Facilities Management Department

Tom Fleetwood, Director, Department of Housing and Community Development

Kirk Kincannon, Director, Park Authority

Ronald N. Kirkpatrick, Deputy Director, DPWES

Fairfax County
Sustainable Development Policy for Capital Projects
Revised September 15, 2020

Purpose

The purpose of the Sustainable Development Policy is to fulfill the Fairfax County Board of Supervisors' commitment to environmental, economic, and social stewardship through sustainable development practices for County facilities and buildings. This Policy is intended to further the County's established goals for environmental stewardship as defined by the Operational Energy Strategy, the Green Initiatives Board Matter, and the Comprehensive Plan goals for Environmental Protection and Energy Conservation. In keeping with these established County goals, the Policy provides a framework to preserve natural resources; to meet or exceed federal, state and local standards for water and air quality, to promote energy efficiency and energy conservation; to use all resources wisely and to protect and enhance the County's natural environment and open space. The Policy also provides a framework within which to yield cost savings through reduced operating costs; to provide healthy work environments for County employees and visitors to County facilities; and to help establish a community standard of sustainable development for Fairfax County.

Background

In February 2008, the BOS adopted the County's Sustainable Development Policy for County Capital Facilities Projects. This Policy established Leadership in Energy and Environmental Design (LEED) as the standard for County projects and established the Silver Certification level as the goal for projects over 10,000 square feet (SF) in size.

Since adoption of the 2008 Policy the County has made great progress in many areas of sustainability including low Impact development for stormwater and landscaping, vegetative roofs, parking reductions, infrastructure for EV charging stations, recycling and use of recycled content materials, use of locally sourced and rapidly renewable materials, indoor environmental quality, reduction in domestic water usage, and energy performance improvement.

This updated Policy further strengthens the LEED sustainability goals and provides for incremental energy performance improvement and reduction in Green House Gas (GHG) emissions with a target of achieving Net Zero Energy eligibility by no later than FY 2031.

Departments Affected

This Policy is applicable to all County departments that are responsible for financing, planning, designing, developing, constructing, and operating County-owned facilities and buildings, including their design consultants and their contractors.

Policy

It is the Policy of the Board of Supervisors to finance, plan, design, construct, operate, renovate, maintain, and ultimately decommission its facilities and buildings to be sustainable. New facility construction, additions, and major renovations with an occupied area greater than 10,000 SF shall be designed and built under the LEED program, shall be guided by a LEED certified professional, and shall strive to achieve the following, at a minimum:

- Achieve LEED Gold certification
- Incorporate solar and EV readiness features

Updated Sustainable Development Policy for Capital Projects

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- Provide an on-site renewable energy generation component, as practicable, with supplemental off-site renewable energy generation as required

In addition, for all projects beginning design in FY 2021 or later, all buildings shall achieve:

- Minimum of 30% energy performance improvement for new construction, and 25% for major renovations, as demonstrated by cost.
- Reduction in Greenhouse Gas (GHG) emissions of 32% for new construction, and 24% for major renovations.

For all projects beginning design in FY 2024, or later, all buildings shall achieve:

- Minimum of 40% energy performance improvement for new construction, and 35% for major renovations, as demonstrated by cost.
- Reduction in Greenhouse Gas (GHG) emissions of 65% for new construction, and 50% for major renovations.

For all projects beginning design in FY 2027, all buildings shall achieve:

- Minimum of 50% energy performance improvement for new construction, and 45% for major renovations, as demonstrated by cost.
- Reduction in Greenhouse Gas (GHG) emissions of 100% for new construction, and 80% for major renovations.

For all projects beginning in FY 2031 or later, all buildings shall achieve:

- NZE by demonstrating that the amount of energy consumed by the building every year will be supported by an amount of energy produced by on-site renewable energy generation, to the extent practicable, to be supplemented with off-site energy generation as needed.

These energy performance values apply to buildings over 10,000 SF and shall be calculated using the most current version of LEED/ANSI/ASHRAE 90.1/IESNA in effect at the time of the project's design. County staff shall continuously strive to exceed the achievement levels and timelines outlined in this policy for energy reduction, GHG reduction, and implementing on and off-site renewable energy generation.

This policy shall apply to all building projects funded from county sources. In addition, all co-located county and county-funded facilities shall be designed and constructed to work in tandem to maximize the energy goals of the individual buildings. New facility construction, additions, and major renovations with an occupied area of 5,000 SF to 10,000 SF, are to incorporate the following: 1) be designed and built under the LEED program, 2) engage a LEED Certified professional, 3) be registered with LEED, 4) shall strive to achieve LEED Certified level, and 5) strive to achieve reductions in energy performance and GHG emissions, and incorporate renewable energy sources.

Variance from this policy will be evaluated on a case-by-case basis. Variance from the policy standards and/or energy goals will be determined by the Director, Office of Environmental and Energy Coordination or by the Department Director responsible for design and construction management. Any building or facility that has been approved for a variance from this policy shall follow LEED design process and guiding principles. If a renovation or expansion project does not include the scope of work

Updated Sustainable Development Policy for Capital Projects

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necessary to pursue the policy goals, the target energy performance and/or is ineligible for LEED certification, the project will be exempt from the Policy or eligible for a variance.

This Policy recognizes that certain project types, such as single family, townhouse and low-rise multi-family facilities of residential use group, parking structures, industrial facilities, non-conditioned spaces, and other low occupancy facilities, that may not be practically conducive to attaining this Policy’s LEED achievement goals, shall be developed under the LEED program. Such projects may be exempted from the expectation to attain a specific LEED certification level and may be eligible for a variance of the energy and GHG reduction requirements. Single family, townhouse and low-rise multi-family facilities of residential use group will be required to meet the ENERGY STAR qualification for homes, in lieu of a requirement for a specific level of certification under the LEED program. Other facility projects that cannot practically meet this Policy’s LEED achievement goals, due to unique factors or extenuating circumstances, shall be eligible for consideration of an exception or variance under this Policy. Written documentation detailing the extenuating reasons for an exception or variance shall be submitted to the appropriate department director, for approval, including an evaluation of whether the building can meet required LEED achievement and energy performance improvement levels. The department director shall provide a written response accepting or denying the exception request, including a determination of what level of LEED achievement and certification will be required.

A summary of these Policy applications for project over 10,000 SF is included in the table below:

SUMMARY OF POLICY GOALS				
Year(s)	Construction (New/Major Renovation)	Minimum Energy Performance	Minimum GHG Reduction	Minimum Certification Rating
FY 2021	New	30%	32%	Gold
	Renovation	25%	24%	Gold
FY 2024	New	40%	65%	Gold
	Renovation	35%	50%	Gold
FY 2027	New	50%	100%	Gold
	Renovation	45%	80%	Gold
FY 2031	New	NZE	NZE	Gold
	Renovation	NZE	NZE	Gold

Fairfax County will carry out its commitment to this Policy by assuring that County personnel who administer projects fully understand sustainable development principles and by requiring the selected design teams to maintain and employ these principles through every phase of design, construction, and operations planning. Criteria for choosing designers, architects, engineers, construction manager, and consulting teams shall include demonstrated knowledge of sustainable development practices in their specific fields and knowledge of the LEED rating system, Life Cycle Cost Analysis, Value Engineering, energy codes, and energy modeling.

This Policy shall be applicable to all County facility projects as defined herein, for which project scope and budget approvals are enacted after the effective date of the Policy. All currently, active County facility projects shall have a goal of meeting this Policy; however, it is recognized that certain active projects may not be able to fully comply with this Policy due to the pre-established funding constraints, and based on already advanced stages of design or construction. At no time shall this Policy take

Updated Sustainable Development Policy for Capital Projects

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precedent over building codes or other regulatory requirements. This Policy recognizes the primary scope, goal and intent of the capital project is as defined by the Capital Improvement Program (CIP). This Policy shall be re-evaluated in a timeframe not to exceed three years.

This Policy also commits the County to an ongoing program for monitoring and analysis of actual building energy performance data; identifying existing buildings as priority candidates for systems recommissioning; recommissioning of priority buildings with initial focus on buildings previously certified by LEED; and for more proactive management of building systems and controls. Proactive management of building energy data, systems and controls, and periodic re-commissioning are necessary to optimize the cost, energy, and GHG saving benefits of the systems, and recover the first cost investment. This requires a recurring investment to analyze energy consumption and adjust electronic controls for major building systems and equipment.

Budgeting and Financing

All capital projects subject to this Policy shall include funding to meet the requirements of the Policy. Additional funding may be required to adjust previously approved budgets for projects in the design and construction phases to achieve the updated Policy requirements. Ongoing, life cycle utility budgets may need to be adjusted to address the need for utilizing off-site renewable energy to meet the updated Policy requirements. If it is determined that additional funding is required to meet this policy, the department responsible for design and construction management shall forward the additional funding request to Office of Environmental and Energy Coordination and Department of Management and Budget.

Procedures and Responsibilities

The Directors of all County Departments whose responsibilities include planning, designing, constructing, renovating, operating, maintaining, or decommissioning County-owned facilities shall be responsible for ensuring that facilities and buildings comply with this Policy. Affected Directors of County Departments shall be responsible for and reporting on the implementation of this Policy, annually.



County of Fairfax, Virginia

MEMORANDUM

DATE: JUN 10 2020

TO: Board of Supervisors

FROM: Bryan J. Hill
County Executive *J Hill*

SUBJECT: Updates to the County's Sustainable Development Policy

The Department of Public Works and Environmental Services (DPWES) has worked in close collaboration with the Office of Environmental and Energy Coordination (OEEC) to develop a framework for proposed revisions to the County's Sustainable Development Policy (Policy) based on the leadership and guidance provided by the Board of Supervisors (BOS) and input from County agencies and community stakeholder groups. Based on the Operational Energy Strategy and the Fairfax Green Initiatives adopted by the BOS, the proposed Policy update establishes a new baseline of Gold Certification under the United States Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) program with a plan for transition to Net Zero Energy (NZE)¹. The Policy update also establishes minimum energy performance improvement levels and associated reductions in fossil fuel consumption and Greenhouse Gas (GHG) emissions for capital building projects.

Background

In February 2008, the BOS adopted the County's Sustainable Development Policy for County Capital Facilities Projects. This Policy established LEED as the standard for County projects and established the Silver Certification level as the goal for projects over 10,000 square feet (SF) in size. The Policy also established the LEED Certification Level as the goal for projects between 2,500 and 10,000 SF. The current 2008 Policy does not include a specific energy performance goal and relies on the holistic application of the LEED program across all areas of sustainability.

Since adoption of the 2008 Policy, DPWES has met or exceeded the Policy goals for all projects with 17 LEED Silver Certified projects and 15 LEED Gold Certified projects. Since adoption of the 2008 Policy, the County has made great progress in many areas of sustainability including low impact development for stormwater and landscaping, vegetative

¹ Net Zero Energy (NZE) - the total amount of energy used by the building on an annual basis is equal to the amount of renewable energy created on the site, or by renewable energy sources offsite.

roofs, parking reductions, infrastructure for EV charging stations, recycling and use of recycled content materials, use of locally sourced and rapidly renewable materials, indoor environmental quality, reduction in domestic water usage, and energy performance improvement.

Under the 2008 Policy, the average actual, annual Energy Use Intensity (EUI)² is 115 kBtu/sf/yr for all newly commissioned LEED certified fire stations, and 79 kBtu/sf/yr for libraries. This is compared to the average actual EUI of 121 kBtu/sf/yr for older non-LEED certified fire stations, and 95 kBtu/SF for libraries.

Proposed Policy Updates

County staff recommends the Policy be revised to strengthen sustainability goals such that all County building projects over 10,000 SF will, at a minimum:

- Achieve LEED Gold Certification;
- Include solar and EV readiness;
- Provide an on-site renewable energy generation component, as practicable, with off-site renewable energy generation as a supplement;
- Achieve a minimum 30% energy performance improvement for new construction, and a 25% energy performance improvement for major renovations;
- Achieve a reduction in GHG emissions of 32% for new construction, and 24% for major renovation.

The updated Policy criteria is already being used as a goal for current projects in the design phase and will apply as a Policy expectation for all projects that begin design after formal adoption of the updated Policy by the BOS (projected for late summer 2020). The updated Policy will continue to use LEED as the basis for the County sustainable development program and will continue to promote a holistic approach to sustainability and green building design to encompass all categories of the LEED program.

The updated Policy will strengthen the level of sustainable development requirements exponentially, based on several achievement criteria that will concurrently be increased:

- LEED Certification level increased from Silver to Gold;
- LEED Program performance criteria increasing from the previous LEED v3.0 to LEED v4.0, and then to LEED v4.1;
- Baseline energy performance improvement criteria established as 30% for new construction and 25% for renovations.

² Energy Usage Intensity (EUI) is a common measure used for building energy performance that can readily be used for analysis and comparisons. EUI is measured as kilo Btu, per square foot, per year (kBtu/sf/yr).

- The American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE)³ baseline energy modelling criteria strengthened from ASHRAE 2010 to ASHRAE 2013, and then to adoption of ASHRAE 2016;
- Virginia Energy Conservation Code performance criteria to be strengthened with the impending adoption of the 2018 Code version.

In addition, the updated Policy provides for incremental strengthening of the energy performance improvement criteria and the reduction in GHG emissions in future years FY 2024 and FY 2027, with a target of achieving NZE eligibility by FY 2031, at the latest. DPWES believes the exponential strengthening of the Policy criteria, noted above, creates a stretch goal that will be challenging to consistently meet on all projects. DPWES is committed to continuing with our implementation of creative, cost effective solutions to achieve the updated Policy goals.

Life Cycle Energy Performance Management

It is extremely important for the County to invest in the proactive management of building systems and periodic building systems re-commissioning. Proactive systems management and periodic re-commissioning are necessary so the first cost investment to reduce fossil fuel energy consumption and GHG emissions is realized by life cycle reductions in both. This requires an annual investment in monitoring and adjusting electronic controls for HVAC, lighting, plumbing, renewable systems, and other major building systems and equipment to assure they continue to operate in an optimized manner over the building life cycle.

Three primary factors that impact the annual EUI over the building life cycle are:

- Weather- annual variance in weather
- Operations- changes in the end user's operation of the building
- Building Systems- optimization and efficiency of systems and equipment

The average actual EUI for newly commissioned, LEED certified County fire stations is 115 kBtu/sf/yr, and 79 kBtu/sf/yr for newly commissioned LEED libraries. While the EUI for most LEED certified fire stations and libraries remains steady after the initial commissioning, the average actual EUI for the same LEED certified fire stations and libraries is approximately 5% higher over all subsequent years. The increase in average annual EUI across all fire stations and libraries is driven by a small number of facilities that exceed the initially commissioned EUI by approximately 10%, or more. Those LEED certified facilities demonstrating significant growth in the EUI over their life cycle should be the targets for a system re-commissioning program, across all LEED certified buildings, to assure the County continues to optimize the cost, energy, and GHG saving benefits of the original system investment.

³ American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standard is used globally as a benchmark to set minimum energy performance standards and energy codes.

Path to Net Zero Energy (NZE)

The recommended Policy update will be a major step toward achieving NZE status for buildings. DPWES is already working on a goal of achieving NZE eligibility for 2-3 upcoming projects. In addition, the County's recently executed Solar Power Purchase Agreement (PPA) provides a path for implementation of solar energy arrays at County buildings and sites. DPWES is already moving forward with plans for installation of solar energy arrays on several building projects using the PPA.

In addition to the FY 2021 goal of 30% energy performance improvement, and incremental future year increases in that percentage, the updated Policy includes a goal of achieving NZE eligibility for all projects beginning design by FY 2031, at the latest. The ability to achieve the energy performance improvement and NZE goals will require a combination of reducing energy consumption, improving EUI performance, and achieving sufficient renewable solar energy generation.

Due to the smaller size of many County building projects (often under 30,000 SF) and sites, initial analysis indicates that it will be difficult to achieve enough clear roof and site area for solar arrays to generate the necessary solar energy on-site. In addition, multi-story buildings with larger square footages will be challenged to create enough area for solar arrays on-site to fully offset the building energy consumption. While DPWES continues working to achieve significant areas for solar arrays on current projects, it appears the pathway to achieving the updated Policy goals for energy performance improvement and NZE will likely require the ability to achieve credit for off-site renewable energy generation.

Fiscal Impact

Based on our own program experience, consultant feedback and industry published information, DPWES has identified a fiscal impact of 5-7% for the first cost associated with achieving LEED V4.0 Gold Certification, and a 30% energy performance improvement. This first cost increment is for achieving across all sustainability areas of the LEED program and achieving the 30% energy performance improvement goal. First cost impact will vary based on the unique aspects of each individual project. DPWES is continuing to evaluate the estimated life cycle payback associated with the updated Policy goals and the direct annual energy and water savings. The life-cycle payback period based on direct energy and water cost savings is expected to exceed 30 years as the Policy updates entail first cost investment in broader, holistic areas of sustainability. These broader, holistic program areas provide significant environmental benefit and indirect cost savings.

Budgets for future projects in the Advertised Capital Improvement Program for fiscal years 2021 through 2025 have been adjusted to incorporate this first cost increment. Budget adjustments may also be required for previously approved projects, currently in the design phase, to meet the updated Policy goals. DPWES is continuing to coordinate with the Facilities Management Department, Department of Management and Budget, and OEEC to identify the additional annual funding necessary for the recurring, annual operational management, and periodic re-commissioning of building HVAC systems.

Conclusion

DPWES, OEEC, and other County stakeholder agencies support the proposed Policy updates described, herein. DPWES has coordinated with OEEC and others and will present the proposed Policy updates at the June 16, 2020, BOS Environmental Committee meeting. Subsequent to the BOS Environmental Committee briefing, DPWES will prepare an Action Item recommending BOS formal adoption of the Policy updates.

cc: Rachel Flynn, Deputy County Executive
Joseph Mondoro, Chief Financial Officer, Department of Management and Budget
Christina Jackson, Director, Department of Management and Budget
Kambiz Agazi, Director, Office of Energy and Environmental Coordination
Jose Comayagua, Director, Facilities Management Department
Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)
Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

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ACTION - 11

Authorization to Add Funding to the Fairfax RISE: COVID-19 Small Business and Non-Profit Relief Grant Program

ISSUE:

Board of Supervisors' authorization to add additional funding to the Fairfax RISE (Relief Initiative to Support Employers) grant program to provide relief to small businesses and non-profits impacted by the COVID-19 pandemic. The increase in program funds would be via an allocation of the Coronavirus Relief Funds provided through the federal CARES Act.

RECOMMENDATION:

The County Executive recommends the Board of Supervisors (Board) approve the expenditure of up to \$12,000,000 to expand the Fairfax RISE: COVID-19 Small Business and Non-Profit Relief Grant Program (Grant Program) for businesses and non-profits affected by the COVID-19 pandemic. It is anticipated that this additional funding would allow for all remaining qualified businesses who applied for RISE grants to receive funding. If less than the full \$12,000,000 are required, the remaining funds will be reallocated to meet other needs utilizing the Coronavirus Relief Funds.

TIMING:

Board action is requested on September 15, 2020, in order to allow the program to serve all applicants who applied for the Fairfax RISE program during the open application period in June 2020.

BACKGROUND:

On May 12, 2020, the Board established the Grant Program to support eligible small businesses impacted by the COVID-19 public health emergency, including non-safety net non-profit organizations in Fairfax County, through grants to address costs of business interruptions caused by required closures. The Grant Program was funded with \$25,000,000 from Coronavirus Relief Funds provided through the federal CARES Act.

On July 14, 2020, the Board increased the funding amount for the Grant Program by an additional \$20,000,000, bringing the County funding to a total of \$45,000,000. The Town

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of Vienna has contributed \$1,000,000 to the Grant program, bringing the total Grant Program resource pool to \$46,000,000.

Under the Grant Program, funds will be delivered to eligible entities impacted by the public health emergency in the form of grants, which would not be repaid by the selected awardees. With the desired outcomes of:

1. Helping businesses and organizations remain in business through the COVID-19 emergency and keep employees on payrolls.
2. Addressing gaps that may exist among complementary programs at the County, state, and federal levels (including the proposed Basic Needs Supplemental Funding and Nonprofit Sustainability Program, SBA programs, unemployment assistance, and Microloan Program).
3. As permitted by federal and state law, providing targeted funding to businesses that are historically less likely to be approved for small business financing and could be at-risk during this crisis, including women-owned, minority-owned, and veteran-owned businesses.
4. Making Fairfax County businesses aware of available assistance and resources at the federal, state and County level.

The size of the Grant Program awards is based upon the number of employees, with the following structure implemented:

- Employees, 1 - 10: \$10,000
- Employees, 11 – 25: \$15,000
- Employees, 26 – 49: \$20,000

The Grant Program application period was open between June 8 – June 15, 2020. During that period 6,280 applications were received. These applications were reviewed for preliminary disqualification criteria.

The primary reasons for disqualifications were businesses being located outside of Fairfax County, having 50 or more employees (as of March 1, 2020), having received a Fairfax County Non-profit Sustainability Grant, or being permanently closed. To date, 1,141 applicants have been disqualified from the program; this number will change as applications continue to be evaluated.

As the Grant Program was oversubscribed, a random selection was used to determine the order of processing for all applicants. All applicants were assigned a unique

computer-generated random ID, which were then used to determine the processing order.

As a result, a total of 4,093 applicants have been invited to participate in the second phase, the Documentation and Certification Review, or have received a grant to date. This number is 80% of all applications determined to meet the preliminary qualifications.

Under the Grant Program funding of \$46,000,000 there will not be enough available to serve the approximately 1,000 applicants on the wait list. It is estimated that increased funding of up to \$12,000,000 would ensure that grants could be offered to all those applicants on the waiting list and cover potential increase in administrative fees to meet the expanded program.

Given the large applicant pool and clear demand for assistance from our small business community, the County Executive recommends increasing funding for the Grant Program. An increase of \$12,000,000 would bring the County funding to a total of \$57,000,000. The Town of Vienna has contributed \$1,000,000 to the Grant program, bringing the total Grant Program resource pool up to \$58,000,000, or an amount that would allow 100% of all qualified applicants to receive a grant.

FISCAL IMPACT:

Funding for the expansion of Grant Program resources is recommended from the Federal CARES Act funding that has been provided to the County. Depending upon final guidance for the use of these funds, and the specific grants awarded per the Grant Guidelines, it may be necessary to utilize County funds for a small number of awards.

It is anticipated that an appropriation of up to an additional \$12,000,000 will be used from Coronavirus Relief Funds provided through the federal CARES Act to fund the Grant Program. Funds to administer the Grant Program would come from the CARES Act, with additional funding made from the General Fund reserve to fund any Grant Program awards selected which are determined to be ineligible to receive CARES Act funding.

Program administration costs remain limited to no more than 2% of the total authorized Grant Program funding amount.

As staff reconciles the awards made from the program and receives updated guidance from the Federal Government for administration of the CARES Act funds, the exact allocation between funding sources will be identified.

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ENCLOSED DOCUMENTS:

None.

STAFF:

Rachel Flynn, Deputy County Executive

Joe Mondoro, Chief Financial Officer

Christina Jackson, Director, Department of Management and Budget

Rebecca Moudry, Director, Department of Economic Initiatives

Scott Sizer, Department of Economic Initiatives

ASSIGNED COUNSEL:

Patricia McCay, Senior Assistant County Attorney

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INFORMATION - 1

Consolidated Plan Certification for the Fairfax County Redevelopment and Housing Authority Moving to Work Plan for Fiscal Year 2021

On September 24, 2020, the Fairfax County Redevelopment and Housing Authority (FCRHA) will take action to give final approval for the submission of its Moving to Work Plan for Fiscal Year 2021 to the U.S. Department of Housing and Urban Development (HUD). Certification that the plan is consistent with the Fairfax County Consolidated Plan is part of the required submission due to HUD by September 30, 2020. County policy requires that the Board of Supervisors (Board) be informed of Consolidated Plan certifications.

The Moving to Work Plan articulates the FCRHA's mission to serve the housing needs of low-income and very low-income households, and the FCRHA's strategy for addressing those needs. The plan is presented in a HUD-mandated format and has had extensive review by the FCRHA and the public. The FCRHA made the plan available for public comment from July 16, 2020 through August 14, 2020 and held the required public hearing on July 30, 2020. The draft Moving to Work Plan for Fiscal Year 2021 was initially due to HUD in April 2020, however HUD provided an extension through September 30, 2020 due to the COVID-19 pandemic.

The draft Moving to Work Plan for Fiscal Year 2021, as released by the FCRHA, is available at www.fairfaxcounty.gov/housing/initiatives/moving-to-work .

Unless directed otherwise by the Board, the County Executive will sign the Certification of Consistency with the Consolidated Plan and provide it to the FCRHA for inclusion in the Moving to Work Plan for Fiscal Year 2021 to be submitted to HUD.

ENCLOSED DOCUMENTS:

Attachment 1: Certification of Consistency with the Consolidated Plan

STAFF:

Tisha Deeghan, Deputy County Executive
Thomas Fleetwood, Director, Department of Housing and Community Development (HCD)
Amy Ginger, Deputy Director, Operations, HCD
Vincent Rogers, Director, FCRHA Policy and Compliance, HCD

ASSIGNED COUNSEL:

Susan Timoner, Assistant County Attorney

Certification of Consistency with the Consolidated Plan

U.S. Department of Housing
and Urban Development

Attachment 1

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan.
(Type or clearly print the following information:)

Applicant Name: _____

Project Name: _____

Location of the Project: _____

Name of the Federal
Program to which the
applicant is applying: _____

Name of
Certifying Jurisdiction: _____

Certifying Official
of the Jurisdiction
Name: _____

Title: _____

Signature: _____

Date: _____

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3:30 p.m.

Public Hearing on PCA 89-D-007-02 (Milestone Tower Limited Partnership IV D/B/A Milestone; Fairfax County School Board) to Amend the Proffers for RZ 89-D-007, Previously Approved for Public Uses to Permit a Telecommunications Facility and Associated Modifications to Proffers and Site Design with an Overall Floor Area Ratio of 0.24, Located on Approximately 40.68 Acres of Land Zoned R-3 (Dranesville District) (Concurrent with SE 2019-DR-012)

and

Public Hearing on SE 2019-DR-012 (Milestone Tower Limited Partnership IV D/B/A Milestone; Fairfax County School Board) to Permit a Telecommunications Facility, Located on Approximately 40.68 Acres of Land Zoned R-3 (Dranesville District) (Concurrent with PCA 89-D-007-02)

This property is located on N. side of Bennett St. and E. side of Dranesville Rd. Tax Map 10-2 ((1)) 6A.

This property is located at 700 Bennett St., Herndon, 20170. Tax Map 10-2 ((1)) 6A.

The Board of Supervisors deferred this public hearing at the February 25, 2020, meeting until March 10, 2020, at 3:30 p.m. On March 10, 2020, the Board of Supervisors deferred this public hearing until March 24, 2020, at 4:30 p.m. On March 24, 2020, the Board of Supervisors further deferred this public hearing to May 5, 2020, at 3:30 p.m. On May 5, 2020, the Board of Supervisors deferred this public hearing to June 9, 2020, at 3:00 p.m. On June 9, 2020, the Board of Supervisors deferred this public hearing to September 15, 2020, at 3:30 p.m.

PLANNING COMMISSION RECOMMENDATION:

On July 15, 2020, the Planning Commission voted 12-0 to recommend to the Board of Supervisors the following actions:

- Approval of PCA 89-D-007-02, subject to the execution of proffered conditions consistent with those as contained in Attachment 1 of the June 8, 2020 Staff Report Addendum;

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- Approval of SE 2019-DR-012, subject to the proposed development conditions dated June 8, 2020;
- Reaffirmation of the modification of the transitional screening requirements along all property boundaries in favor of that shown on the Generalized Development Plan (GDP); and
- Reaffirmation of the modification of the barrier requirements along the northern, eastern, and western, boundaries in favor of the fencing shown on the GDP, and wavier of the barrier requirement along the southern boundary.

In a related action, the Planning Commission voted 12-0 to find that the telecommunications facility proposed under 2232-D18-32 satisfies the criteria of location, character, and extent, as specified in Sect. 15.2-2232 of the *Code of Virginia*, as amended, and therefore, is substantially in accord with the Comprehensive Plan.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)
Jerrell Timberlake, Planner, DPD

Board Agenda Item
September 15, 2020

REVISED

3:30 p.m.

Public Hearing on SE 2020-PR-006 (Mohamed Elrafaei D/B/A Mint Cafe) to Permit a Restaurant, Located on Approximately 25,287 Square Feet of Land Zoned C-2 and HC (Providence District)

This property is located at 7787 Leesburg Pike, Falls Church, 22043. Tax Map 39-2 ((1)) 42.

PLANNING COMMISSION RECOMMENDATION:

On July 29, 2020, the Planning Commission voted 12-0 to recommend to the Board of Supervisors the following actions:

- Approval of SE 2020-PR-006, subject to the proposed development conditions dated **May 19, 2020** ~~July 8, 2020~~; and
- Modification of Sects. 13-303 and 13-304 of the Zoning Ordinance for the transitional screening and barrier requirements to that shown on the SE Plat.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Alexis Robinson, Planner, DPD

Board Agenda Item
September 15, 2020

3:30 p.m.

Public Hearing on RZ 2019-HM-016 (Christopher Land, LLC) to Rezone from R-1 to PDH-2 to Permit Development of up to 26 Single Family Detached Units with an Overall Density of 1.97 Dwelling Units per Acre and Approval of the Conceptual Development Plan, Located on Approximately 13.2 Acres of Land (Hunter Mill District)

This property is located at the terminus of Floris Lane approx. 800 ft. S. of West Ox Rd. and 1,300 ft E. of Centreville Rd. Tax Map 25-1 ((4)) 8B, 9A and 14C.

PLANNING COMMISSION RECOMMENDATION:

On July 8, 2020, the Planning Commission voted 12-0 to recommend to the Board of Supervisors the following actions:

- Approval of RZ 2019-HM-016, subject to the execution of proffered conditions consistent with those dated June 30, 2020; and
- Waiver of Par. 2 of Sect. 11-302 of the Zoning Ordinance to exceed the maximum length of 600 feet for the private street serving the eastern portion of the property.

In a related action, the Planning Commission voted 12-0 to approve FDP 2019-HM-016, subject to the Final Development Plan conditions dated June 15, 2020.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:

<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Wanda Suder, Planner, DPD

Board Agenda Item
September 15, 2020

3:30 p.m.

Public Hearing on SEA 93-Y-006-02 (PM Plus, LLC) to Amend SE 93-Y-006, Previously Approved for a Service Station, Quick Service Food Store and Vehicle Light Service Establishment, to Permit Modifications to the Development Conditions, Located on Approximately 1.41 Acres of Land Zoned C-8, WS and HC (Sully District)

This property is located at 13612 and 13616 Lee Hwy. and 13603 and 13607 Johnson Ave., Centreville, 20120. Tax Map 54-4 ((6)) 21A, 22A, 29 and 30.

PLANNING COMMISSION RECOMMENDATION:

On July 8, 2020, the Planning Commission voted 12-0 to recommend to the Board of Supervisors the following actions:

- Approval of SEA 93-Y-006-02, subject to the proposed development conditions dated June 8, 2020;
- Reaffirmation of a modification of transitional screening requirements along the eastern lot line of the property in favor of that shown on the SEA Plat; and
- Reaffirmation of a waiver of barrier requirements along the eastern lot line of the property in favor of that shown on the SEA Plat.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)
Sharon Williams, Planner, DPD

Board Agenda Item
September 15, 2020

3:30 p.m.

Public Hearing on RZ 2019-DR-013 (Margaret F. Ahbe, Trustee) to Rezone from R-1 to PDH-2 to Permit Residential Development with an Overall Density of 1.75 Dwelling Units per Acre, Located on Approximately 1.72 Acres of Land (Dranesville District)

This property is located on the S. side of Jarrett Valley Dr. and W. side of Leesburg Pike. Tax Map 29-1 ((1)) 10.

PLANNING COMMISSION RECOMMENDATION:

On July 22, 2020, the Planning Commission voted 12-0 to recommend to the Board of Supervisors the following actions:

- Approval of RZ 2019-DR-013, subject to the execution of proffered conditions consistent with those dated July 22, 2020;
- Waiver of Par. 1 of Sect. 6-107 of the Zoning Ordinance requiring the minimum district size;
- Modification of Par. 1 of Sect. 2-414 of the Zoning Ordinance of the requirement for a 200-foot setback from the Dulles Airport Access Road (DAAR) to permit a single-family detached dwelling to be up to 101 feet away from the DAAR as depicted on the CDP/FDP; and
- Modification of Par. 3 of Sect. 10-104 of the Zoning Ordinance to allow an increase in height of a noise barrier from 8 feet to 10 feet.

