

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
January 28, 2014**

**AGENDA**

9:30	<b>Done</b>	Presentations
10:30	<b>Done</b>	Presentation of the Don Smith Award
10:40	<b>Report Adopted</b>	Report on General Assembly Activities
10:50	<b>Done</b>	Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups
11:00	<b>Done</b>	Items Presented by the County Executive

**ADMINISTRATIVE  
ITEMS**

1	<b>Dranesville and Hunter Mill Districts Approved; Sully District Not Approved</b>	Streets into the Secondary System (Dranesville, Hunter Mill and Sully Districts)
2	<b>Approved</b>	Authorization to Advertise a Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Route 29 Widening Road Improvements (Braddock District)
3	<b>Approved</b>	Authorization to Advertise a Public Hearing to Establish the Strathmeade Square Community Parking District (Providence District)
4	<b>Approved</b>	Installation of "Watch for Children" Signs as Part of the Residential Traffic Administration Program (Dranesville, Lee, Mount Vernon and Hunter Mill Districts)
5	<b>Approved</b>	Authorization to Advertise a Public Hearing to Establish Parking Restrictions on Willow Oaks Corporate Drive (Providence District)
6	<b>Approved</b>	Authorization to Advertise a Public Hearing to Establish the Northern Virginia Community College Community Parking District (Braddock District)
7	<b>Approved</b>	Authorization to Advertise a Public Hearing on a Proposal to Abandon a Portion of Former South Van Dorn Street (Lee District)
8	<b>Approved</b>	Extension of Review Periods for 2232 Review Applications (Mason and Mount Vernon Districts)

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
January 28, 2014**

**ADMINISTRATIVE  
ITEMS  
(Continued)**

- 9           **Approved**           Authorization for Various Fairfax County Agencies to Apply for and Accept Funding from the U.S. Department of Housing and Urban Development Through the Continuum of Care Program, and Authorization for Consolidated Plan Certification

**ACTION ITEMS**

- 1           **Approved**           Approval of a Project Agreement Between Cityline Partners, LLC, and Fairfax County for the Scotts Run Stream Restoration at Hanover Parcel (Providence District)
- 2           **Approved**           Approval of a Parking Reduction for Huntington Avenue Properties (Mount Vernon District)
- 3           **Approved**           Authorization to Sign Memorandums of Agreement for Distribution of 30 Percent Local Share of Northern Virginia Transportation Authority Revenues
- 4           **Approved**           Approval of the Department of Transportation's (FCDOT) Interim Title VI Plan for the Federal Transit Administration (FTA)
- 5           **Approved**           Approval of an Agreement Between Fairfax County and George Mason University to Implement an Employee Commuter Shuttle Pool Program (Braddock District)
- 6           **Approved**           Authorization to Sign Department of Rail and Public Transportation Project Funding Agreements
- 7           **Approved**           Adjustment to Fairfax Center, Centreville, Tysons, Tysons-Wide and Tysons Grid of Streets Road Funds and Approval of Proposed Projects and Studies (Dranesville, Springfield, Braddock, Sully, Providence Districts)
- 8           **Approved**           Comments in Response to the Notice of Proposed Rulemaking Issued by the Federal Communications Commission ("FCC") on September 26, 2013, Regarding Co-Locations of Telecommunications Equipment and the Time Parameters for Processing the Review of Telecommunications Applications
- 9           **Approved**           Approval of Transportation Project Priorities for FY 2015 – FY 2020, and Project Submissions for Northern Virginia Transportation Authority's Consideration for FY 2014 – FY 2016

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
January 28, 2014**

**ACTION ITEMS  
(Continued)**

10	<b>Approved</b>	Amendment to Deed of Lease with Comstock Reston Station Holdings, LC Regarding Private Development above County-Owned Garage at Wiehle-Reston East Metrorail Station
11:10	<b>Done</b>	Matters Presented by Board Members
12:00	<b>Done</b>	Closed Session
3:00	<b>Held</b>	Annual Meeting of the Fairfax County Solid Waste Authority

**PUBLIC  
HEARINGS**

3:30	<b>Approved</b>	Decision Only on Proposed Area Plans Review Nominations 09-IV-IMV and 09-IV-15MV, Located Northwest of Richmond Highway, and Northeast Huntington Avenue (Mount Vernon District)
3:30	<b>Public Hearing deferred to 2/11/2014 at 3:30 p.m.</b>	Public Hearing on RZ 2013-SU-010 (Christopher Land, L.L.C.) (Sully District)
4:00	<b>Approved</b>	Public Hearing on RZ 2013-MV-001(A&R Huntington Metro, LLC (Mount Vernon District)
4:00	<b>Approved</b>	Public Hearing on Adoption of Chapter 124 (Stormwater Management Ordinance), Repeal of Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage), and Proposed Amendments to Chapters 101 (Subdivision Ordinance), 104 (Erosion and Sedimentation Control), 112 (Zoning Ordinance), 118 (Chesapeake Bay Preservation Ordinance), and Appendix Q (Land Development Services Fees) of The Code of the County of Fairfax, Virginia Re: Implementation of the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Regulation (9 VAC 25-870 et seq.)
4:00	<b>Approved</b>	Public Hearing on Proposed Amendments to Chapter 6 (Storm Drainage) and Chapter 12 (Vegetation Preservation and Planting) of the Public Facilities Manual (PFM) Re: Water Quality Controls, Adequate Outfall, Detention, Maintenance of Stormwater Management Facilities, and Replanting of Disturbed Areas

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
January 28, 2014**

**PUBLIC  
HEARINGSS  
(Continued)**

- |      |   |  |
|------|---|--|
| 4:30 | <b>Deferred Decision<br/>Only to 2/11/14 at<br/>4:00 p.m.</b> | Public Hearing on SEA 2009-DR-008 (Oakcrest School) (Hunter Mill District)   |
| 4:30 | <b>Deferred Decision<br/>Only to 2/11/14 at<br/>3:30 p.m.</b> | Public Hearing on Proposed Reston Master Plan Special Study (Phase I) Plan Amendment Item ST09-III-UP1(A), Consisting of the Reston-Herndon Suburban Center (Hunter Mill and Dranesville District) |



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

**Tuesday**  
**January 28, 2014**

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9:30 a.m.

**PRESENTATIONS**

**RECOGNITIONS**

- CERTIFICATE – To recognize the students — past and present — and the appropriate representatives from Thomas Jefferson High School for Science and Technology and Orbital Sciences Corporation for the TJ<sup>3</sup> Satellite project. Requested by Supervisors Gross and Foust.
- CERTIFICATE – To recognize Yara El Mowafy and Jordan Bivings for establishing a Student Meal Assistance Fund to provide meals for homeless students at George Mason University. Requested by Chairman Bulova and Supervisor Cook.

**DESIGNATIONS**

- PROCLAMATION – To designate January 2014 as Stalking Awareness Month in Fairfax County. Requested by Chairman Bulova.
- PROCLAMATION – To designate February 2014 as African American Heritage Month in Fairfax County. Requested by Supervisor Hudgins

**STAFF:**

Merni Fitzgerald, Director, Office of Public Affairs  
Bill Miller, Office of Public Affairs

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Board Agenda Item  
January 28, 2014

10:30 a.m.

Presentation of the Don Smith Award

ENCLOSED DOCUMENTS:

None.

PRESENTED BY:

Randy R. Creller, Chairperson, Employee Advisory Council (EAC)

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Board Agenda Item  
January 28, 2014

10:40 a.m.

Report on General Assembly Activities

ENCLOSED DOCUMENTS:

None. Materials to be distributed to the Board of Supervisors on January 28, 2014

PRESENTED BY:

Supervisor Jeff McKay, Chairman, Board of Supervisors' Legislative Committee  
Edward L. Long Jr., County Executive

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Board Agenda Item  
January 28, 2014

10:50 a.m.

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

ENCLOSED DOCUMENTS:

Attachment 1: Appointments to be heard January 28, 2014  
(An updated list will be distributed at the Board meeting.)

STAFF:

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

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**FINAL COPY**

**APPOINTMENTS TO BE HEARD JANUARY 28, 2014**  
**(ENCOMPASSING VACANCIES PROJECTED THROUGH JANUARY 31, 2014)**  
 (Unless otherwise noted, members are eligible for reappointment)

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

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
Clifford L. Fields (Appointed 1/96-1/03 by Hanley; 1/04-1/08 by Connolly, 2/09- 2/13 by Bulova) Term exp. 1/14	At-Large Chairman's Representative		Bulova	At Large Chairman's
Jane W. Gwinn (Appointed 2/04-1/09 by Bulova; 1/10-1/13 by Cook) Term exp. 1/14	Braddock District Representative	<b>Jane W. Gwinn</b>	Cook	Braddock
Kerrie Wilson Appointed 1/10-1/13 by Foust) Term exp. 1/14	Dranesville District Representative	<b>Kerrie Wilson</b>	Foust	Dranesville
Ronald Copeland (Appointed 1/05-1/13 by Hudgins) Term exp. 1/14	Hunter Mill District Representative	<b>Ronald Copeland</b>	Hudgins	Hunter Mill
Joseph Blackwell (Appointed 1/06-1/08 by Kauffman, 1/09- 1/13 by McKay) Term exp. 1/14	Lee District Representative	<b>Joseph Blackwell</b>	McKay	Lee

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**A. HEATH ONTHANK MEMORIAL AWARD SELECTION COMMITTEE**

**(1 year)**

**Continued**

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
Eileen J. Garnett (Appointed 1/03-1/13 by Gross) Term exp. 1/14	Mason District Representative		Gross	Mason
Charles T. Coyle (Appointed 2/13 by Hyland) Term exp. 1/14	Mount Vernon District Representative		Hyland	Mount Vernon
Ernestine Heastie (Appointed 2/04-1/13 by Smyth) Term exp. 1/14	Providence District Representative	<b>Ernestine Heastie</b>	Smyth	Providence
Philip E. Rosenthal (Appointed 1/92-2/08 by McConnell, 1/09- 1/13 by Herrity) Term exp. 1/14	Springfield District Representative	<b>Philip Rosenthal</b>	Herrity	Springfield

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Meg K. Rayford; appointed 2/13 by Bulova) Term exp. 9/16) <i>Resigned</i>	At-Large Chairman’s Representative		Bulova	At-Large Chairman’s
VACANT (Formerly held by Edwina Dorch; appointed 2/13 by Hyland) Term exp. 9/16 <i>Resigned</i>	Mount Vernon District Representative		Hyland	Mount Vernon
VACANT (Formerly held by Sosthenes Klu; Appointed 12/05-9/08 by Frey) Term exp. 9/12 <i>Resigned</i>	Sully District Representative		Frey	Sully

**AFFORDABLE DWELLING UNIT ADVISORY BOARD (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Arthur R. Genuario; appointed 4/96-5/12 by Hyland) Term exp. 9/13 <i>Resigned</i>	Builder (Single Family) Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Mark S. Ingrao; appointed 1/03 by Mendelsohn; 5/05 by DuBois) Term exp. 5/09 <i>Resigned</i>	Citizen Representative		By Any Supervisor	At-Large
VACANT (Formerly held by James Francis Carey; appointed 2/95-5/02 by Hanley; 5/06 by Connolly) Term exp. 5/10 <i>Resigned</i>	Lending Institution Representative		By Any Supervisor	At-Large

**AIRPORTS ADVISORY COMMITTEE (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Robert Ackerman (Appointed 3/93 by Berger; 1/96-1/02 by Mendelsohn; 1/05 by DuBois; 1/08-1/11 by Foust) Term exp. 1/14	Dranesville District Representative	<b>Robert Ackerman</b>	Foust	Dranesville
Edward Robichaud (Appointed 2/11 by Hudgins) Term exp. 1/14	Hunter Mill District Representative	<b>Edward Robichaud</b>	Hudgins	Hunter Mill
VACANT (Formerly held by Barbara Kreykenbohm; appointed 1/09 by Gross) Term exp. 1/11 <i>Resigned</i>	Mason District Representative		Gross	Mason

**ALCOHOL SAFETY ACTION PROGRAM LOCAL POLICY BOARD (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Nicholas Capezza; appointed 1/11 by Bulova) Term exp. 10/13 <i>Resigned</i>	At-Large #5 Representative		By Any Supervisor	At-Large

**ATHLETIC COUNCIL (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
James Pendergast (Appointed 7/12 by Cook) Term exp. 6/13	Braddock District Alternate Representative		Cook	Braddock
Chip Chidester (Appointed 3/10-11/11 by Bulova) Term exp. 10/13	Member-At-Large Alternate Representative		Bulova	At-Large Chairman's

**AUDIT COMMITTEE (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Christopher Wade (Appointed 1/12 by Bulova) Term exp. 1/14	At-Large #1 Representative	<b>Christopher Wade</b> (Bulova)	By Any Supervisor	At-Large
Michael Hershman (Appointed 1/96-1/02 by Hanley; 1/04-1/08 by Connolly; 1/10-1/12 by Bulova) Term exp. 1/14	At-Large #2 Representative	<b>Michael Hershman</b> (Bulova)	By Any Supervisor	At-Large

**BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Rachel Rifkind (Appointed 5/09-6/09 by Gross) Term exp. 6/11	Mason District Representative		Gross	Mason

**BOARD OF BUILDING AND FIRE PREVENTION CODE APPEALS (4 years)**  
 (No official, technical assistant, inspector or other employee of the DPWES, DPZ,  
 or FR shall serve as a member of the board.)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Wayne Bryan; appointed 1/10-2/13 by Bulova) Term exp. 2/17 <i>Resigned</i>	Alternate #2 Representative		By Any Supervisor	At-Large

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by William C. Harvey; appointed 9/05-12/06 by DuBois; 1/09-11/12 by Foust) Term exp. 12/14 <i>Resigned</i>	Professional #2 Representative		By Any Supervisor	At-Large

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Kanthan Siva; appointed 1/13 by Frey) Term exp. 9/15 <i>Resigned</i>	Sully District Representative		Frey	Sully

**CHILD CARE ADVISORY COUNCIL (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Ann Aoki; (Appointed 11/10-9/12 by Foust) Term exp. 9/14 <i>Resigned</i>	Dranesville District Representative		Foust	Dranesville
VACANT (Formerly held by Joan C. Holtz; appointed 5/09 by Smyth) Term exp. 9/11 <i>Resigned</i>	Providence District Representative		Smyth	Providence

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Jean Zettler (Appointed 11/08-5/10 by Smyth) Term exp. 5/12	Providence District Representative		Smyth	Providence

**CIVIL SERVICE COMMISSION (2 years)**

[NOTE: The Commission shall include at least 3 members who are male, 3 members who are female, and 3 members who are from a member of a minority group.]  
 Current Membership: Males - 9      Females – 3      Minorities: 5

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Rosemarie Annunziata (Appointed 10/05-1/08 by Connolly; 12/09- 1/12 by Bulova) Term exp. 12/13	At-Large #3 Representative	<b>Rosemarie Annunziata</b> (Bulova)	By Any Supervisor	At-Large
Irene V. Farquhar (Appointed 4/10-12/11 by Cook) Term exp. 12/13	At-Large #8 Representative	<b>Broderick Coleman Dunn</b> (Cook)	By Any Supervisor	At-Large
D. Patrick Lewis (Appointed 10/05- 12/11 by Gross) Term exp. 12/13	At-Large #9 Representative		By Any Supervisor	At-Large

**COMMISSION ON AGING (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Suzanne P. M. Rudiselle; appointed 11/10-5/12 by Hudgins) Term exp. 5/14 <i>Resigned</i>	Hunter Mill District Representative	<b>Eleanor Fusaro</b>	Hudgins	Hunter Mill

**COMMISSION ON ORGAN AND TISSUE DONATION AND TRANSPLANTATION  
(4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Charles Dane (Appointed 7/02-1/06 by Bulova; 1/10 by Cook) Term exp. 1/14	Braddock District Representative	<b>Charles Dane</b>	Cook	Braddock
Robert Neuman (Appointed 1/03 by Hanley; 1/06-1/10 by Hudgins) Term exp. 1/14	Donor Family Member Representative	<b>Robert Neuman</b> (Hudgins)	By Any Supervisor	At-Large
Lisa Kory (Appointed 5/05-1/06 by DuBois; 1/10 by Foust) Term exp. 1/14	Dranesville District Representative	<b>Lisa Kory</b>	Foust	Dranesville
VACANT (Formerly held by Benjamin Gibson; appointed 4/11 by McKay) Term exp. 1/15 <i>Resigned</i>	Lee District Representative		McKay	Lee
VACANT (Formerly held by David Hess-Linkous; appointed 7/11 by Smyth) Term exp. 1/13 <i>Resigned</i>	Providence District Representative		Smyth	Providence
VACANT (Formerly held by Nicole Gage; appointed 2/08-1/10 by Gross) Term exp. 1/14 <i>Resigned</i>	Medical Community Representative		By Any Supervisor	At-Large

**COMMUNITY REVITALIZATION AND REINVESTMENT ADVISORY GROUP  
(2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Loren C. Bruce; appointed 6/11 by Hudgins) Term exp. 4/13 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Robert Mortensen; appointed 5/09-4/13 by Smyth) Term exp. 4/15 <i>Resigned</i>	Providence District Representative		Smyth	Providence

**CRIMINAL JUSTICE ADVISORY BOARD (CJAB) (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Rose Miles Robinson; appointed 7/06-2/09 by Hudgins) Term exp. 2/12 <i>Resigned</i>	Hunter Mill District Representative	<b>Robert Gehring</b>	Hudgins	Hunter Mill
VACANT (Formerly held by Michael Birch; appointed 1/08-4/10 by Frey) Term exp. 4/13 <i>Resigned</i>	Sully District Representative		Frey	Sully

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

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
VACANT Formerly held by Todd S. Rich; appointed 4/13 by Bulova) Term exp. 1/16 <i>Resigned</i>	BOS At-Large #5 Representative	<b>Jeffrey T. Chod</b> (Bulova)	By Any Supervisor	At-Large

**CONFIRMATION NEEDED:**

- Mr. Jeffrey J. Fairfield as the Town of Herndon Representative

**ENGINEERING STANDARDS REVIEW COMMITTEE (3 years)**

**CONFIRMATION NEEDED:**

- Ms. Maya Huber as the CCLUT Representative

**ENVIRONMENTAL QUALITY ADVISORY COUNCIL (EQAC) (3 years)**

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
Frank Divita (Appointed 9/09-11/10 by Cook) Term exp. 11/13	Braddock District Representative		Cook	Braddock

**FAIRFAX AREA DISABILITY SERVICES BOARD**

**(3 years- limited to 2 full consecutive terms per MOU, after initial term)**

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Chuck Caputo; appointed 1/10-11/10 by Bulova) Term exp. 11/13 <i>Resigned</i>	At-Large #1 Business Community Representative		Bulova	At-Large Chairman's
Ann Pimley (Appointed 9/03&11/06 by Frey) Term exp. 11/09 <i>Not eligible for reappointment</i>	Sully District Representative		Frey	Sully

**FAIRFAX-FALLS CHURCH COMMUNITY SERVICES BOARD**

**(3 years – limited to 3 full terms)**

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Jessica Burmester; appointed 5/97-7/03 by Bulova; 7/09-6/12 by Cook) Term exp. 6/15 <i>Resigned</i>	Braddock District Representative	<b>Lynn Miller</b> (Résumé attached) <i>(Will be confirmed on February 25, 2014)</i>	Cook	Braddock

**GEOTECHNICAL REVIEW BOARD (3 years)**

**CONFIRMATION NEEDED:**

- Mr. Shaz Moosa as the Primary #3 Representative
- Mr. Robert F. Scheller as the Alternate #1 Representative
- Mr. James Collin as the Alternate #3 Representative

**HEALTH CARE ADVISORY BOARD  
(4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Judith Beattie; appointed 6/96-9/12 by Frey) Term exp. 6/16 <i>Resigned</i>	Sully District Representative		Frey	Sully

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by David Braun; appointed 10/06-6/09 by Smyth) Term exp. 6/12 <i>Resigned</i>	Consumer #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Andrew A. Painter; appointed 2/11 by Smyth) Term exp. 6/13 <i>Resigned</i>	Consumer #4 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Carol Ann Coryell; appointed 6/05-6/08 by Frey) Term exp. 6/11 <i>Resigned</i>	Consumer #6 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Samuel Jones; appointed 12/09 by Gross) Term exp. 6/12 <i>Resigned</i>	Provider #1 Representative		By Any Supervisor	At-Large
Lee G. Draznin (Appointed 5/95-7/10 by Bulova) Term exp. 6/13 <i>Not eligible for reappointment (Need 1 year lapse)</i>	Provider #4 Representative	<b>Sally Horwatt</b> (Hudgins)	By Any Supervisor	At-Large

**HUMAN RIGHTS COMMISSION (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Ahmed Selim (Appointed 7/08-9/10 by Gross) Term exp. 9/13	At-Large #6 Representative		By Any Supervisor	At-Large

**HUMAN SERVICES COUNCIL (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Judith Tessie Wilson; appointed 2/13 by Cook) Term exp. 7/13 <i>Resigned</i>	Braddock District #1 Representative		Cook	Braddock
Richard Gonzalez (Appointed 7/97-7/05 by Kauffman; 8/09 by McKay) Term exp. 7/13	Lee District #1 Representative		McKay	Lee
VACANT (Formerly held by David Dunlap; appointed 7/12 by Smyth) Term exp. 7/13 <i>Resigned</i>	Providence District #2 Representative		Smyth	Providence
VACANT (Formerly held by Richard Berger; appointed 2/06-8/09 by Frey) Term exp. 7/13 <i>Resigned</i>	Sully District #1 Representative		Frey	Sully

**INDUSTRIAL DEVELOPMENT AUTHORITY (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Inge Gedo (Appointed 11/09 by Herrity) Term exp. 10/13	At-Large #3 Representative	<b>Inge Gedo</b> (Herrity)	By Any Supervisor	At-Large
Marcus B. Simon (Appointed 12/01 by Hanley; 10/05 by Connolly; 12/09 by Bulova) Term exp. 10/13	At-Large #5 Representative		By Any Supervisor	At-Large

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

**CONFIRMATION NEEDED:**

- Mr. John George as the Northern Virginia Technology Council Representative

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Paul Langley (Appointed 4/10-1/12 by Cook) Term exp. 1/14	Braddock District Representative		Cook	Braddock
Robert Marro (Appointed 4/08-1/12 by Foust) Term exp. 1/14	Dranesville District Representative	<b>Robert Marro</b>	Foust	Dranesville

Continued on next page

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Brian Murray (Appointed 3/08-1/12 by McKay) Term exp. 1/14	Lee District Representative	<b>Brian Murray</b>	McKay	Lee
Bernard Thompson (Appointed 6/10-2/12 by Gross) Term exp. 1/14	Mason District Representative		Gross	Mason
Michael Beattie (Appointed 7/11-1/12 by Smyth) Term exp. 1/14	Providence District Representative	<b>Michael Beattie</b>	Smyth	Providence
Melissa Smarr (Appointed 7/09-1/12 by Herrity) Term exp. 1/14	Springfield District Representative	<b>Melissa Smarr</b>	Herrity	Springfield

**LIBRARY BOARD (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
David C. F. Ray (Appointed 4/09-7/09 by Cook) Term exp. 7/13	Braddock District Representative	<b>Michael Donovan</b>	Cook	Braddock

**MOSAIC DISTRICT COMMUNITY DEVELOPMENT AUTHORITY  
(4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Kenneth Lawrence; appointed 1/10 by Smyth) Term exp. 1/14 <i>Resigned</i>	Community Representative		By Any Supervisor	At-Large

**OVERSIGHT COMMITTEE ON DRINKING AND DRIVING (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Eileen Nelson; appointed 3/04-6/07 by Connolly; 6/10 by Bulova) Term exp. 6/13 <i>Resigned</i>	At-Large Chairman's Representative		Bulova	At-Large Chairman's
VACANT (Formerly held by Adam Parnes; appointed 9/03-6/12 by Hudgins) Term exp. 6/15 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Braddock
VACANT (Formerly held by Richard Nilsen; appointed 3/10-6/10 by McKay) Term exp. 6/13 <i>Resigned</i>	Lee District Representative		McKay	Lee

Continued on next page

**OVERSIGHT COMMITTEE ON DRINKING AND DRIVING (3 years)  
continued**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by William J. Stephens; appointed 9/05 by McConnell; 6/08-6/13 by Herrity) Term exp. 6/16 <i>Resigned</i>	Springfield District Representative		Herrity	Springfield
VACANT (Formerly held by Ronald Miner; appointed 8/02-6/11 by Frey) Term exp. 6/14 <i>Resigned</i>	Sully District Representative		Frey	Sully

**ROAD VIEWERS BOARD (1 year)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
John W. Ewing (Appointed 2/11-11/02 by Hanley; 1/04-12/08 by Connolly; 12/09-11/12 by Bulova) Term exp. 12/13	At-Large #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Stephen E. Still; appointed 6/06-12/11 by Smyth) Term exp. 12/12 <i>Resigned</i>	At-Large #4 Representative		By Any Supervisor	At-Large

**ROUTE 28 HIGHWAY TRANSPORTATION DISTRICT ADVISORY BOARD  
(4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Scott Crabtree (Appointed 4/04-1/10 by Frey) Term exp. 1/14	Resident/Owner Route 28 District #1 Representative	<b>Scott Crabtree</b> (Frey)	By Any Supervisor	At-Large
William Keech (Appointed 4/08-1/10 by Frey) Term exp. 1/14	Resident/Owner Route 28 District #2 Representative	<b>William Keech</b> (Frey)	By Any Supervisor	At-Large
Jeffrey Fairfield (Appointed 11/04-1/10 by Hudgins) Term exp. 1/14	Resident/Owner Route 28 District #3 Representative	<b>Jeffrey Fairfield</b> (Hudgins)	By Any Supervisor	At-Large

**TENANT LANDLORD COMMISSION (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Michael Congleton (Appointed 7/13 by Herrity) Term exp. 1/14	Citizen Member #1 Representative	<b>Michael Congleton</b> (Herrity)	By Any Supervisor	At-Large
Antonio Gomez (Appointed 1/99-1/02 by Hanley; 3/05-1/08 by Connolly; 1/11 by Bulova) Term exp. 1/14	Citizen Member #2 Representative	<b>Antonio Gomez</b> (Bulova)	By Any Supervisor	At-Large
VACANT (Formerly held by Craig Richey; appointed 5/13 by Frey) Term exp. 12/15 <i>Resigned</i>	Citizen Member #3 Representative	<b>Michael Schwarz</b> (Herrity)	By Any Supervisor	At-Large
VACANT (Formerly held by Sally D. Liff; appointed 8/04-1/11 by Smyth) Term exp. 1/14 <i>Deceased</i>	Condo Owner Representative		By Any Supervisor	At-Large
Michael McEearney (Appointed 10/09-2-11 by Foust) Term exp. 1/14	Landlord Member #3 Representative		By Any Supervisor	At-Large
Evelyn McRae (Appointed 6/98-8/01 by Hanley; 12/04-1/08 by Connolly; 4/11 by Bulova) Term exp. 1/14	Tenant Member #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Kevin Denton; appointed 4/10&1/11 by Smyth) Term exp. 1/14 <i>Resigned</i>	Tenant Member #3 Representative		By Any Supervisor	At-Large

**TRAILS AND SIDEWALKS COMMITTEE (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Kenneth Comer (Appointed 2/12 by Bulova) Term exp. 1/14	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Thomas Kennedy (Appointed 6/09-1/12 by Cook) Term exp. 1/14	Braddock District Representative	<b>Thomas Kennedy</b>	Cook	Braddock
Wade H. B. Smith (Appointed 4/02 by Mendelsohn; 1/04-1/08 by DuBois; 1/10-1/12 by Foust) Term exp. 1/14	Dranesville District Representative	<b>Wade H. B. Smith</b>	Foust	Dranesville
Jeffrey Anderson (Appointed 5/11-1/12 by Hudgins) Term exp. 1/14	Hunter Mill District Representative	<b>Jeffrey Anderson</b>	Hudgins	Hunter Mill
Robert Michie (Appointed 1/02-1/08 by Kauffman; 1/10-1/12 by McKay) Term exp. 1/14	Lee District Representative	<b>Robert Michie</b>	McKay	Lee
Jan Reitman (Appointed 3/08-1/12 by Gross) Term exp. 1/14	Mason District Representative		Gross	Mason
Peter Christensen (Appointed 2/06-1/12 by Hyland) Term exp. 1/14	Mount Vernon District Representative		Hyland	Mount Vernon
Roger Diedrich (Appointed 11/05-1/12 by Smyth) Term exp. 1/14	Providence District Representative		Smyth	Providence

Continued on next page

**TRAILS AND SIDEWALKS COMMITTEE (2 years)  
continued**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Alan Young (Appointed 3/12 by Herrity) Term exp. 1/14	Springfield District Representative	<b>Alan Young</b>	Herrity	Springfield
Paul Kent (Appointed 1/10-1/12 by Frey) Term exp. 1/14	Sully District Representative	<b>Paul Kent</b>	Frey	Sully

**CONFIRMATION NEEDED:**

- Ms. Jackie Browne as the Fairfax Area Disability Services Board Representative

**TREE COMMISSION (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Ron Rubin; appointed 1/05-10/12 by Hudgins) Term exp. 10/15 <i>Resigned</i>	Hunter Mill District Representative	<b>Dragan Momcilovic</b>	Hudgins	Hunter Mill

**TRESPASS TOWING ADVISORY BOARD (3 years)**

[NOTE: Advisory board created effective 7/1/06 to advise the Board of Supervisors with regard to the appropriate provisions of Va. Code Section 46.2-1233.2 and Fairfax County Code 82.5-32.]

**Membership:** Members shall be Fairfax County residents. A towing representative shall be defined as a person who, prior to the time of his or her appointment, and throughout his or her term, shall be an operator of a towing business in Fairfax County.

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Ronald P. Miner; appointed 6/06 by Connolly; 9/09 by Bulova) Term exp. 9/12 <i>Resigned</i>	Citizen Alternate Representative		By Any Supervisor	At-Large

**WETLANDS BOARD (5 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Anita Van Breda; appointed 9/13 by Bulova) Term exp. 7/16 <i>Resigned</i>	Alternate #1 Representative	<b>Deana M. Crumbling</b> (Bulova)	By Any Supervisor	At-Large
Elizabeth Martin (Appointed 11/09 by Gross) Term exp. 12/13	At-Large #1 Representative	<b>Elizabeth Martin</b> (Hyland) <i>Deferred 12/3/13</i>	By Any Supervisor	At-Large

# LYNN MILLER

## Professional Summary

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Extensive experience in operations, management, accounting and human resources in both the non-profit and corporate atmosphere. Efficient, analytical, articulate and diligent.

## Skills

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- Budget development
- Financial reporting
- Corporate tax planning
- Fiscal budgeting
- Cash flow analysis

## Work History

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### Vice President, Operations

11/1990 to 05/2010

**George C. Marshall Institute** – Washington, DC

Managed operations and finance of science and public policy think tank, planned and executed annual fundraising dinner.

### Executive Director

06/2010 to Current

**Community College Consortium on Autism and Intellectual Disabilities** – Sterling, VA

Manage organization of Community College Presidents in efforts to launch/maintain programs serving students with autism and intellectual disabilities.

## Education

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**Bachelor of Science:** Accounting

1987

**University of Maryland** - College Park, MD

## Affiliations

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Fairfax County Long Term Coordinating Care Council Subcommittee on Young Adults with Disabilities

Board Member, Martin Luther King Cultural Foundation

Board Member, Virginia Autism Project

Focus on passing insurance reform in the General Assembly. Current efforts focused on implementation and outreach for families to gain access to possible benefits.

Treasurer, Patriot Elite Wrestling Club

Treasurer, Oakton Women's Club

Event Chair, Annual Fashion show to raise money for local charities including the Virginia Autism Project and Project Lifesaver

Member, Jewish Community Center Committee on Special Needs

Board Agenda Item  
January 28, 2014

11:00 a.m.

Items Presented by the County Executive

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ADMINISTRATIVE – 1

Streets into the Secondary System (Dranesville, Hunter Mill and Sully Districts)

ISSUE:

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

RECOMMENDATION:

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

<b><u>Subdivision</u></b>	<b><u>District</u></b>	<b><u>Street</u></b>
Marshall Property	Dranesville	Eaton Drive (Route 7367)
		Spring Hill Road (Route 684) (Additional Right-of-Way (ROW) Only)
Stuart Estates	Dranesville	Admiral Zumwalt Lane
		Shaker Woods Road (Route 680) (Additional ROW Only)
Tysons Crest	Hunter Mill	Tysons Crest Lane
		Old Courthouse Road (Route 677) (Additional ROW Only)
Jackson Fields	Sully	Jackson Fields Court
		Crim Station Road (Route 10152)
		Mount Olive Road (Route 859) (Additional ROW Only)

TIMING:

Routine.

Board Agenda Item  
January 28, 2014

BACKGROUND:

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

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – Street Acceptance Forms

STAFF:

Robert A. Stalzer, Deputy County Executive

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

Michelle Brickner, Deputy Director, DPWES, Land Development Services

# Street Acceptance Form For Board Of Supervisors Resolution - June 2005

<p><b>FAIRFAX COUNTY BOARD OF SUPERVISORS FAIRFAX, VA</b></p> <p>Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.</p> <p><b>ENGINEERING MANAGER:</b> Terry L. Yates, P.E.  <b>BY:</b> <u>Nadia Alphonse</u></p>	<p><b>VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA</b></p> <p>REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.</p> <p><b>PLAN NUMBER:</b> 0467-SD-01</p> <p><b>SUBDIVISION PLAT NAME:</b> Marshall Property</p> <p><b>COUNTY MAGISTERIAL DISTRICT:</b> Dranesville</p> <p style="text-align: center;"><b>FOR OFFICIAL USE ONLY</b></p> <p><b>DATE OF VDOT INSPECTION APPROVAL:</b> <u>10/25/2013</u></p>
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STREET NAME	LOCATION		MILE LENGTH
	FROM	TO	
Eaton Drive (Route 7367)	Existing Eaton Drive (Route 7367) - 408' S CL Hampton Oak Court (Route 7394)	1,217' NE to End of Cul-de-Sac	0.23
Spring Hill Road (Route 684) (Additional Right-of-Way Only)	680' NE CL Spring Hill Farm Drive (Route 10328)	253' N to End of Dedication	0.0
<b>NOTES:</b>			<b>TOTALS:</b>
Eaton Drive: 4' Concrete Sidewalk on North Side to be maintained by Fairfax County.			0.23

# Street Acceptance Form For Board Of Supervisors Resolution - June 2005

<p><b>FAIRFAX COUNTY BOARD OF SUPERVISORS</b>  <b>FAIRFAX, VA</b></p> <p>Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.</p>	<p><b>VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA</b></p> <p>REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.</p>
<p>ENGINEERING MANAGER: Terry L. Yates, P.E.</p> <p>BY: <i>Nidia Appleby</i></p>	<p>PLAN NUMBER: 0893-SD-01</p> <p>SUBDIVISION PLAT NAME: Stuart Estates</p> <p>COUNTY MAGISTERIAL DISTRICT: Dranesville</p>

**FOR OFFICIAL USE ONLY**

DATE OF VDOT INSPECTION APPROVAL: 10/25/2013

STREET NAME	LOCATION		MILE LENGTH
	FROM	TO	
Admiral Zumwalt Lane	CL Shaker Woods Road (Route 680) - 2,163' S CL Sugarland Road (Route 604)	566' W to End of Cul-de-Sac	0.11
Shaker Woods Road (Route 680) (Additional Right-of-Way Only)	2,008' S CL Sugarland Road (Route 604)	636' S to End of Dedication	0.0
<b>NOTES:</b>			<b>TOTALS:</b>
			0.11



# Street Acceptance Form For Board Of Supervisors Resolution - June 2005

**FAIRFAX COUNTY BOARD OF SUPERVISORS  
FAIRFAX, VA**

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

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

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

**PLAN NUMBER:** 8783-SD-05  
**SUBDIVISION PLAT NAME:** Jackson Fields  
**COUNTY MAGISTERIAL DISTRICT:** Sully

**FOR OFFICIAL USE ONLY**

**DATE OF VDOT INSPECTION APPROVAL:** 10/18/2013

**ENGINEERING MANAGER:** Terry L. Yates, P.E.

**BY:** Nadia Alphonse

STREET NAME	LOCATION		MILE LENGTH
	FROM	TO	
Jackson Fields Court	CL Mount Olive Road (Route 859) - 574' E CL Folkers Landing (Route 10151)	933' NW to End of Cul-de-Sac	0.18
Crim Station Road (Route 10152)	Existing Crim Station Road (Route 10152) - 158' NE CL Folkers Landing (Route 10151)	242' NE to CL Jackson Fields Court	0.05
Mount Olive Road (Route 859) (Additional Right-of-Way Only)	200' E CL Folkers Landing (Route 10151)	610' E to End of Dedication	0.00
<b>NOTES:</b>			<b>TOTALS:</b>
Jackson Fields Court: 4' Concrete Sidewalk on Both Sides to be maintained by VDOT.			0.23
Crim Station Road: 4' Concrete Sidewalk on Both Sides to be maintained by VDOT.			
Mount Olive Road: 8' Asphalt Trail on North Side to be maintained by Fairfax County.			

Board Agenda Item  
January 28, 2014

ADMINISTRATIVE - 2

Authorization to Advertise a Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Route 29 Widening Road Improvements (Braddock District)

ISSUE:

Board authorization to advertise a public hearing on the acquisition of certain land rights necessary for the construction of Project 4YP212, also known as 5G25-052-000, Route 29 Widening, Fund 300-C30050, Transportation Improvements.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for February 25, 2014, at 4:00 p.m.

TIMING:

Board action is requested on January 28, 2014, to provide sufficient time to advertise the proposed public hearing on the acquisition of certain land rights necessary to keep this project on schedule.

BACKGROUND:

The County is planning to widen Route 29, Lee Highway, from Legato Road to approximately 600 feet north of Shirley Gate Road, to add an additional northbound travel lane. The project includes five-foot-wide concrete sidewalks, ten-foot-wide shared use paths and asphalt sidewalks, storm water management, curb and gutter, improved right turn lanes and related appurtenances.

Land rights for these improvements are required on 31 properties. The construction of the project requires the acquisition of dedications for public street purposes, storm drainage, ingress/egress, signage, landscaping, detention pond, grading agreement and temporary construction, Dominion Virginia Power, Verizon, Cox Communications, and XO Communications Services easements and utility relocation.

Negotiations are in progress with several owners of these properties; however, because resolution of these acquisitions is not imminent, it may become necessary for the Board to utilize quick-take eminent domain powers to commence construction of this project on

Board Agenda Item  
January 28, 2014

schedule. These powers are conferred upon the Board by statute, namely, Va. Code Ann. Sections 15.2-1904 and 15.2-1905 (2012). Pursuant to these provisions, a public hearing is required before property interests can be acquired in such an accelerated manner.

FISCAL IMPACT:

Funding is currently available in Project 4YP212, also known as 5G25-052-000, Route 29 Widening, Fund 300-C30050, Transportation Improvements. No additional funds are required at this time for land acquisition.

ENCLOSED DOCUMENTS:

Attachment A - Project Location Map  
Attachment B - Listing of Affected Properties

STAFF:

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



### ROUTE 29 WIDENING

Project 2G25-052-000 (4YP212)

Scale: Not to Scale

Tax Map: 56-1

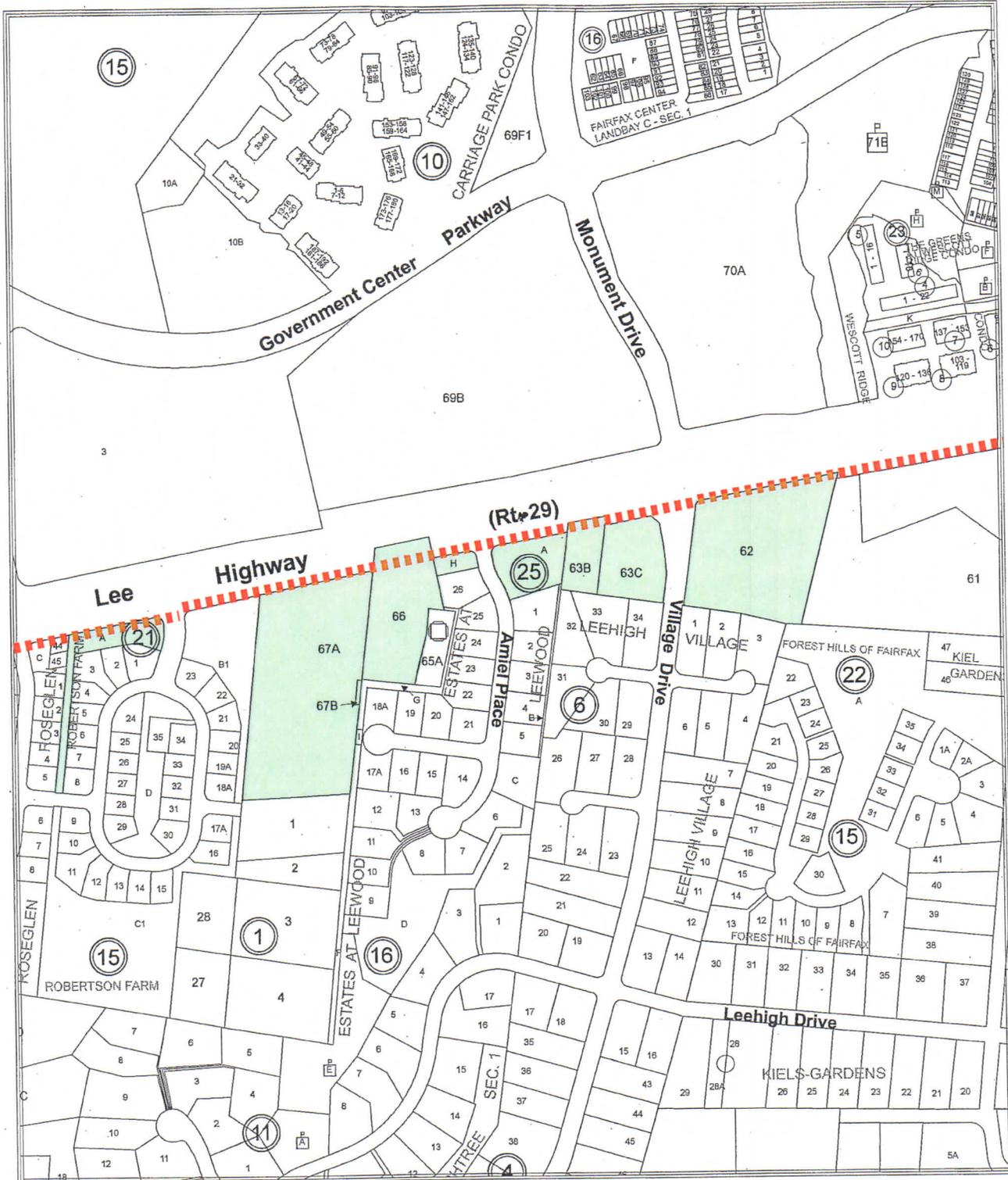
Braddock District

Affected Properties:



Proposed Improvements:





### ROUTE 29 WIDENING

Tax Map: 56-2

Project 2G25-052-000 (4YP212)

Scale: Not to Scale

Braddock District

Affected Properties:



Proposed Improvements:





### ROUTE 29 WIDENING

Tax Map: 56-2 & 56-3

Project 2G25-052-000 (4YP212)

Scale: Not to Scale

Braddock District

Affected Properties:



Proposed Improvements:



LISTING OF AFFECTED PROPERTIES  
 Project 4YP212 – Route 29 Widening Road Improvements  
 (Braddock District)

<u>PROPERTY OWNER(S)</u>	<u>TAX MAP NUMBER</u>
1. Nancy Lee Hall George T. Hall  Address: 11901 Lee Highway Fairfax, Virginia 22030	056-1-07-0001 (Interests already acquired)
2. The Johnson A. Edosomwan, LLC  Address: 11909 Lee Highway Fairfax, Virginia 22030	056-1-07-0002 (Interests already acquired)
3. The Johnson A. Edosomwan, LLC  Address: 11917 Lee Highway Fairfax, Virginia 22030	056-1-07-0003 (Interests already acquired)
4. Song Hun Yu IN Project, LLC  Address: 11923 Lee Highway Fairfax, Virginia 22030	056-1-07-0004
5. Song Hun Yu IN Project, LLC  Address: 11923 Lee Highway Fairfax, Virginia 22030	056-1-07-0004-A
6. Tong S. Park  Address: 11935 Lee Highway Fairfax, Virginia 22030	056-1-07-0005 (Interests already acquired)

7. Scott Rudge 056-1-07-0006-A  
 Address:  
 4645 Spruce Street  
 Fairfax, Virginia 22030
8. Fair Oaks Child Development Center, LLC 056-1-07-0007-A  
 (Interests already acquired)  
 Address:  
 12001 Lee Highway  
 Fairfax, Virginia 22030
9. Alden Glen Community Association 056-1-14-0000-A  
 (Interests already acquired)  
 Address:  
 Situated on the north side Lee Highway west of Holly Avenue  
 Fairfax, Virginia 22030
10. Alden Glen Community Association 056-1-14-0000-D  
 Address:  
 Situated on the north side Lee Highway east of Holly Avenue  
 Fairfax, Virginia 22030
11. GSG Residential Ellipse, LLC 056-1-15-0005-C  
 (Interests already acquired)  
 Address:  
 Situated at the northwest corner of Lee Highway and Forum Drive  
 Fairfax, Virginia 22030
12. Robertson Farm Homeowners Association 056-1-21 0000-A  
 (Interests already acquired)  
 Address:  
 Situated at the southwest corner of Lee Highway and Robertson Farm Circle  
 Fairfax, Virginia 22030
13. Becky L. Earhart, Susan E. Black, 056-2-01-0039  
 Leigh A. Earhart, Kristi C. Vallone, Trustees  
 Address:  
 11332 Lee Highway  
 Fairfax, Virginia 22030

14. Board of Supervisors 056-2-01-0040  
(Interests already acquired)  
Address:  
Situated on the West side of Waples Mill Road  
Fairfax, Virginia 22030
15. Aref Assadzadeh 056-2-01-0050  
Address:  
11317 Lee Highway  
Fairfax, Virginia 22030
16. TKG Virginia Storage, LLC 056-2-01-0052  
(Interests already acquired)  
Address:  
11325 Lee Highway  
Fairfax, Virginia 22030
17. Lonardelli Joint Venture, LLC 056-2-01-0054  
Address:  
11401 Lee Highway  
Fairfax, Virginia 22030
18. Seung K. Hong, Trustee 056-2-01-0055  
Address:  
11421 Lee Highway  
Fairfax, Virginia 22030
19. Forest Hill Joint Venture, LLC 056-2-01-0057  
Address:  
11429 Lee Highway  
Fairfax, Virginia 22030
20. Forest Hill Joint Venture, LLC 056-2-01-0058  
Address:  
11425 Lee Highway  
Fairfax, Virginia 22030

21. State Farm Mutual Automobile Insurance Company 056-2-01-0062  
(Interests already acquired)
- Address:  
4401 Village Drive  
Fairfax, Virginia 22030
22. S&G Craven, LLC 056-2-01-0063-B
- Address:  
11625 Lee Highway  
Fairfax, Virginia 22030
23. Chevy Chase Bank, F. S. B. 056-2-01-0063-C  
(Interests already acquired)
- Address:  
11611 Lee Highway  
Fairfax, Virginia 22030
24. Ronald A. DeAngelis 056-2-01-0066  
Leta G. DeAngelis
- Address:  
11717 Lee Highway  
Fairfax, Virginia 22030
25. 11725 Lee Highway, LLC 056-2-01-0067-A  
(Interests already acquired)
- Address:  
11725 Lee Highway  
Fairfax, Virginia 22030
26. Garden World R.E., LLC 056-2-04-0001
- Address:  
11347 Lee Highway  
Fairfax, Virginia 22030
27. Garden World R.E., LLC 056-2-04-0002
- Address:  
11343 Lee Highway  
Fairfax, Virginia 22030

28. Robert M. Rosenthal 056-2-04-0004  
(Interests already acquired)  
Address:  
11335 Lee Highway  
Fairfax, Virginia 22030
29. Estates at Leewood 056-2-25-0000-A  
Homeowners Association (Interests already acquired)  
Address:  
Parcel A  
Fairfax, Virginia 22030
30. Estates at Leewood 056-2-25-0000-H  
Homeowners Association (Interests already acquired)  
Address:  
Parcel H  
Fairfax, Virginia 22030
31. Merrifield Garden Center Corporation 056-3-01-0014  
(Interests already acquired)  
Address:  
12039 Lee Highway  
Fairfax, Virginia 22030

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ADMINISTRATIVE - 3

Authorization to Advertise a Public Hearing to Establish the Strathmeade Square  
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 Strathmeade Square Community Parking District (CPD).

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for February 25, 2014, at 4:00 p.m. to consider adoption of a Fairfax County Code amendment (Attachment I) to establish the Strathmeade Square CPD.

TIMING:

The Board of Supervisors should take action on January 28, 2014, to provide sufficient time for advertisement of the public hearing on February 25, 2014, at 4:00 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 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; 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 on the streets in the CPD.

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 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 CPD for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip or (iv) restricted vehicles that are temporarily

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parked on a public street within any such CPD for use by federal, state, or local public agencies to provide services.

Pursuant to Fairfax County Code Section 82-5B-3, the Board may establish a CPD if: (1) the Board receives a petition requesting such an 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 at \$900 to be paid out of 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 Strathmeade Square CPD

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Eric Teitelman, Division Chief, Capital Projects and Operations Division, FCDOT  
Neil Freschman, Chief, Traffic Operations Section, FCDOT  
Maria Turner, Sr. Transportation Planner, FCDOT

PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA  
APPENDIX M

M-82 Strathmeade Square Community Parking District

(a) *District Designation.*

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

*Beverly Drive (Route 3565)*

From Tobin Road to Schockey Drive.

*Breckenridge Court (Route 4051)*

From Beverly Drive to the cul-de-sac inclusive.

*Thompson Road (Route 4050)*

From the west end to the east cul-de-sac inclusive.

*Tobin Road (Route 709)*

From Woodburn Village Drive to Beverly Drive, north side only.

(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 Strathmeade Square 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 Strathmeade Square 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



Fairfax County Department of Transportation  
 Traffic Operations Section  
 COMMUNITY PARKING DISTRICT (CPD)  
 Proposed Strathmeade Square CPD  
 Providence District



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ADMINISTRATIVE - 4

Installation of “Watch for Children” Signs as Part of the Residential Traffic Administration Program (Dranesville, Lee, Mount Vernon and Hunter Mill Districts)

ISSUE:

Board endorsement for the installation of “Watch for Children” signs, as part of the Residential Traffic Administration Program (RTAP).

RECOMMENDATION:

The County Executive recommends that the Board endorse the installation of “Watch for Children” signs on the following roads:

- Sugarland Road (Dranesville District)
- Marilyn Drive (Lee District)
- Scotch Drive (Lee District)
- Waynewood Boulevard (2) (Mount Vernon District)
- Plymouth Road (Mount Vernon District)
- Freetown Drive (Hunter Mill District)

TIMING:

Board action is requested on January 28, 2014.

BACKGROUND:

The RTAP allows for installation of “Watch for Children” signs at the primary entrance to residential neighborhoods, or at a location with an extremely high concentration of children relative to the area, such as playgrounds, day care centers, or community centers. FCDOT reviews each request to ensure the proposed sign will be effectively located and will not be in conflict with any other traffic control devices. On April 15, 2012; July 11, 2012; August 7, 2012; and October 16, 2012, FCDOT received written verification from the appropriate local supervisors confirming community support for the referenced “Watch for Children” signs.

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FISCAL IMPACT:

The cost for signs at the seven locations is approximately \$1,070. Funding in the amount of \$1,070 is available in Fund100-C10001, General Fund, under Job Number 40TTCP.

ENCLOSED DOCUMENTS:

None.

STAFF:

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

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ADMINISTRATIVE - 5

Authorization to Advertise a Public Hearing to Establish Parking Restrictions on Willow Oaks Corporate Drive (Providence District)

ISSUE:

Board authorization to advertise a public hearing to consider a proposed amendment to Appendix R of *The Code of the County of Fairfax, Virginia*, (Fairfax County Code) to establish parking restrictions on Willow Oaks Corporate Drive in the Providence District.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for February 25, 2014, at 4:00 p.m. to consider adoption of a Fairfax County Code amendment (Attachment I) to Appendix R to prohibit commercial vehicles, recreational vehicles and all trailers as defined in Fairfax County Code Sections 82-5-7(b) and 82-5B-1 from parking on Willow Oaks Corporate Drive from Gallows Road to Professional Center Access Road from 9:00 p.m. to 6:00 a.m., seven days per week, excluding areas designated as "No Parking" by the Virginia Department of Transportation.

TIMING:

The Board of Supervisors should take action on January 28, 2014, to provide sufficient time for advertisement of the public hearing on February 25, 2014, at 4:00 p.m.

BACKGROUND:

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

The Providence District office forwarded a petition and request from business owners along Willow Oaks Corporate Drive to prohibit commercial vehicles, recreational vehicles and all trailers from parking on Willow Oaks Corporate Drive from Gallows Road to Professional Center Access Road from 9:00 p.m. to 6:00 a.m., seven days per week. Business owners indicated that out-of-area businesses are parking their commercial vehicles, recreational vehicles and trailers for long periods of time resulting in scarce parking for employees and business customers.

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Staff has been to this location on several occasions over several months and verified that long-term parking is occurring that diminishes the capacity of on-street parking for use by the business community.

FISCAL IMPACT:

The cost of sign installation is estimated at \$800 to be paid out of Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

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

Attachment II: Area Map of Proposed Parking Restriction

STAFF:

Robert A. Stalzer, Deputy County Executive

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

Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT

Neil Freschman, Chief, Traffic Operations Section, FCDOT

Maria Turner, Sr. Transportation Planner, FCDOT

PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA  
APPENDIX R

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

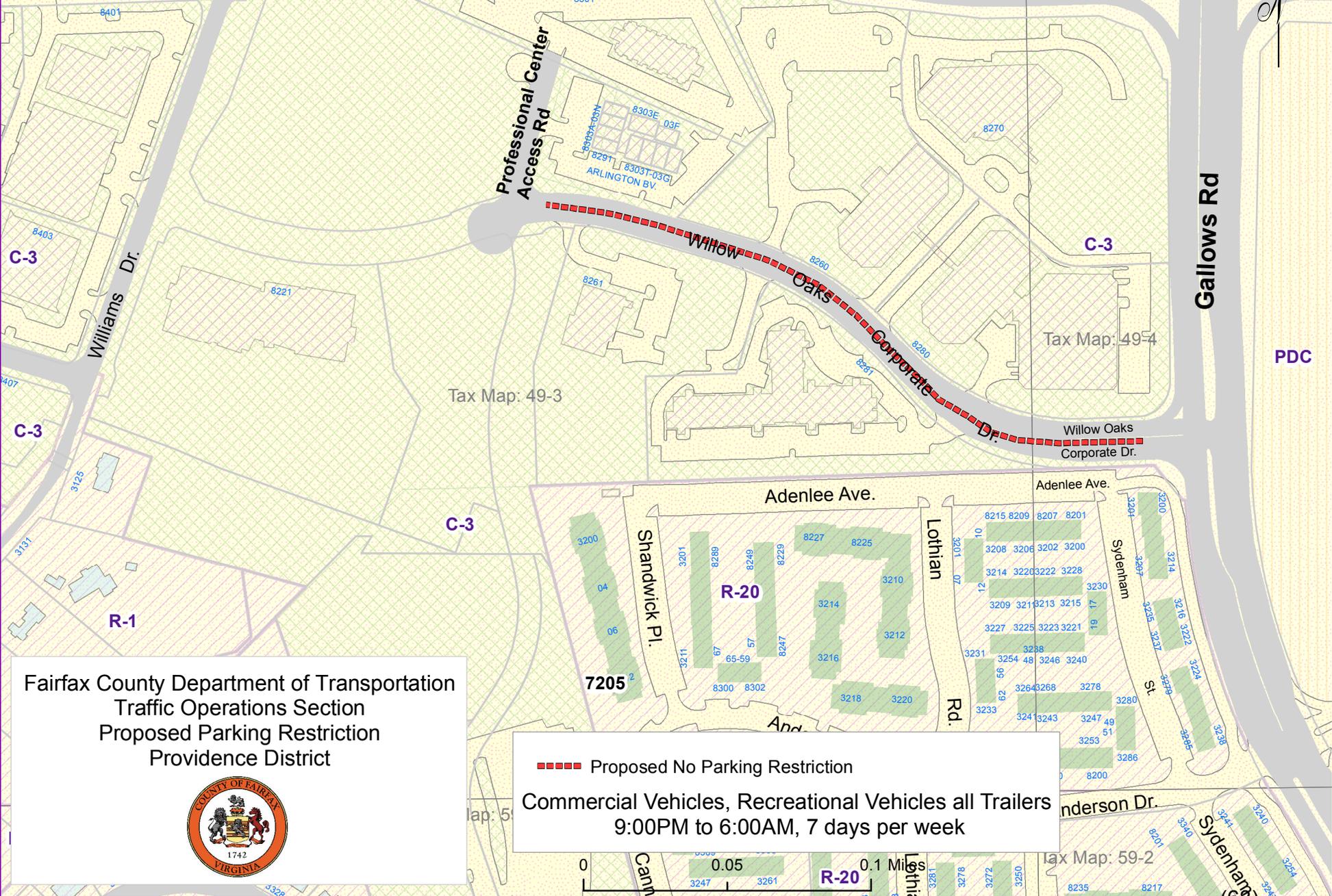
Willow Oaks Corporate Drive (Route 8200).  
Commercial vehicles, recreational vehicles, and trailers as defined in Fairfax County Code Sections 82-5-7(b) and 82-5B-1 shall be restricted from parking on Willow Oaks Corporate Drive from Gallows Road to Professional Center Access Road from 9:00 p.m. to 6:00 a.m., seven days per week, excluding areas designated as "No Parking" by the Virginia Department of Transportation.

Arlington Bv

Gallows Rd



Professional Center Access Rd



Fairfax County Department of Transportation  
Traffic Operations Section  
Proposed Parking Restriction  
Providence District



Proposed No Parking Restriction  
Commercial Vehicles, Recreational Vehicles all Trailers  
9:00PM to 6:00AM, 7 days per week



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ADMINISTRATIVE - 6

Authorization to Advertise a Public Hearing to Establish the Northern Virginia Community College Community Parking District (Braddock 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 Northern Virginia Community College Community Parking District (CPD).

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for February 25, 2014, at 4:00 p.m. to consider adoption of a Fairfax County Code amendment to establish the Northern Virginia Community College CPD.

TIMING:

The Board of Supervisors should take action on January 28, 2014, to provide sufficient time for advertisement of the public hearing on February 25, 2014, at 4:00 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 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; 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 on the streets in the CPD.

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 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 CPD for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip or (iv) restricted vehicles that are temporarily

Board Agenda Item  
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parked on a public street within any such CPD for use by federal, state, or local public agencies to provide services.

Pursuant to Fairfax County Code Section 82-5B-3, the Board may establish a CPD if: (1) the Board receives a petition requesting such an 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 at \$900 to be paid out of 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 Northern Virginia Community College CPD

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Eric Teitelman, Division Chief, Capital Projects and Operations Division, FCDOT  
Neil Freschman, Chief, Traffic Operations Section, FCDOT  
Maria Turner, Sr. Transportation Planner, FCDOT

PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA  
APPENDIX M

M-81 Northern Virginia Community College Community Parking District

(a) *District Designation.*

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

*Briar Creek Drive (Route 4495)*

From Holborn Avenue to Duncan Drive.

*Jayson Lane (Route 4677)*

From *Briar Creek Drive* to the cul-de-sac inclusive.

*Woodchuck Court (Route 4497)*

From *Briar Creek Drive* to the cul-de-sac inclusive.

(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 Northern Virginia Community College 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 Northern Virginia Community College 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



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ADMINISTRATIVE – 7

Authorization to Advertise a Public Hearing on a Proposal to Abandon a Portion of Former South Van Dorn Street (Lee District)

ISSUE:

Board Authorization to advertise a public hearing on a proposal to abandon a portion of former South Van Dorn Street.

RECOMMENDATION:

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

TIMING:

The Board should take action on January 28, 2014, to provide sufficient time to advertise the public hearing for March 4, 2014, at 4:00 p.m.

BACKGROUND:

The applicant, Kingstowne Commercial LP, is requesting that a portion of the former right-of-way of what is now South Van Dorn Street be abandoned under §33.1-164 of the Code of Virginia. The subject right-of-way, consisting of 3,448 square feet, is located near the southeast corner of the intersection of Franconia Road and the relocated South Van Dorn street. It is not in the Virginia Department of Transportation (VDOT) State Secondary System.

The applicant has made the request to facilitate the transfer of an entrance monument, part of which occupies the candidate right-of-way, to the Kingstowne Residential Owner Corporation. When South Van Dorn Street was relocated as an off-site transportation improvement, proffered under RZ-84-L-020 (Kingstowne), the former alignment in the vicinity of Franconia Road remained right-of-way.

Retention of the candidate right-of-way for the potential interchange of South Van Dorn Street and Franconia Road, shown on the Comprehensive Plan, is not being proposed. The candidate right-of-way is apparently prescriptive as no creation record has been found in the land records, nor has it been reserved by proffer for future transportation projects. Therefore, the County would have to acquire the fee simple title to the land regardless of whether the right-of-way has been abandoned or not, assuming that the future layout of the interchange, which has not been determined, would require the land.

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Traffic Circulation and Access

The abandonment will have no long-term impact on pedestrian, transit, or vehicle circulation and access. There are no transportation facilities on the subject right-of-way and the adjacent relocated South van Dorn Street has highway, pedestrian, and transit service. Since the candidate right-of-way is prescriptive, the fee simple title would still have to be acquired if a future transportation project were built on the land, regardless of the right-of-way status.

Easements

Public easement needs have been identified by the Fairfax County Water Authority. Dominion Virginia Power indicated an interest but field evaluation showed that their facility, paralleling Franconia Road, is outside the bounds of the candidate right-of-way. The applicants have provided an easement in a form acceptable to Fairfax Water. No other easement needs were identified.

The proposal to vacate and abandon this right-of-way was circulated to the following public agencies and utility companies for review: Office of the County Attorney, Department of Public Works and Environmental Services, Fairfax County Department of Transportation, Department of Planning and Zoning, Fairfax County Park Authority, Fairfax County Water Authority, Fairfax County School Board, Fire and Rescue, Virginia Department of Transportation, Dominion Virginia Power, Washington Gas Light Company, and Verizon. None of these indicate any opposition to the proposal.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I: Statement of Justification  
Attachment II: Notice of Intent  
Attachment III: Order of Abandonment  
Attachment IV: Abandonment Plat  
Attachment V: Metes and Bounds Description  
Attachment VI: Vicinity Map

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Donald Stephens, FCDOT

**SHANER & HELF, LLC**  
Attorneys at Law

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(703) 385-1211 \*\*\* fax: (703) 934-8461

4920 Elm Street  
Suite 200  
Bethesda, Maryland 20814  
(301) 913-9306  
Fax: 301-913-9624

June 5, 2012

**Via Hand Delivery**

Donald E. Stephens  
Fairfax County Department of Transportation  
Centerpointe 1 Office Building  
4050 Legato Road, Suite 400  
Fairfax, Virginia 22033-2867

Re: Application to the Board of Supervisors of Fairfax County, Virginia for abandonment of old road to extent of alteration by new road pursuant to subdivision 2 of §15.2-2272 (§15.2-2272(2)), as alternative procedure under §33.1-166.1, Code of Virginia, as amended, being a portion of former South Van Dorn Street, formerly Triplett Road, located at the intersection of Franconia Road-Route 644 and new South Van Dorn Street-Route 613, containing 3,448 square feet of land or 0.792 acres of land, Lee District, Fairfax County, Virginia

Dear Mr. Stephens:

This firm represents Kingstowne Commercial LP, a Virginia limited partnership ("KCLP"), the fee title owner of certain tracts or parcels of land contiguous to or related by record title to former South Van Dorn Street, formerly Triplett Road (Route 973), and new or alternate South Van Dorn Street in place of the old road.

KCLP wishes to cause the abandonment of that portion of former South Van Dorn Street shown as "Residual Portion of South Van Dorn Street" on the record plat entitled, "Right of Way Abandonment of Residual Portion of South Van Dorn Street," dated May 23, 2012 ("Plat"), and prepared by Tri-Tek Engineering, a professional corporation, Herndon, Virginia, pursuant to §15.2-2272(2). To this result, enclosed are the following:

1. This application plus 18 copies;
2. This firm's check payable to Fairfax County in the amount of \$200 representing the County's processing fee;
3. Recordable Plat (18 copies);
4. Metes and Bounds Legal Description (18 copies) of the area to be abandoned;

Donald E. Stephens  
Fairfax County Department of Transportation  
June 5, 2012  
Page Two

5. Vicinity Map/Fairfax County Assessment Map 81-4 (18 copies);
6. Notice of Intent to Abandon (18 copies); and
7. Adoption of Ordinance (18 copies).

KCLP is the fee simple owner of the following tracts or parcels of land subject to the proffered conditions associated with Rezoning Application RZ 84-L-020, approved by the Board of Supervisors on June 17, 1985, as amended:

Tax Map Reference(s) 0814 01 0052A ("Parcel 52A") containing .1759 acres of land, and being part of the land acquired by KCLP by Deed of Contribution dated April 30, 2012, recorded in Deed Book 22289, at Page 046; and 0184 03 007 ("Lot 7) containing .5802 acres, and 0184 03-0007A ("Lot 7A"), containing .3788 acres, and being part of the same land acquired by KCLP by Deed of Contribution dated October 24, 2008, recorded in Deed Book 20158, at Page 1323.

In satisfaction of the proffered conditions, Kingstowne L.P. (predecessor in title to KCLP) caused to be dedicated for public street purposes the realignment and extension of South Van Dorn Street according to the following deeds recorded among the land records:

Deed of Dedication and Easements dated February 16, 1988, recorded in Deed Book 7085, at Page 0475 (South Van Dorn Street, Phase I); and Deed of Dedication and Easements dated April 26, 1989, recorded in Deed Book 7329, at Page 0703.

As a result of the street dedications, former South Van Dorn Street, in that location has been altered and a new road, approved by the Board of Supervisors, constructed in lieu thereof, which serves the same citizens as the old road.

Further, KCLP is the fee owner of the land lying on either side of old road. As a result of the street dedications, former Tract 7 of Cameron Villa Farms, as platted and recorded in Deed Book N-9, at Page 16, was bifurcated by the realignment of the new road, so that a portion of Tract 7, Cameron Villa Farms, lies northeast of the parent tract separated by the new road ("Residual Lot 7"), which for real estate assessment purposes is combined with the remainder of Tract 7 as Tax Map No. 0184 03-007 or Lot 7 herein. Hence, no third parties reside on either side of the old road or abandonment.

Donald E. Stephens  
Fairfax County Department of Transportation  
June 5, 2012  
Page Three

A physical inspection of the site shows that the old road is physically closed and, in place thereof, permanent entrance features and landscaping have been installed in connection with the Kingstowne project.

Upon adoption of the ordinance fee title vests in KCLP. KCLP intends to consolidate Residual Lot 7, the Residual Portion of South Van Dorn Street and Parcel 52A as a single lot to be either conveyed in fee or by easement for the benefit of the Kingstowne Residential Owner Corporation (KROC).

Very truly yours,

SHANER & HELF, LLC



Enclosures

cc: Dave Currin, Trik-Tek Engineering (w/o/enc.)(via email only)  
Jon Halle, Kingstowne Commercial LP (w/o enc.)(via email only)  
Steve Fleischman, Kingstowne Commercial LP (w/o enc.)(via email only)  
(s:\data\user\dshaner\kingstowne\kingstowne commercial\fxcodeptof transportation\tr.southvandornstreet)

**NOTICE OF INTENT TO ABANDON  
A PORTION OF FORMER SOUTH VAN DORN STREET  
LEE DISTRICT, FAIRFAX COUNTY, VIRGINIA**

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on March 4, 2014, at 4:00 P.M., during its regular meeting in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia, pursuant to §33.1-158, Virginia Code, as amended, on the proposed abandonment of former road to the extent such former road has been altered and a new road constructed in lieu thereof, such former road being that portion of former South Van Dorn Street, containing a total area of 3,448 square feet or 0.0792 acre of land, in that location that has been altered and new South Van Dorn Street constructed in lieu thereof between Franconia Road-Route 644 and new South Van Dorn Street-Route 613, pursuant to §33.1-164, Code of Virginia, as amended. The road is located on Tax Map 81-4, and is described and shown on the metes and bounds schedule and plat prepared by Tri-Tek Engineering, Herndon, Virginia, dated May 23, 2012 (rev. 06-12-2013), 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.

All persons wishing to speak on this subject may call the Office of the Clerk to the Board, (703) 324-3903, to be placed on the Speaker's List, or may appear and be heard.

**ADOPTION OF ORDER ABANDONING  
A PORTION OF FORMER SOUTH VAN DORN STREET  
LEE 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 the day of March 4, 2014, at which meeting a quorum was present and voting, the Board, after conducting a public hearing upon due notice given pursuant to §33.1-158, Virginia Code, as amended, and as otherwise required by law, it was duly moved and seconded to adopt the following resolution, to wit:

WHEREAS, the Board has received an application for abandonment of an old road no longer necessary for public use pursuant to §33.1-164, Virginia Code, as amended, and

WHEREAS, after due consideration, the Board has determined that the old road in that location has been altered and a new road, approved by the Board, constructed in lieu thereof, serves the same citizens as the old road, so that the old road may be abandoned to the extent of such alteration, but no further;

WHEREFORE, BE IT ORDAINED:

That, that portion of South Van Dorn Street containing a total area of 3,448 square feet or 0.0792 acre of land, as more particularly described by metes and bounds and as bounded and shown on the record plat entitled "Right of Way Abandonment of Residual Portion of South Van Dorn Street," dated May 23, 2012 (rev. 06-12-2013), prepared by Tri-Tek Engineering, Herndon, Virginia, both of which are attached hereto and incorporated herein, be and the same is hereby abandoned.

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 permission of the landowner.