In a related action, the Planning Commission voted 12-0 to approve FDP 2019-DR-013, subject to the proposed development conditions dated July 7, 2020.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

Board Agenda Item
September 15, 2020

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development
(DPD)

Daniel Creed, Planner, DPD

Board Agenda Item
September 15, 2020

4:00 p.m.

Public Hearing on a Proposal to Prohibit Through Truck Traffic on Bull Run Post Office Road (Sully District)

ISSUE:

Public hearing for the purpose of endorsing the following road to be included in the Residential Traffic Administration Program (RTAP) for a Through Truck Traffic Restriction:

- Bull Run Post Office Road between Route 29 (Lee Highway) in Fairfax County and Braddock Road in Loudoun County

RECOMMENDATION:

The County Executive recommends that the Board approve the attached resolution (Attachment I) endorsing this road to be included in the RTAP for a Through Truck Traffic Restriction following the public hearing.

TIMING:

On July 28, 2020, the Board authorized advertisement of a public hearing scheduled for September 15, 2020, at 4:00 p.m.

BACKGROUND:

In August 2019, Supervisor Kathy Smith requested the Virginia Department of Transportation (VDOT) to restore a Through Truck Restriction on Bull Run Post Office Road. The restriction had been rescinded and signage removed by VDOT due to significant changes to the original road alignment that resulted in a noncontinuous route connecting the original terminating points of the restriction. VDOT has been unable to restore the requested restriction and indicated that a new resolution would need to be submitted by Fairfax County to re-start the Through Truck Restriction process.

The proposed restricted route on Bull Run Post Office Road between Route 29 and Braddock Road is within both Fairfax County and Loudoun County. The identified alternate truck route is Sudley Road and Gum Spring Road; between Route 29 and Braddock Road, in Fairfax County, Loudoun County and Prince William County.

A portion of the identified alternate route in Prince William County goes through the

Board Agenda Item
September 15, 2020

Manassas National Battlefield Park, part of the National Park Service.

The National Park Service and Prince William County have written to VDOT and Fairfax County (Attachment III and Attachment IV) indicating opposition to the identified alternate truck route on Sudley Road and the Through Truck Restriction on Bull Run Post Office Road. Identifying a reasonable alternate route for restricted truck traffic is a stated requirement of the Through Truck Restriction Program and does not limit or direct truck traffic to the identified alternate route. Loudoun County stated a need for the results of the VDOT truck traffic analysis before making a determination.

Section 46.2-809, of the *Code of Virginia* requires a local jurisdiction to hold a duly advertised public hearing on any proposal to restrict through truck traffic on a primary or secondary road. Further, a resolution pertaining to prohibiting through truck traffic on a portion of this road (Attachment I) has been prepared for adoption and transmittal to VDOT, which requires a resolution from Fairfax County to conduct the formal engineering study of the Through Truck Traffic Restriction request.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I: Proposed Resolution to Restrict Through Truck Traffic on Popes Head Road

Attachment II: Area Map of Proposed Through Truck Traffic Restriction

Attachment III: National Park Service Letter

Attachment IV: Prince William County Resolution

STAFF:

Rachel Flynn, Deputy County Executive

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

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

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Steven K. Knudsen, Transportation Planner, FCDOT

RESOLUTION

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION
RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)
THROUGH TRUCK TRAFFIC RESTRICTION
BULL RUN POST OFFICE ROAD
SULLY DISTRICT

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, September 15, 2020, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, the residents who live along Bull Run Post Office Road, between Lee Highway (Route 29) and the Fairfax County Line, have expressed concerns regarding the negative impacts associated with through truck traffic on this road; and

WHEREAS, a reasonable alternate route has been identified for Bull Run Post Office Road starting at the intersection of Bull Run Post Office Road and Lee Highway (Route 29) to the intersection of Lee Highway and Sudley Road, and from the intersection of Lee Highway and Sudley Road to the intersection of Sudley Road and Gum Spring Road, and from the intersection of Sudley Road and Gum Spring Road to the intersection of Gum Spring Road and Braddock Road, and from the intersection of Gum Spring Road and Braddock Road to the intersection of Braddock Road and Bull Run Post Office Road; and

WHEREAS, it is the intent of the Fairfax County Board of Supervisors to ensure that the proposed through truck restriction be enforced by the Fairfax County Police Department where authorized; and

WHEREAS, a public hearing was held pursuant to Section 46.2-809 of the *Code of Virginia*;

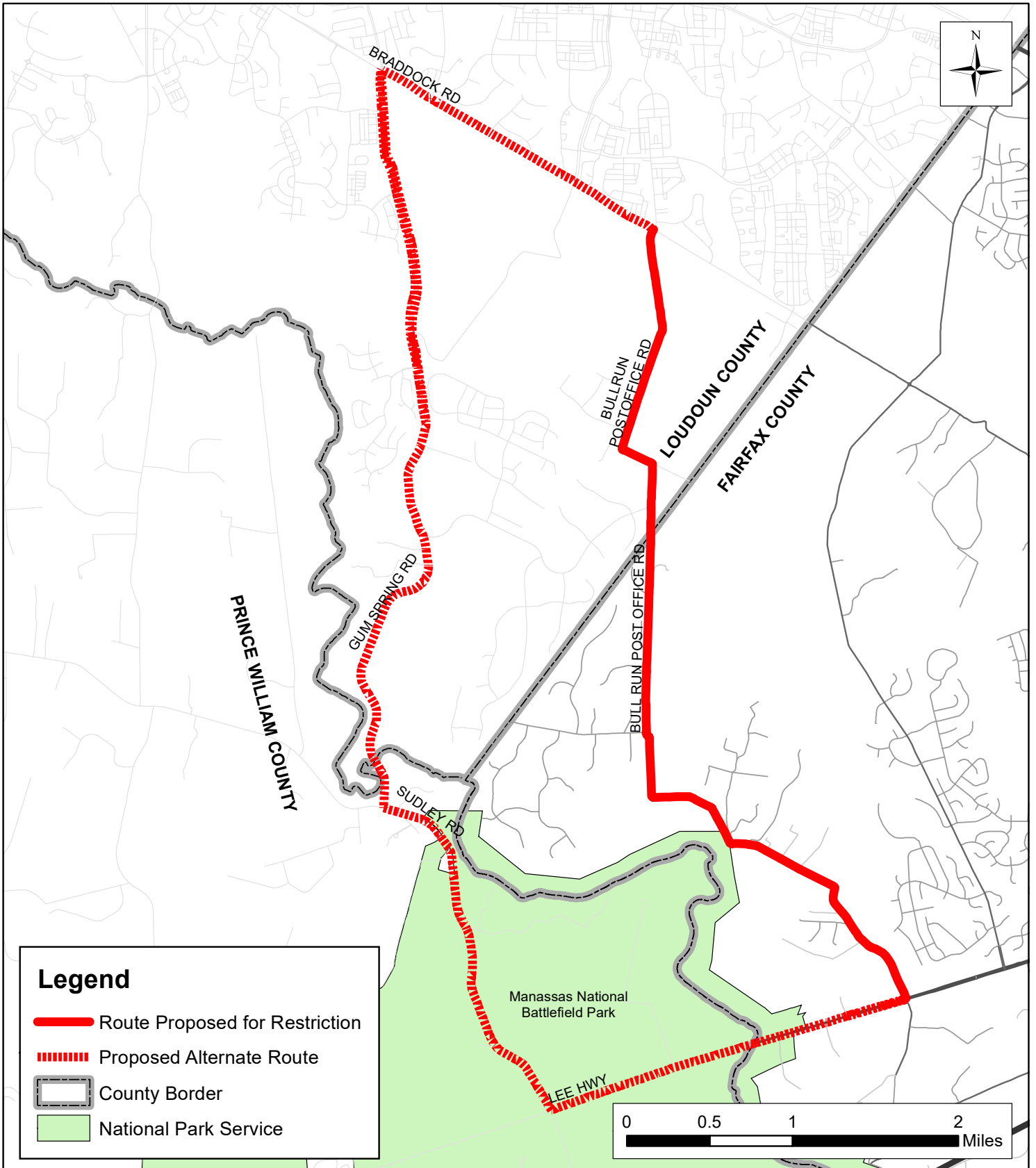
NOW THEREFORE BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, has determined that to promote the health, safety, and general welfare of the citizens of Fairfax County, it is beneficial to prohibit through truck traffic on Bull Run Post Office Road, between Lee Highway (Route 29) and Braddock Road, as part of the County's Residential Traffic Administration Program (RTAP).

FURTHER BE IT RESOLVED, that the Commonwealth Transportation Board is hereby formally requested to take necessary steps to enact this prohibition.

ADOPTED this 15th day of September, 2020.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors



Tax Map: 42-4, 52-2, 52-4, 53-3, 64-1

**Fairfax County Department of Transportation
 Residential Traffic Administration Program
 Through Truck Restriction - Fairfax County
 Bull Run Post Office Road
 Sully District**

June 2020





**United States Department of the Interior
NATIONAL PARK SERVICE**

**Manassas National Battlefield Park
12521 Lee Highway
Manassas, VA 20109**



In Reply Refer to:

1.A.2 (NCA-MANA)

March 24, 2020

Mr. Steven K. Knudsen
Transportation Planner III
Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, Virginia 22033

Dear Mr. Knudsen:

We recently received a copy of the through truck restriction proposed for Bull Run Post Office Road in Fairfax and Loudoun Counties and want to register our concerns about the potential impacts to Manassas National Battlefield Park. The proposed restriction covers Bull Run Post Office Road, from Lee Highway northward to Braddock Road, and identifies an alternate truck route using portions of Lee Highway, Sudley Road, Gum Springs Road, and Braddock Road.

We are particularly concerned about the potential of this proposal to impact traffic levels on Lee Highway and Sudley Road within the park. These highways already carry an excessive load, and the addition of increased truck traffic on these roads will contribute to congested conditions in the heart of the battlefield, where peak traffic already results in lengthy delays at the intersection of the two highways. An increase in truck traffic on these roads also raises safety concerns, especially resulting from combining slower moving truck traffic with passenger car traffic traveling at and frequently above the posted speed limit. The resulting congestion and traffic conflicts pose a daunting prospect for park visitors attempting to tour the battlefield and work to degrade the visitor experience at the park.

We are also concerned about the impact such increased truck traffic will have on park resources such as the historic Stone House, which is located mere yards away from Lee Highway and a short distance east of its intersection with Sudley Road. We have observed increasing damage to the building's stone masonry, and the vibrations of heavy truck traffic passing through the intersection may be contributing to this damage.

The impact of existing traffic levels on the visitor experience at this location is already apparent, with traffic noise invading into the house when it is opened to the public. A noise analysis conducted in 1995, with lower traffic volumes than present volumes, yielded a maximum noise

level at the Stone House measuring 69 dB, a level that was rated as being discouraged for cultural activities, marginally compatible with natural and recreation areas, and incompatible with neighborhood parks.

We are hopeful that you will take these concerns into consideration as you evaluate the proposal to implement the through truck restriction on Bull Run Post Office Road. If you have any questions regarding our comments, please contact me at 703-754-1861.

Sincerely,

A handwritten signature in black ink that reads "Brandon S. Bies". The signature is written in a cursive style with a large initial 'B'.

Brandon S. Bies
Superintendent

Cc: Northern Virginia District, Virginia Department of Transportation
Loudoun County Department of Transportation and Capital Infrastructure
Richard Weinmann, Prince William County Department of Transportation

MOTION: LAWSON

**June 16, 2020
Regular Meeting
Res. No. 20-456**

SECOND: ANGRY

RE: REQUEST THE BOARD OF COUNTY SUPERVISORS TO CALL FOR THE VIRGINIA DEPARTMENT OF TRANSPORTATION AND THE COMMONWEALTH TRANSPORTATION BOARD TO OPPOSE THE ALTERNATIVE TRUCK ROUTE PROPOSED AS PART OF THE BULL RUN POST OFFICE ROAD THROUGH-TRUCK RESTRICTION IN FAIRFAX COUNTY – GAINESVILLE MAGISTERIAL DISTRICT

ACTION: APPROVED

WHEREAS, the Fairfax County Department of Transportation has proposed a restriction of through-truck traffic on Bull Run Post Office Road between Braddock Road and Lee Highway; and

WHEREAS, the proposed alternative route from Braddock Road to Lee Highway is via Gum Spring Road, Sudley Road, and Lee Highway in Prince William County; and

WHEREAS, the alternate route is depicted on the attached map; and

WHEREAS, the proposed alternative route is currently serving heavy traffic and is over capacity; and

WHEREAS, the proposed alternative route has significant safety concerns and a high rate of accidents; and

WHEREAS, additional heavy-truck traffic will increase congestion and safety issues on Gum Spring Road, Sudley Road, and Lee Highway in Prince William County; and

WHEREAS, Featherbed Lane (State Route 622), Pageland Lane (State Route 705), and Catharpin Road (State Route 676) already have through truck restrictions; and

WHEREAS, the route from Braddock Road to Lee Highway via Sanders Lane, Sudley Road, and Lee Highway in Prince William County has the same concerns and issues as the proposed alternative route via Gum Springs Road; and

WHEREAS, the proposed alternative route will not promote the health, safety, and welfare of the citizens and tourists within the County; and

WHEREAS, the proposed alternative route goes through the Manassas National Battlefield Park, a historical and ecologically sensitive area; and

WHEREAS, the Manassas National Battlefield Park is classified as an endangered battlefield and roadways cannot be improved through the park to accommodate additional traffic; and

June 16, 2020
Regular Meeting
Res. No. 20-456
Page Two

WHEREAS, the existing traffic on the proposed alternative route already degrades the visitor experience with noise and congestion; and

WHEREAS, the Supervisor of the Manassas National Battlefield Park sent a letter to the Fairfax County Department of Transportation opposing the proposed alternative truck route (attached);

NOW, THEREFORE, BE IT RESOLVED that the Prince William Board of County Supervisors hereby requests that the Virginia Department of Transportation and the Commonwealth Transportation Board oppose the alternative truck route proposed as part of the Bull Run Post Office Road through-truck restriction in Fairfax County;

BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Virginia Department of Transportation District Engineer and the Fairfax County Department of Transportation.

ATTACHMENTS: Bull Run Post Office Road Through-Truck Restriction Sketch provided by the Fairfax County Department of Transportation
Letter from Supervisor of Manassas National Battlefield Park Opposing the Proposed Through-Truck Restriction
Letter from Supervisor Pete Candland, Gainesville Magisterial District, Opposing the Proposed Through-Truck Restriction

Votes:

Ayes: Angry, Bailey, Boddye, Franklin, Lawson, Vega Wheeler

Nays: None

Absent from Vote: None

Absent from Meeting: Candland

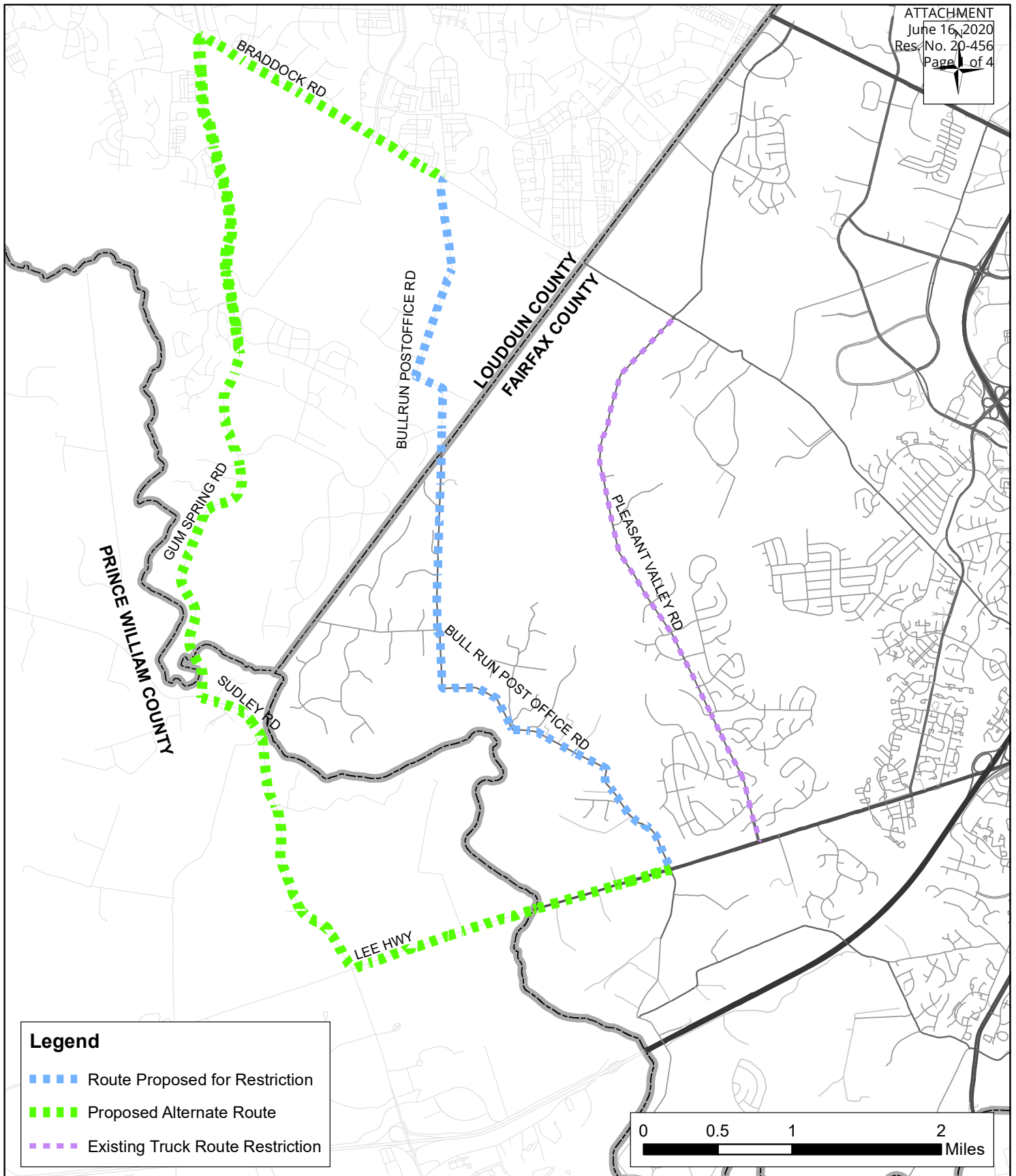
For Information:

County Attorney
Director of Transportation
VDOT District Traffic Engineer
VDOT Manassas Residency
Supervisor of Manassas Battlefield

ATTEST: _____



Clerk to the Board



Tax Map: 42.4, 52-2, 52-4, 53-3, 64-1

**Fairfax County Department of Transportation
Residential Traffic Administration Program
Through Truck Restriction - Fairfax County
Bull Run Post Office Road
Sully District**

February 2020





**United States Department of the Interior
NATIONAL PARK SERVICE**

**Manassas National Battlefield Park
12521 Lee Highway
Manassas, VA 20109**



In Reply Refer to:

1.A.2 (NCA-MANA)

March 24, 2020

Mr. Steven K. Knudsen
Transportation Planner III
Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, Virginia 22033

Dear Mr. Knudsen:

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We are particularly concerned about the potential of this proposal to impact traffic levels on Lee Highway and Sudley Road within the park. These highways already carry an excessive load, and the addition of increased truck traffic on these roads will contribute to congested conditions in the heart of the battlefield, where peak traffic already results in lengthy delays at the intersection of the two highways. An increase in truck traffic on these roads also raises safety concerns, especially resulting from combining slower moving truck traffic with passenger car traffic traveling at and frequently above the posted speed limit. The resulting congestion and traffic conflicts pose a daunting prospect for park visitors attempting to tour the battlefield and work to degrade the visitor experience at the park.

We are also concerned about the impact such increased truck traffic will have on park resources such as the historic Stone House, which is located mere yards away from Lee Highway and a short distance east of its intersection with Sudley Road. We have observed increasing damage to the building's stone masonry, and the vibrations of heavy truck traffic passing through the intersection may be contributing to this damage.

The impact of existing traffic levels on the visitor experience at this location is already apparent, with traffic noise invading into the house when it is opened to the public. A noise analysis conducted in 1995, with lower traffic volumes than present volumes, yielded a maximum noise

level at the Stone House measuring 69 dB, a level that was rated as being discouraged for cultural activities, marginally compatible with natural and recreation areas, and incompatible with neighborhood parks.

We are hopeful that you will take these concerns into consideration as you evaluate the proposal to implement the through truck restriction on Bull Run Post Office Road. If you have any questions regarding our comments, please contact me at 703-754-1861.

Sincerely,

A handwritten signature in black ink that reads "Brandon S. Bies". The signature is written in a cursive style with a large initial 'B'.

Brandon S. Bies
Superintendent

Cc: Northern Virginia District, Virginia Department of Transportation
Loudoun County Department of Transportation and Capital Infrastructure
Richard Weinmann, Prince William County Department of Transportation



COUNTY OF PRINCE WILLIAM

7001 Heritage Village Plaza, Suite 210
Gainesville, Virginia 20155
(703) 792-6195 FAX: (571) 248-4290
gainesville@pwcgov.org

Pete Candland
Supervisor
Gainesville District

May 28, 2020

Thomas Folve
Assistant District Traffic Engineer – Traffic Engineering Section
Virginia Department of Transportation
4975 Alliance Drive
Fairfax, VA 22030

Re: Proposed Through Truck Restriction on Bull Run Post Office Road

Dear Mr. Folve,

I would like to register my strong objection to the proposed alternate route identified for the Bull Run Post Office Road Through Truck Restriction being proposed by Fairfax County Department of Transportation that uses portions of Lee Highway, Sudley Road and Gum Springs Road in Prince William County.

I am extremely concerned that in addition to increasing traffic on Lee Highway, Sudley Road and Gum Springs Road, this proposed alternate route will aggravate already existing safety and congestion issues on one of the County's most congested and problematic corridor and intersections. The intersection of Lee Highway and Sudley Road and much of the proposed alternative route lie within the environmentally and historically sensitive Historic Manassas Battlefield Park. For years the County and VDOT have been examining alternatives to address the current traffic, safety and congestion issues in the park to identify feasible improvements that do not negatively impact the environmental and historical sensitivity of the area. Adding additional truck traffic to this route will only negate these efforts and further worsen issues, degrade traffic conditions and decrease safety on a corridor where there are few alternatives and opportunities to make already needed improvements.

The County is strongly opposed to the proposed alternative route and the Prince William County Board of County Supervisors is scheduled to consider adopting a resolution to formally oppose the proposed alternative truck route at its June 16, 2020 Board Meeting.

Regards,

Pete Candland, Supervisor
Gainesville Magisterial District

cc: Virginia Department of Transportation – Northern Virginia District: Ivan Horodyskyj, Helen Cuervo, Dic Burke
Prince William County – Department of Transportation: Rick Canizales
Fairfax County – Department of Transportation: Steven Knudsen
National Park Service – Manassas National Battlefield Park: Brandon Bies

Board Agenda Item
September 15, 2020

4:00 p.m.

Public Hearing on a Proposal to Vacate a Portion of Westbranch Drive / Route 5457
(Providence District)

ISSUE:

Public hearing on a proposal to vacate a portion of Westbranch Drive / Route 5457.

RECOMMENDATION:

The County Executive recommends that the Board adopt the attached ordinance (Attachment III) and resolution (Attachment VII) for vacation of the subject right-of-way.

TIMING:

On June 23, 2020, the Board authorized the public hearing to consider the proposed vacation for September 15, 2020, at 4:00 p.m.

BACKGROUND:

The applicant, Walsh, Colucci, Lubeley & Walsh, P.C., on behalf of PS Business Parks, L.P., is requesting that a portion of Westbranch Drive / Route 5457 be vacated under §15.2-2006 of the Virginia Code. The applicant is seeking this request to facilitate the installation of dry utility duct bank facilities that meet the requirements of the Final Development Plan for the property at Tax Map 0294-07-0011A, and required as part of the overall Tysons infrastructure system. The Final Development Plan for Tax Map 0294-07-0011A has been approved following the adoption of the ordinance that grants the Rezoning Application RZ 2017-PR-015 to rezone the property from the C-3 District to the PTC District.

The subject portion of Westbranch Drive is located along the eastern side of Westbranch Drive between the intersection of Westbranch Drive and Westpark Drive and the intersection of Westbranch Drive and Jones Branch Drive. The subject portion of right-of-way is also outside of the vehicular travel lanes and does not impact the overall mileage of Westbranch Drive. Westbranch Drive was originally conveyed to the Board of Supervisors of Fairfax County by virtue of a deed and plat recorded in Deed Book 4040 at Page 333, among the land records of Fairfax County, Virginia. The property that abuts the existing right-of-way to be vacated is currently occupied by Tax Map 0294-07-0011A, to which the land would revert after the vacation. The total area to be vacated is 1,464 square feet.

Board Agenda Item
September 15, 2020

Traffic Circulation and Access

The vacation will have no long-term impact on pedestrian, transit, or vehicle circulation and access.

Easements

The project manager has certified that all easement requirements for the project have been met.

The proposal to vacate 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 Development, Fairfax County Park Authority, Fairfax County Water Authority, Fairfax County School Board, Fire and Rescue, Virginia Department of Transportation, Dominion Virginia Power, Washington Gas, 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 Vacate
Attachment III: Ordinance of Vacation
Attachment IV: Metes and Bounds Description
Attachment V: Vacation Plat
Attachment VI: Vicinity Map
Attachment VII: Resolution

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Gregg Steverson, Deputy Director, FCDOT
Jeff Hermann, Division Chief, FCDOT
Marc Dreyfuss, FCDOT
Michelle Guthrie, FCDOT
Jeffrey Edmondson, FCDOT

ASSIGNED COUNSEL:

Pamela K. Pelto, Assistant County Attorney



**WALSH COLUCCI
LUBELEY & WALSH PC**

H. Mark Goetzman
Phone: 703.528.4700 x5452
Fax: 703.528.6050
mgoetzman@thelandlawyers.com

Revised
May 8, 2020

BY COURIER AND ELECTRONIC MAIL

Michelle Guthrie and Jeffrey Edmondson
Fairfax County Department of Transportation
4050 Legato Rd, Ste 400
Fairfax, VA 22033-2895

Re: Revised request for Vacation of a Portion of Westbranch Drive
(State Route 5457), Providence District, Fairfax County, Virginia

Dear Michelle and Jeffrey:

This letter constitutes a revised request and statement of justification to vacate a portion of Westbranch Drive, Route 5457, Fairfax County, Virginia, originally filed on September 6, 2019, and resubmitted November 15, 2019 and March 23, 2020. This revised letter and our revised exhibits seek to address the comments contained in the Fairfax County Department of Transportation Letter dated February 5, 2020, as revised and supplemented on March 11, 2020, as well as subsequent discussions. Please note that the Virginia Department of Transportation (“VDOT”) Letter dated May 1, 2020 states that VDOT has no objection to the vacation. The portion of Westbranch Drive to be vacated is located in the Providence Magisterial District (hereinafter referred to as the “Vacation Area”). This request is made on behalf of the Applicant pursuant to Virginia Code Sections 15.2-2006 and 15.2-2008. This request is made on behalf of PS Business Parks, L.P., the owner of real property at Tax Map 0294-07-0011A (the “Property”), located adjacent to the Vacation Area.

The Vacation Area to be vacated is shown on the plat entitled “Vacation of a Portion of Westbranch Drive – Route #5457” prepared by VIKA Virginia LLC dated July 26, 2019 and revised on November 7, 2019, February 26, 2020, March 18, 2020, and April 23, 2020.

To offer some background, the Vacation Area was conveyed to the Board of Supervisors of Fairfax County, Virginia (the “Board”), by virtue of a deed and plat recorded in Deed Book 4040 at Page 333, among the land records of Fairfax County, Virginia. The Vacation Area runs along the western side of the Property where construction of a mixed-use development is planned.

ATTORNEYS AT LAW

703 528 4700 • WWW.THELANDLAWYERS.COM
2200 CLARENDON BLVD. • SUITE 1300 • ARLINGTON, VA 22201-3359

(A0915887.DOC / 1 Statement of Justification (Westbranch Drive) (CL) 000875-000759) 703 680 4664

Michelle Guthrie and Jeffrey Edmondson
May 8, 2020
Page 2

The purpose of requesting the vacation of the Vacation Area is to facilitate the installation of dry utility duct bank facilities that are required as part of the overall Tysons infrastructure system, and meet the requirements of the Final Development Plan for the Property. On July 16, 2019, the Board adopted an ordinance granting Rezoning Application RZ 2017-PR-015 to rezone certain land in the Providence District, including the Property, from the C-3 District to the PTC District. An approved Final Development Plan has been approved for the Property, which requires the applicant to provide certain roadway and streetscape improvements, including a landscape amenity panel and a sidewalk within the streetscape portion of the right-of-way.

In the approved Final Development Plan, the back edge of the contemplated sidewalk falls exactly at the right-of-way boundary line. The final design of this site has resulted in the sidewalk being located further into the existing right-of-way, such that there remains right-of-way area between the back edge of the contemplated sidewalk and the existing right-of-way boundary line. Please see the Geometric Layout Plan enclosed. The applicant is requesting the vacation of a portion of this right-of-way area between the back edge of the contemplated sidewalk and the existing right-of-way boundary line for the installation of the above referenced dry utility duct bank facilities.

Portions of the duct bank itself would be located within this vacated right-of-way area, on which an easement could be granted to the dry utility purveyors following the vacation.

The implementation of the streetscape improvements as required under the Final Development Plan will occur in phases in conjunction with the development of the various buildings along Westbranch Drive. A final site plan will be required for each building, and the approved streetscape described above will be implemented across the frontage of each building.

Please note, we are not requesting the vacation of the areas along Westbranch Drive for which no site plan exists to implement such streetscape improvements. Vacation of such areas would result in existing sidewalks being located partially in and partially out of the right-of-way, which would be unacceptable to the Virginia Department of Transportation. Therefore, it is only appropriate to vacate the portion of the right-of-way adjacent to buildings with final site plans which contemplate the streetscape improvements described above.

The total area to be vacated is 1,464 square feet.

I request your final review of this application, and our understanding is that you are noticing a public hearing as soon as possible. We greatly appreciate all the help and cooperation you have provided in this matter thus far. If you have any questions or require additional information, please do not hesitate to contact me.

Michelle Guthrie and Jeffrey Edmondson
May 8, 2020
Page 3

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.


H. Mark Goetzman

HMG/mc

cc: Alysia Yi

NOTICE OF INTENT TO
ADOPT AN ORDINANCE VACATING
A PART OF A PLAT ON WHICH IS SHOWN

(Westbranch Drive – State Route 5457)

Providence District,
Fairfax County, Virginia

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on September 15, 2020, 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, vacating a part of the plat of subdivision, recorded in Deed Book 4040, at Page 333, on which is shown Westbranch Drive – State Route 5457 from Jones Branch Drive to Westpark Drive. The road is located on Tax Maps 029-4-07-0011-A and is described and shown on the metes and bounds schedule dated March 20, 2020, and on the plat dated July 26, 2019, and revised on November 7, 2019, February 26, 2020, and March 18, 2020, each prepared by VIKA Virginia, LLC, both of which are on file in the Fairfax County Department of Transportation, 4050 Legato Road, Suite 400, Fairfax, Virginia 22033, Telephone Number (703) 877-5600.

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.

PROVIDENCE DISTRICT.

§ 15.2-2006

ADOPTION OF AN ORDINANCE VACATING
A PART OF A PLAT ON WHICH IS SHOWN

(Westbranch Drive – Route 5457)

Providence District,
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax County, Virginia, on September 15, 2020, 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 ORDAINED by the Board of Supervisors of Fairfax County, Virginia: that Part of the Record Plat of Westpark Subdivision, recorded in Deed Book 4040 at Page 333, on which is shown Westbranch Drive – Route 5457, from Jones Branch Drive to Westpark Drive, located on Tax Map 029-4-07-0011-A, and described and shown on the metes and bounds schedule dated March 20, 2020, and on the plat dated July 26, 2019, and revised on November 7, 2019, February 26, 2020, and March 18, 2020, each prepared by VIKA Virginia, LLC, attached hereto and incorporated herein, be and the same is hereby vacated, pursuant to Virginia Code Ann. §15.2-2006.