A Copy Teste:

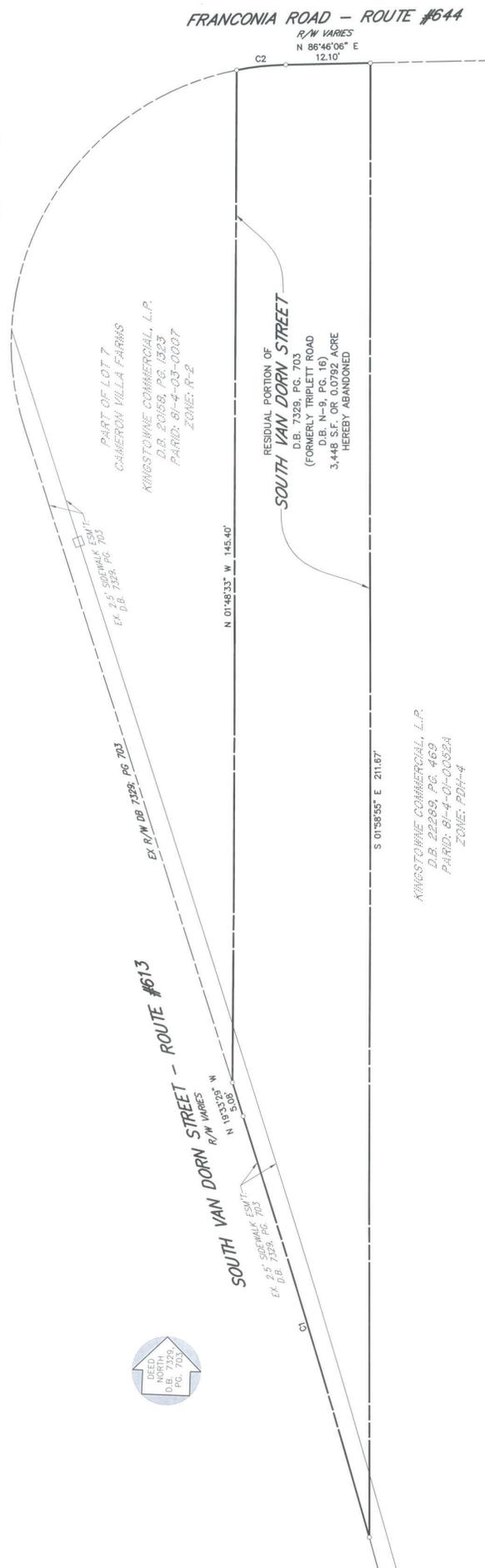
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Clerk to the Board

- NOTES:
1. THE PROPERTY SHOWN HEREON IS LOCATED ON FAIRFAX COUNTY TAX MAP 81-4 AND IS ADJACENT TO PARID 81-4-01-0652A AND 81-4-03-0007.
  2. NO TITLE REPORT FURNISHED.
  3. ALL PREVIOUSLY RECORDED RIGHTS OF WAY, EASEMENTS OR OTHER INTERESTS CONTAINED IN FULL FORCE AND EFFECT UNLESS OTHERWISE SHOWN ON THIS PLAT.
  4. THIS PLAT FULLY COMPLES WITH THE CHESAPEAKE BAY ORDINANCE ADOPTED BY THE BOARD OF SUPERVISORS ON JULY 7, 2003 AND EFFECTIVE NOVEMBER 18, 2005 AND THE MAPS REVISED THROUGH JULY 12, 2005.



VICINITY MAP  
SCALE: 1" = 500'



FRANCONIA ROAD - ROUTE #644  
R/W VARIES  
N 86°46'06" E  
12.10'

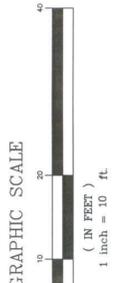
CURVE	LENGTH	RADIUS	TANGENT CHORD	CHD. BRG.	DELTA
C1	63.02	1865.07	31.51'	63.02°	N 18°35'25" W 156°10'
C2	7.06'	40.00'	3.54'	7.05°	N 81°42'18" E 100°08'57"

PLAT SHOWING  
RIGHT OF WAY ABANDONMENT OF  
RESIDUAL PORTION OF  
**SOUTH VAN DORN STREET**  
(DEED BOOK 7329, PAGE 703  
FORMERLY KNOWN AS  
**TRIPLETT ROAD**)  
FAIRFAX COUNTY, VIRGINIA  
SCALE: 1" = 0'  
DATE: 5-23-2012  
REV: 6-12-2013

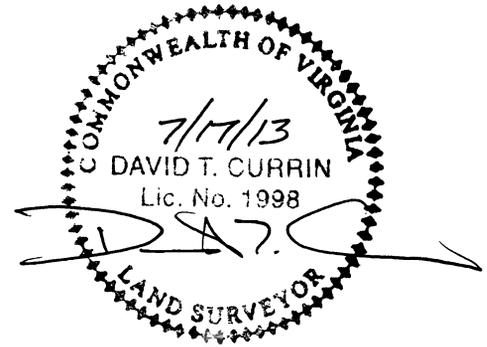
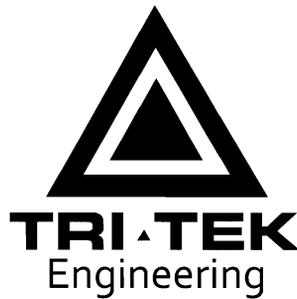


**SURVEYOR'S CERTIFICATE:**  
I, DAVID T. CURRIN, A DULY AUTHORIZED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA DO HEREBY CERTIFY THAT I HAVE CAREFULLY SURVEYED THE PARCEL OF LAND SHOWN HEREON; THAT THE INFORMATION SHOWN HEREON IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF; THAT I AM A LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA UNDER PARAGRAPH 703 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA; THAT THIS VACATION IS WITHIN THE BOUNDARIES THEREOF.

DAVID T. CURRIN, L.S. NO. 1998  
DATED: 5/17/13



**TRI-TEK ENGINEERING**  
CIVIL • ENVIRONMENTAL • LAND PLANNING • SURVEYING  
*a professional corporation*  
Harrison, Virginia 20170-5018 (703) 481-5900



METES AND BOUNDS DESCRIPTION  
RIGHT OF WAY ABANDONMENT OF  
RESIDUAL PORTION OF  
SOUTH VAN DORN STREET  
DEED BOOK 7329, PAGE 703  
(FORMERLY KNOWN AS  
TRIPLETT ROAD)  
LEE DISTRICT  
FAIRFAX COUNTY, VIRGINIA

Beginning at a point on the southerly right-of-way of Franconia Road – Route #644 (variable width) being the northwesterly most corner to Kingstowne Commercial L.P. (D.B. 22289, PG. 469) (PARID: 81-4-01-00052A).

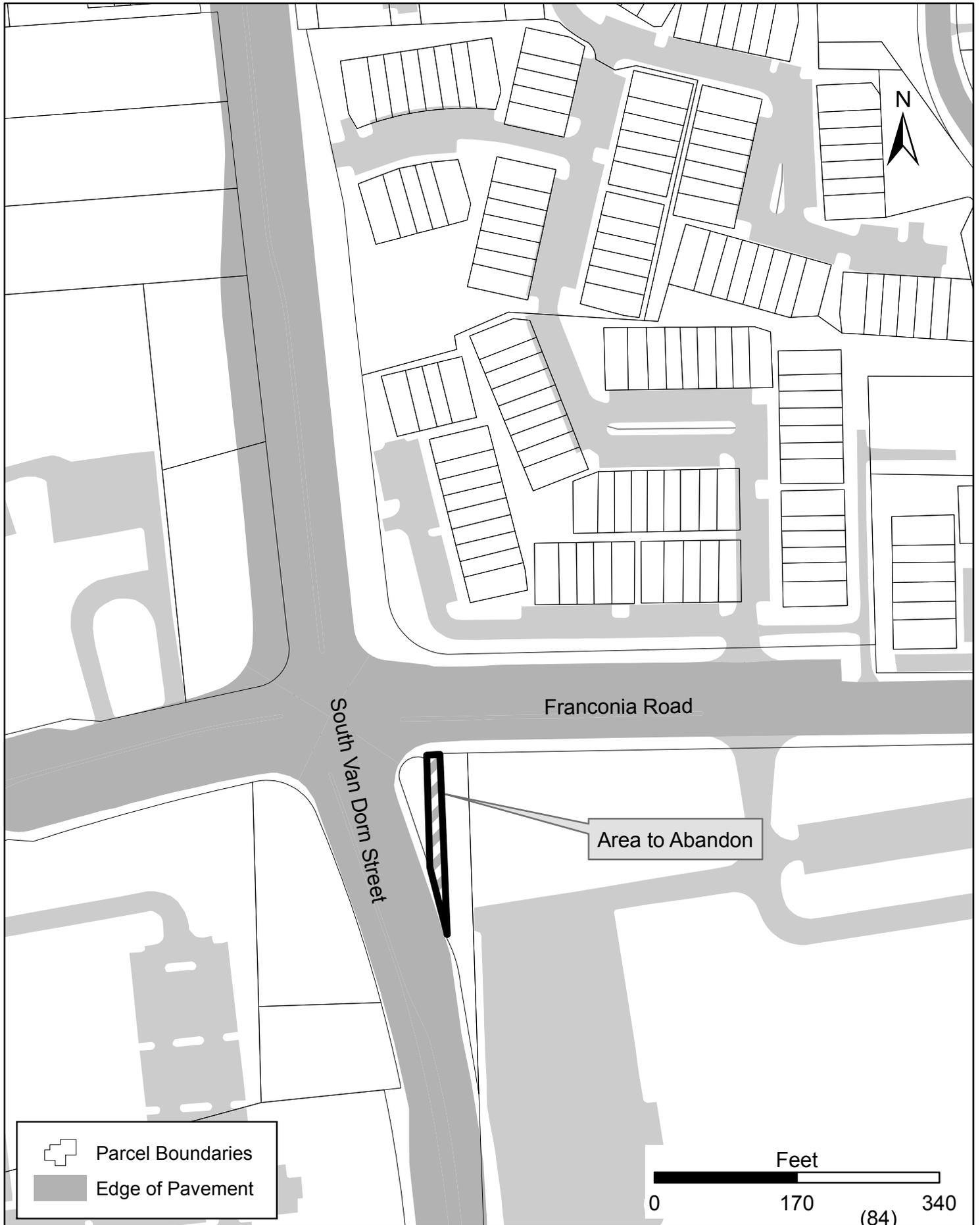
Thence departing Franconia Road – Route #644, running with the west line of Kingstowne Commercial L.P.; S 01°58'55" E – 211.67 feet to a point on the easterly right-of-way of South Van Dorn Street – Route #613 (variable width), said point being a westerly corner to Kingstowne Commercial L.P..

Thence departing Kingstowne Commercial L.P., running with the easterly right-of-way of South Van Dorn Street – Route #613 the following courses; 1) along the arc of a curve to the left as follows; R = 1,865.07' / A = 63.02' / CB = N 18°35'25" W / CHD = 63.02' to a point and 2) N 19°33'29" W – 5.08 feet to a point, said point being the south corner to the easterly portion of Part of Lot 7, Cameron Villa Farms, property of Kingstowne Commercial, L.P. (D.B. 20158, PG. 1323) (PARID: 81-4-03-0007).

Thence departing the South Van Dorn Street – Route #613, running with the easterly line of Part of Lot 7, Cameron Villa Farms; N 01°48'33" W – 145.40 feet to a point on the southerly right-of-way of Franconia Road – Route #644, said point being the northerly most corner to Part of Lot 7, Cameron Villa Farms, property of Kingstowne Commercial, L.P..

Thence departing Part of Lot 7, Cameron Villa Farms, running with the southerly right-of-way of Franconia Road – Route #644 the following courses; 1) along the arc of a curve to the right as follows; R = 40.00' / A = 7.06' / CB = N 81°42'19" E / CHD = 7.05' to a point and 2) N 86°46'06" E – 12.10 feet to the point of beginning containing 3,448 Square Feet or 0.0792 Acres of land.

Vicinity Map - Tax Map 81-4



ADMINISTRATIVE – 8

Extension of Review Periods for 2232 Review Applications (Mason and Mount Vernon Districts)

ISSUE:

Extension of the review periods for specific 2232 Review applications to ensure compliance with the review requirements of *Section 15.2-2232* of the *Code of Virginia*

RECOMMENDATION:

The County Executive recommends that the Board extend the review periods for the following applications: 2232-V13-17 to April 10, 2014; 2232-V13-18 to April 10, 2014, and FSA-M00-66-1 to March 27, 2014.

TIMING:

Board action is required on January 28, 2014, to extend the review periods of the applications noted above before their expirations.

BACKGROUND:

Subsection B of *Section 15.2-2232* of the *Code of Virginia* states: "Failure of the commission to act within sixty days of a submission, unless the time is extended by the governing body, shall be deemed approval." Subsection F of *Section 15.2-2232* of the *Code of Virginia* states: "Failure of the commission to act on any such application for a telecommunications facility under subsection A submitted on or after July 1, 1998, within ninety days of such submission shall be deemed approval of the application by the commission unless the governing body has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The governing body may extend the time required for action by the local commission by no more than sixty additional days."

The Board should extend the review periods for applications 2232-V13-17, 2232-V13-18, and FSA-M00-66-1; which were accepted for review by the Department of Planning and Zoning (DPZ) on October 28, 2013 and December 12, 2013. These applications are for non-telecommunications public facilities, and thus, are not subject to the State Code provision for extending the review period by no more than sixty additional days.

The review periods for the following applications should be extended:

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2232-V13-17      Lorton Solar Energy Park  
10018 & 10100 Furnace Road, Lorton  
Mount Vernon District  
Extend review period to April 10, 2014

2232-V13-18      Lorton Solar Energy Park  
10001, 10201, 10209, 10215, 10219, & 10229 Furnace Road, Lorton  
Mount Vernon District  
Extend review period to April 10, 2014

The Board is also asked to extend the review period for Feature Shown application FSA-M00-66-1, which was accepted for review by DPZ on October 28, 2013, and thus, is subject to the State Code provision that the Board may extend the time required for the Planning Commission to act on this application by no more than sixty (60) additional days. Therefore, the review period for FSA-M00-66-1 should be extended as follows:

FSA-M00-66-1      Sirius XM by Crown Castle  
6800 Versar Center, Springfield  
Mason District  
Extend review period to March 27, 2014

The need for the full time of these extensions may not be necessary and is not intended to set a date for final action.

FISCAL IMPACT:  
None

ENCLOSED DOCUMENTS:  
None

STAFF:  
Robert A. Stalzer, Deputy County Executive  
Fred R. Selden, Director, Department of Planning and Zoning, DPZ  
Chris B. Caperton, Chief, Facilities Planning Branch, Planning Division, DPZ  
Connie A. Maier, Planner, Facilities Planning Branch, Planning Division, DPZ

ADMINISTRATIVE – 9

Authorization for Various Fairfax County Agencies to Apply for and Accept Funding from the U.S. Department of Housing and Urban Development Through the Continuum of Care Program, and Authorization for Consolidated Plan Certification

ISSUE:

Board authorization is requested for various County agencies to apply for and accept funding, if received, from the U.S. Department of Housing and Urban Development (HUD) through the Continuum of Care Program. Grants funded through the Continuum of Care (CoC) Program are awarded to both County agencies and non-profit organizations. Total grant funding of \$6,623,094 will be requested, with an additional \$1,752,552 in match to be met through a combination of County Local Cash Match which is available in the Federal-State grant fund, state match, County in-kind resources, private non-profit organizations cash match or in-kind resources for total funding of \$8,375,646. The award period for each grant varies and is included in Attachment 1 but all of the renewal applications are for only one year in accordance with HUD guidelines. There is no HUD requirement that the County continue these programs after the grants expire; however, HUD does require that any properties that have previously been purchased through these grants be maintained as affordable housing for homeless persons for 20 years. The table below briefly summarizes the HUD grant funding and associated match:

	HUD	County Local Cash Match	County In-kind Resources	State Match	Non-Profit Match <sup>1</sup>	Total
County Grants	\$2,773,372	\$500,837	\$76,115	\$0	\$382,902	\$3,733,226
Non-Profit Organizations	\$3,849,722	\$0	\$0	\$445,136	\$347,562	\$4,642,420
Total	\$6,623,094	\$500,837	\$76,115	\$445,136	\$730,464	\$8,375,646

<sup>1</sup> The non-profit match may be met with either cash match or in-kind resources

If the actual County grant awards received are significantly different from the application amounts, another item will be submitted to the Board requesting appropriation of grant funds. Otherwise, staff will process the award administratively as per Board policy.

HUD regulations require that these projects be certified as consistent with the County's Consolidated Plan, and County policy requires that the Board be informed when such certifications are sent to HUD. Homeless persons, both families and individuals, are a high priority in the County's Five-Year Consolidated Plan for FY 2011-2015, which was approved by the Board on May 11, 2010, and these applications are consistent with

that priority. Upon Board authorization for submission of the applications, the County Executive will sign the certification to be included with the community application, as required by the HUD instructions.

RECOMMENDATION:

The County Executive recommends that the Board approve the following:

- Authorization for the Department of Housing and Community Development (HCD), Fairfax-Falls Church Community Services Board (CSB), Department of Family Services (DFS)(on behalf of the Office to Prevent and End Homelessness who administers the grants), and the Office to Prevent and End Homelessness (OPEH) to apply for and accept, if received, the grant applications listed below. Total funding of \$3,733,226, including \$2,773,372 in HUD funding, \$500,837 in Local Cash Match, \$76,115 in County in-kind resources, and \$382,902 of private in-kind match will be requested to support the County grants.
  - HCD, in partnership with Pathway Homes, will apply for and accept funding, if received, for four renewal Shelter Plus Care grants totaling \$1,531,606. The required match of \$382,902 will be met with in-kind resources provided by Pathway Homes bringing total funding to \$1,914,508. No County Local Cash Match is required. Funding will continue to support rental assistance for 97 units of permanent housing for 114 homeless persons.
  - The CSB will apply for and accept funding, if received, for one reallocated grant totaling \$259,504 which will be matched by \$56,000 of County in-kind resources bringing total funding to \$315,504. Funding will support a new project providing permanent supportive housing to 14 chronically homeless vulnerable individuals, including a 1/1.0 FTE existing grant position in the Federal-State grant fund. The County is under no obligation to continue this position when the grant funding expires.
  - DFS (on behalf of the Office to Prevent and End Homelessness which administers the grants) will apply for and accept funding, if received, for two renewal grants totaling \$1,402,638, including \$901,801 in HUD funding and \$500,837 in Local Cash Match. Funding is for 20 permanent supportive housing units for families with a disabled head of household and 28 transitional housing units assisting families displaced by domestic violence make rapid transitions from domestic violence shelters to permanent housing.
  - OPEH will apply for and accept funding, if received, for a new Continuum of Care Planning Grant totaling \$80,461, which will be matched by \$20,115 of County in-kind resources bringing total funding to \$100,576. Funding will be used to meet significant additional HUD requirements to conduct CoC

homeless system planning, project monitoring and evaluation, compliance activities, and related CoC functions.

- Endorse 21 grant applications by Fairfax County non-profit organizations totaling \$4,642,420, including \$3,849,722 in HUD funding, \$445,136 in state match, and \$347,562 in match to be met with non-profit organizations cash or in-kind resources.

Attachment 1 summarizes both the County and non-profit organizations grant applications and associated funding sources for each project.

TIMING:

Board approval is requested on January 28, 2014, as the HUD application deadline is February 3, 2014.

BACKGROUND:

The Fairfax-Falls Church community has been very successful for more than two decades in leveraging County, private, and state funds to secure HUD Continuum of Care funds. These funds have contributed to the development of a core continuum of services to enable homeless families and individuals to move toward stable housing. Over the past several years, new projects have been awarded that utilize a housing first approach to provide permanent supportive housing for chronically homeless single individuals. The conversion of the RISE grant from transitional to permanent supportive housing has added capacity to serve families with an adult who has a disabling condition with children under 18 living in the household. It should be noted that the housing opportunities provided under the Continuum of Care grant funds play a critical role in achieving the metrics called for in the Fairfax County Housing Blueprint, and meeting the goals of the 10-Year Plan to Prevent and End Homelessness in the Fairfax-Falls Church Community. As reflected in the draft FY 2015 Housing Blueprint, in addition to providing continued housing for existing residents, the proposed Continuum of Care funds will support as many as 39 new households via unit turnover.

On November 22, 2013, HUD published a Notice of Funding Availability (NOFA) in the Federal Register for the 2013 Continuum of Care Program. Approximately \$1.7 billion is available through the national competition for Continuum of Care Program funds. The purpose of these funds is to assist homeless persons to move toward self-sufficiency and into permanent housing. HUD estimates that this amount will not be sufficient to fund all renewal projects due to sequestration. The shortfall has multiple impacts on the CoC application process. There is no new funding available for new permanent housing projects and the amount allowed for CoC Planning Grants is less than half the proportion authorized by the HEARTH Act. All new projects must be funded by reallocating funding from existing grants.

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Consistent with last year, each Continuum of Care must rank all projects in the order of funding priority, and funding will be awarded in two tiers. Tier 1 is the amount needed to fund all renewal projects minus 5 percent. The remaining projects will fall into Tier 2, which may not be funded. HUD will also apply its own funding priorities within each Tier, but all Tier 1 projects will be funded before any Tier 2 projects are awarded funding. HUD is also promoting the use of reallocation of funds from existing renewal grants to create new projects. We have two new projects as a result of reallocation of funds. These programs are in line with HUD's prioritization of permanent housing over transitional housing and for projects that will house the hardest to serve, i.e. chronically homeless individuals with the highest barriers. The Community Services Board is reallocating the funds from a treatment and transitional housing program to a permanent housing program that will serve 14 chronically homeless singles. Christian Relief Services relinquished a grant for reallocation. Organizations and agencies were invited to compete for these funds to serve chronically homeless, highly vulnerable individuals. The applicants submitted proposals and gave presentations on their proposed projects to the CoC committee of the Governing Board. New Hope Housing was selected and their project will serve six chronically homeless singles. In addition, NOVACO became part of Shelter House, which will now be the sponsor of their transitional housing project.

HUD continues to implement changes mandated by the HEARTH Act. The former Supportive Housing Program and Shelter Plus Care Program are now merged into one CoC Program, consolidating these funding streams and establishing a minimum 25 percent match requirement for all project activities except leasing costs. The match can be provided as cash or in-kind, and is applied as a lump sum to each project's total budget rather than by line item. This may result in changes in the amount of match for each project and the method by which the requirement is met. Attachment 1, the CoC Grant Application Chart, reflects the minimum match requirement for each project under "other match," but the amounts identified may be provided by either cash or through in-kind services or activities that are eligible under the grant guidelines. In many projects, the grantee exceeds the minimum match requirement.

The Governing Board has designated OPEH as the lead agency for the Continuum of Care grant application process. OPEH constructed a monitoring and evaluation committee comprised of representatives of government and non-profit agencies that created a comprehensive monitoring and evaluation tool. Every sponsoring agency completed this tool for the agency and for each project. Both were scored by the committee. All projects met the minimum requirements to be included in the overall CoC application. The scores will be a component of the project ranking process.

There are 26 Continuum of Care grants that are eligible for renewal in the 2013 application cycle, including all of the projects that were renewed and funded for one year in the 2012 cycle except for the projects which were reallocated and the Planning Project which is not a renewable grant. The reallocations resulted in the inclusion of two new projects and OPEH will once again apply for a Planning Project

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bringing the total grant applications to 29.

Attachment 1 summarizes the grants, with projects that provide permanent supportive housing listed first, followed by transitional housing programs. The sequence in the Chart, however, is not necessarily the order in which the CoC Project Ranking Committee will rank the projects.

In summary these grants will provide the following, if awarded:

- Funding for two new projects to provide supportive housing and services for 20 highly vulnerable chronically homeless single individuals with mental illness and/or other disabilities;
- One year of continued funding of permanent supportive housing for 249 formerly homeless individuals with disabilities.
- One year of continued funding for a Safe Haven that provides housing and support services for eight vulnerable homeless individuals with serious mental illness;
- One year of continued funding for 24 units of permanent supportive housing for 25 families with a disabled head of household with minor children.
- One year of continued funding for 86 units of transitional housing serving 86 homeless families.
- One year of funding to OPEH to support activities to meet the additional planning requirements established under the HEARTH Act and the federal CoC Program interim rule.

FISCAL IMPACT:

Grant funding in the amount of \$6,623,094 will be requested from HUD through the Continuum of Care Program supporting both County grants and grants for non-profit organizations. The required match of \$1,752,552 will be met through a combination of County Local Cash Match, County in-kind resources, state match, private non-profit cash match or in-kind resources for total funding of \$8,375,646.

County grant funding totaling \$3,733,226, including \$2,773,372 in HUD funding, \$500,837 in Local Cash Match which is available in the Federal-State grant fund and \$459,017 in in-kind resources will be used to support programs in the Department of Housing and Community Development, the Office to Prevent and End Homelessness, and the Fairfax-Falls Church Community Services Board. These actions do not

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increase the expenditure level in the Federal- State Grant Fund, as funds are held in reserve for these grant awards. These grants do not allow for the recovery of indirect costs.

Grants for non-profit organizations totaling \$4,642,420, including \$3,849,722 in HUD funding, \$445,136 in state funding, and \$347,562 in cash match or in-kind resources to be met with private non-profit resources will be used to support 21 projects located throughout the County. The County has no fiscal responsibility in administering these grants; it is the sole responsibility of the non-profit organizations. However, OPEH will have added oversight responsibility under the new CoC program rules.

CREATION OF POSITIONS:

Funding will continue to support 1/1.0 FTE existing grant position in the CSB. The County is under no obligation to continue this position when the grant funding expires.

ENCLOSED DOCUMENTS:

Attachment 1 – Chart of HUD 2013 Continuum of Care Applications  
Attachment 2 – Certification of Consistency with the Consolidated Plan

STAFF:

Patricia Harrison, Deputy County Executive  
Dean H. Klein, Director, OPEH  
Julie Maltzman, CoC Lead Manager, OPEH  
Paula C. Sampson, Director, Department of Housing and Community Development  
George E. Braunstein, Executive Director, Fairfax-Falls Church CSB  
Nannette M. Bowler, Director, Department of Family Services

**HUD 2013 CONTINUUM OF CARE GRANT APPLICATIONS**  
*One Year Grants*

<b>Project Description</b> (number is <b>not</b> the ranking priority) Match amounts are preliminary estimates. All are 1 year grants	<b>HUD Amount</b>	<b>Local Cash Match*</b>	<b>State Match*</b>	<b>Expected Match* (other sources)</b>	<b>TOTAL</b>
<b>1. 1994 Christian Relief Services of Virginia/Pathway Homes/ PRS SHP--Renewal 07/14-06/15</b> – Four units of permanent supportive housing for 14 formerly homeless persons with severe mental illness.	\$220,909		\$58,702		\$279,611
<b>2. 1995 Christian Relief Services of Virginia/Pathway Homes/ PRS SHP– Renewal 02/14-01/15</b> – Four units of permanent supportive housing for 14 formerly homeless persons with severe mental illness.	\$297,346		\$77,603		\$374,949
<b>3. 1991 Christian Relief Services Charities/Pathway Homes SHP- Renewal 01/15-12/15</b> – Three units of permanent supportive housing for 12 formerly homeless persons with severe mental illness.	\$138,257		\$111,750		\$250,007
<b>4. 1991 Pathway Homes SHP – Renewal 01/15-12/15</b> – Four units of permanent supportive housing for 16 formerly homeless persons with severe mental illness.	\$160,794		\$127,956		\$288,750
<b>5. 2007 Pathway Homes SHP – Renewal 12/14-11/15</b> – Seven units of permanent supportive housing for seven formerly chronically homeless single individuals with mental illness.	\$156,583			\$15,332	\$171,915
<b>6. 2009 Pathway Homes SHP – Renewal 11/14-10/15</b> – Seven units of permanent supportive housing for seven formerly chronically homeless single individuals with severe mental illness.	\$156,307			\$14,549	\$170,856
<b>7. 2011 Pathway Homes SHP – Renewal 09/14-08/15</b> – Nine apartments and one group home providing permanent supportive housing for 24 formerly homeless or chronically homeless individuals with severe mental illness.	\$320,904			\$32,082	\$352,986
<b>8. PRS, Inc., PRS Intensive Supportive Housing – Renewal 09/14-08/15</b> – Permanent supportive housing with intensive supportive services for six seriously mentally ill formerly homeless individuals with a revolving pattern of homelessness and hospitalization.	\$171,659		\$69,125		\$240,784
<b>9. FACETS TRIUMPH II Permanent Supportive Housing –Renewal 1/15-12/15</b> – Twelve rental units providing permanent supportive housing to 18 formerly chronically homeless individuals.	\$287,359			\$17,960	\$305,319
<b>10. FACETS, TRIUMPH Permanent Supportive Housing Program – Renewal 02/14-01/15</b> – Nine rental units providing permanent supportive housing to nine formerly chronically homeless individuals.	\$155,858			\$13,930	\$169,788
<b>11. Volunteers of America Chesapeake, Bailey’s Supportive Housing Program – Renewal 10/14-09/15-</b> Seven units of permanent supportive housing for 14 formerly chronically homeless.	\$156,141			\$8,354	\$164,495
<b>12. New Hope Housing, Gartlan House – Renewal 01/15-12/15</b> – Permanent supportive housing for eight formerly chronically homeless men in a group living home.	\$124,171			\$31,043	\$155,214
					<b>(93)</b>

<b>Project Description</b> (number is <b>not</b> the ranking priority) Match amounts are preliminary estimates. All are 1 year grants	<b>HUD Amount</b>	<b>Local Cash Match*</b>	<b>State Match*</b>	<b>Expected Match* (other sources)</b>	<b>TOTAL</b>
<b>13. New Hope Housing, Max's Place – Renewal 08/14-07/15</b> – Eight beds in a Safe Haven with support services for eight homeless persons with serious mental illness.	\$225,336			\$45,981	\$271,317
<b>14. New Hope Housing, Milestones – Renewal 07/14-06/15</b> – Four units of permanent supportive housing serving five formerly homeless families with a disabled head of household.	\$59,971			\$14,993	\$74,964
<b>15. New Hope Housing- Just Home Fairfax – New Project through re-allocation - 09/14 – 8/15</b> – 3 units of permanent supportive housing serving 6 formerly chronically homeless individuals.	\$82,250			\$20,563	\$102,813
<b>16. DFS with partners - Reaching Independence through Support and Education (RISE) – Renewal 08/14 - 07/15</b> – 20 leased units providing permanent supportive housing for formerly homeless families with a disabled head of household.	\$461,994	\$67,000			\$528,994
<b>17. DHCD/Pathway Homes Shelter Plus Care (Merged SPC 1) – Renewal 04/14-03/15</b> - Rental assistance and supportive services for 34 formerly homeless persons with serious mental illness living in 29 units.	\$457,669			\$114,417	\$572,086
<b>18. DHCD/Pathway Homes Shelter Plus Care (Merged SPC 2) – Renewal 06/14-06/15</b> – Rental assistance and supportive services for 40 formerly homeless persons with serious mental illness living in 32 units.	\$512,059			\$128,015	\$640,074
<b>19. DHCD/Pathway Homes Shelter Plus Care (Merged SPC 9) – Renewal 08/14-07/15</b> – Rental assistance and supportive services for 24 formerly homeless persons with serious mental illness living in 21 units.	\$329,654			\$82,414	\$412,068
<b>20. DHCD/Pathway Homes Shelter Plus Care (Merged SPC 10) – Renewal 05/14-05/15</b> – Rental assistance and supportive services for 16 formerly homeless persons with serious mental illness living in 15 units.	\$232,224			\$58,056	\$290,280
<b>21. Fairfax-Falls Church Community Services Board- Welcome Home – New Project from re-allocation - 07/14-06/15</b> – Twelve units of permanent supportive housing for 14 formerly chronically homeless individuals.	\$259,504			\$56,000	\$315,504
<b>22. DFS, with partners, Community Housing Resource Program (CHRP) – Renewal 11/14-10/15</b> – 28 units of transitional housing with support services for families who are victims of domestic violence.	\$439,807	\$433,837			\$873,644
<b>23. Christian Relief Services Charities, STRIDE – Renewal 01/14 -12/14</b> – Nine units of transitional housing with support services for homeless families.	\$122,975			\$30,744	\$153,719
<b>24. Christian Relief Services Charities, Safe Places – Renewal 09/14 – 08/15</b> -- Eight units of transitional housing and support services for families who are victims of domestic violence.	\$77,672			\$19,418	\$97,090

<b>Project Description</b> (number is <b>not</b> the ranking priority) Match amounts are preliminary estimates. All are 1 year grants	<b>HUD Amount</b>	<b>Local Cash Match*</b>	<b>State Match*</b>	<b>Expected Match* (other sources)</b>	<b>TOTAL</b>
<b>25. Shelter House NOVACO Transitional Housing for Victims of Domestic Abuse – Renewal 01/15 -12/15</b> – Six units of transitional housing with support services for families who are victims of domestic violence.	\$113,615			\$28,004	\$141,619
<b>26. United Community Ministries – Journeys – Renewal 06/14 - 05/15</b> – Nine leased units of transitional housing with support services for families who are victims of domestic violence.	\$140,852			\$12,562	\$153,414
<b>27. Homestretch, Inc., Success – Renewal 07/14 – 06/15</b> - Six leased units of transitional housing with support services for large families.	\$153,602			\$12,221	\$165,823
<b>28. Kurdish Human Rights Watch, Transitional Housing and Supportive Services for Families – Renewal 07/14- 06/15--</b> 20 units of transitional housing with supportive services for homeless families, serving primarily middle eastern immigrants.	\$527,161			\$29,826	\$556,987
<b>29. OPEH, CoC Planning Project – New Project</b> – HUD has authorized an amount that each CoC can apply for to conduct planning activities related to the CoC System, Project Monitoring and Evaluation, HUD compliance and related CoC functions.	\$80,461			\$20,115	\$100,576
<b>Totals</b>	<b>\$6,623,094</b>	<b>\$500,837</b>	<b>\$445,136</b>	<b>\$806,579</b>	<b>\$8,375,646</b>

\*- There is a requirement of a minimum 25% match which can come from cash or in-kind resources from public or private sources.

# Certification of Consistency with the Consolidated Plan

U.S. Department of Housing  
and Urban Development

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: Fairfax County CoC on behalf of Partner Organizations

Project Name: See attached list

Location of the Project: Fairfax County, VA (county-wide)  
\_\_\_\_\_  
\_\_\_\_\_

Name of the Federal Program to which the applicant is applying: HUD CoC Program

Name of Certifying Jurisdiction: Fairfax County, Virginia

Certifying Official of the Jurisdiction Name: Edward L. Long, Jr.

Title: County Executive

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment to Form HUD-2991**  
**Certification of Consistency with the Consolidated Plan**  
**2013 Fairfax County Continuum of Care (CoC) Grant Process**

**FEDERAL PROGRAM:** Continuum of Care Program

***Applicant and Project Name:***

1. Christian Relief Services of Virginia, Inc.; 1994 CRS/Pathway Homes/ PRS SHP
2. Christian Relief Services of Virginia Inc.; 1995 CRS/Pathway Homes/ PRS SHP
3. Christian Relief Services Charities, Inc.; 1991 CRS/Pathway Homes SHP
4. Pathway Homes, Inc.; 1991 Pathway Homes Supportive Housing Program
5. Pathway Homes, Inc.; 2007 Pathway Homes Supportive Housing Program
6. Pathway Homes, Inc.; 2009 Pathway Homes Supportive Housing Program
7. Pathway Homes, Inc.; 2011 Pathway Homes Supportive Housing Program
8. PRS, Inc.; PRS Intensive Supportive Housing
9. FACETS, Inc.; TRIUMPH II Permanent Supportive Housing Program
10. FACETS, Inc.; TRIUMPH Permanent Supportive Housing Program
11. Volunteers of America Chesapeake; Bailey's Supportive Housing Program
12. New Hope Housing; Gartlan House
13. New Hope Housing; Max's Place
14. New Hope Housing; Milestones
15. New Hope Housing Inc.; Just Home Fairfax
16. Fairfax County Dept. of Family Services; Reaching Independence through Support and Education (RISE)
17. Fairfax County Dept. of Housing and Community Development; DHCD/Pathway Homes Shelter Plus Care - SPC Grant #1
18. Fairfax County Dept. of Housing and Community Development; DHCD/Pathway Homes Shelter Plus Care - SPC Grant #2
19. Fairfax County Dept. of Housing and Community Development; DHCD/Pathway Homes Shelter Plus Care - SPC Grant #9
20. Fairfax County Dept. of Housing and Community Development; DHCD/Pathway Homes Shelter Plus Care - SPC Grant #10
21. Fairfax-Falls Church Community Services Board; Welcome Home
22. Fairfax County Dept. of Family Services; Community Housing Resource Program (CHRP)
23. Christian Relief Services Charities Inc.; Homes for the Homeless-STRIDE
24. Christian Relief Services Charities Inc.; Homes for the Homeless-Safe Places
25. Shelter House Inc.; NOVACO Transitional Housing for Victims of Domestic Abuse
26. United Community Ministries Inc.; Journeys Program
27. Homestretch, Inc.; Success
28. Kurdish Human Rights Watch Inc.; Transitional Housing and Supportive Services for Families
29. Fairfax County Office to Prevent and End Homelessness; CoC Planning Project

**Name of Certifying Jurisdiction:** Fairfax County, Virginia  
**Certifying Official Name and Title:** Edward L. Long, Jr., County Executive

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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ACTION - 1

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

ISSUE:

A plan for the storm drain outfall and stream restoration improvements, 25530-PI-002, was approved on November 5, 2013, and the project cost based on the site plan's scope is \$738,000 with contingencies. The financial obligations for this project are defined in Proffer 50.D of the Arbor Row rezoning, RZ 201-PR-023, and pursuant to this proffer, the owner, Cityline Partners LLC, ("Cityline") is obligated to pay a maximum amount of \$500,000 for the project's design and construction costs. The proffer includes a condition for Cityline to construct stream restoration exceeding the \$500,000 cap if a source of funding is identified.

RECOMMENDATION:

The County Executive recommends that the County partner with Cityline on paying the construction costs of the proposed stream restoration, because the \$238,000 cost to the County is mitigated by partnering with Cityline and because of the environmental benefit of restoring the degraded channel in question.

TIMING:

Board action is requested on January 28, 2014, to enable Cityline to complete its stream restoration work in accordance with the proffer, which requires the work to be completed by June 15, 2015. Cityline desires to complete the stream restoration in conjunction with the athletic fields it is currently constructing, pursuant to approved site plan 25530-SP-003-2, because the athletic field site provides the most convenient access to the stream corridor, and to take advantage of ongoing construction to minimize mobilization and demobilization costs.

BACKGROUND:

The stream restoration project is a proffered element within Arbor Row, a mixed use development project by Cityline, located in Tysons within the Providence District. The development is described in rezoning case RZ 201-PR-023 which was approved by the Board of Supervisors on November 20, 2012. Per the approved rezoning, the applicant must design and construct storm drain outfall and stream restoration improvements per terms of the proffer.

A plan for the storm drain outfall and stream restoration improvements, 25530-PI-002, was approved on November 5, 2013, and the project cost based on the site plan's scope is \$738,000 with contingencies. The financial obligations of Cityline for this project are defined in Proffer 50.D, with the cost of design and construction not to exceed \$500,000. The proffer includes a condition for the applicant to construct stream

Board Agenda Item  
January 28, 2014

restoration exceeding the \$500,000 cap if a source of funding is identified. This action item recommends that the County fund the gap estimated to be \$238,000.

Considering the existing proffer conditions noted above and that construction documents have been developed, it is staff's recommendation to partner with Cityline on the construction of the proposed stream restoration. Supporting this project is feasible and cost effective. The stream is located within an existing storm drainage and floodplain easement. Further, the stream restoration project will occur in conjunction with construction of athletic fields, also proffered by Cityline in the Arbor Row rezoning, and located immediately downstream of the restoration project, achieving lower construction costs with a consolidated project. The County cost of up to \$238,000 equates to about \$297 per linear foot, lower than the cost of county-financed stream restoration projects over the past four years, which ranged between \$425-\$687 per linear foot of stream restoration.

Supporting this project also supports county priorities. Protection and restoration of stream valleys is part of the adopted Comprehensive Plan and part of the Tysons Urban Design Guidelines. In addition, stormwater improvement and stream restoration projects for Tysons are included in the adopted Scotts Run watershed management plan and are part of the adopted Fiscal Year 2014 to 2018 Capital Improvement Program.

FISCAL IMPACT:

The estimated total cost of the project is \$738,000. Cityline, LLC, will pay 68% of the cost (\$500,000), and the County will fund up to 32% (\$238,000) of final costs. Funding is currently available in Fund 400-C40101, Stormwater Services, in Project SD-000031, Stream and Water Quality Improvements to fund the County obligation to this project.

ENCLOSED DOCUMENTS:

Attachment 1: Agreement for Construction of Hanover Stream Restoration (with Exhibit A)

STAFF:

Robert A. Stalzer, Deputy County Executive  
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)  
Randolph W. Bartlett, Deputy Director, DPWES  
Matt Meyers, Stormwater Planning Division, DPWES  
William Marsh, Tysons Urban Center Coordinator, DPWES

**EXECUTION COUNTERPART****AGREEMENT FOR CONSTRUCTION  
OF  
HANOVER STREAM RESTORATION**

This Agreement for Construction of Hanover Stream Restoration ("Agreement") is made as of the 6th day of January, 2014 (the "Effective Date") by and between CITYLINE PARTNERS LLC, a Virginia limited liability company, as applicant in the Rezoning (as hereinafter defined), hereinafter referred to as "Cityline", and THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a political subdivision, hereinafter referred to as the "County".

WHEREAS, on November 20, 2012, the County approved Cityline's proffered rezoning application, specifically, RZ 2011-PR-023, which, in general, sets forth the redevelopment of six parcels into a mixed use development containing office, hotel, residential and retail uses ("the Rezoning"); and

WHEREAS, Proffer No. 50(D) of the Rezoning, which is attached hereto as Exhibit A, requires Cityline to construct certain Stream Restoration Improvements, (also referred to herein as "the Project") on property shown on Tax Map Nos. 29-2 ((15)) B2 and 29-4 (07)) A4, at a cost not to exceed \$500,000; and

WHEREAS, Proffer No. 50(D) contemplates that certain "necessary easements and the indemnification by others" is required to construct the Project; and

WHEREAS, the Parties agree that such easements have been obtained, and further, that Cityline has represented to the County that such indemnifications have also been obtained and are not an impediment to the construction of the Project; and

WHEREAS, Proffer No. 50(D) also provides that if the estimated cost of the Stream Restoration Improvements at 75% design exceeds \$500,000 that Cityline may nonetheless proceed with the construction of such improvements provided that (a) the estimated costs do not exceed an additional \$100,000, and (b) that a third-party source is identified to be responsible for such additional costs; and

WHEREAS, the Stream Restoration Improvements are depicted on an approved site plan, Site Plan No. 25530-PI-002 dated November 5, 2013, and prepared by Bowman Consulting Group, Ltd.; ("the Site Plan") and

WHEREAS, pursuant to Proffer No. 50(D), Cityline solicited two qualified bids for the Project and, upon its receipt and review of the bids, and with the approval of

the County, awarded the contract to Environmental Quality Resources, LLC; and

WHEREAS, at the time of the execution of this Agreement, the budget for the Project, taking into account the contract awarded to Environmental Quality Resources, LLC and other contracts entered into with design, engineering and other consultants for the Project, reflects an estimated total cost of the Project of \$738,000; and

WHEREAS, Cityline would be unwilling to proceed with the Project absent a commitment by the County or another entity to fund all costs of the Project in excess of Cityline's \$500,000 proffer obligation; and

WHEREAS, the County will be materially benefited by the Project and has therefore agreed to be responsible for the \$238,000 difference between Cityline's \$500,000 proffer obligation and the \$738,000 estimated cost of the Project; and it has been determined that this cost is fair and reasonable for the work to be performed; and accordingly it is in the County's interest to enter into this agreement to accomplish the needed additional stream improvements;

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

1. The recitals of this Agreement set forth above are incorporated herein and made a part of this Agreement.

**2. The County shall:**

a. Reimburse Cityline for one hundred percent (100%) of all costs associated with the Project over Cityline's \$500,000 commitment; provided, however, that the County's total obligation for such costs shall be limited to \$238,000 (unless the County shall have approved an increase in such amount through a change order or otherwise). Cityline shall have the right to invoice the County, from time to time, after Cityline shall have funded (or caused parties other than the County to fund) the initial \$500,000 of such costs. Each invoice shall contain commercially reasonable detail and documentation supporting the amount claimed therein. Each such invoice shall be paid by the County to Cityline within sixty (60) days of the receipt of each such invoice unless such invoice is disputed by the Director, Fairfax County Department of Public Works and Environmental Services. In the event of such a dispute, Article 4, Section 5 of the Fairfax County Purchasing Resolution shall govern any such dispute. For the purposes of this agreement "costs" shall include but not be limited to the following: construction, construction administration, Architectural/Engineering/

Geotechnical Engineering fees for design, change orders, testing, utility designation and relocation if any, and surveying, permitting, and bonds, and any other costs reasonably and typically associated with a project of this nature, but in no event shall include any expenses or administration costs unrelated to the Stream Restoration Improvements.

- b. Review bid proposals for construction of the Project. The County has, as of the date of this Agreement, reviewed both solicited bids.
- c. Provide Cityline with expeditious and timely review of properly completed plans and other submissions made to the County and any required interim and final inspections of the work.

**3. Cityline shall:**

- a. Retain necessary engineering firms to design and prepare engineered plans and plats of the Stream Restoration Improvements consistent with the information provided by the County. Copies of such plans and copies of all final plats shall be provided to the County as requested. The County acknowledges that Cityline has satisfied its obligations pursuant to this paragraph a.
- b. Pursue and acquire all permits from government bodies necessary to construct the Stream Restoration Improvements. The County acknowledges that Cityline has satisfied its obligations pursuant to this paragraph b.
- c. Provide the County with a detailed construction cost estimate of the Stream Restoration Improvements, including utility relocation (if any) and contingency costs. The County acknowledges that Cityline has satisfied its obligations pursuant to this paragraph c.
- d. Prepare the construction contract and related documents in accordance with approved plans. The County acknowledges that Cityline has satisfied its obligations pursuant to this paragraph d.
- e. Select a contractor ("Contractor"), with the County's approval. Cityline shall enter into a contract ("Contract") with the Contractor. The County acknowledges that Cityline has satisfied its obligations pursuant to this paragraph e by selecting Environmental Quality Resources, LLC as the Contractor and entering into the Contract with the Contractor.
- f. Obtain from the Contractor a Performance Bond in an amount not less than one hundred percent (100%) of the Contract amount in a form reasonably acceptable to the County.

- g. Perform, or cause to be performed, the construction of the Project in accordance with the Site Plan. Any changes or additions to the work reflected on the Site Plan (i.e., change orders and cost overruns) which would cause the County's total obligations under paragraph 2.a, above, to exceed \$238,000, shall receive approval by both parties prior to the commencement of additional work. The County agrees to respond to any change orders and/or requests for cost overruns within five (5) working days of receipt of adequate information.
- h. Provide, or cause to be provided, the necessary contract administration including materials testing, surveying and inspection services before and during construction, to include vertical and horizontal tolerance testing of structures within the stream channel, and provide the County with "as -built" plans promptly upon completion of construction and/or demonstrate to the County's satisfaction that the Project has been constructed in accordance with the Site Plan, as amended as provided herein.
- i. Obtain warranties from the Contractor, which shall be transferable to the County upon transfer of title of the underlying property, for survival of vegetation that is planted with the Stream Restoration Improvements and removal of invasive vegetation, during the two year maintenance period for Nationwide Permit NAO-2011-00711.
- j. Indemnify and hold County harmless from liability to third parties for damage to or destruction of property or injury to or death of any person arising out of the negligent conduct of Cityline, its agents or employees, on the property on which the Project is being constructed (except for negligence on the part of the County, its agents or employees). Cityline shall obtain and, at the request of the County, provide evidence of the existence of a standard policy of commercial general liability insurance coverage in at least the amount of \$1,000,000 per occurrence covering Cityline's activities on the subject property that names the County as an "additional insured".
- k. Submit to the County construction invoices as provided in paragraph 2a above.
- l. Permit in-progress and post-construction auditing of the Project by the County or its agent, and retain any and all material documents related to the Project until at least 90 days after completion of the Project. County shall provide 15 days prior notice of its intent to audit. Post-auditing, if any, shall be completed within 90 days of completion of the Contract.

**4. It is further agreed by the parties hereto:**

- a. The staff and authorized representatives of the County shall have the right to inspect any construction within project limits. All communications between the County and the Contractor shall occur only through Cityline.
- b. Cityline shall advise the County of any construction progress meetings.
- c. All permits, plans and specifications, as revised, required to complete the construction of the Project and referred to herein are incorporated herein by this reference as and to the extent necessary to allow for the full definition of the rights and obligations of the parties hereunder.
- d. In the event the Contractor files a claim on the Project as a result of an asserted breach of the Contract by Cityline:
  1. Cityline shall furnish the County a copy of all Notices of Intent to file a claim and a copy of any claim that is submitted by the Contractor.
  2. The County shall have access to all of Cityline's papers pertaining to the claim (excluding papers which may be privileged or confidential) upon request and during normal business hours.
  3. The County must concur with any settlement between Cityline and Contractor, although any such concurrence by the County shall not be unreasonably withheld.
- e. This Agreement is not made for the benefit of any third party.
- f. If any provision of this Agreement is determined to be void or invalid by a court of competent jurisdiction, such provision shall be stricken and the remainder of this Agreement shall not be affected thereby.
- g. In no event shall the County be responsible or otherwise liable for more than \$238,000 unless this Agreement is amended by mutual consent of the Parties. In the event that costs of the Project are anticipated to exceed a total of \$738,000, then, the Parties shall endeavor in good faith to adjust the design and/or nature of the Project such that its costs do not exceed \$738,000, and/or jointly determine how such additional costs will be paid for.
- h. Any dispute regarding this Agreement shall be subject to the laws of the Commonwealth of Virginia, and the forum for resolving any such dispute shall be the Circuit Court of Fairfax County, Virginia.
- i. This Agreement is subject to approval by the Fairfax County Board of Supervisors, which approval is anticipated to occur within 60 days after the

date hereof, failing which Cityline may terminate this Agreement upon written notice to the County.

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

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

Date: \_\_\_\_\_

By: \_\_\_\_\_

Edward L. Long Jr.

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

The foregoing instrument was acknowledged before me by Edward L. Long Jr., County Executive, on behalf of the Board of Supervisors of Fairfax County, Virginia, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[SIGNATURES CONTINUE ON NEXT PAGE]



interior when later phases are complete, but that are exposed at phase lines for more than a one-year period. This screening system shall be applied to all levels above grade and shall be composed of an architecturally designed system that may reflect basic architectural lines of the permanent façades and/or vegetation or other techniques, and shall partially obscure the garage view from outside the garage until the next phase is constructed. As may be appropriate, the specific temporary screening system to be utilized for each building shall be determined at the time of FDP approval and depicted on the FDP. Other alternate temporary garage screening and the use of banners and/or temporary art works as a part of the screening system may be approved at the time of FDP approval;

- B. Grading and seeding of areas on the Subject Property where existing improvements are removed to accommodate a portion of the development shown for the subject Block, not used for construction staging and not scheduled to commence construction within 12 months; and
- C. Provision of attractive temporary construction fencing, which may include public art, signage or way-finding elements. Signage shall comply with Article 12 of the Zoning Ordinance or alternatively in accordance with an approved Comprehensive Sign Plan.

#### **OFF-SITE PUBLIC FACILITIES AND ATHLETIC FIELDS**

50. Public Facilities and Athletic Fields Contributions. To address the Comprehensive Plan's recommendations regarding the provision of public facilities and athletic fields in Tysons Corner, the following shall be provided:

- A. Dedication of Off-Site Parcel. The approximately eight (8) acres of land identified as Fairfax County Tax Map Parcel 29-2-((15))-B2 (the "Park/School/Athletic Fields Parcel") shall be dedicated, in fee simple, to the Board for public park, athletic fields, public elementary school and/or similar or related public uses. This dedication shall occur within one hundred twenty (120) days after completion of construction of the improvements described in subparagraphs B., C. and D. below, as evidenced by the release of the bonds posted with approval of the Athletic Field Site Plan described in Proffer 51.
- B. Athletic Fields. Prior to June 30, 2015 as described in Proffer 51, or such later date as may be determined by the Zoning Administrator pursuant to Proffer 108, the following two athletic fields and related support facilities (collectively, the "Athletic Fields Improvements") shall be constructed on the Park/School/Athletic Fields Parcel generally as shown on the plan

entitled "Playing Fields and Public Facilities Exhibit," dated September 10, 2012 and attached to these Proffers as **Exhibit A**:

- i. Installation of one synthetic turf, multi-purpose athletic field of approximately 390 feet by 220 feet ("Field One"), which includes fifteen (15) feet wide overruns, two player benches (no bleachers), field striping, two goals, and field lighting (which shall qualify for a minimum of one (1) athletic field credit). Field construction and lighting shall be consistent with Fairfax County Park Authority ("FCPA") standards at the time of construction. Field design and location shall be determined in coordination with the FCPA Synthetic Turf Fields Manager.
- ii. Installation of one synthetic turf, multi-purpose athletic field of approximately 180 feet by 255 feet ("Field Two"), which includes fifteen (15) feet wide overruns and two player benches (no bleachers), field striping, two goals, and field lighting (which shall qualify for a minimum of one-half (½) athletic field credit). Field construction and lighting shall be consistent with FCPA standards at the time of construction. Field design and location shall be determined in coordination with the FCPA Synthetic Turf Fields Manager. It is anticipated that Field Two may be removed in the future by the County and/or the Fairfax County School Board (the "School Board") at such time as this portion of the Park/School/Athletic Fields Parcel may be needed for school purposes.
- iii. The installation and construction of Field One and Field Two will qualify for a minimum total of one and one-half (1½) athletic field credits as defined in the Tysons Urban Center Plan. One-half (½) athletic field credit shall meet the approximate one-half (½) athletic field requirement anticipated for this Rezoning. The remaining one (1) athletic field credit shall be available to the Applicant to meet the partial anticipated athletic field credit requirement for the property included in pending rezoning applications RZ 2011-PR-010 and RZ 2011-PR-011. The support facilities identified on **Exhibit A**, which include the picnic shelter and seating facilities, a paved parking area for approximately 46 cars, and an internal trail system, shall be installed with construction of the athletic fields. An eight (8) foot wide concrete trail, with associated street tree landscaping, also shall be installed along the Jones Branch Drive frontage of the Park/School/Athletic Fields Parcel with construction of the athletic fields. These frontage improvements shall not include any road widening, on-

street parking, streetscape or other road frontage improvements along Jones Branch Drive. The improvements to the Park/School/Athletic Fields Parcel as shown on Exhibit A shall be located so as not to preclude the future construction by others of (i) road widening, on-street parking and streetscape improvements along public streets, including Jones Branch Drive, and (ii) a future grid street within the thirty-five (35) foot wide right-of-way identified on Exhibit A as "AREA FOR POTENTIAL FUTURE ROAD EXTENSION." Subject to approval of the appropriate waivers, the Applicant shall have no obligation, in connection with the site plans for the Athletic Fields Improvements, the Stream Trail Improvements (as defined below) and the Stream Restoration Improvements (as defined below) or otherwise, to design and/or construct, or contribute funds toward construction, of such public street frontage improvements or such future grid street.

- C. Construction of Stream Valley Trail. Prior to June 30, 2015 as described in Proffer 51 below, or such later date as may be determined by the Zoning Administrator pursuant to Proffer 108, an asphalt trail, approximately eight (8) feet in width, with a bridge where the trail crosses the stream (collectively, the "Stream Trail Improvements"), shall be constructed through the stream valley corridor on the Park/School/Athletic Fields Parcel from Westpark Drive northward to connect to the portion of the Park/School/Athletic Fields Parcel on which the athletic fields are located, generally as shown on Exhibit A. The location of this trail shall be coordinated with the Park Authority Trails Coordinator. The Applicant shall work with the Park Authority Trails Coordinator to design the location of this trail connection to reduce the slope to the extent practicable while meeting the applicable standards of the PFM and mitigating unnecessary impacts on the scenic quality of this trail connection.
- D. Outfall and Stream Bank Restoration. Prior to June 30, 2015, as described in Proffer 51 below, the Applicant shall construct, at a total cost not to exceed \$500,000, the following: (a) improvements to the storm drain outfall, such as plunge pools, from the culvert under Westpark Drive extending approximately 125 linear feet downstream from the outfall, including stream channel treatment along the existing public sanitary sewer main that crosses the main stream channel, but not to include any alteration nor treatment of the sanitary sewer main pipe itself other than repair of any damage, if any, to the pipe that may be caused by construction of the Stream Restoration Improvements, and (b) such other stream bank stabilization improvements on the Park/School/Athletic Fields Parcel and within the limits of the existing Storm Drainage and

Floodplain Easement (the "Existing Storm Drainage Easement") granted on Fairfax County Tax Map Parcel 29-4-((7))-A4 ("Parcel A4") by the deed recorded in Deed Book 21514, at page 76 among the land records in the Clerk's Office of the Circuit Court of Fairfax County, as approved by DPWES and the U.S. Army Corps of Engineers, in consultation with the Park Authority (together (a) and (b) are referred to collectively as the "Stream Restoration Improvements"). The Stream Restoration Improvements shall be constructed in strict accordance with plans approved by DPWES, in its sole discretion, based on, among other things, all applicable regulatory requirements and DPWES's design preferences. In addition to the Stream Restoration Improvements, the Applicant shall, subject to issuance of necessary permits and if a Condition Assessment Report ("CAR") has been issued and the CAR has not already been corrected, dredge Pond D located on Fairfax County Tax Map Parcel 29-4-((7))-B to the original design depth and limits of construction pursuant to SD-1213-1 and -2, based on a bathymetric study conducted before and immediately after such dredging (the "Pond D Dredging"). In such event, the Pond D Dredging shall be done in conjunction with the improvements to the storm drain outfall described in subparagraph (a) above. The Pond D Dredging shall not include any improvements upstream of Pond D nor any upgrades to the existing dam, riser, inlets or other structural elements, but will include repairs required under the existing maintenance agreement for Pond D and to address damage, if any, that may be caused by the Pond D Dredging. The Stream Restoration Improvements located on Parcel A4 within the Existing Storm Drainage Easement shall be subject to provision of any additional off-site easements that may be required and appropriate indemnification by others without payment of consideration by the Applicant for such easements and indemnification. The Stream Restoration Improvements shall not include any design or construction work to be performed to the existing structures on Parcel A4. If necessary easements and the indemnification by others cannot be obtained or if the Stream Restoration Improvements are projected, based on two qualified bids at the time of 75% plan design, to exceed the \$500,000 limitation, then the Applicant will work with DPWES, the Park Authority and the U.S. Army Corps of Engineers to adjust the design and/or nature of the improvements described in subparagraph (b) so the work can be performed entirely on the Park/School/Athletic Fields Parcel, if the necessary easements and indemnification by others cannot be obtained, and so the total cost of the Stream Restoration Improvements will not exceed the \$500,000 limitation unless a funding source for the amount in excess of the \$500,000 limitation, up to an additional twenty percent (20%) cost, is identified in which case such work in excess of \$500,000, up to the additional twenty percent (20%) cost, shall also be performed by the Applicant. The Applicant shall provide to the County reasonable

documentation, such as invoices and receipts, to document the actual amount of funds spent on the Stream Restoration Improvements. If any of the Stream Restoration Improvements are provided as part of the public improvements plan described in Proffer 62.A., the cost of such improvements shall count toward the \$500,000 limit on the commitments in this paragraph. Construction of all or any portion of the Stream Restoration Improvements shall not be a condition to the site plan approval for Block A, Block E or Block F, unless all or a portion of the Stream Restoration Improvements are required for the subject Block to meet the minimum adequate outfall requirements of the PFM. If all or any portion of the Stream Restoration Improvements are required for Block A, Block E or Block F to meet the minimum adequate outfall requirements of the PFM, such portion of the Stream Restoration Improvements may be a condition of site plan approval for such Block in accordance with the PFM requirements, and the costs to construct such portion of the Stream Restoration Improvements shall not be counted toward the \$500,000 limit on the commitments in this paragraph.

- E. Contribution to Costs of Potential Future Park/School/Athletic Fields Parcel Improvements. A total contribution of \$600,000 shall be made to the Board solely for the purposes of designing the elementary school facilities on the Park/School/Athletic Fields Parcel, maintaining, repairing and replacing the athletic fields and/or trails constructed on the Park/School/Athletic Fields Parcel and/or for stream improvements or restoration activities. The amount of this contribution shall escalate as provided in Proffer 111. Such contribution shall be made in three (3) equal payments to the County of \$200,000 each, to be made prior to issuance of the building permit for each of the three buildings to be constructed on Block B and Block C.

51. Construction of the Athletic Fields and Related Facilities. Not later than one hundred-twenty (120) days after the approval of this Rezoning, the Applicant shall submit to the County one or more site plans for the Athletic Fields Improvements, the Stream Trail Improvements and the Stream Restoration Improvements. The Applicant reserves the right to (i) submit a separate site plan for the Stream Trail Improvements and the Stream Restoration Improvements or to identify that work as a separate phase from the Athletic Fields Improvements, and (ii) subdivide the Park/School/Athletic Fields Parcel in order to dedicate the portion on which the Athletic Fields Improvements are located and obtain bond release for that portion while work continues on the remainder of the Park/School/Athletic Fields Parcel to complete the Stream Trail Improvements and the Stream Restoration Improvements. The Applicant shall diligently pursue site plan approval for all the proffered improvements to the Park/School/Athletic Fields Parcel. Upon approval of the site plans, the Applicant shall diligently pursue construction of all improvements and complete construction by June 30, 2015, or such later date as may be determined by the Zoning Administrator pursuant to Proffer 108.

ACTION – 2

Approval of a Parking Reduction for Huntington Avenue Properties (Mount Vernon District)

ISSUE:

Board of Supervisors approval of a 20.1 percent overall parking reduction for A&R Huntington Avenue Properties, Tax Maps #083-1-08-0092A, 0092B, 0093A, 0093B and 0094A, Mount Vernon District.

RECOMMENDATION:

The County Executive recommends that the Board approve a reduction of 18.8% percent (42 fewer spaces) of the required parking for the residential component of the proposed development and a 37.5% percent reduction (6 fewer spaces) for the community-serving secondary/retail component. Overall, the applicant's request is for a 20.1% reduction (48 less spaces) pursuant to Paragraph 5 of Section 11-102 of Chapter 112 (Zoning Ordinance) of the Code of the County of Fairfax, Virginia as detailed in the attached Parking Reduction Study (#25678-PKS-001).

The County Executive recommends that the Board approve the requested reduction subject to the following conditions:

1. A minimum of 181 garage parking spaces shall be maintained on site at all times to serve the 139 residential dwelling units at a rate of no fewer than 1.3 spaces per dwelling unit. In addition, a minimum of 10 garage parking spaces shall be maintained on site at all times to serve the secondary/retail uses, **provided that all or a portion of the retail parking spaces may be converted to serve the residential dwelling units by approval of the Director in the event the retail square footage is not occupied by uses requiring separate parking.** The 181 residential parking spaces shall be secured by controlled access within the parking garage with the exception of 7 spaces designated for "visitors". The site plan shall clearly identify how the parking spaces will be secured for residential use only.
2. This parking reduction is based on the applicant constructing up to 139 residential dwelling units (no more than 25, two bedroom units, 82, one bedroom units, and 32, studio units); and up to 3,534 gross square feet of secondary/retail uses, as proffered in conjunction with the approval of the A&R Huntington Metro

LLC proffers (RZ/FDP 2013-MV-001). Any additional uses must be parked at Code.

3. The current owners, their successors, or assigns of the parcels identified as Tax Maps #083-1-08-0092A, 0092B, 0093A, 0093B and 0094A on the Fairfax County Property Maps shall submit a parking space utilization study for review and approval by the Board at any time in the future that the Zoning Administrator so requests in writing. Following review of that study, or if a study is not submitted within 90 days after being requested, the Board may rescind this parking reduction or require alternative measures to satisfy parking needs which may include requiring all uses to comply with the full parking space requirements specified in Article 11 of the Zoning Ordinance in effect at the time the parking utilization study is submitted.
4. All parking provided shall be in accordance with applicable requirements of Article 11 of the Zoning Ordinance and the Fairfax County Public Facilities Manual including the provisions referencing the accessibility standards of the Virginia Uniform Statewide Building Code.
5. The Transportation Demand Management (TDM) program proffered in conjunction with the approval of the A&R Huntington Metro LLC proffers (RZ/FDP 2013-MV-001) must be implemented.
6. Shared parking with any additional use(s) shall not be permitted without the submission of a new parking study prepared in accordance with the applicable requirements of the Zoning Ordinance and shall be subject to Board approval.
7. The conditions of approval of this parking reduction shall be binding on the successors of the current owners and/or other applicants and shall be recorded in the Fairfax County land records in a form acceptable to the County Attorney.
8. Unless a time extension has been approved by the Board, this parking reduction shall expire without notice 6 months from the date of Board approval if condition #7 has not been executed.

TIMING:

Board action is requested on January 28, 2014.

BACKGROUND:

A & R Huntington Metro, LLC has submitted a rezoning application (RZ/FDP 2013-MV-001) to rezone a 1.0 acre site, from C-5 (Neighborhood Retail Commercial) to Planned Residential Mixed (PRM). The site is located in the southeast quadrant of the

intersection of Huntington Avenue and Biscayne Drive and within ¼ mile of the Huntington Metrorail Station. It's currently developed with two single family attached (duplex) homes and a 12-unit apartment building.

The applicant plans on constructing an apartment building, consisting of 139 dwelling units and a three-level parking garage. Approximately 3,534 gross square feet of the first floor will contain community-serving secondary/retail uses, such as retail sales establishments, eating establishments, and personal service establishments. The applicant has provided 181 parking spaces to serve the residential use at a rate of 1.3 spaces per dwelling unit. Additionally, the applicant has provided 10 parking spaces to serve the secondary/retail uses. Under strict application of the Zoning Ordinance requirements, a total of 239 parking spaces are required: 223 spaces for the proposed residential component and 16 parking spaces for the proposed secondary/retail component.

On November 19, 2013, the Board held a public hearing on the associated rezoning application filed by A&R Huntington Metro LLC, RZ 2013-MV-001. Several members of the Board raised questions at the public hearing about the extent of the proposed parking reduction and how that would affect the project's viability and the neighborhood around it. Based on the Board's concerns, the decision on the rezoning application was deferred by the Board, to give time for the applicant to respond to the Board's concerns. At that time, the Board deferred decision on the parking reduction for Huntington Avenue Properties.

On December 3, 2013, RZ 2013-MV-001 was removed from the Board's agenda to allow time for the applicant to pursue an expansion of the below-grade parking. At that time, the Board also 1) Directed the Department of Planning and Zoning and the Clerk to the Board of Supervisors to work with the applicant to prepare notices for and establish a new public hearing for RZ 2013-MV-001, to be held on January 28, 2014 at 4:00 p.m., to consider revisions to the Conceptual Development Plan (CDP) and associated proffers; 2) Referred FDP 2013-MV-001 back to the Planning Commission for further action in light of the changes to the CDP and proffers the applicant proposed to make; and 3) Deferred decision on the parking reduction for Huntington Avenue Properties.

This recommendation reflects a coordinated review by the Department of Transportation, the Department of Planning and Zoning; and the Department of Public Works and Environmental Services.

FISCAL IMPACT:  
None

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REVISED

ENCLOSED DOCUMENTS:

Attachment 1 – Parking Reduction Study by Wells + Associates, Inc., #25678-PKS-001  
dated December 17, 2013

STAFF:

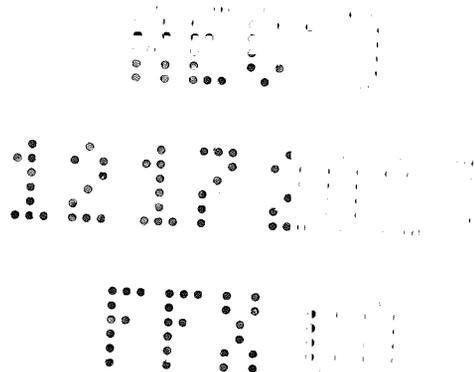
Robert A. Stalzer, Deputy County Executive

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

Michelle A. Brickner, Deputy Director for Land Development Services, DPWES



WELLS + ASSOCIATES



**MEMORANDUM**

**TO:** Jan Leavitt  
Code Development and Compliance Division  
Fairfax County Department of Public Works and Environmental Services

**FROM:** Robin L. Antonucci  
William F. Johnson, P.E.  
Brian J. Horan, E.I.T.

**RE:** RZ/FDP 2013-MV-001; A&R Huntington Metro, LLC  
Map 83-1 ((8)) 92A, 92B, 93A, 93B, and 94A  
Fairfax County, Virginia

**SUBJECT:** Parking Reduction

**DATE:** February 1, 2013  
Revised December 17, 2013

**Introduction**

This memorandum presents the results of a parking reduction analysis conducted in conjunction with the proposed development of a residential, transit-oriented development ("TOD") (referred to as "A&R Huntington TOD") in Fairfax County, Virginia. The subject properties that comprise the application area (2013 Tax Maps 83-1 ((8)) 92A, 92B, 93A, 93B, and 94A) are located in the southeast quadrant of the Huntington Avenue (Route 1332)/Biscayne Drive (Route 1330) intersection in close proximity to the Huntington Metrorail Station (within 1/4 mile of the station portal). More specifically, the subject site is bounded on the north by Huntington Avenue, on the west by Biscayne Drive, and on the south by Glendale Terrace (Route 1348), as shown on Figure 1.

The subject site is zoned C-5 ("Neighborhood Retail Commercial") and is currently developed with two single family attached (duplex) homes and a 12-unit apartment building. The applicant has submitted a rezoning application (RZ/FDP 2013-MV-001) to Fairfax County to rezone the site to the PRM ("Planned Residential Mixed") district in order to develop a new residential transit-oriented mixed-use project on the subject site. The conceptual/final development plan (CDP/FDP) prepared by Bowman Consulting and dated December 9, 2013, reflects a single, approximate 136,000 gross square foot (GSF) building with a three level parking garage. Shown in the most recent CDP/FDP, the applicant proposes to construct up to 3,534 GSF of first floor community-serving secondary/retail uses, such as retail sales establishments, eating establishments, and personal service establishments (i.e. "community-serving secondary/retail uses") and up to 139 residential units in a single mixed-use building.

256078-PKS-001-3



Figure 1  
Site Location



A&R Huntington IOD  
Fairfax County, Virginia



Wells + Associates, Inc.

In furtherance of this plan, the applicant has requested a reduction in the number of parking spaces that would be required by a strict application of the Fairfax County Zoning Ordinance, as summarized below:

- An overall parking reduction of 20.1 percent (or 48 fewer parking spaces) for a total of 191 parking spaces to serve all of the uses is requested. The reduction for each individual use is as follows:
  - A residential parking reduction of 18.8 percent (or 42 fewer parking spaces) for a total of 181 parking spaces to serve the new residential uses. This represents a reduction in the rate from 1.6 spaces/unit (required) to 1.3 spaces/unit (proposed). *Note that the actual number of parking spaces will depend on the final unit count as determined at site plan, and would be subject to a rate of 1.3 spaces/unit.*
  - A community-serving secondary/retail parking reduction of 37.5 percent (or 6 fewer parking spaces) for a total of 10 parking spaces to serve the new community-serving secondary/retail uses.

### Background

The December 9, 2013 CDP/FDP reflects 139 proposed multifamily dwelling units, as well as approximately 3,534 GSF of community-serving secondary/retail uses which will be served by 191 parking spaces. The applicant has indicated that the 139 residential dwelling units is a maximum and the project could be developed with fewer units depending on the final building plans and market demand. For purposes of this parking reduction request however, the development is assumed to consist of the maximum 139 multifamily dwelling units and 3,534 GSF of community-serving secondary/retail uses. A reduction of the community-serving secondary/retail required parking is being sought consistent with other transit-oriented development (TOD) provisions currently recognized in the Tysons Corner Comprehensive Plan text. A reduced copy of the CDP/FDP is provided as Figure 2. A full size copy is also provided as Attachment I. The applicant's most recent Statement of Justification, dated December 10, 2013, is provided in Attachment II.

### Proposed Parking Supply

As stated above, parking for the residential and retail uses will be provided in a three level parking garage. As reflected in the CDP/FDP (see Figure 2), access to this new parking garage would be provided along Biscayne Drive at two locations. The level 1 garage floor services the retail parking which would be segregated from the residential parking internal to the garage. A separate loading entrance is also located on Biscayne Drive. A total of 191 parking spaces are provided between the three parking levels. Of the 191 parking spaces, 181 will serve the residential uses and 10 will serve the retail uses.