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

§15.2-2006

VIKA Virginia, LLC
8180 Greensboro Dr.
Suite 200
Tysons, VA 22102
703.442.7800
vika.com

**GLOUCESTER PARCEL
Right-of-Way Vacation Area #1**

**MARCH 20, 2020
DESCRIPTION OF
A PORTION OF
THE EXISTING RIGHT-OF-WAY OF
WESTBRANCH DRIVE
STATE ROUTE 5457
100 FEET RIGHT-OF-WAY
DEED BOOK 4040 AT PAGE 333
PROVIDENCE DISTRICT
FAIRFAX COUNTY, VIRGINIA**

Being a portion of the existing right-of-way of Westbranch Drive – State Route 5457, 100 feet right-of-way, as recorded in Deed Book 4040 at Page 3333 among the land records of Fairfax County, Virginia and identified as "VACATION AREA #1" on sheet 2 of 2 of the plat by VIKA Virginia, LLC entitled "Plat Showing, Vacation of a Portion of, Westbranch Drive – Route #5457", and being more particularly described as follows:

Beginning for the same at a point marking the intersection of the easterly right-of-way line of the aforementioned Westbranch Drive and the northerly right-of-way line of Maitland Street, 46 feet right-of-way; thence leaving the said easterly right-of-way line of Westbranch Drive and running so as to cross and include a portion of said Westbranch Drive the following three (3) courses and distances

1. North 63°56'02" West, 3.51 feet to a point of curvature (non-tangent); thence
2. 417.10 feet along the arc of a curve to the left having a radius of 1,102.61 feet and a chord bearing and distance of North 12°50'18" East, 414.62 feet to a point; thence
3. North 85°36'55" East, 3.52 feet to a point of curvature (non-tangent) lying on the aforesaid easterly right-of-way line of Westbranch Drive, said point also lying on the westerly line of PS Business Parks, L.P. (Gloucester) as recorded in Deed Book 21446 at Page 2013, among the aforesaid Land Records; thence running with said westerly line
4. 418.97 feet along the arc of a curve to the right having a radius of 1,106.11 feet, and a chord bearing and distance of South 12°49'52" West, 416.47 feet to the point of beginning containing 1,464 square feet or 0.03361 acres of land, more or less.

P:\projects\17388\17388PICADD - P\SURVEYS\LEGAL DESCRIPTIONS\17388P GLOUCESTER - ROW VACATION 1.doc

Our Site Set on the Future.



IES.

HE SUBJECT PROPERTY IS ADJACENT TO FAIRFAX COUNTY, VIRGINIA TAX MAP NUMBER 029-4-07-0011A AND ARE ZONED C-3.1 SUBJECT TO RECORDING CASE: 82-2071-FR-015.

HE ADJACENT PROPERTY IS NOW IN THE NAME OF P/S BUSINESS PARKS, L.P. AS RECORDED IN DEED BOOK 21446 AT PAGE 2013 AND DEED BOOK _____ AT PAGE ____ ALL AROUND THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.

HE SUBJECT PROPERTY IS LOCATED IN ZONE "X" (MAYAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) AS SHOWN ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FLOOD INSURANCE RATE MAP (FIRM) NUMBER 5109020202E, COMMUNITY NO. 51022 0143 E, FOR FAIRFAX COUNTY, VIRGINIA WITH AN EFFECTIVE DATE OF SEPTEMBER 17, 2010. ZONE "X" IS NOT DETERMINED TO BE A SPECIAL FLOOD HAZARD ZONE AREA.

HE HORIZONTAL DATA SHOWN HEREON IS REFERENCED TO VIRGINIA COORDINATE SYSTEM OF 1983 (NCS 83).

ADJACENT INFORMATION SHOWN HEREON IS BASED UPON A FIELD SURVEY BY WVA, INC. THE SURVEY CONTROL ESTABLISHED BY WVA, INC. AND USED TO DETERMINE THE BOUNDARY HAS A HORIZONTAL PRECISION OF 1:151,303 WHICH EXCEEDS THE VIRGINIA PRECISION OF 1:20,000 AS REQUIRED BY THE COMMONWEALTH OF VIRGINIA.

HE SUBJECT PROPERTY DOES NOT LIE WITHIN A RESURVEY PROTECTION AREA (RPA) FOR FAIRFAX COUNTY CRESAPICUM BAY RECREATION AREAS MAP 029-4 (DATED MARCH 1, 2005).

IF FUTURE EXPANSION OR AUTORIZATION FOR ELECTRIC, CABLE, TELEPHONE OR GAS SERVICE TO BE FURNISHED TO THE PROPERTY SHOWN ON THIS PLAT SHALL COMPLY WITH THE PROVISIONS OF VIRGINIA CODE 15.2-224(9).

1. KNOWN PLATTABLE EASEMENTS OF RECORD ARE SHOWN HEREON.

RIGHT CREDIT FOR THE AREAS VACATED IS ESTABLISHED PER ARTICLE 2-308 OF THE ZONING ORDINANCE.

CURVE TABLE						
CURVE LENGTH	RADIUS	DELTA	TANGENT	CHORD BEG.	CHORD END	
CS	417.07'	1102.81'	201'40.27"	211.07'	11720.18'E	414.82'
CE	418.87'	1106.11'	201'42.08"	212.02'	512'49.52"W	416.47'



SURVEYOR'S CERTIFICATION:

I, FRANKLIN E. DENNIS, A LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT I HAVE CAREFULLY SURVEYED THE PROPERTY DESCRIBED ON THIS PLAT OF VACATION OF PUBLIC STREET AND THAT IT IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF. THAT IT IS A PORTION OF THE PROPERTY DEDICATED FOR PUBLIC STREET PURPOSES AS WESTBRANCH DRIVE STATE ROUTE 5457 RECORDED IN DEED BOOK 4040 AT PAGE 111. AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.

I FURTHER CERTIFY THAT THE LAND DEDICATED BY THIS PLAT OF STREET VACATION LIES ENTIRELY WITHIN THE BOUNDARIES OF THE ORIGINAL TRACT, THAT THIS PLAT REPRESENTS AN ACCURATE SURVEY OF THE SAME AND THAT THE REQUIREMENTS OF THE VIRGINIA COORDINATE SYSTEM OF 1983 (NCS 83), SEE NOTE 4, IN ACCORDANCE WITH THE REQUIREMENTS OF THE FAIRFAX COUNTY SUPERVISION ORDINANCE.

DATE: 4/23/2020

FRANKLIN E. DENNIS
LICENSED LAND SURVEYOR
VIRGINIA, 2081



APPROVED
COUNTY OF FAIRFAX
LAND DEVELOPMENT SERVICES
ADDRESSING NUMBER _____
DATE OF RECOMMENDATION: _____
DATE OF RECOMMENDATION: _____
DATE OF RECOMMENDATION: _____

VACATION OF A PORTION OF WESTBRANCH DRIVE - ROUTE 5457

SCALE: 1" = 200'
REV. NOVEMBER 1, 2010, FEBRUARY 26, 2020,
MARCH 18, 2020, APRIL 23, 2020
SHEET 1 OF 2



* ENGINEERS ■ PLANNERS ■ LANDSCAPE ARCHITECTS ■ SURVEYORS ■ GEOTECHNICALS
VWA VIRGINIA, LLC
#800 DORCHESTER DRIVE, SUITE 200 ■ TROSPER, VIRGINIA 22902
(703) 542-7800 ■ FAX (703) 781-2787
WWW.VIRVA.CO

PUBLIC STREET VACATION AREA TABULATION:

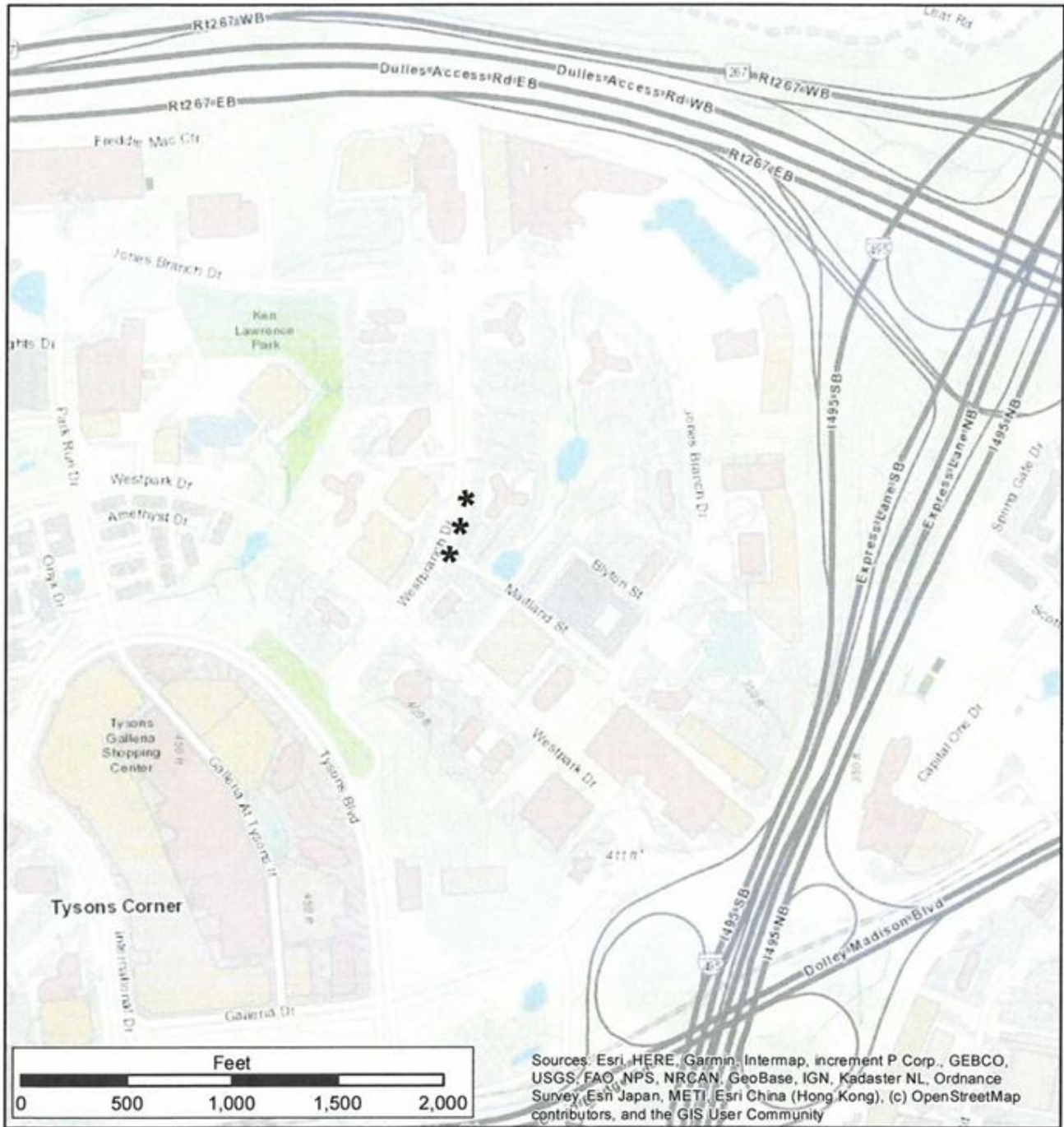
VACATION AREA # 1: 1,464 SQ. OR 0.02381 AC
TOTAL VACATION AREA: 1,464 SQ. OR 0.02381 AC

AREA TABULATION:

EXISTING
QUADRESTER 029-4-07-0011A 335,887 SQ. OR 7,71090 AC
TOTAL EXISTING PARCELS 335,887 SQ. OR 7,71090 AC

PROPOSED (WITH STREET VACATION)
QUADRESTER + VACATION AREA 1 335,887 SQ. OR 7,71090 AC
QUADRESTER TOTAL AREA 337,351 SQ. OR 7,74481 AC

Westbranch Drive Easement Vacation Providence District



Tax Map 29-4



* Symbol Denotes Area of Easement to be Vacated

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, this 15th day of September, 2020, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, Walsh, Colucci, Lubeley & Walsh, P.C., petitioned the Fairfax County Board of Supervisors to vacate a portion of the existing right-of-way of Westbranch Drive (Route 5457) to allow the installation of dry utility duct bank facilities that are required as part of the overall Tysons infrastructure system, and satisfy the requirements of the Final Development Plan for the property at Tax Map 0294-07-0011A, and;

WHEREAS, the Board of Supervisors has approved the vacation of a portion of the existing right-of-way of Westbranch Drive (Route 5457) located adjacent to Tax Map 29-4-((7)) Parcel 11A, described on the metes and bounds schedule dated March 20, 2020, and shown as 1,464 square feet (Vacation Area #1) on the vacation plat dated April 23, 2020, both prepared by VIKA Virginia LLC, and;

WHEREAS, the County has no current or planned use for the right-of-way created by the vacation, and;

WHEREAS, the Board of Supervisors finds that it would be in the best interest of the residents of Fairfax County to vacate, pursuant to Virginia Code Ann. §15.2-2006, the above described portion of Westbranch Drive (Route 5457),

NOW, THEREFORE, upon public hearing duly advertised according to law, it is **RESOLVED** that, in consideration of the requirements as part of the overall Tysons infrastructure system, the County Executive or Deputy County Executive is hereby authorized to execute all necessary documents to vacate the real property described above to the Applicant.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

Board Agenda Item
September 15, 2020

4:00 p.m.

Public Hearing to Consider Adopting an Ordinance to Establish an Economic Incentive Program (Dranesville, Lee, Mason, Mount Vernon and Providence Districts)

ISSUE:

Board public hearing to consider amending Chapter 4, Taxation and Finance, of the *Code of the County of Fairfax, Virginia* (Code) to establish a new Article 29 – Incentives to Encourage Economic Growth to establish an Economic Incentive Program (EIP) that will apply to certain areas of the county.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the proposed addition to Chapter 4, Taxation and Finance to establish Article 29 – Incentives to Encourage Economic Growth.

TIMING:

Board action is requested on September 15, 2020, to adopt the ordinance. If adopted, the benefits of this ordinance would take effect on specific dates for each EIP Area and last for a period of ten years. Staff understands that Board members will provide an effective date for each of the Economic Incentive Areas prior to adoption. Dates have been publicly advertised to begin between January 1, 2021 and January 1, 2026, and expire exactly 10 years after the effective dates adopted at the public hearing.

BACKGROUND:

In 2017, the Virginia General Assembly passed HB1970 that provides for regulatory flexibility and financial incentives to encourage the private sector to assemble property for economic development purposes. Pursuant to that legislation, along with previously existing law, an inter-departmental team developed and vetted with industry a proposal for a program in Fairfax County to provide an economic development opportunity to the private sector consistent with the legislation. At its October 2, 2018, Board Revitalization Committee meeting, the Board directed staff to draft an ordinance to establish the locations, processes, procedures and incentives of such a program.

The proposed amendment to the Code would add a new Article 29 - Incentives to Encourage Economic Growth that would offer regulatory incentives in the form of concurrent processing of development applications and associated Comprehensive

Board Agenda Item
September 15, 2020

Plan amendments, inclusion of development applications in the LDS Project Management Program, a fee reduction of 10 percent for site plan review, and a partial real estate tax abatement (as described in the Fiscal Impact section below) to private sector developers who assemble and develop properties in accordance with the ordinance and consistent with the vision of the Comprehensive Plan.

The EIP is proposed to apply to all five of the County's Commercial Revitalization Districts (CRDs), which are Annandale, Baileys Crossroads/Seven Corners, McLean, Richmond Highway and Springfield; and the County's Commercial Revitalization Area (CRA) of Lincolnia. It is envisioned that the Lake Anne Village Center CRA will come back at a future date based on when redevelopment opportunities arise. The County has a long-standing policy of supporting revitalization and redevelopment in older commercial areas not experiencing reinvestment such as the CRDs/CRA, and the CRDs/CRA are established Mixed-use Centers in the Comprehensive Plan targeted for future growth and investment.

Additionally, the EIP is proposed to apply to logical extensions of two of the the CRDs. Only certain portions of the Richmond Highway corridor are designated as CRDs. However, Richmond Highway is viewed as a continuous corridor rather than a series of business nodes and is undergoing extensive transportation and public transit investment. Likewise, the Springfield Transit Station Area (TSA) is intertwined with the Springfield CRD and the two combine to form one overall area known as the Greater Springfield Area. This area has also undergone significant transportation and public transit investments, with more anticipated in the future.

Extending the program beyond the Richmond Highway CRDs results in including properties fronting on Richmond Highway between the CRDs from Huntington Avenue to Jeff Todd Way as follows: the Suburban Neighborhood Areas along Richmond Highway as shown in the Comprehensive Plan, properties along Richmond Highway located between the Richmond Highway CRDs and Suburban Neighborhood Areas (see Maps 1-4), and Land Units R and Q of the Huntington Transit Station Area as shown in the Comprehensive Plan. Extending the program beyond the Springfield CRD results in including the Franconia-Springfield TSA, except for those areas planned for single-family development, i.e. sub-units Q and R and the portion of sub-unit N north of the Springfield-Franconia Parkway, as shown in the Comprehensive Plan.

In order to qualify for the program, a development would need to have newly assembled a minimum of two parcels not previously approved for a rezoning or site plan that collectively would comprise at least two acres in size, be zoned to permit commercial or industrial uses or for multifamily residential development, be in conformance with all laws and policies related to the provision and preservation of affordable housing, and be in conformance with the uses and consolidation recommendations in the

Board Agenda Item
September 15, 2020

Comprehensive Plan; however, the Board could consider smaller acreages if necessary to achieve the vision of the Comprehensive Plan. Additionally, existing development may be retained and/or repurposed under certain circumstances, if consistent with the vision in the Comprehensive Plan.

The eligibility process would require the applicant to submit a formal application and all owners must be a party to the application. Staff would review the application to determine if it meets the eligibility requirements of the EIP, as well as the Comprehensive Plan, and all laws and policies related to the provision and preservation of affordable housing. Staff would then issue a provisional approval or rejection letter regarding eligibility. Eligible applications would be considered by the Board as an Action Item at a regularly scheduled Board meeting and could be concurrent with any rezoning application, if applicable. The Board would determine whether to approve the eligible application separately for a by-right development proposal.

All development proposals will continue to be evaluated in a manner consistent with all other development applications, including how they offset development impacts associated with their development, including those to roadways, parks, schools and other county public facilities. Similarly, on-site commitments would be expected to be met as applicable for items such as the grid of streets, green buildings, stormwater management, urban park spaces, affordable housing, streetscapes, transportation demand management programs and, environmental concerns.

On July 28, 2020, the Board of Supervisors authorized advertisement of the attached referenced ordinance for a public hearing on September 15, 2020. At the July 28th hearing, the Board directed staff to explore the possibility of including a market-based component on the tax-exempt portion of a qualifying property under the program. The Board also asked staff to include this proposed amendment to the draft ordinance language in the advertisement for the public hearing. Staff has concluded that enabling authority supports the requested amendment and that the Department of Tax Administration is administratively able to incorporate the proposed amendment in their system. Attached is revised text for your consideration. As always, the Board still has maximum flexibility to make changes or propose alternate recommendations within each of the major issue areas so long as such changes or recommendations are within the scope of the advertisement, which is attached.

Substantive Revisions:

1. Addition of a market rate adjustment to the tax-exempt portion of the qualifying property. (Initial paragraph of Section 4-29-7).

Following the July 28th hearing, staff determined that the Virginia Code authorizes inclusion of a market-based component to the tax-exempt portion of any qualifying development included in the EIP. Staff added language to the proposed ordinance to *"include any increase or decrease in the fair market value of the tax-exempt portion of the qualifying property as determined by the Department of Tax Administration's annual assessment of the property."*

2. Deletion of the requirement that the partial real estate tax exemption not exceed the current assessment. (Section 4-29-7(d)).

Staff was originally concerned that tax-exempt calculation, together with certain economic circumstances, could potentially result in the tax-exempt portion of the of the qualifying property exceeding the total tax on the parcel(s) and result in a tax refund. The proposed ordinance amendment in the initial paragraph of Section 4-29-7 includes *"any increase or decrease in the fair market value of the tax-exempt portion of the qualifying property."* Because the tax-exempt calculation now incorporates potential reductions in fair market value into the calculation of the tax-exempt portion of the exemption, there is no need for this clause in the ordinance.

3. Establishment of effective dates.

The effective date for an EIP area starts the ten-year clock for each specific area. Only after a project is determined to be substantially complete, i.e. a building that, at a minimum, has been completed to a **Shell** condition and is ready to have its interior finish installed, may the the final valuation be requested of DTA for use in calculating the partial tax exemption amount. The goal of establishing different effective dates for EIP areas is to maximize the amount of time that a developer will be in the program based upon economic and market conditions in each area.

Following ordinance adoption, staff will publicize the program, conduct outreach activities to educate the public and members of the development and real estate communities about the new program, and begin to review applications that may be submitted either as part of by-right or rezoning proposals. Staff will also conduct internal trainings of the relevant land development agencies to ensure a shared understanding and coordinated implementation of the program. Periodic updates will be provided to the Board regarding the number of applications, projects approved to date, status of qualifying developments, and financial impacts of the program.

FISCAL IMPACT:

Qualifying developments will receive regulatory and economic benefits including expedited processing, a reduction in site plan review fees of 10 percent, and a partial

Board Agenda Item
September 15, 2020

tax exemption on the real estate tax calculated as the difference between the pre-redevelopment (base) assessed value and the post-development assessed value in accordance with Virginia Code. It should be noted that the partial real estate abatement applies only to the County's real estate tax (with a current rate of \$1.15 per \$100 of assessed value) and does not apply to other taxes, such as the Commercial and Industrial Tax or special district taxes. In addition, as the County will continue to receive real estate tax revenues on the base value of developments in the program, the partial tax exemptions of the real estate tax will have not reduced the General Fund. Real estate taxes will be assessed on the full assessed value of the development no later than the expiration date of the incentive period.

It is not possible to estimate how many projects may come forward and be deemed eligible under the program. However, a prototypical example of the real estate tax abatement would work as follows: If the base assessed value of a property is \$5 million, real estate taxes would generate \$57,500 per year. Assuming a post development assessed value of \$120 million, the partial tax abatement would be calculated on the \$115 million increment or difference between pre- and post-development values. With a tax rate of \$1.15 per \$100 of assessed value, the total tax abatement would be \$1,322,500 per year for a maximum tax abatement of \$13,225,000 over the maximum 10-year life of the program.

It is also difficult to quantify the total fiscal impact to the county as a result of the decreased revenue from site plan review fees, but it is estimated to be less than \$100,000 over the 10-year life of the program.

Staff will be available to address any questions on September 15, 2020.

ENCLOSED DOCUMENTS:

Attachment 1 – Revised Ordinance Amending the Code of the County of Fairfax Chapter 4, Article 29, Relating to Incentives to Encourage Economic Growth
Attachment 2 - Maps 1-4

STAFF:

Barbara A. Byron, Director, Department of Planning and Development (DPD)
Elizabeth A. Hagg, Director, Community Revitalization Section, DPD
Jay Doshi, Director, Department of Tax Administration
Anne Stevenson, Assistant Director, Department of Tax Administration
Bill Hicks, Director, Land Development Services

Board Agenda Item
September 15, 2020

ASSIGNED COUNSEL:

Corinne N. Lockett, Senior Assistant County Attorney
Cherie L. Halyard, Assistant County Attorney

1 AN ORDINANCE ADOPTING
2 ARTICLE 29 OF CHAPTER 4 OF THE FAIRFAX COUNTY CODE, RELATING TO
3 INCENTIVES to ENCOURAGE ECONOMIC GROWTH
4

5 AN ORDINANCE to amend the Fairfax County Code by adopting Article 29
6 to Chapter 4 relating to incentives to private entities to encourage economic
7 growth.
8

9
10 Be it ordained by the Board of Supervisors of Fairfax County:
11

12 1. That Chapter 4, Article 29 of the Fairfax County Code is adopted, as follows:

13 ARTICLE 29. – Incentives to Encourage Economic Growth.

14 Section 4-29-1. Title.

15 This ordinance shall hereafter be known, cited and referred to as the “Economic Incentive
16 Program Ordinance” of Fairfax County.

17
18 Section 4-29-2. Purpose and Intent.

19 Fairfax County seeks to provide economic revitalization and redevelopment
20 opportunities, in accordance with §§ 15.2-1232.2 and 58.1-3219.4 of the Code of Virginia, by
21 offering regulatory and financial incentives, including partial real estate tax exemptions as set
22 forth below, to encourage the private sector to purchase, assemble, revitalize, and redevelop real
23 property suitable for economic development that is consistent with the vision contained in the
24 Comprehensive Plan adopted by Fairfax County.

25
26 Section 4-29-3. Definitions.

27 (a) Application means the form provided by the Director to be filed by an applicant seeking
28 approval of the redevelopment of an assemblage of parcels and the granting of economic
29 and regulatory incentives pursuant to the terms of this Article.

30
31 (b) Assemblage means the combination of adjoining parcels, with different owners, into a
32 single development in accordance with this Article.

33
34 (c) Commercial and industrial properties include all real property, excluding commercial
35 condominiums, used for or zoned to permit commercial or industrial uses that are
36 approved and designed for retail or wholesale trade, hotel, restaurant, offices, clinics,

37 warehouses, light manufacturing, and other such uses. Such classification of real property
38 excludes all residential uses.

39
40 (d) Director means the Director of the Department of Planning and Development, or the
41 designated agent of that Director.

42
43 (e) The Economic Incentive Program includes designated Economic Incentive Areas listed in
44 Section 4-29-4 that operate for the purpose of economic revitalization as provided for in
45 Va. Code § 15.2-1232.2 and for redevelopment pursuant to Va. Code § 58.1-3219.4.

46
47 (f) Multifamily residential development includes apartments or any building containing more
48 than four residential units, including live/work or senior housing units. Such
49 classification of real property excludes single-family detached and attached residential
50 units, cooperatives, and residential condominiums.

51
52 (g) Proposed development means the proposed site design and uses submitted by the
53 applicant(s) for approval under this Article.

54
55 (h) Qualifying property means any assemblage approved by the Board of Supervisors under
56 the criteria of this Article.

57
58 Section 4-29-4. Economic Incentive Areas.

59 The following areas are hereby established as individual Economic Incentive Areas
60 included in the Economic Incentive Program:

61
62 (a) Annandale Incentive Area: the Annandale Commercial Revitalization District as
63 established in Appendix 7 of the Fairfax County Zoning Ordinance.

64
65 (b) Bailey's Crossroads/Seven Corners Incentive Area: the Bailey's Crossroad/Seven
66 Corners Commercial Revitalization District as established in Appendix 7 of the Fairfax
67 County Zoning Ordinance.

68
69 (c) Lincolnia Incentive Area: the Lincolnia Commercial Revitalization Area (per the
70 Comprehensive Plan, 2017 Edition, amended through July 16, 2019; Lincolnia
71 Community Business Center, Pg. 19, Figure 10).

72
73 (d) McLean Incentive Area: the McLean Commercial Revitalization District as established
74 in Appendix 7 of the Fairfax County Zoning Ordinance.

75

- 76 (e) Richmond Highway Incentive Area: The Richmond Highway Commercial Revitalization
 77 District as established in Appendix 7 of the Fairfax County Zoning Ordinance and the
 78 following within the Richmond Highway Corridor per the Comprehensive Plan, 2017
 79 Edition, amended May 1, 2018:
 80
 81 (1) Suburban Neighborhood Area (SNA) between North Gateway and Penn Daw
 82 Community Business Centers (CBCs) (Pg. 167, Figure 67).
 83
 84 (2) SNA between Penn Daw and Beacon/Groveton CBCs (Pg. 169, Figure 68).
 85
 86 (3) SNA between Beacon/Groveton and Hybla Valley/Gum Springs CBCs (Pg. 170,
 87 Figure 69).
 88
 89 (4) SNA between Hybla Valley/Gum Springs and South County Center CBCs (Pg.
 90 173, Figure 70).
 91
 92 (5) SNA between South County Center and Woodlawn CBCs (Pg. 179, Figure 71).
 93
 94 (6) SNA adjacent to Woodlawn CBC (Pg. 182, Figure 72).
 95
 96 (7) Land Units R and Q of the Huntington Transit Station Area (per the
 97 Comprehensive Plan, 2017 Edition, amended through October 16, 2018; Pg. 25,
 98 Figure 9).
 99
 100 (8) The areas located between a Richmond Highway CRD and a Richmond Highway
 101 SNA that abut Richmond Highway, as depicted on the attached maps 1-4.
 102
 103 (f) Springfield Incentive Area: the Springfield Commercial Revitalization District as
 104 established in Appendix 7 of the Fairfax County Zoning Ordinance and the Franconia-
 105 Springfield Transit Station Area, except for those areas planned for single-family
 106 residential development, i.e. sub-units Q and R and the portion of sub-unit N north of the
 107 Springfield-Franconia Parkway) (per the Comprehensive Plan, 2017 Edition, amended
 108 through March 19, 2019; Franconia-Springfield Area Land Unit Map Pg. 37, Figure 7).
 109
 110
 111 Section 4-29-5. Application and Review of Eligibility.
 112
 113 (a) The Director will determine and publish the procedure for submitting an application.
 114 Owners of property located within an Economic Incentive Areas designated in Section
 115 4-29-4, may submit an application to the Director.
 116
 117 (b) Such application must be submitted on forms provided by the Director and must include
 118 a plan for development as well as any additional schedules, plans, specifications, and an
 119 estimated fair market value of the proposed development that the Director requires.
 120

- 121 (c) Every owner of any parcel included in the application must be a party to the application.
 122 However, an individual who is the owner of an undivided interest in a parcel may apply
 123 on behalf of himself and the other owners of the parcel upon submitting an affidavit that
 124 the other owners either: (1) affirm the application, (2) are minors, or (3) after a diligent
 125 search, cannot be located.
- 126
- 127 (d) Upon receipt of an application, the Director will determine whether the application
 128 meets the eligibility criteria under this Article, the Comprehensive Plan, and all laws and
 129 policies related to the provision and preservation of affordable housing. If the
 130 application is found eligible, the Director will forward it to the Department of Tax
 131 Administration for calculation of an estimated base fair market value based upon the
 132 initial proposed development. Any application failing to meet the eligibility criteria will
 133 be denied and will be reconsidered only after all missing criteria are met.
- 134
- 135 (e) The Director will submit an eligible application to the Board of Supervisors for approval
 136 either in conjunction with a concurrent rezoning application or separately for a by-right
 137 development proposal.
- 138
- 139 (f) The application must meet both general and specific eligibility requirements as set forth
 140 in Section 4-29-6, as well as Virginia and local law, before being considered for
 141 approval by the Board of Supervisors.
- 142

143 Section 4-29-6. Eligibility.

- 144 (a) The proposed development must be a commercial, industrial, and/or multifamily
 145 residential development within the territorial limits of an Economic Incentive Area as
 146 described in Section 4-29-4.
- 147
- 148 (b) An application must contain a newly proposed assemblage, not previously approved for
 149 a rezoning or site plan by the County, of at least two contiguous parcels that collectively
 150 total a minimum of two acres. The application must conform to all laws and policies
 151 related to the provision and preservation of affordable housing and the use and
 152 consolidation recommendations in the Comprehensive Plan. Smaller acreages may be
 153 considered by the Board for good cause shown, such as to facilitate redevelopment of
 154 parcels. A single parcel may contain multiple structures, but all structures must be fully
 155 contained within its parcel lot lines before approval of the application.
- 156
- 157 (c) A minimum of two acres of the assemblage, unless modified by the Board as set forth in
 158 paragraph 4-29-6(b), must be located within an Economic Incentive Area for the entire
 159 assemblage to qualify. Some small acreage of the assemblage may lie outside of the

- 160 delineated boundary of the Economic Incentive Area but the area outside of the
 161 boundary cannot be counted toward the 2-acre minimum requirement.
 162
- 163 (d) Applicants are responsible for obtaining any necessary zoning and site plan approvals in
 164 accordance with the Zoning Ordinance and state and local law before receiving
 165 incentives in Section 4-29-8(c)(2).
 166
- 167 (e) No improvements made to real property are eligible for real estate tax incentives
 168 pursuant to the Article unless approved by the Board of Supervisors.
 169
- 170 Section 4-29-7. Calculation of Partial Real Estate Tax Exemption.
- 171 A qualifying property shall receive a partial tax exemption to the general real property tax in an
 172 amount that is equal to the difference between (i) the Base Value and (ii) the fair market value of
 173 the parcel including all new structures or other improvements at the time of the final inspection
 174 and valuation. The partial exemption shall also include any increase or decrease in the fair
 175 market value of the tax-exempt portion of the qualifying property as annually assessed by the
 176 Department of Tax Administration.
 177
- 178 (a) Following Board approval of the application and upon written request from the applicant,
 179 the Department of Tax Administration will determine a final base fair market value (“Base
 180 Value”) for the qualifying property. The Base Value shall be the fair market value of the
 181 qualifying property at the time of determination plus the first \$1,000 in assessed value on
 182 the structure(s) planned to be built or repurposed on the assemblage.
 183
- 184 (b) Applicant shall submit a written request for final inspection and valuation by the
 185 Department of Tax Administration at any time after construction of any structure is
 186 substantially complete (“substantially complete” meaning the point where the physical
 187 shell is completed and basic components of the building are installed and improved
 188 including complete installation of elevators, electrical, HVAC, and fire prevention
 189 sprinkler systems). If the proposed development contains multiple buildings to be
 190 constructed or repurposed in multiple stages, the tax exemption shall be recalculated for
 191 each lot upon substantial completion and a final inspection and written valuation request
 192 from the applicant.
 193
- 194 (c) The Department of Tax Administration shall provide written notification to the property
 195 owner of the amount of the assessment of the property that will be exempt from real
 196 property taxation and the period of such exemption.
 197
- 198 (d) The partial tax exemption shall run with the land, and, except as otherwise provided in this
 199 Article, the owner of such property during each year of the partial exemption shall be

200 entitled to receive a partial tax exemption in the amount specified by the Department of
201 Tax Administration.