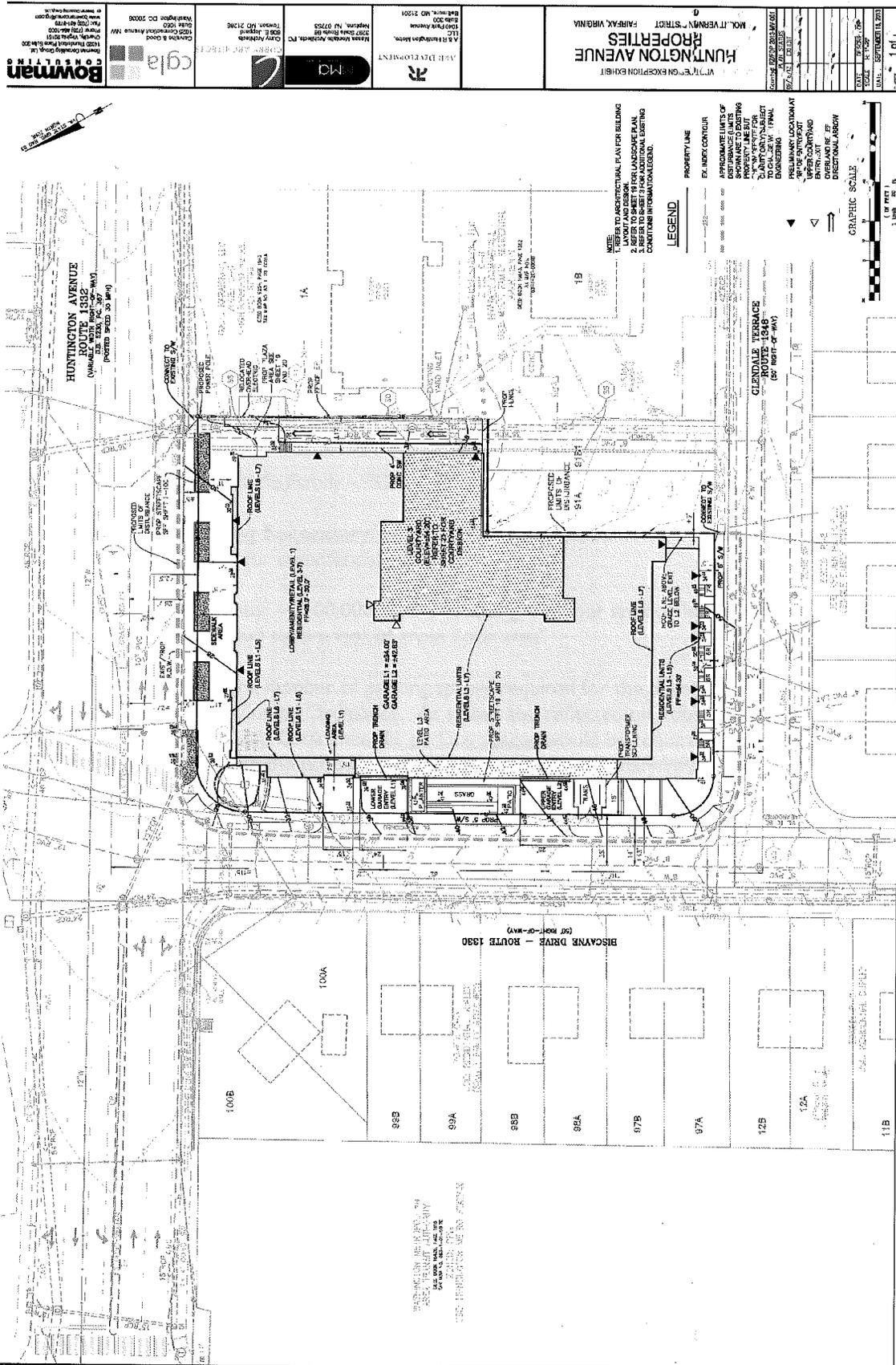


Figure 2  
Conceptual Development Plan

\*Plan provided by Bowman Consulting

A&R Huntington TOD  
Fairfax County, Virginia



North

Table I  
 A&R Huntington TOD Parking Reduction Study  
 Parking Requirements (1)

Land Use	Amount	Units	Code Requirement	Retail Provided Spaces	Retail Percentage Reduction Sought
Shopping Center	3,534	GSF	Four and three-tenths (4.3) spaces per 1000 square feet of gross floor area	16	37.5%
Dwelling, Multiple Family	139	DU	One and six-tenths (1.6) spaces per unit	223	
		Studio			
		1 Bedroom			
		2 Bedroom			
				<b>Residential Provided Spaces</b>	<b>181</b>
				<b>Residential Percentage Reduction Sought</b>	<b>18.8%</b>
				<b>Total Required Spaces</b>	<b>239</b>
				<b>Total Provided Spaces</b>	<b>191</b>
				<b>Total Percentage Reduction Sought</b>	<b>20.1%</b>

Note(s): (1) All calculations conducted per the Fairfax County Zoning Ordinance.

WELLS + ASSOCIATES, INC.  
 MANASSAS, VIRGINIA

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ACTION - 3

Authorization to Sign Memorandums of Agreement for Distribution of 30 Percent Local Share of Northern Virginia Transportation Authority Revenues

ISSUE:

Board of Supervisors' authorization for the County Executive to sign Memorandums of Agreement (MOAs) that establish the terms for the distribution of the local share of the HB 2313 revenues from the Northern Virginia Transportation Authority (the Authority) to the County, and from the County to the Towns of Herndon and Vienna.

RECOMMENDATION:

The County Executive recommends that the Board approve the execution of three MOAs:

- One between Fairfax County and the Authority;
- One between the County, the Authority and the Town of Herndon; and
- One between the County, the Authority, and the Town of Vienna.

The MOAs establish the terms of the transfer of the 30 percent local share of the Northern Virginia Transportation Authority funding, pursuant to HB 2313 (2013), and ensure that the requirements of HB 2313 are met.

TIMING:

The Board of Supervisors should act on this item on January 28, 2014, so that the Authority can begin distributing the 30 percent funding to Fairfax County. Following the execution of the agreements by all parties, the County will receive funding from the Authority and can make funding available to the towns.

BACKGROUND:

Effective July 1, 2013, HB 2313 increased three taxes and fees in Planning District 8 which are being deposited in the Northern Virginia Transportation Authority Fund for transportation improvements in Northern Virginia. HB 2313 directs the Authority to return 30 percent of the revenue collected from the Northern Virginia taxes and fees to the city or county in which the funds were raised. To accomplish this, the Authority developed an MOA between itself and its counties and cities, in consultation with the respective localities, to govern the terms of this transfer and ensure that the requirements of HB 2313 are met. The MOA is based on the requirements of HB 2313,

but also includes practical provisions associated with the implementation of the law and the payment of the Authority's administrative expenses. Each Authority member jurisdiction must execute an MOA before it can receive any distributions. The attached MOA (Attachment I) is explicitly what the Authority approved during its December 2013 meeting.

The major provisions of the agreement between the County and the Authority are:

- The agreement restates some of the significant provisions of HB 2313 and the Authority's authorizing statute, including:
  - The Authority is directed to return 30 percent of the funding it receives from the regional revenue sources included in HB 2313 to its member cities and counties, based on the amount of revenue collected in each city and county;
  - The city or county is required to deposit the revenue received from the Authority in a fund to be used for urban or secondary road construction, for other capital improvements that reduce congestion, for other transportation capital improvements in the Authority's long-range plan or for public transportation purposes;
  - The city or county is required to provide documentation to the Authority showing that it spent the revenues in accordance with HB 2313;
  - The Authority is required to allocate the cost of its administrative expenses (not otherwise funded through other sources) to its member jurisdictions based on population;
  - Each city and county is required to adopt the commercial and industrial (C&I) property tax for transportation at a rate of \$0.125 per \$100 valuation or deposit an equivalent amount into a separate fund for transportation improvements;
  - If a city or county fails to deposit the full amount of C&I tax or equivalent into a separate fund for transportation, the Authority shall reduce that locality's disbursement of 30 percent funding by the difference between the amount the city or county deposited compared to the amount it should have deposited;
  - Each city and county is required to maintain its average expenditures for transportation from FY 2010 to FY 2013 or lose its share of the 30 percent of the regional HB 2313 funds for the fiscal year succeeding the year in which it did not maintain its transportation expenditures;
  - The Authority has a continuing responsibility to ensure that the 30 percent funding is properly spent.
- The Authority will be responsible for accepting the funds from the Commonwealth, investing the funds, distributing the funds to the counties and cities, and providing periodic reports on deposits and disbursements;
- The initial disbursement to a county or city will be made no later than one month following the execution of the MOA by that jurisdiction. Subsequent distributions shall occur monthly;

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- Each city and county is responsible for paying its share of the Authority's administrative expenses by July 15 of each year;
- The Authority will invoice each jurisdiction for its share of the administrative expenses by June 1 of each year;
- Each city or county can choose to provide its share of the administrative expenses by asking the Authority to reduce the amount it will receive from its 30 percent funding or by paying the invoice from other sources by July 15;
- If a city or county fails to make an election by July 1, the Authority will reduce that jurisdiction's distribution of the 30 percent funding by the amount of the administrative expenses;
- If a city or county chooses to pay the Authority's administrative expense by another means, but does not pay by July 15, the Authority will withhold further distribution of the 30 percent funding until the funding for the administrative expenses is provided;
- By August 1 of each year, the chief administrative officer (CAO) of each city or county will certify that the jurisdiction has adopted the C&I tax at \$0.125 per \$100 valuation or set aside an equivalent amount of local revenues for transportation purposes. In addition, the CAO will certify that the jurisdiction met the maintenance of effort requirement for the previous fiscal year;
- None of the 30 percent funds can be used to repay debt issued before July 1, 2013;
- If the city or county appropriates or allocates any of the 30 percent funds to purposes not included in the bill, the Authority shall cease any further distribution of 30 percent funding in the year in which the event occurs, and the jurisdiction will also lose the benefit of the 30 percent funding in the succeeding fiscal year. An exception is included for clerical, inadvertent or unintentional errors;
- The towns' share of sales tax will be based on school age population. The towns' share of the transient occupancy tax will be based on the location of the hotel property. The towns' share of the grantor's tax will be based on the location of the property involved in the real estate transaction;
- Counties acknowledge a responsibility to ensure that towns with a population of 3,500 or more comply with the requirements of HB 2313, particularly regarding the use of the funding. A town's failure to comply with the law could be treated as a county's failure to comply. Counties will also be responsible for collecting the towns' share of the Authority's administrative expenses;
- Counties are required to enter into a formal agreement with their towns (over 3,500 population) detailing how the 30 percent funding may be used and providing distribution to towns on a reimbursement basis and the towns' requirement to reimburse the county for any funds spent inappropriately. The Authority may assist with resolving disputes, if requested;
- Cities and counties are required to submit unaudited financial reports and supporting materials documenting how their share of the 30 percent funding was

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spent. The reports are due by August 1 of each year. If audited financial reports show a variance of greater than five percent, the jurisdiction will need to submit a revised report and supporting documentation. If a jurisdiction fails to submit the report, the Authority shall withhold further distribution of the 30 percent funding to the jurisdiction, until the reports are provided;

- In the event the Authority fails to comply with the agreement between a city or county and the Authority, the city or county will provide notice and allow the Authority 30 days to correct the dispute. If the dispute is not resolved, the jurisdiction has all remedies available in law to resolve the dispute. In the event a city or county fails to comply with the agreement, the situation will be reviewed by the Authority's Finance Committee which will prepare a recommendation for the Authority's consideration. After the Authority reviews the issue, the jurisdiction will have 30 days to correct the violation. If the jurisdiction does not correct the violation, the Authority shall withhold further distribution of the 30 percent funding;
- If a city or county misappropriates or misallocates the 30 percent funding, the jurisdiction will also be responsible for reimbursing the Authority for the misused funding with interest;
- All county and town records will need to be maintained for five years from the date the record was created. All parties must also comply with the Public Records Act and all applicable state and federal laws regarding records retention.

HB 2313 further directs the Authority and its member jurisdictions to ensure that towns with a population greater than 3,500 receive their respective share of the regional revenues the Authority is receiving. The Towns of Herndon and Vienna meet this criterion. To accomplish this, the Authority developed a separate MOA to govern the terms of these transfers, and ensure that the HB 2313 requirements are met. This agreement is patterned after the MOA between the Authority and the cities and counties, which will be an attachment and its provisions will be incorporated into the County-Town MOA. Following the execution of both agreements, the County will receive funding from the Authority and can make funding available to our towns. The attached MOAs (Attachments II and III) are explicitly what the Authority approved during its December 2013 meeting.

In addition to many of the provisions included in the MOA between the County and the Authority, as noted above, provisions in this MOA related specifically to towns include:

- The city or county is required to deposit the revenue received from the Authority in a fund to be used for urban or secondary road construction, for other capital improvements that reduce congestion, for other transportation capital improvements in the Authority's long-range plan or for public transportation purposes. These same requirements apply to towns;
- Each city and county is required to maintain its average expenditures for transportation from FY 2010 to FY 2013 or risk losing its share of the 30 percent of

the regional HB 2313 funds. This requirement does not apply to towns (except to the extent that if a county does not meet its maintenance of effort requirement, towns within the county will not receive their respective share of the county's 30 percent funding);

- The Authority and its member cities and counties are required to work cooperatively to ensure that the towns with populations greater than 3,500 receive their respective shares of the funding;
- If a city or county appropriates or allocates any of the 30 percent funding for non-transportation purposes, the city or county shall not be a direct beneficiary of the 30 percent funding in the immediately succeeding year which will also mean that qualifying towns within the county will not receive their share of the regional funding;
- If a qualifying town appropriates or allocates any of the 30 percent funding for non-transportation purposes, its constituent county and any other town could be judicially declared to lose the benefits of this funding in the immediately succeeding year;
- The Authority and the counties, cities and towns will only use the funding for the transportation purposes outlined in the Code of Virginia for the benefit of the counties, cities and towns embraced by the Authority.
- Following receipt of the funding from the Authority, each county with a qualifying town(s) will calculate the amount of funding due to the town(s) and hold it within a separate account within its financial records for the town(s); The town agrees to segregate the funding it receives from the county in a separate account in its financial records;
- The counties will advise the towns of the balance in their account on a quarterly basis or at mutually agreed upon intervals;
- A county will pay interest on the town's accounts at the same rate as it earns interest on its special transportation accounts;
- A county's payment of the Authority's administrative expenses must include the share attributable to its qualifying town(s) based on population. The county will pay its entire administrative expenses to the Authority and then bill the town for its share of these expenses. The town has the same options for payment that are available to counties. If a town fails to pay this invoice, the county will withhold distribution of the 30 percent funding to the town until the Authority's administrative expenses are paid;
- By July 20 of each year, the CAO of each town will certify to its respective county that it has satisfied the requirements of the agreement, particularly regarding the accounting for the funding. In addition, by July 20, the town will provide the county with unaudited financial reports and supporting materials documenting how the town's share of the 30 percent funding was spent, so that the county can include this information in its report to the Authority that is due on August 1. The reports will be developed on a cash basis, rather than an accrual basis. If audited financial

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reports show a variance of greater than five percent, after adjusting for the difference between cash and accrual accounting methods, the jurisdiction will need to provide a revised report and supporting documentation. If a town fails to submit the report, the county shall withhold further distribution of the 30 percent funding to the jurisdiction, until the reports are provided;

- If a town appropriates or allocates any 30 percent funds to purposes not included in the bill, the county shall cease distribution of 30 percent funding in the year in which the event occurs, and the town will also lose its share of the 30 percent funding in the succeeding fiscal year. An exception is included for clerical, inadvertent or unintentional errors;
- If the town appropriates or allocates funding to purposes not included in the bill, the town will refund these funds to the county with interest;
- Distribution of Authority funds to towns will be handled on a reimbursement basis only;
- Upon receipt of an invoice from a qualifying town, the county will review the invoice and process payment to the town within 30 days. However, every effort will be made to process the invoice in 20 days or less;
- Upon request, the Authority will provide technical resources or act as a non-binding mediator in disputes between a county and a town; and
- In the event a town fails to comply with the agreement, the county will provide notice to the town and the Authority. The county and the town may request the Authority's assistance in resolving the dispute. If the dispute is not resolved, the county and the town have all remedies available in law to resolve the dispute. If the town does not correct the violation, the county shall withhold further distribution of the 30 percent funding. In the event a county fails to comply with the agreement, the town will provide written notice to the county and the county will have 30 days to correct the situation. The county and the town may request the Authority's assistance in resolving the dispute. If the dispute is not resolved, the county and the town have all remedies available in law to resolve the dispute.

FISCAL IMPACT:

As part of the In FY 2014 Adopted Budget Plan, the Board approved \$37.5 million in anticipated revenues in Fund 40010 (County and Regional Transportation Projects) to be received as the County's share of NVTA local funds. Staff estimates FY 2015 revenues to be \$39.4 million; the Board will consider this estimate at the adoption of the FY 2015 budget in late April 2014. There is no impact to the General Fund.

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ENCLOSED DOCUMENTS:

Attachment I: Memorandum of Agreement between Fairfax County and the Authority

Attachment II: Memorandum of Agreement between Fairfax County, the Authority, and the Town of Herndon

Attachment III: Memorandum of Agreement between Fairfax County, the Authority, and the Town of Vienna

STAFF:

Robert A. Stalzer, Deputy County Executive

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

Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT

Ray Johnson, Senior Transportation Planner, Coordination and Funding Division, FCDOT

Noelle Dominguez, Senior Transportation Planner, Coordination and Funding Division, FCDOT

Ellen Posner, Management Analyst/Counsel, FCDOT

Erin C. Ward, Senior Assistant County Attorney

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**MEMORANDUM OF AGREEMENT  
BETWEEN THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY  
AND THE COUNTY OF FAIRFAX  
REGARDING DISTRIBUTION OF 30% FUNDS**

THIS MEMORANDUM OF AGREEMENT, effective the \_\_\_\_ day of \_\_\_\_\_, 2014 (this "Agreement"), by and between the Northern Virginia Transportation Authority ("NVTA") and the County of Fairfax, a member City/County of NVTA (the "CITY/COUNTY").

**WITNESSETH:**

WHEREAS, NVTA was established by the Northern Virginia Transportation Authority Act, VA. Code Ann. §§ 15.2- 4829 *et seq.*, the local jurisdiction members of which include the counties of Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park ("Localities," collectively and "City/County" individually); and

WHEREAS, in accordance with VA. Code Ann. § 15.2-4838.01, a special non-reverting fund for Planning District 8, known as the Northern Virginia Transportation Authority Fund was created in the Virginia state treasury, comprised of taxes and fees levied in accordance with the aforesaid Code section and any other funds that may be received for the credit of the aforesaid fund (the "Fund"), the proceeds of which Fund are distributed to NVTA for use in accordance with VA. Code Ann. § 15.2-4838.1; and

WHEREAS, in accordance with, and subject to the requirements of, § 15.2-4838.1, thirty percent (30%) of the revenues received by NVTA shall be distributed on a pro rata basis to each City/County with each City/County's share being the total of the revenues received by NVTA that are generated or attributable to the City/County divided by the total of such revenue received by NVTA (the "30% Funds"); and

WHEREAS, among other requirements of VA. Code Ann. § 15.2-4838.1, each City/County shall deposit all Fund revenues received from NVTA in a separate, special fund (the "Local Fund") to be used for additional urban or secondary road construction, for other capital improvements that reduce congestion, for other transportation capital improvements in NVTA's most recent long range transportation plan, or for public transportation purposes; and

WHEREAS, § 15.2-4838.1 further requires each City/County to provide annually to NVTA sufficient documentation as required by NVTA showing that the 30% Funds received by the City/County were used as required by § 15.2-4838.1B.1; and

WHEREAS, § 15.2-4835 provides that the administrative expenses of NVTA, as set forth in NVTA's annual budget, shall be allocated among the component counties and cities based on relative population, which administrative expenses may be paid from the 30% Funds in accordance with § 15.2-4838.1; and

WHEREAS, Chapter 766 of the 2013 Acts of Assembly, the legislation establishing the Fund, imposes, among others, the following requirements on each of the Localities: (1) that each Locality deposit into its Local Fund, all revenues from the commercial and industrial tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed under that section or, in lieu of that amount, an amount from sources other than moneys received from NVTA equivalent to the amount that would have been

received had the maximum tax rate been imposed; (2) that each of the Localities expend or disburse for transportation purposes each year an amount that is at least equal to the average amount expended or disbursed for transportation purposes by the county or city between July 1, 2010 and June 30, 2013, excluding bond proceeds or debt service payments and federal or state grants; and (3) that NVTA and the Localities work cooperatively with towns with a population greater than 3,500 to ensure the towns receive their respective share of the 30% Funds; and

WHEREAS, § 15.2-4838.1B.2 provides that if any City/County fails to deposit into its Local Fund the amount equivalent to the revenue generated by the maximum tax rate allowed under § 58.1-3221.3, then NVTA shall reduce the amount of the 30% Funds disbursed to the City/County by the difference between the amount that was deposited in the City/County's Local Fund and the amount that should have been deposited; and Chapter 766 of the 2013 Acts of Assembly further provides that in the event any of the Localities appropriates or allocates any of the 30% Funds to a non-transportation purpose, the City/County shall not be the direct beneficiary of any of the revenues in the NVTA Fund in the year immediately succeeding the year in which the 30% Funds were appropriated or allocated to a non-transportation purpose; and

WHEREAS, NVTA has a continuing responsibility to ensure that the 30% Funds are properly spent, and that each City/County adheres to the statutory and other legal obligations it has with regard to the Fund; and

WHEREAS, NVTA has requested, and the City/County has agreed, to enter into this Agreement for the purpose of ensuring the requirements applicable to NVTA and the City/County regarding the NVTA Fund are met;

NOW, THEREFORE, in consideration of the foregoing, which is hereby incorporated within this Agreement, and the mutual undertakings of the parties, NVTA and the County of Fairfax agree as follows:

1. NVTA Management of NVTA Fund. In accordance with § 15.2-4838.01, NVTA shall receive from the Commonwealth's Comptroller regular distributions of the sums deposited in the special nonreverting fund created in the state treasury known as the Northern Virginia Transportation Authority Fund. NVTA shall accept each such distribution of funds and deposit them as it deems appropriate, and shall manage such deposits, including investments thereof which shall be made pursuant to NVTA's investment policy and procedures as such may be revised from time to time, all in accordance with generally accepted accounting principles and all applicable legal requirements. NVTA shall provide to its governing board periodic reports of deposits on hand and all disbursements and expenditures thereof, and shall obtain an annual audit of its financial records. NVTA shall use the funds solely for transportation purposes benefiting those counties and cities that are embraced by NVTA in accordance with § 15.2-4838.1.

2. Distribution of 30% Funds by NVTA to County of Fairfax. Beginning no later than the month following final approval and execution of this Agreement by the parties, NVTA shall begin to distribute to the County of Fairfax the 30% Funds to which the County of Fairfax is entitled pursuant to § 15.2-4838.1, with interest at the rate earned by NVTA, and, subject to NVTA's continued receipt of funds from the Comptroller, shall continue to distribute to the County of Fairfax its 30% funds on a monthly basis, provided the County of Fairfax remains in compliance with the terms of this Memorandum of Agreement and all applicable provisions of law.

3. Payment of County of Fairfax's Share of NVTA's Administrative Expenses. Pursuant to § 15.2-4835, the County of Fairfax is responsible for paying its share of NVTA's total administrative expenses as set forth in NVTA's approved budget prior to the start of NVTA's fiscal year which begins July 1<sup>st</sup> each year. NVTA shall invoice the County of Fairfax for its proportionate share of NVTA's administrative expenses by June 1<sup>st</sup> of the preceding fiscal year, and the County of Fairfax shall, at its election, have the option each year of paying in either of the following methods: (1) by having NVTA reduce the first distribution of 30% Funds made to the County of Fairfax after July 1<sup>st</sup> by the amount of the County of Fairfax's share of NVTA's administrative expenses, or (2) by paying NVTA directly for its share of NVTA's administrative expenses not later than July 15<sup>th</sup>. The failure by the County of Fairfax to elect one of the foregoing methods of payment shall result in NVTA reducing the first distribution of 30% Funds made to the County of Fairfax after July 1<sup>st</sup> by the amount of the County of Fairfax's share of NVTA's administrative expenses. In the event the County of Fairfax fails to pay its share of NVTA's administrative expenses by July 15<sup>th</sup>, NVTA shall make no distribution to the County of Fairfax of the County of Fairfax's 30% Funds or of any other monies from the NVTA Fund.

4. Establishment of Local Fund by County of Fairfax.

A. The County of Fairfax shall deposit in a Local Fund all revenues distributed to it by NVTA pursuant to Paragraph 2 above, and all revenues collected by the County of Fairfax from the tax imposed pursuant to § 58.1-3221.3. If the County of Fairfax has not imposed the aforesaid tax, or has not imposed it at the maximum permissible rate, then the County of Fairfax shall deposit into its Local Fund an amount, from sources other than moneys received from NVTA, that is equivalent to the difference between the revenue the County of Fairfax received from the aforesaid tax and the revenue the County of Fairfax would have received if it imposed the aforesaid tax at the maximum permissible rate.

B. By August 1<sup>st</sup> of each year, the chief administrative officer of the County of Fairfax shall certify to NVTA, in a form prescribed by NVTA, that it has satisfied each of the requirements set forth in subsection A.

C. If the County of Fairfax has not deposited into its Local Fund an amount equivalent to the revenue the County of Fairfax would have received if it imposed the maximum permissible rate under § 58.1-3221.3, then NVTA shall reduce the 30% Funds distributed to the County of Fairfax by the difference between the amount the County of Fairfax would receive if it was imposing the aforesaid tax at the maximum rate and the amount of revenue deposited into its Local Fund. NVTA shall retain the amount by which the distribution of County of Fairfax's 30% Funds have been reduced for use by NVTA in accordance with § 15.2-4838.1C.1.

5. Maintenance of Transportation Funding by County of Fairfax.

A. The County of Fairfax shall expend or disburse for transportation purposes each year an amount that is at least equal to the average annual amount expended or disbursed for transportation purposes by the County of Fairfax, excluding bond proceeds or debt service payments and federal or state grants, between July 1, 2010, and June 30, 2013. In the event that the County of Fairfax does not expend or disburse the aforesaid amount in any year, the County of Fairfax shall not be the direct beneficiary of any of the NVTA Fund in the immediately succeeding year. In such event, NVTA shall make no distribution to the County of Fairfax of the County of Fairfax's 30% Funds, or any other

monies from the NVTAFund to the County of Fairfax, and such funds shall be used in accordance § 15.2-4838.1C.1.

B. By August 1<sup>st</sup> of each year, the chief administrative officer of the County of Fairfax shall certify to NVTAFund, in a form prescribed by NVTAFund, that it has satisfied the requirements set forth in subsection A for the previous fiscal year.

6. Use of 30% Funds by County of Fairfax.

A. The County of Fairfax shall use the 30% Funds distributed to it by NVTAFund for the following purposes as the County of Fairfax solely determines: (1) for additional urban or secondary road construction; (2) for other capital improvements that reduce congestion; (3) for other transportation capital improvements which have been approved by the most recent long range transportation plan adopted by NVTAFund; or (4) for public transportation purposes. The County of Fairfax shall not use any of the revenue distributed to it by NVTAFund to repay debt issued before July 1, 2013.

B. In the event the County of Fairfax appropriates or allocates any of the 30% Funds to a purpose other than those specified above, unless demonstrated by the County of Fairfax to the satisfaction of NVTAFund to be attributable to clerical or other unintentional, inadvertent error, then NVTAFund shall cease any further distributions of the 30% Funds to the County of Fairfax in the fiscal year in which the misappropriation or misallocation occurs, and the County of Fairfax shall not be the direct beneficiary of any of the NVTAFund in the fiscal year immediately succeeding the year in which any of the 30% Funds were misappropriated or misallocated and such funds shall be used in accordance § 15.2-4838.1C.1. Further, in that succeeding fiscal year, NVTAFund shall make no distribution to the County of Fairfax of any other monies from the NVTAFund to the County of Fairfax.

7. Distribution to Towns of Proportionate Share.

A. To the extent that one or more towns with a population greater than 3,500 are located within the County, NVTAFund and the County agree to work cooperatively with the towns for the purpose of implementing the provisions of § 15.2-4838.1 and to ensure that the towns receive their respective share of the 30% Funds distributed to the County by NVTAFund. Such share shall be determined based on the population of school age children in the town for the purposes of calculating the portion of the 30% Funds attributable to sales tax, and the location of the taxpaying business for purposes of calculating the portion of the 30% Funds attributable to the transient occupancy tax and of the transferred property for purposes of calculating the portion of the 30% Funds attributable to the grantors tax. The County acknowledges its responsibility to ensure that the towns use the 30% Funds in compliance with this Memorandum of Agreement and the law, and that a town's failure to do so could be treated under law as a failure of the County subject to all the consequences of such failure. The County shall also be responsible for ensuring the town pays its proportionate share of NVTAFund's administrative expenses as provided for in Paragraph 3.

B. Prior to the time at which the County distributes any of the town's share of the 30% Funds to a town, the County shall enter into an agreement with each of the towns located within the County, in a form approved by NVTAFund, detailing how the 30% Funds may be used by the town including, but not limited to, the selection of projects by the towns for funding by the County, the circumstances and terms under which the County may distribute any of the 30% Funds to a town, specifically providing that such distributions to a town shall be on a reimbursement basis only, and the town's obligation to refund to the County with interest any funds used contrary to the agreement

or the law. The agreement with the towns shall also provide for (1) NVTA providing its technical and legal resources or act as a non-binding mediator to assist and/or facilitate in the resolution of any questions or disputes upon joint written request by a county and a town; and (2) NVTA instructing a county that it shall make no pro rata distribution of 30% Funds or any other NVTA funds to a town that has appropriated or allocated any of its portion of a county's 30% Funds or any other NVTA funds for unauthorized purposes.

8. County of Fairfax's Annual Report to NVTA. Annually, the County of Fairfax shall provide to NVTA an unaudited financial report, with supporting documentation, showing that the 30% Funds were used as required by Paragraph 6. The report shall be in a form, and provide the information and documentation, mutually agreed upon by NVTA and the Localities. The County of Fairfax shall provide the report to NVTA on or before August 1<sup>st</sup> of each year for the previous fiscal year. In the event the County of Fairfax's audited financials show a material variance, defined as five percent (5%) or more, from the initial report, the County of Fairfax shall provide NVTA a further report, with supporting documentation satisfactory to NVTA, detailing the County of Fairfax's use of the 30% Funds. NVTA may request from the County of Fairfax additional information and documentation related to the report and the documentation provided with the report. In the event the County of Fairfax fails to provide the report as required above, NVTA shall withhold further distributions of the 30% Funds until the report is provided in accordance with this Paragraph. Once the County of Fairfax provides an acceptable report, NVTA shall distribute all withheld funds, inclusive of any interest earned by NVTA on such funds, to the County of Fairfax.

9. Failure to Comply with Memorandum of Agreement.

A. In the event NVTA fails to perform any of its obligations under this Memorandum of Agreement, the County of Fairfax shall provide written notice to NVTA's Executive Director of such failure. NVTA shall dispute the failure or cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from the County of Fairfax. In the event NVTA disputes the failure or fails to cure or commence to cure the event of noncompliance and diligently pursue completion thereof, the County of Fairfax may pursue all remedies available at law to obtain compliance by NVTA.

B. In the event the County of Fairfax fails to perform any of its obligations under this Memorandum of Agreement, NVTA's Executive Director shall notify NVTA's Finance Committee which shall review the matter and prepare recommendations for NVTA. Thereafter, NVTA shall determine whether to declare the County of Fairfax in default for such noncompliance in which case NVTA shall provide written notice to the County of Fairfax of such failure. The County of Fairfax shall dispute the noncompliance determination or cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from NVTA. In the event the County of Fairfax fails to dispute the noncompliance or to cure or commence to cure the event of noncompliance and diligently pursue completion thereof, NVTA shall withhold further distributions of the 30% Funds to the County of Fairfax until the dispute is resolved and County of Fairfax is in full compliance with its obligations under this Agreement. In addition, NVTA may pursue all available remedies at law to obtain compliance by the County of Fairfax.

C. A cure by the County of Fairfax of its failure to comply with the terms of this Agreement shall not change the consequences of mis-use of any of the 30% Funds set forth in Paragraph 6.B of this Agreement.

10. County of Fairfax's Obligation to Reimburse Misused Funds to NVTA.

A. In the event the County of Fairfax misuses or misallocates any of the 30% Funds in the manner permitted by law, in addition to the consequences set forth in Paragraph 6B, it shall reimburse NVTA the full amount of such misused or misallocated funds inclusive of any interest earned by the County of Fairfax on such funds. Until the full amount is reimbursed, NVTA shall withhold further distributions of the 30% Funds to the County of Fairfax.

B. The County of Fairfax's reimbursement of misused or misallocated funds shall not change the consequences of such misuse or misallocation set forth in Paragraph 6.B of this Agreement.

11. Maintenance of Records by County of Fairfax and NVTA. The County of Fairfax and NVTA shall maintain all records relating to the 30% Funds and the use thereof for a minimum of five (5) years from the date the record was created. In addition to the foregoing, the County of Fairfax and NVTA shall comply with the Public Records Act and all applicable state and federal laws with regard to the retention of records.

12. Notice. Any notice required or permitted to be provided under this Agreement shall be in writing and delivered in person, or sent by U.S. Mail to the below named representatives at the below addresses:

NVTA:

Executive Director  
Northern Virginia Transportation Authority  
3060 Williams Drive, Suite 510  
Fairfax, VA 22031

County of Fairfax:

County Executive  
Fairfax County  
12000 Government Center Parkway  
Fairfax, VA 22035

NVTA and the County of Fairfax may change the representative designated to receive notices for purposes of this Agreement by providing written notice of such change to the other party.

13. Entire Agreement. This Agreement constitutes the entire agreement between NVTA and the County of Fairfax and supersedes any prior understanding or agreement between them with regard to NVTA's distribution of the 30% Funds to the County of Fairfax.

14. No Third Party Beneficiaries. The provisions of this Agreement shall inure to the benefit of, and bind NVTA and the County of Fairfax but shall not inure to the benefit of any other party or other persons.

15. Severability. If any provision of this Agreement or the application of the provision to any circumstance is invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application of the provision will not be affected and will be enforceable to the fullest extent permitted by law.

16. Amendments. Any amendment to this Agreement must be made in writing and signed by NVTA and the County of Fairfax.

IN WITNESS WHEREFORE, the parties hereto, by their duly authorized representatives, have executed this Memorandum of Agreement as of the date and year aforesaid.

Northern Virginia Transportation Authority

Attest:

\_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Chairman

County of Fairfax

Attest:

\_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**MEMORANDUM OF AGREEMENT  
BETWEEN THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY  
("NVTA"), COUNTY OF FAIRFAX AND THE TOWN OF HERNDON  
REGARDING DISTRIBUTION AND USE OF 30% FUNDS UNDER CHAPTER  
766 OF THE 2013 VIRGINIA ACTS OF ASSEMBLY**

THIS MEMORANDUM OF AGREEMENT, effective this \_\_\_\_ day of \_\_\_\_\_, 2014 (the "Agreement"), by and between NVTA, County of Fairfax, a member of ("NVTA") and the Town of Herndon, a Qualifying Town under the NVTA Act and under Enactment Clause 8 of Chapter 766 of the 2013 Virginia Acts of Assembly ("Chapter 766").

**WITNESSETH:**

WHEREAS, NVTA was established by the Northern Virginia Transportation Authority Act, Va. Code Ann. §§ 15.2- 4829 *et seq.*, the local jurisdiction members of which include the counties of Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park (collectively and individually "City/County"); and

WHEREAS, in accordance with Va. Code Ann. § 15.2-4838.01, a special non-reverting fund for Planning District 8, known as the Northern Virginia Transportation Authority Fund was created in the Virginia state treasury, comprised of taxes and fees levied in accordance with the aforesaid Code section and any other funds that may be received for the credit of the aforesaid fund (the "Fund"), the proceeds of which fund are distributed to NVTA for use in accordance with Va. Code Ann. § 15.2-4838.1; and

WHEREAS, in accordance with, and subject to the requirements of, § 15.2-4838.1, thirty percent (30%) of the revenues received by NVTA shall be distributed on a pro rata basis to each City/County with each City/County's share being the total of the revenues received by NVTA that are generated by or attributable to such City/County divided by the total of such revenue received by NVTA (the "30% Funds"); and

WHEREAS, among the other requirements of Va. Code Ann. § 15.2-4838.1, each City/County shall deposit all Fund revenues received from NVTA in a separate, special fund ("The Local Fund") to be used for additional urban or secondary road construction, for other capital improvements that reduce congestion, for other transportation capital improvements in NVTA's most recent long range transportation plan, or for public transportation purposes; and

WHEREAS, § 15.2-4838.1 further requires each City/County to provide annually to NVTA sufficient documentation as required by NVTA showing that the 30% Funds received by the City/County were used as required by § 15.2-4838.1B.1; and

WHEREAS, § 15.2-4835 provides that the administrative expenses of NVTA, as set forth in NVTA's annual budget, shall be allocated among the component counties and cities based on relative population which-administrative expenses may be paid from the 30% Funds in accordance with § 15.2-4838.1; and

WHEREAS, pursuant to Chapter 766, the legislation establishing the Fund, imposes, among other requirements, the following requirements on each City/County: (1) that each City/County deposit into its, Local Fund all revenues from the commercial and industrial tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed

under that section or, in lieu of that amount, an amount from sources other than moneys received from NVTA equivalent to the amount that would have been received had the maximum tax rate been imposed; and (2) that each City/County expend or disburse for transportation purposes each year an amount that is at least equal to the average amount expended or disbursed for transportation purposes by the City/County between July 1, 2010 and June 30, 2013, excluding bond proceeds or debt service payments and federal or state grants; and

WHEREAS, § 15.2-4838.1B.2 provides that if any City/County fails to deposit into its Local Fund the amount equivalent to the revenue that would be generated by imposition of the maximum tax rate allowed under § 58.1-3221.3, then NVTA shall reduce the amount of the 30% Funds disbursed to the City/County by the difference between the amount that was deposited in the City/County's Local Fund and the amount that should have been deposited;

WHEREAS, Enactment Clause 8 of Chapter 766 provides that NVTA and each City/County embraced by it shall work cooperatively with towns with a population greater than 3,500 located within NVTA's member Counties ("Qualifying Towns") for purposes of implementing Chapter 766 and so as to ensure that all such "Qualifying Towns" receive their respective share(s) of the revenues pursuant to subdivision B 1 of § 15.2-4838.1.

WHEREAS Chapter 766 further provides that in the event any County appropriates or allocates any of the 30% Funds to a non-transportation purpose, that County and its Qualifying Towns shall not be the direct beneficiary or beneficiaries of any of the revenues from the NVTA Fund in the year immediately succeeding the year in which the 30% Funds were appropriated or allocated to a non-transportation purpose; and

WHEREAS Chapter 766 further provides that, in the event that any Qualifying Town appropriates or allocates any of the 30% Funds to a non-transportation purpose, not only will such Qualifying Town not be a direct beneficiary of any of the revenues in the fiscal year immediately succeeding the fiscal year in which the 30% revenues were appropriated or allocated to a non-transportation purpose, but its constituent County and all other Qualifying Towns within said County could also be judicially declared not to be direct beneficiaries of such revenues from NVTA in the next succeeding fiscal year.

WHEREAS, NVTA has a continuing responsibility to ensure that the 30% Funds are properly spent, and that each NVTA member City/County and each Qualifying Town adhere to the statutory and other legal obligations that it has with regard to the Fund;

WHEREAS, NVTA has requested that each member City/County enter into a separate Memorandum of Agreement in order to implement the provisions of Chapter 766 with regard to *inter alia* the distribution and use of funds in the manner prescribed by Va. Code Ann. §15.2-4838.1 and each member City/County has agreed;

WHEREAS NVTA and each member City/County has agreed to be bound by all terms and conditions in a separate Memorandum of Agreement ("NVTA/City-County MOA"), for purposes of ensuring that NVTA, each member City/County, and each Qualifying Town are in full compliance with Chapter 766 and all applicable requirements of the NVTA Act with regard to the receipt, maintenance, management, oversight, distribution, and use of all funds from the NVTA Fund;

NOW, THEREFORE, in consideration of the foregoing which is hereby incorporated within this "Agreement" and the mutual undertakings of the parties, the County of Fairfax and the Qualifying Town of Herndon agree as follows:

1. NVTA's Management of NVTA Funds. NVTA will manage the NVTA Fund and all funds therein and shall receive from the Commonwealth's Comptroller regular distributions of the sums deposited in the special non-reverting fund created in the state treasury known as the Northern Virginia Transportation Authority Fund. NVTA shall accept each such distribution of funds and deposit them as it deems appropriate, and shall manage such deposits, including investments thereof which shall be made pursuant to NVTA's investment policy and procedures as such may be revised from time to time, all in accordance with generally accepted accounting principles and all applicable legal requirements. NVTA shall provide to its governing board periodic reports of deposits on hand and all disbursements and expenditures thereof, and shall obtain an annual audit of its financial records. NVTA, each component City/County, and each Qualifying Town shall use the funds solely for transportation purposes benefiting those Counties, Cities and Qualifying Towns that are embraced by NVTA in accordance with § 15.2-4838.1.

2. NVTA's Distributions of 30% Funds to Each NVTA Member City/County, including Qualifying Town Shares. NVTA will make regular distributions of the 30% Funds to each member City/County in accordance with applicable law and in accordance with the processes established by the "NVTA/City-County MOA" incorporated by reference as Attachment 1.

A. Beginning no later than the month following final approval and execution of this Agreement by the parties, NVTA shall begin to distribute to County of Fairfax the 30% Funds to which County of Fairfax is entitled pursuant to § 15.2-4838.1, with interest at the rate earned by NVTA; and, subject to NVTA's continued receipt of funds from the Comptroller, shall continue to distribute to County of Fairfax its respective 30% funds on a monthly basis; provided that County of Fairfax remains in compliance with the terms of NVTA/City-County MOA and all applicable provisions of law.

B. Upon receipt of its 30% funds as set forth in Paragraph 2A above, County of Fairfax will calculate and transfer to the separate account on its financial records that has been established in the name of Town of Herndon in accordance with Paragraphs 4 and 7A of this Agreement, all amounts attributable to Town of Herndon using the bases prescribed by Chapter 766 and Paragraph 7A of this Agreement in the manner set forth in Paragraph 4 of this Agreement.

C. County of Fairfax will advise Town of Herndon on a quarterly basis or at such other intervals that are mutually agreeable to County of Fairfax and Town of Herndon as to the balance in Town of Herndon's special account.

D. For Town of Herndon's planning and budgeting purposes, prior to the beginning of each fiscal year, County of Fairfax will provide to Town of Herndon a revenue report of receipts for the previous twelve (12) months actual funds transfers from County of Fairfax to Town of Herndon.

3. County of Fairfax and Town of Herndon's Obligation to Pay Shares of NVTA's Administrative Expenses. Pursuant to §15.2-4835, County of Fairfax is responsible for paying its share of NVTA's total administrative expenses as set forth in NVTA's approved budget prior to the start of NVTA's fiscal year which begins July 1<sup>st</sup> of each year. NVTA shall invoice County of Fairfax for its proportionate share of NVTA's administrative expenses by June 1<sup>st</sup> of the preceding fiscal year, and County of Fairfax shall, at its election, have the option of paying in either of the following methods: (1) by having NVTA reduce the final distribution of County of Fairfax's 30% funds made to County of Fairfax after July 1<sup>st</sup> by the amount of County of Fairfax's share of the administrative expenses; or 2) by paying NVTA directly for its share of the

administrative expenses not later than July 15th. County of Fairfax's failure to elect one of the foregoing methods of payment on or before July 1st of the preceding year shall result in NVTA reducing the first distribution of 30% Funds made to County of Fairfax after July 15<sup>th</sup> by the amount of County of Fairfax's share of NVTA's administrative expenses. In the event that County of Fairfax fails to pay its share of NVTA's administrative expenses by July 15th, NVTA shall withhold further distribution of all County of Fairfax's Funds from the NVTA Fund. NVTA will reduce County of Fairfax's 30% funds by the amount of County of Fairfax's delinquent share of NVTA's administrative expenses, remit the balance of County of Fairfax's 30% funds to County of Fairfax, and restore distribution of all County of Fairfax's other NVTA funding.

A. County of Fairfax's payment of its full amount of NVTA's administrative expenses must include the portion of such administrative expenses that are attributable to Town of Herndon, and County of Fairfax will seek reimbursement from Town of Herndon regarding Town of Herndon's *pro rata* share of all NVTA's administrative fees that were pre-paid by County of Fairfax. Town of Herndon's share of NVTA's annual administrative expenses shall be calculated by the relative population method as prescribed by Va. Code Ann. § 15.2-4835. Once County of Fairfax pays the full amount of its NVTA administrative expenses in the time and manner required by the NVTA/City-County MOA, County of Fairfax will thereafter send an invoice to Town of Herndon seeking reimbursement for Town of Herndon's portions of NVTA's administrative expenses pre-paid by County of Fairfax. Town of Herndon will pay said invoice within thirty (30) days upon receipt. If mutually agreed upon by County of Fairfax and Town of Herndon, Town of Herndon's reimbursement payments may be made via electronic transfer of funds or as a direct deduction from Town of Herndon's separate account with County of Fairfax; and Town of Herndon shall have the same options regarding method of payment to County of Fairfax as identified in Paragraph 3 above. Failure by Town of Herndon to pay said invoice will result in County of Fairfax withholding Town of Herndon's 30% Funds until payment is made.

4. Establishment and Maintenance of Separate Accounts by County of Fairfax and Town of Herndon.

A. County of Fairfax is required to deposit in its Local Fund all revenues distributed to it by NVTA pursuant to Paragraph 2 above and all revenues collected by County of Fairfax from the tax imposed pursuant to § 58.1-3221.3. If County of Fairfax has not imposed the aforesaid tax, or has not imposed it at the maximum permissible rate, then County of Fairfax is required to deposit into its Local Fund an amount, from sources other than moneys received from NVTA, that is equivalent to the difference between the revenue County of Fairfax received from the aforesaid tax and the revenue County of Fairfax would have received if it had imposed the aforesaid tax at the maximum permissible rate.

B. County of Fairfax agrees to establish, segregate, and maintain on its financial records a separate account in the name of Town of Herndon for the purpose of calculating and distributing those revenues that are generated by and attributable to Town of Herndon under Chapter 766. Interest on this account shall accrue at the same rate accrued on all other County of Fairfax's special transportation accounts.

C. Town of Herndon agrees to establish, segregate, and maintain on its financial records a separate account for all NVTA funds that it receives from County of Fairfax.

D. Because County of Fairfax is required to certify to NVTA by August 1<sup>st</sup> of each year that County of Fairfax has satisfied each of the requirements of Paragraphs 4A

and 4B above, on or before July 20th of each year, the chief administrative officer of Town of Herndon shall certify to County of Fairfax, in a format prescribed by and acceptable to County of Fairfax and NVTA, that Town of Herndon has satisfied each of the requirements set forth in this Paragraph that may be applicable to Town of Herndon.

E. If County of Fairfax has not deposited into its Local Fund an amount equivalent to the revenue County of Fairfax would have received if it imposed the tax at the maximum permissible rate under § 58.1-3221.3, then, in any given year, NVTA shall reduce the 30% Funds distributed to County of Fairfax by the difference between the amount the County of Fairfax would receive if it was imposing the aforesaid tax at the maximum rate and the amount of revenue deposited into its Local Fund; and NVTA shall retain the amount by which the distribution of County of Fairfax's 30% Funds will be reduced for use by NVTA in accordance with § 15.2-4838.1C.1. In such situation, Town of Herndon's percentage of County of Fairfax's share of its 30% NVTA revenues shall also be reduced *pro rata*.

5. Maintenance of Transportation Funding by County of Fairfax.

A. County of Fairfax is required to expend or disburse for transportation purposes each year an amount that is at least equal to the average annual amount expended or disbursed for transportation purposes by the County of Fairfax, excluding bond proceeds or debt service payments and federal or state grants, between July 1, 2010, and June 30, 2013. In the event that County of Fairfax does not expend or disburse the aforesaid amount in any year, County of Fairfax shall not be the direct beneficiary of any NVTA Funds in the immediately succeeding year. In such event, NVTA shall make no distribution to County of Fairfax of County of Fairfax's 30% Funds, or any other monies from the NVTA Fund to County of Fairfax or to any of County of Fairfax's Qualifying Towns, including Town of Herndon; and, in such case, all such funds shall be used in accordance with § 15.2-4838.1C.1.

B. Although County of Fairfax and Town of Herndon understand and acknowledge that Town of Herndon's receipt of annual funding under Chapter 766 is expressly subject to and contingent upon County of Fairfax's annual maintenance of transportation funding efforts and requirements as set forth in Paragraph 5A above, Town of Herndon shall have no independent requirement under Chapter 766 to maintain its own levels of transportation funding from year to year in order to receive its respective share of the 30% funds.

6. Use of 30% Funds by Town of Herndon.

A. Town of Herndon shall use its portion of County of Fairfax's 30% Funds as distributed to it by County of Fairfax solely for the following purposes in a manner determined by Town of Herndon: (1) for additional urban or secondary road construction; (2) for other capital improvements that reduce congestion; (3) for other transportation capital improvements which have been approved by the most recent long range transportation plan adopted by NVTA; or (4) for public transportation purposes. Town of Herndon shall not use any of the revenues distributed to it by NVTA to repay debt issued before July 1, 2013.

B. In the event that Town of Herndon appropriates or allocates any of its portion of County of Fairfax's 30% Funds to a purpose other than those specified in paragraph 6A above; and unless Town of Herndon demonstrates to the satisfaction of County of Fairfax and NVTA that such acts were solely a result of and attributable to clerical or other unintentional, inadvertent error, then NVTA and County of Fairfax shall cease any further distributions of the 30% Funds to Town of Herndon in the fiscal year in which the

misappropriation or misallocation occurs Town of Herndon shall not be the direct beneficiary of any of the funds from the NVTA Fund in the fiscal year immediately succeeding the year in which any of its portion of County of Fairfax's 30% Funds were misappropriated or misallocated, and such funds shall be used in accordance with §15.2-4838.1C.1. In the next succeeding fiscal year, NVTA will instruct County of Fairfax that there shall be no *pro rata* distribution of County of Fairfax's 30% funds to Town of Herndon; and, if determined by a court of competent jurisdiction, to County of Fairfax or any other Qualifying Town located in County of Fairfax because Town of Herndon's default could be deemed a default by County of Fairfax and by all other Qualifying Towns located in County of Fairfax.

7. County of Fairfax's Distributions of Town of Herndon's Proportionate Share of 30% Funds to Town of Herndon.

A. Pursuant to Chapter 766, County of Fairfax and Town of Herndon will work cooperatively with NVTA for purposes of implementing the provisions of § 15.2-4838.1 and to ensure that all Qualifying Towns in County of Fairfax, including Town of Herndon, receive their respective share of the 30% Funds distributed by NVTA to County of Fairfax. Such share shall be determined on the proportion of population of school age children in Town of Herndon as compared to County of Fairfax for the purposes of calculating the portion of the 30% Funds attributable to sales tax, and the location of the tax receipts derived from the taxpaying business for purposes of calculating the portion of the 30% Funds attributable to the transient occupancy tax, and the location of the transferred property for purposes of calculating the portion of the 30% Funds attributable to the grantors tax.

B. NVTA and County of Fairfax have an ongoing responsibility to ensure that all Qualifying Towns in County of Fairfax use the 30% Funds in compliance with this Agreement, County of Fairfax's NVTA/City-County MOA, and in accordance with law. Town of Herndon acknowledges that its failure to comply with the terms and conditions of this Agreement shall constitute a default by Town of Herndon and could constitute a default by County of Fairfax and all other Qualifying Towns located in County of Fairfax.

C. All distributions of NVTA funds by County of Fairfax to Town of Herndon under this Agreement will be project based and effected by the reimbursement method only. All requests for reimbursements by Town of Herndon to County of Fairfax will be submitted in a form and manner determined by and acceptable to NVTA and County of Fairfax. Upon proper submission by Town of Herndon to County of Fairfax; and after review and approval by County of Fairfax, County of Fairfax shall transmit payment to Town of Herndon within thirty (30) days from receipt and may be made via electronic transfer of funds, if the two parties so agree. County of Fairfax will make every effort to effect reimbursement to Town of Herndon within twenty (20) days or sooner, as may be practicable.

D. Without exception, all projects that Town of Herndon selects and submits for funding reimbursement to County of Fairfax must comply with all requirements and conditions for transportation funding as prescribed under Chapter 766. Further, the County of Fairfax determination of Town of Herndon projects is solely determined through Chapter 766 statutory and technical legal review and criteria. Upon joint request of County of Fairfax and Town of Herndon, NVTA will provide its technical resources or act as a non-binding mediator as between County of Fairfax and Town of Herndon in order to assist and/or facilitate in the resolution of any question or

dispute as to whether a specific Town of Herndon transportation project may be eligible for funding under this Agreement or under Chapter 766. All such requests for assistance by NVTA should be submitted, in writing, to NVTA, c/o NVTA's Executive Director. Upon receipt of any such request, NVTA's Executive Director shall advise NVTA regarding the type of assistance requested and will thereafter make NVTA's technical and legal staff available to provide the type of assistance requested by County of Fairfax and Town of Herndon. Nothing herein shall affect any party's rights to seek or pursue any and all remedies at law that may be available to that party to resolve any disputes.

E. If Town of Herndon fails to comply with the project selection requirements as prescribed by Chapter 766 or fails to comply with the terms and conditions of this Agreement, it will be obligated to refund with interest to County of Fairfax all funds used contrary to this Agreement or in derogation of the law.

8. County of Fairfax's Obligation to File Annual Report to NVTA and Town of Herndon's Obligation to File Annual Report to County of Fairfax. County of Fairfax must annually provide to NVTA an unaudited financial report, with supporting documentation, showing that the 30% Funds were used as required by Paragraph 6; which Annual Report must include sufficient documentation, showing Town of Herndon's appropriate use of its portion of County of Fairfax's 30% funds during the previous fiscal year. Because County of Fairfax is required to provide its Report to NVTA on or before August 1<sup>st</sup> of each year, Town of Herndon shall provide to County of Fairfax on or before July 20<sup>th</sup> of each year an unaudited financial report, using the "cash basis method of accounting" with supporting documentation in a form required by NVTA and County of Fairfax showing that all funds distributed by County of Fairfax to Town of Herndon during the previous fiscal year were used as required by Paragraph 6 and in full compliance with the law. In the event the Town of Herndon's audited financials show a material variance, defined as five percent (5%) or more after adjusted for the difference between cash basis accounting and accrual basis accounting, from the initial report, Town of Herndon shall provide County of Fairfax with supplemental documentation satisfactory to County of Fairfax, detailing Town of Herndon's use of the 30% Funds.

A. In the event the Town of Herndon fails to provide the report or information as required above, County of Fairfax shall withhold further distributions of Town of Herndon's 30% Funds until the report or supplemental information is provided in accordance with this Paragraph. Once Town of Herndon provides an acceptable report with appropriate documentation, all withheld funds, inclusive of any interest accrued on such withheld funds, shall be made available for distribution to Town of Herndon as soon as practicable.

9. Failure to Comply with Memorandum of Agreement.

A. In the event County of Fairfax fails to perform any of its obligations under this Agreement, Town of Herndon shall provide written notice to County of Fairfax's County Executive/Manager/Administrator of such failure or non-compliance. County of Fairfax shall cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from Town of Herndon. Upon its receipt and review of the notice of default from Town of Herndon, County of Fairfax may dispute any matters set forth in such notice; and in such circumstances shall advise Town of Herndon's Town Manager that any such matter is in dispute. In the event County of Fairfax fails to cure or commence to cure the event of noncompliance and diligently pursue completion thereof, if County of Fairfax agrees, Town of Herndon may request the assistance of NVTA as provided in Paragraph 7D above. Nothing herein shall, however, prohibit either County

of Fairfax or Town of Herndon from pursuing all legal remedies that may be available to it at law.

B. In the event Town of Herndon fails to perform any of its obligations under this Agreement, County of Fairfax's Executive shall notify the Town Manager of Town of Herndon and notify NVTA's Executive Director that Town of Herndon is in default. If agreed to by County of Fairfax, Town of Herndon may request the assistance of NVTA as provided in Paragraph 7D above. Nothing herein shall, however, prohibit either County of Fairfax or Town of Herndon from pursuing all legal remedies that may be available to it at law.

C. A cure by Town of Herndon's of its failure to comply with the terms of this Agreement shall not alter the consequences of and penalties associated with the misuse of any 30% Funds by Town of Herndon as set forth in Paragraph 6B of this Agreement.

10. Town of Herndon's Obligation to Reimburse Misused Funds to County of Fairfax.

A. In the event Town of Herndon misuses or misallocates any of the 30% Funds, in addition to the consequences set forth in Paragraph 6B, it shall reimburse County of Fairfax the full amount of such misused funds plus accrued interest. Until the full amount is reimbursed to County of Fairfax, County of Fairfax shall withhold further distributions of the 30% Funds to Town of Herndon.

B. Town of Herndon's reimbursement of misused funds shall not change the consequences of and penalties associated with such misuse set forth in Paragraph 6B of this Agreement.

11. Maintenance of Records by Town of Herndon and County of Fairfax. Town of Herndon and County of Fairfax shall maintain all records relating to the 30% Funds and the use thereof for a minimum of five (5) years from the date the record was created. In addition to the foregoing, Town of Herndon and County of Fairfax shall comply with the Virginia Public Records Act and all applicable state and federal laws with regard to the retention of records.

12. Notice. Any notice required or permitted to be provided under this Agreement shall be in writing and delivered in person, or sent by U.S. Mail to the below named representatives at the below addresses:

Town of Herndon:  
Town Manager  
Town of Herndon  
P.O. Box 427  
Herndon, Virginia 20172-0427

County of Fairfax:  
County Executive  
Fairfax County  
12000 Government Center Parkway  
Fairfax, VA 22035

Town of Herndon and County of Fairfax may change their respective representative designated to receive notices for purposes of this Agreement by providing written notice of such change to the other party.

13. Entire Agreement. This Agreement constitutes the entire agreement between Town of Herndon and County of Fairfax and supersedes any prior understanding or agreement between them with regard to any of County of Fairfax's distributions to Town of Herndon of its *pro rata* portion of County of Fairfax's 30% Funds; except that the parties understand and acknowledge that the NVTAs/City-County MOA as between NVTAs and County of Fairfax referenced above has been expressly incorporated.

14. No Third Party Beneficiaries. The provisions of this Agreement shall inure to the benefit of, and bind Town of Herndon and County of Fairfax, but shall not inure to the benefit of any other party or other persons; except as to NVTAs, as expressly provided in this Agreement.

15. Severability. If any provision of this Agreement or the application of the provision to any circumstance is invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application of the provision will not be affected and will be enforceable to the fullest extent permitted by law.

16. Amendments. Any amendment to this Agreement must be made in writing and signed by Town of Herndon and County of Fairfax.

IN WITNESS WHEREFORE, the parties hereto, by their duly authorized representatives, have executed this Agreement as of the date and year aforesaid.

County of Fairfax

Attest:

\_\_\_\_\_

By: \_\_\_\_\_

Clerk

Title: \_\_\_\_\_

Town of Herndon

Attest:

\_\_\_\_\_

By: \_\_\_\_\_

Clerk

Title: \_\_\_\_\_

Northern Virginia Transportation Authority

By: \_\_\_\_\_

Title: \_\_\_\_\_

**MEMORANDUM OF AGREEMENT  
BETWEEN THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY  
("NVTA"), COUNTY OF FAIRFAX AND THE TOWN OF VIENNA  
REGARDING DISTRIBUTION AND USE OF 30% FUNDS UNDER CHAPTER  
766 OF THE 2013 VIRGINIA ACTS OF ASSEMBLY**

THIS MEMORANDUM OF AGREEMENT, effective this \_\_\_\_ day of \_\_\_\_\_, 2014 (the "Agreement"), by and between NVTA, County of Fairfax, a member of ("NVTA") and the Town of Vienna, a Qualifying Town under the NVTA Act and under Enactment Clause 8 of Chapter 766 of the 2013 Virginia Acts of Assembly ("Chapter 766").

**WITNESSETH:**

WHEREAS, NVTA was established by the Northern Virginia Transportation Authority Act, Va. Code Ann. §§ 15.2- 4829 *et seq.*, the local jurisdiction members of which include the counties of Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park (collectively and individually "City/County"); and

WHEREAS, in accordance with Va. Code Ann. § 15.2-4838.01, a special non-reverting fund for Planning District 8, known as the Northern Virginia Transportation Authority Fund was created in the Virginia state treasury, comprised of taxes and fees levied in accordance with the aforesaid Code section and any other funds that may be received for the credit of the aforesaid fund (the "Fund"), the proceeds of which fund are distributed to NVTA for use in accordance with Va. Code Ann. § 15.2-4838.1; and

WHEREAS, in accordance with, and subject to the requirements of, § 15.2-4838.1, thirty percent (30%) of the revenues received by NVTA shall be distributed on a pro rata basis to each City/County with each City/County's share being the total of the revenues received by NVTA that are generated by or attributable to such City/County divided by the total of such revenue received by NVTA (the "30% Funds"); and

WHEREAS, among the other requirements of Va. Code Ann. § 15.2-4838.1, each City/County shall deposit all Fund revenues received from NVTA in a separate, special fund ("The Local Fund") to be used for additional urban or secondary road construction, for other capital improvements that reduce congestion, for other transportation capital improvements in NVTA's most recent long range transportation plan, or for public transportation purposes; and

WHEREAS, § 15.2-4838.1 further requires each City/County to provide annually to NVTA sufficient documentation as required by NVTA showing that the 30% Funds received by the City/County were used as required by § 15.2-4838.1B.1; and

WHEREAS, § 15.2-4835 provides that the administrative expenses of NVTA, as set forth in NVTA's annual budget, shall be allocated among the component counties and cities based on relative population which-administrative expenses may be paid from the 30% Funds in accordance with § 15.2-4838.1; and

WHEREAS, pursuant to Chapter 766, the legislation establishing the Fund, imposes, among other requirements, the following requirements on each City/County: (1) that each City/County deposit into its, Local Fund all revenues from the commercial and industrial tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed

under that section or, in lieu of that amount, an amount from sources other than moneys received from NVTA equivalent to the amount that would have been received had the maximum tax rate been imposed; and (2) that each City/County expend or disburse for transportation purposes each year an amount that is at least equal to the average amount expended or disbursed for transportation purposes by the City/County between July 1, 2010 and June 30, 2013, excluding bond proceeds or debt service payments and federal or state grants; and

WHEREAS, § 15.2-4838.1B.2 provides that if any City/County fails to deposit into its Local Fund the amount equivalent to the revenue that would be generated by imposition of the maximum tax rate allowed under § 58.1-3221.3, then NVTA shall reduce the amount of the 30% Funds disbursed to the City/County by the difference between the amount that was deposited in the City/County's Local Fund and the amount that should have been deposited;

WHEREAS, Enactment Clause 8 of Chapter 766 provides that NVTA and each City/County embraced by it shall work cooperatively with towns with a population greater than 3,500 located within NVTA's member Counties ("Qualifying Towns") for purposes of implementing Chapter 766 and so as to ensure that all such "Qualifying Towns" receive their respective share(s) of the revenues pursuant to subdivision B 1 of § 15.2-4838.1.

WHEREAS Chapter 766 further provides that in the event any County appropriates or allocates any of the 30% Funds to a non-transportation purpose, that County and its Qualifying Towns shall not be the direct beneficiary or beneficiaries of any of the revenues from the NVTA Fund in the year immediately succeeding the year in which the 30% Funds were appropriated or allocated to a non-transportation purpose; and

WHEREAS Chapter 766 further provides that, in the event that any Qualifying Town appropriates or allocates any of the 30% Funds to a non-transportation purpose, not only will such Qualifying Town not be a direct beneficiary of any of the revenues in the fiscal year immediately succeeding the fiscal year in which the 30% revenues were appropriated or allocated to a non-transportation purpose, but its constituent County and all other Qualifying Towns within said County could also be judicially declared not to be direct beneficiaries of such revenues from NVTA in the next succeeding fiscal year.

WHEREAS, NVTA has a continuing responsibility to ensure that the 30% Funds are properly spent, and that each NVTA member City/County and each Qualifying Town adhere to the statutory and other legal obligations that it has with regard to the Fund;

WHEREAS, NVTA has requested that each member City/County enter into a separate Memorandum of Agreement in order to implement the provisions of Chapter 766 with regard to *inter alia* the distribution and use of funds in the manner prescribed by Va. Code Ann. §15.2-4838.1 and each member City/County has agreed;

WHEREAS NVTA and each member City/County has agreed to be bound by all terms and conditions in a separate Memorandum of Agreement ("NVTA/City-County MOA"), for purposes of ensuring that NVTA, each member City/County, and each Qualifying Town are in full compliance with Chapter 766 and all applicable requirements of the NVTA Act with regard to the receipt, maintenance, management, oversight, distribution, and use of all funds from the NVTA Fund;

NOW, THEREFORE, in consideration of the foregoing which is hereby incorporated within this "Agreement" and the mutual undertakings of the parties, the County of Fairfax and the Qualifying Town of Vienna agree as follows:

1. NVTA's Management of NVTA Funds. NVTA will manage the NVTA Fund and all funds therein and shall receive from the Commonwealth's Comptroller regular distributions of the sums deposited in the special non-reverting fund created in the state treasury known as the Northern Virginia Transportation Authority Fund. NVTA shall accept each such distribution of funds and deposit them as it deems appropriate, and shall manage such deposits, including investments thereof which shall be made pursuant to NVTA's investment policy and procedures as such may be revised from time to time, all in accordance with generally accepted accounting principles and all applicable legal requirements. NVTA shall provide to its governing board periodic reports of deposits on hand and all disbursements and expenditures thereof, and shall obtain an annual audit of its financial records. NVTA, each component City/County, and each Qualifying Town shall use the funds solely for transportation purposes benefiting those Counties, Cities and Qualifying Towns that are embraced by NVTA in accordance with § 15.2-4838.1.

2. NVTA's Distributions of 30% Funds to Each NVTA Member City/County, including Qualifying Town Shares. NVTA will make regular distributions of the 30% Funds to each member City/County in accordance with applicable law and in accordance with the processes established by the "NVTA/City-County MOA" incorporated by reference as Attachment 1.

A. Beginning no later than the month following final approval and execution of this Agreement by the parties, NVTA shall begin to distribute to County of Fairfax the 30% Funds to which County of Fairfax is entitled pursuant to § 15.2-4838.1, with interest at the rate earned by NVTA; and, subject to NVTA's continued receipt of funds from the Comptroller, shall continue to distribute to County of Fairfax its respective 30% funds on a monthly basis; provided that County of Fairfax remains in compliance with the terms of NVTA/City-County MOA and all applicable provisions of law.

B. Upon receipt of its 30% funds as set forth in Paragraph 2A above, County of Fairfax will calculate and transfer to the separate account on its financial records that has been established in the name of Town of Vienna in accordance with Paragraphs 4 and 7A of this Agreement, all amounts attributable to Town of Vienna using the bases prescribed by Chapter 766 and Paragraph 7A of this Agreement in the manner set forth in Paragraph 4 of this Agreement.

C. County of Fairfax will advise Town of Vienna on a quarterly basis or at such other intervals that are mutually agreeable to County of Fairfax and Town of Vienna as to the balance in Town of Vienna's special account.

D. For Town of Vienna's planning and budgeting purposes, prior to the beginning of each fiscal year, County of Fairfax will provide to Town of Vienna a revenue report of receipts for the previous twelve (12) months actual funds transfers from County of Fairfax to Town of Vienna.

3. County of Fairfax and Town of Vienna's Obligation to Pay Shares of NVTA's Administrative Expenses. Pursuant to §15.2-4835, County of Fairfax is responsible for paying its share of NVTA's total administrative expenses as set forth in NVTA's approved budget prior to the start of NVTA's fiscal year which begins July 1<sup>st</sup> of each year. NVTA shall invoice County of Fairfax for its proportionate share of NVTA's administrative expenses by June 1<sup>st</sup> of the preceding fiscal year, and County of Fairfax shall, at its election, have the option of paying in either of the following methods: (1) by having NVTA reduce the final distribution of County of Fairfax's 30% funds made to County of Fairfax after July 1<sup>st</sup> by the amount of County of Fairfax's share of the administrative expenses; or 2) by paying NVTA directly for its share of the

administrative expenses not later than July 15th. County of Fairfax's failure to elect one of the foregoing methods of payment on or before July 1st of the preceding year shall result in NVTA reducing the first distribution of 30% Funds made to County of Fairfax after July 15<sup>th</sup> by the amount of County of Fairfax's share of NVTA's administrative expenses. In the event that County of Fairfax fails to pay its share of NVTA's administrative expenses by July 15th, NVTA shall withhold further distribution of all County of Fairfax's Funds from the NVTA Fund. NVTA will reduce County of Fairfax's 30% funds by the amount of County of Fairfax's delinquent share of NVTA's administrative expenses, remit the balance of County of Fairfax's 30% funds to County of Fairfax, and restore distribution of all County of Fairfax's other NVTA funding.

A. County of Fairfax's payment of its full amount of NVTA's administrative expenses must include the portion of such administrative expenses that are attributable to Town of Vienna, and County of Fairfax will seek reimbursement from Town of Vienna regarding Town of Vienna's *pro rata* share of all NVTA's administrative fees that were pre-paid by County of Fairfax. Town of Vienna's share of NVTA's annual administrative expenses shall be calculated by the relative population method as prescribed by Va. Code Ann. § 15.2-4835. Once County of Fairfax pays the full amount of its NVTA administrative expenses in the time and manner required by the NVTA/City –County MOA, County of Fairfax will thereafter send an invoice to Town of Vienna seeking reimbursement for Town of Vienna's portions of NVTA's administrative expenses pre-paid by County of Fairfax. Town of Vienna will pay said invoice within thirty (30) days upon receipt. If mutually agreed upon by County of Fairfax and Town of Vienna, Town of Vienna's reimbursement payments may be made via electronic transfer of funds or as a direct deduction from Town of Vienna's separate account with County of Fairfax; and Town of Vienna shall have the same options regarding method of payment to County of Fairfax as identified in Paragraph 3 above. Failure by Town of Vienna to pay said invoice will result in County of Fairfax withholding Town of Vienna's 30% Funds until payment is made.

4. Establishment and Maintenance of Separate Accounts by County of Fairfax and Town of Vienna.

A. County of Fairfax is required to deposit in its Local Fund all revenues distributed to it by NVTA pursuant to Paragraph 2 above and all revenues collected by County of Fairfax from the tax imposed pursuant to § 58.1-3221.3. If County of Fairfax has not imposed the aforesaid tax, or has not imposed it at the maximum permissible rate, then County of Fairfax is required to deposit into its Local Fund an amount, from sources other than moneys received from NVTA, that is equivalent to the difference between the revenue County of Fairfax received from the aforesaid tax and the revenue County of Fairfax would have received if it had imposed the aforesaid tax at the maximum permissible rate.

B. County of Fairfax agrees to establish, segregate, and maintain on its financial records a separate account in the name of Town of Vienna for the purpose of calculating and distributing those revenues that are generated by and attributable to Town of Vienna under Chapter 766. Interest on this account shall accrue at the same rate accrued on all other County of Fairfax's special transportation accounts.