202 Section 4-29-8. Economic Incentives.

- 203 (a) Incentives shall be administered by the Director and the Department of Tax
204 Administration in accordance with to the general provisions of this Article.
205
- 206 (b) Regulatory incentives become effective upon a determination of eligibility by the Director
207 and include:
208
- 209 (1) Expedited scheduling of zoning applications.
 - 210 (2) Concurrent processing of a Comprehensive Plan amendment with an associated
211 zoning application.
 - 212 (3) Concurrent processing of a site plan and a zoning application.
 - 213 (4) Inclusion in the Land Development Services Project Management Program.
 - 214 (5) A lower project value to qualify for Fairfax County Land Development Services'
215 Modified Processing Program.
- 216
- 217 (c) Financial incentives include:
218
- 219 (1) A 10 percent reduction in the site plan fee submitted at the time of application.
 - 220 (2) Partial real estate tax incentives.
- 221

222 Section 4-29-9. Timing or Effective Rate of Incentives.

223 Each Economic Incentive Area shall extend for a period of up to 10 years from the date of
224 the initial establishment of the area as set forth below:

- 225
- 226 (a) Annandale Incentive Area: This area shall take effect on ###, 20##, and expire on ####,
227 20##.
228
- 229 (b) Bailey's Crossroads/Seven Corners Incentive Area: This area shall take effect on ###,
230 20##, and expire on ####, 20##.
231
- 232 (c) Lincolnia Incentive Area: This area shall take effect on ###, 20##, and expire on ####,
233 20##.
234
- 235 (d) McLean Incentive Area: This area shall take effect on ###, 20##, and expire on ####,
236 20##.
237

238 (e) Richmond Highway Incentive Area: This area shall take effect on ###, 20##, and expire
239 on ####, 20##.

240

241 (f) Springfield Incentive Area: This area shall take effect on ###, 20##, and expire on ####,
242 20##.

243

244 The timeframes enumerated above constitutes the incentive period for each Economic Incentive
245 Area. Real estate tax incentives as set forth in Section 4-29-8(c)(2) shall be effective between
246 January 1 of the tax year next succeeding the year following substantial completion and the end
247 of the incentive period, at which time, the real estate assessment on the subject parcels will revert
248 to full market value. All incentives shall terminate no later than the expiration date for each
249 Economic Incentive Area listed above.

250

251 Section 4-29-10. Failure to pay real estate taxes in a timely manner.

252 The incentives provided for in Section 4-29-8 shall be suspended if the real estate tax on the
253 qualifying property has not been paid on or before July 28 and December 5 of any year, as
254 required by Sections 4-10-1 and 4-10-2. Failure to pay the real estate tax on or before the day on
255 which the real estate tax is due shall result in the forfeiture of any incentives in that year, and in
256 such cases, the taxpayer shall be liable for the annual real estate tax that otherwise would have
257 been assessed on the full fair market value of the improved real property. Late payment of the
258 real estate tax on the qualifying property shall be subject to late payment penalties and interest in
259 accordance with Sections 4-10-1 and 4-10-2. However, the Director of the Department of Tax
260 Administration may waive any penalty and interest and reinstate the real estate tax exemption if
261 the failure to pay the real estate tax was not in any way the fault of the taxpayer.

262

263 **2. That the provisions of this ordinance shall take effect on September 15, 2020.**

264

265 GIVEN under my hand this ____ day of _____, 2020.

266

267

268

269

Jill G. Cooper
Clerk for the Board of Supervisors
Department of Clerk Services

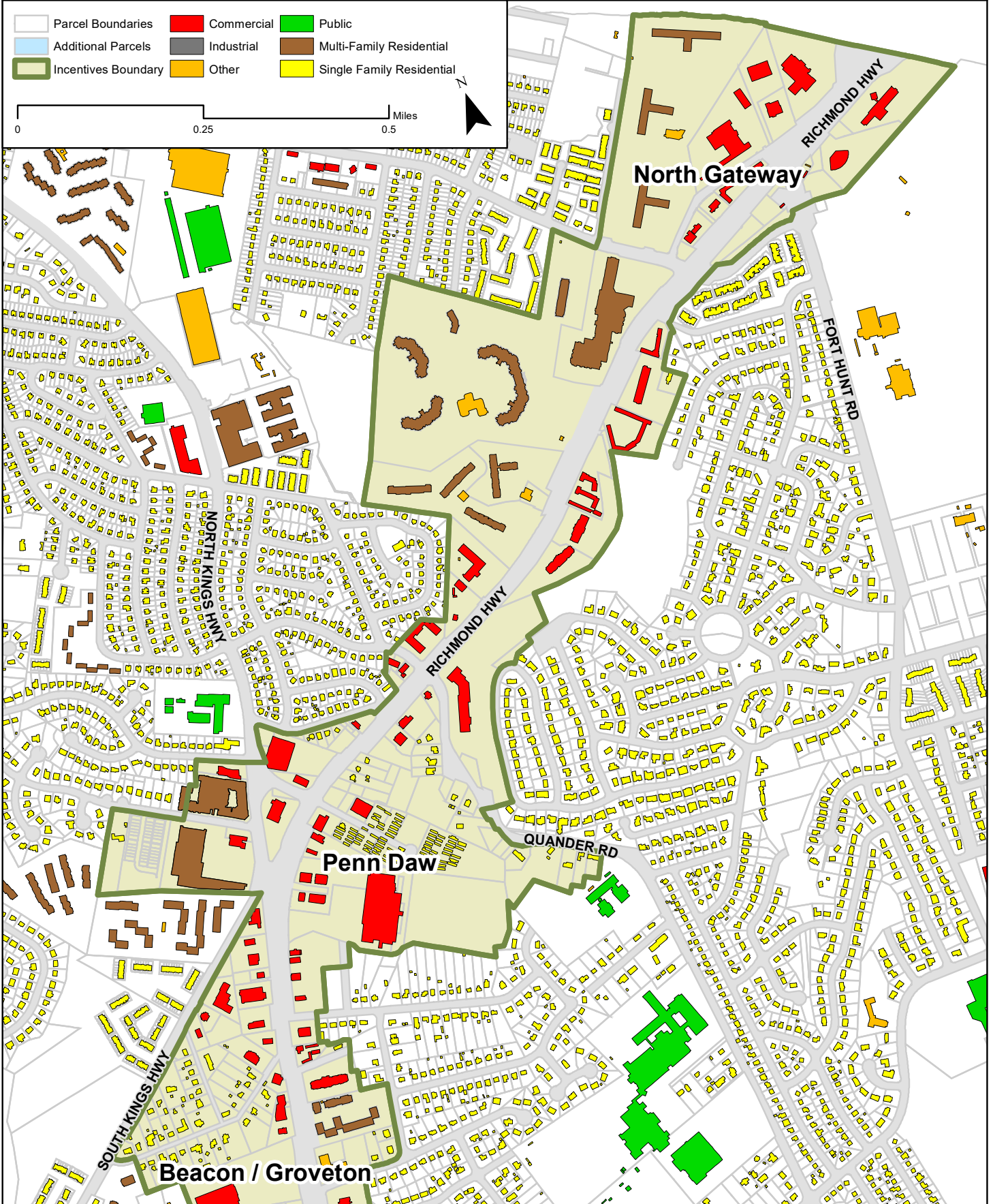
270

271

Economic Incentive Program - Richmond Highway Corridor Additional Parcels Between SNA and CRD

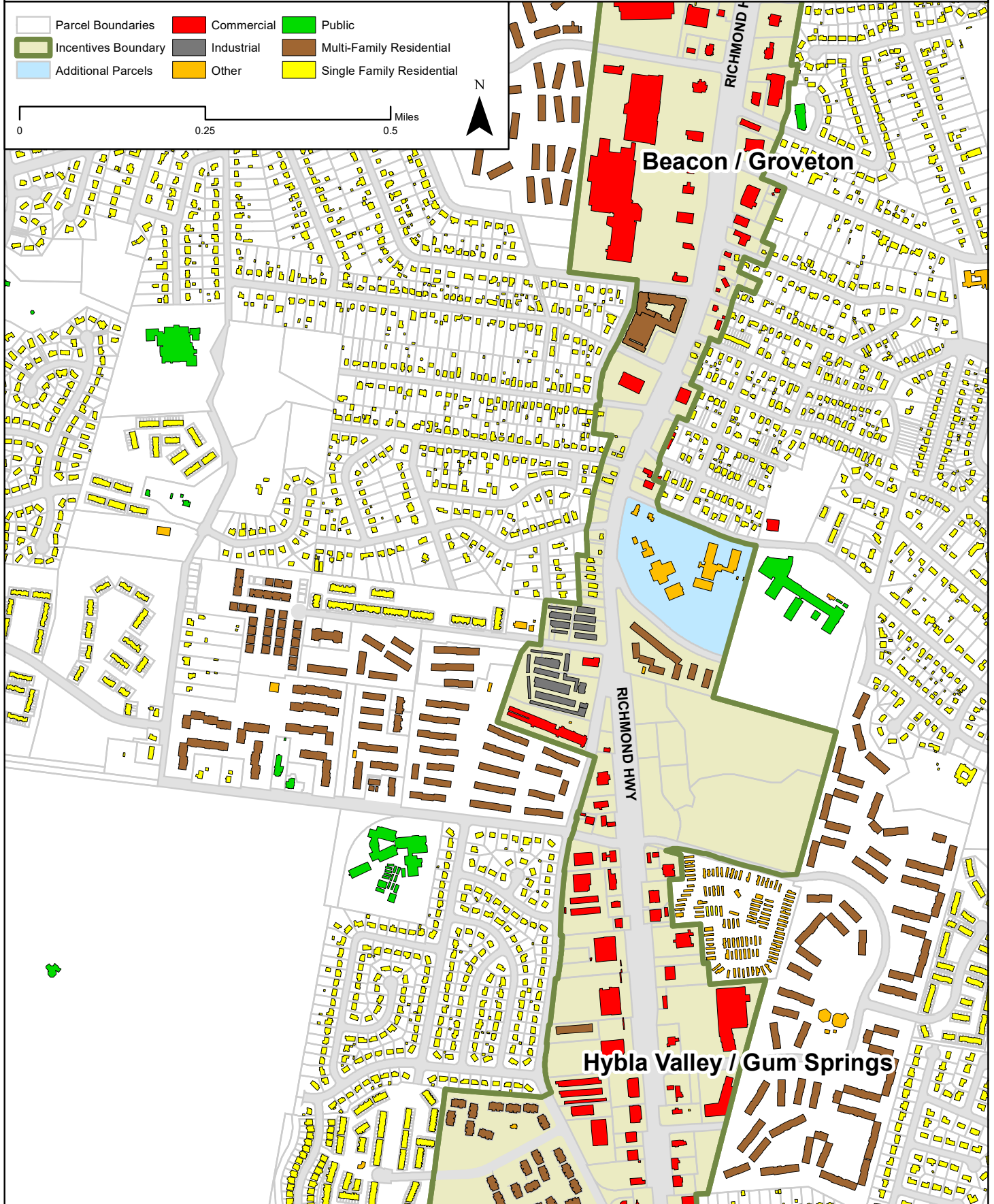
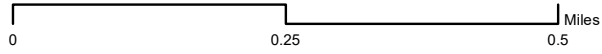
- | | | |
|---------------------|------------|---------------------------|
| Parcel Boundaries | Commercial | Public |
| Additional Parcels | Industrial | Multi-Family Residential |
| Incentives Boundary | Other | Single Family Residential |

0 0.25 0.5 Miles



Economic Incentive Program - Richmond Highway Corridor Additional Parcels Between SNA and CRD

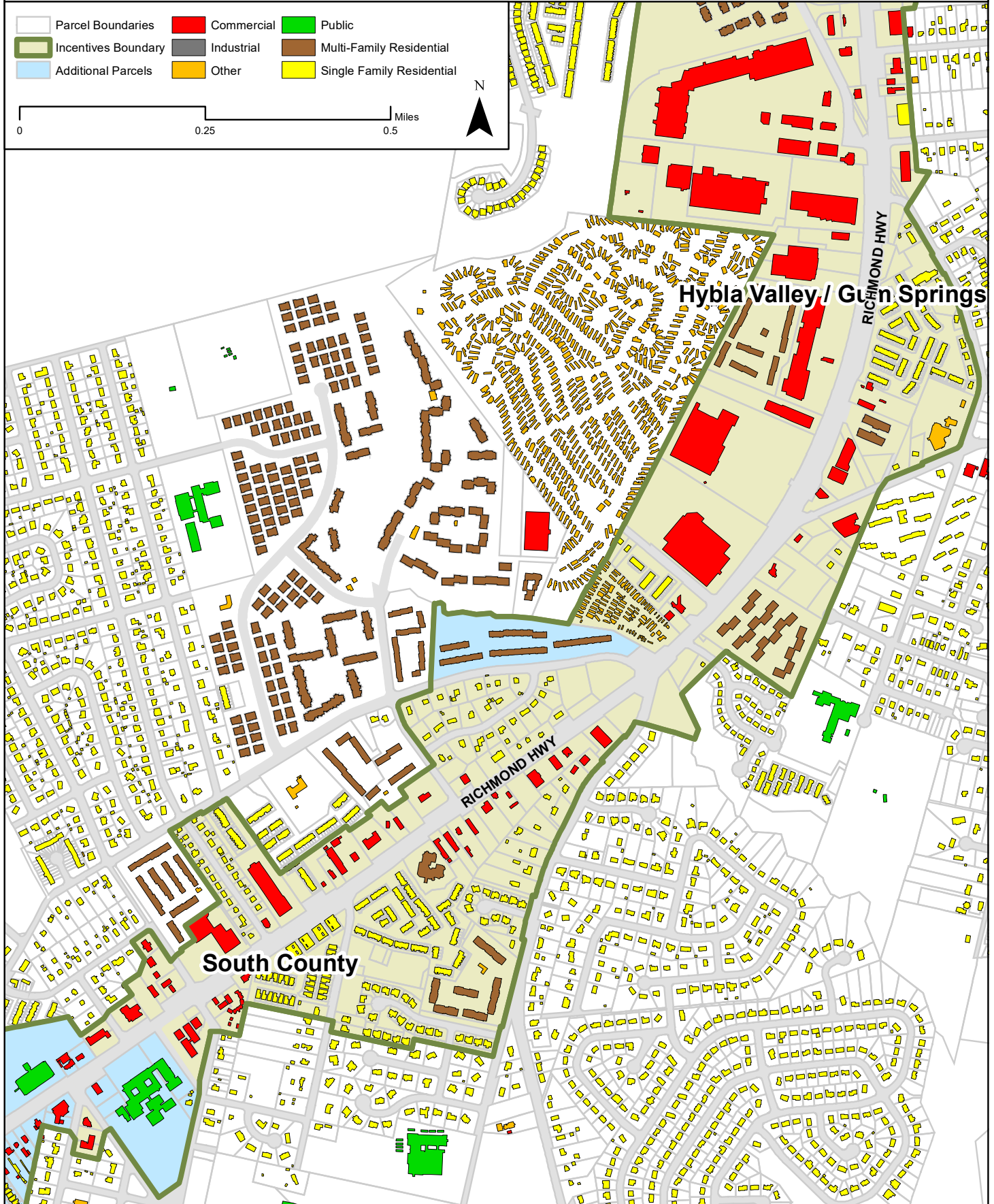
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| Parcel Boundaries | Commercial | Public |
| Incentives Boundary | Industrial | Multi-Family Residential |
| Additional Parcels | Other | Single Family Residential |



Economic Incentive Program - Richmond Highway Corridor Additional Parcels Between SNA and CRD

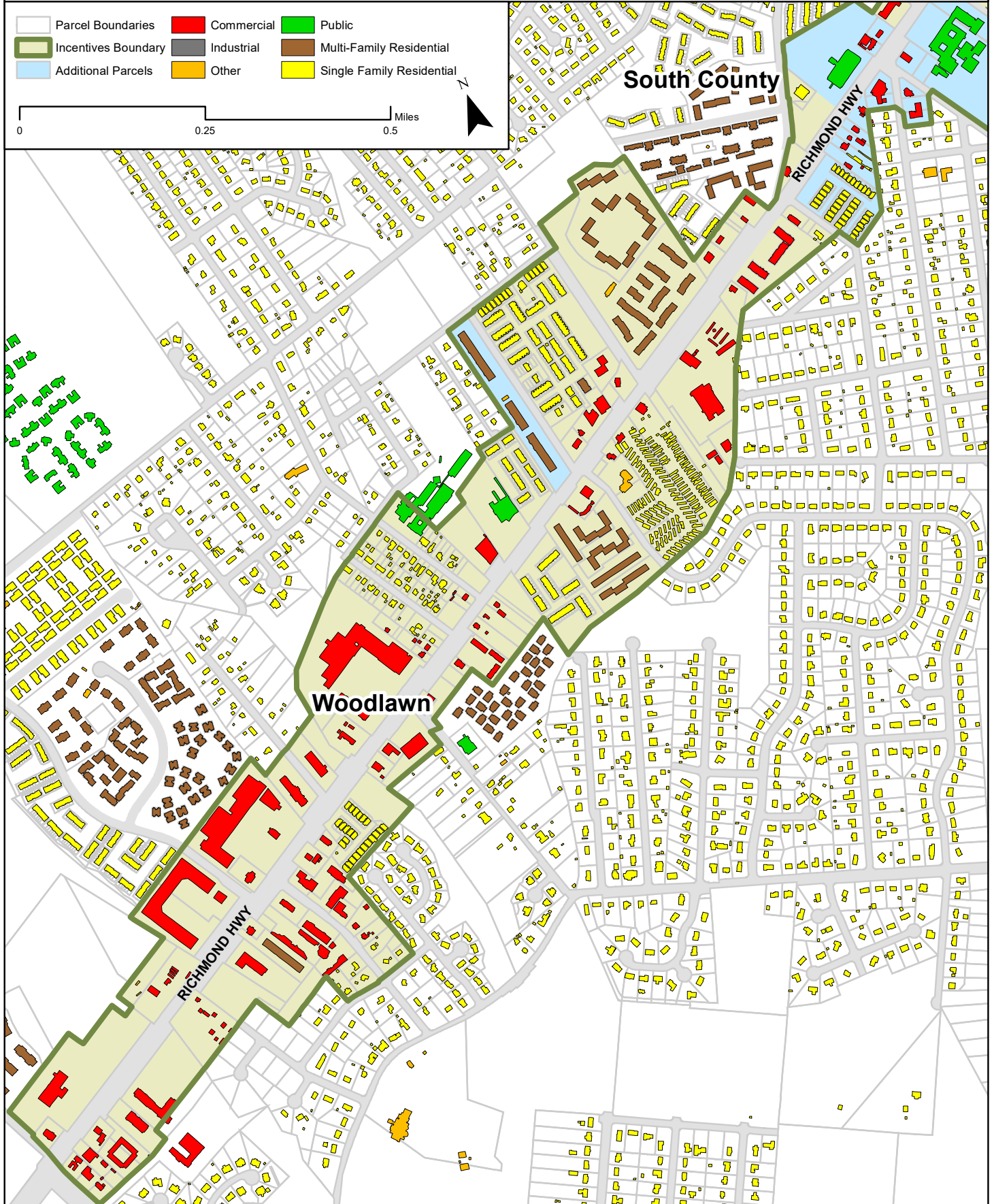
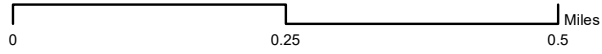
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0 0.25 0.5 Miles



Economic Incentive Program - Richmond Highway Corridor Additional Parcels Between SNA and CRD

- | | | |
|---------------------|------------|---------------------------|
| Parcel Boundaries | Commercial | Public |
| Incentives Boundary | Industrial | Multi-Family Residential |
| Additional Parcels | Other | Single Family Residential |



Board Agenda Item
September 15, 2020

4:00 p.m.

Decision Only on PCA-C-052-09/CDPA-C-052-02 (KIW SKYLINE 1, LLC, KIW SKYLINE 2, LLC and KIW SKYLINE 3, LLC) to Amend the Proffers and Conceptual Development Plan for RZ-C-052, Previously Approved for Office Use, to Permit the Repurposing of Office Buildings to Accommodate Live/Work Units and Associated Modifications to Proffers and Site Design at a 2.98 Floor Area Ratio, Located on Approximately 6.45 Acres of Land Zoned PDC, CRD, SC and HC (Mason District)

This property is located on the E. side of Seminary Rd., S. of Leesburg Pike and N. of South George Mason Dr. Tax Map 62-3 ((1)) 30, 33, 35, 35A and 45.

On July 28, 2020, the Board of Supervisors held the public hearing on this application and voted 9-0 (Supervisor Alcorn was absent from the meeting) to defer the decision only on this application to September 15, 2020.

PLANNING COMMISSION RECOMMENDATION:

On July 22, 2020, the Planning Commission voted 12-0 to recommend to the Board of Supervisors the following actions:

- Approval of PCA-C-052-09 and the associated Conceptual Development Plan, CDPA-C-052-02, subject to the execution of proffered conditions consistent with those dated July 22, 2020;
- Modification of Sect. 6-206.5 of the Zoning Ordinance to allow other secondary uses in PDC to exceed 50% of the principal gross floor area proposed;
- Modification of Sect. 11-102 of the Zoning Ordinance to permit a parking reduction in favor of that shown on the CDPA/FDPA;
- Waiver of Sect. 11-302 of the Zoning Ordinance to allow private streets in excess of 600 feet in length as shown on the CDPA/FDPA;
- Waiver of Sect. 11-303 of the Zoning Ordinance to allow private streets and garage aisles less than 24 feet in width as depicted on the CDPA/FDPA;

Board Agenda Item
September 15, 2020

- Modification of Sect. 13-300 of the Zoning Ordinance for transitional screening and barriers within the site and along adjacent property lines in favor of the existing conditions;
- Waiver of Par. 1 of Sect. 13-202 of the Zoning Ordinance for interior parking lot landscaping in favor of the existing conditions;
- Waiver of Par. 1 & 2 of Sect. 13-203 of the Zoning Ordinance for peripheral landscaping of above grade parking structures in favor of maintaining the existing conditions;
- Modification of Par. 2 of Sect. 17-201 of the Zoning Ordinance requiring the construction of trails and walkways in accordance with the general location provided in the Comprehensive Plan in favor of the existing conditions; and
- Modification of Par. 4 of Sect. 17-201 of the Zoning Ordinance requiring further dedication and construction (or widening) of existing roads beyond that indicated.

In a related action, the Planning Commission voted 12-0 to approve FDPA-C-052-15, subject to the development conditions dated July 13, 2020 and subject to the Board of Supervisors' approval of PCA-C-052-09.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Sharon Williams, Planner, DPD

Board Agenda Item
September 15, 2020

4:00 p.m.

Public Hearing to Consider Amendment of Chapter 11 of the County Code to Reflect Amendments to State Anti-Discrimination and Fair Housing Statutes Enacted During the 2020 Session of the General Assembly to Add Sexual Orientation, Gender Identity, Status as a Veteran, and, Regarding Fair Housing, Source of Funds as Protected Classes; Revision of the Chapter 11, Article 1 of the County Code (Human Rights Ordinance) to Conform to Federal and State Law Counterparts; Amendment of Chapter 11, Article 2 of the County Code (Fairfax County Fair Housing Act) to Conform to State Law by Adding Additional Provisions Regarding Reasonable Accommodations and By Clarifying the Scope of Certain Exemptions; and Recodification of Chapter 11 and Chapter 11.1 to Improve Structure and Clarity, and to Remove Obsolete and Duplicative Provisions

ISSUE:

Board of Supervisors authorization to advertise a public hearing to consider: (1) amending Chapter 11 of the County Code to reflect amendments to state anti-discrimination and fair housing statutes enacted during the 2020 Session of the General Assembly to add sexual orientation, gender identity, status as a veteran, and, regarding fair housing, source of funds as protected classes; (2) revising the Human Rights Ordinance to conform to federal and state law counterparts; (3) amending the Fairfax County Fair Housing Act to conform to state law by adding additional provisions regarding reasonable accommodations and by clarifying the scope of certain exemptions, and (4) recodifying Chapter 11 as Chapter 11.1 to improve structure and clarity, and to remove obsolete and duplicative provisions. Proposed amendments shall be effective retroactive to July 1, 2020.

RECOMMENDATION:

The County Executive recommends that the Board: (1) amend Chapter 11 of the County Code to reflect amendments to state anti-discrimination and fair housing Statutes enacted during the 2020 Session of the General Assembly to add sexual orientation, gender identity, status as a veteran, and, regarding fair housing, source of funds as protected classes; (2) revise the Human Rights Ordinance to conform to federal and state law counterparts; (3) amend the Fairfax County Fair Housing Act to conform to state law by adding additional provisions regarding reasonable accommodations and by clarifying the scope of certain exemptions, and (4) recodify Chapter 11 as Chapter 11.1 to improve structure and clarity, and to remove obsolete and duplicative provisions.

Board Agenda Item
September 15, 2020

TIMING:

Board action is requested on September 15, 2020, to amend, revise, and recodify Chapter 11 of the County Code as Chapter 11.1.

BACKGROUND:

The Office of Human Rights and Equity Programs (OHREP) recently decided to undertake full-scale review of Chapter 11 of the County Code, which consists of the Human Rights Ordinance (HRO) and Fairfax County Fair Housing Act (FCFHA). The HRO may “not [be] inconsistent with nor more stringent than” any state anti-discrimination law. Likewise, the FCFHA may be amended “provided the amendment is not inconsistent” with the Virginia Fair Housing Law (VFHL). The County long has chosen, as permitted under state law, to maintain separate ordinances governing human rights and fair housing within its jurisdiction. The HRO and FCFHA were last amended in 2010.

OHREP placed its review of Chapter 11 on hold when it learned that the Virginia General Assembly intended to make increasing the protections provided under the state statute a priority of its 2020 session. The General Assembly subsequently passed SB 868, which was signed by the Governor on April 11, 2020, and HB 6, which was signed by the Governor on March 27, 2020. Both these measures took effect on July 1, 2020.

SB 868 explicitly prohibits discrimination in private employment on the basis of sexual orientation and gender identity. Additionally, the bill (a) prohibits discrimination in public accommodations on the basis of sexual orientation, gender identity, or status as a veteran; (b) prohibits discrimination in credit on the basis of sexual orientation, gender identity, pregnancy, childbirth or related medical conditions, disability, and status as a veteran; and (c) adds discrimination on the basis of an individual's sexual orientation, gender identity, or status as a veteran as an unlawful housing practice.

HB 6 adds discrimination on the basis of a person's source of funds to the list of unlawful discriminatory housing practices. The bill defines "source of funds" as any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.

OHREP proposes amendments to Chapter 11 of the County Code that incorporate all further protections against discrimination provided under SB 868 and HB 6. As to the HRO, it also proposes: (1) revision of procedural provisions to track requirements for the administrative processing of complaints added to the Virginia Human Rights Act (the state statutory counterpart to the HRO) by SB 868 and/or procedural regulations of the U.S. Equal Employment Opportunity Commission, with which OHREP has a work-sharing agreement; and (2) repeal obsolete provisions on County enforcement.

As to the FCFHA, OHREP proposes additional amendments to Chapter 11 to bring the FCFHA into fuller conformity with the VFHL. These include:

- Reasonable Accommodations and Assistance Animals. In 2017, the General Assembly passed a series of revisions to the VFHL adding detail regarding the reasonable accommodation process generally consistent with federal regulations and guidance, with a particular emphasis on the use of “assistance animals” that provide assistance or emotional support to persons with a disability. The VFHL and FCFHA already prohibited housing discrimination based on disability and generally required reasonable accommodations, but the 2017 amendments to the VFHL provide further clarity as to the process by which reasonable accommodation requests are to be made and reviewed. OHREP proposes to incorporate these provisions into the FCFHA.
- Certain Exemptions. The FCFHA, like the VFHL and federal Fair Housing Act (FHA), contains certain exemptions to its general prohibition against housing discrimination. For example, the current FCFHA generally exempts a single-family house sold or rented by an owner, so long as the owner does not own more than three single-family houses. However, in both the FCFHA and the VFHL, this exemption does not apply to the prohibition against the making or publishing of discriminatory statements or advertisements in connection with the sale or rental of housing. The VFHL also provides that this exemption does not apply to restrictive covenants that purport to discriminate based on a protected class. OHREP proposes to similarly limit this exemption in the FCFHA.

Further, the FCFHA, consistent the VFHL and federal FHA, contains an exemption from the prohibition on discrimination on the basis of familial status for “housing for older persons”. To qualify for this exemption, the housing provider must satisfy one of three statutorily-specified thresholds. In the VFHL, one of these thresholds requires, among other things, that at least eighty percent of occupied units be occupied by at least one person fifty-five years of age or older. OHREP proposes to add the word “occupied” to the analogous provision in the FCFHA.

Beyond these amendments and revisions, OHREP proposes that the Board recodify Chapter 11 as Chapter 11.1. Such a recodification seeks to improve the Chapter’s structure and clarity. To this end, it reorganizes sections concerning the Human Rights Commission generally into a separate Article. This reorganization eliminates duplicative sections in the current Chapter. Insofar as sections of Chapter 11.1 are substantively the same as sections of Chapter 11, they are intended as a continuation of the earlier sections and not as new enactments. If adopted, the recodification shall be effective retroactive to July 1, 2020, to ensure full compliance with SB 868 and HB 6.

Board Agenda Item
September 15, 2020

FISCAL IMPACT:

None.

ENCLOSED DOCUMENT:

Attachment 1 – Comparison of Fairfax County Code, Chapter 11, to Proposed Chapter 11.1.

Attachment 2 – Proposed Fairfax County Code, Chapter 11.1

STAFF:

Kenneth Saunders, Director, Office of Human Rights and Equity Programs

ASSIGNED COUNSEL:

Benjamin R. Jacewicz, Assistant County Attorney

Ryan Wolf, Assistant County Attorney

COMPARISON OF CHAPTER 11 TO CHAPTER 11.1

Chapter 11 Section	Chapter 11.1 Section
11-1-1	11.1-2-3
11-1-2	11.1-1-2 and 11.1-2-2
11-1-3	11.1-2-5
11-1-4	11.1-2-5
11-1-5	11.1-2-5
11-1-6	11.1-2-5
11-1-7	11.1-2-5
11-1-8	11.1-2-5
11-1-9	11.1-2-5
11-1-10	11.1-1-3 to 11.1-1-6, and 11.1-2-6
11-1-11	11.1-2-6 to 11.1-2-7, and 11.1-2-16
11-1-12	Moved to bylaws
11-1-13	11.1-2-9 to 11.1-2-15, 11.1-2-17 to 11.1-2-22
11-1-14	11.1-1-7 and 11.1-2-24
11-1-15	11.1-2-23
11-1-16	11.1-2-9
11-1-17	11.1-2-25
11-1-18	Deleted
11-1-19	11.1-1-8
11-1-20	11.1-2-26
11-1-21	11.1-2-8
11-1-22	11.1-2-11
11-1-23	11.1-2-27
11-2-1	11.1-3-1
11-2-2	11.1-3-2
11-2-3	11.1-3-3
11-2-4	11.1-3-4
	11.1-3-4.1

Chapter 11 Section	Chapter 11.1 Section
	11.1-3-4.2
11-2-5	11.1-3-5
11-2-6	11.1-3-6
11-2-7	11.1-3-7
11-2-8	11.1-3-8
11-2-9	11.1-3-9
11-2-10	11.1-3-10
11-2-11	11.1-3-11
11-2-12	11.1-3-12
11-2-13	11.1-3-13
11-2-14	11.1-3-14
11-2-15	11.1-3-15
11-2-16	11.1-3-16
11-2-17	11.1-3-17
11-2-18	11.1-3-18
11-2-19	11.1-3-19
11-2-20	11.1-3-20
11-2-21	11.1-3-21
11-2-22	11.1-3-22
11-2-23	11.1-3-23
11-2-24	11.1-3-24

Human Rights and Fair Housing

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Article 1.1. In General.