C. Town of Vienna agrees to establish, segregate, and maintain on its financial records a separate account for all NVTA funds that it receives from County of Fairfax.

D. Because County of Fairfax is required to certify to NVTA by August 1<sup>st</sup> of each year that County of Fairfax has satisfied each of the requirements of Paragraphs 4A

and 4B above, on or before July 20th of each year, the chief administrative officer of Town of Vienna shall certify to County of Fairfax, in a format prescribed by and acceptable to County of Fairfax and NVTA, that Town of Vienna has satisfied each of the requirements set forth in this Paragraph that may be applicable to Town of Vienna.

E. If County of Fairfax has not deposited into its Local Fund an amount equivalent to the revenue County of Fairfax would have received if it imposed the tax at the maximum permissible rate under § 58.1-3221.3, then, in any given year, NVTA shall reduce the 30% Funds distributed to County of Fairfax by the difference between the amount the County of Fairfax would receive if it was imposing the aforesaid tax at the maximum rate and the amount of revenue deposited into its Local Fund; and NVTA shall retain the amount by which the distribution of County of Fairfax's 30% Funds will be reduced for use by NVTA in accordance with § 15.2-4838.1C.1. In such situation, Town of Vienna's percentage of County of Fairfax's share of its 30% NVTA revenues shall also be reduced *pro rata*.

5. Maintenance of Transportation Funding by County of Fairfax.

A. County of Fairfax is required to expend or disburse for transportation purposes each year an amount that is at least equal to the average annual amount expended or disbursed for transportation purposes by the County of Fairfax, excluding bond proceeds or debt service payments and federal or state grants, between July 1, 2010, and June 30, 2013. In the event that County of Fairfax does not expend or disburse the aforesaid amount in any year, County of Fairfax shall not be the direct beneficiary of any NVTA Funds in the immediately succeeding year. In such event, NVTA shall make no distribution to County of Fairfax of County of Fairfax's 30% Funds, or any other monies from the NVTA Fund to County of Fairfax or to any of County of Fairfax's Qualifying Towns, including Town of Vienna; and, in such case, all such funds shall be used in accordance with § 15.2-4838.1C.1.

B. Although County of Fairfax and Town of Vienna understand and acknowledge that Town of Vienna's receipt of annual funding under Chapter 766 is expressly subject to and contingent upon County of Fairfax's annual maintenance of transportation funding efforts and requirements as set forth in Paragraph 5A above, Town of Vienna shall have no independent requirement under Chapter 766 to maintain its own levels of transportation funding from year to year in order to receive its respective share of the 30% funds.

6. Use of 30% Funds by Town of Vienna.

A. Town of Vienna shall use its portion of County of Fairfax's 30% Funds as distributed to it by County of Fairfax solely for the following purposes in a manner determined by Town of Vienna: (1) for additional urban or secondary road construction; (2) for other capital improvements that reduce congestion; (3) for other transportation capital improvements which have been approved by the most recent long range transportation plan adopted by NVTA; or (4) for public transportation purposes. Town of Vienna shall not use any of the revenues distributed to it by NVTA to repay debt issued before July 1, 2013.

B. In the event that Town of Vienna appropriates or allocates any of its portion of County of Fairfax's 30% Funds to a purpose other than those specified in paragraph 6A above; and unless Town of Vienna demonstrates to the satisfaction of County of Fairfax and NVTA that such acts were solely a result of and attributable to clerical or other unintentional, inadvertent error, then NVTA and County of Fairfax shall cease any further distributions of the 30% Funds to Town of Vienna in the fiscal year in which the

misappropriation or misallocation occurs Town of Vienna shall not be the direct beneficiary of any of the funds from the NVTAFund in the fiscal year immediately succeeding the year in which any of its portion of County of Fairfax's 30% Funds were misappropriated or misallocated, and such funds shall be used in accordance with §15.2-4838.1C.1. In the next succeeding fiscal year, NVTAFund will instruct County of Fairfax that there shall be no *pro rata* distribution of County of Fairfax's 30% funds to Town of Vienna; and, if determined by a court of competent jurisdiction, to County of Fairfax or any other Qualifying Town located in County of Fairfax because Town of Vienna's default could be deemed a default by County of Fairfax and by all other Qualifying Towns located in County of Fairfax.

7. County of Fairfax's Distributions of Town of Vienna's Proportionate Share of 30% Funds to Town of Vienna.

A. Pursuant to Chapter 766, County of Fairfax and Town of Vienna will work cooperatively with NVTAFund for purposes of implementing the provisions of § 15.2-4838.1 and to ensure that all Qualifying Towns in County of Fairfax, including Town of Vienna, receive their respective share of the 30% Funds distributed by NVTAFund to County of Fairfax. Such share shall be determined on the proportion of population of school age children in Town of Vienna as compared to County of Fairfax for the purposes of calculating the portion of the 30% Funds attributable to sales tax, and the location of the tax receipts derived from the taxpaying business for purposes of calculating the portion of the 30% Funds attributable to the transient occupancy tax, and the location of the transferred property for purposes of calculating the portion of the 30% Funds attributable to the grantors tax.

B. NVTAFund and County of Fairfax have an ongoing responsibility to ensure that all Qualifying Towns in County of Fairfax use the 30% Funds in compliance with this Agreement, County of Fairfax's NVTAFund/City-County MOA, and in accordance with law. Town of Vienna acknowledges that its failure to comply with the terms and conditions of this Agreement shall constitute a default by Town of Vienna and could constitute a default by County of Fairfax and all other Qualifying Towns located in County of Fairfax.

C. All distributions of NVTAFund funds by County of Fairfax to Town of Vienna under this Agreement will be project based and effected by the reimbursement method only. All requests for reimbursements by Town of Vienna to County of Fairfax will be submitted in a form and manner determined by and acceptable to NVTAFund and County of Fairfax. Upon proper submission by Town of Vienna to County of Fairfax; and after review and approval by County of Fairfax, County of Fairfax shall transmit payment to Town of Vienna within thirty (30) days from receipt and may be made via electronic transfer of funds, if the two parties so agree. County of Fairfax will make every effort to effect reimbursement to Town of Vienna within twenty (20) days or sooner, as may be practicable.

D. Without exception, all projects that Town of Vienna selects and submits for funding reimbursement to County of Fairfax must comply with all requirements and conditions for transportation funding as prescribed under Chapter 766. Further, the County of Fairfax determination of Town of Vienna projects is solely determined through Chapter 766 statutory and technical legal review and criteria. Upon joint request of County of Fairfax and Town of Vienna, NVTAFund will provide its technical resources or act as a non-binding mediator as between County of Fairfax and Town of Vienna in order to assist and/or facilitate in the resolution of any question or dispute as to

whether a specific Town of Vienna transportation project may be eligible for funding under this Agreement or under Chapter 766. All such requests for assistance by NVTA should be submitted, in writing, to NVTA, c/o NVTA's Executive Director. Upon receipt of any such request, NVTA's Executive Director shall advise NVTA regarding the type of assistance requested and will thereafter make NVTA's technical and legal staff available to provide the type of assistance requested by County of Fairfax and Town of Vienna. Nothing herein shall affect any party's rights to seek or pursue any and all remedies at law that may be available to that party to resolve any disputes.

E. If Town of Vienna fails to comply with the project selection requirements as prescribed by Chapter 766 or fails to comply with the terms and conditions of this Agreement, it will be obligated to refund with interest to County of Fairfax all funds used contrary to this Agreement or in derogation of the law.

8. County of Fairfax's Obligation to File Annual Report to NVTA and Town of Vienna's Obligation to File Annual Report to County of Fairfax. County of Fairfax must annually provide to NVTA an unaudited financial report, with supporting documentation, showing that the 30% Funds were used as required by Paragraph 6; which Annual Report must include sufficient documentation, showing Town of Vienna's appropriate use of its portion of County of Fairfax's 30% funds during the previous fiscal year. Because County of Fairfax is required to provide its Report to NVTA on or before August 1<sup>st</sup> of each year, Town of Vienna shall provide to County of Fairfax on or before July 20<sup>th</sup> of each year an unaudited financial report, using the "cash basis method of accounting" with supporting documentation in a form required by NVTA and County of Fairfax showing that all funds distributed by County of Fairfax to Town of Vienna during the previous fiscal year were used as required by Paragraph 6 and in full compliance with the law. In the event the Town of Vienna's audited financials show a material variance, defined as five percent (5%) or more after adjusted for the difference between cash basis accounting and accrual basis accounting, from the initial report, Town of Vienna shall provide County of Fairfax with supplemental documentation satisfactory to County of Fairfax, detailing Town of Vienna's use of the 30% Funds.

A. In the event the Town of Vienna fails to provide the report or information as required above, County of Fairfax shall withhold further distributions of Town of Vienna's 30% Funds until the report or supplemental information is provided in accordance with this Paragraph. Once Town of Vienna provides an acceptable report with appropriate documentation, all withheld funds, inclusive of any interest accrued on such withheld funds, shall be made available for distribution to Town of Vienna as soon as practicable.

9. Failure to Comply with Memorandum of Agreement.

A. In the event County of Fairfax fails to perform any of its obligations under this Agreement, Town of Vienna shall provide written notice to County of Fairfax's County Executive/Manager/Administrator of such failure or non-compliance. County of Fairfax shall cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from Town of Vienna. Upon its receipt and review of the notice of default from Town of Vienna, County of Fairfax may dispute any matters set forth in such notice; and in such circumstances shall advise Town of Vienna's Town Manager that any such matter is in dispute. In the event County of Fairfax fails to cure or commence to cure the event of noncompliance and diligently pursue completion thereof, if County of Fairfax agrees, Town of Vienna may request the assistance of NVTA as provided in Paragraph 7D above. Nothing herein shall, however, prohibit either County

of Fairfax or Town of Vienna from pursuing all legal remedies that may be available to it at law.

B. In the event Town of Vienna fails to perform any of its obligations under this Agreement, County of Fairfax's Executive shall notify the Town Manager of Town of Vienna and notify NVTAs Executive Director that Town of Vienna is in default. If agreed to by County of Fairfax, Town of Vienna may request the assistance of NVTAs as provided in Paragraph 7D above. Nothing herein shall, however, prohibit either County of Fairfax or Town of Vienna from pursuing all legal remedies that may be available to it at law.

C. A cure by Town of Vienna's of its failure to comply with the terms of this Agreement shall not alter the consequences of and penalties associated with the misuse of any 30% Funds by Town of Vienna as set forth in Paragraph 6B of this Agreement.

10. Town of Vienna's Obligation to Reimburse Misused Funds to County of Fairfax.

A. In the event Town of Vienna misuses or misallocates any of the 30% Funds, in addition to the consequences set forth in Paragraph 6B, it shall reimburse County of Fairfax the full amount of such misused funds plus accrued interest. Until the full amount is reimbursed to County of Fairfax, County of Fairfax shall withhold further distributions of the 30% Funds to Town of Vienna.

B. Town of Vienna's reimbursement of misused funds shall not change the consequences of and penalties associated with such misuse set forth in Paragraph 6B of this Agreement.

11. Maintenance of Records by Town of Vienna and County of Fairfax. Town of Vienna and County of Fairfax shall maintain all records relating to the 30% Funds and the use thereof for a minimum of five (5) years from the date the record was created. In addition to the foregoing, Town of Vienna and County of Fairfax shall comply with the Virginia Public Records Act and all applicable state and federal laws with regard to the retention of records.

12. Notice. Any notice required or permitted to be provided under this Agreement shall be in writing and delivered in person, or sent by U.S. Mail to the below named representatives at the below addresses:

Town of Vienna:  
Town Manager  
Town of Vienna  
127 Center St. S.  
Vienna, VA 22180

County of Fairfax:  
County Executive  
Fairfax County  
12000 Government Center Parkway  
Fairfax, VA 22035

Town of Vienna and County of Fairfax may change their respective representative designated to receive notices for purposes of this Agreement by providing written notice of such change to the other party.

13. Entire Agreement. This Agreement constitutes the entire agreement between Town of Vienna and County of Fairfax and supersedes any prior understanding or agreement between them with regard to any of County of Fairfax's distributions to Town of Vienna of its *pro rata* portion of County of Fairfax's 30% Funds; except that the parties understand and acknowledge that the NVTAs/City-County MOA as between NVTAs and County of Fairfax referenced above has been expressly incorporated.

14. No Third Party Beneficiaries. The provisions of this Agreement shall inure to the benefit of, and bind Town of Vienna and County of Fairfax, but shall not inure to the benefit of any other party or other persons; except as to NVTAs, as expressly provided in this Agreement.

15. Severability. If any provision of this Agreement or the application of the provision to any circumstance is invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application of the provision will not be affected and will be enforceable to the fullest extent permitted by law.

16. Amendments. Any amendment to this Agreement must be made in writing and signed by Town of Vienna and County of Fairfax.

IN WITNESS WHEREFORE, the parties hereto, by their duly authorized representatives, have executed this Agreement as of the date and year aforesaid.

County of Fairfax

Attest:

\_\_\_\_\_

By: \_\_\_\_\_

Clerk

Title: \_\_\_\_\_

Town of Vienna

Attest:

\_\_\_\_\_

By: \_\_\_\_\_

Clerk

Title: \_\_\_\_\_

Northern Virginia Transportation Authority

By: \_\_\_\_\_

Title: \_\_\_\_\_

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Board Agenda Item  
January 28, 2014

ACTION - 4

Approval of the Department of Transportation's (FCDOT) Interim Title VI Plan for the Federal Transit Administration (FTA)

ISSUE:

Board approval of the Department of Transportation's (FCDOT) Interim Title VI Plan for the Federal Transit Administration (FTA). All recipients of 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. Title VI guidelines prohibit recipients of federal financial assistance from discriminating on the basis of race, color, national origin, or economic status in their programs or activities, and it obligates FTA, as part of USDOT, to enforce compliance. All recipients of federal financial assistance must maintain a valid Title VI Plan.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve FCDOT's Interim Title VI Program substantially in the form of the accompanying attachment (Attachment I).

TIMING:

The Board of Supervisors is requested to act on this item on January 28, 2014, so that FCDOT can complete a full Title VI Plan, pursuant to FTA Circular 4702.1B. FCDOT anticipates submitting a complete Title VI Plan to FTA in July 2014, after final approval by the Board of Supervisors.

BACKGROUND:

On October 1, 2012, FTA issued new guidance related to Title VI, FTA Circular 4702.1B. The updated circular requires substantially more coordination, analysis, and oversight of Title VI related matters than the previous circular. Every three years FTA requires recipients to submit an updated Title VI Plan. To meet the new requirements, FCDOT submitted a draft Interim Title VI Program to FTA on January 6, 2014. The Interim Title VI Program provides information on existing FCDOT materials and practices, and lays the groundwork for the completion of updated Title VI requirements. FCDOT will work to complete a full Title VI Plan over the next several months, and will submit the full Plan to the Board of Supervisors for consideration on July 1, 2014.

Board Agenda Item  
January 28, 2014

Topics addressed in the Interim Title VI Plan include:

- Title VI Public Notices and Assurances
- Title VI Public Complaint Process and Form
- Minority Inclusion on Non-Elected Councils or Committees
- Summary of Title VI Complaints, Investigations, and Lawsuits
- Land Acquisition for Purposes of Transit Facility Construction
- Listing of Subrecipients of Federal Transit Administration Funding
- Public Participation Plan
- Transit Service Standards and Policies

FISCAL IMPACT:

Obtaining Title VI compliance will allow Fairfax County to be eligible to receive future FTA grant and other USDOT funding, including Transportation Infrastructure Finance and Innovation Act (TIFIA) funding. The County has a TIFIA loan in the amount of \$404 million pending with USDOT. The TIFIA program offers competitive interest rates (3.91% as of December 31, 2013) that correlate to 30-Year Treasury.

ENCLOSED DOCUMENTS:

Attachment I: FCDOT's Interim Title VI Program

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Kenneth Saunders, Director, Office of Human Rights and Equity Programs  
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT  
Brent Riddle, Coordination and Funding Division, FCDOT



# County of Fairfax, Virginia

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

Attachment I

## INTERIM TITLE VI PROGRAM

The Fairfax County Department of Transportation (FCDOT) has completed the Interim Title VI Program (the Program) in accordance with the Federal Transit Administration's (FTA) Remedial Action Plan. The completed elements in this Interim Title VI Program submission include:

- A. Title VI Notices and Assurances
- B. Title VI Complaint Process and Form
- C. Minority Inclusion on Non-Elected Councils or Committees
- D. Summary of Title VI Complaints, Investigations, and Lawsuits
- E. Land Acquisition for Purposes of Facility Construction
- F. Subrecipients of Federal Transit Administration Funding
- G. Public Participation Plan
- H. Transit Service Standards and Policies

*Elements of FCDOT's Remedial Action Plan, submitted to FTA on December 16, 2013, also have been incorporated here. Additional FTA concerns or comments on completed elements in this Title VI Program will be addressed prior to the final Title VI Program submission.*

Work on many elements of the Title VI Program, including the service area maps and profiles and the language access plan have begun, and the material that has been prepared to-date accompanies this Program. Work on preparing and receiving comments on the major service change, disparate impact and disproportionate burden (DIDB) policies, transit service monitoring, and creating and administering Title VI training for FCDOT staff and contractors has also begun, but efforts will accelerate upon authorization of this Interim Title VI Program by the Fairfax County Board of Supervisors. The Board is scheduled to consider this Interim Title VI Program at its meeting on January 28, 2014.

Following the completion of all draft Title VI Program elements, approximately one month is needed to allow for review of the draft program. This includes incorporating any additional internal comments or comments from FTA on draft deliverables as requested, time for executive and legal reviews of the plan within Fairfax County, the preparation of the board package, and presentation of the Title VI program.

All items requiring Board of Supervisors approval are to be submitted to the County Executive's staff a minimum of three weeks in advance of the meeting date. Transit service monitoring, which will be completed at the end of February 2014, will be submitted for the Board's consideration on either April 8 or April 29, 2014. FCDOT's major service change and DIDB policies will be submitted for the Board's consideration on May 13, 2014.

Table 1 presents FCDOT's draft timeline for coming into compliance with all Federal Transit Administration Title VI Circular (FTA C 4702.1B) requirements. For each element contained within this

Title VI Program is a ***detailed set of milestones and the rationale*** for the time required for completion. FCDOT will work closely with FTA in the completion of this Title VI Program. To ensure the development of the Title VI program is thorough and on-time, FCDOT will establish standing monthly conference calls with FTA staff.

**The final Title VI Program will be submitted for Board consideration at the July 2014 board meeting** (tentatively scheduled for July 1, 2014). The Title VI Program will be submitted to FTA following Board of Supervisors approval. FCDOT also anticipates hiring a new Civil Rights Officer in July 2014 to manage Title VI compliance on an ongoing basis.

Table 1 Fairfax Connector Title VI Program Development Schedule

FAIRFAX CONNECTOR TITLE VI PROGRAM DEVELOPMENT SCHEDULE								
<p>◆ Plan Submissions: January 2014 and August 2014</p> <p>● Fairfax County Board of Supervisors Approval</p> <p>☐ Meetings ◆ New Position</p>								
Title VI Program Element	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14
Title VI Program Management Committee Meetings	☐	☐	☐	☐	☐	☐	☐	☐
Title VI Status Conference Calls with FTA	☐	☐	☐	☐	☐	☐	☐	☐
<i>Civil Rights Officer - New Position (Tentative)</i>	☐	☐	☐	☐	☐	☐	☐	◆
Develop Fairfax Connector Title VI Complaint Form and Process	☐							
Develop Title VI Notices and Assurances	☐							
Minority Inclusion on Non-Elected Councils or Committees	☐							
Public Participation Plan	☐							
Transit Service Standards and Policies	☐							
Interim Title VI Program Submission	☐	◆						
Interim Title VI Program Board Approval	☐	●						
Service Area Profile	☐	☐	2/7					
Transit Service Monitoring	☐	☐	2/28	☐	●			
Language Access Plan	☐	☐	☐	☐	4/18			
Title VI Staff Training					4/18			
Major Service Change and DIDB Policies	☐	☐	☐	☐	☐	●		
Finalize Draft Title VI Program and Prepare for Board of Supervisors Approval	☐	☐	☐	☐	☐	☐	☐	
Board of Supervisors Approval and Submit Final Title VI Program	☐	☐	☐	☐	☐	☐	☐	●◆

## **A. Title VI Public Notice**

The following language will be used to notify the public of their rights under Title VI:

### **Notifying the Public of Rights Under Title VI Fairfax County Department of Transportation and Fairfax Connector**

The Fairfax County Department of Transportation and Fairfax Connector operate programs and services without regard to race, color, and national origin in accordance with Title VI of the Civil Rights Act. Any person who believes she or he has been aggrieved by any unlawful discriminatory practice under Title VI may file a complaint with the Fairfax County Office of Human Rights and Equity Programs within 180 days of the date of the alleged discrimination. The Office of Human Rights and Equity Programs is located at 12000 Government Center Parkway, Fairfax, Virginia 22035. This office can also be reached by calling 703-324-2953, TTY 711, or Fax: 703-324-3570.

For more information on the Fairfax County Department of Transportation and Fairfax Connector civil rights program and the procedures to file a complaint, please contact: 703-339-7200 (703-339-1608 TTY), email [fairfaxconnector@fairfaxcounty.gov](mailto:fairfaxconnector@fairfaxcounty.gov); or visit the department's administrative office at 4050 Legato Road, 4th Floor, Fairfax, Virginia 22033. Information on the procedures to file a complaint or to file a complaint contact: 703-324-2953 (TTY 711) or <http://www.fairfaxcounty.gov/ohrep/epd/>. Complaints can be mailed to: Fairfax County Office of Human Rights and Equity Programs, 12000 Government Center Parkway, Suite 318, Fairfax, Virginia 22035.

A complainant may file a complaint directly with the Federal Transit Administration by filing a complaint with the Office of Civil Rights, Attention: Title VI Program Coordinator, East Building, 5th Floor-TCR, 1200 New Jersey Ave., SE, Washington, DC 20590.

If information is needed in another language, please contact: 703-339-7200.

The final line of the notice, informing the public of the availability of language assistance, will be translated on the notice into the following languages:

- Spanish
- Korean
- Vietnamese
- Chinese
- Amharic<sup>1</sup>
- Hindi<sup>2</sup>
- Arabic
- Urdu
- Farsi
- Tagalog

Thirty-six percent (36%) or over 360,000 people in Fairfax County speak a language other than English at home.<sup>3</sup> The languages above were selected based on the fact they 1) constitute the ten most prevalent non-English languages spoken in Fairfax County, and 2) they correlate with the ten highest numbers of individuals who speak English “less than very well.” Together, speakers of the ten languages selected for use on the Notice comprise 80 percent of all of the speakers of languages other than English in Fairfax County.

Fairfax County Department of Transportation’s Title VI Notice references both FCDOT and Fairfax Connector to ensure that it is understood that Title VI applies both to the Fairfax Connector service and to other transit-related activities of FCDOT. The notice will be printed in both English and Spanish and posted in both languages in the following places:

- All 278 Fairfax Connector buses
- FCDOT Administrative Offices at 4050 Legato Road, 4th Floor, Fairfax, Virginia 22033, at the front desk and reception area
- Fairfax Connector Webpage at: <http://www.fairfaxcounty.gov/connector/>
- All Fairfax Connector Stores:
  - Franconia-Springfield Metrorail Station, 6880 Frontier Drive, Springfield, Virginia 22150
  - Herndon-Monroe Park-and-Ride, 12530 Sunrise Valley Drive, Herndon, Virginia 20171
  - Reston Town Center Transit Station, 12051 Bluemont Way, Reston, Virginia 20190
  - Tysons West\*Park Transit Station, 8300 Jones Branch Drive, McLean, Virginia 22102
- At all Fairfax Connector and transit-related FCDOT public meetings
- Each month, a link to the Title VI Notice on the Fairfax Connector website will be tweeted through Fairfax Connector’s Twitter account: @ffxconnector
- On Fairfax Connector’s Facebook “About” page at: <https://www.facebook.com/fairfaxconnector/info>

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<sup>1</sup> The U.S. Census lists only “African languages” for all African languages, but Amharic will be used as the largest African immigrant population in Fairfax County was born in Ethiopia, per American Community Survey, 2011, 5-year estimates.

<sup>2</sup> “Other Indic Languages” fell into the top ten languages with individuals speaking English “less than very well” while Hindi had the 12<sup>th</sup> highest number of speakers speaking English “less than very well.” As many speakers of other Indic Languages may also speak or have knowledge of Hindi, Hindi was included on this list.

<sup>3</sup> American Community Survey, 2011, 5-year estimates.

## **B. Title VI Complaint Procedures and Form**

Fairfax County Department of Transportation Title VI Complaint Procedures will be posted on Fairfax Connector's website and will be printed in a tri-fold brochure or flyer format that will be available in Fairfax Connector Stores, park-and ride facilities, on Fairfax Connector buses, at major Fairfax Connector transit hubs, and at FCDOT's Administrative Offices.

The following text will be produced as part of FCDOT's Title VI Complaint Procedures:

Title VI of the Civil Rights Act of 1964 prohibits discrimination against an individual or group, intentional or unintentional, on the basis of race, color, and national origin in any program or activity receiving federal assistance, including Fairfax Connector and Fairfax County Department of Transportation's transit operations and activities.

Any person who believes she or he has been discriminated against on the basis of race, color, or national origin by Fairfax Connector or Fairfax County Department of Transportation may file a Title VI complaint by completing and submitting the "Fairfax Connector" complaint form available on Fairfax County's Office of Human Rights and Equity Programs (OHREP) website at the following URL:

<http://www.fairfaxcounty.gov/ohrep/epd/>

A complaint form can also be obtained by writing the Office of Human Rights and Equity Programs, Equity Programs Division, 12000 Government Center Parkway, Fairfax, Virginia 22035 or by calling 703-324-2953, TTY 711, Fax: 703-324-3570.

Fairfax County investigates complaints received no more than 180 days after the alleged incident. Fairfax County can only process complaints that provide sufficient information to begin an investigation.

Within 48 hours of receiving a complaint, the Fairfax County Office of Human Rights and Equity Programs staff will contact the complainant and elicit all pertinent information with regard to the alleged discriminatory act(s) from the individual via an intake form. The complainant is required to cooperate with the intake process. Within 48 hours of completing an intake form, OHREP staff will use the information in the form to determine whether or not the complainant may establish a prima facie, or a clear case of possible discrimination.

If OHREP determines that there is a prima facie case of discrimination, an investigation will be initiated. Investigations may include, but shall not be limited to, on-site visits, interviews of witnesses and collection of documents. The accused party(ies) in the allegation(s) of discrimination will be interviewed and provided an opportunity to rebut the allegations and provide relevant information for investigation. Additionally, witnesses will be interviewed as deemed necessary. After an investigation is initiated all information obtained is confidential. Within seven work days of the initiation of an investigation all of the investigation documentation for the case must be completed. If additional time is necessary to prepare the documentation requested, the staff responsible for the investigation will request an extension from OHREP leadership.

After the completion of the investigation a report will be produced, and OHREP staff will submit a final recommendation to the OHREP Executive Director. The OHREP Executive Director will review the

investigative file and make a final determination. OHREP will inform the complainant whether the allegations of discrimination were substantiated. Upon completion of the investigation and notification of the parties in the complaint, the file will be closed. All documentation, including audio tapes (if applicable), will be kept in the complaint file.

If OHREP determines that a prima facie case of discrimination has not occurred, no investigation will be initiated. However, OHREP's findings in the matter will be documented in a report. OHREP's findings fall under the purview of the Equity Programs Division and there is no right of appeal.

If probable cause is determined or misconduct by an employee is identified, OHREP will instruct FCDOT to consult with the Fairfax County Department of Human Resources regarding disciplinary action. If in the course of the investigation, the investigator has reason to believe that a criminal act or violation of law may have occurred, OHREP will contact the Fairfax County Police Department for appropriate action.

Fairfax County utilizes the form presented below as its current Title VI complaint form for citizens. The form is available on Fairfax County's website in PDF format at:

<http://www.fairfaxcounty.gov/ohrep/epd/>. The form can also be obtained at the following locations:

- Fairfax County Office of Human Rights and Equity Programs, 12000 Government Center Parkway, Fairfax, Virginia 22035
- Fairfax County Department of Transportation Administrative Offices at 4050 Legato Road, 4th Floor, Fairfax, Virginia 22033
- All Fairfax Connector Stores:
  - Franconia-Springfield Metrorail Station, 6880 Frontier Drive, Springfield, Virginia 22150
  - Herndon-Monroe Park-and-Ride, 12530 Sunrise Valley Drive, Herndon, Virginia 20171
  - Reston Town Center Transit Station, 12051 Bluemont Way, Reston, Virginia 20190
  - Tysons West\*Park Transit Station, 8300 Jones Branch Drive, McLean, Virginia 22102



# County of Fairfax, Virginia

## Complaint Form for Allegations of Discrimination

Fairfax County has two complaint procedures providing for prompt resolution of complaints by individuals alleging discrimination prohibited by Federal, State and local law or policy in the provision of services, activities, programs, or benefits. This complaint form is to be utilized for filing complaints of discrimination on the basis of age, sex, sexual harassment, race, religion, creed, national origin, marital status, color, political affiliation or veteran's status.

An individual wishing to file a complaint based on disability will need to use the complaint form identified in the Fairfax County Government Complaint Procedure under the Americans with Disabilities Act. You may obtain a copy of the complaint form by contacting staff at the Office of Human Rights and Equity Programs.

To contact the Fairfax County Office of Human Rights and Equity Programs call 703-324-2953, TTY 711 on any Fairfax County workday between the hours of 8:00 a.m. and 4:30 p.m., or email [EPDEmailComplaints@FairfaxCounty.gov](mailto:EPDEmailComplaints@FairfaxCounty.gov).

**INSTRUCTIONS:** Complaints should be filed in writing within 60 workdays (180 calendar days for transit related complaints) from the day the alleged discriminatory act took place. The term "workday" shall mean any Monday through Friday that is not a county holiday. An investigation will follow the filing of the complaint.

This form should be used in conjunction with the Fairfax County Policy and Procedure for Individuals Alleging Discrimination in County Programs and Services.

### Person Filing Complaint

<b>Name:</b>		<b>Telephone No.:</b>	<b>Home:</b> <b>Work:</b> <b>Mobile:</b> <b>Best time to call:</b>
<b>E-mail:</b>			
<b>Address:</b>	<b>Street:</b> _____ <b>City:</b> _____ <b>State:</b> _____ <b>Zip Code:</b> _____		

### Person and Department Alleged to have Discriminated:

<b>Name:</b> _____	<b>Department:</b> _____
<b>Street:</b> _____	
<b>City:</b> _____	<b>State:</b> _____ <b>Zip Code:</b> _____
<b>Phone:</b> _____	



### C. Minority Representation on Relevant Non-Elected Commissions, Committees, and Boards

Fairfax County currently has four non-elected committees, commissions, and boards that provide input on transit service: the Transportation Advisory Commission (TAC), the Commission on Aging, the Fairfax Area Disabled Services Board, and the Mobility & Transportation Committee. The table below displays the current composition of these groups by race/ethnicity.

**Table 2 Minority Representation on Relevant Non-Elected Commissions, Committees, and Boards**

Body	Race/Ethnicity				
	Caucasian	Latino	African American	Asian American	Native American
<i>Fairfax County Population (2010 Census)</i>	<b>63%</b>	<b>16%</b>	<b>9%</b>	<b>18%</b>	<b>0.2%</b>
<b>Transportation Advisory Commission</b>	100%	0%	0%	0%	0%
<b>Fairfax Area Commission on Aging</b>	82%	0%	9%	9%	0%
<b>Fairfax Area Disability Services Board</b>	93%	0%	0%	0%	7%
<b>Mobility &amp; Transportation Committee (Disability Services and Long Term Care)</b>	75%	0%	10%	15%	0%

The *Transportation Advisory Commission (TAC)* advises the Board of Supervisors on major transportation issues, including, but not limited to transit service. The TAC meets once a month, and provides the board with information and comments regarding transportation improvements in the County. Meetings are open to the public. The TAC is comprised of 11 members who each serve two-year terms. The TAC includes one member from each magisterial district (9); one at-large; and one Disability Services representative. All members are appointed by the Board of Supervisors. The TAC agenda is posted to its web page prior to every meeting. Minutes from every meeting also are posted on the TAC web page.

FCDOT staff will work with the Board of Supervisors to ensure that they are aware of non-Caucasian individuals who may have an interest in serving on the TAC and the importance of having a TAC that is representative of Fairfax County’s diverse population. Staff also will work proactively with community-based organizations, Fairfax County departments including the OHREP and the Department of Neighborhood and Community Services (NCS), to identify minority individuals who have an interest in transit service and make the names of those individuals available to the Board for possible appointment to the TAC.

The *Fairfax Area Commission on Aging* aims to increase awareness of problems affecting Fairfax’s aging population, and organizes activities to increase the County’s senior population’s well-being. The Commission on Aging includes 12 members who each serve two-year terms. The Commission members include one representative from each magisterial district (9); one at-large representative; one representative from the City of Fairfax; and one representative from the City of Falls Church. The Commission is made up of more than 50 percent older persons including minority individuals; representative of older persons; representative of health care provider organizations, supportive services provider organizations; persons with leadership experience in the private and voluntary sectors, local elected officials, and the general public. The Commission meets twice a month, and all meetings

are open to the public. Meetings are advertised on Fairfax County's website calendar, and on the Fairfax Area Commission of Aging's County webpage.

The *Fairfax Area Disability Services Board* provides the Fairfax County government with input, assistance, and advice on the service needs of persons with physical and sensory disabilities. Fairfax's Area Disability Services Board has 15 members who each serve three-year terms. Members can serve up to three terms. The members of the Fairfax Area Disability Service Board include appointees from each magisterial district (9); one At-Large member; two At-Large/Fairfax County Business Community representatives; one City of Fairfax local official; one City of Falls Church local official; and one At-Large/Fairfax County local official. An alternate may be appointed from each of the cities, for a total of 17. State Code requires that membership in the local disabilities board include at least 30 percent representation by individuals with physical, visual or hearing disabilities or their family members; a local official (person elected or appointed to or employed by a board commission or agency from the jurisdiction making the appointment to the disability services board) from each participating jurisdiction; and at least two representatives from the business community. The Board meets once a month and meetings are open to the public. Meetings are advertised on Fairfax County's disability services email listserv, and on Fairfax County's website calendar. Information about the board's meeting is also available through a toll free number.

The *Mobility and Transportation Committee* aims to create a multi-modal transportation system in Fairfax County that affords personal independence, choice, and full participation by all individuals regardless of age, disability, or economic status in a safe, accessible, affordable, reliable, timely, and sustainable manner. The Committee promotes funding transit studies; advocates for improved transportation access; and encourages government and community based organizations to utilize best practices in mobility management. The Mobility and Transportation Committee co-chairs are members the Disability Services Board and the Long Term Care Coordinating Council, but membership is open to all residents. There is no limit on the number of committee members. Currently, there are 20 members. The committee meets monthly on the 4th Wednesday at 7:00pm at the Fairfax County Government Center.

#### **D. Summary of Title VI Complaints, Investigations, and Lawsuits**

Fairfax County did not have any Title VI investigations or lawsuits or receive any Title VI complaints involving Fairfax Connector service or other Fairfax County Department of Transportation transit-related activities between 2010 and 2013.

#### **E. Land Acquisition for Purposes of Facility Construction**

Fairfax County has not constructed any facilities cited by Circular 4702.1B, Chapter III, Section 13, including any vehicle storage facilities, maintenance facilities, operations centers, or other similar facilities, which required land acquisition and the displacement of persons from their residences and businesses during the reporting period of 2010-2013.

#### **F. Sub-recipients of Federal Transit Administration Funding**

Fairfax County does not have any sub-recipients of FTA funds.

## **G. Public Participation Plan**

### **Introduction and Goals**

FCDOT is committed to providing accessible and relevant information and public involvement opportunities to provide input on transit service and planning for *all* members of the public. The purpose of FCDOT's Public Participation Plan is to provide a set of public participation strategies that facilitate greater involvement by minority (as defined by race, color, or national origin), Limited English Proficiency (LEP), and low-income populations in the transit planning and decision-making process.

Three goals were developed to guide FCDOT's Public Participation Plan:

- 1) Ensure that minority, LEP, and low-income individuals are provided with *meaningful* and *accessible* opportunities to provide input into Fairfax County's transit decision-making process.
- 2) Build relationships that facilitate open and frequent communication with key stakeholder groups representing and working with minority, LEP, and low-income communities.
- 3) Obtain information and feedback that Fairfax Connector can use to inform the provision of transit service that meets the specific transportation needs of minority, LEP, and low-income populations.

These goals reflect FCDOT's intent to provide relevant information, background, and opportunities for input on all projects in a manner that is accessible to Title VI protected populations and low-income populations throughout Fairfax County. Moving forward, FCDOT intends to strengthen relationships with minority, LEP, and low-income populations and relevant community groups and other stakeholders to create a culture that promotes continuous feedback and a high-level of trust with these populations.

### **Language Access Plan**

Effective communication is the cornerstone of a meaningful Public Participation Plan. Developing FCDOT's Language Access Plan, therefore, is critical, as it helps determine what types of language assistance FCDOT provides; how LEP persons will be informed about the availability of language assistance; create a process for monitoring, evaluating, and updating the plan; and training materials for all FCDOT transit employees and contractors to ensure awareness of how to provide timely and reasonable language assistance. FCDOT has identified a range of language assistance available and the costs of many types of language assistance in anticipation of preparing the language access plan. However, additional time will be needed to prepare the Four Factor Analysis and complete the determination of what types of language assistance will be provided by language.

The table below presents a detailed milestone timeline for the completion of the Language Access Plan. FCDOT will work to complete the Four Factor Analysis during January 2014, and, assuming Board of Supervisor's approval, then apply the results of the analysis to develop a plan for and identify resources to support the provision of language assistance. The Language Access Plan can be completed by April 2014.

**Table 3 Language Access Plan Development Milestones**

<b>Milestone</b>	<b>Date</b>
Factor 1: The number or proportion of Limited English Proficiency persons eligible to be served or likely to be encountered by the recipient	Friday, January 17, 2014
Factor 2: The frequency with which LEP persons come into contact with the program.	Friday, February 21, 2014
Factor 3: The nature and importance of the program, activity, or service provided by the program to people’s lives.	Friday, February 21, 2014
Factor 4: The resources available to the recipient for LEP outreach, as well as the costs associated with that outreach.	Friday, March 07, 2014
Finalize Four Factor Analysis	Friday, March 28, 2014
Determine how the language assistance services will be provided by language and how LEP persons will be notified about the availability of language assistance	Friday, March 21, 2014
Create a process for monitoring, evaluating, and updating the language access plan	Friday, March 21, 2014
Create a training for all FCDOT employees and contractors working directly with the public that allows them to provide timely and reasonable language assistance	Friday, April 04, 2014
Finalize Language Access Plan	Friday, April 18, 2014

The development of the language access plan will occur over a nine-week period. The following assumptions were made in the creation of this timeline:

- Factor 1, developing an understanding of the number and proportion of LEP populations in Fairfax County, is largely complete with Census data on LEP populations by language described in tables and maps (Appendix 1). There may be revisions to this analysis or additional analysis in the complete Title VI Program.
- Factor 2 and Factor 3 involve conversations with other Fairfax County departments that serve LEP populations and speaking with Fairfax Connector staff and contractors that work directly with the public, and these conversations need to be scheduled and then the results of these conversations must be synthesized. A GIS analysis must also be completed for Factor 3.
- The costs of providing language assistance have already been documented, but FCDOT staff will need to determine the total available budget for language assistance (Factor 4). At this time staff will also meet at least once to determine the language assistance services that need to be provided by individual language.
- FCDOT staff will prepare an analysis of LEP persons and how they can be notified of the availability of language assistance. FCDOT staff will create a monitoring and evaluation plan, which will require at least one staff meeting.
- The preparation and review of training materials (which may include PowerPoint slides and other handout materials) is expected to take two weeks to complete. Work on the training materials will begin earlier in process.
- Finalizing the Language Access Plan includes time for incorporating revisions and comments on draft components of the plan.

**Four Factor Analysis and Language Access Plan Approach**

An approach to both the four factor analysis and the subsequent components of the language access plan is detailed below.

*Four Factor Analysis*

The Department of Justice (DOJ) developed the Four Factor Analysis to provide a clear framework through which recipients of federal funding can determine the extent of their obligation to provide LEP services. Federal funding recipients are required to take *reasonable* actions to ensure access to their programs and activities, and the Four Factor Analysis was created to aid in an individualized determination of the extent of the needs of LEP populations and how they are best and feasibly served. FTA’s Title VI Circular instructs FTA funding recipients to use the Four Factor Analysis and refer to DOJ’s LEP guidance as needed.

**Factor 1: The number or proportion of Limited English Proficiency persons eligible to be served or likely to be encountered by the recipient.**

LEP individuals are those persons who reported to the Census Bureau that they speak English “less than very well.” According to American Community Survey (ACS) data, 150,689 persons, or 14.9 percent, of the Fairfax County population age 5 years and older would be considered LEP or linguistically isolated.<sup>4</sup>

In accordance with the FTA Circular, FCDOT has begun to identify LEP populations in the service area and their language characteristics through an analysis of available Census data. Fairfax County’s GIS staff developed maps (see Appendix 1) demonstrating the number of LEP individuals eligible to be served by Fairfax Connector, including the presence, population density, and distribution of linguistically isolated populations within Fairfax County. The following tables provide detail on the linguistically isolated population of Fairfax County.

**Table 4 Linguistically Isolated Population in Fairfax County – Top 10 Languages**

Language	Speak English "Less Than Very Well"
Spanish or Spanish Creole	63,100
Korean	19,355
Vietnamese	13,946
Chinese	10,274
Hindi and other Indic languages <sup>5</sup>	5,927
African Languages	5,050
Arabic	3,725
Urdu	3,629
Farsi	3,606
Tagalog	2,967

<sup>4</sup> American Community Survey, 2007-2011 5-year estimates.

<sup>5</sup> There are 4,060 speakers of “other Indic languages” and 1,742 speakers of Hindi that speak English less than very well. Hindi is the 12<sup>th</sup> largest language group for residents who speak English “less than well” behind Portuguese, but it is among the top ten non-English languages overall (including those that speak English well) spoken in Fairfax County. Due to this fact, and the fact that speakers of other Indic languages may also speak Hindi, Hindi and other Indic languages will be combined in analyses of linguistically isolated populations in Fairfax County.

**Table 5 Linguistic Isolation in Fairfax County by Language Group**

Language Spoken at Home	Population 5 years and over	Percent of Population	Speak English less than “very well”	Percent of Population that Speaks English Less than “Very Well”
<b>Spanish</b>	138,397	37.2%	64,092	13.7%
<b>Indo-European</b>	83,654	8.3%	22,160	2.2%
<b>Asian or Pacific Islander</b>	117,911	11.7%	53,678	5.3%
<b>Other Languages</b>	36,237	3.6%	10,759	1.1%
<b>Language Other than English</b>	<b>376,199</b>	<b>37.2%</b>	<b>150,689</b>	<b>14.9%</b>

As part of the Factor 1 Analysis, FCDOT will reach out to Fairfax County Public Schools to examine school enrollment patterns in regard to LEP populations. This data will help to determine concentrations of the population speaking a similar language. Identifying these populations will allow FCDOT to ensure its LEP program is effective and ensure meaningful access is available to services for LEP persons. The final Factor 1 Analysis will include detailed evaluation methods, the application of the safe harbor provision, descriptions of data sources, the LEP Population Identification, including charts and maps, and a summary of the findings.

**Factor 2: The frequency with which LEP persons come into contact with the program.**

FCDOT will survey Fairfax Connector Store representatives, telephone operators, and transportation supervisors to determine if the agency’s personnel are in frequent contact with LEP persons. The Factor 2 Analysis will include detailed methodology, and synthesis of the findings from the Census data, staff surveys and ridership surveys.

**Factor 3: The nature and importance of the program, activity, or service provided by the program to people’s lives.**

The nature and importance of Fairfax Connector service to LEP populations in Fairfax County will be assessed using both qualitative and quantitative analyses. A GIS analysis overlaying the presence and population density of LEP and linguistically isolated populations and the density of zero and one-car households will provide perspective on where populations with the greatest need for transit coincide with language assistance needs. The numbers, geographic distribution, and proportion of minority and low-income individuals using Fairfax Connector service will also be assessed using Census data.

Fairfax County departments and organizations working with LEP populations, including the OHREP and NCS, will be consulted to provide qualitative input how on the importance of public transportation services to the residents that they each serve.

**Factor 4: The resources available to the recipient for LEP outreach, as well as the costs associated with that outreach.**

FCDOT has completed a preliminary determination of the costs of LEP outreach (see Table 6 below), and staff will need to work to determine the available budget for providing language assistance in reference to the types of language assistance that Factors 1-3 determine is needed.

**Table 6: Language Assistance Unit Costs**

Language Assistance Strategy	Unit Cost	Source
Materials Translation - Spanish	<ul style="list-style-type: none"> <li>Flyers - \$46 per page</li> <li>Fares and Policies Guide - \$250</li> <li>Schedules - \$68 (Spanish), \$92 (Other Languages)</li> <li>.17 per word (Spanish), .25 per word (other languages)</li> </ul>	Voiance – Approved Fairfax County vendor (rates provided by FCDOT Communications)
Materials Translation	\$36 per job minimum	Northern Virginia Area Health Education Center (Non-Profit)
Materials Translation	\$0.18/word for Spanish and \$0.23/word for other languages, with a minimum of \$50 per job	Schreiber Translations, Inc. (STI)
Simultaneous Interpretation with transmitter equipment provided for up to 15 people per session	\$115 per hour, for a minimum of two hours plus a \$10 travel fee per session	Northern Virginia Area Health Education Center (Non-Profit)
Simultaneous Interpretation with transmitter equipment provided for 15 or more people per session	\$125 per hour, for a minimum of two hours plus a \$10 travel fee per session	Northern Virginia Area Health Education Center (Non-Profit)
Consecutive Interpreting	\$75 per hour per translator, for a minimum of two hours plus a \$10 travel fee per session	Northern Virginia Area Health Education Center (Non-Profit)
Consecutive Interpreting	\$500 per hour for a minimum of four hours	Schreiber Translations, Inc. (STI)
Language Line	Billed by the minute, costs per call ranged from \$95 to \$177 and totaled \$1,335 in the past year	Fairfax County Office of Human Rights and Equity Programs data
Language Assistance Tear Sheets	Translation will likely cost between \$50 and \$75, depending on the number of languages	Based on STI's cost per word for translation
Website Translation	Free	Google Translate is currently in use on the Fairfax County website, translating into 80 different languages

**Determining Language Assistance Provided**

FCDOT currently provides the following language assistance services:

- Interpretation:** FCDOT has access to County staff that can provide interpretation services for Spanish, Mandarin Chinese, and Vietnamese. For example, through the Silver Line Pilot Program (described

below), Fairfax County Police Department's (FCPD) Language Skills Support Unit can be leveraged to provide interpretation services at relevant Silver Line outreach events.

- **Website Translation:** Fairfax County, including FCDOT's web page, currently uses Google Translate to provide translation of its website into approximately 80 different languages.
- **Fares, Policies, and General Information** – This guide is currently available in English and Spanish.
- **Service Information Flyers:** FCDOT typically translates 10 of 20-30 flyers annually into Spanish.

FCDOT also anticipates providing the following types of language assistance services:

- **Title VI Bus Cards – Spanish:** Title VI Notice bus card into Spanish for every vehicle in the Fairfax Connector fleet.
- **Language Line Services:** FCDOT will employ a language line service based on the Fairfax County Office of Human Rights and Equity Programs past experience with use of the service.
- **Language Assistance Tear Sheet:** Each Fairfax Connector bus will have a packet of 60 tear sheets. These tear sheets will have a basic set of language assistance instructions printed in Spanish and nine other languages.
- **Fares, Policies, and General Information** – These guides will be translated into additional languages as determined per the Four Factor Analysis.
- **Service Information Flyers:** FCDOT produces between 25 and 30 flyers annually; flyers will be translated into additional languages as determined per the Four Factor Analysis, and per the local area demographics of the impacted routes on a case-by-case basis.
- **Interpretation:** The provision of interpretation services at meetings will be reviewed. Currently all interpretation must be requested ahead of time; however, there may be some instances where interpretation services will be provided without a special request.

In determining the types of language assistance to be provided by language, FCDOT will process the results of the Four Factor Analysis, including the consideration of available budget for language assistance.

#### **Notifying LEP Persons of the Availability of Language Assistance**

FCDOT staff will consult with other Fairfax County departments, including NCS and OHREP, to determine how best to notify LEP persons of the availability of language assistance. FCDOT staff will ensure the translation of vital documents into all languages, as deemed necessary through the Four Factor Analysis and the Safe Harbor Provision, to ensure that LEP persons have access to information on how to contact FCDOT about Fairfax Connector service or in regard to other transit-related issues.

#### **Training**

Staff training to meet the needs of LEP populations will be incorporated in Title VI training for all front-line Fairfax Connector staff, including contract bus operators, bus supervisors and dispatchers, and call center staff, as well as County staff responsible for Fairfax Connector oversight. The preparation of this training material will include the development of PowerPoint presentation slides and speaker notes, and may include the development of other training materials including a role-playing scenario and the use of DOJ's training videos on meeting the needs of LEP populations.

All staff interacting with the public will have a language assistance "tear sheet" or flash cards in multiple languages to identify language spoken and access to a language line phone number to use as needed.

### **Monitoring and Evaluation of the Language Access Plan**

In the near-term FCDOT will examine the results of the 2014 ridership survey in mid-2014 to better understand how linguistically isolated persons are using the Fairfax Connector system. The ridership survey will be available in English and Spanish and the survey asks for the respondent's native language and whether or not the respondent speaks English "very well," "well," or "not well."<sup>6</sup> This data will be examined at the route-level to provide a geographic perspective on the usage of Fairfax Connector by LEP populations. Once FCDOT has begun using language information line, staff will track the language requests for future reference

In addition to these first steps, staff will examine best practices from potential peer transit agencies to determine other measures and procedures for monitoring, evaluating, and updating the language access plan and language assistance provided. Proposed peer transit agencies include: WMATA, SamTrans (San Mateo, California), Via Metropolitan Transit (San Antonio, Texas), Metropolitan Council (Minnesota).

### **Project Examples**

#### ***Service Change Notifications Public Outreach Process***

FCDOT conducts outreach to inform and seek input from Fairfax Connector riders about service changes that will impact their routes and communities. Service change outreach efforts are targeted around the geographic areas that are directly impacted by the planned service changes, although meetings are advertised throughout the system. Typically, Fairfax County conducts outreach to impacted riders and communities by posting notices of the planned changes and opportunities for public comment on the changes at public meetings, on buses, at bus shelters, and by directly distributing print notices of meetings to riders. Information is also posted to Fairfax Connector's website and social media accounts. Translation services are available upon request at all public meetings. Fairfax County translates print notices into Spanish and other languages as needed upon reviewing the demographics of the impacted riders and neighborhoods. By providing information directly to passengers with translation into the appropriate languages, FCDOT seeks to ensure that all riders and impacted community members are aware of and have the opportunity to provide comment on service changes that impact their lives. The following are two examples of public outreach related to typical service change notifications:

- In April 2011, Fairfax County closed the Reston East Park and Ride lot to facilitate the construction of the Wiehle-Reston East Metrorail Station parking garage; opened Sunset Hills Interim Park and Ride lot; and created a new Fairfax Connector route, Route 555. Staff developed an outreach plan consisting of public meetings and public notices to inform the public about these changes. The public meetings were held at transit accessible locations that were located near the affected areas. Translation services were available upon request at these public meetings, but no translation services were requested. Notices about the changes were posted on buses, bus shelters, and on the Fairfax Connector's website and handed out directly to passengers.
- In September 2011, Fairfax Connector modified service in South Fairfax County due to the impact of the Base Realignment and Closure (BRAC) process on Fort Belvoir. A significant Hispanic population lives in the neighborhoods served by two of the impacted routes, Route 310 and Route 171, and as a result flyers informing the public of the service change and their

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<sup>6</sup> The following languages were listed as options on this question: English, Spanish or Spanish Creole, Korean, Vietnamese, Mandarin, Arabic, Amharic, Urdu, Hindi, Persian, Tagalog, and Other (write-in).

opportunity to comment on the proposed changes were printed in both English and Spanish and were posted on buses and at bus shelters. This information was also available on Fairfax Connector's website. Three public meetings were held in transit accessible locations along the routes being impacted. Translation services were offered at the public meetings, but none were requested. During the week of the service change, staff went out to key transfer and boarding locations and provided printed information in both English and Spanish directly to riders to ensure that they were aware of the route and schedule modifications.

***Silver Line Outreach Campaign and Language Skills Support Unit (LSSU) Pilot Program***

For more significant service changes, FCDOT engages in a larger, more robust public outreach process. The most recent example, described below, involved the launch of major service changes for the Fairfax Connector, in conjunction with the launch of the Washington Metropolitan Area Transit Authority (WMATA) Silver Line project. FCDOT's efforts to ensure comprehensive and effective public outreach for these service changes have led to the development of a new public outreach pilot program. This new pilot program is helping to create new partnerships among County agencies and has redefined FCDOT's approach to public participation outreach.

*Silver Line Outreach Campaign* – WMATA's Silver Line project is a 23.1 mile Metrorail extension that will connect the Fairfax County communities of Tysons, Reston, Herndon, and Dulles International Airport to the regional rail system. In 2014, WMATA will be opening the first phase of Silver Line service, including four stations in Tysons Corner and one in Reston. Fairfax Connector has planned a major service change that will modify 40 percent of the Connector's existing service in response to the opening of the Silver Line Phase I.

FCDOT's Silver Line Bus Service Plan was developed to increase transit ridership and encourage the use of the Metrorail Silver Line by providing bus service to the new Silver Line stations in Tysons Corner and Reston. The Silver Line Bus Service Plan is derived from recommendations from Fairfax County's Transit Development Plan (TDP), and categorized by two distinct efforts: the realignment, enhancement and addition of new feeder routes in the Herndon, Reston, Tysons, McLean, Vienna areas; and the implementation of circulator bus system within Tysons.

Two rounds of public outreach were employed to support the development of Silver Line Bus Service Plan. The first round of public outreach included six, two-hour public meetings (followed by an online chat) within the Dulles corridor between January 31, 2013 and February 11, 2013. At each meeting, a preliminary bus service plan was presented and feedback was received.

To advertise the first round of meetings, FCDOT completed the following:

- Issued a press release to local media outlets approximately two weeks before the first meeting.
- Included the press release information in a flyer and posted it on the FCDOT website, as well as in key locations in the Dulles corridor and posted on Fairfax Connector buses
- Public meeting information was placed on the County's public meeting calendar
- Public meeting information was posted on social media (Facebook, Twitter)
- A bus hanger was created in English and Spanish and placed on all the buses in the service area, alerting existing riders to the meetings and to the potential for service changes to their route.

After the first round of public meetings, staff compiled approximately 380 comments from the public and revised the service plan. FCDOT staff then initiated a second round of public outreach to gather final comments on the revised plan. Round two of the public outreach process included six, two-hour public meetings and online chats. FCDOT received an additional 200 comments during the second round of public meetings. To support the second round of meetings, FCDOT staff completed the following:

- Emailed participants of the first round of meetings, for whom FCDOT had email addresses, to invite them to participate in the second round of meetings.
- Issued a press release to local media outlets approximately two weeks before the first meeting.
- Included the press release information in a flyer and posted it on the FCDOT website, as well as in key locations in the Dulles corridor and posted on Fairfax Connector buses
- Public meeting information was placed on the County's public meeting calendar
- Public meeting information was posted on social media (Facebook, Twitter)

During the course of Silver Line public outreach and planning, FCDOT determined that a larger information campaign that targets Title VI communities also would be needed when the new services begin operating. FCDOT now is preparing to implement a large-scale outreach campaign to provide information on the Silver Line opening and the related Fairfax Connector service changes, targeted to residents in impacted neighborhoods. In partnership with WMATA, FCDOT is conducting public meetings and other efforts to educate the public about the Silver Line opening. FCDOT's Silver Line outreach campaign targets impacted populations at a hyper-local level that WMATA does not have the capacity to reach. This includes meetings with community groups, holding or attending events in the impacted areas, and using electronic and traditional media to provide information about the Silver Line and changes to Fairfax Connector service. The Silver Line outreach campaign aims to specifically engage residents from underserved and disenfranchised populations: minorities, LEP individuals, persons with disabilities, older adults, and individuals and families living within lower income brackets.

In developing the Silver Line outreach campaign, FCDOT worked closely NCS to develop a strategic outreach plan to reach the targeted communities more effectively. The resulting plan uses a grassroots approach to place Fairfax County staff within easy reach of these populations, with a variety of strategies, including meeting people where they are: community centers, retirement homes, and transit centers, with translators and in formats that allow for one-on-one interaction. The strategies recommended for input into the Silver Line outreach effort have been incorporated into this public participation plan.

*LSSU Pilot Program* – The Silver Line outreach campaign also will include a joint initiative pilot program between FCDOT and FCPD LSSU. The FCPD LSSU will provide one-on-one interpreters for the Silver Line community outreach events for a variety of languages. FCDOT and FCPD LSSU developed the joint program to reach people where they live and to provide opportunities for one-on-one interaction. Utilizing the FCPD's existing structure for securing the appropriate translation services will allow FCDOT to both capitalize on the efficiencies of using public sector staff that are trained in dealing with the public and that have been background checked. LSSU officers will work alongside FCDOT staff at a variety of events, to provide information on the Silver Line opening and changes to Fairfax Connector service. FCDOT and FCPD LSSU have created a special training program for LSSU officers assisting with the Silver Line outreach campaign to ensure they understand the information to provide to members of

the public. As this is not traditional police work and it is important for the public to feel comfortable approaching FCDOT, LSSU officers participating in the pilot program will wear business casual attire.

The Silver Line outreach campaign also incorporates assistance from other parts of Fairfax County government. FCDOT is developing a map book for a “train the trainer” program to provide to community centers, libraries, and other government facilities. This will allow staff to provide information on the Silver Line changes in an environment that residents find familiar and trustworthy. The train the trainer program will include information about existing routes, where changes will be occurring, and what new service riders can use.

The LSSU pilot program will be used to gauge the success of these outreach strategies and will serve as a model for future outreach efforts. FCDOT will track staff attendance at all the events, and the amount of materials distributed to quantifiably measure the success of the program. FCDOT will also conduct periodic reviews throughout the outreach effort to determine if changes need to be made to the program.

### **Development of Public Participation Plan Strategies**

During the development of the Silver Line LSSU pilot program, FCDOT contacted staff in the County Executive’s office, NCS, FCPD, and the Hunter Mill magisterial district to obtain information and form critical partnerships to allow FCDOT to better involve minority, low-income, and LEP populations. Several best practice strategies were developed as a result, including:

- *Meet people where they are, rather than asking people to come to Fairfax Connector meetings to provide input or obtain information.* FCDOT received a list of the relevant locations, including community centers, senior centers, medical centers, houses of worship, and County-owned and other multifamily residential complexes for the Silver Line LSSU Pilot Project.
- *Engage with community-based organizations to reach their members and understand the best ways to reach their members and constituents.* FCDOT received a list of organizations relevant to the Silver Line LSSU Pilot Project.
- *Speak at monthly meeting for local human services agencies.* Human services agency staff can help with distributing information on transit service changes and opportunities for providing input. Human services agency staff also can share their insight into the transportation challenges of the populations they serve with FCDOT staff.
- *Utilize Fairfax County Public Schools (FCPS) communication channels and resources to reach parents.* Sending information home with students at schools in neighborhoods impacted by the Silver Line service changes was recommended. FCPS parent liaisons can provide a direct link to provide transit-related information to families in Title VI and other traditionally underserved populations.
- *Focus on providing translated print materials in Spanish, Korean, Vietnamese, Mandarin Chinese, and Cantonese Chinese, Amharic, Hindi, Arabic, Urdu, Farsi and Tagalog, as appropriate.* These are the primary languages for which translation is needed within Fairfax County.
- *Buy PSA time on Spanish-language media channels, including Univision, Telemundo, and Spanish-language radio stations.* Spanish-language PSAs have proven effective in distributing information to Fairfax County’s Hispanic community.

- *Be available for one-on-one interactions.* For the Silver Line outreach, FCDOT will leverage its relationship with the FCPD LSSU to provide interpreters for FCDOT staff members during outreach activities.
- *Create targeted how-to videos to familiarize seniors with how to use transit.*
- *Provide SmarTrip cards as an incentive to increase participation.*
- *Create train-the-trainer for community center staff.* Provide resources including schedules, brochures, and route maps to community center staff so that they can provide transit information to the general public.

Several strategies for holding effective public meetings that are inclusive for all populations were also documented:

- *Be available and conduct public outreach at all times of day, including weekends.* This enables individuals working different types of schedules, including individuals with shift-work jobs that take place outside of traditional business hours and on the weekend, to participate in meetings.
- *Provide child care for larger meetings.* FCDOT can leverage volunteer coordinators at community centers, as these child care volunteers are already background-checked.
- *Have snacks at meetings.* Providing food increases participation.
- *Conduct meetings within walking distance of residential hubs.* Holding meetings in easily accessible locations increases attendance.

FCDOT now is in the process of formalizing a partnership with NCS and other human services agencies and organizations, which have direct access to minority, LEP, and low-income populations. These groups can assist with selecting outreach methods, venues, and partners for transit-related public participation activities in the future.

In addition to these strategies, FCDOT staff referred to federal guidance and other national best practices reviews, including FTA Circular 4703.1 Environmental Justice Policy Guidance for Federal Transit Administration Recipients and National Cooperative Highway Research Program Report 710: *Practical Approaches for Involving Traditionally Underserved Populations in Transportation Decisionmaking*, to aid in the selection of strategies for this Public Participation Plan.

## **Public Outreach Strategies**

FCDOT currently creates individual public participation plans for each planning process or initiative, tailored to the type of plan or service under consideration and the scope of changes or geographic impact of the project. Strategies identified in this plan will be utilized *selectively* by FCDOT on a case-by-case basis and incorporated into project-level public participation plans. At the outset of a planning process, service change, fare change, or other transit initiative, FCDOT project managers will review the strategies contained within this plan and select those that are appropriate to the individual project based on the type of project, the demographics of the individuals that would be impacted by the project, and the resources available.

*Understanding Our Community* – At the outset of any transit initiative requiring outreach, FCDOT will identify the local area(s) impacted and develop an understanding of the populations living in the area(s). Demographic data, past experience, as well as feedback from local community-based organizations, houses of worship, human services agencies, and staff from the magisterial district office will provide

both a quantitative and qualitative understanding of the local area(s). Based on this information, FCDOT will develop a targeted approach to ensuring inclusive public participation by all members of the local community, including identifying the need for translation services and the types of public outreach that are likely to be effective with the populations present in the local community.

*Inclusive Public Meetings* – FCDOT uses public meetings to generate feedback about proposed service changes and other projects. FCDOT notifies the public 30 days prior to the meeting through a variety of print and non-print advertising methods. Meetings are held in transit accessible locations, and in a variety of location types (i.e. schools, community centers, senior centers, apartment complexes, shopping malls, and libraries). Meetings will be held at locations within walking distance of residential areas when possible. FCDOT will hold meetings at traditional and non-traditional times, including during the morning, daytime, and on the weekend. Childcare services and refreshments will be available as project resources allow. Translation services will be available at all meetings upon request and translation services may be provided without request at meetings in areas with high concentrations of LEP populations. When appropriate, the format of the meetings will be open-house style, to allow attendees to speak individually and provide oral feedback to FCDOT staff.

*Pop-Up Events* – “Pop-Up” events include setting up information booths at places where Fairfax Connector riders and other residents are present in formats that allow for one-on-one interaction. Pop-up events may be held in locations such as transit centers and major transfer points, community centers, schools, senior centers, medical centers, houses of worship, and County-owned and other multifamily residential complexes. When project resources allow, SmarTrip cards or other small giveaway materials may be provided to increase public participation. At these pop-up events, FCDOT may be accompanied by translators and members of local community-based organizations to facilitate relationship building and communication with the local community. Individuals will have the opportunity to provide oral feedback directly to FCDOT to increase feedback from minority, low-income, and LEP populations.

*Internal Partnerships* – FCDOT will work with other Fairfax County departments, including the OHREP, NCS, and FCPD, to leverage relationships with community and faith-based organizations, translation resources, and to work with them at their events to distribute information about Fairfax Connector services and transit projects, plans, and initiatives. FCDOT also will work with internal partners to create “train-the-trainer” programs that familiarize other front-line Fairfax County staff with Fairfax Connector service and current transit projects and plans to allow staff to provide transit information to the general public.

*Community Events* – FCDOT staff will seek to meet people where they are by attending community events and festivals (e.g., *Celebrate Fairfax, Pan-American Festival*) where minority, low-income, and LEP populations may be present to distribute transit information and solicit feedback.

*Partnerships with Community Based Organizations, Faith Based Institutions, and Schools* – OHREP provided FCDOT with a list of over 100 community-based organizations, while NCS also provided a list of community-based organizations, houses of worship, and local schools for the Silver Line LSSU Pilot Project. Building relationships with these types of organizational partners is vital for disseminating information and soliciting feedback from diverse communities. FCDOT will work with these organizations to distribute materials, co-sponsor meetings, or attend meetings to reach their constituents, clients, and members. FCDOT will continuously build on these relationships to develop sustainable partnerships.

*Focus Groups* – Focus groups with leaders of relevant community and faith-based organizations, or the members or constituents, will be employed at times and locations convenient to attendees to solicit feedback in a small group, informal setting from minority, LEP, and low-income populations.

*Print Materials* – FCDOT develops flyers, brochures, and other print materials to inform the public of public meetings and other opportunities to comment on projects and to convey vital system information. Print materials are always distributed to community areas affected by proposed project or service changes and translated into other languages as needed per the local demographics and the Language Access Plan. Where possible, printed materials will incorporate pictures and use minimal text to facilitate their use by LEP and low-literacy individuals. FCDOT will place advertisements to promote public meetings and alert riders of service changes on buses, bus shelters, park and ride lots, and at Fairfax Connector Stores. FCDOT will also provide these notices to other partners for distribution through their channels, including community-based organizations, local human services agencies, and houses of worship.

*Online Materials* - FCDOT will use existing online resources: website, social media accounts (Twitter and Facebook), and county-managed listservs (ConnectorInfo, 2050TransitStudy, and TransportationFunding) to disseminate information about capital projects. FCDOT also will develop informative videos and other interactive visualization techniques, which are important for reaching LEP and low literacy communities, will be incorporated in large-scale projects for distribution online and use at public meetings.

*Phone Line* – FCDOT has an existing call center service that is available 24-hours a day, as well as access to a language line service. This call center phone number will be included on all project related materials.

*Use of Ethnic Media* – FCDOT will advertise public meetings in local ethnic media outlets, which may include radio stations, TV stations, and newspapers. These outlets reach Fairfax County's diverse populations and can help to target specific minority communities.

*Advisory Committee Meetings* – Fairfax County has four advisory boards that weigh in on transit-related matters: The Transportation Advisory Commission, the Commission on Aging, the Fairfax Area Disability Services Board, and The Mobility and Transportation Committee. These advisory boards are comprised of members of the community who can provide vital information regarding the best outreach strategies for reaching targeted populations.

## **Outcomes Evaluation Process**

The Fairfax County Department of Transportation is committed to reviewing its Public Participation Plan and the effectiveness of the strategies contained herein. This Public Participation Plan is a living document that FCDOT will refer to and update on an ongoing basis.

Following the completion of a planning process or initiative that includes public involvement, FCDOT will review the overall effectiveness of the public outreach by addressing the following questions:

- Was there participation by Title VI protected populations throughout this public participation process? What was the level of participation by Title VI protected populations relative to the

proportion of the populations that would be potentially impacted by the proposed plan, project, service change, or fare change?

- How many external events, meetings, and opportunities for one-on-one interaction were provided? Did these outreach activities target specific Title VI populations that would be impacted by the proposed transit plan project, service change, or fare change?
- Were materials translated into the appropriate language(s), printed, and distributed at places where minority, LEP, and low-income populations would have access to them?
- In the judgment of the project team, were the appropriate strategies employed to engender inclusive public participation? Which strategies worked the best, and which ones did not work as well as expected?

These questions will be addressed by all involved team members and documented in a brief memo on lessons learned following each public participation campaign’s conclusion. This performance documentation will allow FCDOT staff to continuously improve efforts to promote inclusive public participation.

## H. Transit Service Standards and Policies

FCDOT has developed transit service standards and policies to guide the equitable provision of service and amenities for Fairfax Connector service. FCDOT also is working to develop a service area profile, in conjunction with strategies for transit service monitoring.

### Transit Service Standards

**Vehicle Loads:** Vehicle loads are used to determine if a bus is overcrowded. A vehicle load is the average maximum number of people seated and standing during the peak one-hour in the peak direction. Vehicle passenger load is measured by the average load and the ratio of average load to seated capacity (load/seat ratio) during weekday a.m. peak, midday, and p.m. peak period. The table below presents the maximum load factors for the three types of buses in the Fairfax Connector fleet: 40-foot, 35-foot, and 30-foot buses.

Figure 1 Vehicle Loads

Vehicle Type	Seated Capacity	Standing Capacity	Maximum Achievable Capacity	Maximum Load Factor
<b>40 foot bus</b>	39	9	48	1.25
<b>35 foot bus</b>	30	7	37	1.25
<b>30 foot bus</b>	28	7	35	1.25

### Service Frequency

Service frequency (headways and span of service) are determined based on the type of route. The Fairfax Connector service uses the following classification of routes:

*Commuter/Express:* Fixed route bus service provided solely in the peak/rush hour periods Monday-Friday, in the peak direction of travel, where the service predominately picks up passengers from either a neighborhood or collection point (park-and-ride lot or transit hub), and provides closed-door service

for at least five miles along the route on a highway or major arterial. At least one Metrorail station or transit hub is served.

*Local:* Fixed route bus service usually provided Monday through Sunday, where the service is provided along local streets and roadways, where there is not only passenger activity at the start and end point of the route, but also boardings and alightings at stops along the route. Service typically runs all day or during off-peak times.

*Feeder:* Fixed route bus service typically provided Monday through Friday, where the service predominately picks up passengers from a neighborhood and/or collection point (park-and-ride lot, transit hub, etc.), and service is provided to/from a Metrorail station or transit hub. Service may be provided all day or solely in the peak periods. 'Reverse-commute' type service may also be included in this category.

*Cross County:* Fixed route bus service typically provided Monday through Sunday, where the service is provided along mostly local streets and roadways, where the route is at least 15 miles long and serves at least two activity centers (transit hubs, major generators, etc.), where there is not only passenger activity at the start and end point of the route, but also between stops along the route. Service typically runs all day.

*Circulator:* Fixed route bus service provided at higher frequencies (i.e. less than 15 minutes) all day. Service is designed to facilitate movement to and from a Metrorail station or transit hub. At least one Metrorail station or transit hub is served.<sup>7</sup>

Based on these types of routes, the following service frequency guidelines have been established:

*Span of service*

- a) For commuter/express – when possible, service should be provided Monday to Friday during morning and evening peak periods – early enough to connect to the first Metrorail train inbound to the District, and to the last train operated at frequent (six minute or otherwise) headways outbound from the District in the afternoon
- b) For Cross-County routes– service should begin, when possible, within the first hour of Metrorail service to last train outbound
- c) For all other routes – service should begin, when possible, within the first hour of Metrorail service to within two hours of the last train<sup>8</sup>
- d) *For other ridership generators/attractors – should be as appropriate to serve demand*

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<sup>7</sup> Fairfax Connector does not currently have circulator routes in the Fairfax Connector system, but will have new circulator routes introduced following the Silver Line related service changes.

<sup>8</sup> When referencing the last Metrorail train, the Monday-Thursday Metrorail schedule will be utilized as Metrorail operates extended service on Friday and Saturday. The Sunday Metrorail schedule will apply on that day of the week.

*Headways*<sup>9</sup>

- a) During peak periods on weekdays (5:30 AM – 9:00 AM and 3:30 PM – 7:00 PM)
  - a. Demand headways – not less than the rail headway and not more than twice the rail headway
  - b. Policy headways – to the extent possible, not more than 30 minutes
- b) During all other periods on weekdays and all day on Saturdays, Sundays, and holidays
  - a. Demand headways – not less than twice the rail headway and not more than three times the rail headway
  - b. Policy headways – to the extent possible, not more than 60 minutes
- c) To the extent possible, clock-face headways will be operated<sup>10</sup>

**On-Time Performance:** On-time performance is defined as vehicle arrivals no more than one minute early and five minutes late measured at the first and last time point of a route.

**Service Availability:** Fairfax Connector’s standard for service availability is that all persons residing within 1/4 mile of bus stops/bus routes should be served by Fairfax Connector’s fixed-route bus service.

**Transit Service Policies**

**Distribution of Amenities / Site Selection Methodology**

Selection and distribution of new installations of amenities (e.g., bus shelters, benches, loading pads and trash receptacles) is based on the criteria as established in the bus stop guidelines adopted in 2004.

Site selection also plays a major role in the distribution of bus stops and pedestrian improvements. As part of the 2004 Bus Stop Improvements Study new scoring and improvement factors were established. The scoring standard is comprised of various factors (e.g., safety, potential ridership, and cost). Locations were scored as either high or low priority, and, in an effort to address sites with immediate needs, all locations scoring high in the high priority category have been selected for first consideration for improvements.

**Figure 2 Bus Stop Improvement Site Selection Prioritization Scoring (Source: 2004 Bus Stop Improvement Study)**

Configuration				Estimated and Potential Ridership	Additional Non-Transit Related Benefits	Cost for Improvements	Overall Score
Safety While Walking	Safety While Standing	Vehicular Safety	Combined Safety Score				
1 = Most Safe			1 = Most Safe	1 = Low existing and potential usage	1 = No clear benefit to the community	1 = High Cost - Over 100K	1 = Low priority
5 = Least Safe			5 = Least Safe	5 = High existing or potential usage	5 = Clear benefit to the community	5 = Low Cost - Less than 1K	5 = Action Recommended

<sup>9</sup> A demand headway is determined by applying a loading standard to observed maximum loads to determine the number of trips per hour required to accommodate the observed loads without exceeding the loading standard. A policy headway is set by standard or policy, and is applied when there is insufficient demand to require demand headway(s).

<sup>10</sup> Fairfax Connector has been challenged to maintain clock-face headways due to fluctuating travel times and traffic patterns at different times of the day, but still tries to adhere to this principle as much as possible.

## Bus Stop Guidelines

The bus stop guidelines include bus stop spacing, bus stop facilities (shelters, benches, loading pad, signs, service information, lighting, bus bays).

### Bus Stop Spacing

- *High density* (750-foot spacing) – primarily commercial with high concentration of employment, or with a population density of more than five people per acre.
- *Moderate density* (1,000-foot spacing) – population density of two to five people per acre.
- *Low density* (spacing based on activity centers rather than distance) – population density of less than 2 people per acre.

Fairfax Connector generally follows these bus stop spacing guidelines, however, bus stop spacing is at times predicated on whether or not there is existing infrastructure that can be safely accessed by the general public (i.e., no obstructions, the presence of sidewalks or lighting, whether other accessibility requirements are met) as well as the operational ability of the bus to safely operate and serve a specific or pre-selected stop location.

### Bus Stop Facilities

Guidelines for the provision of bus stop facilities are provided below. Bus Stop facilities include: shelters, benches, loading pads, bus stops signs, parking signs, customer information signs, lighting, and bus bays. Bus bench installation generally follows the 2004 guidelines; however, it has become clear that the demand for bus shelters far exceeds the demand for benches alone. Regardless, the provision of benches still is included as part of the improvement program and benches are added when a site location meets the criteria.

- **Shelters may be installed if any one of the conditions below is met:**<sup>11</sup>
  - a. Stop is at transit center OR at park-and-ride lot
  - b. Stop is at major activity center (boardings  $\geq 100$  per day) AND sufficient right-of-way for shelter is available
  - c. Stop is on arterial street/major collector road (boardings  $\geq 100$  per day) AND sufficient right-of-way for shelter is available
  - d. Stop is on arterial street/major collector road (boardings  $< 100$  per day) AND stop is in high-density area AND no shelter exists on route within 0.5 mile AND sufficient right-of-way for shelter is available
  - e. Stop is on minor collector road (boardings  $\geq 100$  per day) AND sufficient right-of-way for shelter is available
  - f. Stop is on minor collector road (boardings  $< 100$  per day) AND stop is in high-density area AND no shelter exists on route within 0.5 mile AND sufficient right-of-way for shelter is available
  - g. Stop is on residential street (boardings  $\geq 50$  per day) AND sufficient right-of-way for shelter is available

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<sup>11</sup> Since the Bus Stop Guidelines were developed in 2004, a new bus shelter advertising program was initiated. These shelter locations are selected by the advertising contractor in areas where high potential for shelter advertising sales and revenue exists.

- h. Stop is on residential street (boardings <50 per day) AND stop is in high-density area AND no shelter exists on route within 0.5 mile AND sufficient right-of-way for shelter is available
- i. Stop is on residential street (boardings <50 per day) AND stop is in residential area AND no shelter exists on route within 1.0 mile AND sufficient right-of-way for shelter is available
- j. Stop is on rural road (boardings ≥25 per day) AND sufficient right-of-way for shelter is available
- k. Stop is on rural road (boardings <25 per day) AND stop is in rural area AND no shelter exists on route within 1.0 mile AND sufficient right-of-way for shelter is available
- **Benches may be installed if any one of the conditions below is met:**
  - a. Stop is at major activity center (boardings ≥100 per day) AND sufficient right-of-way for shelter is not available AND sufficient right-of-way for bench is available
  - b. Stop is on arterial street/major collector road (boardings ≥100 per day) AND sufficient right-of-way for shelter is not available AND sufficient right-of-way for bench is available
  - c. Stop is on arterial street/major collector road (boardings ≥100 per day) AND sufficient right-of-way for shelter is not available AND sufficient right-of-way for bench is available
  - d. Stop is on arterial street/major collector road (boardings <100 per day) AND stop is in high-density area AND no shelter exists on route within 0.5 mile AND sufficient right-of-way for shelter is not available AND sufficient right-of-way for bench is available
  - e. Stop is on minor collector road (boardings ≥100 per day) AND sufficient right-of-way for shelter is not available AND sufficient right-of-way for bench is available
  - f. Stop is on minor collector road (boardings <100 per day) AND stop is in high-density area AND no shelter exists on route within 0.5 mile AND sufficient right-of-way for shelter is not available AND sufficient right-of-way for bench is available
  - g. Stop is on residential street (boardings ≥50 per day) AND sufficient right-of-way for shelter is not available AND sufficient right-of-way for bench is available
  - h. Stop is on residential street (boardings <50 per day) AND stop is in high-density area AND no shelter exists on route within 0.5 mile AND sufficient right-of-way for shelter is not available AND sufficient right-of-way for bench is available
  - i. Stop is on residential street (boardings <50 per day) AND stop is in residential area AND no shelter exists on route within 1.0 mile AND sufficient right-of-way for shelter is not available AND sufficient right-of-way for bench is available
  - j. Stop is on rural road (boardings ≥25 per day) AND sufficient right-of-way for shelter is not available AND sufficient right-of-way for bench is available
  - k. Stop is on rural road (boardings <25 per day) AND stop is in rural area AND no shelter exists on route within 1.0 mile AND sufficient right-of-way for shelter is not available AND sufficient right-of-way for bench is available
- **Loading pad**
  - a. Extending full length of bus(es) at transit center / park-and-ride lot
  - b. Current bus loading pad specifications are 5'x8'<sup>12</sup>
- **Bus stop sign**
  - a. Bus stop signs are installed at all locations with two variations: local and regional (for stops jointly served by WMATA's Metrobus) designs

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<sup>12</sup> The Fairfax Connector does not operate vehicles that deploy lifts at the rear doors, so FCDOT only designs bus loading pads to serve the front door ramp and kneeling systems.

- **“No Stopping, Standing or Parking” signs**
  - a. The Fairfax County code designates all bus stops are “NO Parking” Zones. The code<sup>13</sup> was amended in 2012 extending the length of the zone from a base of 30’ to 70’ feet, 60’ feet on approach and 10’ on departure in the bus stop area (Near-side, Mid-block and Far-side stops)
- **Customer information displays (schedule, system map)**
  - a. Fairfax County utilizes a variety of Customer Information display systems:
    - i. Bus route Ride Information Guides (2-4 sided mounted display units) which contain schedule and individual system maps are installed at all transit stations (bus/rail) and park-and-ride lots where Fairfax Connector bus service operates and have designated service bays
  - b. Bus System map are installed in bus shelters that are primarily served by Fairfax Connector routes only at most transit stations (Bus/Rail) and park-and-ride lots where Fairfax Connector bus service operates and have designated service bays
- **Lighting**
  - a. Generally Fairfax Connector bus stops do not have specific lighting installed other than what currently exists along the roadway in accordance with Illuminating Engineering Society standards
- **Bus bay – to be considered if at least one of the conditions below is met:**
  - a. The speed limit at the location is 45 miles per hour or higher
  - b. The sight distance at the location is limited by horizontal or vertical curves
  - c. The location is at the bottom of a steep grade
  - d. Bus dwells due to passenger activity generally exceed 10 seconds
  - e. When feasible, locate bus bay at far side stop at signalized intersection to take advantage of traffic stream interruptions from upstream signal

## Vehicle Assignment

Fairfax Connector’s routes are assigned vehicles from three bus garages: Herndon, West Ox, and Huntington, based on the size of the bus and the capacity needed on the routes operated from the garage. Buses are replaced at the end of their useful life per Fairfax Connector’s fleet replacement plan. The Fairfax Connector has a comprehensive preventive maintenance and component replacement program which ensures a high level of vehicle reliability. The oldest vehicles in the Fairfax Connector fleet date to 2002 with 94 percent of the fleet having a manufacture date of 2007 or later. The Fairfax Connector fleet averages 4.8 years of age. All vehicles in the Fairfax Connector fleet are low-floor with the exception of the 17 vehicles manufactured in 2002. Fairfax Connector’s current policy is to purchase only low-floor vehicles.

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<sup>13</sup> Fairfax County Code, Chap. 82-5-40 as amended.

**Table 7 Fairfax Connector Fleet Profile**

Year	Make	Size	Number	Low Floor?
2002	Orion	35'	7	No
2002	Orion	30'	10	No
2007	New Flyer	35'	16	Yes
2007	New Flyer	40'	52	Yes
2008	Orion	30'	26	Yes
2009	New Flyer	40'	45	Yes
2011	New Flyer	40'	68	Yes
2012	New Flyer	40'	20	Yes
2013	New Flyer	35'	15	Yes
2013	New Flyer	40'	19	Yes

**Service Area Profile**

Fairfax County has begun to develop its service area profile in preparation for the Title VI Program, in accordance with the Title VI Circular, Chapter IV, Section 5, and Appendix I. FCDOT’s milestones for the completion of this element are shown in the table below. FCDOT’s Information Technology (IT) and Geographic Information Systems (GIS) staff, in coordination with consultant staff, will be working on completing this demographic analysis, revisions to the LEP maps and charts as needed, and the transit service monitoring activity all during the same period within January. Based on the total workload and staff and consultant resources available, completion of the service area maps and profile is scheduled for February 2014.

**Table 8 Service Area Profile Development Milestones**

Milestone	Date
Revisions to draft service area maps	Monday, January 20, 2014
Draft narrative for service area maps and charts	Friday, January 24, 2014
Complete review of service area maps and charts	Friday, January 31, 2014
Finalize service area profile	Friday, February 07, 2014

Below are the draft maps for displaying the concentration and distribution of minority and low-income populations residing in Fairfax County. Fairfax County’s Department of Planning and Zoning uses a definition for low-income households as household incomes that are less than 50 percent of the Metropolitan Statistical Area (MSA) median household income, adjusted for family size. In keeping with that definition, FCDOT utilized the HUD Fair Market Rent Income Limits for the Washington-Arlington-Alexandria, DC-VA-MD HUD Metro FMR Area (which includes Fairfax County), which show the region as having a median household income of \$107,300. Low-income, defined as 50 percent of median household income, for a family of four (a typical measure) is \$53,650.

Figure 3 Minority Populations in Fairfax County

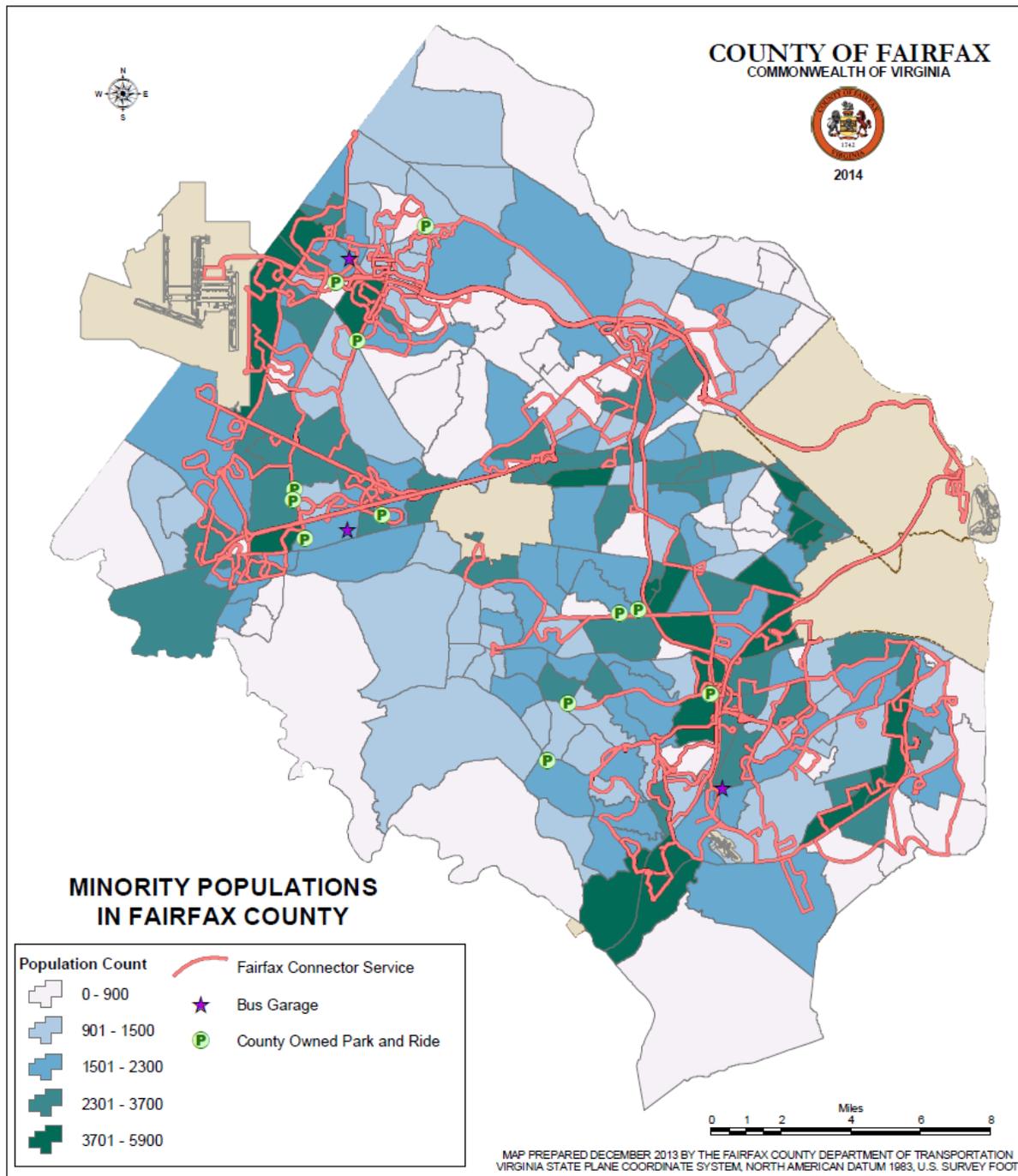
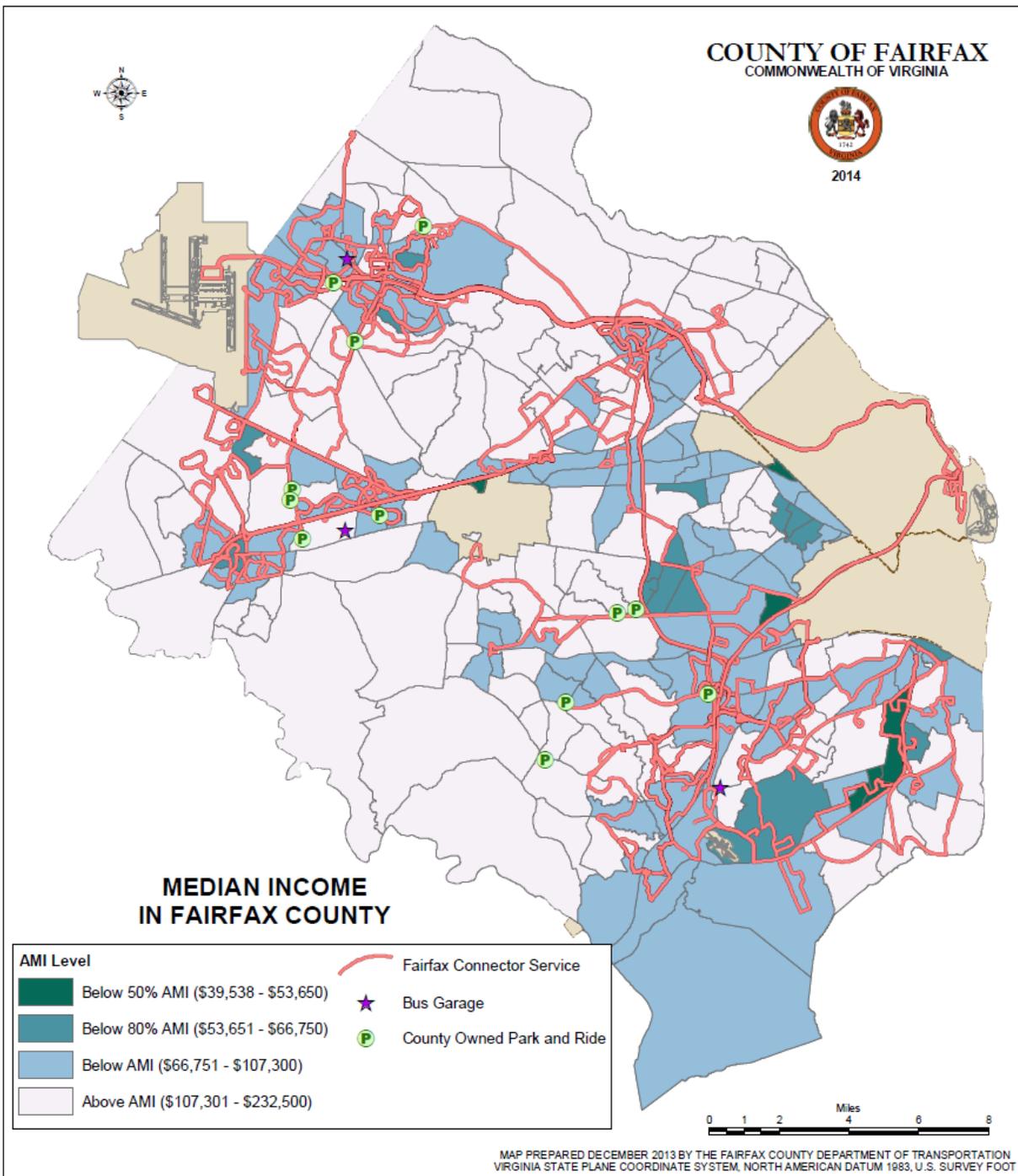


Figure 4 Census Tracts with "Very Low Income" and "Low Income" in Fairfax County



## Transit Service Monitoring

The first step in transit service monitoring will be a route-level analysis to determine, based on 2010 Census data, which routes are minority routes. Where practical, the results of the 2009 Ridership Survey will be cross-checked against the Census data to ensure that any routes that may be running through non-minority neighborhoods, but still have high minority ridership, are not missed.

Transit service monitoring will include an assessment of each minority and non-minority route in the Fairfax Connector service area to observe whether or not it meets or fails the existing transit service standards and an assessment of where there are deviances from the transit amenity policy.

The route-level analysis will then be applied to Fairfax Connector's transit service standards to uncover any instances where the standards are not being met. Information on the distribution of transit amenities will be cross-checked against the transit amenity policies established and variances will be noted. This analysis will be completed in GIS per the examples provided in the Title VI Circular.

FCDOT staff will meet to consider the findings of the monitoring activity, and to determine if any actions are needed in response, following the completion of the monitoring maps and charts.

As noted earlier, FCDOT's IT/GIS and FCDOT's consultant staff will be working on completing this demographic analysis, revisions to the LEP maps and charts as needed, and the transit service monitoring activity concurrently. Based on the total workload and staff and consultant resources available, completion of the transit monitoring activity is scheduled for February 2014.

**Table 9 Transit Service Monitoring Development Milestones**

Milestone	Date
Route-level analysis	Friday, January 24, 2014
Draft monitoring maps and charts	Friday, February 07, 2014
Determine monitoring findings and any appropriate actions in needed in response	Friday, February 14, 2014
Complete transit service monitoring	Friday, February 28, 2014
Board of Supervisors Approval	Tuesday, April 29, 2014

## **Major Service Change, Disparate Impact, and Disproportionate Burden Policies**

The development of FCDOT's Major Service Change, DIBD policies will require 12 weeks (not including board approval) due to the fact that these policies require time for public participation, and FCDOT must develop a tailored plan for and execute public participation activities.

By mid-January, FCDOT will have completed a review of peer system major service change, DIBD policies, and a draft of the plan for public outreach. Proposed peer systems again include: WMATA, SamTrans (San Mateo, California), Via Metropolitan Transit (San Antonio, Texas), Metropolitan Council (Minnesota). Upon approval of the Interim Title VI program by the Fairfax County Board of Supervisors, FCDOT envisions at a minimum having the draft policies posted on the Fairfax Connector website for 30 days, soliciting comments electronically, and holding two focus groups with community-based organizations to directly solicit feedback of from representatives of minority, limited English proficiency, and low-income communities. The presentations for these focus groups will be videotaped and placed on the Fairfax County YouTube site, with directions on how the public can provide additional comments electronically. Links to the YouTube video and information on how to provide electronic comments will also be placed on the Fairfax Connector Facebook and Twitter social media accounts. In addition to these steps, FCDOT will work with FTA to determine the appropriate level of public participation, including the need for broader public meetings. Once the public outreach plan has been finalized, preparations (including setting up the appropriate meeting venues and preparing presentation materials) will begin immediately.

In conjunction with the review of peer system policies, Fairfax Connector will closely examine the current use of the Fairfax Connector system by minority and low-income populations to ensure that the values selected for the DIBD policies are not set so high that findings of disparate impact and disproportionate burden are never found. FCDOT staff will meet to determine the draft major service change and DIBD policies with all of this information available to consider during the decision-making process. Preparations for posting the DIBD policies on the web and to begin advertising the opportunity to provide comment on these policies will take place in the week following the policy determinations, with the public comment period beginning on March 3, 2014. Following the end of the public comment period, FCDOT will analyze the public comments received through all formats (electronic and at meetings) and finalize the major service change and DIBD policies.

**Table 10 Major Service Change, Disparate Impact, and Disproportionate Burden (DIDB) Policy Development Milestones**

<b>Milestone</b>	<b>Date</b>
Complete review of peer system policies	Friday, January 24, 2014
Analyze route-level system data and develop draft major service change and DIDB policies	Friday, January 24, 2014
Draft public outreach plan	Friday, February 07, 2014
Finalize draft major service change and DIDB policies	Friday, February 14, 2014
Finalize public outreach plan	Friday, February 21, 2014
Start conduct public outreach activities (e.g., focus groups)	Saturday, March 01, 2014
Begin public comment period	Monday, March 03, 2014
End public outreach and comment period	Sunday, April 07, 2014
Process and analyze public comments and determine major service change and disparate impact / disproportionate burden policies	Friday, April 18, 2014
Board of Supervisors Approval	Tuesday, May 13, 2014

Upon approval of the Major Service Change and DIDB policies by the Board of Supervisors, FCDOT will be prepared to conduct Service Equity Analyses, as described by FTA C 4702.1B. Any Service Equity Analyses occurring prior to the completion of the 2014 Ridership Survey, including the analysis that FCDOT will complete for the Silver Line related service changes, will utilize Census data, but future Service Equity and Fare Equity Analyses will utilize ridership survey data in to determine instances of disparate impacts or disproportionate burden.

## **Appendix 1: Linguistically Isolated Populations in Fairfax County by Language**

**Map Note:** All of the maps were prepared using U.S. Census Bureau, American Community Survey, 2007-2011, 5-year estimates, data. Linguistically isolated populations were identified as those who speak English less than “very well.” Data was analyzed at the tract level of Census geography.

Figure 5 Concentration of Linguistically Isolated Populations (Percent of Total) in Fairfax County

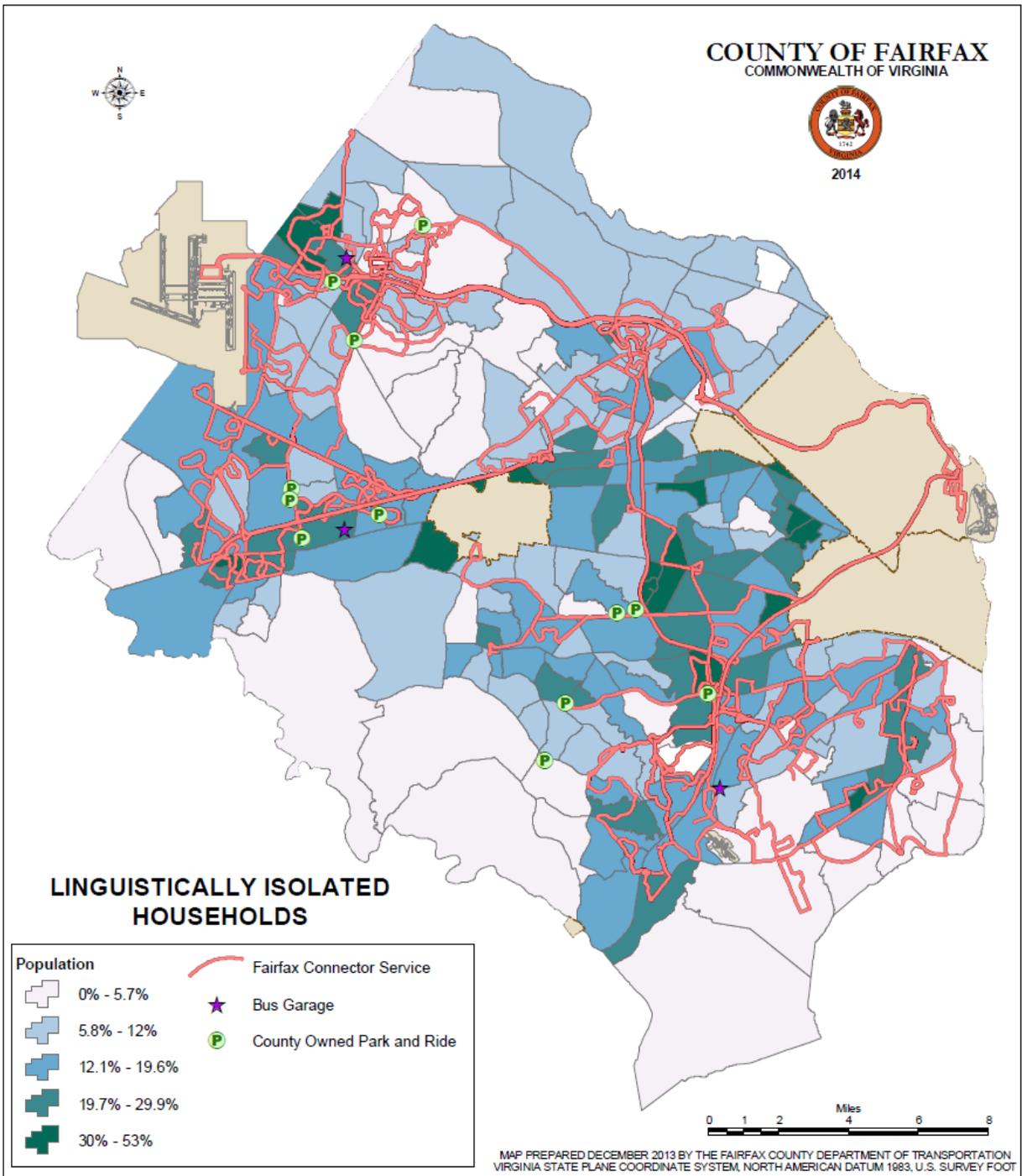


Figure 6 Linguistically Isolated Population (Number) in Fairfax County – Arabic

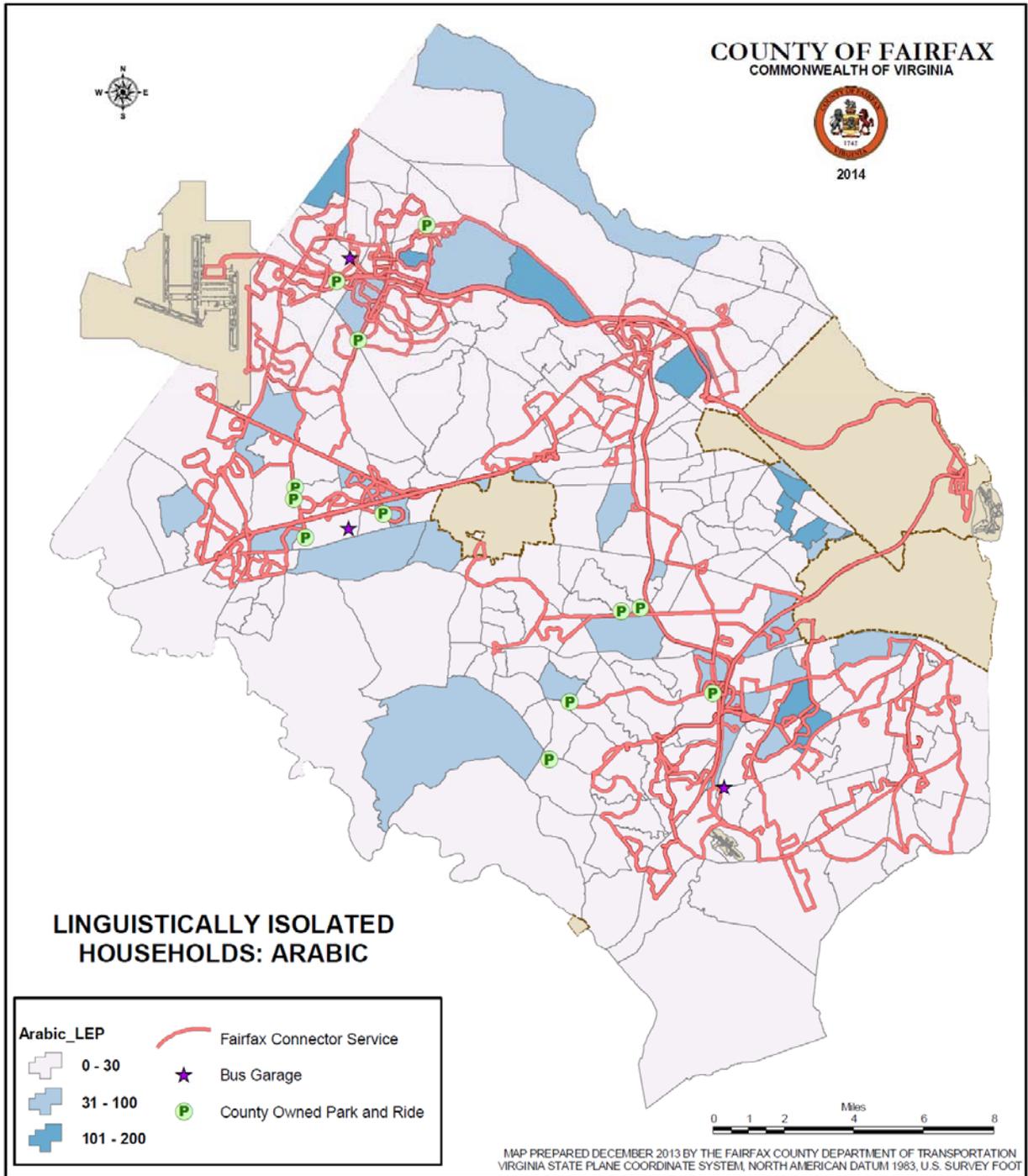


Figure 7 Linguistically Isolated Population (Number) in Fairfax County – African Languages

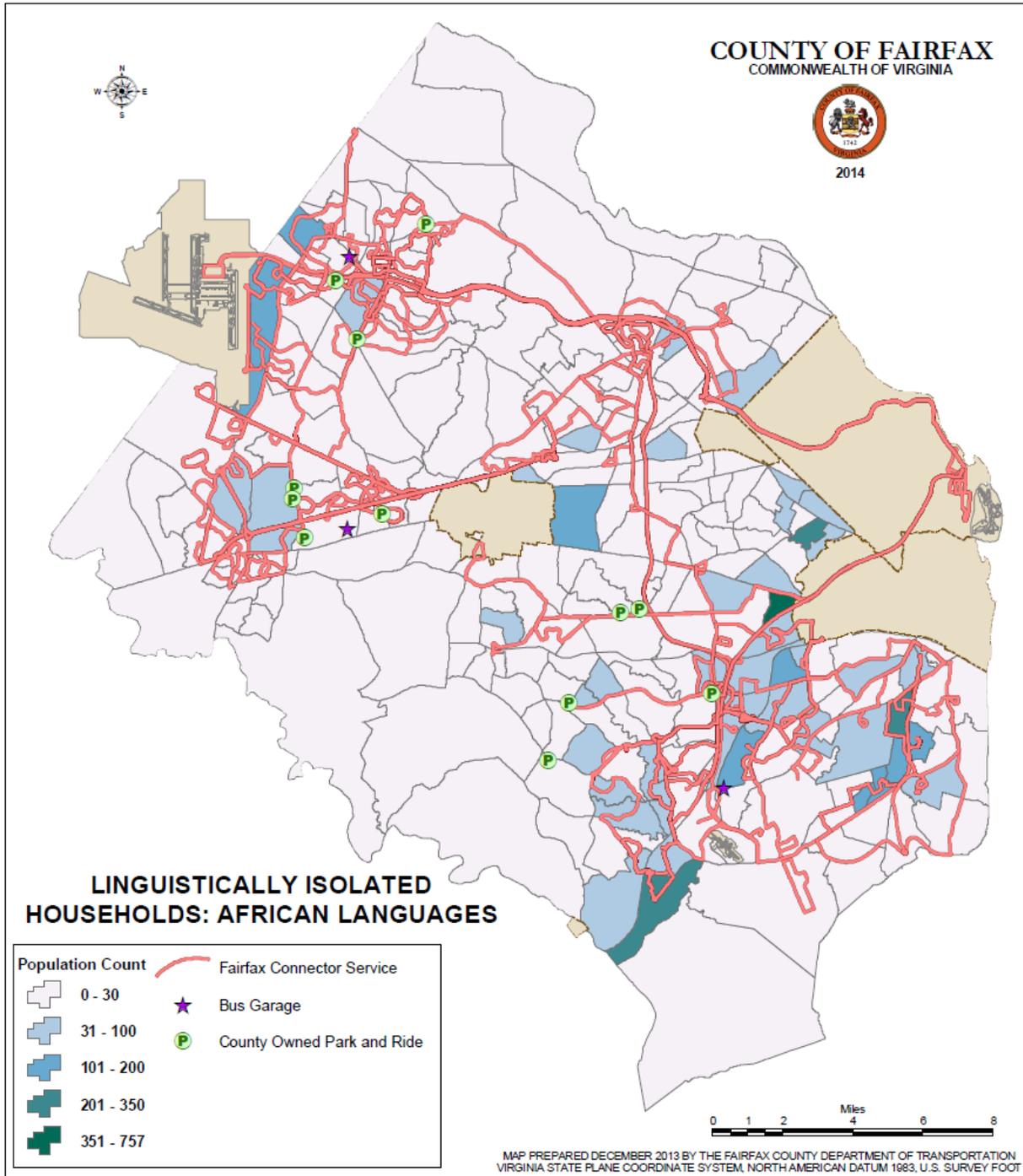


Figure 8 Linguistically Isolated Population (Number) in Fairfax County – Mandarin Chinese

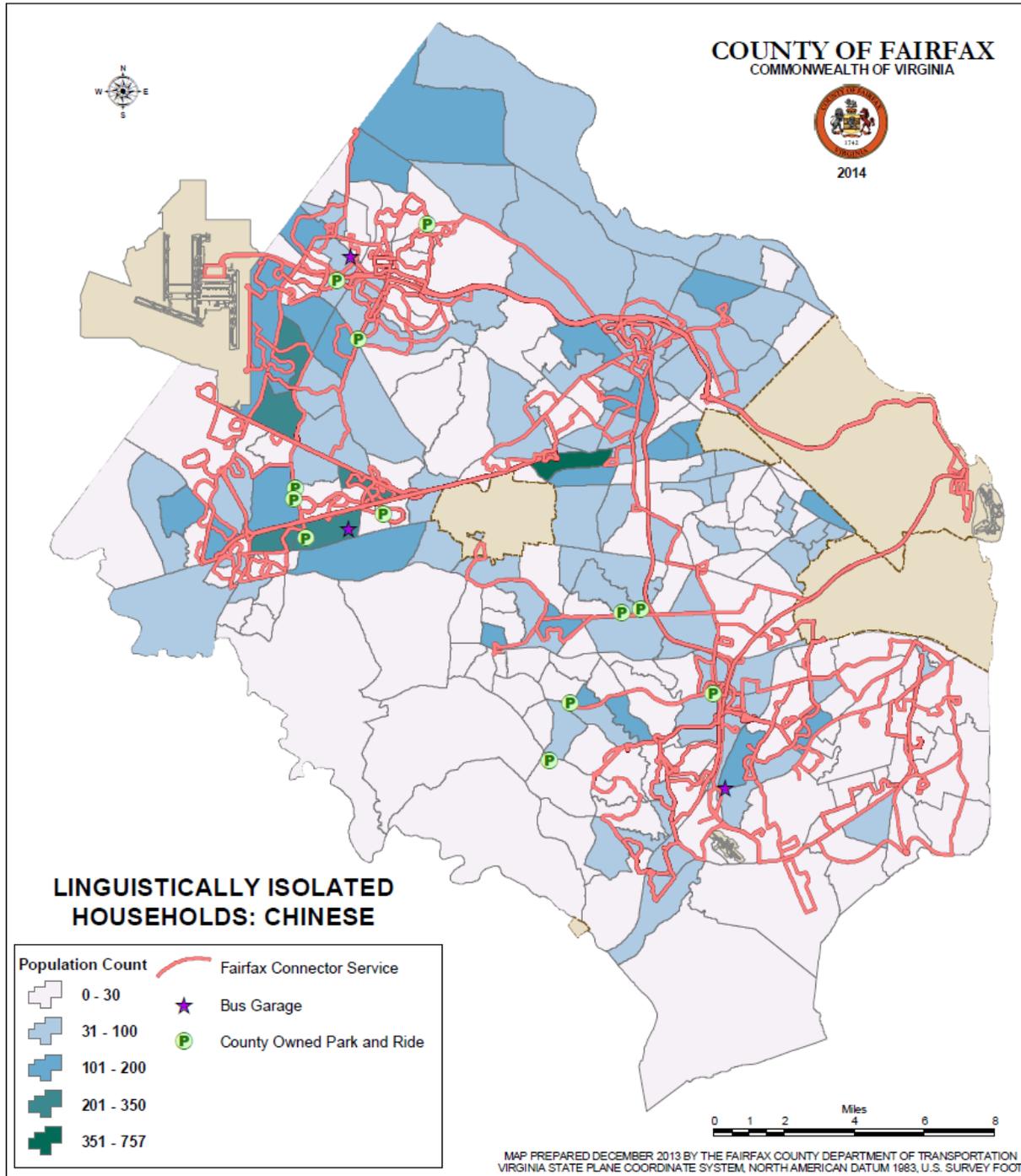


Figure 9 Linguistically Isolated Population (Number) in Fairfax County – Farsi (Persian)

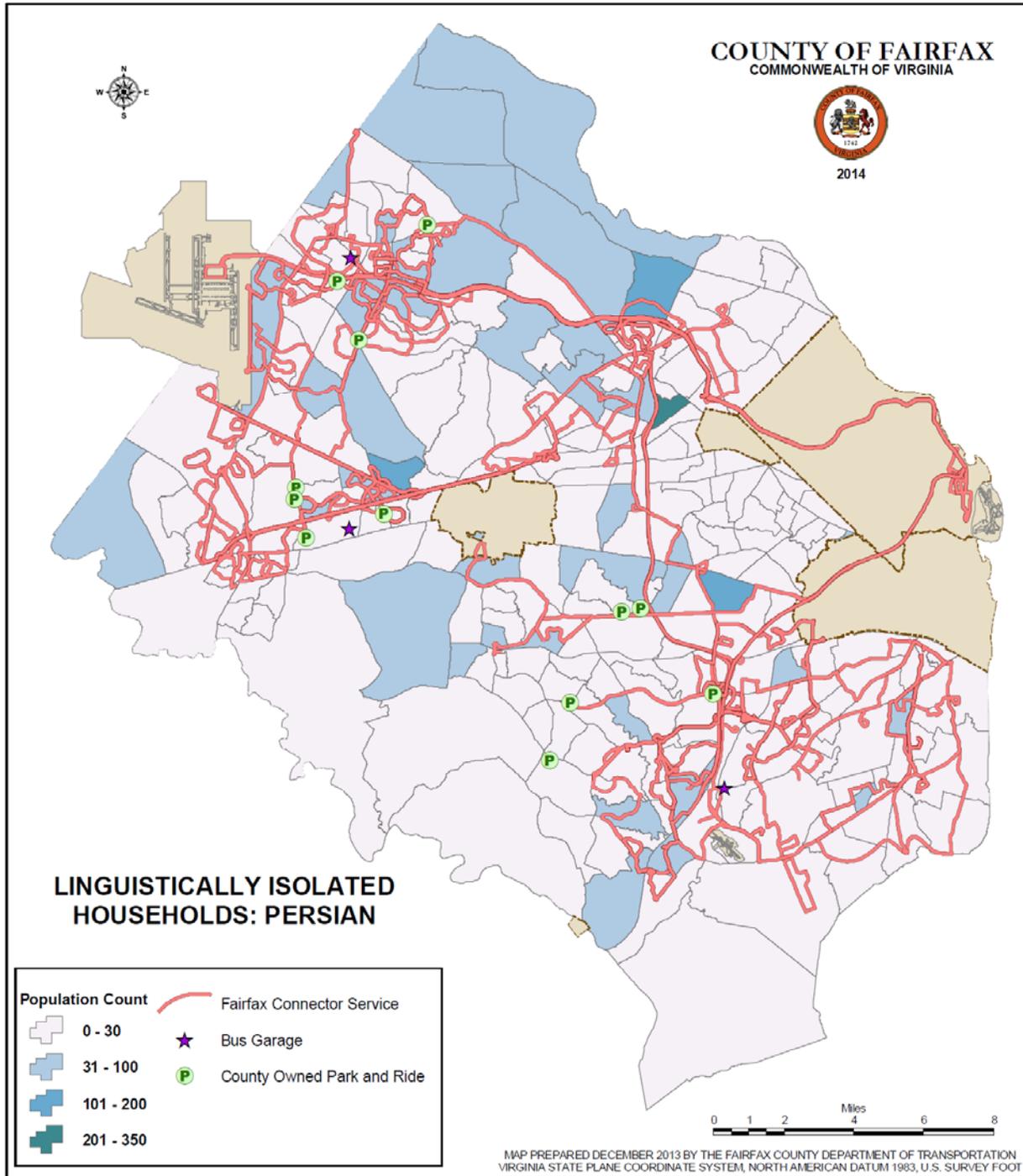


Figure 10 Linguistically Isolated Population (Number) in Fairfax County – Korean

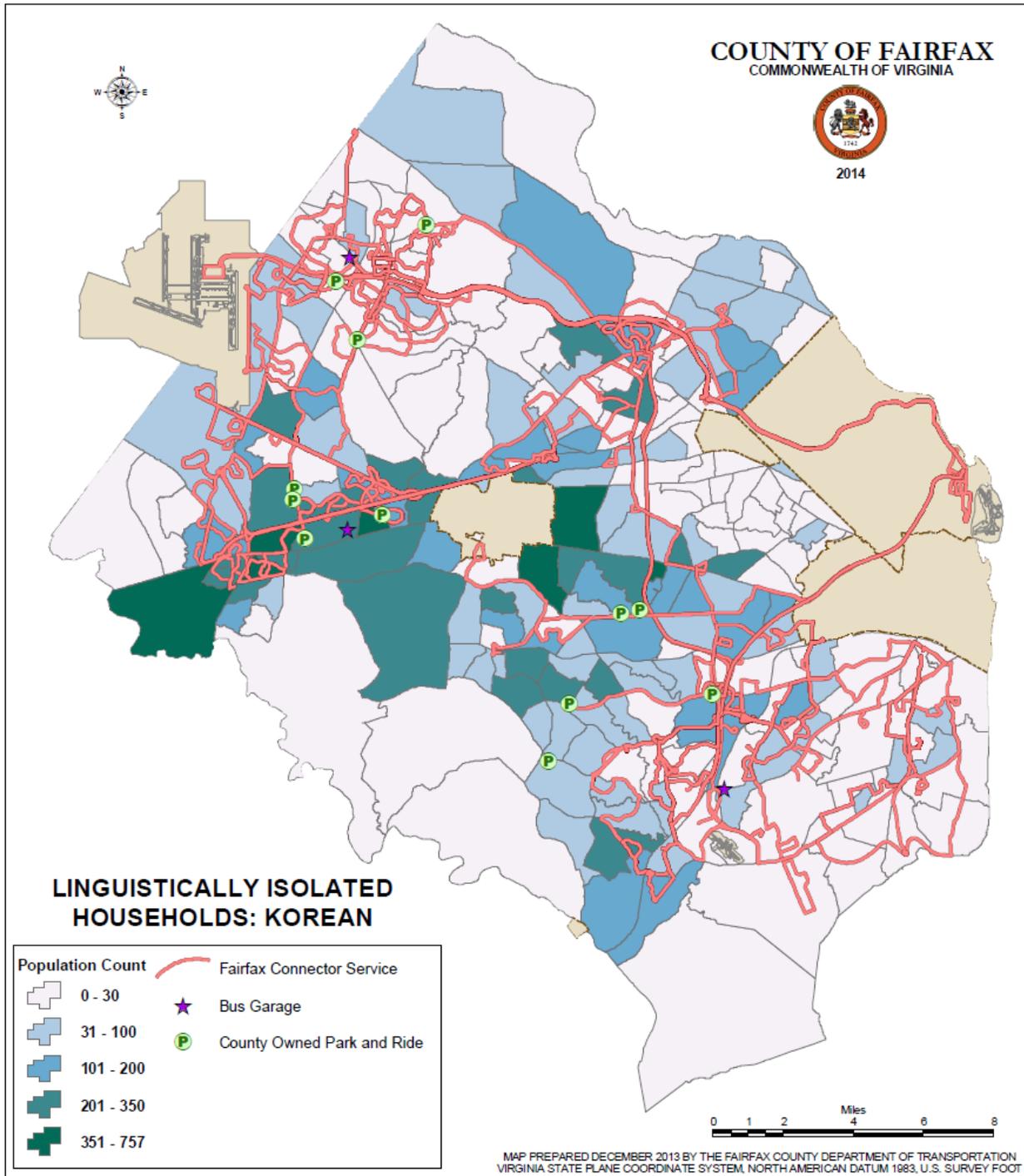


Figure 11 Linguistically Isolated Population (Number) in Fairfax County – Hindi

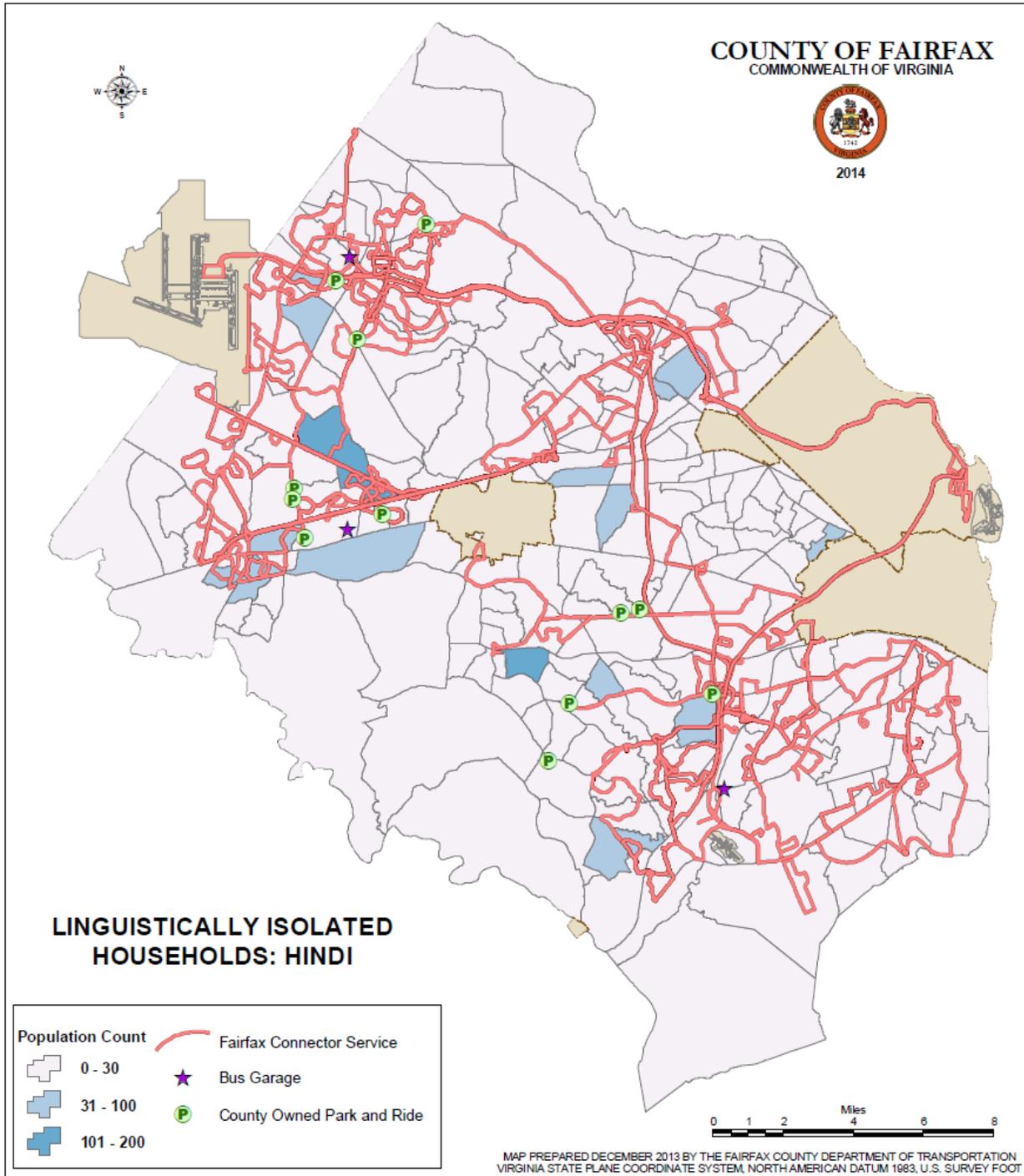
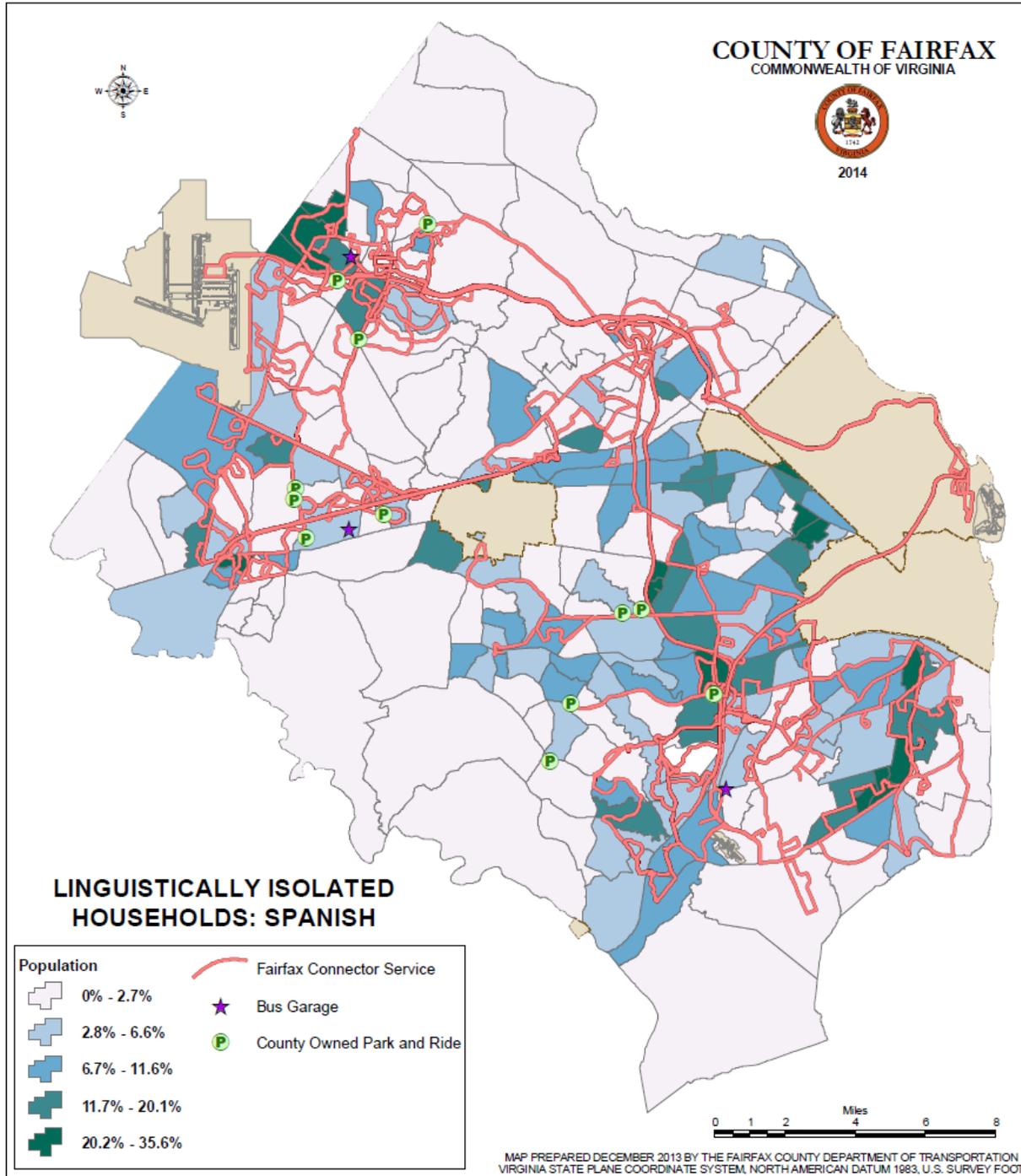


Figure 5 Linguistically Isolated Population (Percent of Total) in Fairfax County – Spanish<sup>14</sup>



<sup>14</sup> After English, Spanish is by far the predominant language spoken in Fairfax County. In some Census tracts, Spanish speakers constitute a significant percentage of the population.

Figure 6 Linguistically Isolated Population (Number) in Fairfax County – Spanish

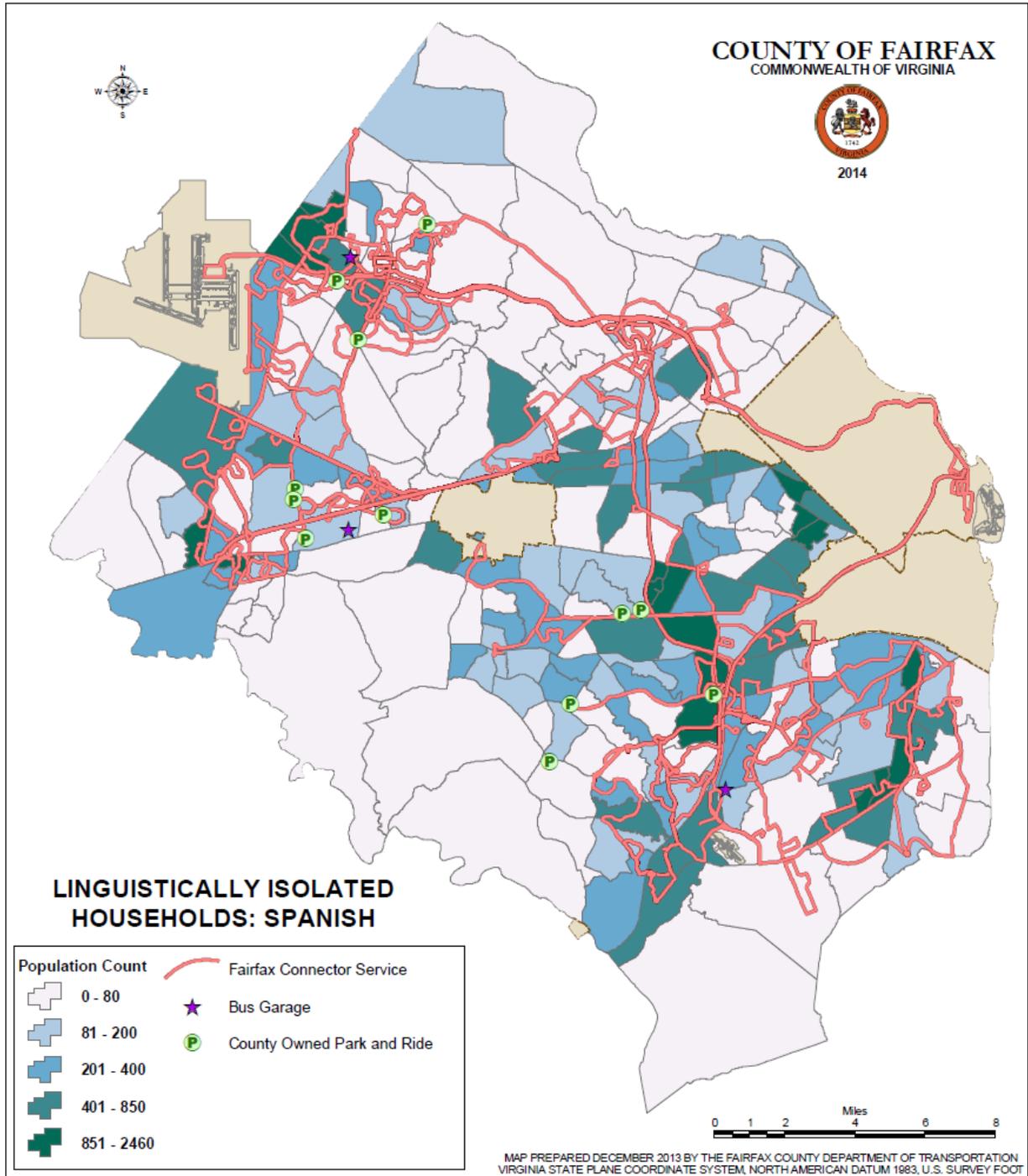


Figure 7 Linguistically Isolated Population (Number) in Fairfax County – Tagalog

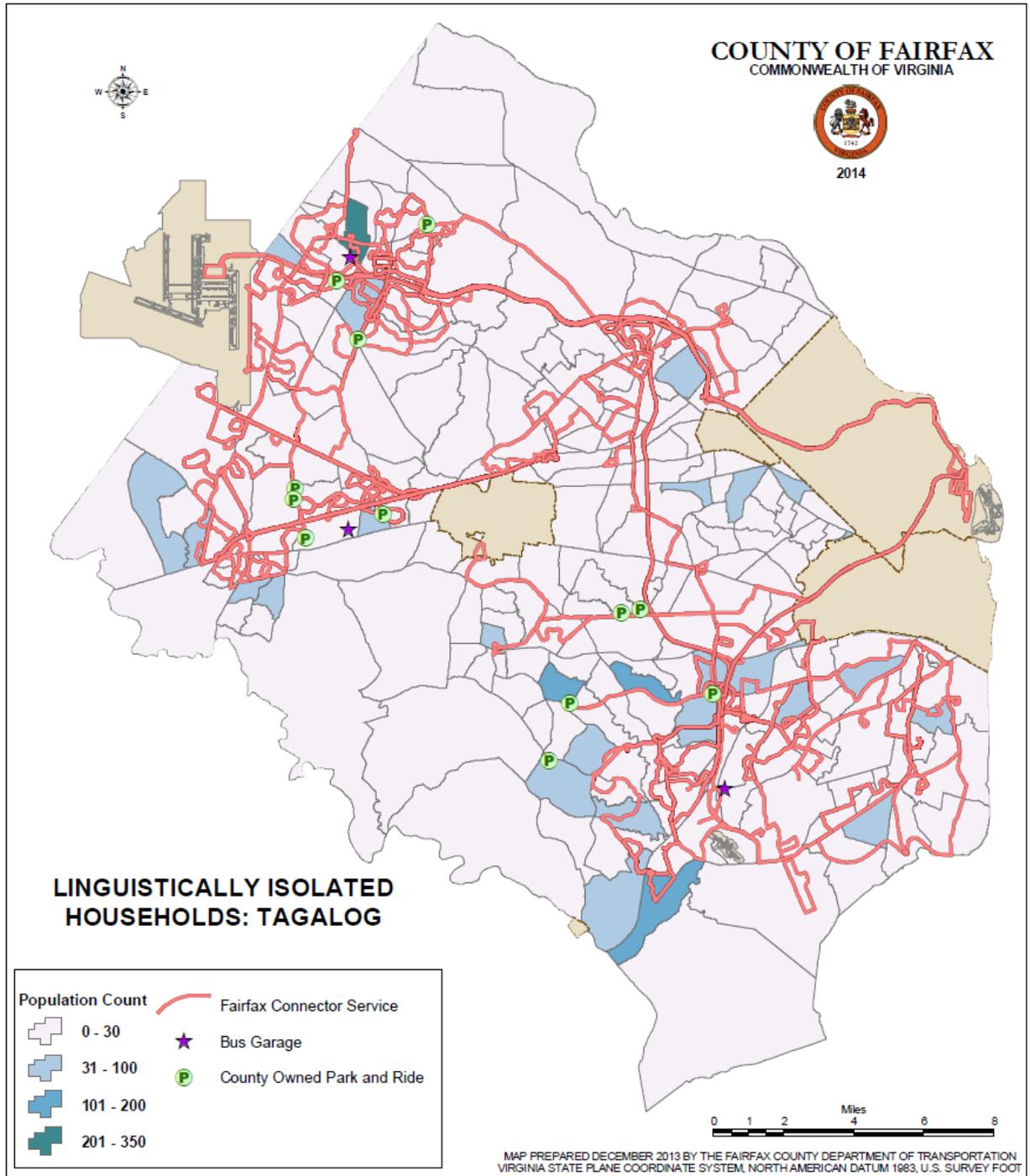


Figure 8 Linguistically Isolated Population (Number) in Fairfax County – Vietnamese

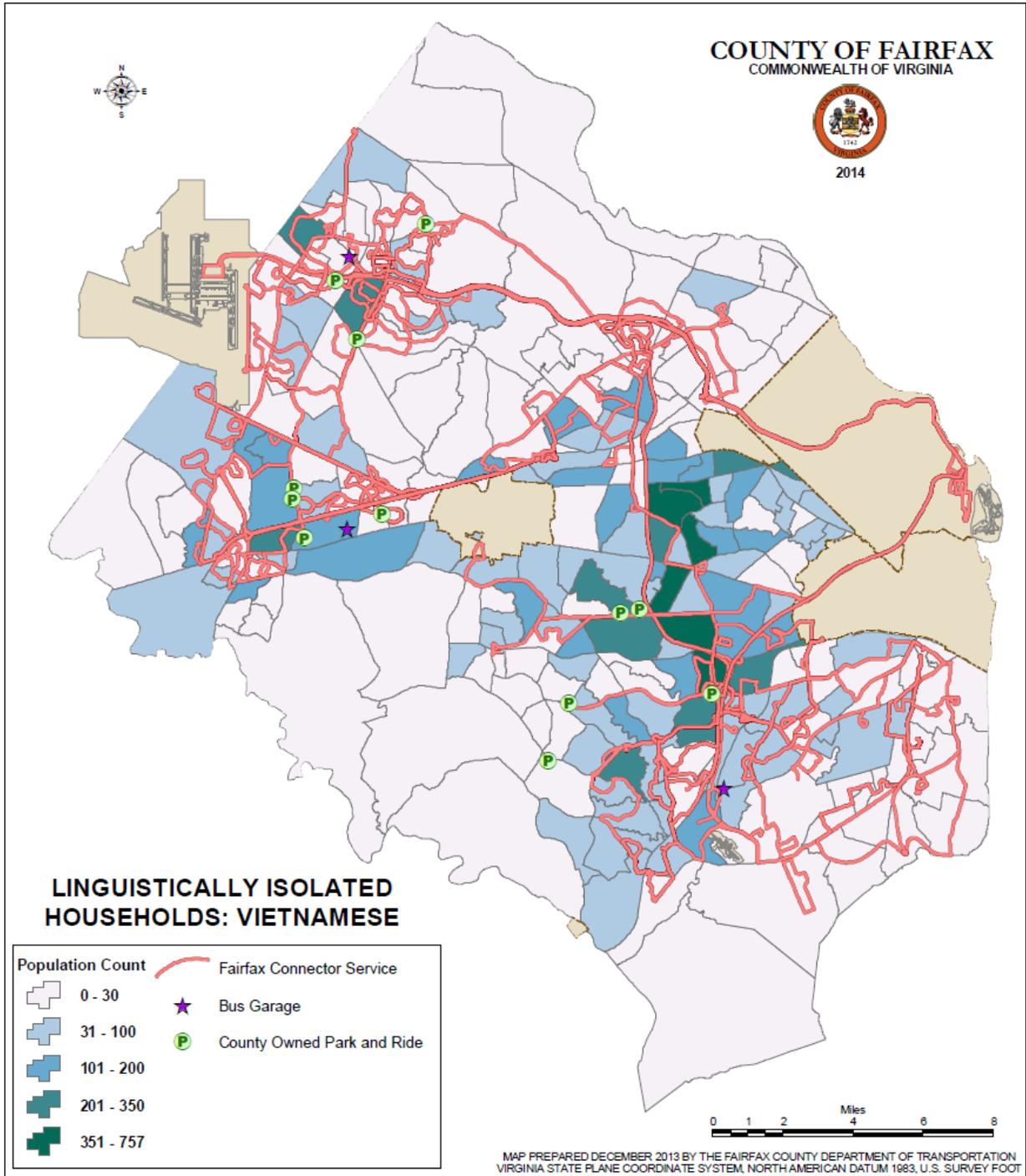
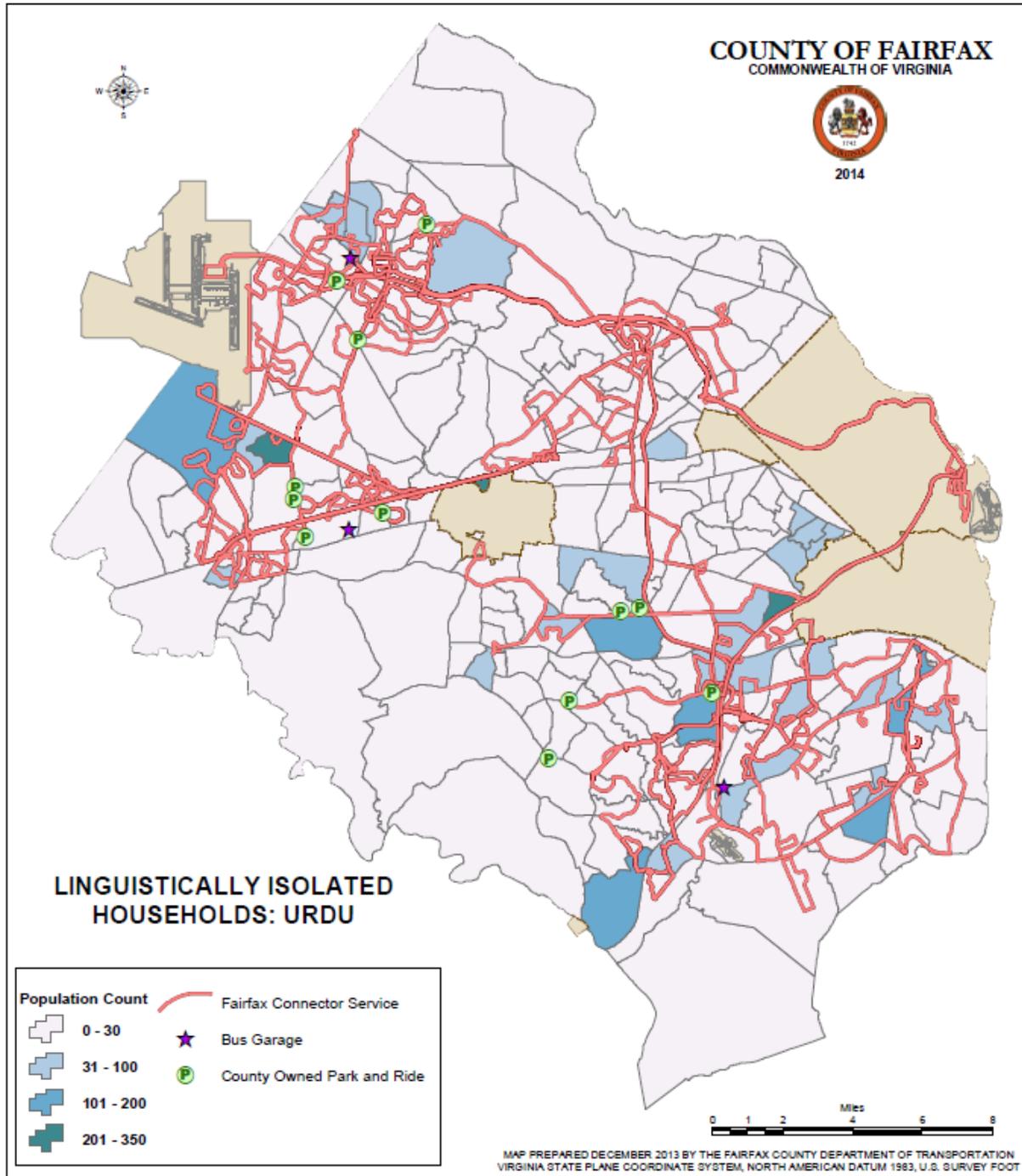


Figure 9 Linguistically Isolated Population (Number) in Fairfax County – Urdu



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Board Agenda Item  
January 28, 2014

ACTION - 5

Approval of an Agreement Between Fairfax County and George Mason University to Implement an Employee Commuter Shuttle Pool Program (Braddock District)

ISSUE:

Board approval of an agreement between Fairfax County and George Mason University to provide funds for an Employee Commuter Shuttle Pool as a Transportation Demand Management (TDM) strategy as part of the I-95 Express Lanes Transportation Management Plan (TMP).