Section 11.1-1-1. Purpose.

This Chapter codifies the Fairfax County Human Rights Ordinance and the Fairfax County Fair Housing Act. As such, it reflects the following decision the Board of Supervisors to:

- (a) Continue to enforce and amend the County Fair Housing Act in effect on January 1, 1991, as authorized by Virginia Code § 36.1-96.21, rather than merge the County's rules and regulations on housing discrimination into the Human Rights Ordinance; and
- (b) Designate the Fairfax County Human Rights Commission as responsible for furthering compliance with the Human Rights Ordinance and the Fair Housing Act, as authorized by Virginia Code §§ 15.2-823, 15.2-853, 15.2-965, and 36.1-96.21.

Section 11.1-1-2. Definitions.

The following definitions shall apply to this Chapter:

- (a) *Case file* shall mean the OHREP file on a complaint, including but not limited to, the complaint, any answer filed by the respondent, and information gathered during any investigation of the complaint.
- (b) *Commission* shall mean the Human Rights Commission, as established herein.
- (c) *County Attorney* shall mean the County Attorney for Fairfax County.
- (d) *Director* shall mean the Director of OHREP, or the Director's designated representative.
- (e) *OHREP* shall mean the Fairfax County Office of Human Rights and Equity Programs.

Section 11.1-1-3. Human Rights Commission established.

The Board of Supervisors establishes the Fairfax County Human Rights Commission.

Section 11.1-1-4. Membership; compensation; terms of office; chairperson and vice chairperson; bylaws.

- (a) The Commission shall consist of twelve (12) members who shall be residents of the County and broadly representative of the County's population.
- (b) The members of the Commission shall be appointed by the Board of Supervisors and shall be entitled to receive such compensation as the Board of Supervisors shall direct.

(c) Of the members of the Commission first appointed, four (4) shall be appointed for terms of three (3) years, four (4) shall be appointed for terms of two (2) years, and three (3) shall be appointed for terms of one (1) year. Thereafter, members shall be appointed for terms of three (3) years each. Any vacancy shall be filled by the Board of Supervisors for the unexpired portion of the term.

(d) The Commission shall establish bylaws, and make any subsequent amendments to such bylaws, in accordance with County policies and procedures.

Section 11.1-1-5. Legal counsel.

The County Attorney shall act as legal counsel to the Commission and shall authorize retention of outside legal counsel for the Commission where deemed appropriate for a particular complaint.

Section 11.1-1-6. Office of Human Rights and Equity Programs.

(a) OHREP shall have the following functions:

- (1) To provide administrative support for the Commission's activities;
- (2) To make studies to effectuate the purposes and policies of this Article and to make the results thereof available to the public;
- (3) To accept public grants or private gifts, bequests, or other payments, as appropriate under the law; and
- (4) To furnish technical assistance, upon request, to persons subject to this Article to further compliance with this Article or a recommendation made thereunder.

OHREP also may perform any other function as provided by this Chapter.

(b) The Board of Supervisors shall appoint the Director of OHREP upon the recommendation of the County Executive. The Director shall serve full time and be responsible for overseeing the day-to-day operations of OHREP.

Section 11.1-1-7. Right to representation.

A complainant and respondent each are entitled to be represented by counsel or by an authorized representative in any matter before the Commission.

Section 11.1-1-8. Effective date.

This Chapter shall take effect retroactive to July 1, 2020, and shall apply to all matters pending before the Commission on that date and to all matters arising before the Commission thereafter.

Article 2.1. Human Rights Ordinance.

Section 11.1-2-1. Authorization; short title.

(a) Under the authority of Virginia Code §§ 15.2-853 and 15.2-965, the Board of Supervisors enacts this Article prohibiting discrimination in employment, public accommodations, credit, and education on the basis of race, color, religion, sex, pregnancy, childbirth or related medical conditions, national origin, status as a veteran, age, marital status, sexual orientation, gender identity, or disability.¹

(b) This Article shall be known and cited as the Fairfax County Human Rights Ordinance.

Section 11.1-2-2. Definitions.

The following definitions shall apply to this Article:

(a) *Complainant* shall mean a person who claims to have been injured by an unlawful discriminatory practice.

(b) *Complaint* shall mean a written statement by a person, a member of the Commission, or the Commission alleging an act of discrimination prohibited by this Article.

(c) *Conciliation* shall mean the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent, and the Director.

(d) *Party* shall mean a complainant or respondent.

(e) *Person* shall mean one or more individuals, labor unions, partnerships, corporations, associations, legal representatives, mutual companies, joint-stock companies, trusts or unincorporated organizations.

(f) *Respondent* shall mean a person against whom a complaint of violation of this Article is filed.

Section 11.1-2-3. Declaration of policy.

It is the policy of the County to:

- Safeguard all individuals within the County from unlawful discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical

¹ As explained in Article 1 of this Chapter, Virginia Code 15.2-853 also authorizes the Board of Supervisors to prohibit unlawful discrimination in housing and real estate transactions. Under the authority of Virginia Code § 36-96.21, the Board has enacted a separate Fair Housing Act to prohibit such discrimination, which appears as Article 3.

conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability in places of public accommodation, including educational institutions, and with respect to credit;

- Safeguard all individuals within the County from unlawful discrimination in employment because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability;
- Preserve the public safety, health, and general welfare;
- Further the interests, rights, and privileges of individuals within the County; and
- Protect citizens of the County against unfounded charges of unlawful discrimination.

Section 11.1-2-4. Construction.

(a) The provisions of this Article shall be construed liberally for the accomplishment of its policies.

(b) Nothing in this Article shall be deemed to repeal, supersede or expand upon any of the provisions of any other state or federal law relating to discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability.

(c) Nothing in this Article shall prohibit or alter any program, service, facility, school, or privilege that is afforded, oriented, or restricted to a person because of disability or age from continuing to habilitate, rehabilitate, or accommodate that person.

(d) Nothing in this Article shall be construed to affect any government program, law or activity differentiating between persons on the basis of age over the age of eighteen (18) years (i) where the differentiation is reasonably necessary to normal operation or the activity is based upon reasonable factors other than age or (ii) where the program, law or activity constitutes a legitimate exercise of powers of the County for the general health, safety and welfare of the population at large.

Section 11.1-2-5. Unlawful discrimination.

(a) With the exception of matters relating to housing and residential real estate, conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions, including lactation, age, disability, status as a veteran, or national origin shall be an “unlawful discriminatory practice” for purposes of this Article.

(b) It shall be a violation of this Article for any person to engage in an unlawful discriminatory practice.

Section 11.1-2-6. Commission jurisdiction.

(a) The Commission shall exercise jurisdiction to enforce this Article within the geographical boundaries of the County, including the Towns of Clifton, Herndon and Vienna, except for complaints of unlawful discrimination made against governmental entities, and the officers, employees and agents of such entities.

(b) If the Commission determines that a complaint is not within the Commission's jurisdiction, but possibly within the jurisdiction of one of the agencies with which the Commission has an interagency agreement, the complaint shall be sent to the appropriate agency within fifteen (15) working days of the determination. The complainant shall be notified of this action and a reason provided. Once the complaint has been forwarded and the complainant notified, the Commission shall close the case file. In the event the complaint is not under the jurisdiction of the agency to which it was referred, or if additional evidence is submitted, the case file will be reopened. The Commission delegates to the Director authority to make the determination and provide the notice required under this Subsection.

Section 11.1-2-7 Commission powers and duties.

Under this Article, the Commission shall promote policies to ensure that all persons in the County be afforded equal opportunity, serve as an agency for receiving, investigating, holding hearings, processing, and assisting in the voluntary resolution of complaints regarding unlawful discriminatory practices occurring within the County, and with the approval of the County Attorney, to seek, through appropriate enforcement authorities, prevention of or relief from a violation of any County ordinance prohibiting discrimination.

Section 11.1-2-8. Service.

Service by the Commission with respect to matters covered by this Article shall be either in person or by mail to the last-known address of the recipient appearing in OHREP's records. The complainant, respondent, counsel of record and any authorized representative shall be responsible for providing the Commission with prompt notice of any change in address.

Section 11.1-2-9. Filing of complaint.

(a) Any person claiming to be aggrieved by an unlawful discriminatory practice may file a complaint in writing under oath or affirmation with the Commission. The Commission or a member of the Commission may in a like manner file such a complaint.

(b) In the event that a complaint is filed on behalf of a person claiming to be aggrieved, the Director shall verify the complaint with the person on whose behalf the complaint is made.

(c) Where a person is entitled to file a complaint with the Commission, OHREP shall render assistance in the filing of a complaint.

(d) A complaint may be filed in person at or by mail to OHREP's office located at the Fairfax County Government Center, 12000 Government Center Parkway, Suite 318, Fairfax, Virginia 22035 during normal County business hours, by fax to 703-324-3570, or by email to EPDEmailComplaints@fairfaxcounty.gov. Telephone calls may be made to 703-324-2953, TTY 711, in order to receive information on how and where to file a complaint. Complaints shall not be accepted over the telephone.

(e) All complaints shall be dated and time-stamped upon receipt.

(f) The Commission may reveal the identity of complainants to federal, state, or local agencies that have agreed to keep such information confidential, or when required to do so by law.

Section 11.1-2-10. Form and contents of complaint.

(a) A complaint shall be in such detail as to substantially apprise any party properly concerned as to the time, place, and facts surrounding the alleged unlawful discriminatory practice. To ensure compliance with this requirement, it should contain the following information:

(1) The full name, address and telephone number of the person making the complaint;

(2) The full name, addresses and telephone number of the respondent; and

(3) A clear concise statement of the facts, including pertinent dates, constituting the alleged unlawful discriminatory practice.

(b) Notwithstanding the provisions of Subsection (a) of this Section, a complaint shall be considered filed when OHREP receives a written statement that identifies the parties and describes generally the actions or practices complained of.

(c) A complaint may be reasonably and fairly amended by the filing party at any time prior to a hearing. Except for purposes of notifying the respondent as specified in Subsection (d) of this Section, amended complaints shall be considered as having been made as of the original filing date.

(d) When an amendment is filed, OHREP shall forward a copy of the amendment to the respondent within five (5) working days of the amendment. The respondent shall within ten (10) working days after receiving the amendment file an answer to the amendment.

Section 11.1-2-11. Dismissal of complaint.

(a) The Commission shall dismiss a complaint for lack of jurisdiction.

(b) The Commission shall dismiss a complaint when the complainant fails to cure defects in its allegations or make required amendments within the time prescribed by OHREP.

(c) When the Commission determines that the complaint (1) is not timely or (2) fails to state a claim under this Article, it shall dismiss the complaint.

(d) Written notice of any dismissal pursuant to this Section shall be issued to the complainant and the respondent.

(e) The Commission delegates authority to the Director to dismiss complaints under this Section.

Section 11.1-2-12. Withdrawal of complaint.

(a) A complaint may only be withdrawn by the complainant and only with the consent of the Commission. The Commission hereby delegates authority to the Director to consent to a request to withdraw a complaint, where withdrawal of the complaint will not defeat the purposes of the statute or regulation alleged to have been violated.

(b) The Commission may withdraw any complaint filed by a member of the Commission whose term of office has expired or otherwise ended when it determines that the purposes of this Article are no longer served by processing the complaint.

(c) A complaint filed under this Article may not be withdrawn after a determination of reasonable cause has been made.

Section 11.1-2-13. Service and notice of complaint.

(a) Upon perfection of a complaint, the Commission shall timely serve the complaint on the respondent and provide all parties with written notice informing them of the complainant's rights, including the right to commence a civil action, and the dates within which the complainant may exercise such rights. The notice also shall notify the complainant that the complaint shall be dismissed with prejudice and with no right to further proceed if a written complaint is not timely filed with the appropriate general district or circuit court. Finally, the notice also shall advise the parties of the need for them to preserve all documents relevant to the complaint until final disposition of the complaint.

(b) The Commission delegates to the Director authority to serve the complaint and notice provided under this Section.

Section 11.1-2-14. Mediation.

(a) The complainant and respondent may agree voluntarily to submit the complaint to mediation without waiving any rights that are otherwise available to each party pursuant to this Article and without incurring any obligation to accept the result of the mediation process.

(b) Nothing occurring in mediation shall be disclosed by the Commission or OHREP. Nor shall it be admissible in evidence in any subsequent proceeding unless the complainant and the respondent agree in writing that such disclosure be made.

Section 11.1-2-15. Investigation.

(a) Unless the complaint on its face is subject to dismissal under Section 11-1-2-11, the Commission shall conduct an investigation sufficient to determine whether there is reasonable cause to believe the unlawful discriminatory practice alleged in the complaint has occurred or is occurring.

(b) The Commission delegates the authority to investigate the complaint to OHREP. As part of each investigation, OHREP:

(1) Shall accept a statement of position or evidence submitted by the complainant, the person making the complaint on behalf of the complainant, or the respondent;

(2) May require the complainant to provide a statement which includes: (i) a statement of each specific harm that the complainant has suffered and the date on which each harm occurred; (ii) for each harm, a statement specifying the act, policy or practice which is alleged to be unlawful; and (iii) for each act, policy, or practice alleged to have harmed the complainant, a statement of the facts which lead the complainant to believe that the act, policy or practice is discriminatory; and

(3) May submit a request for information to the respondent that, in addition to specific questions, may request a response to the allegations contained in the complaint.

(c) OHREP's authority to investigate a complaint is not limited to the procedures outlined in Subsection (b) of this Section.

Section 11.1-2-16. Subpoena power.

(a) The Commission has no power itself to issue subpoenas under this Article.

(b) Whenever OHREP has a reasonable cause to believe that any person has engaged in, or is engaging in, any violation of this Article, and, after making a good faith effort to obtain the data, information, and attendance of witnesses necessary to determine whether such violation has occurred, is unable to obtain such data, information, or attendance, it may request the County Attorney to petition the General District Court for Fairfax County for a subpoena against any such person refusing to produce such data and information or refusing to appear as a witness, and such court may, upon good cause shown, cause the subpoena to be issued.

(c) Neither the complainant nor the respondent shall have the right to demand that a subpoena be issued by the Commission or OHREP.

(d) Any witness subpoena issued under this Section shall include a statement that any statements made will be under oath and that the respondent or other witness is entitled to be represented by an attorney.

(e) Any person failing to comply with a subpoena issued under this Section shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued a subpoena to quash it.

Section 11.1-2-17. Investigative report.

(a) Upon completion of the investigation, the Commission shall issue a written investigative report determining whether or not there is reasonable cause to believe a violation of this Article has occurred, and the facts supporting such determination. The report shall be a confidential document subject to review by the Director, authorized OHREP staff members, and the parties.

(b) The Commission delegates authority to the Director to prepare and issue written investigative reports.

Section 11.1-2-18. No cause determination.

(a) If the investigative report concludes that there is no reasonable cause to believe the alleged unlawful discrimination has been committed, the complaint shall be dismissed.

(b) The Commission delegates authority to the Director to issue no cause letters of determination and dismiss complaints pursuant to this Section.

(c) If the complainant disagrees with the no cause determination, the complainant may seek reconsideration by the Director or file an appeal with the Commission within ten (10) working days of receipt of the determination.

(d) Reconsideration shall only be granted when the complainant presents newly discovered evidence. After considering any such evidence, the Director shall (1) reaffirm the determination of no cause and dismiss the complaint, or (2) make a determination of reasonable cause.

(e) The Director shall provide a written notice to the complainant of the decision made on the request for reconsideration. In the event the Director reaffirms the no cause determination, this notice shall advise the complainant that the determination shall become final, unless within ten (10) business days of the letter's receipt, the complainant files an appeal with the Commission.

(1) The Commission shall only overturn the Director's no cause determination if it decides that (i) a factual finding underlying the determination is clearly erroneous, or (ii) the determination rests upon an incorrect legal conclusion.

(2) If the Commission affirms the Director's determination, it shall dismiss the complaint. When the Commission overturns the determination, it shall either: (i) vacate the determination and direct the Director to continue the investigation; or

(ii) reverse and determine that there is reasonable cause to believe that a violation of this Article has occurred or is occurring.

Section 11.1-2-19. Reasonable cause determination.

(a) If the investigative report concludes that there is reasonable cause to believe the alleged unlawful discriminatory practice has been committed, the complainant and respondent shall be notified of such determination.

(b) A determination finding reasonable cause shall be based on, and limited to, evidence obtained by during the investigation and does not reflect any judgment of the merits of the allegations not addressed in the determination.

(c) The Commission delegates to the Director, upon completion of the investigation, to make a reasonable cause determination, issue a cause letter of determination and serve a copy of the letter upon the parties.

Section 11.1-2-20. Conciliation.

(a) When a reasonable cause determination has been made, the Commission shall immediately endeavor to eliminate any alleged unlawful discriminatory practice by informal methods such as conference, conciliation, negotiation, and persuasion.

(b) The Commission delegates to the Director the authority to enter into informal conciliation efforts, and to negotiate conciliation agreements.

(c) If the conciliation is successful, and agreed to by the vote of the Commission, the complaint shall be considered resolved, and the case file shall be closed. The terms of any settlement agreement resulting from the conciliation shall be reduced to writing and signed by the complainant, respondent, and the Commission. A copy of the agreement signed by parties and the Chair of the Commission or the Chair's designee shall be sent to the complainant and the respondent.

(d) When the Commission agrees in any negotiated settlement not to process the complaint further, the Commission's agreement shall be in consideration for the promises made by the other parties to the agreement. Such agreement shall not affect the processing of any other complaint, including, but not limited to, a complaint with allegations which are like or related to the individual allegations settled.

(e) When the Director determines that further endeavor to settle a complaint by conference, conciliation, negotiation, and persuasion is unworkable and should be bypassed, the Director shall so notify the complainant and the respondent in writing. Within 10 working days of receipt of this notice, the complainant may request referral of the complaint to the Commission for determination of whether to hold a public hearing. If the complainant makes no such request, the Commission shall close the case file.

Section 11.1-2-21. Determination whether to hold a public hearing.

The Commission shall determine whether to hold a public hearing on a complaint based upon the totality of circumstances, including how best to further the policies and purposes underlying this Article. If the Commission determines not to hold a public hearing, it shall close the case file.

Section 11.1-2-22. Confidentiality.

(a) No member of the Commission or member of OHREP shall make public, prior to a public hearing, as provided herein, investigative notes and other correspondence and information furnished to the Commission or OHREP in confidence with respect to an investigation, mediation, or conciliation process involving an alleged unlawful discriminatory practice under this Article; however, nothing in this Section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.

(b) This Section does not apply to such disclosures to representatives of federal, state or local agencies as may be appropriate or necessary to carrying out the Commission's functions under this Article; provided, that the Commission may refuse to make disclosures to any such agency which does not maintain confidentiality of such endeavors in accordance with this Section or in any circumstances where the disclosures will not serve the purposes of effective enforcement of the law or regulation alleged to have been violated.

Section 11.1-2-23. Hearing before Commission.

(a) The Commission may hear appeals made following a no cause determination made under this Article; provided, however, that a member of the Commission who has filed the complaint at issue or otherwise has a personal interest in the matter giving rise to the complaint shall be disqualified from hearing the appeal.

(b) After hearing all of the evidence and arguments, the Commission shall vote to dismiss the complaint due to insufficient evidence of a violation of this Article or to find reasonable cause based upon evidence sufficient to establish a violation of this Article.

(c) Once the hearing has concluded, all administrative appeals and hearings shall have been exhausted, and the Commission shall close the case file.

Section 11.1-2-24. Hearing procedures.

(a) This Section applies to all hearings held before the Commission, including any panel of its members, under this Article.

- (b) The Commission shall notify the parties of the time, date, and location of a hearing no later than twenty (20) working days prior to the date of the hearing. This notice also shall identify the issues to be considered at the hearing and, when applicable, specify the deadlines by which parties must submit motions, file exhibits, designate witnesses, and raise evidentiary objections. Motions to continue a hearing or extend a deadline shall be in writing with a copy to the opposing party and submitted to the Commission. The Commission may grant any such motion only where good cause is shown.
- (c) All hearings shall be open to the public.
- (d) Both the complainant and the respondent shall appear and be heard in person.
- (e) All testimony shall be given under oath or affirmation.
- (f) The order of presentation of evidence shall be established by the Commission with the burden of proof being placed on the complainant. The burden of proof shall be a preponderance of the evidence.
- (g) The Commission shall rule on all motions, evidentiary issues, and procedural matters. It shall not be bound by statutory rules of evidence or technical rules of procedure
- (h) Irrelevant, immaterial, and unduly repetitious evidence shall, at the discretion of the Commission, be excluded. The rules of privilege shall be given effect.
- (i) Documents and witness testimony not provided during the prior investigation shall not be admitted as evidence at the hearing, except for good cause shown or upon agreement of the parties.
- (j) A party's exhibit and witness list for a hearing must be distributed to the Commission and the other party no later than five (5) working days prior to the hearing. Non-compliance with this rule shall result in the exclusion of the document or witness testimony left off the list, unless the Commission determines that good cause exists to allow it.
- (k) At the start of the hearing, the Commission shall order the exclusion of witnesses so they cannot hear the testimony of other witnesses. This rule does not authorize excluding parties, or a person authorized to be present.
- (l) Commission members may ask questions of the parties and witnesses.
- (m) Before the hearing concludes, the parties shall be given an opportunity to present oral argument of their cases.
- (n) After the parties have completed their presentations, the Commission's members shall cast their votes. After all members have voted, the Chair shall announce the Commission's decision and conclude the hearing.

Section 11.1-2-25. Remedies.

(a) If the respondent fails to adhere to any provision contained in any conciliation agreement or adequately to remedy a violation of this Article giving rise to a reasonable cause determination, the Commission, with the approval of the County Attorney, may seek through appropriate enforcement authorities the prevention of or relief from the violation.

(b) Upon finding a violation of this Article, the Commission may notify the County Purchasing Agent or any County agency providing financial support to the respondent of the violation.

(c) The Commission has no authority to award damages or grant injunctive relief under this Article.

(d) Nothing in this Article creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions.

Section 11.1-2-26. No waiver of other legal rights.

(a) Any person who is aggrieved by an unlawful discriminatory practice may bring an appropriate action in a court of competent jurisdiction, as provided for by any other applicable law.

(b) Nothing in this Chapter shall prevent any person from exercising any right or seeking any remedy to which the person might otherwise be entitled; nor shall any person be required to pursue any remedy set forth herein as a condition of seeking relief from any court or other agency, except as is otherwise provided by applicable Virginia or federal law.

Section 11.1-2-27. Severability.

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the other provisions or applications of this Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable.

ARTICLE 3. Fairfax County Fair Housing Act.

Section 11.1-3-1. Declaration of policy.

- (a) This Article shall be known and referred to as the Fairfax County Fair Housing Act.
- (b) It is the policy of the County of Fairfax to provide for fair housing throughout the County, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the County may be protected and ensured. This law shall be deemed an exercise of the police power of the County of Fairfax for the protection of the people of the County.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-2. Definitions.

For the purposes of this Article, unless the context clearly indicates otherwise:

Aggrieved person means any person who (i) claims to have been injured by a discriminatory housing practice or (ii) believes that such person will be injured by a discriminatory housing practice that is about to occur.

Assistance animal means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability related functions, including guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability related need for such support. An assistance animal is not required to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals. An assistance animal is not a pet.

Complainant means a person, including the Human Rights Commission, who files a complaint under Section 11.1-3-10.

Conciliation means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal

negotiations involving the aggrieved person, the respondent, their respective authorized representatives, and the Human Rights Commission.

Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation.

Disability means, with respect to a person, (i) a physical or mental impairment that substantially limits one or more of such person's major life activities; (ii) a record of having such an impairment; or (iii) being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance as defined in Virginia or federal law. For the purposes of this chapter, the terms "disability" and "handicap" shall be interchangeable.

Discriminatory housing practices means an act that is unlawful [under] Sections 11.1-3-4, 11.1-3-5, 11.1-3-6, or 11.1-3-7. Dwelling means any building, structure, or portion thereof, which is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Elderliness means an individual who has attained his or her fifty-fifth birthday.

Familial status means one or more individuals who have not attained the age of 18 years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term "familial status" also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. For purposes of this Section, "in the process of securing legal custody" means having filed an appropriate petition to obtain legal custody of such minor in a court of competent jurisdiction.

Family includes a single individual, whether male or female.

Lending institution includes any bank, savings institution, credit union, insurance company, or mortgage lender.

Major life activities include any of the following functions: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Person means one or more individuals, whether male or female, corporations, partnerships, associations, labor organizations, fair housing organizations, civil rights organizations, organizations, governmental entities, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

Physical or mental impairment includes any of the following: (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine or (ii) any mental or physiological disorder, such as an intellectual or developmental disability, organic brain syndrome, emotional or mental illness, or specific learning disability. "Physical or mental impairment" includes such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; autism; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; human immunodeficiency virus infection; intellectual and developmental disabilities; emotional illness; drug addiction other than addiction caused by current, illegal use of a controlled substance, and alcoholism.

Prevailing Party has the same meaning as such term has in Section 1988 of Title 42 of the United States Code.

Respondent means any person or other entity alleged to have violated the provisions of this Article, as stated in a complaint filed under the provisions of this Chapter and any other person joined pursuant to the provisions of Section 11.1-3-10.

Restrictive covenant means any specification in any instrument affecting title to real property which purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability.

Source of funds means any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.

To rent means to lease, to sublease, to let, or otherwise to grant for consideration the right to occupy premises not owned by the occupant.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-3. Exemptions.

- (a) Except as provided in Section 11.1-3-4(a)(3) and Section 11.1-3-7(a)-(c), this Article shall not apply to any single-family house sold or rented by an owner, provided that such private individual does not own more than three single-family houses at any one time. In the case of the sale of any single-family house by a private individual-owner not residing in the house at the time of the sale or who was not the most recent resident of the house prior to sale, the exemption granted shall apply only with respect to one such sale within any 24-

month period; provided that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time. The sale or rental of any such single-family house shall be exempt from the application of this Article only if the house is sold or rented (i) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, salesperson, or of the facilities or the services of any person in the business of selling or renting dwellings, or of any employee, independent contractor, or agent of any broker, agent, salesperson, or person and (ii) without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this Article. However, nothing herein shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as necessary to perfect or transfer the title.

- (b) Except for Section 11.1-3-4(a)(3), this Article shall not apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.
- (c) Nothing in this Article shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preferences to such persons, unless membership in such religion is restricted on account of race, color, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability. Nor shall anything in this Article apply to a private membership club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members. Nor, where matters of personal privacy are involved, shall anything in this Article be construed to prohibit any private, state-owned, or state-supported educational institution, hospital, nursing home, religious, or correctional institution, from requiring that persons of both sexes not occupy any single-family residence or room or unit of dwellings or other buildings, or restrooms in such room or unit in dwellings or other buildings, which it owns or operates.

- (d) Nothing in this Article prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in federal law.
- (e) It shall not be unlawful under this Article for any owner to deny or limit the rental of housing to persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.
- (f) A rental application may require disclosure by the applicant of any criminal convictions and the owner or managing agent may require as a condition of acceptance of the rental application that applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the rental application. The owner or managing agent may collect from the applicant moneys to reimburse the owner or managing agent for the exact amount of the out-of-pocket costs for such criminal record checks. Nothing in this Article shall require an owner or managing agent to rent a dwelling to an individual who, based on a prior record of criminal convictions involving harm to persons or property, would constitute a clear and present threat to the health or safety of other individuals.
- (g) Nothing in this Article limits the applicability of any reasonable local, state, or federal restriction regarding the maximum number of occupants permitted to occupy a dwelling. Owners or managing agents of dwellings may develop and implement reasonable occupancy and safety standards based on factors such as the number and size of sleeping areas or bedrooms and overall size of a dwelling unit so long as the standards do not violate local, state, or federal restrictions. Nothing in this Article prohibits the rental application or similar document from requiring information concerning the number, ages, sex, and familial relationship of the applicants and the dwelling's intended occupants.
- (h) Nothing in this Article shall prohibit an owner or an owner's managing agent from denying or limiting the rental or occupancy of a rental dwelling unit to a person because of such person's source of funds, provided that such owner does not own more than four rental dwelling units in the Commonwealth at the time of the alleged discriminatory housing practice. However, if an owner, whether individually or through a business entity, owns more than a 10 percent interest in more than four rental dwelling units in the Commonwealth at the time of the alleged discriminatory housing practice, the exemption provided in this subsection shall not apply.
- (i) It shall be unlawful under this Article for an owner or owner's managing agent to deny or limit a person's rental or occupancy of a

rental dwelling unit based on the person's source of funds for that unit if such source is not approved within 15 days of the person's submission of the request for tenancy approval.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-4. Unlawful discriminatory housing practices.

- (a) It shall be an unlawful discriminatory housing practice for any person:
- (1) To refuse to sell or rent after the making of a bona fide offer or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, sex, elderliness, source of funds, familial status, marital status, sexual orientation, gender identity, or status as a veteran;
 - (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in the connection therewith to any person because of race, color, religion, national origin, sex, elderliness, source of funds, familial status, marital status, sexual orientation, gender identity, or status as a veteran;
 - (3) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation or discrimination based on race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability. The use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima facie evidence of an illegal preference under this Chapter that shall not be overcome by a general disclaimer. However, reference alone to places of worship including churches, synagogues, temples, or mosques in any such notice, statement or advertisement shall not be prima facie evidence of an illegal preference;
 - (4) To represent to any person because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

- (5) To deny any person access to membership in or participation in any multiple listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability;
 - (6) To include in any transfer, sale, rental, or lease of housing, any restrictive covenant that discriminates because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability or for any person to honor or exercise, or attempt to honor or exercise any such discriminatory covenant pertaining to housing;
 - (7) To induce or attempt to induce to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability;
 - (8) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise discriminate or make unavailable or deny a dwelling because of a disability of (i) the buyer or renter; (ii) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or (iii) any person associated with the buyer or renter; or
 - (9) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of a disability of (i) that person; (ii) a person residing in or intending to reside in that dwelling after it was so sold, rented or made available; or (iii) any person associated with that buyer or renter.
- (b) For the purposes of this Section, discrimination includes: (i) a refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by any person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the

interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make reasonable accommodations in rules, practices, policies, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection with the design and construction of covered multi-family dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that:

- (1) The public use and common use areas of the dwellings are readily accessible to and usable by disabled persons;
 - (2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by disabled persons in wheelchairs; and
 - (3) All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. As used in this subdivision the term "covered multi-family dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.
- (c) Compliance with the appropriate requirements of the American National Standards for Building and Facilities (commonly cited as "ANSI A117.1") or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically disabled people shall be deemed to satisfy the requirements of Section 11.1-3-4(b)(3).
- (d) Nothing in this Chapter shall be construed to invalidate or limit any Virginia law or regulation that requires dwellings to be designed and constructed in a manner that affords disabled persons greater access than is required by this Chapter.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-4-1. Rights and responsibilities with respect to the use of an assistance animal in a dwelling.

- (a) A person with a disability, or a person associated with such person, who maintains an assistance animal in a dwelling shall comply with the rental agreement or any rules and regulations of the property

owner applicable to all residents that do not interfere with an equal opportunity to use and enjoy the dwelling and any common areas of the premises. Such person shall not be required to pay a pet fee or deposit or any additional rent to maintain an assistance animal in a dwelling, but shall be responsible for any physical damages to the dwelling if residents who maintain pets are responsible for such damages in accordance with such documents or state law. Nothing herein shall be construed to affect any cause of action against any resident for other damages under the laws of the County.