RECOMMENDATION:

The County Executive recommends that the Board approve the execution of the agreement between Fairfax County and George Mason University to implement an Employee Commuter Shuttle Pool. The County Executive also recommends that the Director, Department of Transportation, be authorized to sign the agreement.

TIMING:

The Board should take action on this matter as soon as possible, so that funding is available to begin implementation of the Employee Commuter Shuttle Pool in January 2014.

BACKGROUND:

The Employee Commuter Shuttle Pool Program is a TDM strategy designed to reduce traffic congestion by offering a free shared-ride commuter option to employees that travel over 20 miles to work along the I-95 Express Lanes construction in Virginia.

The Employee Commuter Shuttle Pool pilot program/TDM Strategy was successfully implemented in January 2012 at INOVA Fairfax Hospital. As part of the Employee Commuter Shuttle Pool program, the I-495 Capital Beltway Express Lanes TMP funded the first six months operation. After the initial six month period, Inova Fairfax Hospital has continued to fund the program into 2014.

As part of this ongoing TDM strategy, staff has engaged George Mason University to pursue implementation of an Employee Commuter ShuttlePool program.

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George Mason University has met or exceeded all proffered trip reduction goals, in addition to these efforts George Mason University provides shuttle services to and from Vienna Metrorail station for its employees.

George Mason University has committed \$80,727.57 to engage its existing shuttle service provider to operate one long distance shuttle for employees who regularly drive from the south along the I-95 Express Lanes. This Employee Commuter Shuttle Pool will reduce SOV traffic in the Express Lanes construction zone, and provide employees with free, comfortable, and attractive alternative to driving alone.

FISCAL IMPACT:

One hundred percent of the funds for this program is provided by the Virginia Department of Transportation through the Transportation Management Program (TMP) for the I-95 Express Lanes, in the amount of \$80,727.57. George Mason University has committed to funding the Shuttle Pool for another six months following this startup period at \$80,727.57. If George Mason University chooses to continue the Shuttle Pool beyond the first year, it will be entirely at their expense. There is no commitment to provide public funds beyond the six month startup period.

No County funds are required for this program.

ENCLOSED DOCUMENTS:

Attachment I: Employee Commuter Shuttle Pool Agreement  
Attachment II: GMU Shuttle Pool Application/Proposal

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Ellen Posner, Coordination and Funding Section, FCDOT  
Beth Francis, Transportation Services Section, FCDOT  
Walter Daniel, Transportation Services Section, FCDOT

**FAIRFAX COUNTY EMPLOYEE SHUTTLE POOL PROGRAM  
AGREEMENT BETWEEN FAIRFAX COUNTY AND GEORGE MASON UNIVERSITY**

THIS AGREEMENT, made and executed in triplicate this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2014, is by and between the County of Fairfax, Virginia, hereinafter referred to as the COUNTY, and GEORGE MASON UNIVERSITY, an educational institution and agency of the Commonwealth of Virginia, hereinafter referred to as GEORGE MASON UNIVERSITY, (together the "Parties").

WHEREAS, the COUNTY and GEORGE MASON UNIVERSITY concur on the implementation of an Employee Shuttle Pool Program to benefit their corresponding employees that is related to the promotion of a Transportation Demand Management (TDM) strategy for the (I-95) Transportation Management Plan (TMP) High Occupancy Toll (HOT) lanes project as outlined in Appendix A and hereinafter referred to as the Program; and

WHEREAS GEORGE MASON UNIVERSITY manages various shuttle services, which, are currently operated by a contractor and desires add this new Program under its management and will appoint a staff member to administer the Program; and

WHEREAS partial funding for this Program will be supplied by the Commonwealth of Virginia's Department of Transportation (VDOT) and Department of Rail and Public Transportation (DRPT); and

WHEREAS the VDOT and DRPT funding requires an agreement between the COUNTY and GEORGE MASON UNIVERSITY for the funding and operation of the Program; and

;

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and benefits hereunder and other good and valuable consideration, the COUNTY and GEORGE MASON UNIVERSITY do hereby agree as follows:

1. The COUNTY shall:

- a. Provide payment in the amount not to exceed eighty thousand seven hundred twenty seven thousand dollars and fifty-seven cents (\$80,727.57) for the first six months of operation of the Program starting in January 2014, utilizing state funds from the Virginia Department of Transportation and the Department of Rail and Public Transportation. No local County funds will be required.
- b. Reimburse GEORGE MASON UNIVERSITY the cost of eligible Program expenses, upon receipt of GEORGE MASON UNIVERSITY's invoices pursuant to paragraph 2. b., not to exceed a cumulative total of \$80,727.57. Such reimbursements shall be payable by the COUNTY within 30 days of an acceptable invoice submission by GEORGE MASON UNIVERSITY.

- c. Make available to GEORGE MASON UNIVERSITY guidelines to assist the Parties in carrying out responsibilities under this Agreement,

2. GEORGE MASON UNIVERSITY shall:

- a. Provide payment of the remaining balance of eighty thousand seven hundred twenty seven thousand dollars and fifty-seven cents (\$80,727.57) of the funding for the final six months of the operation of the Program as outlined in Appendix A.
- b. Submit monthly invoices with supporting documentation to the COUNTY in the form prescribed by the COUNTY. Supporting documentation shall include copies of any related contractor invoices paid by GEORGE MASON UNIVERSITY for the first six months and also include an up-to-date project summary, payments and adjustments to date related to the Program. GEORGE MASON UNIVERSITY shall supply ridership data to the COUNTY for the first year of operations.
- c. Monitor ridership levels so that vehicle size and resulting monthly operational cost will be warranted. Meaning; if the initial 32seat passenger shuttle (vehicle) is not operating at sustainable levels GEORGE MASON UNIVERSITY will reduce the size of the vehicle which should directly reflect a reduction of the operational costs due by the Parties.
- d. Administer the Program in accordance with all applicable federal, state, and local laws and regulations. Failure to fulfill legal obligations associated with the Program may result in forfeiture of state-aid reimbursements.
- e. Require its current and future contractors to carry insurance sufficient to cover the risks for all damage to life and property due to any and all activities in connection with the work performed under this Agreement, in accordance with the VDOT and DRPT Liability Waiver requirement for state grant funding included in this agreement as Appendix B. Such insurance shall list the Commonwealth of Virginia, VDOT, DRPT, the COUNTY, and the officers or agents and employees of these entities as additional insured.

- 3. Nothing in this agreement shall be construed as a waiver of the COUNTY, GEORGE MASON UNIVERSITY, or the Commonwealth of Virginia's sovereign immunity.

- 4. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the COUNTY or GEORGE MASON UNIVERSITY shall not be bound by any agreements between either party, and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the COUNTY or GEORGE MASON UNIVERSITY has, in writing, received a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.

5. The COUNTY and GEORGE MASON UNIVERSITY shall not be obligated to provide additional funds beyond those appropriated pursuant to an annual or other lawful appropriation. THE COUNTY and GEORGE MASON UNIVERSITY acknowledge and agree that this Agreement has been prepared jointly by the Parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.
6. THIS AGREEMENT, when properly executed, shall be binding upon both Parties, their successors, and assigns.
7. THIS AGREEMENT may be modified in writing by mutual agreement of both Parties.
8. Notice. Any notice required by this Agreement shall be in writing and shall be deemed given when sent, postage prepaid, through the United States Postal Service by certified mail, return receipt, or when sent by nationally recognized overnight delivery service, or personally served upon the appropriate party.

If to George Mason University and its current and future contractors:

George Mason University  
Parking & Transportation  
4400 University Drive, MS 1J6  
Fairfax, Virginia 22030  
Attention: Marina Budimir, Transportation Coordinator

and copy to:

George Mason University  
Office of University Counsel  
4400 University Drive, MS2A3  
Fairfax, VA 22030

Reston Limousine and Travel Service, Inc. dba  
Attention: Tony Simon  
45685 Elmwood Court  
Sterling, VA 20166

If to Fairfax County:

Fairfax County Department of Transportation  
Address: 4050 Legato Road, Suite 400, Fairfax, VA 22033-2895  
Attention: Walter Daniel

9. Applicable Law; Venue. This Agreement shall be construed, governed and interpreted by and in accordance with the laws of the Commonwealth of Virginia. Any litigation with respect to this Agreement shall be brought before a court of competent jurisdiction in the Commonwealth of Virginia. The County agrees that it shall at all times comply with all applicable federal and state laws and regulations.



### Liability Waiver

The Grantee shall be responsible to the extent allowable by law for all damage to life and property due to its activities and those of its employees in connection with the work performed under the Agreement or a Project Agreement. Even if the Grantee is not allowed by law to indemnify, the Grantee shall either carry sufficient insurance which is acceptable to the Department in the Department's sole discretion to cover the risks for work performed under this Agreement or a Project Agreement for the Grantee, its employees, agents and subcontractors. In lieu of carrying insurance for its agents or subcontractors, the Grantee may require all its agents or subcontractors who perform any work or activity of any type .in connection with this Agreement or a Project Agreement to carry insurance sufficient to cover the risks for all damage to life and property due any and all activities in connection with the work performed under this Agreement or a Project Agreement. However, such insurance does not relieve the Grantee of the burden of carrying insurance to cover the actions of its employees. Such insurance, purchased by either the Grantee or its agents or subcontractors, shall list the Commonwealth of Virginia, the Department, the Virginia Department of Transportation and the officers or agents and employees of these entities as additional insured. Payment of any funds by the Department shall not waive any of the rights of the Department contained in this section nor release the Grantee from any responsibilities or duties contained in this Agreement or a Project Agreement. Further, to the extent allowable under Virginia law, it is expressly understood that the Grantee shall indemnify, defend and hold harmless the Commonwealth of Virginia, the Department, the Virginia Department of Transportation, its officers, agents, and employees from and against all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any negligent act or omission in the performance by the Grantee or its subcontractors of the work' covered by this Agreement or a Project Agreement. The obligations of this section shall survive the termination or completion of this Agreement or a Project Agreement.

**George Mason University ShuttlePool  
Program  
Overview and Application  
November 2013**



## Introduction and Background

Five years ago, George Mason University contracted out shuttle service to Reston Limousine. Since then, the shuttle program has grown tremendously and currently has five different routes in and around Mason's Fairfax Campus to support students and employees' mobility needs.

A Transportation Master Plan was conducted three years which identified a need for additional shuttle service, particularly from areas located south of the Fairfax Campus. Mason has identified hundreds of employees who live near the I-95 corridor and 121 of those employees would like to join in a shuttle pool program to commute to Mason.

The University is currently finishing up trial runs and is ready to begin service on December 1, 2013 provided that we are able to secure the necessary funds to supplement the total cost.

## Terms and Conditions for ShuttlePool Program

### A. Cost to operate the service; hourly, daily, weekly and monthly. (cost out by provider)

Facility Location:	Service Hours:	Number of employees:	Est. Weekly Hours	Est. Weekly Cost	Est. Monthly Cost
Reston Limousine 45685 Elmwood Court, Sterling, VA 20166  Transportation one (1) 32-passenger shuttle	9 Hours per Day  <i>Mon – Fri one shuttle from 05:00 am to 9:30 am and from 3:00pm to 7:30 pm</i>	1 Full-time CDL Licensed Driver and 1- 32 passenger shuttle	45	\$3,494.70	\$13,454.59
Total Estimated Yearly Cost:					\$161,455.14

Cost structure for the ShuttlePool Program reimbursement is based on a 50% match for the first year of operation. Monthly estimated operational costs = \$13,454.59 x 12 months = \$161,455.14. In this case, the ShuttlePool program would cover 50% of that cost or \$80,727.57.

**B. Identify the employers' efforts to recruit riders by promoting the ShuttlePool. (Marketing)**

All employees who live along the I-95 corridor have been surveyed and 110 employees have expressed an interest in joining a shuttle pool program. We have been in touch with the employees and plan on signing them up during November.

**C. Employer's projected ridership based on surveys, density plots or other analysis. (Demand)**

We expect the 32 passenger shuttle to fill up completely for both runs as more than 110 employees have said that they would rather take a shuttle to work. We will use a smaller or larger bus depending on demand.

**D. Need for: please provide the reason(s) why the service is needed. Parking management, Benefit to employee, sustainability, etc.**

The ShuttlePool program would provide a fast and affordable commute option to Mason's employees. Our Parking and Transportation office continually receives requests for shuttle service along the I-95 corridor. There are very few public transportation options that serve the I-95 corridor and which travel to Mason's Fairfax Campus at 4400 University Drive, Fairfax, VA. The ShuttlePool program would be a great pilot project for the University to test out the demand and see if shuttle service beyond the one-year commitment would be warranted.

## ShuttlePool General Information

Vehicle Seating Capacity 32 ShuttlePool Start Date: Dec 1, 2013

### Pick-Up Points:

Number One Route 208 Commuter Lot, Fredericksburg Time 5:45am

Number Two PRTC Transit Center Time 7:30am

### Drop-Off Points:

Number One GMU, 4400 University Drive, Fairfax Time 6:45am

Number Two GMU, 4400 University Drive, Fairfax Time 8:30am

One Way Commute Mileage 83.8 mi in the morning 110.3 mi in the afternoon Monthly Miles 1,843.6 mi in the morning 2,426.6 mi in the afternoon

Route Traveled I-95 from Fredericksburg to Ox Road and then to Braddock Road

Total Monthly ShuttlePool Operating Costs \$ 13,454.59

### Contact Info:

George Mason University  
Marina Budimir  
Transportation Coordinator  
[mbudimir@gmu.edu](mailto:mbudimir@gmu.edu)  
703.993.0520

## Employee Shuttle on I-95

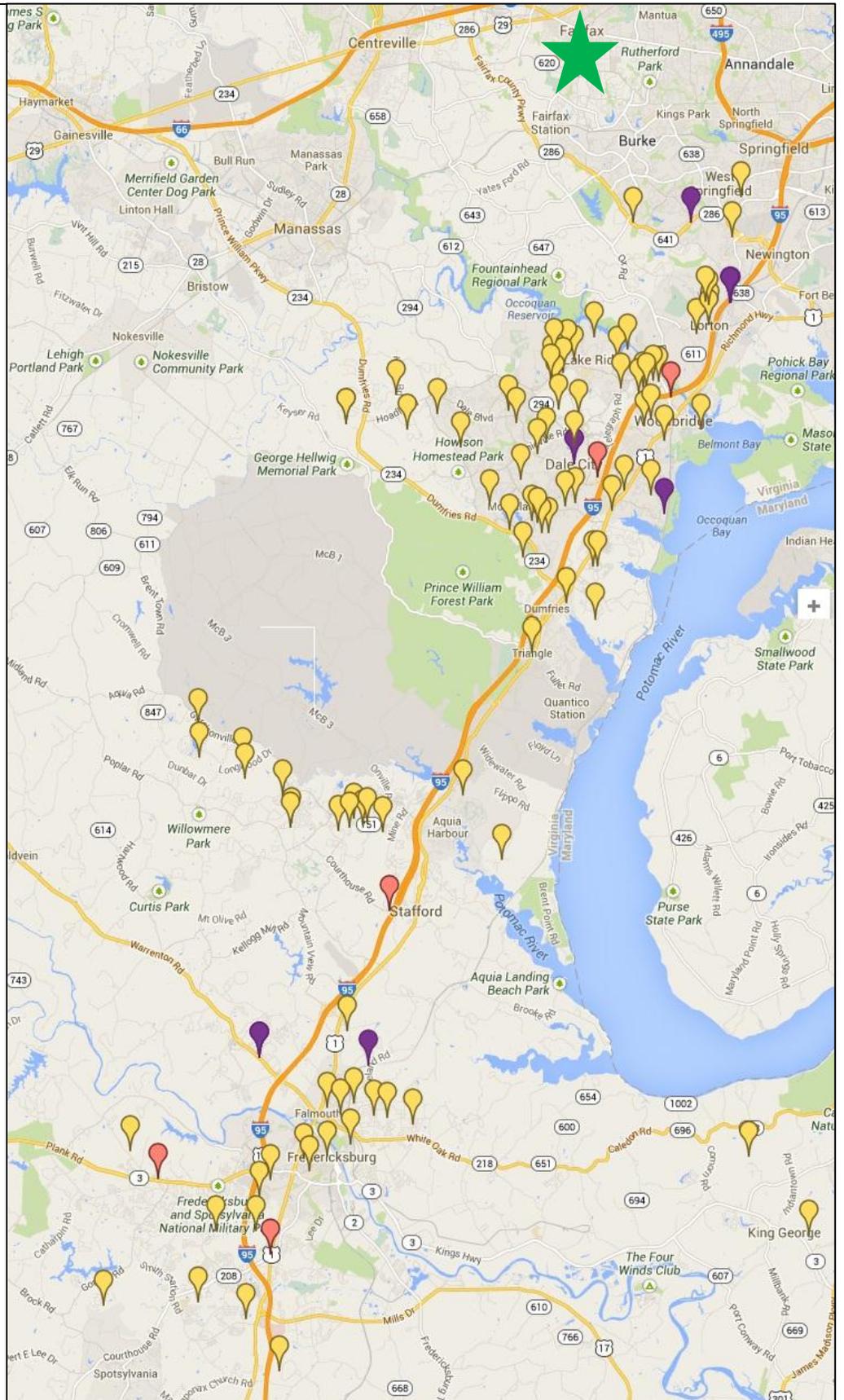
121 employees responded to the survey.

**We suggested five lots for pickup and drop-off, marked in red on the map. Of the 93 employees who answered this question, the distribution was as follows:**

Spotsylvania: Route 3 West (VA-3 & VA-627)	9/103
Spotsylvania: Route 208 Commuter Lot (VA-208 1/4 Mile off US-1, Commuter Bus)	11/103
Stafford: Courthouse Rd (VA-630 West of I-95 Exit-140, Commuter Bus)	21/103
Prince William: PRTC Transit Center (14700 Potomac Mills Rd at I-95 exit-156 Dale City, OmniRide)	20/103
Prince William: Route 123 Commuter Lot (I-95 & VA-123, SC-1070S at I-95 exit-160, OmniRide)	42/103
Other pick up areas	31/121

Employees also suggested other pickup and drop-off locations, marked in purple.

Everyone's home addresses are marked in yellow.



## ShuttlePool Employee Survey

### Shuttle for I-95 Corridor (Fredericksburg, Lorton, Woodbridge, etc.)

Full Name	
Answer Options	Response Count
	121
<i>answered question</i>	121
<i>skipped question</i>	2

### Shuttle for I-95 Corridor (Fredericksburg, Lorton, Woodbridge, etc.)

Email Address (Please include if you'd like to be updated on the	
Answer Options	Response Count
	120
<i>answered question</i>	120
<i>skipped question</i>	3

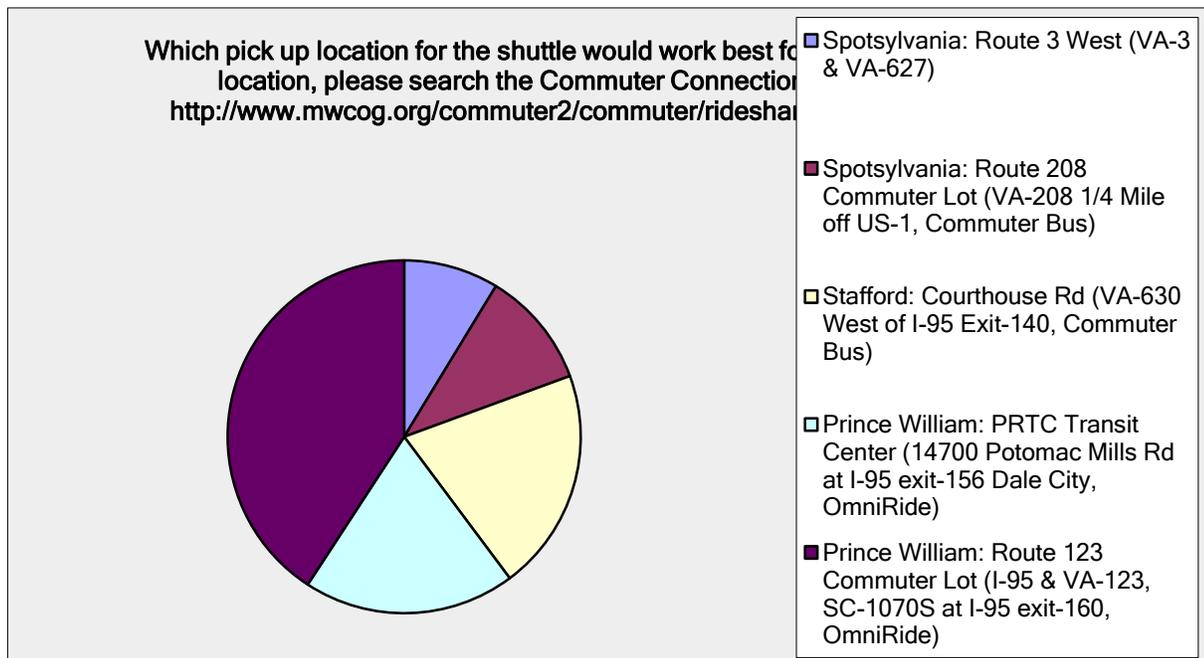
### Shuttle for I-95 Corridor (Fredericksburg, Lorton, Woodbridge, etc.)

Street Address, Zip Code	
Answer Options	Response Count
	118
<i>answered question</i>	118
<i>skipped question</i>	5

## Shuttle for I-95 Corridor (Fredericksburg, Lorton, Woodbridge, etc.)

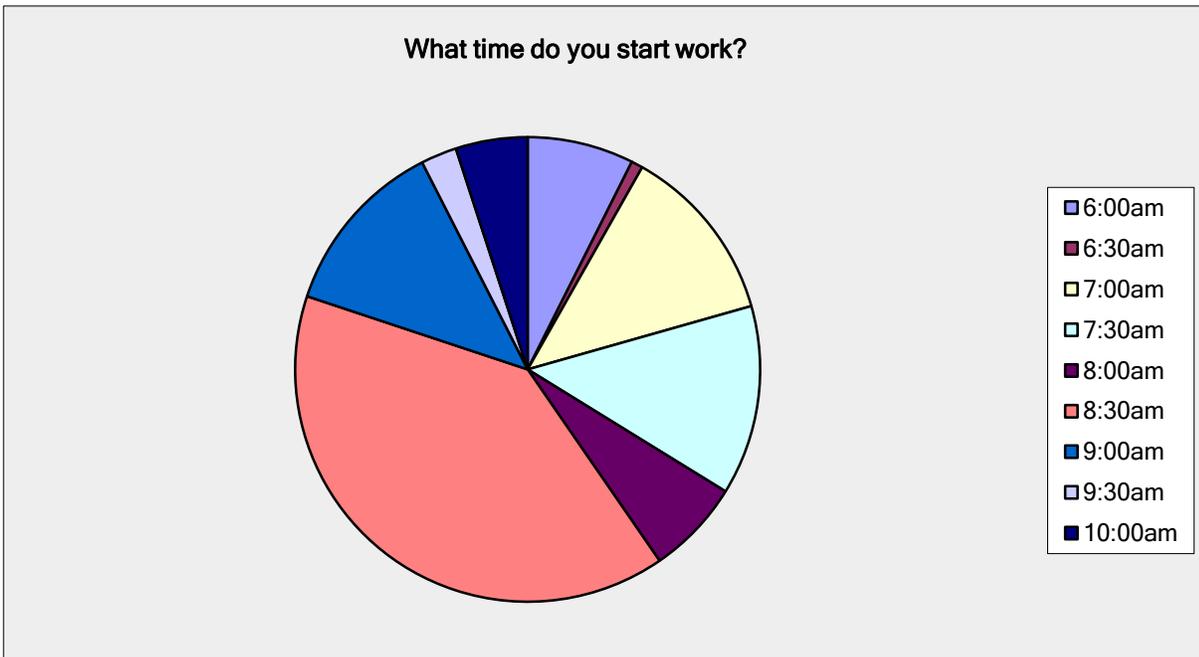
Which pick up location for the shuttle would work best for you? (To find another location, please search the Commuter Connections list and map at <http://www.mwcog.org/commuter2/commuter/rideshar>)

Answer Options	Response Percent	Response Count
Spotsylvania: Route 3 West (VA-3 & VA-627)	8.7%	9
Spotsylvania: Route 208 Commuter Lot (VA-208 1/4 Mile off US-1, Commuter Bus)	10.7%	11
Stafford: Courthouse Rd (VA-630 West of I-95 Exit-140, Commuter Bus)	20.4%	21
Prince William: PRTC Transit Center (14700 Potomac Mills Rd at I-95 exit-156 Dale City, OmniRide)	19.4%	20
Prince William: Route 123 Commuter Lot (I-95 & VA-123, SC-1070S at I-95 exit-160, OmniRide)	40.8%	42
Other (please use same name and description as the Commuter Connections list and map at <a href="http://www.mwcog.org/commuter2/commuter/rideshar">http://www.mwcog.org/commuter2/commuter/rideshar</a> )		31
<b>answered question</b>		<b>103</b>
<b>skipped question</b>		<b>20</b>



## Shuttle for I-95 Corridor (Fredericksburg, Lorton, Woodbridge, etc.)

What time do you start work?		
Answer Options	Response Percent	Response Count
6:00am	7.4%	9
6:30am	0.8%	1
7:00am	12.4%	15
7:30am	13.2%	16
8:00am	6.6%	8
8:30am	39.7%	48
9:00am	12.4%	15
9:30am	2.5%	3
10:00am	5.0%	6
Other (please specify)		7
<i>answered question</i>		121
<i>skipped question</i>		2

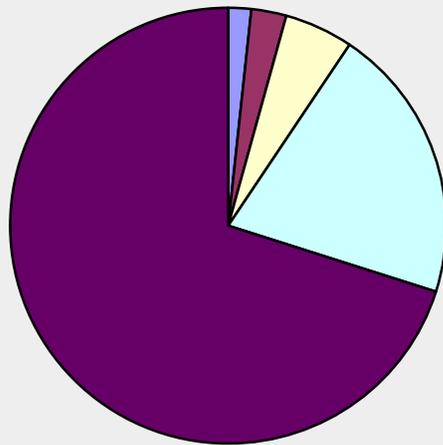


## Shuttle for I-95 Corridor (Fredericksburg, Lorton, Woodbridge, etc.)

On average, how many days per week do you travel to the Fairfax Campus?

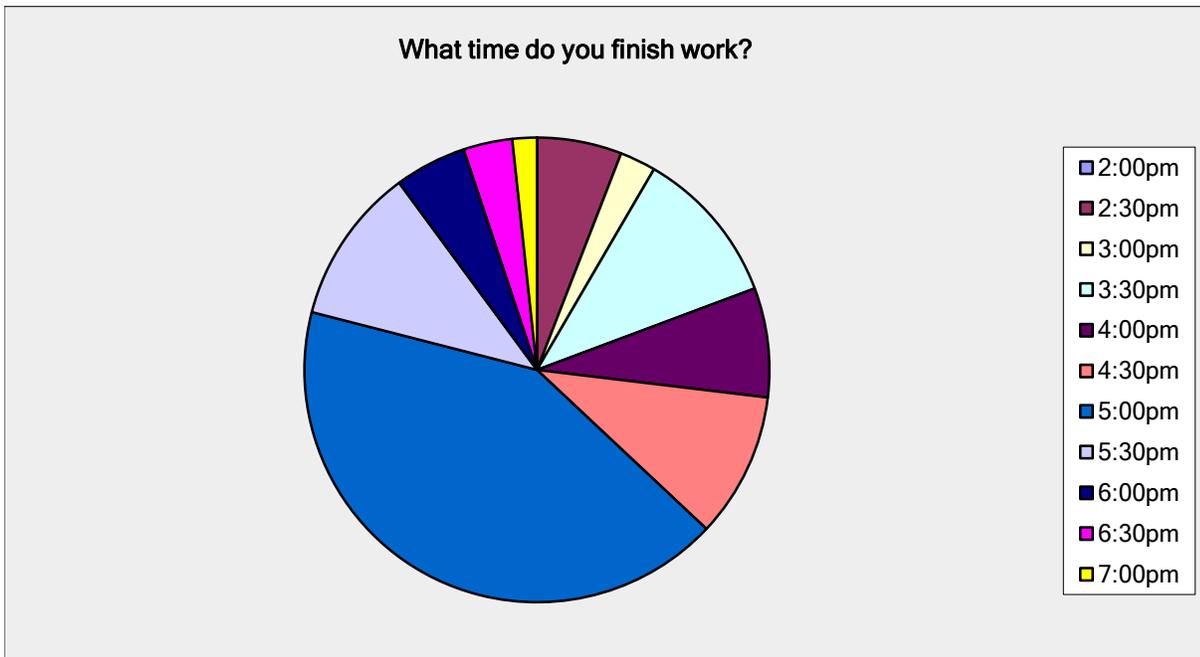
Answer Options	Response Percent	Response Count
1 day	1.7%	2
2 days	2.6%	3
3 days	5.1%	6
4 days	20.5%	24
5 days	70.1%	82
Other (please specify)		5
<i>answered question</i>		<b>117</b>
<i>skipped question</i>		<b>6</b>

On average, how many days per week do you travel to the Fairfax Campus?



## Shuttle for I-95 Corridor (Fredericksburg, Lorton, Woodbridge, etc.)

What time do you finish work?		
Answer Options	Response Percent	Response Count
2:00pm	0.0%	0
2:30pm	5.9%	7
3:00pm	2.5%	3
3:30pm	10.9%	13
4:00pm	7.6%	9
4:30pm	10.1%	12
5:00pm	42.0%	50
5:30pm	10.9%	13
6:00pm	5.0%	6
6:30pm	3.4%	4
7:00pm	1.7%	2
Other (please specify)		7
<i>answered question</i>		<b>119</b>
<i>skipped question</i>		<b>4</b>



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Board Agenda Item  
January 28, 2014

ACTION - 6

Authorization to Sign Department of Rail and Public Transportation Project Funding Agreements

ISSUE:

Board of Supervisors' authorization for the County Executive or his designee to sign agreements with the Virginia Department of Rail and Public Transportation (DRPT). These agreements provide funding to Fairfax County in FY 2014, for Washington Metropolitan Area Transit Authority (WMATA) capital and operations projects, and for Fairfax County transit capital projects and operations.

RECOMMENDATION:

The County Executive recommends that the Board authorize him to sign, in substantially the form, the attached Project Agreements (Attachments 1 through 17). These Project Agreements between DRPT and Fairfax County fund Fairfax County and WMATA transit capital and operations projects, and the Northern Virginia Transportation Commission (NVTC)'s operations.

TIMING:

The Board of Supervisors should act on this item on January 28, 2014, so that DRPT will release FY 2014 transit funding for Fairfax County and WMATA capital and operating projects and for NVTC's operations.

BACKGROUND:

For more than 30 years, the state has disbursed state transit assistance to the Northern Virginia jurisdictions served by WMATA through NVTC. NVTC has used a Subsidy Allocation Model (SAM) to distribute this regional transit funding between the jurisdictions, as required by the Code of Virginia. The current SAM has essentially been in place for ten years, and the Northern Virginia jurisdictions are satisfied with this model. Although the transit assistance still flows through NVTC to the Northern Virginia jurisdictions, there are three factors that have delayed execution of the Project Agreements for FY 2014.

First, beginning in FY 2014, DRPT required each of the NVTC jurisdictions contract directly for its transit assistance. This change in process resulted in a significant

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increase in the number of agreements and related invoices, requiring each jurisdiction to review and approve the local and WMATA agreements individually. Thus, where there was once three agreements processed by NVTC (two for WMATA regional projects and one for Fairfax County local projects), there are now 19, and all are processed locally by Fairfax County. Two Project Agreements are still being negotiated between the County and DRPT. Those agreements will be present to the Board when negotiations are completed.

Second, DRPT also modified the terms of the specific project agreements and included additional language that in previous years would be captured in the Master Agreement between NVTC and DRPT. This new language, which changes from year to year, and in some cases project to project, complicated the review process and increased the amount of time needed for review.

Third, DRPT did not release the entire set of FY2014 project agreements until the end of September. In past years, NVTC would receive the project agreements from DRPT during July and August. NVTC would verify that the projects, amounts and expiration dates are included in the approved Six Year Improvement Program and project applications.

The combination of these factors (the increase in project agreements, the additional language directly to the agreements, and the late release of the documents) has caused a significant delay in the execution of the project agreements, and the release of FY 2014 operating and capital assistance to NVTC jurisdictions, including Fairfax County.

FISCAL IMPACT:

The FY 2014 funding in the Six-Year Improvement Program provides the County with \$8,570,250 for Fairfax County Transit Capital Projects, \$11,134,381 for Fairfax Connector Operating Assistance, \$22,643,214 for WMATA Capital Projects, and \$34,962,196 for WMATA Operating Assistance. However, funding from the Commonwealth for Transit Capital Projects is provided on a reimbursement basis after the purchase and/or project is completed. These funds are already included into Fairfax County's FY 2014 Adopted Budget, and there will be no fiscal impact, if this item is approved.

ENCLOSED DOCUMENTS:

Attachment 1: Project Grant # 72014-31 Fairfax Local Operating

Attachment 2: Project Grant # 72014-35 WMATA Operating

Attachment 3: Project Grant # 73014-58 Fairfax County Local Bus Inspections

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Attachment 4: Project Grant # 73014-59 Local Purchase of 19 40-foot Replacement Buses

Attachment 5: Project Grant # 73014-61 Fairfax Local Reston-Herndon Maintenance Facility (Rehabilitate and Renovate Reston-Herndon Maintenance Facility)

Attachment 6: Project Grant # 73014-62 Fairfax Local Engineering & Design Huntington Maintenance Facility (Engineering and Design of Huntington Maintenance Facility)

Attachment 7: Project Grant # 73014-64 Fairfax Local LED Lighting (purchase and installation of light emitting diode (LED) lighting at park-and-ride garage facilities)

Attachment 8: Project Grant # 73014-65 Fairfax Local Spare Parts – Associated Capital Maintenance (purchase of spare parts)

Attachment 9: Project Grant # 73014-66 Fairfax Local Shop Equipment

Attachment 10: Project Grant # 73014-67 Fairfax Local Huntington Garage (Rehabilitation of an Renovation of the Huntington Garage Maintenance Facility)

Attachment 11: Project Grant # 73014-68 West Ox Salt Dome

Attachment 12: Project Grant # 73014-69 Fairfax Local ITS (Purchase and installation of Intelligent Transportation Systems (ITS) hardware and software)

Attachment 13: Project Grant # 73114-64 Fairfax WMATA Debt Service

Attachment 14: Project Grant # 73114-65 Fairfax WMATA Project Development

Attachment 15: Project Grant # 73114-66 Fairfax WMATA Opt Out Debt Service

Attachment 16: Project Grant # 73114-67 Fairfax WMATA Replacement of Rolling Stock

Attachment 17: Project Grant # 73114-68 Fairfax WMATA Other Assets

STAFF:

Robert A. Stalzer, Deputy County Executive

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

Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT

Noelle Dominguez, Coordination and Funding Division, FCDOT

Patricia McCay, Assistant County Attorney

Malcolm Watson, Transportation Planner, FCDOT

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**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 72014-31**

This Project Agreement (“Agreement”) is effective as of July 1, 2013 by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding for Fiscal Year 2014 operating assistance.

WHEREAS, the Grantee in an agent letter dated October 3, 2012, designated Northern Virginia Transportation Commission (“NVTC”) to act as their agent; and

WHEREAS, NVTC, on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2013 – Fiscal Year 2018 Six Year Improvement Program (“SYIP”) for operating to support the Grantee’s locally provided transit service; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Operation of Fairfax County’s transit service. In providing this service, the Grantee must record the allocated funds provided by this Agreement in its financial records in accordance with Governmental Generally Accepted Accounting Principles and indicate that their purpose is to provide state assistance for the Grantee’s local transit service.
  
2. The Department agrees to provide funding as follows:

a. State grant funding for the operating assistance program for the Fairfax County's transit service in the amount of \$11,134,381 approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.

3. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the CTB and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

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

*This space intentionally left blank*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

**Grantee: Fairfax County**

**Project Number: 72014-31**

**Project Start Date: July 1, 2013**

**Project Expiration Date: June 30, 2014**

**EIN: 540787833**

### Operating Assistance Payment Schedule

<b>Payment No.</b>	<b>Estimated Payment Date</b>	<b>Payment Amount</b>
1	August 15, 2013	\$ 2,783,595
2	November 15, 2013	\$ 2,783,595
3	February 15, 2014	\$ 2,783,595
4	May 15, 2014	\$ 2,783,596
<b>TOTAL GRANT AMOUNT</b>		<b>\$11,134,381</b>

In no event shall this grant exceed \$11,134,381.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 72014-35**

This Project Agreement (“Agreement”) is effective as of July 1, 2013 by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding for Fiscal Year 2014 operating assistance.

WHEREAS, the Grantee in an agent letter dated October 3, 2012, designated Northern Virginia Transportation Commission (“NVTC”) to act as their agent; and

WHEREAS, NVTC, on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2013 – Fiscal Year 2018 Six Year Improvement Program (“SYIP”) for operating assistance to support Washington Metropolitan Area Transportation Authority (“WMATA”) as a state contribution distribution to each local WMATA service area jurisdiction’s obligation to provide funding subsidy to WMATA and for operating and capital assistance to support the Grantee’s locally provided transit service; and

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Payment of state contribution subsidy to WMATA for transit services provided to the WMATA Compact member jurisdictions based on the Grantee’s proportionate subsidy share as identified by WMATA. In providing for this service obligation, the Grantee must record the state contribution subsidy funding provided by the Department to the Grantee in its financial records as allocated in accordance with

Governmental Generally Accepted Accounting Principles and indicate that their with purpose is providing state contribution funding to offset the jurisdiction's obligation to provide subsidy funding for WMATA service within its jurisdiction.

2. The Department agrees to provide funding as follows:
  - a. State grant funding for Fairfax County's state contribution subsidy owed to WMATA for transit services provided to the WMATA Compact member jurisdictions in the amount of \$34,962,196 approved in the Fiscal Year 2013 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
3. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the CTB and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

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

*This space intentionally left blank*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Appendix 1**

**Grantee: Fairfax County**

**WMATA Operating Costs - Fairfax County Obligation - State Contribution  
Subsidy**

**Project Number: 72014-35**

**Project Start Date: July 1, 2013**

**Project Expiration Date: June 30, 2014**

**EIN: 540787833**

**WMATA Operating Assistance Payment Schedule**

<b>Payment No.</b>	<b>Estimated Payment Date</b>	<b>Payment Amount</b>
1	July 15, 2013	\$ 2,913,516
2	August 15, 2013	\$ 2,913,516
3	September 15, 2013	\$ 2,913,516
4	October 15, 2013	\$ 2,913,516
5	November 15, 2013	\$ 2,913,516
6	December 15, 2013	\$ 2,913,516
7	January 15, 2014	\$ 2,913,516
8	February 15, 2014	\$ 2,913,516
9	March 15, 2014	\$ 2,913,516
10	April 15, 2014	\$ 2,913,516
11	May 15, 2014	\$ 2,913,516
12	June 15, 2014	\$ 2,913,520
<b>TOTAL GRANT AMOUNT</b>		<b>\$34,962,196</b>

In no event shall this grant exceed \$34,962,196.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73014-58**

This Project Agreement (“Agreement”), effective as of July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding to hire a third party contractor to inspect new buses while they are being built and at final inspection (“Project”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding to hire a third party contractor to inspect new buses while they are being built and at final inspection; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Grantee understands and acknowledges that it is bound by and must comply with the Special Capital Provisions of the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012 (“Master Agreement”), and that the Department has a contingent interest in the Work produced pursuant to those provisions and Article 1 of this Agreement; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Hire a third party contractor to inspect new buses while they are being built and final inspection.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to

perform administrative activities and they must follow these conditions:

- a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on Grantee's behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.
  - b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
- a. State grant funding in the amount of \$68,750 to hire a third party contractor to inspect new buses while they are being built and final inspection approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board ("CTB") and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement as if set out in full herein.

*This space intentionally left blank*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

**Grantee: Fairfax County**

**Funding to Hire a Third Party Contractor to Inspect New Buses  
While Being Built and at Final Inspection  
Capital Project Agreement**

**Project Number: 73014-58**

**Project Start Date: July 1, 2013**

**Project Expiration Date: September 30, 2014**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of project cost 55%)	\$ 68,750
1400	Local share of project cost (45%)	\$ 56,250
	Total Project Expense	\$125,000

In no event shall this grant exceed \$68,750.

The Department shall have a contingent interest in this capital item commensurate with the investment of grant funding.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73014-59**

This Project Agreement (“Agreement”), effective as of July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding for the purchase of 19 40-foot replacement buses (“Project”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding for the purchase of 19 40-foot replacement buses; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Grantee understands and acknowledges that it is bound by and must comply with the Special Capital Provisions of the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012 (“Master Agreement”), and that the Department has a contingent interest in the Work produced pursuant to those provisions and Article 1 of this Agreement; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. The purchase of 19 40-foot replacement buses.

2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to perform administrative activities and they must follow these conditions:
  - a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on Grantee's behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.
  - b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
  - a. State grant funding in the amount of \$4,801,500 for the purchase of 19 40-foot replacement buses approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board ("CTB") and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement as if set out in full herein.

*This space intentionally left blank.*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

**Grantee: Fairfax County**

### **Funding for the Purchase of 19 40-Foot Replacement Buses Capital Project Agreement**

**Project Number: 73014-59**

**Project Start Date: July 1, 2013**

**Project Expiration Date: September 30, 2014**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
478	Grant Amount (State share of project cost 55%)	\$4,801,500
1400	Local share of project cost (45%)	\$3,928,500
	Total Project Expense	\$8,730,000

In no event shall this grant exceed \$4,801,500.

The Department shall have a contingent interest in this capital item commensurate with the investment of grant funding.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73014-61**

This Project Agreement (“Agreement”), effective as of July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding to rehabilitate and renovate the Reston/Herndon Maintenance Facility (“Project”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding to rehabilitate and renovate the Reston/Herndon Maintenance Facility; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Grantee understands and acknowledges that it is bound by and must comply with the Special Capital Provisions of the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012 (“Master Agreement”), and that the Department has a contingent interest in the Work produced pursuant to those provisions and Article 1 of this Agreement; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Rehabilitate and renovate the Reston/Herndon Maintenance Facility.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to perform administrative activities and they must follow these conditions:

- a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on Grantee's behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.
  - b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
    - a. State grant funding in the amount of \$440,000 to rehabilitate and renovate the Reston/Herndon Maintenance Facility approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
  4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board ("CTB") and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement as if set out in full herein.

*This space intentionally left blank*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

**Grantee: Fairfax County**

**Funding to Rehabilitate and Renovate the Reston/Herndon Maintenance  
Facility  
Capital Project Agreement**

**Project Number: 73014-61**

**Project Start Date: July 1, 2013**

**Project Expiration Date: September 30, 2015**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
478	Grant Amount (State share of project cost 55%)	\$440,000
1400	Local share of project cost (45%)	\$360,000
	Total Project Expense	\$800,000

In no event shall this grant exceed \$440,000.

The Department shall have a contingent interest in this capital item commensurate with the investment of grant funding.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73014-62**

This Project Agreement (“Agreement”), effective as of July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding for engineering and design of the Huntington Maintenance Facility (“Project”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding for engineering and design of the Huntington Maintenance Facility; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Grantee understands and acknowledges that it is bound by and must comply with the Special Capital Provisions of the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012 (“Master Agreement”), and that the Department has a contingent interest in the Work produced pursuant to those provisions and Article 1 of this Agreement; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Engineering and design of the Huntington Maintenance Facility.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to perform administrative activities and they must follow these conditions:

- a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on Grantee's behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.
  - b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
- a. State grant funding in the amount of \$440,000 for engineering and design of the Huntington Maintenance Facility approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board ("CTB") and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement as if set out in full herein.

*This space intentionally left blank*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

**Grantee: Fairfax County**

### **Funding for Engineering and Design of the Huntington Maintenance Facility Capital Project Agreement**

**Project Number: 73014-62**

**Project Start Date: July 1, 2013**

**Project Expiration Date: September 30, 2014**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of project cost 55%)	\$440,000
1400	Local share of project cost (45%)	\$360,000
	Total Project Expense	\$800,000

In no event shall this grant exceed \$440,000.

The Department shall have a contingent interest in this capital item commensurate with the investment of grant funding.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73014-64**

This Project Agreement (“Agreement”), effective as of July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of the purchase and installation of light emitting diode (“LED”) lighting at park-and-ride garage facilities (“Project”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding for the purchase and installation of light emitting diode (“LED”) lighting at park-and-ride garage facilities; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Grantee understands and acknowledges that it is bound by and must comply with the Special Capital Provisions of the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012 (“Master Agreement”), and that the Department has a contingent interest in the Work produced pursuant to those provisions and Article 1 of this Agreement; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Purchase and installation of light emitting diode (“LED”) lighting at park-and-ride garage facilities.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to

perform administrative activities and they must follow these conditions:

- a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on Grantee's behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.
  - b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
- a. State grant funding in the amount of \$110,000 for the purchase and installation of light emitting diode ("LED") lighting at park-and-ride garage facilities approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board ("CTB") and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement as if set out in full herein.

*This space intentionally left blank*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

**Grantee: Fairfax County**

**Funding for the Purchase and Installation of LED Lighting at Park-and-Ride  
Garage Facilities  
Capital Project Agreement**

**Project Number: 73014-64**

**Project Start Date: July 1, 2013**

**Project Expiration Date: September 30, 2014**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of project cost 55%)	\$110,000
1400	Local share of project cost (45%)	\$ 90,000
	Total Project Expense	\$200,000

In no event shall this grant exceed \$110,000.

The Department shall have a contingent interest in this capital item commensurate with the investment of grant funding.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73014-65**

This Project Agreement (“Agreement”), effective as of July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding for the purchase of spare parts/ACM items (“Project”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding for the purchase of spare parts/ACM items; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Grantee understands and acknowledges that it is bound by and must comply with the Special Capital Provisions of the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012 (“Master Agreement”), and that the Department has a contingent interest in the Work produced pursuant to those provisions and Article 1 of this Agreement; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Purchase spare parts/ACM items.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to perform administrative activities and they must follow these conditions:

- a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on Grantee's behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.
  - b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
    - a. State grant funding in the amount of \$247,500 for the purchase of spare parts/ACM items approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
  4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board ("CTB") and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement as if set out in full herein.

*This space intentionally left blank*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

**Grantee: Fairfax County**

### **Funding for the Purchase of Spare Parts/ACM Items Capital Project Agreement**

**Project Number: 73014-65**

**Project Start Date: July 1, 2013**

**Project Expiration Date: September 30, 2014**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of project cost 55%)	\$247,500
1400	Local share of project cost (45%)	\$202,500
	Total Project Expense	\$450,000

In no event shall this grant exceed \$247,500.

The Department shall have a contingent interest in this capital item commensurate with the investment of grant funding.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73014-66**

This Project Agreement (“Agreement”), effective as of July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding for purchase of shop equipment (“Project”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding for the purchase of shop equipment; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Grantee understands and acknowledges that it is bound by and must comply with the Special Capital Provisions of the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012 (“Master Agreement”), and that the Department has a contingent interest in the Work produced pursuant to those provisions and Article 1 of this Agreement; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Purchase shop equipment.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to perform administrative activities and they must follow these conditions:

- a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on Grantee's behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.
  - b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
    - a. State grant funding in the amount of \$27,500 for the purchase of shop equipment approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
  4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board ("CTB") and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement as if set out in full herein.

*This space intentionally left blank*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

**Grantee: Fairfax County**

### **Funding for the Purchase of Shop Equipment Capital Project Agreement**

**Project Number: 73014-66**

**Project Start Date: July 1, 2013**

**Project Expiration Date: September 30, 2014**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of project cost 55%)	\$27,500
1400	Local share of project cost (45%)	\$22,500
	Total Project Expense	\$50,000

In no event shall this grant exceed \$27,500.

The Department shall have a contingent interest in this capital item commensurate with the investment of grant funding.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73014-67**

This Project Agreement (“Agreement”), effective as of July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding for the Rehabilitation and Renovation of the Huntington Garage Maintenance Facility (“Project”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding for the Project; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Grantee understands and acknowledges that it is bound by and must comply with the Special Capital Provisions of the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012 (“Master Agreement”), and that the Department has a contingent interest in the Work produced pursuant to those provisions and Article 1 of this Agreement; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. The Rehabilitation and Renovation of the Huntington Garage Maintenance Facility.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to

perform administrative activities and they must follow these conditions:

- a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on Grantee's behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.
  - b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
- a. State grant funding in the amount of \$398,750 for the Rehabilitation and Renovation of the Huntington Garage Maintenance Facility approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board ("CTB") and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement as if set out in full herein.

*This space intentionally left blank*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

Grantee: Fairfax County

**Funding for the Rehabilitation and Renovation of the Huntington Garage  
Maintenance Facility  
Capital Project Agreement**

**Project Number: 73014-67**

**Project Start Date: July 1, 2013**

**Project Expiration Date: September 30, 2014**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of project cost 55%)	\$398,750
1400	Local share of project cost (45%)	\$326,250
	Total Project Expense	\$725,000

In no event shall this grant exceed \$398,750.

The Department shall have a contingent interest in this capital item commensurate with the investment of grant funding.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73014-68**

This Project Agreement (“Agreement”), effective as of July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding for the construction of the West Ox salt dome (“Project”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding for the construction of the West Ox salt dome; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Grantee understands and acknowledges that it is bound by and must comply with the Special Capital Provisions of the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012 (“Master Agreement”), and that the Department has a contingent interest in the Work produced pursuant to those provisions and Article 1 of this Agreement; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Construction of the West Ox salt dome.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to perform administrative activities and they must follow these conditions:

- a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on Grantee's behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.
  - b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
    - a. State grant funding in the amount of \$55,000 for the construction of the West Ox salt dome approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
  4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board ("CTB") and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement as if set out in full herein.

*This space intentionally left blank*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

**Grantee: Fairfax County**

### **Funding for the Construction of the West Ox Salt Dome Capital Project Agreement**

**Project Number: 73014-68**

**Project Start Date: July 1, 2013**

**Project Expiration Date: September 30, 2014**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of project cost 55%)	\$ 55,000
1400	Local share of project cost (45%)	\$ 45,000
	Total Project Expense	\$100,000

In no event shall this grant exceed \$55,000.

The Department shall have a contingent interest in this capital item commensurate with the investment of grant funding.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73014-69**

This Project Agreement (“Agreement”), effective as of July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding for the purchase and installation of Information Technology Systems (“ITS”) hardware and software (“Project”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding for the purchase and installation of ITS hardware and software; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Grantee understands and acknowledges that it is bound by and must comply with the Special Capital Provisions of the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012 (“Master Agreement”), and that the Department has a contingent interest in the Work produced pursuant to those provisions and Article 1 of this Agreement; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Purchase and installation of ITS hardware and software.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to

perform administrative activities and they must follow these conditions:

- a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on Grantee's behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.
  - b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
- a. State grant funding in the amount of \$1,925,000 for the purchase and installation of ITS hardware and software approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board ("CTB") and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement as if set out in full herein.

*This space intentionally left blank.*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

**Grantee: Fairfax County**

### **Funding for Purchase and Installation of ITS Hardware and Software Capital Project Agreement**

**Project Number: 73014-69**

**Project Start Date: July 1, 2013**

**Project Expiration Date: September 30, 2014**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of project cost 55%)	\$1,925,000
1400	Local share of project cost (45%)	\$1,575,000
	Total Project Expense	\$3,500,000

In no event shall this grant exceed \$1,925,000.

The Department shall have a contingent interest in this capital item commensurate with the investment of grant funding.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73114-64**

This Project Agreement (“Agreement”), effective July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and the Fairfax County (“Grantee”), for the provision of funding for debt service for Washington Metropolitan Area Transit Authority (“WMATA”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, the NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding for debt service to support WMATA (“Project”) as a state contribution distribution to each local WMATA service area jurisdiction’s obligation to provide funding subsidy to WMATA; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Debt service for WMATA.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to perform administrative activities and they must follow these conditions:
  - a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on

Grantee's behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.

- b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
- a. State grant funding in the amount of \$746,753 for debt service for WMATA approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board ("CTB") and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement dated May 30, 2012 as if set out in full herein.

*This space intentionally left blank.*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Appendix 1**

**Grantee: Fairfax County**

**Funding for WMATA Debt Service  
Capital Project Agreement**

**Project Number: 73114-64**

**Project Start Date: July 1, 2013**

**Project Expiration Date: June 30, 2014**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of Project cost 55%)	\$ 746,753
1400	Local share of Project cost (45%)	\$ 610,979
	Total Project Expense	\$1,357,732

In no event shall this grant exceed \$746,753.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73114-65**

This Project Agreement (“Agreement”), effective July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding for project development for Washington Metropolitan Area Transit Authority (“WMATA”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, the NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding for project development to support WMATA (“Project”) as a state contribution distribution to each local WMATA service area jurisdiction’s obligation to provide funding subsidy to WMATA; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Project development for WMATA.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to perform administrative activities and they must follow these conditions:
  - a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on

Grantee's behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.

- b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
- a. State grant funding in the amount of \$229,350 for project development for WMATA approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board ("CTB") and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement dated May 30, 2012 as if set out in full herein.

*This space intentionally left blank.*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

**Grantee: Fairfax County**

### **Funding for WMATA Project Development Capital Project Agreement**

**Project Number: 73114-65**

**Project Start Date: July 1, 2013**

**Project Expiration Date: June 30, 2014**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of Project cost 55%)	\$229,350
1400	Local share of Project cost (45%)	\$187,650
	Total Project Expense	\$417,000

In no event shall this grant exceed \$229,350.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73114-66**

This Project Agreement (“Agreement”), effective July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding for Metro Matters jurisdiction debt service for Washington Metropolitan Area Transit Authority (“WMATA”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, the NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding for Metro Matters jurisdiction debt service to support WMATA (“Project”) as a state contribution distribution to each local WMATA service area jurisdiction’s obligation to provide funding subsidy to WMATA; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Metro Matters jurisdiction debt service for WMATA.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to perform administrative activities and they must follow these conditions:

- a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on Grantee’s behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.
  - b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
    - a. State grant funding in the amount of \$4,197,301 for Metro Matters jurisdiction debt service for WMATA approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
  4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board (“CTB”) and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement dated May 30, 2012 as if set out in full herein.

*This space intentionally left blank.*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

**Grantee: Fairfax County**

### **Funding for WMATA Metro Matters Jurisdiction Debt Service Capital Project Agreement**

**Project Number: 73114-66**

**Project Start Date: July 1, 2013**

**Project Expiration Date: June 30, 2014**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of Project cost 55%)	\$4,197,301
1400	Local share of Project cost (45%)	\$3,434,156
	Total Project Expense	\$7,631,457

In no event shall this grant exceed \$4,197,301.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73114-67**

This Project Agreement (“Agreement”), effective July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding for the capital improvement program for replacement of rolling stock for Washington Metropolitan Area Transit Authority (“WMATA”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, the NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding for the capital improvement program for replacement of rolling stock for WMATA (“Project”) as a state contribution distribution to each local WMATA service area jurisdiction’s obligation to provide funding subsidy to WMATA; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Capital improvement program for replacement of rolling stock for WMATA.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to perform administrative activities and they must follow these conditions:

- a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on Grantee's behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.
  - b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
- a. State grant funding in the amount of \$2,795,744 for the capital improvement program for replacement of rolling stock for WMATA approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board ("CTB") and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement dated May 30, 2012 as if set out in full herein.

*This space intentionally left blank.*

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Appendix 1

Grantee: Fairfax County

### Funding for WMATA Capital Improvement Program Replacement of Rolling Stock Capital Project Agreement

Project Number: 73114-67

Project Start Date: July 1, 2013

Project Expiration Date: December 31, 2014

EIN: 540787833

<b>Fund Code</b>		<b>Item Amount</b>
478	Grant Amount (State share of Project cost 80%)	\$2,795,744
1400	Local share of Project cost (20%)	\$ 698,936
	Total Project Expense	\$3,494,680

In no event shall this grant exceed \$2,795,744.

**Project Agreement for Use Of  
Commonwealth Transportation Funds  
Fiscal Year 2014  
Six Year Improvement Program Approved Project  
Grant Number 73114-68**

This Project Agreement (“Agreement”), effective July 1, 2013, by and between the Commonwealth of Virginia (“Commonwealth”), Department of Rail and Public Transportation (“Department”), and Fairfax County (“Grantee”), for the provision of funding for other assets and credit management services for Washington Metropolitan Area Transit Authority (“WMATA”).

WHEREAS, the Grantee designated the Northern Virginia Transportation Commission (“NVTC”) as their agent in a letter dated October 3, 2012; and

WHEREAS, the NVTC on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2014 Six Year Improvement Program to request funding for other assets and credit management services to support WMATA (“Project”) as a state contribution distribution to each local WMATA service area jurisdiction’s obligation to provide funding subsidy to WMATA; and

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

WHEREAS, on June 19, 2013, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work under the terms of this Agreement is as follows:
  - a. Other assets and credit management services for WMATA.
2. The Grantee designated NVTC as their authorized agent by letter dated October 3, 2012 to perform administrative activities and they must follow these conditions:

- a. Pursuant to § 15.2-4518(5) of the *Code of Virginia*, NVTC shall perform on Grantee’s behalf administrative activities required by this Agreement, and will follow the terms of this Agreement. No modification or change to the terms and conditions contained in the NVTC Agent Letter can be made without the prior written notification to the Department by the Grantee and concurrence by the Department.
  - b. The Grantee remains responsible to the Department for the Work and terms of this Agreement and for ensuring compliance by NVTC with its terms.
  - c. The Grantee must make a full value allocation and distribution of the funds for the purposes specified in this Agreement, and record the allocated funding in its financial records as state assistance for these purposes.
3. The Department agrees to provide funding as follows:
    - a. State grant funding in the amount of \$14,674,066 for other assets and credit management services for WMATA approved in the Fiscal Year 2014 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is hereto attached and made a part of this Agreement.
  4. The Grantee hereby acknowledges that state grant funding for this grant cannot exceed the amount allocated by the Commonwealth Transportation Board (“CTB”) and that state grant funding is contingent upon appropriation by the General Assembly of Virginia.

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

The parties hereby agree to incorporate the Master Agreement dated May 30, 2012 as if set out in full herein.

*This space intentionally left blank.*

**Appendix 1**

IN WITNESS WHEREOF, the Department and the Grantee have caused this Agreement to be executed by their duly authorized officials on the dates listed below.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: \_\_\_\_\_  
Director

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Grantee: Fairfax County**

**Funding for WMATA Other Assets and Credit Management Services  
Capital Project Agreement**

**Project Number: 73114-68**

**Project Start Date: July 1, 2013**

**Project Expiration Date: December 31, 2014**

**EIN: 540787833**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of Project cost 1%)	\$ 209,854
478	Grant Amount (State share of Project cost 54%)	\$14,464,212
1400	Local share of Project cost (45%)	\$12,006,054
	Total Project Expense	\$26,680,120

In no event shall this grant exceed \$14,674,066.

ACTION - 7

Adjustment to Fairfax Center, Centreville, Tysons, Tysons-Wide and Tysons Grid of Streets Road Funds and Approval of Proposed Projects and Studies (Dranesville, Springfield, Braddock, Sully, Providence Districts)

ISSUE:

Adjustments to Fairfax Center, Centreville, Tysons, Tysons-Wide and Tysons Grid of Streets Road Funds are needed to compensate for inflation, as defined in the Consumer Price Index, to keep pace with increases in construction costs for which the fund areas were established (Attachment 1). Approval is also requested for a list of proposed projects and studies to be funded from the Tysons Road Fund (Attachment 3).

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the attached rate schedule (Attachment 1), including a 1.98 percent adjustment of the existing contribution rates in the all fund areas with the new rate effective February 1, 2014, and approve the proposed Tysons projects and studies in Attachment 3.

TIMING:

Board action is requested on January 28, 2014, so that the new rates can take effect on February 1, 2014.

BACKGROUND:

One of the principles of the Comprehensive Plan for the Fairfax Center Area is that development above the baseline level established in the plan may be approved, if the developer contributes to a fund for the provision of off-site road improvements. Each of the other funds function in the same manner.

Attachment 1 reflects the increase in developer contribution rates as calculated with the 1.98 percent inflation since 2012. The 1.98 percent is taken from the Consumer Price Index (CPI) as required by the code of Virginia. The rate increase is necessary to keep pace with inflationary construction cost increases. Attachment 2 includes projects previously approved by the Board. Attachment 3 includes new projects and studies to be funded by the Tysons Road Fund. These projects will advance various aspects of the Tysons Grid of Streets and Tysons-Wide improvements.

Board Agenda Item  
January 28, 2014

Attachment 4 includes the guidelines for the Fairfax Center, Tysons-Wide, and Tysons Grid of Streets Road Funds. No changes are proposed to any of the guidelines at this time.

The proposed projects and studies outlined in Attachment 3 require Board approval, since there is no comprehensive project list for the Tysons Fund Area. Some of the projects outlined will require funding agreements with other agencies or transportation groups. FCDOT staff will return to the board for approval of any such agreements.

FISCAL IMPACT:

Adoption of the revised rates will increase the funds contributed by developers to the Contributed Roadway Fund by approximately 1.98 percent over previously anticipated amounts. However, the Procedural Guidelines for the Fairfax Center, Tysons-Wide, and Tysons Grid of Streets specifically stipulate that the contribution amount is determined by the effective rate at the time of development approval by the Board and that such amounts are fixed for site plans submitted for that approved development during a two-year period. Thus, the primary effects of this increase will be felt in future fiscal years.

ENCLOSED DOCUMENTS:

Attachment 1: Calculation of Revised Contribution Rate for 2014  
Attachment 2: Fund 30040 Projects Previously Approved by the Board  
Attachment 3: Proposed Projects and Studies to be Funded from Tysons Fund  
Attachment 4: Procedural Guidelines for Annual Review Process; Fairfax Center Area, Tysons-Wide Area and Tysons Grid of Streets Area

STAFF:

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

## CALCULATION OF REVISED CONTRIBUTION RATE - 2014

Inflation rate for 2013 based on the Consumer Price Index published by the US Department of Labor, Bureau of Labor Statistics, as required by the Code of Virginia.

## Proposed 2014 Contribution Rates

<b>Road Fund Area</b>	<b>Type</b>	<b>Current Rate</b>	<b>Inflationary Increase</b>	<b>Proposed Rate</b>
<b>Tysons</b>	non-residential	\$4.19	x 1.0198	\$4.27
	residential	\$929.00	x 1.0198	\$947.00
<b>Tysons-Wide</b>	non-residential	\$5.63	x 1.0198	\$5.74
	residential	\$1,000.00	x 1.0198	\$1,020.00
<b>Tysons-Grid of Streets</b>	non-residential	\$6.44	x 1.0198	\$6.57
	residential	\$1,000.00	x 1.0198	\$1,020.00
<b>Fairfax Center</b>	non-residential	\$5.69	x 1.0198	\$5.80
	residential	\$1,260.00	x 1.0198	\$1,285.00
<b>Centreville</b>	non-residential	\$6.10	x 1.0198	\$6.22
	residential	\$2,414.00	x 1.0198	\$2,462.00

**FUND 30040 Projects Approved by the Board**

<b>PROJECT</b>	<b>PROJECT DESCRIPTION</b>	<b>PRELIMINARY COST ESTIMATES*</b>	<b>STATUS</b>
<b>FAIRFAX CENTER AREA</b>			
Route 50/Waples Mill Road Interchange	Design of entire interchange including at-grade and flyover components; construction to be phased depending on funding availability.	\$5.8 M (at-grade)	Construction of at-grade improvements completed in December 2006.
Tall Timbers Drive	Construct an east-west roadway, connecting Fields Brigade Drive and North Lake Drive.	\$1.8 M	Completed in February 2007.
<b>CENTREVILLE AREA</b>			
Old Centreville Road at Route 28	Construct improvements to Old Centreville Road approach to Route 28.	\$0.2 M	Complete.
Stone Road	Construct center raised median with left turn lanes between Granville Lane And Sully Park Drive.	\$1.0 M	Completed in July 2008.
Clifton Road	Widen to 4-lanes between Braddock Road and Lee Highway (Route 29).	\$4.3 M	Completed in 2006.
Centreville Fire Station Emergency Signal	Preemptive Emergency Signal for Centreville Fire Station Access to Old Centreville Road	\$0.03 M	Design completed Fall 2013, construction scheduled for Summer 2014

\*Project cost estimates are done without any survey and right-of-way needs information, and could change significantly

<b>TYSONS CORNER AREA</b>	<b>PROJECT DESCRIPTION</b>	<b>PRELIMINARY COST ESTIMATES*</b>	<b>STATUS</b>
Pedestrian Facilities in Tysons	Supplemental funding for design of projects funded by Job Access and Reverse Commute Grant.	\$0.8 M	Sidewalks are complete; project is scheduled to be closed out in 2014.
Route 7 & Route 123	Complete selected improvements as proposed in Route 7/123 Transportation Corridor Study prepared by Patton Harris Rust and Associates; construction to be phased based on funding availability.	\$3.3 M	Several spot improvements are complete, remaining to be completed as funding becomes available.
Conceptual Engineering and Design of Boone Boulevard and Greensboro Drive	Determine the feasibility and impacts of extending Boone Boulevard and Greensboro Drive.	\$0.8 M	The conceptual engineering and design assessment study to accommodate traffic, pedestrians, and bikes; and assess the impact on landowners and future development plans was completed.
Tysons Corner Metrorail Access Management Program (TMSAMS)	On March 30, 2009, the Board of Supervisors requested that multi-modal access to the four Tysons Corner Metrorail stations be studied and that citizens and businesses from the three surrounding magisterial districts and the Town of Vienna be represented on this study group.	\$0.35 M	TMSAMS was conducted in 2010 and 2011, 4, 2011, and the final report on this was presented to the board on December 6, 2011. Recommendations are shown at <a href="http://www.fairfaxcounty.gov/fcdot/silverline/tysonsimp.htm">http://www.fairfaxcounty.gov/fcdot/silverline/tysonsimp.htm</a> Work has been initiated on 34 of these projects.

TYSONS CORNER AREA PROJECT	PROJECT DESCRIPTION	PRELIMINARY COST ESTIMATES*	STATUS
Conceptual Design and Engineering of Sections of the Proposed Tysons Corner Street Grid	The proposed Tysons grid of streets is a critical element of the future plan for Tysons Corner. It disperses vehicle traffic and improves mobility for pedestrians and bicyclists. The grid of streets will be supported by a street hierarchy that allows different types of trips to use different streets. People wishing to travel across Tysons can choose to use a major arterial, such as Route 7. Others who only need to travel a couple of blocks will have a choice to travel on a smaller street within the grid of streets.	\$2.5 M	An extensive analysis of the Tysons grid of streets was completed. Through this analysis the location and associated right-of-way needs for the grid of streets were established. The analysis was conducted in co-operation with Tysons property owners and other stakeholders. The analysis and results were submitted to VDOT for approval. VDOT approved the process.
Tysons Circulator Feasibility Study	To advance the conceptual Circulator System, more detailed design, with consideration given to the desired development pattern, will need to be done. Details of the final Circulator alignment that will need to be assessed include. The specific connections between the Circulator and the Metrorail system. Location of Circulator stops throughout Tysons. Circulator routes to connect the desired Circulator stops, including identification of how the Circulator fits into the roadway right-of-way. Design of the Circulator platforms and stops, including access and circulation plans for pedestrians, transit, bikes, and autos, and integration with the surrounding land uses. Type of Circulator mode (i.e., streetcar, fixed-route bus, jitney, etc).	\$0.5 M	The Tysons Circulator Study was published in February 2013 and is posted at <a href="http://www.fairfaxcounty.gov/tysons/transportation/download/tysons_circulator_study_final_report.pdf">http://www.fairfaxcounty.gov/tysons/transportation/download/tysons_circulator_study_final_report.pdf</a>
Route 7 – from Route 123 to I-495/Capital Beltway	Widening of Route 7 from Route 123 to I-495.	\$29.0 M	Currently in Phase II Tysons Improvements project list, scheduled from 2013-2026

## Proposed Projects and Studies for Approval

PROJECT	PROJECT DESCRIPTION	PRELIMINARY COST ESTIMATES	STATUS
<b>Tysons Area</b>			
Tysons East Super Streets Simulation	Conduct a simulation for a portion of Route 123 in the Tysons East area to demonstrate the feasibility of a potential “super street” concept. The super street concept modifies left turn movements to facilitate regional through movement. The analysis will assist in the preliminary design of the super street section currently being developed.	\$152,000	Currently finalizing the scope of work with the consultant.
State Street Study	Develop and evaluate concepts for a new roadway named State Street which will connect the future Boone Boulevard and Greensboro Drive in Tysons area. Study will assess the potential alignments, property impacts, costs and feasibility	\$39,000	Underway
Cleveland Ramp Alternatives Analysis	Develop and assess design concepts for a new ramp connecting the Dulles Airport Access Road to the new Tysons East grid of streets	\$145,000	Scope of Work is currently being developed.
Route 7/Route 123 Street Simulation and Operational Analysis	Develop plan for widening Route 7 and potential improvements to the Route 7 /Route 123 Interchange. This work will include Operational Analysis of the road and interchange, conceptual engineering design of Route 7 corridor and schematic design of recommended improvements to the Route 7/Route 123. Plans will assess the potential alignments property impacts and construction cost.	\$500,000	Scope is finalized. Notice to proceed can be issued with approval of funding.

**PROCEDURAL GUIDELINES  
FOR THE  
ANNUAL REVIEW PROCESS  
FAIRFAX CENTER AREA**

Adopted by

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS**

November 22, 1982

April 1, 1995

## **ANNUAL REVIEW PROCESS FOR THE FAIRFAX CENTER AREA**

The following guidelines serve to direct staff in the implementation of the Fairfax Center Area Plan. These procedures were adopted by the Board of Supervisors on November 22, 1982, and revised periodically since their adoption. Guidelines for the monitoring of development in the Area as well as a procedure for reviewing the roadway contribution formula are included herein.

### **A. MAINTENANCE / REVIEW OF LAND USE DATA**

It is the intent of the Board of Supervisors that the target or goal for development intensity of the Fairfax Center Area be Level B, as recommended by the Planning Commission. The annual review process will be utilized to assure the achievement of this goal. In addition the Department of Planning and Zoning and the Department of Systems Management for Human Services will collect and maintain the following information with respect to land use development in the Fairfax Center Area:

- o the development status of parcels, land development units and unit groups (including acreage, existing zoning, existing land use, planned land use, number and type of dwelling units, and amount and type of non-residential floor area); and
- o the identification of activity in the development pipeline for each parcel, land development unit and unit group (including the following stages of development: rezonings pending, rezonings granted, site plans submitted, site plans approved, building permits issued, and projects under construction).

Staff will prepare an annual summary document of this information for presentation to the Board of Supervisors.

### **B. ROADWAY CONTRIBUTION FORMULA REVIEW PROCESS**

The following excerpt from the Comprehensive Plan identifies the intention of the Board of Supervisors to review the method by which the private sector contributes to funding of roadway improvements in the Fairfax Center Area:

The proportional share of the transportation improvements provided by the private sector will be established by the Board of Supervisors and reviewed periodically through an established public process such as the Annual Plan Review.

The paragraphs that follow specify the review process to be undertaken by the Board and County staff. Clarification on the Contribution Formula, Roadway Improvements Prioritization, and the Road Fund Account are also provided.

An appraisal of funding and implementation of roadway improvements in the Fairfax Center Area will be made annually and presented to the Board. The appraisal will include but not be limited to the following items:

- o identification of total funds contributed by the private sector and the funds contributed over the previous year(s);

- o review of trends in roadway construction costs reflecting inflation (or deflation) rates;
- o listing of right-of-way dedications, roadway construction, and other commitments/contributions provided in previous year(s);
- o examination of the development pipeline toward re-assessment of programming of roadway projects; and
- o discussion regarding the ability of current funding mechanisms to satisfactorily provide for necessary roadway improvements.

This annual appraisal will not be conducted as a full-scale traffic analysis and roadway needs study. Rather, it will evaluate the suitability of roadway project implementation with respect to specific site developments and the overall Fairfax Center Area development. In addition to these items, staff will make recommendations with respect to the prioritization of roadway projects. An examination of the funding formula will also be presented for reconsideration by the Board.

### **C. CONTRIBUTION FORMULA**

The Contribution Formula is designed to represent the participation of the private sector in the funding and implementation of 'off-site' roadway projects and provision of land and facilities for transit-related purposes. 'Off-site' roadway projects are defined for the purposes of this document as:

- o those projects which include major improvements to non-interstate primary facilities such as Routes 29 and 50;
- o improvements to secondary roadways functioning as arterial roadways, including Fairfax County Parkway, Waples Mill Road, Shirley Gate Road, West Ox Road, Stringfellow Road, and Clifton Road;
- o bridges and interchanges on interstate and primary roadways;
- o traffic signals which are not otherwise required within the boundaries of or adjacent to sites subject to development; and
- o those portions of roads internal to the Fairfax Center Area which are not within the boundaries of or adjacent to sites subject to development.

These 'off-site' roadway improvements are identified in the next section titled "Prioritization of Roadway Improvements."

This formula does not relate to the dedication of right-of-way for, or the construction of, local and collector roads traversing the Fairfax Center Area where such roads lie within or adjacent to sites being developed. In addition, this formula does not apply to those improvements necessary for site access (i.e., turn lanes, traffic signals or service drives)<sup>1</sup>. It is expected that

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<sup>1</sup> Turning lanes and traffic signals provided on major arterials (e.g. Route 29) are considered to be 'off-site' improvements.

these improvements will be provided solely by the owner/developer of the site. These improvements are referred to as 'on-site' projects.

'Transit-related purposes' are defined as the following:

- o rail stations and facilities peripheral to their function
- o park-n-ride lots
- o bus transit transfer stations and facilities peripheral to their function

The formula does not apply to facilities or activities designed to address site-specific needs to reduce the number of single-occupant vehicle (SOV) trips, such as construction of bus shelters and implementation of TDM programs.

As a minimum, the contribution formula will be as follows<sup>1</sup>:

- o for any application requesting a level of development above the baseline, the contribution will be \$2.50 per gross square foot of building structure of the total proposed non-residential space and \$577 per unit of the proposed residential uses;
- o up to one-third of the total contribution required can be credited by the dedication of right-of-way for 'off-site' roadway projects or 'transit-related' projects provided no density credits have been granted for the same right-of-way;
- o the total contribution requirement can be provided in part or in total by the construction of major portions of 'off-site' roadway projects or 'transit-related' projects.

For the purpose of interpreting these guidelines, development 'above the baseline' shall be construed to mean any uses that generate peak-hour traffic volumes higher than those generated by baseline development levels, regardless of the type of land use modification (rezoning, Special Exception, or other).

The need for a contribution for each application will be identified prior to development approval. Upon approval, the contribution rate at the time of approval will remain effective for a period of 2 years. If a site plan or subdivision plan (i.e. preliminary or final plat) is not submitted within 2 years from the development approval date, the contribution rate which is in effect at the time of site plan submission or final subdivision plat submission will be utilized to identify the total contribution required. The total contribution will then be adjusted to reflect the deduction of any applicable credit and/or 'in-kind' contribution. 'In-kind'

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<sup>1</sup> Contribution amounts to the fund have subsequently been modified. A twenty year track of previous revisions is provided at the end of the document.

contributions are defined as those commitments made by the private sector towards the provision, in part or in total, of the construction of 'off-site' roadways, or 'transit-related' purposes as defined previously.

Credit for land dedicated for the described purposes will be based upon the property's existing County assessment which is in effect at the time of site plan submission or final subdivision plan submission. The value of the land to be dedicated can be credited to no more than one-third of the total required contribution, provided density credits have not been granted for this same dedicated land area. That is, the applicant will have the opportunity to receive credit, based upon right-of-way dedication, for either density of development or partial satisfaction of the total required contribution. The applicant, prior to development approval, should indicate his intent with regard to the credit opportunities for land dedicated in accordance with these guidelines. Dedication of land for site access improvements will not be eligible for consideration with respect to the total required contribution.

If an applicant elects to construct or provide sufficient funds to construct a portion or portions of 'off-site' roadway projects or 'transit-related' projects, a cost estimate will be provided by the applicant and reviewed by the Department of Public Works and Environmental Services consistent with bonding practice prior to plan or subdivision plat approval. These costs, once verified and accepted by the Department of Public Works and Environmental Services, will be applied against the applicant's total contribution with any applicable land credits as illustrated in Appendix A of these Guidelines. The roadway construction projects will be completed before the respective 'off-site' roadway or 'transit-related' project construction bonds are released.

Prior to or upon site plan or subdivision plat approval, the applicant will contribute 10 percent of the total required contribution minus any applicable credits as discussed previously. The remaining 90% will be required before building permits are issued. If the sum of the cost estimate for the 'in-kind' roadway and 'transit-related' projects and the value of the dedicated land (up to one-third of the total required contribution) is less than the total required contribution, the applicant will supply 10 percent of this differential monetary contribution prior to or upon site plan or subdivision plat building permit. In the event that the combined value of the dedicated land for the 'off-site' roadways or 'transit-related' projects (up to one-third of the total contribution) and the cost estimate for the construction of same exceeds the projected contribution, then it shall be determined that the applicant's commitment to the Fairfax Center Area Road Fund has been met.

As the Fairfax Center Area develops, a schedule for roadway improvements will be established. However, dedicated rights-or-way or monetary contributions will not be conditioned on a specific roadway project or the completion of a project by a specified date.

#### **D. PRIORITIZATION OF ROADWAY IMPROVEMENTS**

The timing of the roadway improvements is crucial to the manner in which the Fairfax Center Area develops. The following improvements are considered as high priority and should be scheduled for implementation as closely as possible to the order in which they are listed. Physical, fiscal, and developmental constraints may shift the priorities of the projects as identified through the annual analysis of road improvement needs. The improvement priorities were adopted by the Board of Supervisors on January 9, 2001. (Note: strikeout indicates completed project.)

- o Advanced right-of-way acquisition for:
  - ~~—— Monument Drive west of Fields Brigade Road~~
  - ~~—— Stringfellow Road relocation~~
  
- o At-grade improvements/construction:
  - ~~—— West Ox Road / Route 29 at-grade improvements~~
  - ~~—— Completion of Monument Drive west of Fields Brigade Road~~
  - ~~—— Stringfellow Road widening between Fair Lakes Parkway to Route 29~~
  - ~~—— Widen Route 50 to 6 lanes east of Stringfellow Road~~
  - ~~—— Waples Mill Road / Route 50 at-grade improvements~~
  - Widening of Waples Mill Road to six lanes between Route 50 and Route 29
  - Widening of Rugby Road to four lanes between Fairfax County Parkway and Route 50
  - Widening of Route 50 to 8 lanes between Waples Mill Road and I-66
  - Construction of local and collector roads internal to the Fairfax Center Area which are not within the boundaries of or adjacent to sites under development
  
- o Interchanges:
  - ~~—— Fairfax County Parkway / Route 29 / West Ox Road~~
  - ~~—— Fairfax County Parkway / Route 50~~
  - Waples Mill Road / Route 50
  - ~~—— Fairfax County Parkway / Fair Lakes Parkway / Monument Drive with widening of the Parkway to 6 lanes between I-66 and Route 50~~
  
- o Route 29 reconstruction:
  - East of West Ox Road, including interchanges at Shirley Gate Road and Monument Drive
  - West of West Ox Road, including an interchange at Clifton Road/Stringfellow Road
  
- o Fairfax County Parkway widening:
  - ~~—— Construction of 4 lanes between Route 29 and Braddock Road~~
  - ~~—— Widening to 6 lanes between I-66 and Route 50 in conjunction with the construction of an interchange at Fair Lakes Parkway / Monument Drive~~
  - Construction of 6 through lanes between I-66 and Route 29

This priority listing will change due to development and financial considerations. It is important that development not occur without the availability of sufficient roadway access and capacity. This is especially important in the development of those parcels that would utilize the sub-connectors traversing or adjoining their property.

Roadway construction and/or right-of-way dedication by either the private or public sector will not necessarily follow the aforementioned priority listing. However, construction of development projects by the private sector may be predicated upon the completion of adjacent roadways in order that the roadway system can satisfactorily accommodate the change in travel patterns resulting from additional development.

#### **E. ROAD FUND ACCOUNT**

A road fund account will be established and maintained by the County. Monies received prior to or upon site plan approval, subdivision plat approval, or building permit issuance, will be placed in the account. Interest on monies in the account will accrue to the account at the prevailing interest rate earned by the County less one-half of one percent for administration.

The monies in this account will be utilized to help fund and implement roadway projects in the Fairfax Center Area as closely as possible to the order in the aforementioned priority list. The widening of I-66 and the construction of sub-connector roads (unless included in the listing of priorities) will not be funded from this account.

Any monies from previous proffers and specified for off-site roadway improvements will go into the road fund account unless otherwise designated in the proffers.

**A GUIDE TO CALCULATING CONTRIBUTIONS TO THE FAIRFAX CENTER AREA ROAD FUND IN ACCORDANCE WITH THE PROCEDURAL GUIDELINES ADOPTED BY THE FAIRFAX COUNTY BOARD OF SUPERVISORS ON NOVEMBER 22, 1982 AS REVISED EFFECTIVE MARCH 18, 2002.**

**STEP 1:**      Total required Contribution:

# gsf (or # dwelling units) multiplied by the appropriate rate = total required contribution.

**STEP 2:**      Anticipated Land Credits (if applicable):

# sq. feet of land dedicated for 'off-site' and/or 'transit-related' projects multiplied by the per foot assessed value of the land at time of site plan submission or final subdivision plan submission.\*

**STEP 3:**      Anticipated "In-Kind" contributions:

Cost to construct a portion or portions of 'off-site' roadway and/or 'transit-related' projects consistent with bonding practices and verified and accepted by DPWES prior to plan or subdivision plat approval.

**STEP 4:**      Total Required Contribution Minus Applicable Credits

Dollar value in Step 1 minus the sum of Steps 2 + 3 will result in the net contribution due the FCAR fund. (Note: if the sum of Steps 2 + 3 is greater then the value of Step 1 then the commitment to the fund is met with dedication of right-of way and 'in-kind' construction.)

**\*NOTE:**      This value cannot exceed one-third of the total required contribution calculated in Step 1 provided no density credits have been granted for this land.

## Rate Adjustment History

Effective Date	Percent Increase	Non-Residential Rate per square foot	Residential Rate per unit
January 27, 1992	0	\$3.97	\$883
March 1, 1993	1.75	\$4.04	\$898
March 1, 1994	0.5	\$4.06	\$902
April 1, 1995	0.5	\$4.08	\$906
June 28, 1999	0	\$4.08	\$906
January 8, 2001	2.5	\$4.18	\$928
March 18, 2002	2	\$4.26	\$946
March 24, 2003	3	\$4.39	\$974
March 15, 2004	2	\$4.48	\$993
February 28, 2005	6	\$4.75	\$1,053
September 24, 2007	3.2	\$5.07	\$1,124
September 22, 2008	3.6	\$5.25	\$1,164
November 6, 2010	1.013	\$5.32	\$1,179
December 1, 2011	3.89	\$5.53	\$1,225
January 1, 2013	2.88	\$5.69	\$1,285

Procedural Guidelines  
For The  
Annual Review Process  
Tysons-Wide Fund

Adopted by

Fairfax County  
Board of Supervisors

January 8, 2013

## **GUIDELINES FOR THE TYSONS-WIDE TRANSPORTATION FUND (the Tysons-Wide Fund)**

The following guidelines shall be used to establish, implement, and operate a fund for Tysons-Wide road improvements listed in Table 7 of the Comprehensive Plan. The fund is intended to collect monies in conjunction with development of property within the Tysons Corner Urban Center pursuant to any PTC rezoning action in this area. This will include Special Exception and Special Permit applications that result in an increase in building square footage. The boundary of the Tysons Corner Urban Center is defined in Area II of the 2010 Edition of the Tysons Corner Urban Center Comprehensive Plan (TCP).

Proffered commitments to provide monetary contributions to the fund are anticipated from zoning applications for land use changes that propose construction of new building square footage. The funds will be used to construct or implement transportation projects identified as "Tysons-Wide" in Table 7.

The street sections constructed utilizing Tyson-Wide Transportation Fund monies will include pedestrian and bicycle facilities in their design as recommended in the TCP. Illustrations of the expected cross-sections for road improvements are included with the Comprehensive Plan text and the Memorandum of Agreement between the Board of Supervisors of Fairfax County, Virginia, and Commonwealth of Virginia, Department of Transportation for design standards and related responsibilities for maintenance of streets as outlined in the Transportation Design Standards for Tysons Corner Urban Center signed September 13, 2011. The Tysons Corner Urban Design Guidelines endorsed by the Board of Supervisors on January 24, 2012, will also apply.

The following criteria were adopted by the Board of Supervisors on January 8, 2013.

### **TYSONS-WIDE TRANSPORTATION FUND CONTRIBUTION CRITERIA**

The cash contribution rate for the Tysons-Wide Transportation Fund improvements provided by the private sector has been established by the Board of Supervisors and will be reviewed and adjusted annually in conformance with Virginia Code Section 15.2-2303.3, Subsection B. The paragraphs that follow discuss the process to administer the Fund.

A number of improvements to the existing roadway and transportation infrastructure are necessary to improve access to, and within, the Tysons Corner Urban Center. These improvements are identified as "Tysons-Wide Road Improvements" in Table 7 of the Comprehensive Plan and are listed in Appendix C of these guidelines. These projects include, but are not limited to, new access points from the Dulles Toll Road, and expanded capacity to interstate and arterial roads. The Tysons-Wide Transportation Fund represents part of the private sector's participation in the funding and implementation of road projects that serve a broader public transportation function.

The contribution rate is as follows:

For any zoning application proposing reconstruction of an improved site, construction on an unimproved site, or additional construction on an improved site, the contribution will be \$5.63 per gross square foot ("GSF") of building structure of the total proposed new non-residential space and \$1,000 per unit of the proposed new residential uses. The contribution formula does not apply to the GSF for public use facilities.

The amount of the financial contribution anticipated from each application will be estimated prior to the rezoning approval. Site Traffic Impact Analysis, Consolidated Traffic Impact Analysis, and/or traffic operational analysis data will be used at the time of rezoning to determine if an improvement is eligible for credit and the amount of credit (in whole or in part based on the Applicant's proportional impact on said improvement) as applicable. At site plan submittal, the total financial contribution will be adjusted to reflect the deduction of any applicable credit and/or 'in-kind' contribution. 'In-kind' contributions are defined as those commitments made by the private sector towards the provision, in part or in total, of the design and construction of qualifying Tysons-Wide road projects.

Credit for land dedicated for the described purposes will be based upon the property's County assessment which is in effect at the time of site plan submission, provided density credits have not been granted for the land to be dedicated. The applicant, prior to rezoning approval, shall indicate his intent to either seek credit for a Tysons-wide dedication or density credit. Dedication of land for site access improvements (i.e., turn lanes at driveways) will not be eligible for credit toward the required contribution.

If an applicant elected at rezoning to construct or provide sufficient funds to construct a portion or portions of Tysons-Wide transportation project(s), beyond improvements identified and proffered in the zoning review as necessary to offset site-generated traffic, and is requesting credit against the contribution, a cost estimate will be provided by the applicant and reviewed by FCDOT consistent with bonding practice prior to site plan approval. Copies of these documents shall also be submitted to DPWES for review and comment at the time of site plan approval.

The applicant will contribute 100% of the total required contribution for each building, less applicable credits, at the time non-residential use permits (Non-RUPs) or residential use permits (RUPs) are issued, based on the actual GSF and/or number of units in each building, subject to the provisions in the Virginia Code.

Applicants seeking rezoning actions in the Tysons Urban Center may receive credit against their contribution to the Tysons-Wide Transportation Fund under specific circumstances. Creditable improvements will be applicable to the entire rezoning application. Unless otherwise approved by the Board of Supervisors at the time of rezoning, the criteria for receiving credit are described as follows:

- Construction of road projects specifically identified in Appendix that are not otherwise required to address the impact of site generated traffic (construction credit);
- Dedication of land or right-of-way from the applicable site for road projects specifically identified in Appendix C (dedication credit) that are not for site access or otherwise not required to address the impact of site generated traffic. Right-of-way will be valued at County assessment at the time of site plan submission. Alternatively, the applicant may elect to provide an appraisal in place of the assessment. In this circumstance the applicant must procure, at its own expense, a County approved

Virginia state board licensed MAI or SRA American Institute designated general appraiser who uses standard appraisal techniques in preparing the appraisal;

- Acquisition of off-site land for construction of road projects specifically identified in Appendix C. Land that receives acquisition credit is not eligible for dedication credit; and,
- Construction of road projects specifically identified in Appendix C in advance of the development timelines negotiated and approved by FCDOT.

### **TYSONS-WIDE TRANSPORTATION FUND ACCOUNT**

A transportation fund account will be established and maintained by the County. All monies received will be placed in the account. Interest on monies in the account will accrue to the account and not the General Fund at the prevailing interest rate earned by the County, less up to one-half of one percent for administration. Any interest expended from the fund for administration will be reported annually to the Tysons Service District Advisory Board (created January 8, 2013). The monies in this account will be utilized to help fund and implement Tysons-wide projects in the Tysons Area.

#### **Annual Assessment**

An annual assessment shall be conducted by the Department of Transportation and submitted to the Tysons Service District Advisory Board for review of the Tysons-Wide Transportation Fund, projects and the contribution rates subject to the following:

Review the pace and location of residential and commercial development within Tysons, as well as the construction schedule, funding status, and the funding mechanisms for Tysons' transportation improvements, in concurrence with other Transportation Fund Area review processes, to ensure a sustainable balance between development and transportation infrastructure.

It is understood that this review may result in adjustments to ensure that: the estimated funding levels for such improvements are coordinated with the anticipated construction spending and the timing of construction; that the funding is being spent in an appropriate and efficient manner; and, that the pace of the transportation improvements and the pace of residential and non-residential development are proceeding substantially in tandem, as set forth in the Comprehensive Plan.

This review should be based on the most current data and information available at the time of the review, including whether the assumptions upon which the proposed funding mechanisms and projects were based are still valid or whether they should be changed. The review should include a process that incorporates participation from all stakeholders. If improvements beyond those identified in Table 7 are needed before 2050, and such are considered to be more effective in addressing traffic congestion, consideration could be given to substituting those improvements for projects currently included in Table 7, provided that such adjustments are consistent with and sustain the integrity of the recommended policies and

overall allocation of funding responsibilities. This review will consider any new funding sources (such as parking fees) that have been established.

Changes to these guidelines, as appropriate, may be submitted with the annual assessment.

**A GUIDE TO CALCULATING CONTRIBUTIONS TO THE TYSONS WIDE TRANSPORTATION FUND  
IN ACCORDANCE WITH THE PROCEDURAL GUIDELINES ADOPTED BY THE FAIRFAX COUNTY  
BOARD OF SUPERVISORS ON JANUARY 8, 2013.**

**STEP 1:**     Total required Contribution:

Amount of GSF (and/or # dwelling units) multiplied by the current Tysons-Wide Transportation Fund rate = total required contribution.

**STEP 2:**     Anticipated "In-Kind" contributions:

The cost to construct a portion or portions of 'off-site' Tysons-wide projects consistent with bonding practices and verified and approved by FCDOT prior to site approval. Plus, if applicable, the value of Right of Way to be dedicated according to the procedures in the guidelines.

**STEP 3:**     Total Required Contribution Minus Applicable Credits

Dollar value in Step 1 minus the sum of Step 2 will result in the net contribution due the Tysons-Wide Transportation Fund. (Note: if the sum of Step 2 is greater than the value of Step 1 then any additional credits may be applied to future Tysons-Wide Road Fund obligations.)

**STEP 4:**     Reconciliation of the Tysons-Wide Road Fund Contribution and Actual "In-Kind" Construction Costs Associated With the Construction of Tysons-Wide Road Projects

Upon completion of Tysons-Wide "In-Kind" construction projects, an applicant shall follow the "Creditable Expense" Guidelines, contained herein, for final reconciliation of the Tysons-Wide Road Fund Contribution (or applicable refund) and Actual "In-Kind" Construction Costs.

## APPENDIX B

### A GUIDE TO APPLY FOR THE 'OFF-SITE' CONSTRUCTION/Right-of-Way COST CREDIT (Also Known as a 'Creditable Expense')

Assuming credit for a contribution to the Fund that has not already been provided under the criteria described in the guidelines, it is recommended that developers adhere to the following guidance to seek a credit or refund for 'off-site' construction expenditures. Upon completion of 'off-site' construction projects approved by FCDOT and DPWES, the developer may submit documentation for reimbursement or credit of project expenditures. The package should be assembled according to the guidelines directly below and submitted to FCDOT.

The package should include the following:

- Cover Letter - This letter should be from the original applicant or legal entity acting on their behalf addressed to the FCDOT director. The letter should outline the nature of the request for refund and the work that has been completed.
- Site Plan - This should be the site plan used in the construction of this project. Other plans such as signal, signage and striping plans may be requested as the application is reviewed.
- Invoices - All invoices that are directly related to the construction of the approved 'off-site' construction project should be submitted. If construction is done simultaneously with other parts of the development then the applicant must provide a separate accounting of the portion that applies to the 'off-site' project. FCDOT staff will review the invoices for relevance to the project.
- A copy of the approved rezoning case with approved 'off-site' project cost estimates.
- Any documents recording the release of bond or acceptance of the project into the public right of way.

After submission, FCDOT staff will review the credit or refund request. When the review is completed and approved by the department director or his designee, the applicant will receive notification in writing. The applicant shall be notified of the appropriate credit or receive the refund shortly after approval.

Tysons-Wide Transportation Costs: 2012-2051 (December 4, 2012 Estimate)		
Project		Estimate (2012)
1	Rt.7 Widening from Rt.123 to I-495	\$22,000,000
2	Boone Blvd Extension west from Rt.123 to Ashgrove Lane	\$126,000,000
3	Extension of Jones Branch Connection to inside I-495 (Jones Branch Connector to Route 123)	\$41,000,000
4	Rt.7 Widening from the Dulles Toll Road to Reston Avenue	\$300,000,000
5	Greensboro Drive Extension west from Spring Hill Road to Rt.7	\$58,000,000
6	Dulles Toll Road Ramp to Greensboro Drive Extension	\$28,000,000
7	Dulles Toll Road Westbound Collector Distributor	\$124,000,000
8	Dulles Toll Road Eastbound Collector Distributor	\$62,000,000
9	Dulles Toll Road Ramp to Boone Blvd Extension	\$79,000,000
10	Rt.123 Widening from Rt.7 to I-495	\$20,000,000
11	Rt.123 Widening from Old Courthouse Road to Rt.7	\$8,000,000
12	Rt.7 Widening between I-495 and I-66	\$71,000,000
13	Widen Magarity Road from Lisle/Rt.7 to Great Falls Street	\$63,000,000
14	I-495 Overpass at Tysons Corner Center	\$18,000,000
15	Widen Gallows Road from Rt.7 to Prosperity Ave.	\$94,000,000
16	I-495 Additional Lane (Outer Loop between Rt. 7 and I-66)	\$74,000,000
17	Ramps Connecting Dulles Toll Road to Jones Branch Drive	\$38,000,000
	<b>Total for road projects</b>	<b>\$1,226,000,000</b>

Procedural Guidelines  
For The  
Annual Review Process  
Tysons Grid of Streets Fund

Adopted by

Fairfax County  
Board of Supervisors

January 8, 2013

## **GUIDELINES FOR THE TYSONS GRID OF STREETS TRANSPORTATION FUND (the Tysons Grid Fund)**

The following guidelines shall be used to establish, implement and operate the Tysons Grid of Streets Transportation Fund. The Fund is intended to collect monies in conjunction with development of property within the Tysons Corner Urban Center pursuant to any PTC rezoning action in this area. This will include Special Exception and Special Permit applications that result in an increase in building square footage. The boundary of the Tysons Corner Urban Center is defined in Area II of the 2010 Edition of the Tysons Corner Urban Center Comprehensive Plan (TCP).

Proffered commitments to provide monetary contributions to the Tysons Grid Fund are anticipated during review of zoning applications for land use changes that propose construction of new building square footage. The funds will be used to construct sections of streets that cannot otherwise be built through private development in Tysons. Projects utilizing these funds are expected to be street links that will enhance transportation service within Tysons. The street sections constructed utilizing Tysons Grid Fund monies will include pedestrian and bicycle facilities in their design as recommended in the TCP. Illustrations of the expected cross-sections for grid streets are included with the Comprehensive Plan text and the Memorandum of Agreement between the Board of Supervisors of Fairfax County, Virginia and Commonwealth of Virginia, Department of Transportation for design standards and related responsibilities for maintenance of streets as outlined in the Transportation Design Standards for Tysons Corner Urban Center signed September 13, 2011. The Tysons Corner Urban Design Guidelines endorsed by the Board of Supervisors on January 24, 2012, will also apply.

These guidelines were adopted by the Board of Supervisors on January 8, 2013.

### **TYSONS GRID FUND CONTRIBUTION CRITERIA**

The cash contribution rate for the Tysons Grid of Streets Transportation Fund provided by the private sector has been established by the Board of Supervisors and will be reviewed and adjusted annually in conformance with Virginia Code Section 15.2-2303.3, Subsection B. The paragraphs that follow discuss the process to be undertaken to administer the Fund.

The minimum contribution rate is as follows:

For any zoning application proposing reconstruction of an improved site, construction on an unimproved site, or additional construction on an improved site, the contribution will be \$6.44 per gross square foot ("GSF") of building structure of the total proposed new non-residential space and \$1,000 per unit of the proposed new residential uses. The contribution formula does not apply to the GSF for public use facilities.

The Grid of Streets described within the TCP is needed to provide convenient connections within Tysons, distribute multi-modal traffic efficiently, and enhance the quality of the network through the use of 'complete streets'. The grid of streets is generally comprised of the street network that provides site access and circulation within Tysons. The TCP recommends that the private sector be responsible for on-site improvements, including construction of on-site portions of the grid, as well as for contributions to the Tysons Grid Fund to support the construction of off-site portions of the grid. The Tysons Grid Fund does not include the dedication of right-of-way for, or the construction of, streets traversing the Tysons Corner Urban Center when such roads lie within the site being developed.

The amount of the financial contribution expected for each application will be estimated prior to rezoning approval. Site Traffic Impact Analysis, Consolidated Traffic Impact Analysis, and/or traffic operational analysis data will be used at the time of rezoning to determine if an improvement is eligible for credit and the amount of credit (in whole or in part based on the Applicant's proportional impact on said improvement) as applicable. At site plan, the total financial contribution will be adjusted to reflect the deduction of any applicable credit and/or 'in-kind' contribution. Creditable improvements will be applicable to the entire rezoning application. 'In-kind' contributions are defined as those commitments made by the private sector towards the provision, in part or in total, of the construction of off-site grid projects as defined previously.

If an applicant elects at rezoning to construct or provide sufficient funds to construct a portion or portions of 'off-site' Grid of Streets transportation project(s), and is requesting credit against the contribution, a cost estimate will be provided by the applicant and reviewed by FCDOT consistent with bonding practice prior to site plan approval. Copies of these documents shall also be submitted to DPWES for review and comment.

Prior to or upon site plan approval for non-residential development, the applicant will contribute 25 percent of the total required contribution based on the actual GSF, minus any approved applicable credits as discussed previously. The remaining 75 percent, less any further approved applicable credits, will be required before building permits are issued and will be assessed at the then current rate. This contribution approach is intended to facilitate the construction of Tysons Grid Transportation improvements prior to the occupancy of the new development.

For residential development, the applicant will contribute 100% of the total required contribution based on the actual number of units in each building, less applicable credits, at the time residential use permits (RUPs) are issued, subject to the provisions in the Virginia Code.

Applicants seeking rezoning actions in the Tysons Urban Center may receive credit against their contribution to the Grid of Streets Transportation Fund under specific circumstances. Creditable improvements will be applicable to the entire rezoning application. 'Off-site' street grid projects are defined for the purposes of this document as:

- those portions of streets identified for construction in the TCP internal to the Tysons Corner Urban Center which are not within the boundaries of sites subject to the proposed development;
- construction of capacity and/or operational improvements to grid streets which are not otherwise required to address the impact of site generated traffic, and are not within the boundaries of sites subject to the proposed development;
- traffic signals for grid street connections which are not otherwise required to address the impact of site generated traffic, and are not within the boundaries of or directly adjacent to sites subject to the proposed development;
- advance off-site land acquisition for construction of grid streets;
- construction of on-site grid of streets sections in advance of the development timelines negotiated and approved by FCDOT; and,
- dedication of land or right-of-way for 'off-site' Grid of Streets projects, in which density credit has not been granted for the land to be dedicated. Right-of-way will

be valued at the current County assessment. Alternatively, the applicant may elect to provide an appraisal in place of the assessment. In this circumstance the applicant must procure, at its own expense, a County approved Virginia State Board licensed, MAI or SRA American Institute designated general appraiser who uses standard appraisal techniques in preparing the appraisal.

Unless otherwise approved by the Board of Supervisors at the time of rezoning, construction of qualifying projects to advance the grid which meet the criteria above are eligible to receive credit up to equal value of the development's contribution to the fund.

### **TYSONS GRID TRANSPORTATION FUND ACCOUNT**

A transportation fund account will be established and maintained by the County. All monies received will be placed in the account. Interest on monies in the account will accrue to the account and not the General Fund at the prevailing interest rate earned by the County, less up to one-half of one percent for administration. Any interest expended from the fund for administration will be reported annually to the Tysons Service District Advisory Board (created January, 8 2013). The monies in this account will be utilized to help fund and implement grid roadway projects in the Tysons Urban Center.

#### **Annual Assessment**

An annual assessment shall be conducted by the Department of Transportation and submitted to the Tysons Service District Advisory Board for review of the Tysons Grid of Streets Fund, the Grid of Streets projects and the contribution rates subject to the following:

Review the pace and location of residential and commercial development within Tysons, as well as the construction schedule, funding status, and the funding mechanisms for Tysons' transportation improvements, in concurrence with other Transportation Fund Area review processes, to ensure a sustainable balance between development and transportation infrastructure.

It is understood that this review may result in adjustments to ensure that: the estimated funding levels for such improvements are coordinated with the anticipated construction spending and the timing of construction; that the funding is being spent in an appropriate and efficient manner; and, that the pace of the transportation improvements and the pace of residential and non-residential development are proceeding substantially in tandem, as set forth in the Comprehensive Plan.

This review should be based on the most current data and information available at the time of the review, including whether the assumptions upon which the proposed funding mechanisms projects were based are still valid or whether they should be changed. The review should include a process that incorporates participation from all stakeholders. If improvements beyond those identified in Table 7 are needed before 2050, and such are considered to be more effective in addressing traffic congestion, consideration could be given to substituting those improvements for projects currently included in Table 7, provided that such adjustments are consistent with and sustain the integrity of the recommended policies and overall allocation of funding responsibilities. This review will also consider any new funding sources (such as parking fees) that have been established.

Changes to these guidelines, as appropriate, may be submitted with the annual assessment.

APPENDIX A

A GUIDE TO CALCULATING CONTRIBUTIONS TO THE TYSONS GRID OF STREETS FUND IN ACCORDANCE WITH THE PROCEDURAL GUIDELINES ADOPTED BY THE FAIRFAX COUNTY BOARD OF SUPERVISORS ON JANUARY 8, 2013.

- STEP 1: Total required Contribution:  
Amount of GSF (and/or # dwelling units) multiplied by the current Tysons Grid Transportation Fund rate = total required contribution.
- STEP 2: Anticipated "In-Kind" contributions:  
Cost to construct a portion or portions of 'off-site' grid street projects consistent with bonding practices and verified and approved by FCDOT prior to site plan approval.
- STEP 3: Total Required Contribution Minus Applicable Credits  
Dollar value in Step 1 minus the sum of Step 2 will result in the net contribution due the Tysons Grid Transportation Fund. (Note: if the sum of Step 2 is greater than the value of Step 1 then any additional credits may be applied to future Tysons Grid of Streets Fund obligations.)
- STEP 4: Reconciliation of the Tysons-Wide Road Fund Contribution and Actual "In-Kind" Construction Costs Associated With the Construction of Tysons-Wide Road Projects  
Upon completion of Tysons-Wide "In-Kind" construction projects, an applicant shall follow the "Creditable Expense" Guidelines, contained herein, for final reconciliation of the Tysons-Wide Road Fund Contribution (or applicable refund) and Actual "In-Kind" Construction Costs.

**A GUIDE TO APPLY FOR THE 'OFF-SITE' CONSTRUCTION COST REFUND  
(Also Known as a 'Creditable Expense')**

Assuming credit for contribution to the Fund has not already been provided under the criteria described in the guidelines, it is recommended that developers adhere to the following guidance to seek a credit or refund for 'off-site' construction expenditures. Upon completion of 'off-site' construction projects approved by FCDOT and DPWES, the developer may submit documentation for reimbursement of project expenditures. The package should be assembled according to the guidelines directly below and submitted to FCDOT.

The package should include the following:

- Cover Letter - This letter should be from the original applicant or legal entity acting on their behalf addressed to the FCDOT director. The letter should outline the nature of the request for refund and the work that has been completed.
- Site Plan - This should be the site plan used in the construction of this project. Other plans such as signal, signage and striping plans may be requested as the application is reviewed.
- Invoices - All invoices that are directly related to the construction of the approved 'off-site' construction project should be submitted. If construction is done simultaneously with other parts of the development then the applicant must provide a separate accounting of the portion that applies to the 'off-site' project. FCDOT staff will review the invoices for relevance to the project.
- A copy of the approved rezoning case with approved 'off-site' project cost estimates.
- Any documents recording the release of bond or acceptance of the project into the public right of way.

After submission, FCDOT staff will review the credit or refund request. When the review is completed, and approved by the department director or his designee, the applicant will receive notification in writing. The applicant shall be notified of the appropriate credit or receive the refund shortly after approval.

ACTION – 8

Comments in Response to the Notice of Proposed Rulemaking Issued by the Federal Communications Commission (“FCC”) on September 26, 2013, Regarding Co-Locations of Telecommunications Equipment and the Time Parameters for Processing the Review of Telecommunications Applications

ISSUE:

Board approval of County comments in response to the Notice of Proposed Rulemaking issued by the FCC regarding §6409(a) of the Middle Class Tax Relief Act, which prohibits local and state governments from denying co-locations of telecommunications equipment on existing wireless towers and base stations if those co-locations do not substantially change the physical dimensions of those facilities. The NPRM also seeks comment regarding whether maximum time parameters for reviewing both co-locations and original installations should be imposed.

RECOMMENDATION:

The County Executive recommends that the Board approve the comments put forth by County staff, noting specifically, that the FCC:

1. Refrain from any rule-making at this time.
2. To the extent that any such rules are nonetheless issued, to do so in such a manner that preserves the ability of local governments to control land use decisions to the maximum extent possible.

TIMING:

Board action is requested on January 28, 2014, because comments are due to the Federal Communication Commission on February 3, 2014.

BACKGROUND:

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (“§ 6409(a)”) mandates that state and local governments must approve an eligible facilities request for wireless modifications when that modification to an existing telecommunications tower or base station does not substantially change the physical dimensions of those structures. Under the statute, an “eligible facilities request” is defined as a co-location, or the removal or replacement of transmission equipment (“co-location”).

Although this statute is expressly limited to co-locations on existing wireless towers and base stations, the FCC is contemplating a variety of rules that would expand the type of and kind of telecommunications applications that local and state governments would be required to approve. For example, the FCC is considering including buildings, water towers, utility poles and other such structures within the definition of “wireless tower,” even when those structures are not currently used for telecommunications purposes. Similarly, the term “base station” might be interpreted to include back-up generators.

The FCC is considering establishing rules that would automatically define whether a particular co-location “substantially change[s] the physical dimensions” of a telecommunications facility. Among other rules, the FCC may interpret this term to apply only to those applications where (i) the existing height of the tower is increased by more than 10%, or by the height of one additional antenna array as long as that array is not more than twenty feet from the nearest existing antenna, whichever is greater; (ii) the additional antenna would involve more than the standard number of new cabinets for the technology involved, not to exceed four; (iii) any appurtenance protrudes from the edge of the tower by more than twenty feet; or (iv) the mounting of an antenna would involve excavation outside the current tower site.

Any rule that implements these definitions would substantially alter a locality’s review process. Accordingly, the FCC is also seeking comment on whether local governments can require an application in the first place and if so, what kind of application can be requested and whether any conditions on such a request can be imposed.

The FCC is also considering whether to revisit its 2009 Declaratory Ruling in which it refrained from imposing mandatory time parameters for reviewing and approving telecommunications applications. Under such a rule, a locality’s failure to review an application within a specified period of time would render such application as “deemed approved.” Although the FCC rejected any such rules in 2009, it is now seeking comment on whether to revisit that determination.

Clearly, the proposed rules would significantly constrain the ability of Fairfax County to review these types of applications and determine from a land-use perspective whether they are an appropriate use in a given location. The proposed comments to the FCC urge the FCC to refrain from any such rule-making, or at least to do so in a manner that preserves local land use review and approval to the maximum extent possible.

The draft comments to the FCC observe that Fairfax County has a well-established policy and practice of encouraging and approving co-locations on existing facilities. The County’s proposed comments assert that employing rules in a one-size-fits-all approach is untenable because every property is inherently unique, and that local governments are in the best position to balance land use considerations with the expeditious

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January 28, 2014

deployment of telecommunications infrastructure. The County also intends to argue that many of the FCC's proposed rules extend the scope of § 6409(a) beyond Congress's original intent, and worse, misread the clear and unambiguous language of this statute.

The deadline to submit comments to the FCC is February 3, 2014. Thereafter, it is the intention of staff to also submit reply comments in response to other comments that were submitted to the FCC.

ENCLOSED DOCUMENTS:

Attachment I: Proposed Comments of Fairfax County

Attachment II: Relevant Excerpts of the FCC's Notice of Proposed Rulemaking dated September 26, 2013

Attachment III: Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012

STAFF:

Lorrie Kirst, Senior Deputy Zoning Administrator, Department of Planning and Zoning (DPZ)

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Acceleration of Broadband Deployment by  
Improving Wireless Facilities Siting Policies

Acceleration of Broadband Deployment:  
Expanding the Reach and Reducing the Cost  
of Broadband Deployment by Improving  
Policies Regarding Public Rights of Way and  
Wireless Facilities Siting

Amendment of Parts 1 and 17 of the  
Commission's Rules Regarding Public Notice  
Procedures for Processing Antenna Structure  
Registration Applications for Certain  
Temporary Towers

2012 Biennial Review of Telecommunications  
Regulations

FCC 13-122

WT Docket No. 13-238

WC Docket No. 11-59

RM-11688 (terminated)

WT Docket No. 13-32

**COMMENTS OF FAIRFAX COUNTY, VIRGINIA**

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## COMMENTS OF FAIRFAX COUNTY, VIRGINIA

The County of Fairfax, Virginia, (“County” or “Fairfax County”) submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“FCC”) on September 26, 2013. The NPRM sets forth a myriad of proposed rules designed to give further guidance to localities and the telecommunications industry regarding a recently enacted statute, § 6409(a) of the Middle Class Tax Relief Act (“§ 6409(a)"). This statute provides that in limited circumstances – when a modification to an existing telecommunications tower or base station does not substantially change the physical dimensions of those structures – localities and state governments must approve those modifications.<sup>1</sup>

Despite this directive, which is expressly limited to collocations on existing wireless towers and base stations, the FCC is contemplating a variety of rules that would further constrain the ability of local governments to review and analyze these types of land use applications, in a manner far beyond what Congress intended. As set forth more fully below, Fairfax County respectfully requests that the FCC refrain from any rule making at this time; to the extent that any such rules are nonetheless issued, Fairfax County respectfully requests that the FCC do so in such a manner that preserves the ability of local governments to control these vital land use decisions to the maximum extent possible. In addition, the County asks the FCC to refrain from reexamining the 2009 Declaratory Ruling regarding the establishment of presumptive timeframes for the processing of wireless tower and antenna siting requests. *See 2009 Declaratory Ruling,*

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<sup>1</sup> The statute defines an “eligible facilities request” as a collocation or the removal or repair of existing equipment. *See* § 6409(a)(2). For simplicity, the term “collocation” herein will refer to all such applications.

24 FCC Rcd 13994 (2009), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff'd sub nom. City of Arlington, Texas v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd* 133 S.Ct. 1863 (2013).

## BACKGROUND

In Fairfax County, and indeed in all of Virginia, land use review for telecommunication facilities is a simple process governed by state law and the Fairfax County Zoning Ordinance (“Zoning Ordinance”). Va. Code Ann. §15.2-2232 (2012) ensures that the location, character, and extent of certain public features such as streets, parks, and utilities, including telecommunications facilities, occurs within a comprehensive plan and framework. In Fairfax County, this plan is adopted by a commission specifically appointed for this purpose, and it is a long-term planning guide that represents the culmination of the community’s review and analysis. *See generally, The Fairfax County Comprehensive Plan*; [www.fairfaxcounty.gov/dpz/comprehensiveplan](http://www.fairfaxcounty.gov/dpz/comprehensiveplan) (“Comprehensive Plan”). As telecommunications applications are received, they are reviewed to determine whether they comport with this Comprehensive Plan—a process generally referred to as a “2232 Review.”

In Fairfax County, with the exception of cellular towers,<sup>2</sup> telecommunications facilities are permitted by-right in all commercial and industrial districts, in any zoning district within a utility transmission easement with a width of 90 feet or more, and on all real property zoned to a public use. Zoning Ordinance § 2-514(4). In certain circumstances, antennas may also be established by-right in residential districts. Moreover, the 2232 Review process for collocations is even more straightforward because, without exception, the original telecommunications facility has already gone through the 2232 Review. Thus, unless a collocation application

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<sup>2</sup> Cellular towers are allowed by right in Fairfax County in all industrial zoning districts and by special exception in all other zoning districts. *See The Zoning Ordinance for the County of Fairfax, Virginia* (“Zoning Ordinance”) § 2-514(4); [www.fairfaxcounty.gov/zoning](http://www.fairfaxcounty.gov/zoning).

reveals a new feature that would dramatically alter or change an existing telecommunications facility, there is typically little basis for a collocation application to require more formal review. In these instances, such requests are summarily approved without a public hearing by the Fairfax County Planning Commission as a “feature shown” on the Comprehensive Plan.

Moreover, even if further review is warranted, it is important to note that any such collocation application is already subject to stringent deadlines set forth in Va. Code Ann. § 15.2-2232(F), which states that the failure of a planning commission to act on any application for a telecommunication facility within 90 days of submission shall be deemed approval of the application, unless the governing body has authorized an extension of time for consideration (which may not exceed a period of 60 days), or the applicant has agreed to an extension of time. Fairfax County has strictly adhered to these deadlines in processing 2232 review applications for telecommunications facilities.

In rare situations, a collocation application in Fairfax County might be subject to a second land use approval process, a special exception application. Special exception approval is a legislative act by the County’s Board of Supervisors reserved for uses that “by their nature or design can have an undue impact upon or be incompatible with other uses of land.” *See* Zoning Ordinance § 9-001; [www.fairfaxcounty.gov/zoning](http://www.fairfaxcounty.gov/zoning). Here § 6409(a), falls squarely within this “undue impact” and incompatibility context because it expressly allows localities to continue reviewing and analyzing certain existing facilities when they “substantially change the physical dimensions” of those facilities. Moreover, the FCC’s concerns that leaving such threshold determinations to localities disrupts the expeditious deployment of telecommunications infrastructure is misplaced. As set forth more fully below, there is no evidence of any such recalcitrance in Fairfax County. The FCC’s attempts to interpret § 6409(a) in a manner that

would prohibit or truncate local review and approval of such applications are not only unnecessary, they are beyond the intent and will of Congress.

**I. THE FCC SHOULD REFRAIN FROM RULEMAKING BECAUSE LOCAL OFFICIALS AND ADMINISTRATORS ARE BEST SUITED TO DETERMINE WHETHER A COLLOCATION REQUEST SUBSTANTIALLY CHANGES THE PHYSICAL DIMENSIONS OF A TOWER OR BASE STATION.**

Fairfax County has a well-established policy and practice of encouraging and approving the collocation of telecommunications facilities on existing wireless towers and base stations.<sup>3</sup> Fairfax County recognizes the value of such collocations both to improve the efficacy of wireless networks as well as part of sound land use policy, and indeed, the intent and purpose of § 6409(a) underscores these priorities and values. The FCC's proposed rules, however, appear to go way beyond the directive of § 6409(a). Many of the FCC's proposed rules extend the scope of § 6409(a) beyond Congress's original intent, and worse, misread the clear and unambiguous language of this statute.

Equally troublesome is the fact that the FCC's proposed rules would essentially eliminate sound and reasoned land use determinations when it comes to the siting and expansion of telecommunications facilities. At the core of solid land use planning is the recognition that most uses cannot be evaluated in a one-size-fits-all or cookie-cutter approach. Land and the uses to which it is put are inherently unique. Reasoned land use planning takes into account a myriad of

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<sup>3</sup> Over the past five years (January 1, 2009 – December 31, 2013), Fairfax County has accepted 622 applications either to collocate telecommunications equipment on existing towers and base stations, or to install such equipment on other existing structures such as rooftops, electrical utility poles, and water storage facilities. The County has approved 621 of these requests, an astonishing 99.8%. Moreover, the Comprehensive Plan expressly provides that locating proposed telecommunication facilities on available existing structures is a preferable policy objective over the construction of new facilities. The Comprehensive Plan, Objective 42, Policy; [www.fairfaxcounty.gov/dpz/comprehensiveplan](http://www.fairfaxcounty.gov/dpz/comprehensiveplan). A copy of this section of the Fairfax County Comprehensive Plan is attached hereto as Exhibit A.

factors and interests including the nature and character of the site and its surrounding property, its proximity to various natural resources, its topography, and historical resources among countless others. The benefit of local land use planning and decision-making is that local governing bodies, planners, and administrators—rather than remote federal regulators—are best suited to make individualized determinations that reconcile all of the competing interests and needs posed by a land use application. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). As the Fourth Circuit has stated,

‘[Z]oning is a complex and important function of the State. It may indeed be the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life.’ . . . We can conceive of few matters of public concern more substantial than zoning and land use laws.

*Pomponio v. Fauquier Cnty. Bd. of Supervisors*, 21 F.3d 1319, 1327 (4th Cir. 1994) (quoting *Village of Belle Terre v. Boraas*, 416 U.S. 1, 13 (1974) (Marshall, J., dissenting)). Likewise, the Supreme Court of Virginia has recognized that the members of a local legislative body are in the most advantageous position to determine the proper uses of land within their jurisdiction. *City of Norfolk v. Tiny House, Inc.*, 222 Va. 414, 423-424, 281 S.E.2d 836, 841 (1981).

To be sure, § 6409(a) has already significantly constrained a locality’s ability to make such reasoned decisions when it comes to certain applications. The constraint of § 6409(a), however, is limited: it applies to only (i) wireless towers and base stations, (ii) that already exist, and (iii) that do not substantially change the physical dimension of these structures. The FCC’s attempt to extend further a carefully limited directive serves only to eliminate the remaining discretion that Congress left to localities. To the extent that § 6409(a) has left any issues undefined, the public interest is better served by allowing localities to weigh in on those issues

on a case-by-case basis rather than to steamroll uniform rules that simply will not fit every situation.

The FCC's rationale for jumping into this arena, namely, to prevent protracted litigation and any delays in "the timely deployment of a nationwide public safety network . . . and other communications services" is laudable, but ultimately misguided. *See* NPRM, ¶ 97. First, it assumes without any real data that localities thwart collocation requests, whereas at least in Fairfax County, that assumption is wholly incorrect. In the last five years, Fairfax County has approved 99.8 % of all such applications. Indeed, Fairfax County has a long and proud record of working with the telecommunications industry to place telecommunications facilities in areas where they can be properly integrated into the community. *See T-Mobile Northeast LLC v. Fairfax Cnty. Bd. of Supervisors*, 672 F.3d 259, 269 (4th Cir. 2012) (observing that Fairfax County "has a strong history of approving wireless facilities"). Indeed, in those rare instances when accord has not been achieved, it would seem to be the result of over-reaching by the industry rather than recalcitrance by Fairfax County. *See New Cingular Wireless v. Fairfax Cnty. Bd. of Supervisors*, 674 F.3d 270, 277 (4th Cir. 2012) (upholding the County's denial of an 88-foot-tall telecommunications tower in a residential district).<sup>4</sup>

Second, any purported benefits to be derived from predictability do not outweigh the very real harms that will result as telecommunications facilities wholly incongruous with a community or a location begin to populate the landscape. Despite the FCC's statement that it does not intend to function as a "national zoning board," the proposed rules raise that very specter. *See* NPRM, ¶ 99. Finally, any "rule" that short-circuits the local administrative or

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<sup>4</sup> It should be noted that this denial fell outside of the five year window noted above. Still, in the past 30 years, out of literally thousands of applications, the County has denied only 12 monopole requests and 5 collocation applications.

legislative process serves only to disenfranchise citizens. Local governmental officials are ultimately accountable to the citizens of their community; replacing that accountability with inflexible rules crafted by people unfamiliar with a community is simply undemocratic. Fairfax County respectfully urges the FCC to refrain from any proposed rulemaking at this time.

**II. THE FCC'S PROPOSED DEFINITIONS OF SECTION 6409(a)'S TERMS ARE TOO EXPANSIVE AND UNWORKABLE.**

**A. Back-Up Generators Should Not Be Included Within the Definition of "Transmission Equipment."**

Fairfax County does not have any substantial concern with a definition of "transmission equipment" that does not distinguish generic telecommunications services from personal wireless services. Indeed, the Zoning Ordinance treats all telecommunications services the same.

Fairfax County is particularly concerned, however, if back-up generators are included within the definition of "transmission equipment" such that local review of this equipment is truncated. Although the Zoning Ordinance includes backup generators as part of the telecommunication facility's cabinet compound, encompassing them within the ambit of § 6409(a) would be misguided. Back-up generators, in particular, have certain features that warrant careful review. This equipment is necessarily accompanied by fuel tanks containing flammable materials. When it operates, it produces noxious fumes. Back-up generators are loud. Moreover, the frequent siting of telecommunications facilities in public areas — schools, parks, and other public lands — makes these issues a real matter of public safety.

For example, collocations at schools utilize stadium and athletic field lighting poles for the placement of antennas. This, in turn, potentially places equipment cabinets and backup generators in close proximity to students, stadium seating, and crowds. As part of Fairfax County's review process, backup generators and fuel tanks require a permit application

submitted to the County's Office of the Fire Marshal to ensure compliance with applicable fire codes. Adding or replacing a back-up generator might not necessarily equate to a substantial change in the physical dimension as required by § 6409(a), but to ignore such critical safety issues under the banner of expeditious review would be foolhardy.

**B. The Definitions of “Existing Wireless Tower or Base Station” Should be Limited to Only Those Structures Whose Sole or Primary Purpose is for Telecommunications Services.**

The FCC's intention to define “wireless tower or base station” to include any structures that support or house an antenna, transceiver, or other associated equipment regardless of whether those structures sole or primary purpose is for telecommunications services is problematic. First, the FCC's proposed interpretation would twist these terms in ways that belie their common sense meaning. Even under the expansion of agency authority recently articulated by the United States Supreme Court, an agency “must give effect to the unambiguously expressed intent of Congress.” *See City of Arlington v. Fed. Commc'n Comm'n*, 133 S.Ct. 1863, 1874 (2013) (opining that “[w]here Congress has established a clear line, the agency cannot go beyond it”). Although the FCC claims that its interpretation of “wireless tower or base station” is consistent with rules of statutory construction that would give separate meaning to each of these terms, that rule is not required when each of these terms is unambiguous on the face of the statute. *See id.* at 1868 (when “Congress has directly spoken to the precise question at issue . . . that is the end of the matter”). A “wireless tower” is not a utility pole, a streetlight, or a building. A “base station” is not “any” telecommunications equipment in “any technological configuration;” it is not a distributed antenna system (“DAS”). Rather, a “base station” is precisely what those words connote—discrete set of components that directly support the telecommunications of a wireless tower—at its “base.”

The FCC would do well to be mindful of the law of unintended consequences. In an effort to interpret these terms expansively, the proposed rules could thwart other creative zoning solutions and actually discourage the placement and collocation of telecommunications facilities. For example, Fairfax County supports the location of telecommunication facilities on the rooftops of multi-story structures. *See* Zoning Ordinance § 2-514(1)(A) (permitting structure and rooftop mounted antennas, with related equipment by right on multiple family dwellings greater than 35 feet in height, in all commercial and industrial districts, and all buildings owned or controlled by a public use, among others). An FCC rule, however, that would apply § 6409(a) to permit the unlimited placement of rooftop antenna and equipment runs the real risk of crowding out other important rooftop uses such as elevator shafts and HVAC equipment. *See* Zoning Ordinance § 2-506 (providing that rooftop structures that comprise more than 25% of the rooftop surface must be included in building height calculations).

In addition, to the extent that rooftops are interpreted as “base stations” creative zoning is similarly compromised: less physical space exists for gardens, pools, and other “green” development, or using rooftops in a way that promotes urbanization and mixed-use development uses such as restaurants or recreational space. Instead, the FCC’s rule runs the risk of creating unfettered jungles of telecommunications equipment on rooftops such that Fairfax County would be wise to simply discourage the placement of telecommunications facilities on rooftops altogether. The discretion to develop creative solutions for individual cases, on the other hand, would encourage the use of rooftop spaces for telecommunications equipment when and as appropriate.

**C. The Terms “Collocation,” “Removal,” and “Replacement” Necessarily Mean That Telecommunications Equipment is Already Present.**

Section 6409(a) is a directive to localities that “a *modification* of an *existing* wireless tower or base station that does not substantially change the physical dimensions of such tower or base station” must be approved. (Emphasis added.) Again, this language is clear and unambiguous. If “existing” is to have any meaning, it has to connote telecommunications equipment that is already in existence. It is simply Orwellian to argue that structures that do not currently house telecommunications equipment should also be included within the ambit of rules interpreting § 6409(a). *See* NPRM ¶ 111. Moreover, any assertion to the contrary flatly ignores the term “modification” in § 6409(a). If the structure at issue does not yet house telecommunications equipment, there is nothing to “modify.” Similarly, any definition of “collocation” that does not also recognize already existing telecommunications equipment belies any common sense interpretation of this word because to “collocate” necessarily means to add equipment where it already exists. Similarly, a “repair” or “replacement” both require existing equipment in order to have any meaning. In short, there cannot be a “collocation,” a “repair,” a “replacement,” or a “modification” if there is nothing there in the first place.

**D. Whether a Collocation “Substantially Change[s] The Physical Dimensions” of a Tower or Base Station Cannot be Determined via Uniform Rules.**

The most alarming of the FCC’s proposed rules is the stated proposal to adopt the same four prong test as in the *2009 Declaratory Ruling*. *See* NPRM ¶ 118. Whether a collocation would “substantially change the physical dimensions” of a telecommunications facility is by its very nature a question that can only be analyzed on a case-by-case basis, and Congress recognized this fact when it exempted such application requests from the parameters of § 6409(a). Not only do the proposed rules deny local and state governments this review, as

illustrated below, each of the four tests is simply unworkable. Indeed, in any situation where the original tower or base station was designed with certain features or conditions that would ensure its compatibility with the surrounding community, the uniform proposed rules would frequently transform an unobtrusive use into one that nonetheless “substantially changes the physical dimensions” of those structures.

For example, the first rule, which would permit any increase of either 20 feet or 10% of the existing height, whichever is greater, completely negates any benefit of limiting tower height to the existing tree line or building line. It would also render camouflage techniques such as tree-poles as superfluous; towers and poles designed to look like trees are only effective when those features blend in with the tree canopy. In the illustration below, the antenna array in the first photo, albeit not perfectly blended with the tree line, will likely achieve that result in the near future as trees grow; the second illustration, a rendering that depicts just one additional layer of antenna, is much more noticeable, defeating the purpose of the camouflage technique altogether.



Similarly, towers that are permitted to install up to four additional equipment cabinets or antenna that are permitted to protrude up to twenty feet from the edge of the tower obliterates the stealth appearance of some towers, or may simply look top-heavy and unwieldy. In addition,

permitting any excavation within the boundaries of the site that hosts a tower or base station essentially eliminates any requirement for buffering or transitional screening. As shown below, even an attempt to maintain screening can have an unacceptable result:



Indeed, in the illustration above, an increase in the base station of such a few additional feet might also eliminate the existing vegetative screening on the far right of each photo, impede safe access around the building, and likely cause an adverse impact on the stormwater feature in the foreground. As made clear by these illustrations, whether a collocation, removal, or replacement will “substantially change the physical dimensions” of the existing tower or base station is not a decision amenable to uniform rules. Land use decisions are necessarily as varied as the underlying land itself. It is simply impossible to craft rules that will apply in every situation. This conclusion, as noted in the NPRM, is shared by the Intergovernmental Advisory Committee (“IAC”), and accordingly, Fairfax County fully endorses the IAC’s views in this regard. *See* NPRM ¶ 122.

Although Fairfax County does not support any rule that would permit a *per se* increase of 10%, the suggestion that such 10% increases in height should not be measured from the height of the original structure but rather that multiple and successive increases would be permitted is truly

untenable. *See* NPRM ¶ 120. As noted in the NPRM, any such rule would permit the height of a tower or base station to be increased *ad infinitum*. If “substantial change” is to have any meaning, the baseline must be the structure’s original dimensions and not the cumulative point of all prior modifications. Any rule to the contrary will have the result that local and state governments will be loath to approve any new structure because once they do so, they effectively lose all control over its subsequent growth.

**III. SECTION 6409(a) DOES NOT OBVIATE INDUSTRY OBLIGATIONS TO SUBMIT FORMAL APPLICATIONS FOR COLLOCATION APPROVAL, NEGATE A LOCALITY’S ABILITY TO IMPOSE CONDITIONS ON SUCH AN APPLICATION, OR IMPOSE ANY TIME LIMITATIONS ON SUCH REVIEW.**

The language “may not deny and shall approve” language in § 6409(a) is expressly limited to only those collocation requests that do not “substantially change the physical dimensions” of a tower or base station. It is not a discretionless mandate, but rather, requires an analysis of whether the structure at issue will be “substantially change[d].” Given that approval hinges on this inquiry, the next question is what process is best for analyzing that question. As set forth above, that inquiry is best left to local officials who have a better understanding of the facts and circumstances of each such application. Even if, however, uniform rules are promulgated to control this inquiry, a review process as to whether those rules should apply in a given application must still occur. In short, there is nothing in § 6409(a) that negates the necessity of at least some local or state review of collocation requests. As set forth more fully below, the FCC’s attempt via rulemaking to limit local review beyond the restrictions expressly authorized by § 6409(a) cannot be countenanced.

**A. There are Many Instances When Even Minor Changes to a Telecommunications Facility Should Still Not Be Approved.**

There are several situations when even a collocation that does not substantially change the physical dimension of a tower or base station must nonetheless be denied. First, implicit in § 6409(a) is that the existing telecommunications facility was lawfully installed. There is nothing in the language of § 6409(a) that would sanitize the unlawful construction or installation of telecommunications facilities. Moreover, even when a telecommunications facility is a lawfully nonconforming use, a telecommunications provider should not be permitted to exacerbate that nonconformity by resorting to § 6409(a). *City of Emporia Bd. of Zoning Appeals v. Mangum*, 263 Va. 38, 43, 556 S.E.2d 779, 782 (2002) (noting that “[n]onconforming uses are not favored in the law because they detract from the effectiveness of a comprehensive zoning plan.”) (Citations omitted.) When a telecommunications facility is already contrary to a locality’s zoning ordinance or plan it is very likely that an increase in that nonconformity is per se a substantial change.

Similarly, there are also certain instances in which the original telecommunications facility was approved subject to certain conditions or within a clearly defined building envelope, such as, for example, a maximum height limitation or square footage foot print. In addition, there are times when a carrier agrees to provide a stealth structure or install screening to minimize impacts to adjacent properties. Modifications to an existing tower or base station should be required to maintain the integrity of the original approval and these previously approved conditions. Sometimes that may be impossible, and hence a denial will be warranted. Other times, of course, an application may be approved if the telecommunications provider adds certain additional other features, or refrains from certain minor changes. The imposition of such conditions cannot be construed as running afoul of § 6409(a). An approval with some conditions

is still an approval, and nothing in § 6409(a) supports a contrary interpretation. To be sure, if § 6409(a) is to be interpreted such that collocations can violate existing conditions, or local and state governments are prohibited from imposing conditions to ensure that any changes maintain the integrity of the original approval, it is quite likely that these entities will be loath to approve original siting requests—a result that will thwart the very purpose for which § 6409(a) was originally enacted.

Second, and critically, § 6409(a) is a constraint on land use decisions; it does not in any way serve to preempt building codes, fire codes, or other such codes that are designed to protect public safety. Height increases and the weight of additional antennas and equipment could necessitate a different structural design than one requested to prevent structural failure. It is simply absurd to support any interpretation of § 6409(a) that would allow the installation or construction of unsafe structures. *See Cuccinelli v. Rector, Visitors of Univ. of Virginia*, 283 Va. 420, 436, 722 S.E.2d 626, 635 (2012) (setting forth the well-settled rule of statutory construction that a statute “should never be construed in a way that leads to absurd results.”) Moreover, even if one were to argue that § 6409(a) applies to safety codes, the statute implicitly recognizes that any change in a telecommunications tower or base station that would render it unsafe is necessarily “substantial.”

**B. Section 6409(a) does not Apply When a Government is Acting in a Proprietary Capacity.**

It is also important to observe that § 6409(a) only applies to governments when they are acting in a land use capacity, and not in a proprietary capacity. Although in Fairfax County telecommunications facilities are allowed by right on public uses, that is still a far cry from an interpretation of § 6409(a) that would preclude governments from negotiating the business aspects of such facilities like the amount of rent paid, the location of the structure, and the

duration of any tenancy or license. That the Telecommunications Act does not apply to governments acting in a proprietary capacity was recently recognized by the Ninth Circuit. *See Omnipoint Communications, Inc. v. City of Huntington Beach*, Nos. 10-56877, 10-56944, U.S. App., WL 6486240 \*8 (9th Cir. 2013) (holding that § 332(c)(7) of the Telecommunications Act “applies only to local zoning and land use decision and does not address a municipality’s property rights as a landowner.”) Thus, the courts concur with the IAC’s conclusion that when a government is acting as a landlord rather than as a regulator, § 6409(a) is not applicable. *See* NPRM ¶ 129. Fairfax County strongly endorses this interpretation and urges the FCC to accept it.

**C. Section 6409(a) Does Not Preclude a Requirement for the Submission of an Application for a Collocation Request.**

As the FCC correctly observes, the use of the term “approve” in § 6409(a) necessarily connotes an application process. *See* NPRM ¶ 131. In Fairfax County, this application includes basic information regarding the location of the structure, a description of proposed equipment, its land use impacts, and the necessity of the facility. It requires the minimum amount of information necessary to make a rationale and informed decision about an application. *See* attached hereto as Exhibit B a copy of the Fairfax County Telecommunications Application. Tellingly, the County does not charge any fee for the processing and review of telecommunications applications—either initial installations or collocations despite the administrative costs associated with such review.

As noted above, the Virginia Code dictates that review of a telecommunications facility must be within 90 days of receipt of a completed application, and Fairfax County fully complies

with those requirements.<sup>5</sup> Va. Code Ann. § 15.2-2232(F) . It is important to observe, however, that reviews that take longer than this time frame are usually delayed by telecommunications providers because they fail to submit a properly *completed* application. Despite the fact that the Fairfax County telecommunication form has been in existence for almost ten years, telecommunications providers routinely submit incomplete or inaccurate applications. Generally, nearly all applications contain some type of error and approximately 25% of applications require a resubmission. Typical errors include miscalculation of equipment cabinets and antenna size, discrepancies between the application and submitted plans, errors in tax map numbers, and incomplete information related to the proposed action. Other errors include deficiencies such as incorrect addresses, incorrect land use information such as the applicable zoning and other prior approvals, and missing photo simulations. It is critical, therefore, if the FCC is contemplating any time parameters for the review of collocation requests, that this fact be taken into consideration, and that any time limitations be calculated from the time that a *completed* application is submitted.<sup>6</sup>

**D. Nothing in Section 6409(a) Requires an Administrative Process to the Exclusion of a Legislative Process.**

Nothing in § 6409(a) precludes the necessity of a legislative process to review collocation applications. To be sure, Fairfax County is sensitive to the issue of expediting collocation

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<sup>5</sup> In the 5-year period from January 1, 2009 through December 31, 2013, Fairfax County accepted 648 Telecommunication applications, of which 622 (96%) were reviewed under Administrative review guidelines that did not require a public hearing. Moreover, of these administrative approvals, 83% were reviewed and approved within 90-days, 12% were reviewed and approved within 150-days, and only 5% required longer than 150 days.

<sup>6</sup> In addition, even if the FCC were to impose a rule that mandated a particular time period for review, there is no reason to prevent the applicant and the locality from agreeing to extend that time frame. Any such requirement would seem to serve neither party's interest if they are both amenable to such an agreed-upon extension.

applications, and to that end, it recently adopted amendments to the Comprehensive Plan's Telecommunication Policy Plan to streamline the administrative review of collocations. This Plan provides that certain collocations which otherwise meet the zoning ordinance requirements and comport with the plan's guidelines are eligible for either an Administrative Review approval (by staff) or a Feature Shown determination by the Planning Commission without a public hearing. *See generally*, The Fairfax County Comprehensive Plan, Mobile and Land-based Telecommunication Services, Objectives 44 and 45. A copy of this section of the Comprehensive Plan is attached hereto as Exhibit A. For example, installations on existing structures such as water towers and buildings can be administratively deemed as a "feature shown." *See id.* Objective 44, Policy a and b. These policies and the liberal treatment that such applications receive in Fairfax County underscore that there is simply no need for the FCC to enter this arena. Local governments who are behaving responsibly, in a manner that ensures that important land use interests are not ignored need no such further regulation.

Some applications benefit from the legislative process, whereby a public hearing is held. Although it is rare for a proposed collocation to trigger a public hearing, in Fairfax County that option exists at the discretion of the Planning Commission and can be an important planning tool. Indeed, in those infrequent collocations when the physical dimensions of the existing facility will be significantly impacted, a legislative process, that includes a public hearing, and as such, notice and comment from the public is preferable to an administrative process.

**E. Any "Deemed Approved" Remedy is Constrained by the Tenth Amendment.**

The enforcement remedies to be employed with regard to § 6409(a), particularly any rule in which applications would be "deemed approved" if they are not acted upon within a given time frame, create issues that overlap almost completely with the same issues that the FCC is

considering with respect to § 337(c)(7). As such, they will be dealt with more fully below. Nonetheless, and pursuant to the FCC's invitation for such comment, some discussion is warranted here as to the implications of any such rule with the Tenth Amendment. *See* NPRM ¶ 138.

Congress's power to regulate interstate commerce is limited by the principles of federalism expressed in the Tenth Amendment, which provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Finding that Section 332(c)(7) of the Telecommunications Act imposes federally mandated standards on state and local government's legislative processes and intrudes on their traditional authority to zone property, at least one federal circuit court judge has found that the substantial evidence standard in Section 332(c)(7) of the Telecommunications Act violates the Tenth Amendment. *Petersburg Cellular P'ship v. Bd. of Supervisors*, 205 F.3d 688, 705 (4th Cir. 2000) (Niemeyer, J., concurring in part and dissenting in part). The more broadly § 6409(a) is interpreted, the more it intrudes on the traditional authority of state and local governments to zone property, which in turn increases the likelihood that § 6409(a) will be found to violate the Tenth Amendment. *See generally* John R. Pestle, *Section 6409(a) of the Middle Class Tax Relief Act is Unconstitutional*, *Municipal Lawyer*, Sept.-Dec. 2012, at 22. The FCC is urged to circumscribe its proposed reading of § 6409(a) to avoid unnecessary federal intrusion into state and local governments' longstanding zoning authority, which will in turn diminish the likelihood of constitutional challenges to FCC's proposed rulemaking and the federal statute.

#### **IV. THE FCC NEED NOT REVISIT ITS PRIOR INTERPRETATIONS UNDER SECTION 337(c)(7).**

As the FCC recognizes in the NPRM, Congress expressly preserved State and local zoning authority over the siting of telecommunications facilities as part of § 332(c)(7) of the

Telecommunications Act of 1996 (“Act”). This authority was limited only by the restrictions and requirements in the Act providing that (1) any denial must be supported by substantial evidence; (2) the zoning decision must not discriminate among functionally equivalent carriers; (3) the decision should not have the effect of prohibiting personal wireless services; (4) zoning authorities may not regulate based on adverse health effects as long as the emissions comply with FCC standards; and (5) local governments must act on telecommunications facility siting applications within a reasonable period of time. The remedy for an alleged violation of these provisions was expressly stated by Congress as part of the Telecommunications Act. Section 332(c)(7)(B)(ii) plainly states that any person aggrieved by any state or local government’s final action or failure to act “may, within 30 days after such action or failure to act, commence an action in a court of competent jurisdiction.”

In 2009, in response to a petition by a trade association of wireless service providers, CTIA – The Wireless Association, the FCC promulgated the Declaratory Ruling in FCC 09-99 (“Declaratory Ruling” or, more colloquially, the “Shot Clock Ruling”), which established certain presumptively reasonable timeframes for zoning authorities to act on telecommunications facilities applications. In its Declaratory Ruling, the FCC openly acknowledged that the courts are the ultimate arbiter of whether a zoning authority has acted on a zoning application within a reasonable period of time, and the FCC sought only to establish presumptive timeframes for such action, which could be rebutted or explained in a court of law. (Declar. Ruling, ¶ 39.) In the currently pending NPRM, the FCC categorically notes that it does not intend to change any of these determinations, writing, “[w]e do not intend in this Notice to seek comment on or otherwise revisit any aspect of our 2009 Declaratory Ruling.” (NPRM, ¶ 152.)

Paradoxically, the NPRM then turns to positing several questions about § 332(c)(7) that do precisely what the FCC said it was not going to do – question the findings in the Declaratory Ruling. Critically, one such question asks whether the FCC correctly decided in the 2009 Declaratory Ruling that applications should not be “deemed approved” if the presumptive timeframes were not met. (NPRM, ¶ 162.) The FCC itself provided a very compelling argument as to why the “deemed granted” remedy was inappropriate in 2009, and the logic continues to hold true today. Likewise, the FCC does not need to reexamine the criteria for determining when an application is complete for purposes of triggering the presumptive timeframes for action. (NPRM, ¶ 154.) For the reasons that follow, the FCC should decline the industry’s invitation to engage in further rulemaking regarding the issues addressed in the Declaratory Ruling.