- (b) If a person's disability is obvious or otherwise known to the person receiving a request, or if the need for a requested accommodation is readily apparent or known to the person receiving a request, the person receiving a request for reasonable accommodation may not request any additional verification about the requester's disability. If a person's disability is readily apparent or known to the person receiving the request but the disability-related need is not readily apparent or known, the person receiving the request may ask for additional verification to evaluate the requester's disability-related need.
- (c) A person with a disability, or a person associated with such person, may submit a request for a reasonable accommodation to maintain an assistance animal in a dwelling. Subject to subsection B, the person receiving the request may ask the requester to provide reliable documentation of the disability and the disability-related need for an assistance animal, including documentation from any person with whom the person with a disability has or has had a therapeutic relationship.
- (d) Subject to subsection (b), a person receiving a request for a reasonable accommodation to maintain an assistance animal in a dwelling shall evaluate the request and any reliable supporting documentation to verify the disability and the disability-related need for the reasonable accommodation regarding an assistance animal.
- (e) For purposes of this Section, "therapeutic relationship" means the provision of medical care, program care, or personal care services, in good faith, to the person with a disability by (i) a mental health service provider as defined in Virginia Code § 54.1-2400.1; (ii) an individual or entity with a valid, unrestricted state license, certification, or registration to serve persons with disabilities; (iii) a person from a peer support or similar group that does not charge service recipients a fee or impose any actual or implied financial requirement and who has actual knowledge about the requester's disability; or (iv) a caregiver, reliable third party, or government entity with actual knowledge of the requester's disability.

Section 11.1-3-4-2. Reasonable accommodations; interactive process.

- (a) When a request for a reasonable accommodation establishes that such accommodation is necessary to afford a person with a disability, and who has a disability-related need, an equal opportunity to use and enjoy a dwelling and does not impose either (i) an undue financial and administrative burden or (ii) a fundamental alteration to the nature of the operations of the person receiving the request, the request for the accommodation is reasonable and shall be granted.

- (b) When a request for a reasonable accommodation may impose either (i) an undue financial and administrative burden or (ii) a fundamental alteration to the nature of the operations of the person receiving the request, the person receiving the request shall offer to engage in a good- faith interactive process to determine if there is an alternative accommodation that would effectively address the disability-related needs of the requester. An interactive process is not required when the requester does not have a disability and a disability-related need for the requested accommodation. As part of the interactive process, unless the reasonableness and necessity for the accommodation has been established by the requester, a request may be made for additional supporting documentation to evaluate the reasonableness of either the requested accommodation or any identified alternative accommodations. If an alternative accommodation is identified that effectively meets the requester's disability-related needs and is reasonable, the person receiving the reasonable accommodation request shall make the effective alternative accommodation. However, the requester shall not be required to accept an alternative accommodation if the requested accommodation is also reasonable. The various factors to be considered for determining whether an accommodation imposes an undue financial and administrative burden include (a) the cost of the requested accommodation, including any substantial increase in the cost of the owner's insurance policy; (b) the financial resources of the person receiving the request; (c) the benefits that the accommodation would provide to the person with a disability; and (d) the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

- (c) A request for a reasonable accommodation shall be determined on a case-by-case basis and may be denied if (i) the person on whose behalf the request for an accommodation was submitted is not disabled; (ii) there is no disability-related need for the accommodation; (iii) the accommodation imposes an undue financial and administrative burden on the person receiving the request; or (iv) the accommodation would fundamentally alter the nature of the operations of the person receiving the request. With respect to a

request for reasonable accommodation to maintain an assistance animal in a dwelling, the requested assistance animal shall (a) work, provide assistance, or perform tasks or services for the benefit of the requester or (b) provide emotional support that alleviates one or more of the identified symptoms or effects of such requester's existing disability. In addition, as determined by the person receiving the request, the requested assistance animal shall not pose a clear and present threat of substantial harm to others or to the dwelling itself that is not solely based on breed, size, or type or cannot be reduced or eliminated by another reasonable accommodation.

Section 11.1-3-5. Discrimination in residential real estate-related transactions; unlawful practices by lenders, insurers, appraisers, etc.; deposit of state funds in such institutions.

- (a) It shall be unlawful for any person or other entity, including any lending institution, whose business includes engaging in residential real estate-related transactions, to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, or in the manner of providing such a transaction, because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability. It shall not be unlawful; however, for any person or other entity whose business includes engaging in residential real estate transactions to require any applicant to qualify financially for the loan or loans for which such person is making application.
- (b) As used in this Section, the term "residential real estate-related transaction" means any of the following:
 - (1) The making or purchasing of loans or providing other financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling, or (ii) secured by residential real estate; or
 - (2) The selling, brokering, insuring or appraising of residential real property. However, nothing in this Article shall prohibit a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-6. Interference with enjoyment of rights of others under this Article.

It shall be an unlawful discriminatory housing practice for any person to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on the account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Article.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-7. Certain restrictive covenants void; instruments containing such covenants.

- (a) Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or ownership of property on the basis of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability, whether heretofore or hereafter included in an instrument affecting the title to real or leasehold property, are declared to be void and contrary to the public policy of this County.
- (b) Any person who is asked to accept a document affecting title to real or leasehold property may decline to accept the same if it includes such a covenant or reversionary interest until the covenant or reversionary interest has been removed from the document. Refusal to accept delivery of an instrument for this reason shall not be deemed a breach of a contract to purchase, lease, mortgage, or otherwise deal with such property.
- (c) No person shall solicit or accept compensation of any kind for the release or removal of any covenant or reversionary interest described in subsection (a). Any person violating this subsection shall be liable to any person injured thereby in an amount equal to the greater of three times the compensation solicited or received, or \$500.00, plus reasonable attorney fees and costs incurred.
- (d) A family care home, foster home, or group home in which individuals with physical disabilities, mental illness, intellectual disabilities, or developmental disabilities reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single-family when construing any restrictive covenant which purports to restrict occupancy or ownership of real or leasehold property to members of a single-family or to residential use or structure.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-8. Familial status protection not applicable to housing for older persons.

- (a) Nothing in this Article regarding unlawful discrimination because of familial status shall apply to housing for older persons. As used in this Section, "housing for older persons" means housing: (i) provided under any federal, state, or local program that is lawfully determined to be specifically designed and operated to assist elderly persons, as defined in the federal, state or local program; or (ii) intended for, and solely occupied by, persons 62 years of age or older; or (iii) intended for, and solely occupied by at least one person 55 years of age or older per unit. The following criteria shall be met in determining whether housing qualifies as housing for older persons under subdivision (iii) of this Section:
 - (1) That at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older per unit; and
 - (2) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
- (b) Housing shall not fail to meet the requirements for housing for older persons by reason of:
 - (1) Persons residing in such housing as of September 13, 1988, who do not meet the age requirements of subdivisions (ii) and (iii) of subsection (a) of this Section, provided that new occupants of such housing meet the age requirements of those subdivisions; or
 - (2) Unoccupied units, provided that such units are reserved for occupancy by persons who meet the provisions of subdivisions (ii) and (iii) of subsection (a) of this Section.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-9. Powers of the Human Rights Commission.

The Human Rights Commission has the power for the purposes of this Article to initiate and receive complaints, conduct investigations of any violation of this Article, attempt resolution of complaints by conference and conciliation, and, upon failure of such efforts, issue a charge, and refer it to the County Attorney for action. When conducting an investigation of a complaint filed under Article 3 of this Chapter the Commission or its designated subordinates shall have the power to issue and serve a subpoena as provided for by Section 11.1-3-11(b).

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-10. Procedures for receipt or initiation of complaint under Article 3 of this Chapter; notice to parties; filing of answer.

- (a) A complaint under this Article shall be filed with the Commission in writing within one year after the alleged discriminatory housing practice occurred or terminated.
- (b) Any person not named in such a complaint and who is identified as a respondent in the course of the investigation may be joined as an additional or substitute respondent upon written notice to such person by the Director explaining the basis for the Director's belief that such person is properly joined as a respondent
- (c) Any respondent may file an answer to such a complaint not later than ten business days after receipt of the notice described in Section 11.1-3-10(d) below. Complaints and answers must be made in writing, under oath or affirmation, and in such form as the Director requires. Complaints and answers may be reasonably and fairly amended at any time.
- (d) Upon the filing of a complaint under this Article 3 or initiation of such a complaint by the Director or its designee, the Commission shall provide written notice to the parties as follows:
 - (1) To the aggrieved person acknowledging the filing and advising such person of the time limits and choice of forums under this Article; and
 - (2) To the respondent, not later than ten business days after such filing or the identification of an additional respondent under subsection (b), identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this Article with a copy of the original complaint and copies of any supporting documentation referenced in the complaint.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-11. Procedures for investigation.

- (a) The Director shall commence proceedings with respect to a complaint filed under this Article within 30 days after receipt of the complaint, and shall complete the investigation within 100 days thereof unless it is impracticable to do so. If the Director is unable to complete the investigation within 100 days after the receipt of the complaint, the aggrieved person and the respondent shall be notified in writing of the reasons for not doing so.

- (b) When conducting an investigation of a complaint filed under this Article, the Director shall have the right to interview any person who may have any information which may further its investigation and to request production of any records or documents for inspection and copying in the possession of any person which may further the investigation. Such persons may be interviewed under oath. The Director or its designated subordinates shall have the power to issue and serve a subpoena to any such person to appear and testify and to produce any such records or documents for inspection and copying. Said subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served as part of a civil action in the Commonwealth of Virginia. In case of refusal or neglect to obey a subpoena, the Commission may petition for its enforcement in the Circuit Court for the County of Fairfax. The Circuit Court of Fairfax County will be requested to give these cases priority on the court docket.
- (c) At the end of each investigation under this Section, the Director shall prepare a final investigative report which may contain:
 - (1) The names and dates of contacts with witnesses;
 - (2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
 - (3) A summary description of other pertinent records;
 - (4) A summary of witness statements; and
 - (5) Answers to interrogatories.

A final report under this subsection may be amended if additional evidence is later discovered.

- (d) The Director shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Director's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-12. Reasonable cause determination and effect.

The Commission shall, within 100 days after the filing of a complaint under this Article, determine, based on the facts and after consultation with the Office of the County Attorney, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is

impracticable to do so or unless the Commission has approved a conciliation agreement with respect to the complaint. If the Commission is unable to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur within 100 days after receipt of the complaint, the aggrieved person and the respondent shall be notified in writing of the reasons therefor.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-13. No reasonable cause determination and effect.

If the Commission determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Commission shall promptly dismiss the complaint notifying the parties within 30 days of such determination. The Commission shall make public disclosure of each dismissal.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-14. Conciliation.

During the period beginning with the filing of such complaint under this Article and ending with the filing of a charge or a dismissal by the Director, the Director shall, to the extent feasible, engage in conciliation with respect to such complaint.

- (1) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent, the complainant, and the Commission, and shall be subject to approval by the Commission.
- (2) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.
- (3) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purposes of this Chapter.
- (4) Whenever the Commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the Commission may refer the matter to the County Attorney with a recommendation that a civil action be filed under Section 11.1-3-18 for the enforcement of such agreement.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-15. Issuance of a charge.

Upon failure to resolve a complaint under this Article by conciliation and after consultation with the Office of the County Attorney, the Commission shall issue a charge on behalf of the Commission and the aggrieved person or persons and shall immediately refer the charge to the County Attorney, who shall proceed with the charge as directed by Section 11.1-3-17.

- (1) Such charge:
 - (A) Shall consist of a short and plain statement of the facts upon which the Commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
 - (B) Shall be based on the final investigative report; and
 - (C) Need not be limited to the acts or grounds alleged in the complaint filed under Section 11.1-3-10.
- (2) Not later than ten business days after the Commission issues a charge under this Section, the Director shall cause a copy thereof to be served on each respondent named in such charge and on each aggrieved person on whose behalf the complaint was filed.

The Commission may not issue a charge under this Section regarding an alleged discriminatory housing practice after the beginning of a trial of a civil action commenced by the aggrieved party under an Act of Congress or a state law seeking relief with respect to that discriminatory housing practice.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-16. Prompt judicial action.

If the Director concludes at any time following the filing of a complaint and after consultation with the Office of the County Attorney, that prompt judicial action is necessary to carry out the purposes of this Chapter, the Director may authorize a civil action by the County Attorney for appropriate temporary or preliminary relief. Upon receipt of such authorization, the County Attorney shall promptly commence and maintain such action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Virginia Rules of Civil Procedure. The commencement of a civil action under this Section shall not affect the initiation or continuation of administrative proceedings by the Commission under Section 11.1-3-9.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-17. Civil action by County Attorney upon referral of charge by the Human Rights Commission.

- (a) Not later than 30 days after a charge is referred by the Commission to the County Attorney under Section 11.1-3-15, the County Attorney, at County expense, shall commence and maintain a civil action seeking relief on behalf of the Commission and the complainant in the circuit court for the city, county, or town in which the unlawful discriminatory housing practice has occurred or is about to occur.
- (b) Any aggrieved person with respect to the issues to be determined in a civil action pursuant to subsection (a) may intervene as of right.
- (c) In a civil action under this Section, if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may grant, as relief, any relief which a court could grant with respect to such discriminatory housing practice in a civil action under Section 11.1-3-19. Any relief so granted that would accrue to an aggrieved person under Section 11.1-3-19 shall also accrue to the aggrieved person in a civil action under this Section. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court in the course of the action brought under this Section.
- (d) In any court proceeding arising under this Section, the court, in its discretion, may allow the prevailing party reasonable attorney's fees and costs.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-18. Civil action by County Attorney; matters involving the legality of any local zoning or other land use ordinance; pattern or practice cases; or referral of conciliation agreement for enforcement.

- (a) Whenever the County Attorney has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this Article, or that any group of persons has been denied any of the rights granted by this Article and such denial raises an issue of general public importance, the County Attorney may commence a civil action in the appropriate circuit court for appropriate relief.
- (b) In the event of a breach of a conciliation agreement by a respondent, the Commission may authorize a civil action by the County Attorney. The County Attorney may commence a civil action in any appropriate

circuit court for appropriate relief. A civil action under this subsection shall be commenced no later than the expiration of 90 days after the referral of such alleged breach.

- (c) The County Attorney, on behalf of the Commission, or other party at whose request a subpoena is issued, under this Article, may enforce such subpoena in appropriate proceedings in the appropriate circuit court.
- (d) In a civil action under subsections (a) and (b), the court may:
 - (1) Award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this Article as is necessary to assure the full enjoyment of the rights granted by this Article.
 - (2) Assess a civil penalty against the respondent (i) in an amount not exceeding \$50,000.00 for a first violation; and (ii) in an amount not exceeding \$100,000.00 for any subsequent violation. The court or jury may award such other relief to the aggrieved person, as the court deems appropriate, including compensatory damages, and punitive damages without limitation otherwise imposed by state law.
- (e) Upon timely application, any person may intervene in a civil action commenced by the County Attorney under subsection (a) or (b) which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a party to a conciliation agreement. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under Section 11.1-3-19.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-19. Civil action; enforcement by private parties.

- (a) An aggrieved person may commence a civil action in an appropriate United States district court or state court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this Article, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.
- (b) An aggrieved person may commence a civil action under Section 11.1-3-19(a) no later than 180 days after the conclusion of the administrative process with respect to a complaint or charge or not later than two years after the occurrence or the termination of an

alleged discriminatory housing practice, whichever is later. This subsection shall not apply to actions arising from a breach of a conciliation agreement. An aggrieved person may commence a civil action under this Section whether or not a complaint has been filed under Section 11.1-3-10 and without regard to the status of any such complaint. If the Commission or a federal agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this Section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

- (c) In a civil action under subsection (a), if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may award to the plaintiff, as the prevailing party, compensatory and punitive damages, without limitation otherwise imposed by state law, and the court may award reasonable attorney's fees and costs, and subject to subsection (d), may grant as relief, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or order such affirmative action as may be appropriate.
- (d) Relief granted under subsection (c) shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving bona fide purchasers, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Commission or civil action under this Article.
- (e) Upon timely application, the County Attorney may intervene in such civil action, if the County Attorney certifies that the case is of general public importance. Upon intervention, the County Attorney may obtain such relief as would be available to the private party under subsection (c).

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-20. Witness fees.

Witnesses summoned by a subpoena under this Chapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in the courts of the Commonwealth. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Commission.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-21. Promulgating regulations.

The Commission shall perform all acts necessary and proper to carry out the provisions of this Article and may promulgate and amend necessary regulations.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-22. Application of Article.

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the other provisions or applications of this Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-23. Construction of law.

Nothing in this Article shall abridge the federal Fair Housing Act of 1968, (42 U.S.C. § 3601 et seq.), as amended, or the Virginia Fair Housing Act (Va. Code Ann. § 36-96.1 et seq.) (Michie 1996) as amended.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-24. Time Limitations.

- (a) A complaint filed under the provisions of this Article shall be dismissed by the Director if the complainant knew or should have known that the alleged violation of this Article ceased more than one year prior to the date of filing of the complaint.
- (b) If the Commission is unable to make a final disposition within 100 days after receipt of the complaint, the parties shall be notified in writing of the reasons for not doing so.

(33-10-11.)

4:30 p.m.

Public Hearing on a Proposal to Abandon and Convey a Portion of a Frontage Road (FR 953) (Dranesville District)

ISSUE:

Public hearing on a proposal to abandon and convey a portion of an unnamed frontage road (FR 953).

RECOMMENDATION:

The County Executive recommends that the Board adopt the attached order (Attachment III) ~~for abandonment~~ and resolution (Attachment ~~IV~~ **VII**) for the **abandonment and** conveyance of the subject right-of-way following the public hearing.

TIMING:

On July 28, 2020, the Board authorized the public hearing to consider the proposed abandonment and conveyance for September 15, 2020, at 4:30 p.m.

BACKGROUND:

The applicants, Evermay Community Association and Dunaway Racquet Club, Inc., are requesting that a portion of a frontage road (FR 953) be abandoned under Virginia Code §33.2-909 and conveyed to the Dunaway Racquet Club, Inc., pursuant to Virginia Code §33.2-924. The subject portion of a frontage road (FR 953), just north of the intersection of Dunaway Drive (Route 7132) and Dolley Madison Boulevard (Route 123), is improved and is in the VDOT Secondary System of Highways.

This frontage road (FR 953) was originally dedicated in 1979 as a public road as part of the Section 7-A Evermay Subdivision but currently does not and would not provide vehicular access to any of the surrounding lots. The adjacent property owner, to whom the right-of-way would have typically reverted to after the abandonment (and vacation), prefers not to receive the addition of the subject right-of-way. Consequently, the applicants are requesting that if the abandonment is approved, the abandoned portion be conveyed to the applicants so that it can be incorporated into the community recreation facilities property in the subdivision. The Facilities Management Department has evaluated the value of the portion of the frontage road and the applicants will be paying this consideration for the conveyance.

Traffic Circulation and Access

The abandonment and conveyance will have no long-term impact on pedestrian, transit, or vehicle circulation and access.

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 Development, Fairfax County Park Authority, Fairfax County Water Authority, Fairfax County School Board, Fire and Rescue, Virginia Department of Transportation, Dominion Virginia Power, Washington Gas, and Verizon. None of these indicated any opposition to the proposal.

FISCAL IMPACT:

The portion of the frontage road (FR 953) to be abandoned and conveyed will be purchased by the Evermay Community Association and the Dunaway Racquet Club, Inc. for market value (\$2,348.00).

ENCLOSED DOCUMENTS:

Attachment I: Application Letter
Attachment II: Notice of Intent to Abandon and Convey
Attachment III: Order of Abandonment and Conveyance
Attachment IV: Metes and Bounds Description
Attachment V: Abandonment and Conveyance Plat
Attachment VI: Vicinity Map
Attachment VII: Resolution to Convey

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Jeff Hermann, Division Chief, FCDOT
Marc Dreyfuss, FCDOT
Michelle Guthrie, FCDOT
Jeffrey Edmondson, FCDOT

ASSIGNED COUNSEL:

Pamela K. Pelto, Assistant County Attorney

EVERMAY COMMUNITY ASSOCIATION

Ron Hutchinson, President
P.O. Box 52
McLean, VA 22101

DUNAWAY RACQUET CLUB, INC.

Sattar Mansi, President
6292 Dunaway Court
McLean, VA 22101

VIA HAND DELIVERY AND E-MAIL (Michael.garcia3@fairfaxcounty.gov)

April 18, 2019

Michael W. Garcia, AICP
Transportation Planner
Transportation Planning Division
Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 22030-2897

Re: Transfer of Ownership of Stub Road in Section 7 of Evermay Subdivision

Dear Mr. Garcia:

This letter is a joint request by the Evermay Community Association (ECA) and its sister organization, the Dunaway Racquet Club, Inc. (DRC), for the Fairfax County Department of Transportation (Fairfax County) to transfer ownership and control of a small stub road located in Section 7 of the Evermay subdivision to DRC. ECA and DRC request that this transfer be processed as an abandonment action pursuant to Virginia Code § 33.2-909.

The Evermay subdivision consists of 159 homes in seven sections. Sections 1-6 with a total of 127 homes, are contiguous with one another and are located on the south side of Dolley Madison Boulevard/Route 123. Section 7 of the Evermay subdivision consists of 32 homes that are on the north side of Dolley Madison Boulevard/Route 123 and are physically separated from Sections 1-6. Section 7 is contiguous to Clemyjontri Park.

ECA is the homeowner association that represents all 159 homes located in all seven sections of the Evermay subdivision and is the entity that has exclusive authority for administering and enforcing the restrictive covenants that are applicable to all seven sections of the Evermay subdivision. ECA does not own any community property but has a permanent easement at the south side entrance to Sections 1-6 of the Evermay subdivision and at the north side entrance to Section 7 for installation and maintenance of Evermay signage.

Within Section 7 is an outdoor tennis court facility and surrounding recreational land that is common area property deeded exclusively to DRC on behalf of the 32 homes located within Section 7. DRC was established to administer this common area property within Section 7 for

Michael W. Garcia
April 18, 2019
Page 2

the benefit of Section 7 homeowners. Unlike ECA, DRC is already set up to own common area property and is the appropriate entity to take ownership of the stub road property that is the subject of our request.

The small piece of land which is the subject of this request is a stub road located at the entrance to Section 7 of the Evermay subdivision and is shown on the recordable plat included as Exhibit 2 to this letter and in the vicinity map/Fairfax County assessment map included as Attachment 6 to this letter. This stub road is also shown circled in red on the VDOT maps which are included as Attachment 2 to this letter. This stub road is contiguous to Clemyjontri Park. This stub road is contained entirely within the boundaries of the Evermay subdivision and serves no purpose, has never been used for any purpose and will serve no purpose in the future.

The master plan for Clemyjontri Park approved by Fairfax County states that the stub roads in Evermay that are contiguous to the park will not be utilized for any purpose, including any access to Clemyjontri Park.

Nor is there any possibility that this small stub road could be used in connection with any widening of Dolley Madison Boulevard/Route 123. Not only is the stub road entirely within the boundaries of the Evermay subdivision and could not be affected by any such widening, the issue of widening Dolley Madison Boulevard/Route 123 was resolved in the negative many years ago as is detailed in a letter dated June 16, 2005 (Attachment 7 hereto) from ECA to Supervisor Joan DuBois, the Dranesville supervisor at that time. As is set forth in ECA's June 16, 2005 letter, the Chairman of the Fairfax County Board of Supervisors advised VDOT of the County's opposition to the proposed widening of Dolley Madison Boulevard and requested its removal from the 2010 State Highway Plan. As further indicated in ECA's 2005 letter VDOT agreed and removed the plan for widening Dolley Madison Boulevard/Route 123 from the State Highway Plan, including removal from VDOT's 2025 State Highway Plan to correspond to the NOVA 2020 regional plan which also does not provide for any such widening.

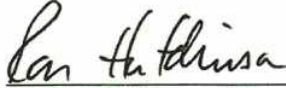
ECA has been pursuing transfer of ownership of this stub road for over a decade. In 2005 at the request of ECA the supervisor for the Dranesville District at that time, Supervisor Joan DuBois, committed to ECA that Fairfax County could have no interest in the continued existence of this stub road after the Phase II construction of the southern part of Clemyjontri Park had been completed. Phase II construction of Clemyjontri Park has now been completed. There is no reason to wait any longer to transfer the stub road to ownership and control of DRC. The Director of Planning and Development of the Fairfax County Park Authority, David Bowden and the current Dranesville supervisor, Supervisor John Foust, agree.

Therefore, ECA and DRC jointly request that Fairfax County start the process of transferring ownership to DRC of this stub road. This joint request has been reviewed by the Virginia Department of Transportation (VDOT) who have determined that this transfer can proceed as an abandonment pursuant to Virginia Code § 33.2-909 as a road in the secondary system.

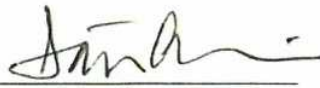
Michael W. Garcia
April 18, 2019
Page 3

We look forward to working with Fairfax County to complete transfer of ownership of this stub road to DRC.

Respectfully submitted,



Ron Hutchinson
President
Evermay Community Association



Sattar Mansi
President
Dunaway Racquet Club, Inc.

Attachments:

- 1 - \$150 Processing Fee;
- 2 - Recordable plat of area to be abandoned showing location of all known utilities and County assessment map reference number;
- 3 - Metes and bounds description of area to be abandoned;
- 4 - Combined notice of public hearing;
- 5 - Order of Abandonment;
- 6 - Vicinity map/Fairfax County assessment map;
- 7 - June 2005 ECA Letter to Supervisor Dubois.

cc: (w/out attachments)

Mr. David Bowden
Director Planning and Development
Fairfax County Park Authority

Supervisor John Foust
Dranesville District

NOTICE OF INTENT TO ABANDON AND CONVEY

FR 953

DRANESVILLE DISTRICT,
Fairfax County, Virginia

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on September 15, 2020, at 4:30 PM during its regular meeting in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia, pursuant to Virginia Code Ann. § 15.2-2204 on the proposed abandonment of a public road known as FR 953, from Route 7132 to boundary of Clemyjontri Park, a distance of 134 feet, pursuant to Virginia Code §§ 33.2-909-013. At the same time and place, the Board of Supervisors will concurrently hold a public hearing on a proposal to convey the right-of-way so abandoned to Dunaway Racquet Club, Inc, a Virginia non-stock corporation. The road is located on Tax Map 31-1, and is described and shown on the metes and bounds schedule and plat prepared by DeLashmutt Associates, Ltd., dated March 19, 2020, 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.

DRANESVILLE DISTRICT.

ORDER OF ABANDONMENT AND CONVEYANCE

FR 593

DRANESVILLE DISTRICT
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held this 15th day of September, 2020, 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 FR 953 from Route 7132 to boundary of Clemyjontri Park, a distance of 134 feet, located on Tax Map 31-1, and described on the plat and metes and bounds schedule prepared by De Lashmutt Associates, Ltd. dated March 19, 2020, which is attached hereto and incorporated herein, be and the same is hereby abandoned as a public road pursuant to Virginia Code §33.2-909 and §33.2-913 and shall be conveyed to Dunaway Racquet Club, Inc, a Virginia non-stock corporation (“DRC”) pursuant to a Deed of Conveyance to be executed between the Board of Supervisors of Fairfax County, Virginia, a body corporate and politic and DRC.

This abandonment and conveyance 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

De Lashmutt Associates, Ltd.
CERTIFIED ENGINEERS AND LAND SURVEYORS

1120 S. GEORGE MASON DRIVE
 Area Code (703) 486-8300

ARLINGTON, VIRGINIA 22204
 FAX (703) 521-3101



March 19, 2020

Description of A Portion of Section 7-A Evermay

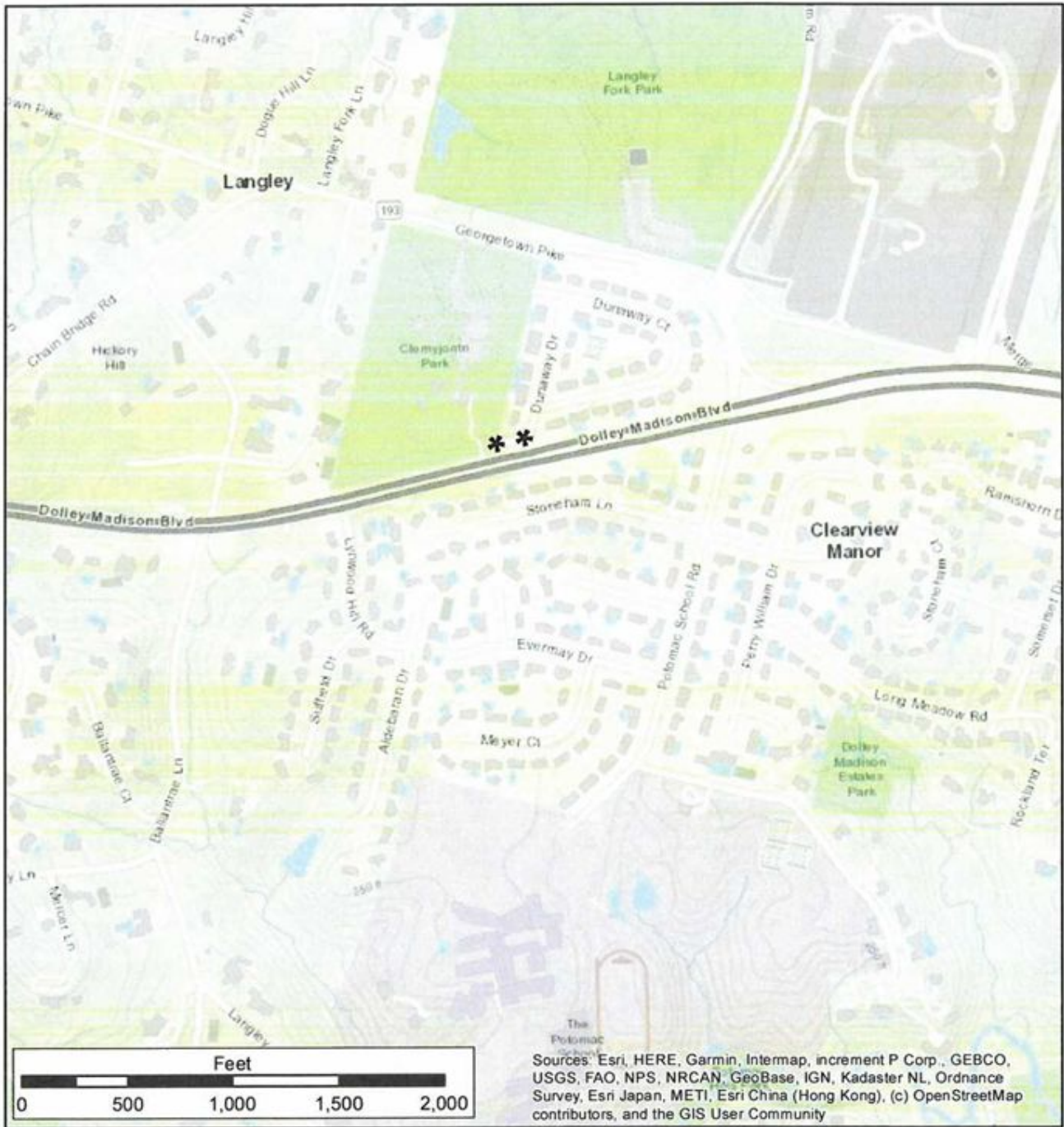
D.B. 5236 Pg. 218

Dranesville District

Fairfax County, Virginia

Beginning at a point being in the Westerly line of Dunaway Drive - State Route 7132 (25 feet from the centerline thereof) said point lying N 23° 28' 10" E ~ 17.00 feet (measured along said Westerly line of Dunaway Drive) from the intersection of the Westerly line of Dunaway Drive - State Route 7132 (25 feet from the centerline thereof) and the Northerly line of Dolly Madison Blvd. - State Route 123 (a right of way of varying width), thence departing from the Westerly right of way line of Dunaway Drive and running through the existing Right-of-Way of State Route F-953, S 86° 37' 43" W ~ 133.37 feet to a point in the Easterly line of the property of the Fairfax County Park Authority being Lot 11B Langley; thence running with the Easterly line of Lot 11B N 23° 28' 20" E ~ 38.46 feet to a point in the Southerly line of Lot 1 Section 7A Evermay as the same appears duly platted and recorded in Deed Book 5236 at Page 218 among the land records of Fairfax County, Virginia; thence running with the southerly line of Lot 1 Section 7A Evermay N 86° 21' 04" E ~ 112.30' to a P.C. of a curve to the left; thence continuing along the curve to the left 38.41 feet, which curve has a radius of 35.00 feet, the chord of which arc bears N 54° 54' 37" E ~ 36.51' to the P.T., a point in the Westerly line of Dunaway Drive - State Route 7132 (25 feet from the centerline thereof); thence continuing with the Westerly line of Dunaway Drive S 23° 28' 10" W ~ 60.58 feet to the point of beginning; containing 4,696 square feet of land, more or less.

FR 953 Right-of-Way Abandonment/Conveyance Dranesville District



Tax Map 31-1



* Symbol Denotes Area of Right-of-Way to be Abandoned

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 the 15th day of September, 2020, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, the Board of Supervisors has approved the abandonment of part of FR 953 located between Tax Map 31-1((18)) Parcel 1 and Dolley Madison Blvd (Route 123), described and shown on the metes and bounds schedule dated March 19, 2020, and abandonment plat dated March 19, 2020, both prepared by De Lashmutt Associates, Ltd,

WHEREAS, the Evermay Community Association and Dunaway Racquet Club, Inc., (Applicant) seek to acquire the fee simple interest in the parcel created by said abandonment for fair market value consideration,

WHEREAS, the County has no current or planned use for the parcel created by the abandonment,

WHEREAS, the Board of Supervisors finds that it would be in the best interest of the residents of Fairfax County to convey in consideration of fair market value the real property as described above to the Applicant.

NOW, THEREFORE, upon public hearing duly advertised according to law, it is **RESOLVED** that, in consideration of the fair market value of the parcel, the County Executive or Deputy County Executive is hereby authorized to execute all necessary documents to convey the real property described above to the Applicant.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

4:30 p.m.

Public Hearing on a Proposal to Vacate and Abandon a Portion of Brecknock Street /
Route 5443 (Sully District)

ISSUE:

Public hearing on a proposal to vacate and abandon a portion of Brecknock Street /
Route 5443.

RECOMMENDATION:

The County Executive recommends that the Board adopt the attached order
(Attachment III) for abandonment, **ordinance (Attachment IV) for vacation** and
resolution (Attachment ~~IV~~ **IX**) for ~~vacation~~ of the subject right-of-way.

TIMING:

On May 12, 2020, the Board authorized the public hearing to consider the proposed
abandonment and vacation for July 14, 2020, at 4:00 p.m. On July 14, 2020, the Board
of Supervisors deferred the public hearing to September 15, 2020, at 4:30 p.m.

BACKGROUND:

The applicant, Taddeo Homes, is requesting that a portion of Brecknock Street / Route
5443 be vacated under §15.2-2272(2) of the Virginia Code and abandoned under
Virginia Code §33.2-909. The applicant is seeking this request because of the
requirements of Interparcel Access Waiver #6369-WIPA-001-1 (Attachment VIII).

The subject portion of Brecknock Street, at the southeast side of the intersection of
Tilton Valley Drive, is currently unbuilt. Brecknock Street was originally dedicated in
1973 as a public road as part of the Mary Ridge subdivision and is in the VDOT
Secondary System of Highways. This unconstructed portion of Brecknock Street does
not and would not provide vehicular connection between Tilton Valley Drive and
Brecknock Street. The property that abuts both sides of the existing right-of-way to be
vacated and abandoned is currently occupied by Lots 18 and 19 of the Mary Ridge
subdivision, 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.

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 Development, Fairfax County Park Authority, Fairfax County Water Authority, Fairfax County School Board, Fire and Rescue, Virginia Department of Transportation, Dominion Virginia Power, Washington Gas, 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
- Attachment VIII: Interparcel Access Waiver #6369-WIPA-001-1 Documentation
- Attachment IX: Resolution

STAFF:

- Rachel Flynn, Deputy County Executive
- Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
- Gregg Steverson, Deputy Director, FCDOT
- Jeff Hermann, Site Analysis Section Chief, FCDOT
- Michelle Guthrie, FCDOT
- Jeffrey Edmondson, FCDOT

ASSIGNED COUNSEL:

- Pamela K. Pelto, Assistant County Attorney

LETTER OF REQUEST AND JUSTIFICATION

September 29, 2019

Board of Supervisors of Fairfax County
12000 Government Center Parkway, Suite 552
Fairfax, Virginia 22035

Re: Vacation and Abandonment of Portions of Brecknock Street

As part of the development of TADDEO ESTATES subdivision, Plan #6369-SD-003-1, Fairfax County Department of Public Works and Environmental Services issued an Interparcel Access Waiver [#6369-WIPA-001-1] dated May 1, 2008, conditioned on, among other things:

"Existing stub street of Brecknock Street (that is not extended) should be vacated/abandoned and pavement should be removed. This should occur prior to the issuance of the residential use permit for the first new home in the subdivision."

The applicant, Taddeo Homes, is requesting the vacation and abandonment of those portions of Brecknock Street required by Interparcel Access Waiver #6369-WIPA-001-1. Attached is a plat entitled "Plat Showing Vacation and Abandonment of a Portion of Brecknock Street" prepared by Charles P. Johnson & Associates, Inc. dated February 21, 2019 (the "**Plat**"). The applicant requests the vacation of that portion of Brecknock Street that results in Parcels A and B as shown on the Plat.

NOTICE OF INTENT TO ABANDON AND TO
ADOPT AN ORDINANCE VACATING
A PART OF A PLAT ON WHICH IS SHOWN

Portions of BRECKNOCK STREET (Route 5443)

Sully District,
Fairfax County, Virginia

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on Sept. 15, 2020 at 4:30 p.m. 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, (1) on the proposed abandonment of a portion of a public road known as Brecknock Street, and (2) vacating a part of the plat of MARY RIDGE subdivision, recorded in Deed Book 3893 at Page 545, on which is shown Brecknock Street from Tilton Valley Drive to the northeast property corner of Lot 19, MARY RIDGE. The road is located on Tax Map 46-1-010 and is described on the metes and bounds schedule prepared by Charles P. Johnson & Associates, Inc. dated September 13, 2019, and is shown on the plat entitled "Plat Showing Vacation and Abandonment of a Portion of Brecknock Street" dated February 21, 2019, and also prepared by Charles P. Johnson & Associates, Inc., both of which are on file in the Fairfax County Department of Transportation, 4050 Legato Road, Suite 400, Fairfax, Virginia 22033, Telephone Number (703) 877-5600.

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.

SULLY DISTRICT.

§ 33.2-909

§ 15.2-2272(2)

ORDER OF ABANDONMENT

A Portion of BRECKNOCK STREET (Route 5443)

SULLY DISTRICT
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held this 15th day of September, 2020, 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 the portions of Brecknock Street labeled as Parcel A and Parcel B on the plat entitled "Plat Showing Vacation and Abandonment of a Portion of Brecknock Street" dated February 21, 2019, and prepared by Charles P. Johnson & Associates, Inc. containing approximately 6,105 square feet and 5,740 square feet, respectively, and described on the metes and bounds schedule prepared by Charles P. Johnson & Associates, Inc. dated September 13, 2019, which is attached hereto and incorporated herein, be and the same are hereby abandoned as a public road pursuant to Virginia Code §33.2-909.

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

A Portion of BRECKNOCK STREET (Route 5443)

Sully District,
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax County, Virginia, on September 15, 2020, 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 ORDAINED by the Board of Supervisors of Fairfax County, Virginia: that Part of the Plat of MARY RIDGE subdivision recorded in Deed Book 3893 at Page 545, on which is shown Brecknock Street, from Tilton Valley Drive to the western property corner of Lot 1A, TADDEO ESTATES subdivision containing approximately 11,845 square feet of land, located on Tax Map 46-1-010 and described on the metes and bounds schedule prepared by Charles P. Johnson & Associates, Inc. dated September 13, 2019, and shown on the plat entitled "Plat Showing Vacation and Abandonment of a Portion of Brecknock Street" dated February 21, 2019, and also prepared by Charles P. Johnson & Associates, Inc. attached hereto and incorporated herein, be and the same is hereby vacated, pursuant to Virginia Code Ann. §15.2-2272(2).

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

§15.2-2272(2)

CPJ Charles P. Johnson & Associates, Inc.
 Civil and Environmental Engineers • Planners • Landscape Architects • Surveyors
 Associates Silver Spring, MD • Gaithersburg, MD • Frederick, MD • Fairfax, VA

September 13, 2019

DESCRIPTION OF THE PROPERTY OF
 THE FAIRAX COUNTY BOARD OF SUPERVISORS
 AS RECORDED IN DEED BOOK 3893 AT PAGE 545

A PORTION OF BRECKNOCK STREET – ROUTE 5443 (TO BE VACATED AND
 ABANDONED)

Parcel A
 Sully District
 Fairfax County, Virginia

Description of Parcel A, a portion of Brecknock Street recorded in Deed Book 3893 at Page 545 among the Land Records of Fairfax County, Virginia and being more particularly described as follows:

Beginning at a point in the southeasterly right of way line of Tilton Valley Drive, said point being a northwesterly corner of Lot 19, Mary Ridge as recorded in Deed Book 3893 at Page 545; thence with the said right of way line

North 29°29'40" East, 55.00 feet to a point; thence departing from said southeasterly right of way line of Tilton Valley Drive and running through Brecknock Street the following three (3) courses:

South 60°30'20" East, 25.00 feet to a point;

147.94 feet along the arc of a curve to the left having a radius of 365.00 feet and a chord bearing and chord of South 72°07'00" East, 146.93 feet to a point and

South 83°43'40" East, 20.00 feet to a point on the westerly line of Lot 1A, Taddeo Estates as recorded in Deed Book 22042 at Page 1759; thence with said westerly lines of Lot 1A

South 06°16'20" West, 30.00 feet to a point and

North 83°43'40" West, 20.00 feet to a point marking the northeasterly corner of aforementioned Lot 19, Mary Ridge, said point also marking the northwesterly corner of Lot 1A, Taddeo Estates; thence with the northerly lines of Lot 19

160.10 feet along the arc of a curve to the right having a radius of 395.00 feet and a chord bearing and chord of North 72°07'00" West, 159.00 feet to a point and

39.27 feet along the arc of a curve to the left having a radius of 25.00 feet and a chord bearing and chord of South 74°29'40" West, 35.36 feet to the point of beginning.

Containing 6,105 square feet or 0.14015 acres of land.

N:\2018-2541\DEPARTMENTS\SURVEY\WORD DOCUMENTS\LEGAL DESCRIPTION\LEGAL DESCRIPTION REV.DOCX

3959 Pender Drive, Suite 210 • Fairfax, VA 22030 • 703-385-7555 • Fax: 703-273-8595 • www.cpja.com

Parcel B
Sully District
Fairfax County, Virginia

Description of Parcel B, a portion of Brecknock Street recorded in Deed Book 3893 at Page 545 among the Land Records of Fairfax County, Virginia and being more particularly described as follows:

Beginning at a point in the southeasterly right of way line of Tilton Valley Drive, said point being a southwesterly corner of Lot 18, Mary Ridge as recorded in Deed Book 3893 at Page 545; thence departing from said right of way line and running with the aforesaid southerly lines of Lot 18, Mary Ridge the following three (3) courses:

39.27 feet along the arc of a curve to the left having a radius of 25.00 feet and a chord bearing and chord of South 15°30'20" East, 35.36 feet to a point;

135.78 feet along the arc of a curve to the left having a radius of 335.00 feet and a chord bearing and chord of South 72°07'00" East, 134.85 feet to a point and

South 83°43'40" East, 20.00 feet to a point marking a westerly corner of Lot 1A, Taddeo Estates, said point also marking the southeasterly corner of Lot 18, Mary Ridge; thence with the westerly line of said Lot 1A

South 06°16'20" West, 30.00 feet to a point; thence departing from the said westerly line of Lot 1A and running through Brecknock Street the following three (3) courses:

North 83°43'40" West, 20.00 feet to a point;

147.94 feet along the arc of a curve to the right having a radius of 365.00 feet and a chord bearing and chord of North 72°07'00" West, 146.93 feet to a point and

North 60°30'20" West, 25.00 feet to a point in the aforementioned southeasterly right of way line of Tilton Valley Drive; thence with said right of way line

North 29°29'40" East, 55.00 feet to the point of beginning.

Containing 5,740 square feet or 0.13177 acres of land.

AREA TABULATION		
EXISTING R/W	SQ. FT.	ACRES
BRECKNOCK ST.	11,845	0.27192
TOTAL AREA	11,845	0.27192
PROPOSED LOTS	SQ. FT.	ACRES
PARCEL "A"	6,305	0.14615
PARCEL "B"	5,740	0.13177
TOTAL AREA	11,845	0.27192

APPROVED
COUNTY OF FAIRFAX
LAND DEVELOPMENT SERVICES
ADDRESSING REVIEW

BY _____ USE RECORDS

FINAL PLAT

RECOMMENDED FOR APPROVAL
FAIRFAX COUNTY
LAND DEVELOPMENT SERVICES

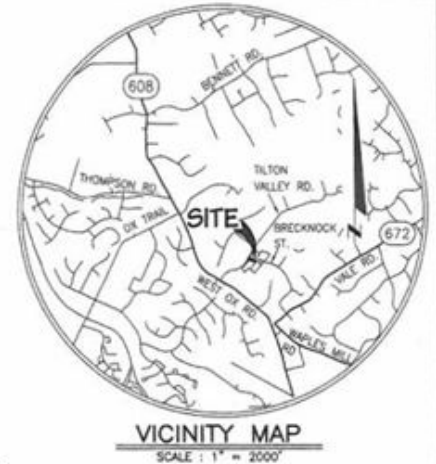
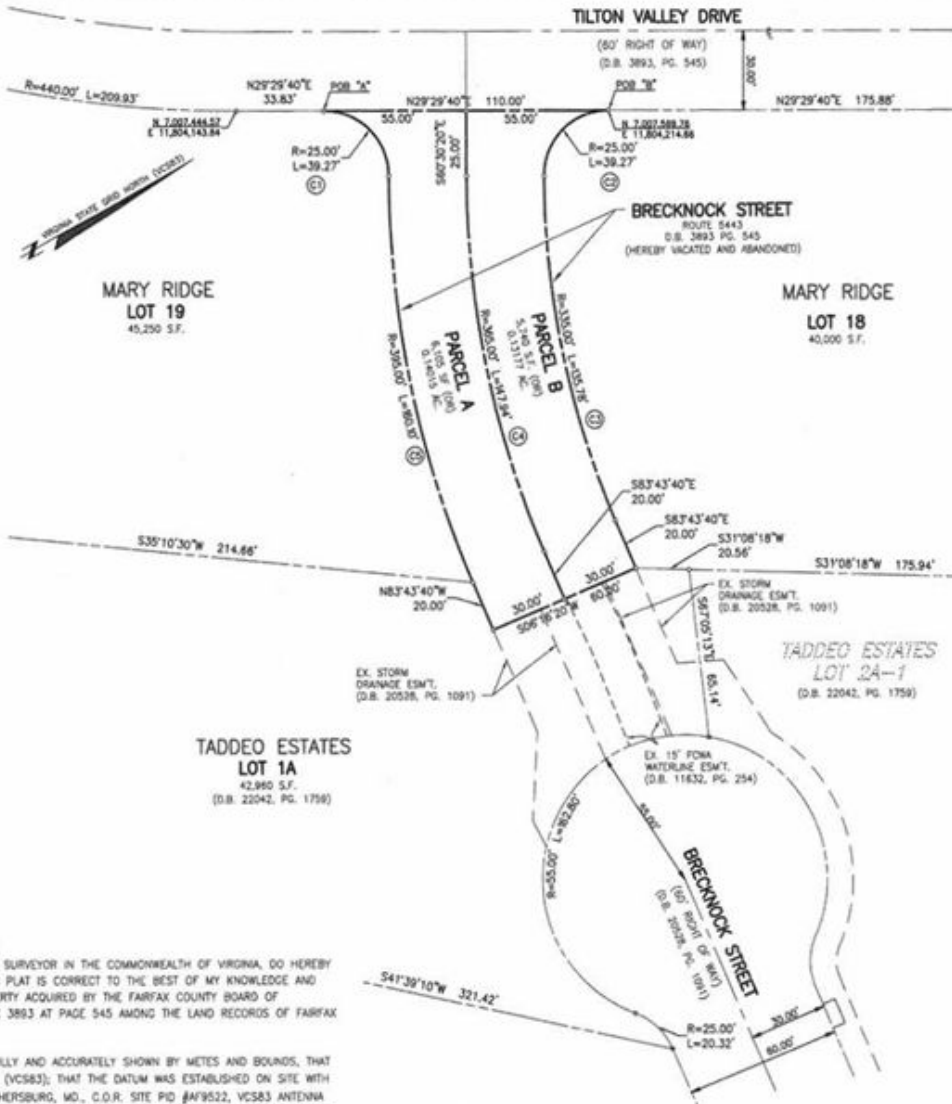
ALL STREET LOCATIONS AND/OR EASEMENTS
CONFORM TO THE REQUIREMENTS OF THIS OFFICE.
THIS APPROVAL IS NOT A COMMITMENT TO PROVIDE
PUBLIC SANITARY SEWER.

BY _____

APPROVED
FOR
BOARD OF SUPERVISORS
FAIRFAX COUNTY, VIRGINIA

BY _____

APPROVAL VOID IF PLAT IS NOT OFFERED FOR
RECORD ON OR BEFORE _____



- NOTES:**
1. THE PROPERTY SHOWN HEREON IS IDENTIFIED ON FAIRFAX COUNTY TAX MAP NO. 46-1 AND IS ZONED R-1.
 2. ALL PREVIOUSLY RECORDED RIGHTS OF WAY, EASEMENTS OR OTHER INTEREST OF THE COUNTY REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE NOTED ON THIS PLAT.
 3. THIS PLAT IS BASED ON A BOUNDARY SURVEY PREPARED BY CHARLES P. JOHNSON & ASSOCIATES, DATED NOVEMBER, 2018 WITH AN ERROR OF CLOSURE WITHIN THE LIMIT OF ONE (1) IN TWENTY THOUSAND (20,000) RELATED TO THE VIRGINIA COORDINATE SYSTEM OF 1983 (VCS 83) NORTH ZONE.
 4. THE PLAT OF THE PROPERTY SHOWN HEREON IS REFERENCED TO THE VIRGINIA COORDINATE SYSTEM OF 1983 AS COMPUTED FROM A FIELD RUN BOUNDARY AND HORIZONTAL CONTROL SURVEY THAT TIES THIS BOUNDARY TO AN NOA/NGS PUBLISHED MONUMENT DESIGNATED AS HV9413 WITH A COMBINED SCALED FACTOR OF 0.99995941.
 5. ALL EASEMENTS ARE "HEREBY GRANTED" UNLESS OTHERWISE NOTED.
 6. THIS PROPERTY LIES WITHIN "ZONE X", (AREAS OF MINIMAL FLOOD HAZARD), AS SHOWN ON THE FLOOD INSURANCE RATE MAP (F.I.R.M.) MAP NO. 51059C014DE 1 AN EFFECTIVE DATE OF SEPTEMBER 17, 2010.
 7. PARCELS "A" AND "B" DO NOT MEET THE REQUIREMENTS OF THE ZONING ORDINANCE FOR A BUILDABLE LOT.

SURVEYOR'S CERTIFICATE:

I, EUGENE C. DORN A DULY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT THE PROPERTY DELINEATED ON THIS PLAT IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF; THAT IT IS A PLAT OF ALL OF THE PROPERTY ACQUIRED BY THE FAIRFAX COUNTY BOARD OF SUPERVISORS, BY DEED RECORDED IN DEED BOOK 3893 AT PAGE 545 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.

I FURTHER CERTIFY THAT THIS PARCEL IS FULLY AND ACCURATELY SHOWN BY METES AND BOUNDS, THAT BEARINGS REFER TO VIRGINIA COORDINATE SYSTEM (VCS83); THAT THE DATUM WAS ESTABLISHED ON SITE WITH G.P.S. RECEIVERS BASED ON THE NGS, NOAA, GAITHERSBURG, MD., C.O.R. SITE PID #AF9522, VCS83 ANTENNA REFERENCE POINT, WITH LATITUDE 39 08 02.34044 N, LONGITUDE 077 13 15.51884 W AND THAT IRON PIPES WILL BE SET IN ACCORDANCE WITH THE FAIRFAX COUNTY SUBDIVISION ORDINANCE.



EUGENE C. DORN
LICENSED LAND SURVEYOR
VA NO. 001445



CURVE TABLE						
CURVE	DELTA	RADIUS	ARC	TANGENT	CHORD	CH. BEARING
C1	90°00'00"	25.00'	39.27'	25.00'	35.36'	S74°29'40"W
C2	90°00'00"	25.00'	39.27'	25.00'	35.36'	S15°30'20"E
C3	27°13'20"	335.00'	135.78'	88.83'	134.85'	S72°07'00"E
C4	27°13'20"	385.00'	147.84'	75.00'	146.93'	S72°07'00"E
C5	27°13'20"	385.00'	180.10'	81.16'	159.00'	N72°07'00"W

PLAT SHOWING
VACATION AND ABANDONMENT
OF A PORTION OF
BRECKNOCK STREET
(D.B. 3893, PG. 545)

SULLY DISTRICT
FAIRFAX COUNTY, VIRGINIA

CPJ Associates
Charles P. Johnson & Associates, Inc.
PLANNERS ENGINEERS LANDSCAPE ARCHITECTS SURVEYORS
3034 PINEY BRANCH DRIVE, SUITE 200, FAIRFAX, VIRGINIA 22030 (703)860-7000
FAX (703)273-8595

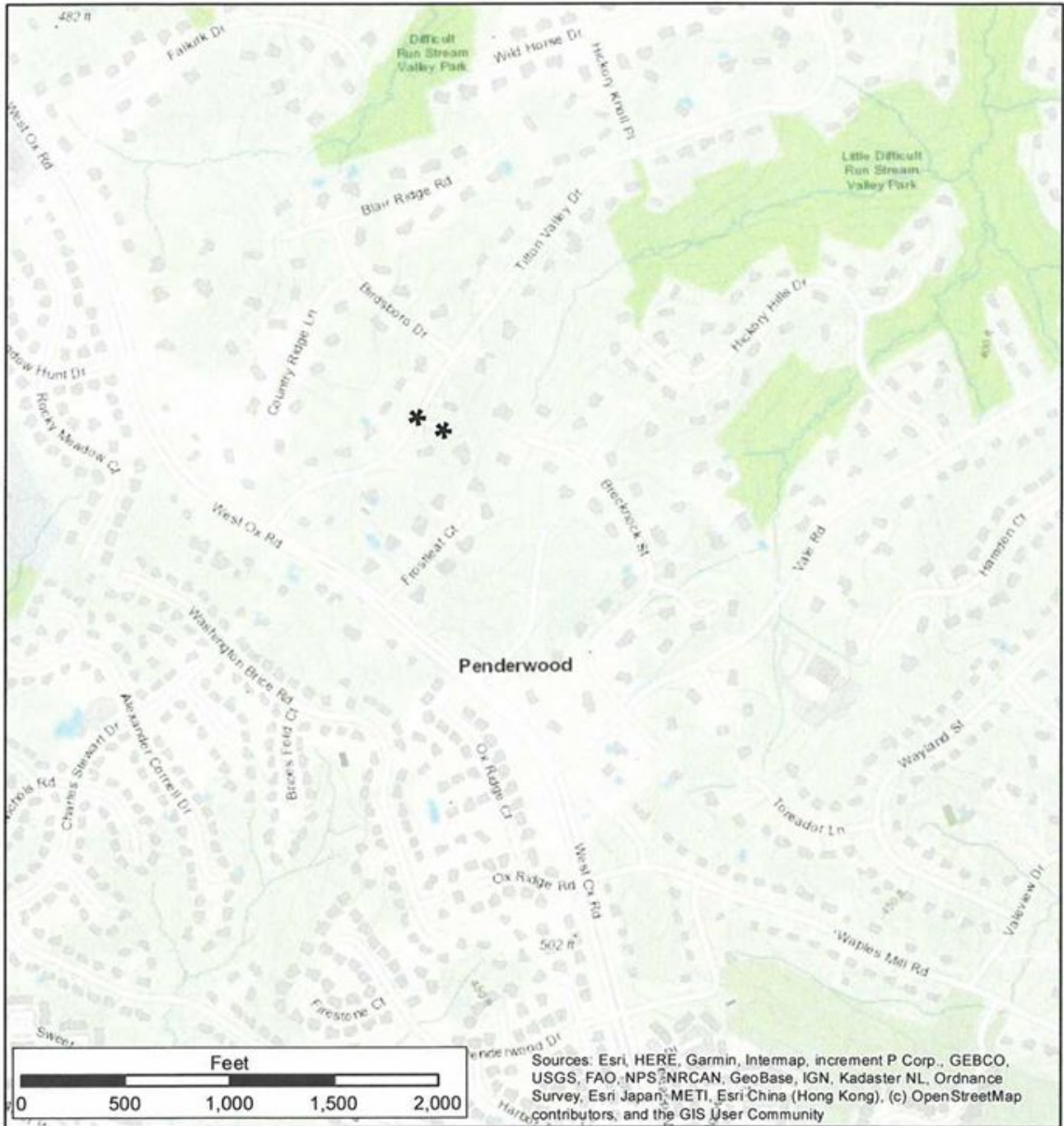
PROJECT NO.	DATE	TAX MAP	SITE PLAN NO.
		46-1 (118)	N/A
DRAWN BY	DATE	CHECKED BY	SHEET
			1
DATE	SCALE	FILE NO.	
3-21-19	1" = 30'	19-0201A	

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Printed 12/16/2019 12:17:20 PM Sheet 1 of 1 2018-2541\DWG/00

ATTACHMENT VI

Brecknock Street Easement Vacation/Abandonment Sully District



Tax Map 46-1

*** Symbol Denotes Area of Easement to be Vacated**





County of Fairfax, Virginia

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

MAY - 1 2008

Dominic M. Taddeo, Principal
Taddeo Homes
6425 Tilton Valley Drive
Fairfax, Virginia 22033

Subject: Taddeo Estates Subdivision, Plan #6369-SD-003-1, Tax Map #046-1-01-0002-B, Sully District

Reference: Interparcel Access Waiver #6369-WIPA-001-1

Dear Mr. Taddeo:

Your request to waive the requirements of the Fairfax County Public Facilities Manual Section 7-0101.1 to provide Interparcel access to connect Brecknock Street through the property to Tilton Valley Drive has been reviewed and coordinated with the Fairfax County Department of Transportation and Virginia Department of Transportation, and is hereby approved, conditioned upon the following:

- Existing stub street of Brecknock Street (that is not extended) should be vacated/abandoned and pavement should be removed. This should occur prior to the issuance of the residential use permit for the first new home in the subdivision.
- The applicant shall provide a "State Standard" cul-de-sac on Brecknock Street.

This waiver shall automatically expire, without notice, twenty-four (24) months after the approval date of this letter, unless the subject construction plan has been approved.

If you have any questions or need additional information, please contact Shaukat Faheem, Engineer III, Environmental and Site Review Division (ESRD) West at 703-324-1720.

Sincerely,

Assad Ayoubi, Director
ESRD West

AUA/tg

cc: Angela Kadar Rodeheaver, Chief, Site Analysis Section, FCDOT
Shaukat Faheem, Engineer III, ESRD West, DPWES
Waiver File

Department of Public Works and Environmental Services
Land Development Services, Environmental and Site Review Division
12055 Government Center Parkway, Suite 535
Fairfax, Virginia 22035-5503
Phone 703-324-1720 • TTY 711 • FAX 703-324-8359



6369-WIPA-006-1 CAA/TBA



Taddeo Homes

Ms. Michelle Brickner, P.E., Director
Department of Public Works and Environmental Services
Environmental and Facilities Review Division
12055 Government Center Parkway, Suite 530
Fairfax, VA 22035

November 26, 2007

Re: Inter-parcel Access Waiver Request
Taddeo Estates, 6369-SD-03-1
Tax Map #46-1((1))2B
Sully District

*Sent to DOT
2/21/08*

Dear Ms. Brickner:

In reference to the above specified project, we respectfully request for your consideration a waiver of PFM Section 7-0101.1 with regard to providing inter-parcel access to connect Brecknock Street through the property to Tilton Valley Drive. We provide the following justifications for granting the waiver:

1. The surrounding adjacent property owners have expressed opposition to Brecknock Street being established as a through road as it will cause increased traffic, noise, and safety concerns for those property owners.
2. There is no benefit to providing a through road along Brecknock Street. Brecknock Street runs parallel to West Ox Road between Tilton Valley Drive and Vale Road. West Ox Road is a major collector road for both Tilton Valley Drive and Vale Road and the predominant destination for both streets. Vehicles using either road can reach West Ox Road shortly beyond Brecknock Street. Therefore, there is no advantage to using Brecknock Street to reach the other.
3. The west portion of Brecknock Street has been a "stub out" for an extended period of time. The opposite portion of Brecknock Street is an existing cul-de-sac. With approval of the waiver, the existing condition is maintained.

We feel the items listed above provide reasonable justifications for waiver approval and appreciate your consideration on this matter. For your reference are two copies of the Final Subdivision Plat as well as the \$690.00 waiver request fee. Your prompt attention to this request would be greatly appreciated. If you have any questions or require any additional information, please feel free to contact me.

Sincerely,

Dominic M. Taddeo
Principal

3425 Tilton Valley Dr Fairfax, Virginia 22033 (703)307-7237

dmtaddeo@yahoo.com



SF

COMMONWEALTH of VIRGINIA

DAVID S. EKERN, P.E.
COMMISSIONER

DEPARTMENT OF TRANSPORTATION
14685 Avion Parkway
Chantilly, VA 20151
(703) 383-VDOT (8368)

March 12, 2008

Assad Ayoubi, Director
Department of Public Works and Environmental Services
Land Development Services
12055 Government Center Parkway, Suite 444
Fairfax, Virginia 22035-5503

Re: Taddeo Estates Subdivision, Interparcel Access Waiver
Fairfax County Plan No.: 6369-WIPA-001-1

Dear Mr. Ayoubi:

We have reviewed the referenced waiver and have no objection to the approval of this waiver as noted:

1. The existing stub street of Brecknock Street (that is not being extended) should be vacated/abandoned and pavement should be removed.
2. The applicant should provide a standard cul-de-sac.

If you have any questions, please call me at (703) 383-2059.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Gerner".

Peter K. Gerner, P.E.
Transportation Engineer

cc: Ms. D. A. Purvis

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center at Fairfax, Virginia, this 15th day of September, 2020, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, Taddeo Homes, petitioned the Fairfax County Board of Supervisors to abandon and vacate an existing stub street of Brecknock Street (Route 5443) to satisfy the conditions of Interparcel Access Waiver #6369-WIPA-001-1 (Attachment VIII), and;

WHEREAS, the Board of Supervisors has approved the abandonment and vacation of the existing stub street of Brecknock Street (Route 5443) located adjacent to Tax Map 46-1-((10)) Parcel 18 and Parcel 19, described on the metes and bounds schedule dated September 13, 2019, and shown as 6,105 square feet (Parcel A) and 5,740 square feet (Parcel B) on the abandonment and vacation plat dated December 17, 2019, both prepared by CPJ Associates, and;

WHEREAS, the County has no current or planned use for the unimproved right-of-way created by the abandonment and vacation, and;

WHEREAS, the Board of Supervisors finds that it would be in the best interest of the residents of Fairfax County to abandon, pursuant to Virginia Code Ann. §33.2-909, and vacate, pursuant to Virginia Code Ann. §15.2-2272(2), the above described portion of Brecknock Street (Route 5443),

NOW, THEREFORE, upon public hearing duly advertised according to law, it is **RESOLVED** that, in consideration of the conditions associated with the Interparcel Access Waiver, the County Executive or Deputy County Executive is hereby authorized to execute all necessary documents to vacate and abandon the real property described above to the Applicant.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

Board Agenda Item
September 15, 2020

4:30 p.m.

Public Hearing to Consider the Removal, Relocation, Contextualization, or Covering of Publicly-Owned Civil War Related Monuments or Memorials at the Fairfax County Judicial Complex (Providence District)

ISSUE:

Whether the Board should direct staff to remove, relocate, contextualize, or cover any or all of the publicly-owned Civil War-related monuments or memorials located at the Fairfax County Judicial Complex.

RECOMMENDATION:

None.

TIMING:

A public hearing has been scheduled for September 15, 2020.

BACKGROUND:

Chapter 1101 of the 2020 Acts of Assembly amended Va. Code § 15.2-1812 to provide localities with additional rights over monuments and memorials commemorating wars and veterans of wars. The amendments took effect on July 1, 2020. Prior to July 1, 2020, Va. Code § 15.2-1812 prohibited localities from disturbing, interfering, removing, damaging, or defacing any such monument or memorial after it was erected. Chapter 1101 gives localities the authority to remove, relocate, contextualize, or cover such monuments located on County-owned property, provided that the local governing body takes certain actions prescribed in the new law.

According to the recent amendments to Va. Code § 15.2-1812, if the Board votes to remove, relocate, contextualize, or cover a publicly-owned monument or memorial, it must offer such monument or memorial for relocation and placement to any museum, historical society, government, or military battlefield for a period of 30 days. After the 30-day period has expired, the Board has the sole authority to determine the final disposition of all publicly-owned monuments or memorials.

Chapter 1101 requires the Virginia Board of Historic Resources to promulgate regulations governing the manner in which any monument or memorial may be contextualized pursuant to the provisions of the act.

Board Agenda Item
September 15, 2020

The Board of Supervisors owns the land area comprising the Fairfax County Judicial Complex. These parcels are identified on the Fairfax County Real Property Identification Map as Tax Map Numbers 57-4((1)) parcel 14 and 57-3((1)) parcel 17.

The advertisement for the public hearing included the potential removal, relocation, contextualization, or covering of any or all of the publicly-owned Civil War-related monuments or memorials located at the Judicial Complex, which included a granite monument commemorating the death of a Confederate soldier, John Quincy Marr, two howitzers, and a state historical marker.

Marr Monument (Attachment 1):

On October 1, 1900, according to County records, the Board of Supervisors gave the right “to the proper authorities to erect a monument on the C.H. [courthouse] lot to the memory of Capt. Marr of Warrenton, VA the first Southern Soldier killed by War of 1861-1865.”¹ The Fairfax Herald reported, on October 23, 1903, that during a meeting of the Marr Camp of Confederate Veterans, a committee was appointed to erect a monument “to commemorate the death of Capt. Marr, who was the first soldier killed in battle in the Civil War – 1st day of June, 1861.”² It was also reported that “the Daughters and Sons of Confederate Veterans at this place, the Daughters of Confederate Veterans at Falls Church, the Memorial Association and Company 1, be requested to assist Marr Camp in raising the money to erect the same.”³ On June 1, 1904, the monument to Marr was unveiled on the lawn in front of the historic courthouse, near the intersection of Routes 123 and 236, where it currently remains. The Alexandria Gazette reported at the time that the monument is of “rough-hewn...Richmond gray granite, weighing six tons, nine feet high and four feet wide at its base.”⁴

The inscription on the Marr monument reads (see Attachment 1):

THIS STONE MARKS
THE SCENE OF THE
OPENING CONFLICT
OF THE WAR OF
1861-1865, WHEN
JOHN Q MARR,
CAPT. OF THE WARRENTON
RIFLES, WHO WAS THE
FIRST SOLDIER KILLED
IN ACTION, FELL 800 FT.
S. 46 W. (MAG.) OF THIS

¹ BOS Minute Book, 10/1/1900

² Fairfax Herald, 10/23/1903

³ Fairfax Herald, 10/23/1903

⁴ Alexandria Gazette, 6/1/1904

Board Agenda Item
September 15, 2020

SPOT, JUNE 1ST, 1861.
ERECTED BY MARR CAMP, C.V.
JUNE 1, 1904"

The Marr Camp of Confederate Veterans reportedly had its last meeting in 1931 due to the deaths of its members, although a Washington Post article from May 29, 1932, mentions Confederate Memorial Day exercises being held at the County courthouse to include an "annual roll call of the Marr Camp of Confederate Veterans."⁵ The United Daughters of the Confederacy has indicated that they do not have archival evidence regarding the ownership or placement of the memorial.

Howitzers (Attachment 2):

On April 17, 1905, according to County records, the clerk of the Board of Supervisors, "was directed to communicate with the proper authorities of the U.S. government to ascertain if it will give two or three cannons and some cannon balls to the County, to be placed on the C.H. [court house] lot and what expense, if any, will be incurred by the County..."⁶ Nearly five years later, on January 3, 1910, the Board granted permission, "to place cannon and shells on the C.H. [court house] lot and Capt. S.R. Donohoe was appointed...to attend to the matter of securing said cannons and balls and place same on the lot."⁷ Following the Board's resolution, the Fairfax Herald reported, that the Board, "by resolution, agreed to accept the generous offer of the Federal government (obtained through the active efforts of Hon. C.C. Carlin) to donate a couple of cannon and 40 balls or shells, for the court house lot, and appointed Capt. S.R. Donohoe a committee to attend to same. These cannon (which were used during the Civil War) will be placed by the Marr monument, marking the first armed conflict on Virginia soil in that war..."⁸ When the howitzers were installed on the courthouse grounds later that year, the Fairfax Herald reported, "The two brass howitzers and forty conical shells, recently donated to Fairfax county by the Federal government, through the efforts of our Congressman, Hon. C.C. Carlin, to be placed in the court house square by the side of the monument erected here in commemoration of the first battle on Virginia soil in the civil war, arrived this week, and have been placed in position. They are fine guns, and will be objects of interest and attraction to visitors as well as to our own people. We are particularly fortunate in securing them."⁹

The two brass howitzers which were installed in 1910, and an ammunition pad for the shells, remain on the courthouse grounds today near the Marr monument. According to staff at the Fairfax County Circuit Court's Historic Records Center, the cannon balls had

⁵ Washington Post, 5/29/1932

⁶ Board of Supervisors Minute Book, 4/17/1905

⁷ Board of Supervisors Minute Book, 1/7/1910

⁸ Fairfax Herald, 1/7/1910

⁹ Fairfax Herald, 2/18/1910

gone missing over the years until the remaining few were removed sometime in the late 1980s or early 1990s. Both howitzers reportedly were inscribed at one time, although the following inscription remains legible on only one of them (see Attachment 2):

Inscription of an Anchor

“12 Pdr
BOAT HOWITZER
1856
J.A.D”

“U.S.N.Y. WASHINGTON 757 Lbs
N. 45”

From this inscription staff concludes that at least one of the howitzers was manufactured in 1856 at the United State Naval Yard in Washington D.C. The letters “J.A.D.” indicate that John A. Dahlgren, who designed the howitzer, was also the manufacturing inspector.¹⁰ The second howitzer is identical; however, it lacks any identifying inscription.

VDHR Historical Marker (Attachment 3):

The Virginia Department of Historic Resources (VDHR) historical marker #262, which is entitled “First Confederate Officer Killed,” is located at the Judicial Complex (see Attachment 3). The historical marker’s installation in 2009 was a collaborative effort between the Fairfax County History Commission, the City of Fairfax Markers Committee, and VDHR. VDHR has stated that the purpose in erecting markers is to “educate the public about Virginia’s history, not to honor, memorialize, or commemorate persons, events, or places. Because highway markers are not honorific in nature, they do not serve the same purpose as monuments, statues, memorial plaques, or war memorials.”¹¹ While this marker was installed through the VDHR program, it is located on County property and is not within a right-of-way maintained by the State. The VDHR requested that if the Board votes to remove the marker that County staff coordinate with VDHR to return the marker to the State.

Ownership:

Based on the evidence currently available, it appears that the Marr monument, howitzers, and the “First Confederate Officer Killed” memorial marker are publicly owned. If it is determined during the course of these proceedings that any of the other Civil War related monuments or memorials at the Judicial Complex are privately owned,

¹⁰ Hazlett, J. C., Olmstead, E., & Parks, M. H. (2004). *Field artillery weapons of the Civil War*. Urbana, Ill: University of Illinois Press

¹¹ VDHR Historical Markers Website, 7/24/2020

Board Agenda Item
September 15, 2020

then any such monument or memorial may be returned to the lawful owner at its request if the Board is so inclined, without the need for a public hearing as to that particular item.

Guidance from the Virginia Department of Historic Resources (VDHR) Regarding Contextualization of Monuments:

VDHR has offered the following guidance regarding the contextualization of monuments: “As required by HB 1537, [VDHR and the [Virginia] Board of Historic Resources are in the process of developing regulations for localities regarding the contextualization of monuments that remain on public property in their existing location. The purpose of the contextualization is to explain to the public the history of the monument, the motivation for its erection, and the truth regarding the ‘Lost Cause.’”¹²

The sole responsibility of the Virginia Board of Historic Resources (VBHR) under this legislation is to promulgate regulations regarding the process for contextualization of certain monuments or memorials for war veterans. VBHR is expected to vote on draft regulations in September 2020.

Scope of Work for Removal of Marr Monument, Howitzers, and Carriages:

- 1.) Written documentation of inspection of the Marr monument, howitzers, and howitzer carriages prior to removal to include photographs, location and site maps, recording of inscriptions, measurements, and description, by a qualified conservator.
- 2.) Safe removal and transport of the Marr monument, howitzers, and carriages to a county storage facility.
- 3.) Work to be performed at night, via crane from the street so as not to disturb any potential archaeological resources on the courthouse grounds.
- 4.) Work will require a traffic plan for the evening, as part of Main Street will be blocked off.
- 5.) Security will be coordinated between Facilities Management Division and a supporting Law Enforcement Agency such as the Sheriff’s Office.
- 6.) Road closures will be coordinated with the City of Fairfax and the Virginia Department of Transportation.

FISCAL IMPACT:

The cost to remove, and relocate to a storage facility, the Marr monument, the two howitzers and their carriages is estimated to be \$19,562.

¹² VDHR Guidance Regarding Confederate Monuments, 2020

Board Agenda Item
September 15, 2020

ENCLOSED DOCUMENTS:

Attachment 1 - Images, John Q. Marr monument, Fairfax historic courthouse grounds
Attachment 2 - Images, Inscriptions on howitzers, Fairfax historic courthouse grounds
Attachment 3 - Images, Virginia Department of Historic Resources marker "First Confederate Officer Killed," Fairfax judicial complex grounds

STAFF:

Rachel Flynn, Deputy County Executive
Barbara Byron, Director, Department of Planning and Development (DPD)
Leanna O'Donnell, Director, Planning Division, DPD
Laura Arseneau, Chief, Heritage Resources and Plan Development Branch, PD, DPD
Denice Dressel, Senior Heritage Resources Planner, Heritage Resources and Plan Development Branch, PD, DPD

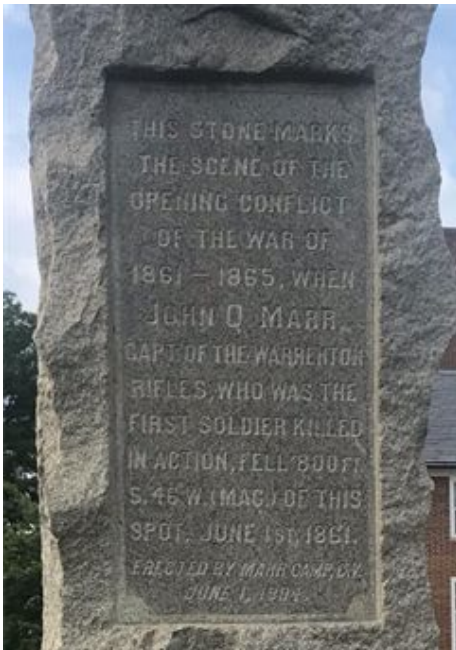
ASSIGNED COUNSEL:

Daniel Robinson, Assistant County Attorney

John Q. Marr Monument



John Q. Marr monument with howitzer on Fairfax historic courthouse grounds, 8/2020



Text, John Q. Marr monument, Fairfax historic courthouse grounds, 8/2020

Dahlgren Howitzers



Howitzer east of Marr monument, 8/2020



Howitzer west of Marr monument, inscribed, 8/2020



Inscription on Howitzer west of Marr monument, 8/2020



Inscription on Howitzer west of Marr monument, 8/2020

VDHR Marker #262
"First Confederate Officer Killed"



DHR Marker, Judicial Complex, 8/2020



Text, DHR Marker, Judicial Complex, 8/2020

4:30 p.m.

Public Hearing to Consider the Adoption of Amendments to Chapter 6 of the Fairfax County Code Relating to Weapons

ISSUE:

Public hearing to consider amendments to Chapter 6 of the Fairfax County Code, governing Weapons. The proposed amendments to Chapter 6 will prohibit the possession, carrying and transportation of firearms, ammunition, or components or combination thereof in County buildings, parks, recreation and community centers and at permitted events and areas adjacent to permitted events, as more fully described in the Background section below.

RECOMMENDATION:

The County Executive recommends that the Board approve the proposed amendments to County Code Chapter 6.

TIMING:

On July 28, 2020, the Board authorized advertisement of a public hearing to consider this matter on September 15, 2020, at 4:30 p.m. If adopted, these amendments will become effective immediately.

BACKGROUND:

In its 2020 session, the Virginia General Assembly passed Senate Bill 35 and House Bill 421, allowing local regulation of firearms in certain areas. The Governor approved the bills on April 22, 2020. The County's legislative program has advocated for many years for state legislation that would allow local governments to prohibit the possession of dangerous weapons in or on any facility or property owned or leased by the locality. During the 2020 session, the County supported Senate Bill 35 and House Bill 421.

This new legislation amends Va. Code § 15.2-915, and allows the County to enact an ordinance prohibiting the possession, carrying and transportation of firearms, ammunition, components or combination thereof in the following areas: (i) in any building, or part thereof, owned or used by the County, or by any authority or local governmental entity created or controlled by the County, for governmental purposes; (ii) in any public park owned or operated by the County, or by any authority or local governmental entity created or controlled by the locality; (iii) in any recreation or

community center facility operated by the County, or by any authority or local governmental entity created or controlled by the County; or (iv) in any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit.

The enabling legislation also allows for increased security measures, such as security guards or metal detectors, to prevent unauthorized access to those areas. The legislation further mandates that notice of the ordinance be posted at entrances to the areas where the prohibition is in effect, including at all building and park entrances, as well as appropriate places of ingress and egress to permitted events, events that would otherwise require a permit, and adjacent areas.

The proposed amendments **in Attachment 2** exercise this new enabling authority in its entirety. Firearms, ammunition, components or combination thereof would be prohibited in buildings, parks, recreation and community centers owned or used by the County or authorities and entities created or controlled by the County such as the Fairfax County Park Authority. The prohibition would also be in effect at permitted events, events that would otherwise require a permit, and areas adjacent to those events, provided those events take place on a public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public. Appropriate signage must be posted in order to enforce the prohibition.

The proposed ordinance also contains provisions related to Northern Virginia Regional Park Authority (NOVA Parks), which is an authority created and controlled by the County in conjunction with several other surrounding jurisdictions. The prohibition would extend to these parks if all participating jurisdictions enact a prohibition on firearms in parks and the governing body of NOVA Parks passes a resolution concurring with the prohibition.

The ordinance contains exemptions for Reserve Officer Training Corps programs and other intercollegiate programs or club sport teams that use firearms, as required by the enabling authority. Other exceptions are for sworn law enforcement, educational programs or events conducted or permitted by the County or an authority or other local government entity created or controlled by the locality, and wildlife management activities, including the County's Deer Management Program. The Bull Run Public Shooting Center, which is operated by NOVA Parks, also would be exempted.

An updated version of the ordinance, dated September 11, 2020, was prepared post advertisement. See Attachment 3. The Board of Supervisors may adopt the advertised version of the ordinance, dated July 21, 2020 (Attachment 2), the updated version dated September 11, 2020 (Attachment 3), or some combination

of both. Any such modifications would be within the scope of the original advertisement.

FISCAL IMPACT:

Staff is in the process of signage design and determining costs associated with signage requirements, including installation, hardware, and staffing expenses related to the posting and removal of both permanent signage and temporary signage required for any permitted events. It is anticipated that these additional expenses can be absorbed within existing agency budgets. Enhancements to physical security, including, but not limited to, security guards and metal detectors, may also be made based on Board guidance or threat assessments and staff recommendations to the County Executive. If necessary, budgetary adjustments will be recommended as part of future quarterly reviews or the annual budget process.

ENCLOSED DOCUMENTS:

Attachment 1 – Va. Code § 15.2-915

Attachment 2 – Proposed Amendments to Chapter 6, Weapons (markup), **dated July 21, 2020**

Attachment 3 – Proposed Amendments to Chapter 6, Weapons (markup), dated September 11, 2020

STAFF:

David M. Rohrer, Deputy County Executive

Edwin C. Roessler Jr., Chief of Police

Jose Comayagua, Director, Facilities Management Department

Kirk Kincannon, Director, Fairfax County Park Authority

Michael S. Liberman, Director, Department of Cable and Consumer Services

ASSIGNED COUNSEL:

John W. Burton, Assistant County Attorney

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

§ 15.2-915. Control of firearms; applicability to authorities and local governmental agencies

A. No locality shall adopt or enforce any ordinance, resolution, or motion, as permitted by § 15.2-1425, and no agent of such locality shall take any administrative action, governing the purchase, possession, transfer, ownership, carrying, storage, or transporting of firearms, ammunition, or components or combination thereof other than those expressly authorized by statute. For purposes of this section, a statute that does not refer to firearms, ammunition, or components or combination thereof shall not be construed to provide express authorization.

Nothing in this section shall prohibit a locality from adopting workplace rules relating to terms and conditions of employment of the workforce. However, no locality shall adopt any workplace rule, other than for the purposes of a community services board or behavioral health authority as defined in § 37.2-100, that prevents an employee of that locality from storing at that locality's workplace a lawfully possessed firearm and ammunition in a locked private motor vehicle. Nothing in this section shall prohibit a law-enforcement officer, as defined in § 9.1-101, from acting within the scope of his duties.

The provisions of this section applicable to a locality shall also apply to any authority or to a local governmental entity, including a department or agency, but not including any local or regional jail, juvenile detention facility, or state-governed entity, department, or agency.

B. Any local ordinance, resolution, or motion adopted prior to July 1, 2004, governing the purchase, possession, transfer, ownership, carrying, or transporting of firearms, ammunition, or components or combination thereof, other than those expressly authorized by statute, is invalid.

C. In addition to any other relief provided, the court may award reasonable attorney fees, expenses, and court costs to any person, group, or entity that prevails in an action challenging (i) an ordinance, resolution, or motion as being in conflict with this section or (ii) an administrative action taken in bad faith as being in conflict with this section.

D. For purposes of this section, "workplace" means "workplace of the locality."

E. Notwithstanding the provisions of this section, a locality may adopt an ordinance that prohibits the possession, carrying, or transportation of any firearms, ammunition, or components or combination thereof (i) in any building, or part thereof, owned or used by such locality, or by any authority or local governmental entity created or controlled by the locality, for governmental purposes; (ii) in any public park owned or operated by the locality, or by any authority or local governmental entity created or controlled by the locality; (iii) in any recreation or community center facility operated by the locality, or by any authority or local governmental entity created or controlled by the locality; or (iv) in any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit. In buildings that are not owned by a locality, or by any authority or local governmental entity created or controlled by the locality, such ordinance shall apply only to the part of the building that is being used for a governmental purpose and when such building, or part thereof, is being

used for a governmental purpose.

Any such ordinance may include security measures that are designed to reasonably prevent the unauthorized access of such buildings, parks, recreation or community center facilities, or public streets, roads, alleys, or sidewalks or public rights-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit by a person with any firearms, ammunition, or components or combination thereof, such as the use of metal detectors and increased use of security personnel.

The provisions of this subsection shall not apply to the activities of (i) a Senior Reserve Officers' Training Corps program operated at a public or private institution of higher education in accordance with the provisions of 10 U.S.C. § 2101 et seq. or (ii) any intercollegiate athletics program operated by a public or private institution of higher education and governed by the National Collegiate Athletic Association or any club sports team recognized by a public or private institution of higher education where the sport engaged in by such program or team involves the use of a firearm. Such activities shall follow strict guidelines developed by such institutions for these activities and shall be conducted under the supervision of staff officials of such institutions.

F. Notice of any ordinance adopted pursuant to subsection E shall be posted (i) at all entrances of any building, or part thereof, owned or used by the locality, or by any authority or local governmental entity created or controlled by the locality, for governmental purposes; (ii) at all entrances of any public park owned or operated by the locality, or by any authority or local governmental entity created or controlled by the locality; (iii) at all entrances of any recreation or community center facilities operated by the locality, or by any authority or local governmental entity created or controlled by the locality; and (iv) at all entrances or other appropriate places of ingress and egress to any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit.

1987, c. 629, § 15.1-29.15; 1988, c. 392; 1997, cc. [550](#), [587](#); 2002, c. [484](#); 2003, c. [943](#); 2004, cc. [837](#), [923](#); 2009, cc. [735](#), [772](#); 2012, c. [757](#); 2020, cc. [1205](#), [1247](#).

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

1
2 **AN ORDINANCE AMENDING**
3 **CHAPTER 6 OF THE FAIRFAX COUNTY CODE, RELATING TO**
4 **WEAPONS**

5 **Draft of July 21, 2020**

6
7 **AN ORDINANCE** to amend the Fairfax County Code by amending and
8 reenacting Article 2, Section 6-2-1, relating to firearms in Fairfax County
9 government facilities and other public areas.

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

11 1. **That Article 2 and Section 6-2-1 of the Fairfax County Code are amended and**
12 **reenacted as follows:**

13 Article 2 – ~~Reserved.~~ Firearms in County government facilities and other public
14 areas.

15 Section 6-2-1 – ~~Reserved.~~ Firearms, ammunition, or components or combination
16 thereof prohibited in certain areas.

17 A. The possession, carrying, or transportation of any firearms, ammunition, or
18 components or combination thereof is prohibited in the following areas:

19
20 1. In any building, or part thereof, owned or used by the County, or by any
21 authority or local government entity created or controlled by the County,
22 for governmental purposes.

23
24 2. In any public park owned or operated by the County, or by any authority
25 or local government entity created or controlled by the County.

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27 3. In any recreation or community center facility operated by the County,
28 or by any authority or local government entity created or controlled by
29 the County.

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31 4. In any public street, road, alley, or sidewalk or public right-of-way or any
32 other place of whatever nature that is open to the public and is being
33 used by or is adjacent to a permitted event or an event that would
34 otherwise require a permit.

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36 5. In buildings not owned by the County, or by any authority or local
37 government entity created or controlled by the County, this Section shall
38 apply only to the part of the building used for a governmental purpose

1 and when such building, or part thereof, is being used for a
2 governmental purpose.

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4 6. In parks located in the County that are owned or operated by a park
5 authority that was created or is controlled by the County in conjunction
6 with one or more other localities, provided that all participating localities
7 enact an ordinance containing a prohibition substantially similar to that
8 imposed by Paragraph A(2) above and the governing body of the park
9 authority passes a resolution or other measure agreeing to the
10 application of each such ordinance within the parks located in each such
11 locality.

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14 B. Pursuant to this Section, the County may implement security measures that are
15 designed to reasonably prevent the unauthorized access of such buildings,
16 parks, recreation or community center facilities, or public streets, roads, alleys,
17 or sidewalks or public rights-of-way or any other place of whatever nature that
18 is open to the public and is being used by or is adjacent to a permitted event or
19 an event that would otherwise require a permit by a person with any firearms,
20 ammunition, or components or combination thereof, such as the use of metal
21 detectors and increased use of security personnel.

22
23 C. The provisions of this Section shall not apply to the following:

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25 1. The activities of (i) a Senior Reserve Officers' Training Corps program
26 operated at a public or private institution of higher education in
27 accordance with the provisions of 10 U.S.C. § 2101 et seq., or (ii) any
28 intercollegiate athletics program operated by a public or private
29 institution of higher education and governed by the National Collegiate
30 Athletic Association or any club sports team recognized by a public or
31 private institution of higher education where the sport engaged in by
32 such program or team involves the use of a firearm. Such activities shall
33 follow strict guidelines developed by such institutions for these activities
34 and shall be conducted under the supervision of staff officials of such
35 institutions.

36
37 2. Sworn law enforcement personnel.

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39 3. Security personnel hired as employees or contracted by the County, or
40 an authority or other local government entity created or controlled by the
41 County in whole or in part, when such personnel are present and

1 working in any building or other location set forth in Paragraph A and
2 who are authorized to carry firearms as part of their duties.

3
4 4. The activities of educational programs and events, including static
5 displays and historical reenactments, conducted or permitted by the
6 County or any authority or local government entity created or controlled
7 by the County, when such educational programs and events involve the
8 use or display of firearms that are not loaded with projectiles.

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10 5. The activities of the County's Deer Management Program and other
11 wildlife management events conducted by the County, by any authority
12 or local government entity created or controlled by the County in whole
13 or in part, by the Commonwealth of Virginia, or by the federal
14 government.

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16 6. The Bull Run Public Shooting Center.

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19 D. Notice of ordinance.

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21 1. Notice of this ordinance shall be posted (i) at all entrances of any
22 building, or part thereof, owned or used by the County, or by any
23 authority or local governmental entity created or controlled by the
24 County, for governmental purposes; (ii) at all entrances of any public
25 park owned or operated by the County, or by any authority or local
26 governmental entity created or controlled by the County; (iii) at all
27 entrances of any recreation or community center facilities operated by
28 the County, or by any authority or local governmental entity created or
29 controlled by the County; and (iv) at all entrances or other appropriate
30 places of ingress and egress to any public street, road, alley, or sidewalk
31 or public right-of-way or any other place of whatever nature that is open
32 to the public and is being used by or is adjacent to a permitted event or
33 an event that would otherwise require a permit.

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35 2. Notice of this ordinance shall be posted at all entrances of any public
36 park owned or operated by a park authority that was created or is
37 controlled by the County in conjunction with one or more other localities,
38 provided that all participating localities have enacted an ordinance
39 containing a prohibition substantially similar to that imposed by
40 Paragraph A(2) above and the governing body of the park authority has

1 passed a resolution or other measure agreeing to the application of each
2 such ordinance within the parks located in each such locality.

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4 E. Violations of Section 6-2-1 (A) shall constitute a Class 1 misdemeanor.

5
6 **2. That the provisions of this ordinance are severable, and if any provision of**
7 **this ordinance or any application thereof is held invalid, that invalidity shall**
8 **not affect the other provisions or applications of this ordinance that can be**
9 **given effect without the invalid provision or application.**

10
11 **3. That the provisions of this ordinance shall take effect upon adoption.**

12
13 GIVEN under my hand this ____ day of _____ 2020.

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17 Jill G. Cooper
18 Clerk for the Board of Supervisors

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**AN ORDINANCE AMENDING
CHAPTER 6 OF THE FAIRFAX COUNTY CODE, RELATING TO
WEAPONS**

Draft of September 11, 2020

AN ORDINANCE to amend the Fairfax County Code by amending and reenacting Article 2, Section 6-2-1, relating to firearms in Fairfax County government facilities and other public areas.

Be it ordained by the Board of Supervisors of Fairfax County:

1. **That Article 2 and Section 6-2-1 of the Fairfax County Code are amended and reenacted as follows:**

Article 2 – ~~Reserved.~~ Firearms in County government facilities and other public areas.

Section 6-2-1 – ~~Reserved.~~ Firearms, ammunition, or components or combination thereof prohibited in certain areas.

A. The possession, carrying, or transportation of any firearms, ammunition, or components or combination thereof is prohibited in the following areas:

1. In any building, or part thereof, owned or used by the County, or by any authority or local government entity created or controlled by the County, for governmental purposes.
2. In any public park owned or operated by the County, or by any authority or local government entity created or controlled by the County.
3. In any recreation or community center facility operated by the County, or by any authority or local government entity created or controlled by the County.
4. In any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a [County-]permitted event or an event that would otherwise require a [County] permit. [For the purposes of this Section, County-permitted event and event that would otherwise require a County permit include events permitted by an authority or local government entity created or controlled by the County in whole or in part.]

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5. In buildings not owned by the County, or by any authority or local government entity created or controlled by the County, this Section shall apply only to the part of the building used for a governmental purpose and when such building, or part thereof, is being used for a governmental purpose.

6. In parks located in the County that are owned or operated by a park authority that was created or is controlled by the County in conjunction with one or more other localities, provided that all participating localities enact an ordinance containing a prohibition substantially similar to that imposed by Paragraph A(2) above and the governing body of the park authority passes a resolution or other measure agreeing to the application of each such ordinance within the parks located in each such locality.

B. Pursuant to this Section, the County may implement security measures that are designed to reasonably prevent the unauthorized access of such buildings, parks, recreation or community center facilities, or public streets, roads, alleys, or sidewalks or public rights-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit by a person with any firearms, ammunition, or components or combination thereof, such as the use of metal detectors and increased use of security personnel.

C. The provisions of this Section shall not apply to the following:

1. The activities of (i) a Senior Reserve Officers' Training Corps program operated at a public or private institution of higher education in accordance with the provisions of 10 U.S.C. § 2101 et seq., or (ii) any intercollegiate athletics program operated by a public or private institution of higher education and governed by the National Collegiate Athletic Association or any club sports team recognized by a public or private institution of higher education where the sport engaged in by such program or team involves the use of a firearm. Such activities shall follow strict guidelines developed by such institutions for these activities and shall be conducted under the supervision of staff officials of such institutions.

2. Sworn law enforcement personnel.

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3. Security personnel hired as employees or contracted by the County, or an authority or other local government entity created or controlled by the County in whole or in part, when such personnel are present and working in any building or other location set forth in Paragraph A and who are authorized to carry firearms as part of their duties.
4. The activities of educational programs and events, including static displays and historical reenactments, conducted or permitted by the County or any authority or local government entity created or controlled by the County, when such educational programs and events involve the use or display of firearms that are not loaded with projectiles.
5. The activities of the County's Deer Management Program and other wildlife management events conducted by the County, by any authority or local government entity created or controlled by the County in whole or in part, by the Commonwealth of Virginia, or by the federal government.
6. The Bull Run Public Shooting Center.
7. [Individuals who are authorized to carry a concealed firearm pursuant to the Law Enforcement Officers Safety Act, 18 U.S.C. §§ 926B and 926C, as amended.]
8. [Active duty military personnel acting within the scope of their official duties.]
9. [The possession and carrying of weapons in the courthouse shall be governed by the provisions of Va. Code § 18.2-283.1, as amended.]
10. [An otherwise lawfully possessed firearm, ammunition, components or combination thereof that is stored out of sight in a locked private motor vehicle that is lawfully parked on County property or a public street.]
11. [Private security officers licensed by the Virginia Department of Criminal Justice Services providing security for a [County-]permitted event.]

D. Notice of ordinance.

1 1. Notice of this ordinance shall be posted (i) at all entrances of any
2 building, or part thereof, owned or used by the County, or by any
3 authority or local governmental entity created or controlled by the
4 County, for governmental purposes; (ii) at all entrances of any public
5 park owned or operated by the County, or by any authority or local
6 governmental entity created or controlled by the County; (iii) at all
7 entrances of any recreation or community center facilities operated by
8 the County, or by any authority or local governmental entity created or
9 controlled by the County; and (iv) at all entrances or other appropriate
10 places of ingress and egress to any public street, road, alley, or sidewalk
11 or public right-of-way or any other place of whatever nature that is open
12 to the public and is being used by or is adjacent to a permitted event or
13 an event that would otherwise require a permit.

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15 2. Notice of this ordinance shall be posted at all entrances of any public
16 park owned or operated by a park authority that was created or is
17 controlled by the County in conjunction with one or more other localities,
18 provided that all participating localities have enacted an ordinance
19 containing a prohibition substantially similar to that imposed by
20 Paragraph A(2) above and the governing body of the park authority has
21 passed a resolution or other measure agreeing to the application of each
22 such ordinance within the parks located in each such locality.

23
24 E. Violations of Section 6-2-1 (A) shall constitute a Class 1 misdemeanor.

25
26 **2. That the provisions of this ordinance are severable, and if any provision of**
27 **this ordinance or any application thereof is held invalid, that invalidity shall**
28 **not affect the other provisions or applications of this ordinance that can be**
29 **given effect without the invalid provision or application.**

30
31 **3. That the provisions of this ordinance shall take effect upon adoption.**

32 GIVEN under my hand this ___ day of _____ 2020.

33
34 _____
35 Clerk for the Board of Supervisors