**A. As the FCC Has Stated, Applications Should Not Be Deemed Approved.**

In its 2009 Declaratory Ruling, the FCC determined that 90 days was a presumptively reasonable amount of time to act on an application for a collocation, and 150 days was presumptively reasonable for all other applications. As part of the Declaratory Ruling, the FCC expressly rejected the industry’s request for a “deemed approved” provision, which would hold that applications not acted on within the presumptive timeframes were “deemed approved.” As part of its 2009 Declaratory Ruling, the FCC explicitly stated:

We reject the Petitioner’s proposals that we go further and either deem an application granted when a State or local government has failed to act within a defined timeframe or adopt a presumption that the court should issue an injunction granting the application. Section 332(c)(7)(B)(v) states that when a failure to act has occurred, aggrieved parties should file with a court of competent jurisdiction within 30 days and that “[t]he court will hear and decide such action on an expedited basis.” This provision indicates Congressional intent that courts should have the responsibility to fashion appropriate case-specific remedies.

(Declar. Ruling, ¶ 39.) Thus, because Congress has already determined that disputes arising under the Telecommunications Act should be decided by the courts, the FCC is without authority

to modify that provision by adopting a “deemed approved” remedy for applications that are decided outside the presumptively reasonable timeframes.

In addition, if the FCC hypothetically adopted such a “deemed approved” remedy, it would run directly afoul of the United States Supreme Court’s decision in *City of Arlington, Texas v. Federal Comm’n Comm’n*, 133 S.Ct. 1863 (2013) because it would be acting outside the congressionally mandated limits of its authority. In *City of Arlington*, the Supreme Court held that the fundamental question in examining actions by the FCC is “always whether the agency has gone beyond what Congress has permitted it to do.” 133 S.Ct. at 1869. If the FCC, disregarding its own prior admissions about the limits of its authority, nevertheless adopted a “deemed approved” remedy that precluded the courts from exercising the authority that was explicitly conferred on the judiciary by Congress in the Telecommunications Act, it clearly would go “beyond what Congress has permitted it to do” in contravention of the Supreme Court’s holding in *City of Arlington, Texas*.

Further, as the FCC also noted in the Declaratory Ruling, “the case law does not establish that an injunction granting the application is always or presumptively appropriate when a failure to act occurs.” (Declar. Ruling, ¶ 39.) The FCC further noted that courts correctly examine all of the facts before determining what remedy is appropriate for a failure to timely act on a zoning application for a telecommunications facility. *Id.* In several reported decisions, for example, the federal district courts noted that the delay beyond statutorily mandated timeframes was entirely defensible. *See, e.g., Sprint Spectrum, L.P. v. Zoning Hearing Bd. of Williston Township*, 43 F. Supp. 2d 534, 539 (E.D. Pa. 1999); *Atlantic Richfield Co. v. City of Bethlehem*, 450 A.2d 248, 252 n.4 (1982); *New York SMSA Ltd. P’ship v. Town of Riverhead Town Bd.*, 118 F. Supp. 2d 333 (E.D.N.Y. 2000). Indeed, the FCC stated that “[i]t is important for courts to

consider the specific facts of individual applications and adopt remedies based on those facts.”  
(Declar. Ruling, ¶ 39.)

Notwithstanding the clarity of the FCC’s pronouncements and its categorical statement that it does not intend to revisit any part of the Declaratory Ruling, it appears that the PCIA and DAS Forum comments nevertheless ask the FCC to deem applications approved that do not comply with the presumptive timeframes. For the reasons articulated by the FCC in its own 2009 Declaratory Ruling, such requests should be rejected. Congress has explicitly stated that disputes under the Telecommunications Act must be resolved by the courts, on an expedited basis after a review of all of the facts of a particular case. Imposing a “deemed approved” standard would run afoul of this explicit Congressional direction and cause the FCC to act outside of its statutorily defined authority.

**B. “Collocation” is Not Susceptible to Various Definitions.**

The FCC also asks whether the term “collocation” should be defined in the same manner for purposes of the 2009 Declaratory Ruling and Section 6409(a) of the Spectrum Act. (NPRM, ¶ 113.) Specifically, the FCC appears to be inclined to impose a definition of “collocation” found in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 C.F.R. Part 1, App. B, in both contexts. However, as noted above, the definition considered by the FCC extends well beyond any commonly understood parameters of the term “collocation.” The term, in ordinary parlance, means the installation of additional antennas on an existing wireless facility with one or more existing antennas, with no substantial change in the existing facility’s physical dimensions. It is only through distending the plain meaning of the word to potentially include 10 percent increases in height and substantial increases in width that the FCC creates the dilemma in which it finds itself of defining how far the definition actually

extends. Adherence to the plain meaning of the word eliminates these dilemmas and adheres to the intent of Congress expressed in § 6409(a). Accordingly, the County again urges the FCC not to delve into a rulemaking exercise that imposes an artificial reading of the word “collocation” on § 6409(a) and stretches the Act far beyond any sensible reading. Likewise, such an artificial reading should not be superimposed on the Declaratory Ruling.

**C. Only a Complete Application Should Trigger the Presumptive Timeframe.**

As noted, above, it is the County’s unfortunate experience that wireless service providers frequently submit applications that are woefully short of complete or fully thought out, such that they do not represent a cogent or consistent representation of the proposed improvement. Without such information, it is simply impossible to engage in any meaningful review of a zoning application. At that point, County staff will attempt to engage the carrier in a dialogue, which the carrier may or may not be interested in having in an expedited timeframe, depending on that carrier’s priorities and the level of its staffing. County staff, for example, experiences problems in maintaining a reliable and consistent contact person with the carrier, who is familiar with the specific application that has been presented to staff. Similarly, requests for information from the carrier are not always timely answered. Drawings are often re-submitted that contain the same errors and omissions. In other words, until the wireless carrier has fully formed its proposal and committed to pursuing it, it is impossible for County staff to do the work for the carrier.

Clearly, the shot clock should not be running during these exasperating delays, caused entirely by the carrier. Indeed, rewarding these delays, errors, and omissions with a “deemed approved” remedy or expectation of a presumptive time frame due to its own delays would simply encourage providers to submit incomplete applications and wait for the clock to expire,

without providing localities with the information needed to make an informed zoning decision, culminating in a “gotcha” moment where the local government is deemed to have approved the application based on the expiration of an artificial clock. Such a nonsensical outcome would significantly limit local review of these applications. Based on the FCC’s unfamiliarity with the particularities of a myriad of different local zoning practices, it is unwise to attempt to establish any hard and fast rules for determining when an application is complete, beyond what the FCC has previously stated. While the County encourages the FCC not to act in this regard, if it does act, the standard for completeness should be defined as the time when the carrier has provided to the zoning authority all information necessary for the state or local government to perform its zoning review of the application at issue, as set forth in the locality’s standard application for such facilities.

**D. Local Moratoria on Applications does not Occur in Fairfax County.**

The FCC notes that some localities have adopted local moratoria against zoning applications for telecommunications facilities for periods of up to six months or more, and the FCC proposes to find that the presumptive timeframes continue to run during any such moratorium period. (NPRM, ¶¶ 155-157.) As further evidence of the lack of any need to regulate vis-à-vis Fairfax County, the County has never enacted any sort of moratorium on the processing of telecommunications facility siting applications. Instead, as previously noted, Fairfax County has a strong record of approving applications, and many staff hours are devoted to ensuring that applications for telecommunications facilities are processed with all due speed and in accordance with all applicable requirements. Accordingly, FCC rulemaking in this regard is neither warranted nor necessary with respect to Fairfax County.

**E. A Preference for Municipal Property is not in any Sense Discriminatory.**

The test for discrimination under § 332(B)(i)(I) of the Telecommunications Act is whether a locality has preferred one functionally equivalent provider over another. *See, e.g., T-Mobile Northeast, LLC v. Bd. of Supervisors*, 672 F.3d 259, 270 (4th Cir. 2012) (holding that the discrimination clause in the Telecommunications Act proscribes unreasonable discrimination against carriers who provide the same type of wireless service). For example, the issue, when such a discrimination claim is alleged in a complaint, is whether the locality permitted AT&T to erect a particular facility, but denied the same right to T-Mobile for no apparent reason. *Id.*

Notwithstanding the clearly stated framework of a discrimination claim under the Telecommunications Act, PCIA asks the FCC to find that local ordinances establishing preferences for placement of telecommunications facilities on municipal property somehow are the equivalent of discriminating against functionally equivalent carriers. Clearly, they are not. Such a preference plainly does not discriminate among functionally equivalent providers because these policies, where they exist, apply to *all* telecommunications carriers. In other words, AT&T *and* T-Mobile will both be asked to first examine public lands as an option before turning to private property as a potential site. Neither competitor has an advantage over the other when it comes to such a preference because they are treated precisely the same under the preference. Thus, the existence of such a preference is not at all akin to the impermissible discrimination that results when AT&T is permitted to have its facilities, but its competitor T-Mobile is precluded from doing so for no apparent reason.

Although the foregoing analysis should dispose of this issue, it is also noted that local governments may legitimately state a preference for siting telecommunications facilities on public lands for many valid, land use based reasons. Significantly, public lands often include

expansive parks, tree cover, buffered areas, and open spaces where telecommunications facilities may best be camouflaged in a manner that diminishes their visual impact on the community. Further, publicly owned government buildings also permit extensive rooftop collocations, which often marry up publicly managed communications systems with commercial wireless service antennas. Likewise, a preference for location on public lands ensures the continuity of telecommunications facilities once constructed, in that public lands typically are not subject to changes of ownership in the same manner as private land. Facilities on public lands also tend to be better buffered from adjacent residential uses and serve a safety purpose of providing cell phone service in more remote, but utilized, parts of the County. For all of these reasons, the FCC should decline the industry's misguided invitation to engage in rulemaking in this area.

**F. Application of the Abbreviated Timeframes to DAS Systems Would be Misguided Because These Facilities Often Require Particularized Review.**

Distributed antenna systems (DAS) typically involve a substantial height increase to a number of existing utility poles, and that height increase typically exceeds the 10 percent of the height of the original utility pole. The DAS networks processed thus far in Fairfax County have involved multiple installations on multiple poles -- typically around 8 to 16 nodes or installations at a minimum for each network. Candidly, the County has found that wireless providers typically do not spend a great deal of time, in connection with their initial submission, on ensuring that they have chosen the least obtrusive location for these nodes. For example, in one such DAS submission to the County, installations were initially proposed that directly obstructed the view from residents' windows or, in one instance, that were squarely at the center of a residents' long-existing outdoor recreational space. Through the zoning process, the nodes that were contiguous to residents' windows were moved to other existing utility poles that were further removed from residences, and the node proposed for the center of the outdoor

recreational space was moved behind existing trees. Both DAS systems were ultimately approved as modified. Plainly, both the wireless provider and the community “won.”

Because of the number of nodes proposed with DAS systems and the fact that they are not collocations under any definition of the term because of the substantial height increases, 90 days is too abbreviated a timeframe to allow for this collaborative process. However, such applications can be processed in the timeframes allowed for all other applications, or 150 days. To be sure, the County has not taken the position that expedited timeframes are optional when it comes to DAS systems. As noted above, the County already has timeframes imposed for its 2232 review, and those timeframes also apply to DAS systems. As a result, there is no need for rulemaking in this area as far as the County is concerned.

## **V. CONCLUSION.**

Section 6409(a) is a departure from the manner in which collocation requests were reviewed and approved by local and state governments. This statute, however, is narrow in scope. It is only in the limited situation where a collocation request does not result in a substantial change in the physical dimension of an existing wireless tower or base station that regulatory control has been preempted. As set forth more fully above, however, many of the FCC’s proposed rules go well beyond this narrow scope and would eliminate meaningful land use review altogether. Similarly, § 332(c)(7) of the Telecommunications Act expressly preserves local and state oversight of telecommunications installations, and although the FCC has issued presumptive guidelines for approving telecommunications applications, it has refrained from mandating any such time parameters. Nonetheless, the FCC is now contemplating new rules that would substantially curtail local land use review, which is usually the only balancing force to ensure that the installation of telecommunications infrastructure

comports with the character of its surroundings and is in harmony with the surrounding community.

This result was never the intent of Congress, and is particularly inappropriate in Fairfax County, which has a long history of collaborating in good faith with the telecommunications industry. Fairfax County respectfully requests that the FCC refrain from any rulemaking at this time, and to the extent that anything is promulgated, it be done in a manner that preserves local and state regulatory review to the maximum extent possible.

Respectfully submitted,

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- Policy h. Avoid interference with radio, television, and telecommunications receivers of the public.
- Policy i. Assure that radiation levels, individually and cumulatively, will be maintained at acceptable levels.

### MOBILE AND LAND-BASED TELECOMMUNICATION SERVICES

Mobile and land-based telecommunication services provide for the wireless transmission of voice and data and include cellular and personal communications services (PCS), paging and wireless Internet services and mobile radio communication. These services operate from wireless networks that depend on antenna devices and related equipment to transmit from a sender to one or more receivers. Such services are viewed as public utility service providers that benefit the community and its economic growth and vitality.

A **telecommunications facility** is defined as a facility, site, or location that contains one (1) or more antenna, telecommunications towers or monopoles, a distributed antenna system (DAS), micro-cell or other miniaturization technology, alternative support structures, satellite dish antennas, other similar communication devices, and related equipment and site improvements used for transmitting, receiving, or relaying telecommunications signals.

The objectives and policies set forth in this section provide guidance on siting and design issues used in evaluating land use applications. They should not be interpreted as superseding or amending any requirements of the Zoning Ordinance or other applicable local, state and Federal laws pertaining to these issues.

The 1996 Telecommunications Act, implemented by the Federal Communications Commission (FCC), and the federal courts defers to state and local governments (subject to certain exceptions) with respect to the placement, construction, and modification of facilities used to provide cellular, broadband, and other personal wireless services. State and local governments may not regulate these facilities based on the potential health or environmental effects of radio frequency (RF) emissions, to the extent that the facilities comply with established FCC regulations. Information on the FCC regulations is available for review on their Website.

### GENERAL GUIDELINES

**Objective 42:** In order to provide for the mobile and land-based telecommunication network for wireless telecommunication systems licensed by the Federal Communications Commission, and to achieve opportunities for the co-location of related facilities and the reduction or elimination of their visual impact, locate the network's necessary support facilities which include any antennas, support structures and equipment buildings or equipment boxes in accordance with the following policies.

- Policy a. Avoid the construction of new structures by locating proposed telecommunication facilities on available existing structures such as rooftops, telecommunication and broadcast support structures, electrical utility poles and towers, and water storage facilities when the telecommunication facilities can be

placed inconspicuously to blend with such existing structures. (See Figures 8, 9, 10.)

- Policy b. When existing structures are not available for co-location, or co-location is not appropriate because of adverse visual impacts or service needs, locate new structures that are required to support telecommunication antennas on properties that provide the greatest opportunity to conceal the telecommunication facilities and minimize their visual impact on surrounding areas.
- Policy c. When new structures or co-locations are required to serve residential neighborhoods, consider minimizing visual impacts on the surrounding area by utilizing camouflage structure design and/or micro-cell technologies or similar miniaturization technologies, such as distributed antenna systems (DAS), if feasible.
- Policy d. When multiple sites provide similar or equal opportunity to minimize impacts, public lands shall be the preferred location.
- Policy e. Locate mobile and land-based telecommunication facilities on public property only after a lease agreement between the County, or related board or authority, and the service provider has been established.
- Policy f. Ensure that the use of public property by mobile and land-based telecommunication facilities does not interfere with the existing or planned operational requirements of the public use and complies with adopted policies and plans to protect natural resources.
- Policy g. Co-locate mobile and land-based telecommunication facilities operated by different service providers on single sites and/or structures whenever appropriate. Locate single-use structures on a property only when a co-location structure for multiple service providers is not desirable or feasible due to technological differences, site limitations or visual impact concerns.
- Policy h. Ensure that the height of the proposed telecommunication facility is no greater than necessary to allow for co-location on the telecommunication facility based on its service area requirements while still mitigating the visual impact of the facility.
- Policy i. When new structures, co-locations and/or technologies (such as distributed antenna systems, micro-cell technology or miniaturization technology) are necessary to meet the service area requirements for the residential neighborhood(s), ensure that the height and mass of any appropriate co-location on the telecommunication facility is in character with the surrounding residential area and mitigates the visual impact of the facility on the surrounding residential area.
- Policy j. Design, site and/or landscape proposed telecommunication facilities to minimize impacts on the character of the property and surrounding areas. Demonstrate the appropriateness of the design through facility schematics and plans which detail the type, location, height, and material of the proposed structures and their relationship to other structures on the property and surrounding areas.

- Policy k. Demonstrate that the selected site for a new telecommunication facility provides the least visual impact on residential areas and the public way, as compared with alternate sites. Analyze the potential impacts from other vantage points in the area, especially from residential properties, to show how the selected site provides the best opportunity to minimize its visual impact on the area and on properties near the proposed site.
- Policy l. A key concept in assessing telecommunication facilities is mitigation which is defined as actions taken to reduce or eliminate negative visual impacts. Mitigate the visual impact of proposed telecommunication facilities and their equipment, by using effective design options appropriate to the site such as:
- Design, site and/or landscape the proposed facility to minimize impacts on the character of the area;
  - Locate proposed telecommunication facilities near or within areas of mature vegetation and trees that effectively screen or provide an appropriate setting for the proposed structure provided such location does not adversely impact sensitive resources or cause fragmentation of forested communities. When viewed in context, consider perspective views, relative topography and other factors, to mitigate the visual presence and prominence of the structure;
  - Blend proposed telecommunication facilities with an existing pattern of tall structures;
  - Obscure or block the views of proposed telecommunication facilities with other existing structures, vegetation, tree cover, or topographic features to the maximum extent feasible; and
  - Replace existing telecommunication facilities with taller structures or extend their overall height to reduce the need for another structure when such height increases or structure replacements are visually appropriate to the site, including the surrounding area and are consistent with the type, style and pattern of the existing structure.
- Policy m. Locate proposed telecommunication facilities to ensure the protection of historically significant landscapes and cultural resources. The views of and vistas from architecturally and/or historically significant structures should not be impaired or diminished by the placement of telecommunication facilities.
- Policy n. Site proposed telecommunication facilities to avoid areas of environmental sensitivity, such as steep slopes, floodplains, wetlands, environmental quality corridors, and resource protection areas.
- Policy o. Site proposed telecommunication facilities to allow for future expansion and with corresponding levels of screening to accommodate expansion.
- Policy p. Design and site proposed telecommunication facilities to preserve areas necessary for future right-of-way dedication and ancillary easements for construction of road improvements.

- Policy q. Locate and construct antennas used for purposes other than mobile and land-based telecommunication services in accordance with the same guidelines established in this “Mobile and Land-Based Telecommunications Services” section.
- Objective 43: Design proposed telecommunication facilities to mitigate their visual presence and prominence, particularly when located in residential areas, by concealing their intended purpose in a way that is consistent with the character of the surrounding area. (See Figures 11 and 12.)**
- Policy a. Disguise or camouflage the appearance of proposed telecommunication facilities to resemble other man-made structures and natural features (such as flagpoles, bell towers, and trees) that are typically found in a similar context and belong to the setting where placed.
- Policy b. Design proposed telecommunication facilities that are disguised and camouflaged to be of a bulk, mass and height typical of and similar to the feature selected.
- Policy c. Use other new and existing structures and vegetation of comparable form and style to establish a grouping that complements a camouflaged telecommunication facility and supports its design, location and appearance.

#### FEATURE SHOWN GUIDELINES

- Objective 44: With Planning Commission approval, consider mobile and land-based telecommunication facilities to be located on existing or replacement structures a “feature shown” of the Comprehensive Plan to be processed without a public hearing when placed in conformance with the following policies:**
- Policy a. Locate telecommunication facilities on existing buildings and structures at the following properties:
- In any zoning district on buildings and structures owned or controlled by a public use or Fairfax County governmental unit (as defined under Sect. 2-514 of the Zoning Ordinance);
  - Commercial and industrial zoned property and in the commercial areas of PDH, PDC, PRM, PRC and PTC zoning districts;
  - Residential properties zoned for and developed with multiple family dwellings 35 feet or greater in height; and
  - Institutional and quasi-public property (as defined under Section 2-514 of the Zoning Ordinance).
- Policy b. Utilize the following types of existing or replacement poles and towers for telecommunication facilities to avoid the construction of new monopoles and towers:

- Utility poles and towers that are within an easement 90 feet and greater in width, including “Fort Worth” or similar mounts that are designed to integrate a pole or other supporting structure within a transmission tower (See Figure 13.);
- Utility distribution poles on property zoned for residential uses provided:
  - The pole is located either within 10 feet of the pavement of an existing Principal or Minor (Type A) Arterial roadway as defined in Appendix 1 (Functional Classification) of the Transportation element of the County’s Policy Plan; or is located on land that is developed with a public or nonresidential use; or is located on land that is undeveloped and planned for public or nonresidential use;
  - The antennas on the pole are either concealed within a cap enclosure that resembles the pole, is no greater than 12 inches in diameter, and is no higher than 7 feet above the top of the pole (See Figure 14.); or the antennas are flush-mounted panels no higher than the top of the pole and are limited to four in number; or the antennas are omni-directional (whips) that either extend no more than 4 feet above the top of the pole and are limited to 3 in number or extend no more than 8.5 feet above the top of the pole and are limited to 1 in number;
  - There is no more than one related equipment cabinet which is either (1) located on and painted to match the pole and is 20 cubic feet or less in volume, or (2) is located on the ground immediately adjacent to the pole, is 70 cubic feet or less in volume and no more than 5 feet in height, and is screened according to Zoning Ordinance provisions; and
  - The height of a replacement pole or standard, including antennas, shall not exceed sixty-four (64) feet in height. The diameter of a replacement pole shall not exceed eighteen (18) inches.
- Utility distribution poles on property zoned for commercial or industrial uses or that is within the right-of-way of an interstate highway or the Dulles Airport Access/Toll Road provided:
  - The antennas on the pole are either concealed within a cap enclosure that resembles the pole, is no greater than 12 inches in diameter and is no higher than 7 feet above the top of the pole; or the antennas are flush-mounted panels and are placed no higher than the top of the pole and are limited to 12 in number; or the antennas are placed in a unified design, such as a candelabra with cylindrical shells covering each antenna (See Figure 15.), and are limited to 12 in number; or the antennas are omni-directional (whips) that either extend no more than 4 feet above the top of the pole and are limited to 3 in number or extend no more than 8.5 feet above the top of the pole and are limited to 1 in number; and
  - There is no more than one related equipment cabinet which is (1) located on and painted to match the pole and is 20 cubic feet or less

in volume; or (2) is located on the ground no larger than 250 square feet in size, setback a minimum distance of 10 feet from any property line or setback a minimum distance of 20 feet from any right-of-way easement line when located in road right-of-way, or utility easement or right-of-way and screened according to Zoning Ordinance provisions.

- Water tanks and water towers;
- Communication towers and monopoles;
- Light and camera standards in rights-of-way of an interstate highway or the Dulles Airport Access/Toll Road provided the antennas on the standard are either concealed within a cap enclosure that resembles the standard, is no greater than 12 inches in diameter, and is no higher than 7 feet above the top of the pole; or the antennas are flush-mounted panels and are placed no higher than the top of the standard and are limited to 12 in number; or the antennas are placed in a unified design, such as a candelabra with cylindrical shells covering each antenna, and are limited to 12 in number; and
- Replacement utility poles or poles extended in height to accommodate telecommunication antennas provided the diameter and overall height of the new or extended pole are no more than 25% greater than that of the originally approved structure and provided such poles: (a) are located on a parcel of land developed with a public or nonresidential use or are on a vacant parcel that is planned for public or nonresidential use; and (b) are outfitted with antennas consistent with the sizes and numbers described above in this objective under the “utility distribution poles” bullets.

Policy c: In determining that proposed telecommunication facilities are a feature shown of the Comprehensive Plan, ensure that the following general factors are met:

- The proposed installation has no material adverse impact on the visual quality or character of the general area in which it is to be placed including any surrounding residential properties;
- The proposed installation is located and designed to blend with the structure on which it is placed such as flush-mounting antennas or screening the antennas and equipment as appropriate to the site;
- The proposed installation, when in a grouping of other similar structures, is consistent with the pattern of those surrounding structures;
- Related equipment cabinets or shelters located on the ground or on a rooftop should be appropriately screened or placed to obscure their visibility from surrounding properties;
- Building rooftop antennas should be either flush mounted to surface walls, screened or placed to not be visible from the surrounding area unless the antenna has a minimal visual impact if installed above the roofline;

- Access to the proposed installation for purposes of maintenance has no material adverse impact on adjoining properties; and
  - Whip antennas with minimal visual impact and an overall height of 5 feet or less and a diameter of 2.5 inches or less.
- Policy d. Consider new monopoles or towers to be located in major utility transmission easements or rights-of-way, which are at least 100 feet in width and not used for underground gas transmission lines, to be a feature shown of the Comprehensive Plan if it is demonstrated that the telecommunication facilities cannot be accommodated on existing utility structures and the following guidelines are met:
- The monopole or tower is placed at least 35 feet inside the transmission easement;
  - The monopole or tower is placed a minimum of 200 feet from any existing residence;
  - The monopole or tower is placed a minimum of 200 feet from the right-of-way of any existing public roadway or street.

#### ADMINISTRATIVE REVIEW GUIDELINES

**Objective 45:** Consider the placement of antennas and their associated equipment to be an Administrative Review “feature shown” of the Comprehensive Plan requiring no formal Planning Commission review when the placement of the antennas and the related equipment structures is in full conformance with all Fairfax County Zoning Ordinance provisions and the following applicable policies:

- Policy a. Locate telecommunication facilities on building surfaces (including water tanks or towers) in accordance with the following standards:
- The antenna shall be placed directly in front of the building’s or tank’s surface, including the surfaces of the penthouse and other structures on the building’s roof, and be no greater than 102 inches in height, 24 inches in width, and 6 inches in depth, or, when a dish antenna, no more than 24 inches in diameter;
  - No part of the antenna shall extend above the surface of the building or tank on which it is placed and no part of the antenna’s mounting shall extend more than 6 inches above the surface of the building on which it is placed;
  - The back of the antenna shall be no more than one foot horizontally from the surface on which it is placed;
  - The antenna and its mounting shall be of a color or finish that closely matches and blends with the surface on which they are placed.
  - The equipment cabinet or shelter shall be either:

- Located inside the building, building penthouse or inside the building parking structure on a level other than the roof;
- Located on the ground and enclosed within a structure no greater than 500 square feet in area and 12 feet in height that is attached to the building and constructed of the material that is the same as, or visually the same as, the color and pattern of the building;
- Located on the ground behind a solid fence, wall, berm, or planted hedge, or combination thereof, as required by the Zoning Ordinance, and shall be no greater than 500 square feet in area and 8 feet in height; or,
- Located on the roof of the building immediately adjacent to its penthouse or other structure on the roof, is no greater than 500 square feet in area and 12 feet in height, and shall be screened by a material of the same, or visually the same, color or pattern and of an equal or lesser height as the adjacent rooftop structure.

Policy b. Locate telecommunication facilities on electrical transmission towers in accordance with the following standards:

- The electrical transmission tower shall be within an easement of 100 feet or greater;
- The top of the antenna shall be no higher than 15 feet above the top of the existing transmission tower;
- The color of the antenna and its mounting shall closely match the surface on which they are placed; and
- The related equipment cabinet or shelter shall be located under, and match the color of the tower structure.

Policy c. Locate telecommunication facilities on existing monopoles and towers in accordance with the following standards:

- The antenna shall be self-supporting and its top shall be located no more than 15 feet above the top of the existing structure.
- The color of the antenna and its mountings shall closely match the surface on which they are placed.
- The related equipment cabinet or shelter area shall be no greater than 500 square feet in area and 12 feet in height and shall be placed within an existing telecommunications compound. The compound must meet the screening requirements of the Zoning Ordinance; and
- The structure shall be located on property that is zoned I-1 through I-6 industrial zoning district.

Policy d. Install telecommunication facilities within existing structures in accordance with the following standards:

- The antenna shall be located totally within an existing structure; and
- The equipment cabinet or shelter shall be located totally within an existing structure.

Policy e. Expand and/or modify telecommunications facilities at existing installations in accordance with the following standards:

- The surface area (as measured for panel antennas as height times width and for whip antennas as height times diameter) of a replacement antenna shall be no more than 50% greater than the antenna originally approved by the Planning Commission;
- The top of the replacement antenna shall be mounted at a level no higher than the level of the top of the antennas being replace;
- The color of the replacement antenna and its mountings closely match the background on which placed; and
- The square footage and the height of the replacement or expanded equipment cabinet or shelter shall be no more than 25% greater than the square footage and the height of the original equipment cabinet or shelter approved by the Planning Commission for the provider at the site.

Policy f. As an option for approved monopoles (camouflaged or non-camouflaged), add telecommunication facilities in accordance with the following standards:

- Antennas allowed within the maximum number identified for the platform elevations in the original monopole approval;
- Antennas allowed within the allowable size;
- Pad sites and equipment cabinet/shelters allowed within the maximum number identified in the originally approved monopole equipment compound; and
- Proposed telecommunication facilities must be in accordance with the Zoning Ordinance.

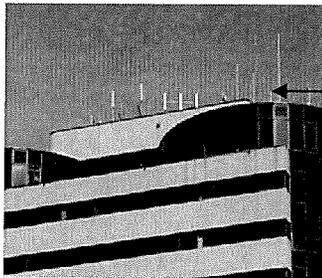


FIGURE 8

Avoid building antennas silhouetted against the sky which create roof top clutter.



FIGURE 9

Place telecommunication facilities to blend inconspicuously with existing structures. Place antennas “flush” against the building wall to blend with the building material.



FIGURE 10



FIGURE 11

Disguise and camouflage telecommunication facilities to resemble other objects found within the area located.

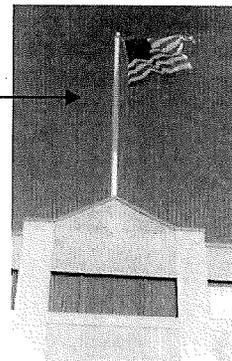
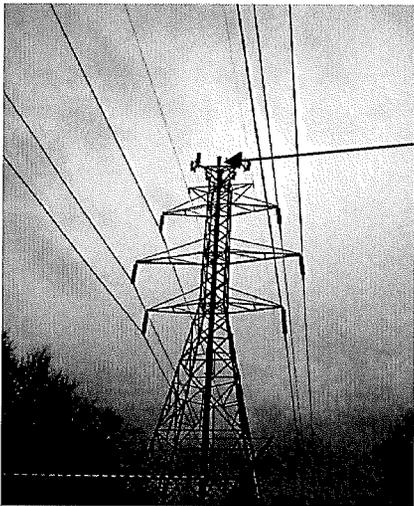


FIGURE 12



A "Fort Worth" structure integrates the telecommunication pole and antennas within an existing electrical transmission tower and helps to conceal the use.

FIGURE 13

A 7 foot “radome cap” on the top of an electrical distribution pole conceals the telecommunication antennas.

The equipment box located on the distribution pole or on the ground should be placed and colored to match the pole or screened to blend with its surroundings.

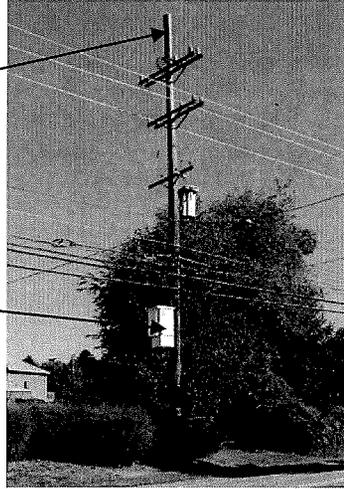
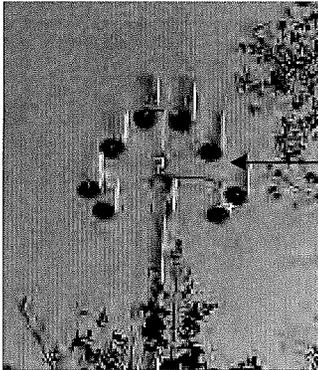


FIGURE 14



Antennas can be of a “candelabra” design and covered with a cylindrical shell to provide a unified, organized appearance.

FIGURE 15



**COUNTY OF FAIRFAX, VIRGINIA  
APPLICATION FOR DETERMINATION  
PURSUANT TO VIRGINIA CODE SECTION 15.2-2232**

## **2232 Application Checklist**

- Three (3) complete copies of the application
- One (1) - 24" x 36" set of the facility plans to correct scale
- Three (3) - 11" x 17" sets of the facility plans to correct scale
- Three (3) - 8 ½" x 11" sets of the facility plans

Do not bind, staple or hole-punch the application materials.

Incomplete applications will not be processed. The applicant will be notified of any deficiencies. Any revisions to the application that require replacement of pages or plans is the responsibility of the applicant. **It is the applicant's responsibility to replace or revise individual pages or plans or applications.**

Direct your questions to:

Fairfax County Department of Planning and Zoning  
Facilities Planning Branch  
12055 Government Center Parkway, Suite 730  
Fairfax, Virginia 22035-5507

(703) 324-1380  
[www.fairfaxcounty.gov/dpz/2232](http://www.fairfaxcounty.gov/dpz/2232)



**COUNTY OF FAIRFAX, VIRGINIA  
APPLICATION FOR DETERMINATION  
PURSUANT TO VIRGINIA CODE SECTION 15.2-2232**

*\*\*\* This area to be completed by staff \*\*\**

**APPLICATION NUMBER** \_\_\_\_\_

Date application received \_\_\_\_\_ by \_\_\_\_\_

Date(s) Revised \_\_\_\_\_

Date application accepted \_\_\_\_\_ by \_\_\_\_\_

*(Please Type or Clearly Print)*

**PART I: APPLICATION SUMMARY**

**LOCATION OF PROPOSED USE**

Address \_\_\_\_\_

City/Town \_\_\_\_\_ Zip Code \_\_\_\_\_

Place Name (example: Dale High School) \_\_\_\_\_

Tax Map I.D. Number(s) \_\_\_\_\_

Fairfax County Supervisor District \_\_\_\_\_

**APPLICANT(S)**

Name (Company or Agency) \_\_\_\_\_

Agent Name \_\_\_\_\_

(Note: Failure to notify County of a change in agent may result in application processing delays)

Agent's Mailing Address \_\_\_\_\_

City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone Number (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_

E-mail \_\_\_\_\_

Secondary Contact \_\_\_\_\_

Telephone Number (\_\_\_\_) \_\_\_\_\_ E-mail \_\_\_\_\_

**BRIEF DESCRIPTION OF PROPOSED USE**

Total Area of Subject Parcel(s) \_\_\_\_\_

Zoning District \_\_\_\_\_

Applicant's previous Zoning Approvals for all uses on site (proffered conditions, special permits, special exceptions, variances, development plans)

**PROPERTY OWNER(S) OF RECORD**

Owner \_\_\_\_\_

Street Address \_\_\_\_\_

City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Has property owner been contacted about this proposed use?  YES  NO

**SIGNATURE**

**The undersigned acknowledges that additional Fairfax County land use review requirements may be identified during the review of this 2232 Review application and the fulfillment of such requirements is the responsibility of the applicant. The undersigned also acknowledges that all Fairfax County Zoning Ordinance requirements pertaining to this project shall be fulfilled.**

**In the event a new agent is assigned responsibility for this application, the applicant agrees to provide a letter to the Department of Planning and Zoning authorizing the transfer of responsibility for the application and providing all new contact information. In the event the applicant fails to notify County staff of a change in agent, the application may be subject to processing delays.**

Signature of Applicant or Agent \_\_\_\_\_

Date \_\_\_\_\_

**Submit completed application to:**

**Chris Caperton, Chief, Facilities Planning Branch  
Fairfax County Department of Planning and Zoning  
12055 Government Center Parkway, Suite 730  
Fairfax, Virginia 22035-5507  
(703) 324-1380**

**PART II: STATEMENT OF JUSTIFICATION**

*Please provide a Statement of Justification that addresses items A through E.*

**A. DESCRIPTION OF PROPOSED USE**

1. Project description
2. Area to be served by proposed use
3. Maintenance requirements and frequency
4. Propagation maps (for telecommunications applications)

**B. REQUIREMENT FOR PROPOSED USE**

1. Why the new or expanded facility is needed
2. Why the proposed location is the best location for the proposed use
3. Why the proposed location and type of facility is the least disruptive alternative

**C. ANTICIPATED IMPACTS / MITIGATION**

1. Visual
2. Noise and light
3. Air and water quality
4. Environmental
5. Transportation (including trip generation)
6. Mitigation Measures as applicable for 1 through 5

**D. CONFORMANCE WITH THE COMPREHENSIVE PLAN AND OTHER STANDARDS**

1. Comprehensive Plan policies and guidelines that directly support the proposal
2. Relevant standards/criteria supporting the facility and location

**E. ALTERNATIVE SITES CONSIDERED FOR THIS USE**

1. Other properties
2. Other locations on the subject property
3. Reasons for rejecting each alternative location

### **PART III: SUPPORTING MATERIALS AND INFORMATION**

*Include the following materials and information as applicable to the proposal:*

**A. PROPERTY IDENTIFICATION MAP:** At a scale of 1" = 500' identify the proposed site for the facility with the subject property centered and highlighted on a Fairfax County Tax Map. Records available online at <http://icare.fairfaxcounty.gov/Main/Home.aspx>

**B. PROPOSED FACILITY/SITE PLAN (AT A SCALE OF 1"= NOT MORE THAN 50'):**

1. One (1) 24" x 36" copy to correct scale
2. Three (3) 11" x 17" copies to correct scale
3. Three (3) 8½" x 11" copies

Note: Additional copies may be requested by County Staff

*Include in the facility/site plan the following information as relevant to the proposal:*

1. Subject and adjoining property boundaries
2. Public right(s)-of-way and names
3. Scale and north arrow
4. Locations, dimensions, and maximum heights of all existing and proposed structures and equipment
5. Distance of proposed structures and equipment to all lot lines
6. When located in a utility easement or road right-of-way, distance of structures and equipment to all utility easement lines or road right-of-way lines
7. Delineation of any floodplain designated by the Federal Insurance Administration, United States Geological Survey, or Fairfax County, and delineation of any Resource Protection Area
8. Building size or land area of new facility or use (acres or square feet)
9. Area of existing facility or use to be enlarged or renovated (acres or square feet)
10. Area of proposed enlargement or renovation (acres or square feet)
11. Any features of the proposed use such as fencing, screening and landscaping, and existing topography with a maximum contour interval of five (5) feet
12. Existing vegetation, proposed limits of clearing, and proposed landscaping and screening as required by the Fairfax County Zoning Ordinance
13. Antenna and mounting detail with dimensions
14. Equipment cabinet or shelter detail with dimensions
15. Details of screening for the use showing type of screening material, dimensions and placement; if landscaping is provided, list the height of the landscaping at time of planting and the ultimate height

**C. PHOTOGRAPHS OF SITE:** Photographs of the existing structure, building and site as applicable (see below for details regarding photographs of telecommunications facilities)

*For telecommunications facilities, submit items D-G in addition to items A-C:*

*Complete pages 6-7 of this application as it relates to the proposed telecommunications facility. Ensure that the information provided in this section is consistent with the information shown on the facility/site plan.*

**D. PHOTO SIMULATIONS OF THE PROPOSED INSTALLATION:**

1. Include enough photo simulations to accurately depict the proposed facility.
2. Provide photo simulations illustrating the proposed facility, antennas and equipment. Clearly identify the location of existing and new antennas and equipment with arrows on the photo-simulation. Provide map keys to identify a) new antennas and equipment and b) the locations of where the photos were taken.
3. Photo simulations may be submitted following completion of an on-site height test and submitted after the application has been submitted. The photo simulations should depict the appearance of all proposed structures and equipment as viewed from the subject site and adjoining properties and show the relationship to existing site features such as buildings, trees and other physical features.
4. For rooftop or structure installations, the photo simulations should clearly depict the appearance of all the antennas and equipment when installed.

**E. BUILDING ROOF PLAN AND CALCULATION:**

1. When locating antennas on a building facade or rooftop, provide a roof plan at a scale of 1"= not more than 20' showing all existing penthouses, structures and mechanical equipment on the roof and the location of the proposed antenna and related telecommunications equipment.
2. Provide a calculation on the plan with: a) the percentage of the roof covered by all existing structures/equipment, and b) the percentage of the roof that will be covered by all existing structures and the proposed structures/equipment.

**F. PHOTOGRAPHIC SURVEY:** For new structures such as monopoles or towers, provide a photographic survey of the project site. Photographs should be taken from the subject property boundaries at four or more locations to show on and off-site views of the subject property and to identify the proposed location of the facility on the site. The number of photos submitted will vary according to site size but should be adequate to view the entire site.

**G. ON-SITE HEIGHT TEST:** For new structures such as monopoles or towers, the applicant should conduct an on-site height demonstration, such as a balloon or crane test, to simulate the extent of the proposed structure's visibility from surrounding properties. Such test should be coordinated with staff. The applicant is responsible for conducting the height test and for notifying property owners and community representatives with the date and time of the height test.

**PART IV: TELECOMMUNICATION USES**  
*(Do not submit for non-telecommunications public facility uses)*

**A. TYPE OF PROPOSED FACILITY** Check the appropriate box(es) and provide the required information

	<b>Yes</b>	<b>No</b>
New monopole* or tower	<input type="checkbox"/>	<input type="checkbox"/>
Collocation on existing monopole or tower	<input type="checkbox"/>	<input type="checkbox"/>
Collocation on building facade or rooftop	<input type="checkbox"/>	<input type="checkbox"/>
Collocation on replacement light pole or utility pole	<input type="checkbox"/>	<input type="checkbox"/>
Located in utility or transportation easement and/or right-of-way	<input type="checkbox"/>	<input type="checkbox"/>
Modification to approved telecommunications facility	<input type="checkbox"/>	<input type="checkbox"/>
Collocation on other structure _____	<input type="checkbox"/>	<input type="checkbox"/>

*\*Including treepoles, flagpoles and other freestanding stealth structures.*

**B. CALCULATION OF FACILITY MODIFICATIONS** for modifications to an approved telecommunications facility, provide the following:

1. Application number(s) (456-, 2232-, FS-, FSA-) for all applicant's prior telecommunications uses on site:
  
2. Calculate the surface area, in square inches (height x width **or** height x diameter), of the applicant's antennas organized in the following categories:
  - a. approved \_\_\_\_\_
  - b. existing \_\_\_\_\_
  - c. proposed \_\_\_\_\_
  
3. Calculate the volume (height x width x depth) of the applicant's equipment cabinets (in cubic inches) and/or shelter (in cubic feet) organized in the following categories:
  - a. approved \_\_\_\_\_
  - b. existing \_\_\_\_\_
  - c. proposed \_\_\_\_\_

**C. ANTENNA(S)** Provide a separate page for each provider listed as part of the application

Provider \_\_\_\_\_

Model # or name	Type Panel, Dish, Omni	Quantity	Height	Width	Diameter	Location height on the structure

Existing structure color: \_\_\_\_\_ Antenna color: \_\_\_\_\_

Is antenna painted to match existing structure? Yes  No

If No, please explain: \_\_\_\_\_

Will the antennas be screened? Yes  No  If Yes, describe the screening to be provided:

Will the antennas be flush-mounted to the structure on which they are located? Yes  No

If No, please explain: \_\_\_\_\_

Additional information:

**D. EQUIPMENT**

Model # or name	Type cabinet or shelter	Quantity	Height	Width	Depth	Location

How will the equipment cabinet or shelter be screened? \_\_\_\_\_

Screen material: \_\_\_\_\_ Screen color: \_\_\_\_\_

Additional information:

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies	)	WT Docket No. 13-238
	)	
Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting	)	WC Docket No. 11-59
	)	
Amendment of Parts 1 and 17 of the Commission's Rules Regarding Public Notice Procedures for Processing Antenna Structure Registration Applications for Certain Temporary Towers	)	RM-11688 (terminated)
	)	
2012 Biennial Review of Telecommunications Regulations	)	WT Docket No. 13-32
	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: September 26, 2013**

**Released: September 26, 2013**

**Comment Date: (60 days after date of publication in the Federal Register)**

**Reply Comment Date: (90 days after date of publication in the Federal Register)**

By the Commission: Acting Chairwoman Clyburn, Commissioner Rosenworcel and Commissioner  
Pai issuing separate statements.

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**I. INTRODUCTION AND EXECUTIVE SUMMARY**

1. In this Notice of Proposed Rulemaking, we explore opportunities to promote the deployment of infrastructure that is necessary to provide the public with advanced wireless broadband services, consistent with governing law and the public interest. In the Telecommunications Act of 1996, Congress directed the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” by working to “remove barriers to infrastructure investment” in a manner consistent with the public interest, convenience, and necessity.<sup>1</sup> We have made significant progress in recent years in expanding high-speed Internet access and promoting broadband availability, but we must continue to examine and address impediments to broadband investment, including impediments that may be presented by unnecessary or unclear regulatory requirements and processes. This Notice of Proposed Rulemaking addresses potential measures to expedite the environmental and historic preservation review of new wireless facilities, as well as rules to implement statutory provisions governing State and local review of wireless siting proposals.

2. America’s demand for and reliance on wireless broadband services has been growing dramatically and will almost certainly continue to do so in the years ahead. The ability of wireless providers to meet this demand will depend not only on access to spectrum, but also on the extent to which they can deploy new or improved wireless facilities or cell sites. The impact of broadband demand on the number of cell sites is reflected in data showing a twelve percent increase in the number of cell sites in 2011 alone.<sup>2</sup> The growth in new site deployment is likely to accelerate as providers increasingly deploy

<sup>1</sup> 47 U.S.C. § 1302(a).

<sup>2</sup> According to CTIA—The Wireless Association (“CTIA”), the total number of cell sites in use by CTIA’s members was 283,385 as of year-end 2011. See CTIA, *2011 Semi-Annual Wireless Industry Survey Results*, at 163 (2012). This represents an increase of 12 percent since December 31, 2010, of 15 percent since December 31, 2009, of 54 percent since December 31, 2005, and of 61 percent since December 31, 2004. *Id.*

small cells and Distributed Antenna Systems (“DAS”) that expand capacity or coverage in a local area through small, low-mounted antennas. These new technologies supplement the capacity of the “macrocell” network, filling in gaps or providing additional capacity in a localized outdoor or indoor area where adding a traditional macrocell would be impractical or inefficient. Because individual DAS antennas and small cells cover very small areas, it is necessary to deploy a large number to achieve the seamless coverage that would be provided by a single macrocell. Further, even where cell sites have been deployed, providers may be required to add to or replace existing facilities to enable support for newer so-called “4G” wireless technologies that provide greater connection speeds to consumers.

3. Parties seeking to deploy wireless infrastructure often face processes they must complete prior to construction that can take long periods of time and impose significant expense. Apart from any private arrangements they must enter into to gain access to the land or structure on which the wireless facilities will be deployed, parties must typically obtain siting approval from the governing local municipality with jurisdiction over the area. They must also comply with the Commission’s rules for environmental review, which implement our obligations under Federal statutes including the National Environmental Policy Act of 1969 and the National Historic Preservation Act of 1966, and are designed to protect wetlands, Native American religious sites, and historic properties, *inter alia*.<sup>3</sup> These regulatory processes serve important interests, ensuring that infrastructure is deployed in a manner that appropriately protects the Nation’s environmental and historic resources, and that is consistent with local community needs, interests, and values. Because these processes can delay the deployment of infrastructure for new or improved wireless services, however, eliminating any steps associated with these processes that may not be needed to achieve their policy goals and fulfill existing statutory mandates is also an important public goal and provides a significant benefit to America’s communities.

4. In the last few years, the Commission has taken a number of significant steps to reduce barriers to wireless infrastructure investment. In 2009, the Commission released a Declaratory Ruling establishing presumptive timeframes for State and local processing of wireless tower and antenna siting requests (“2009 Declaratory Ruling”).<sup>4</sup> In 2011, the Commission adopted an order that ensures timely and rationally priced access to utility poles (“Pole Attachment Order”).<sup>5</sup> The Commission also released at the same time a Notice of Inquiry on Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting (“NOI”).<sup>6</sup> In the *NOI*, the Commission sought to develop a record on the nature and scope of both wireline and wireless broadband deployment issues, including best practices that have promoted deployment as well as practices that have resulted in delays, and further sought comment on “specific steps that could be taken to identify and reduce unnecessary obstacles to obtaining access to rights-of-way and siting wireless facilities.”<sup>7</sup>

<sup>3</sup> See 42 U.S.C. § 4321 *et seq.*; 16 U.S.C. § 470f.

<sup>4</sup> See Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance, WT Docket No. 08-165, *Declaratory Ruling*, 24 FCC Rcd 13994 (2009), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff’d sub nom. City of Arlington, Texas v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff’d*, 133 S.Ct. 1863 (2013).

<sup>5</sup> Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, WC Docket No. 07-245, GN Docket No. 09-51, *Report and Order and Order on Reconsideration*, 26 FCC Rcd 5240 (2011), *aff’d sub nom. American Elec. Power Service Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013), *pet. for cert. filed*, 81 USLW 3673 (May 24, 2013).

<sup>6</sup> Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting, WC Docket No. 11-59, *Notice of Inquiry*, 26 FCC Rcd 5384 (2011) (“NOI”).

<sup>7</sup> *NOI*, 26 FCC Rcd at 5389 para. 10.

5. Earlier this year, the Commission released the Signal Boosters R&O, establishing rules for signal boosters that will promote the deployment of such devices to expand wireless coverage.<sup>8</sup> In addition, we continue to assist the interagency Working Group established by Executive Order 13616 to facilitate broadband deployment on Federal buildings and rights-of-way.<sup>9</sup> We are also separately considering options to facilitate collocation on older towers that did not complete historic preservation review, while protecting Native American sacred sites, sites of Tribal cultural importance, and archeological sites.<sup>10</sup> We will continue working on these fronts as we consider the issues in the immediate rulemaking proceeding.

6. With this Notice of Proposed Rulemaking, we now address four major issues regarding the regulation of wireless facility siting and construction, including issues raised by commenters in the *NOI* proceeding, with the goal of reducing, where appropriate, the cost and delay associated with the deployment of such infrastructure. First, we seek comment on expediting our environmental review process, including review for effects on historic properties, in connection with proposed deployments of small cells, DAS, and other small-scale wireless technologies that may have minimal effects on the environment. While cellular service has traditionally been provided by antennas on large communications towers, these newer technologies can be deployed on utility poles, street lamps, water towers, or rooftops. Through these deployments, providers can enhance the wireless capacity available to mobile users for advanced broadband applications or fill in coverage gaps in areas where it is not possible or economically justifiable to put in additional large towers. They can also deploy these cells inside buildings to enhance indoor signal strength.

7. Deployment of such technologies is therefore becoming increasingly common as one measure to meet growing consumer demand, and we find it may be appropriate to update our environmental review requirements to reflect this development. These requirements are intended to ensure that we consider the environmental effects of new wireless infrastructure deployments, including effects on historic properties. While the Commission has acted in the past to tailor our environmental review for the deployment of wireless infrastructure, those processes were largely developed long before small cell technologies became prevalent, and for the most part reflect the scale and level of environmental concern presented by traditional deployments on tall structures. Accordingly, we seek comment on whether to expedite or tailor our environmental review process for technologies such as DAS and small cells.

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<sup>8</sup> Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission's Rules to Improve Wireless Coverage Through the Use of Signal Boosters, WT Docket No. 10-4, *Report and Order*, 28 FCC Red 1663 (2013) ("*Signal Boosters R&O*").

<sup>9</sup> Accelerating Broadband Infrastructure Deployment, Executive Order 13616, 77 Fed. Reg. 36903 (June 14, 2012). Finding that "decisions on access to Federal property and [rights-of-way] can be essential to the deployment of both wired and wireless broadband infrastructure," Executive Order 13616 created a "Broadband Deployment on Federal Property Working Group" to develop "a coordinated and consistent approach in implementing agency procedures, requirements, and policies related to access to Federal lands, buildings, and [rights-of-way], federally assisted highways, and tribal lands to advance broadband deployment." *Id.* The Working Group is composed of representatives from seven Federal agencies that each have significant ownership of or responsibility for managing Federal lands, buildings, and rights-of-way, federally assisted highways, or Tribal lands, and also includes representatives from four other agencies, including the Commission, that "provide advice and assistance[.]" *Id.*

<sup>10</sup> *See, e.g.*, Federal Communications Commission Office of Native Affairs and Policy, 2012 Annual Report, at 6 (stating that in 2013, the Commission's Office of Native Affairs and Policy and other Commission staff will "host and initiate consultations with Tribal Nations and inter-Tribal government associations regarding options and strategies for analyzing and addressing the status of various classes of towers that never went through historic preservation review under Section 106 of the National Historic Preservation Act."), *available at* <http://transition.fcc.gov/cgb/onap/ONAP-AnnualReport03-19-2013.pdf>.

8. Second, in response to a petition filed by CTIA—The Wireless Association (“CTIA”), and based on the associated record, we propose to adopt a narrow exemption from the Commission’s pre-construction environmental notification requirements for certain temporary towers.<sup>11</sup> Under the current notification requirements, before a party can register with the Commission a proposed communications tower that requires registration under Part 17 of our rules,<sup>12</sup> and thus begin to construct or deploy the tower in question, it must complete a process of local and national notice, which helps to facilitate public involvement in our consideration of the proposed deployment’s potential to create significant environmental effects. Temporary towers are often needed with very little advance warning, however, making the notification process impracticable. Under our proposed exemption, eligible towers must meet specified criteria, including very short duration, height limits, minimal or no associated excavation, and absence of lighting, which should ensure a minimal potential for significant environmental effects. We therefore tentatively find that the proposed exemption will serve the public interest by enabling providers to deploy these temporary facilities on a timely basis in response to unanticipated short term needs without undermining the purposes of the notification process.

9. Third, we seek comment on rules to clarify and implement the requirements of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”).<sup>13</sup> Under Section 6409(a), “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”<sup>14</sup> Eligible facilities requests include collocation requests, as well as requests for removal or replacement of existing equipment. Collocation, which involves placing wireless equipment on pre-existing structures rather than constructing new support structures, is often the most efficient, rapid, and economical means of expanding wireless coverage and capacity, and also reduces the environmental and other impacts of new wireless facilities deployment. By requiring timely approval of eligible collocations, Section 6409(a) will help providers meet the Nation’s growing demand for wireless broadband service and may be critical to the deployment of the nationwide public safety broadband network mandated by the Spectrum Act. Because most of the terms of the provision are undefined, however, we are concerned that disputes over its interpretation may significantly delay these benefits. We therefore propose to adopt rules clarifying the provision’s meaning to assist all parties in implementing its requirements. We also seek comment on how to encourage efforts to develop best practices for applying Section 6409(a) and what role they might play in interpreting or implementing the provision.

10. Finally, we seek comment on whether we should address certain disputes or questions that have arisen about how to apply our *2009 Declaratory Ruling* in four specific circumstances. We also seek comment on one additional issue of interpretation arising under Section 332(c)(7)(B)(i)(I), a provision of Section 332(c)(7) that was not addressed by the *2009 Declaratory Ruling*. We note that the presumptive timeframes the Commission established under Section 332(c)(7) in the *2009 Declaratory Ruling* govern many wireless facilities siting applications that are not covered by Section 6409(a).

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<sup>11</sup> We have previously waived the notification requirements for these temporary towers pending the completion of this rulemaking proceeding. See Amendment of Parts 1 and 17 of the Commission’s Rules Regarding Public Notice Procedures for Processing Antenna Structure Registration Applications for Certain Temporary Towers; 2012 Biennial Review of Telecommunications Regulations, RM-11688, WT Docket No. 13-32, *Order*, 28 FCC Rcd 7758 (2013) (“*Waiver Order*”).

<sup>12</sup> 47 C.F.R. Part 17.

<sup>13</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a), 126 Stat. 156 (2012) (codified at 47 U.S.C. § 1455(a)).

<sup>14</sup> 47 U.S.C. § 1455(a)(1).

process similar to that which currently applies to emergency situations is an inefficient approach for the narrow category of temporary towers within the scope of our proposal and creates unnecessary uncertainty and delay.<sup>193</sup> We seek comment on the costs of the case-by-case waiver process that would be avoided by adopting a rule. We also seek comment on the potential that an exemption by rule would be over-inclusive, and on any costs that might result.

#### IV. IMPLEMENTATION OF SECTION 6409(A)

90. In this section, we seek comment on whether to adopt rules interpreting and implementing Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”),<sup>194</sup> which establishes a new Federal law governing the State and local review of eligible requests for modification of existing wireless towers or base stations, including requests for collocation. As discussed in detail below, we tentatively find that it would serve the public interest to clarify the requirements and scope of this provision. We therefore seek comment on the interpretation of various statutory terms in Section 6409(a) and on other questions of implementation, including whether we should establish time periods for the review of eligible requests and whether we should specify remedies for noncompliance.

##### A. Background

91. Section 6409(a), codified at 47 U.S.C. § 1455(a), was passed on February 22, 2012, as part of Title VI of the Spectrum Act, which Congress adopted to “advance wireless broadband service” for both public safety and commercial users.<sup>195</sup> To accomplish this goal, among other things, Title VI established the First Responder Network Authority (“FirstNet”) to oversee the construction and operation of a nationwide public safety wireless broadband network (“PSBN”) over dedicated spectrum for which the Spectrum Act directed the Commission to issue FirstNet a license.<sup>196</sup> The Spectrum Act also authorized the Commission to conduct an incentive auction of broadcast television spectrum in order to make additional spectrum available for commercial broadband service and to help fund the deployment of the PSBN.<sup>197</sup> Section 6409 contributes to the twin goals of commercial and public safety wireless broadband deployment through several measures that promote rapid deployment of the network facilities needed for the provision of broadband wireless services. These measures include Section 6409(a), entitled “Facilities Modification.”

92. Section 6409(a) has three provisions. Subsection (a)(1) provides that “[n]otwithstanding section 704 of the Telecommunications Act of 1996 [codified as 47 U.S.C. § 332(c)(7)] or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”<sup>198</sup> Subsection (a)(2) defines the term “eligible facilities request” as any request for modification of an existing wireless tower or base station that

<sup>193</sup> See AT&T Comments, RM-11688, at 5, 7-8.

<sup>194</sup> See Title VI – Public Safety Communications and Electromagnetic Spectrum Auctions, Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a), 126 Stat. 156 (2012) (codified at 47 U.S.C. § 1455(a)). We refer hereinafter to the Middle Class Tax Relief and Job Creation Act of 2012 as the “Spectrum Act.”

<sup>195</sup> See H.R. Rep. 112-399, at 136 (2012) (“Conf. Rep.”).

<sup>196</sup> See Spectrum Act §§ 6201, 6202, 6206. See also Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, PS Docket No. 12-94, PS Docket No. 06-229, WT Docket No. 06-150, *Notice of Proposed Rulemaking*, 28 FCC Rcd 2715 (2013).

<sup>197</sup> See Spectrum Act §§ 6402, 6403. See also Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Docket No. 12-268, *Notice of Proposed Rulemaking*, 27 FCC Rcd 12357 (2012).

<sup>198</sup> Spectrum Act § 6409(a)(1).

involves (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment.<sup>199</sup> Subsection (a)(3) provides that “[n]othing in paragraph (a) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.”<sup>200</sup> Aside from the definition of “eligible facilities request,” Section 6409(a) does not define any of its terms. Similarly, neither the definitional section of the Spectrum Act nor that of the Communications Act contains definitions of the Section 6409(a) terms discussed here.<sup>201</sup>

93. On January 25, 2013, the Wireless Telecommunications Bureau (“Wireless Bureau” or “Bureau”) issued a public notice offering interpretive guidance regarding the meaning and application of Section 6409(a) (“*Section 6409(a) PN*”).<sup>202</sup> Specifically, the Bureau provided guidance on how to interpret the term “wireless tower or base station,” on what it means to “substantially change the physical dimensions” of a tower or base station, on whether a State or local government may require an application for a modification covered under Section 6409(a), and on whether there is a time limit within which such an application must be approved.<sup>203</sup> The Bureau noted that the Commission remains free to address the interpretation of Section 6409(a) through its rulemaking authority or through adjudication, pursuant to its authority to “implement and enforce [the provisions of the Spectrum Act] as if . . . part of the Communications Act of 1934 (47 U.S.C. 151 et seq.).”<sup>204</sup>

94. On July 31, 2013, the Intergovernmental Advisory Committee (“IAC”) submitted recommendations to the Commission regarding the interpretation of Section 6409(a) and the Bureau’s guidance in the *Section 6409(a) PN*.<sup>205</sup> In its submission, the IAC disagreed with certain aspects of the Bureau’s guidance and recommended that, “in any future action that would have formal or binding status, the Commission take certain different approaches” to these matters.<sup>206</sup> Specifically, the IAC recommended that the Commission modify the Bureau’s guidance regarding how to interpret the terms “substantially change the physical dimensions” and “base station.”<sup>207</sup> The IAC also recommended that the Commission clarify that “the scope of Section 6409 is properly understood as affecting state, local and tribal land use regulation and not proprietary or contractual activity” and that “state, local and tribal land

<sup>199</sup> Spectrum Act § 6409(a)(2).

<sup>200</sup> Spectrum Act § 6409(a)(3).

<sup>201</sup> Spectrum Act, § 6001; 47 U.S.C. § 153.

<sup>202</sup> Wireless Telecommunications Bureau Offers Guidance on Interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, *Public Notice*, 28 FCC Rcd 1 (WTB 2013) (“*Section 6409(a) PN*”).

<sup>203</sup> *See id.*

<sup>204</sup> *See id.*, 28 FCC Rcd at n. 3 (quoting 47 U.S.C. § 1403(a)). Under the Communications Act, the Commission has broad authority to implement and enforce its provisions through rulemaking. *See, e.g.*, 47 U.S.C. § 201(b); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377-78 (1999); *accord, Alliance for Community Media v. FCC*, 529 F.3d 763, 773-76 (6th Cir. 2008). *See also City of Arlington v. FCC*, 668 F.3d 229, 247-54 (5th Cir. 2012), *aff’d*, 133 S. Ct. 1863 (2013) (application to 47 U.S.C. § 332(c)(7)).

<sup>205</sup> *See* Intergovernmental Advisory Committee to the Federal Communications Commission: Advisory Recommendation Number 2013-9, “Response to Wireless Telecommunications Bureau’s Guidance on Interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012,” dated July 31, 2013 (“IAC Recommendation”). This document has been filed in WC Docket No. 11-59 (Aug. 2, 2013) and is also available at <http://www.fcc.gov/encyclopedia/intergovernmental-advisory-committee-comments>.

<sup>206</sup> IAC Recommendation at 1.

<sup>207</sup> *Id.* at 1-3.

use authorities are properly recognized as the threshold decisions-makers with respect to whether the standards for Section 6409's applicability are met in particular cases."<sup>208</sup>

## B. Discussion

95. We tentatively find that it will serve the public interest for the Commission to establish rules clarifying the requirements of Section 6409(a) to ensure that the benefits of a streamlined review process for collocations and other minor facility modifications are not unnecessarily delayed. As the Commission noted in the *Sixteenth Competition Report*, collocation on existing structures is often the most efficient and economical solution for mobile wireless service providers that need new cell sites, either to expand their existing coverage area, increase their capacity, or deploy new advanced services.<sup>209</sup> Therefore, the Commission has taken several significant steps to facilitate collocations, including tailoring environmental review of collocations through the Collocation Agreement, adopting a time frame for local review of collocations in the *2009 Declaratory Ruling*, and adopting comprehensive rules to streamline the pole attachment process in the *Pole Attachment Order*.<sup>210</sup> Collocation is also commonly encouraged by zoning authorities to reduce the number of new communications towers.<sup>211</sup> In addition, collocations on existing towers will be critical to deployment and ongoing operation of the nationwide PSBN mandated by the Spectrum Act. Indeed, the Spectrum Act requires FirstNet to utilize, to the maximum extent economically desirable, "existing [] commercial or other communications infrastructure [and] Federal, State, tribal, or local infrastructure" in carrying out its statutory requirement to deploy the PSBN.<sup>212</sup> It also authorizes FirstNet to assess and collect lease fees from other entities that seek access to or use of "any equipment or infrastructure, including antennas or towers, constructed or otherwise owned" by FirstNet "resulting from a public-private arrangement to construct, manage, and operate" the PSBN.<sup>213</sup> Such fees are a portion of the monies that FirstNet is authorized to collect to recoup its total expenses each fiscal year to enable it to carry out its annual Spectrum Act duties and responsibilities.<sup>214</sup>

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<sup>208</sup> *Id.* at 3-4.

<sup>209</sup> *Sixteenth Competition Report*, 28 FCC Rcd at 3909 para. 331. PCIA estimates that the average cost to build a new tower is between \$250,000 and \$300,000, whereas the average deployment cost for a collocation is between \$25,000 and \$30,000. See PCIA Comments, WT Docket 11-186, at 7.

<sup>210</sup> See, e.g., Collocation Agreement, 47 C.F.R. Part 1, App. B; Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, WT Docket No. 08-165, *Declaratory Ruling*, 24 FCC Rcd 13994 (2009) ("*2009 Declaratory Ruling*") (finding that a presumptively "reasonable period of time" under Section 332(c)(7)(B) for a State or locality to act on a wireless facility siting application is 90 days for collocation applications and 150 days for non-collocation applications); Implementation of Section 224 of the Act: A National Broadband Plan for Our Future, WC Docket No. 07-245, GN Docket No. 09-51, *Report and Order and Order on Reconsideration*, 26 FCC Rcd 5240 (2011) ("*Pole Attachment Order*") (comprehensively revising pole attachment rules to improve the efficiency and reduce the potentially excessive costs of deploying telecommunications, cable, and broadband networks). In addition, in 2012, the Wireless Bureau, in cooperation with NATOA, hosted a workshop to "provide an overview of how collocations can promote the availability of mobile broadband, public safety, and other wireless services in a manner consistent with community priorities." See <http://www.fcc.gov/document/collocation-workshop-may-1-2012-promoting-mobile-brandband>; <http://www.fcc.gov/events/collocation-workshop> (archived webcast).

<sup>211</sup> See, e.g., <http://www.loyalsocktownshipbos.com/Documents/Telecommunications%20Towers%20Ordinance.pdf>.

<sup>212</sup> Spectrum Act, § 6206(c)(3).

<sup>213</sup> 47 U.S.C. § 1428(a)(3).

<sup>214</sup> *Id.* at § 1428(b).

96. Since Congress adopted Section 6409(a) more than a year ago, parties have expressed widely divergent views as to the meaning of its terms and the scope of its requirements.<sup>215</sup> Although the Bureau's release of the *Section 6409(a) PN* provided guidance on certain questions of interpretation under this provision, the Bureau left other issues unaddressed, and parties have also raised questions and concerns regarding the *Section 6409(a) PN* guidance itself.<sup>216</sup> While these issues could be addressed in practice through local interpretations, judicial decisions, and voluntary agreements, we believe on balance it serves the public interest for us proactively to seek comment at this time on implementing rules to define terms that the statute leaves undefined, and to fill in other interstices that may serve to delay the intended benefits of Section 6409(a). We invite comment on our decision to do so and on any reasons why we should limit or decline to take regulatory action in this proceeding.

97. In particular, we anticipate that, in the absence of definitive guidance from the Commission, the uncertainties under Section 6409(a) may lead to protracted and costly litigation and could adversely affect the timely deployment of a nationwide public safety network and delay the intended streamlining benefits of the statute with respect to other communications services. Further, addressing the interpretation of Section 6409(a) in a rulemaking, with notice and opportunity for comment, will provide a broader opportunity for participation and input in the implementation of this provision than, for example, one or more adjudicatory proceedings. In addition, we believe that State and local governments, FirstNet, Commission licensees, and tower companies will benefit from having settled interpretations on which they can rely in determining how to comply with the new law. We therefore take this opportunity to examine Section 6409(a) and to seek public comment on its interpretation. We seek comment on this reasoning.

98. We acknowledge, however, that there may also be countervailing benefits to offering governments additional opportunity to implement some or all of the provisions of Section 6409(a) before adopting prescriptive rules. Such an approach would provide State and local governments more opportunity and flexibility to develop solutions that best meet the needs of their communities consistent with the requirements of the provision and may also help to distinguish those issues that require clarification by the Commission from those on which there is general consensus. In particular, we believe that best practices or model ordinances that reflect a consensus of industry and municipal interests may facilitate the practical and efficient implementation of Section 6409(a), and we are aware of ongoing discussions between industry and municipal government representatives in that regard.<sup>217</sup> Therefore, we

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<sup>215</sup> See, e.g., Isotope LLC, "New Wireless Regulation from the 2012 Middle Class Tax Relief and Job Creation Act," March 2012, available at [http://www.town.billerica.ma.us/index.php?option=com\\_docman&task=doc\\_view&gid=1164&Itemid=114](http://www.town.billerica.ma.us/index.php?option=com_docman&task=doc_view&gid=1164&Itemid=114); Municipal Minute, "Amendment to Telecommunications Act Limits Local Control of Cellular Facilities," available at <http://municipalminute.ancelglink.com/2012/02/amendment-to-telecommunications-act.html>; PCIA—The Wireless Infrastructure Association, California Wireless Association, "Wireless Infrastructure Industry Policy Position Points: Middle Class Tax Relief and Job Creation Act of 2012," available at <http://calwa.org/wp-content/uploads/2012/08/CalWA-PCIA-Bullets-on-6409-for-JVSV.pdf>; PCIA—The Wireless Infrastructure Association, "Streamlined Wireless Facilities Deployment: Federal Regulation in the Middle Class Tax Relief and Job Creation Act of 2012," available at <http://calwa.org/wp-content/uploads/2012/08/PCIA-Federal-Siting-Legislation-Guidance-5.pdf>.

<sup>216</sup> See, e.g., IAC Recommendation.

<sup>217</sup> See, e.g., Letter from Stephen Traylor, NATOA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-59, filed June 21, 2013 ("NATOA June 21, 2013 *Ex Parte*") (referencing NATOA's "ongoing efforts with PCIA to draft best practices addressing wireless facilities siting issues, especially those arising from Section 6409 of the Middle Class Tax Relief and Jobs Creation Act of 2012."); Letter from Yejin Jang, National Association of Counties, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-59, filed July 10, 2013 (updating efforts to draft best practices with PCIA); PCIA July 22, 2013 *Ex Parte* at 3 (updating efforts to draft voluntary best practices for wireless facility siting, and "noting that they are designed to facilitate discussion of common issues that arise in the

(continued....)

invite comment on whether we should refrain from addressing any or all of the issues discussed below at the present time, on how we might encourage efforts to develop best practices for applying Section 6409(a), and on what role best practices might play in the interpretation or implementation of this statutory provision.

99. We also note legislative efforts by State and local governments to streamline their collocation review processes in response to Section 6409(a) and other considerations.<sup>218</sup> We seek comment on how the Commission could accommodate and encourage such efforts consistent with Section 6409(a) and the factors discussed above. In particular, we seek comment on how this consideration affects whether and to what extent the Commission should leave issues unaddressed at this time. We also seek comment on other ways in which principles of federalism should inform our approach to implementation of Section 6409(a). In this connection, we note that our goal is not to “operate as a national zoning board.”<sup>219</sup> Rather, we seek to implement and enforce the intent of Congress to make compliance with Federal standards “a precondition to continued state regulation in an otherwise pre-empted field.”<sup>220</sup> In establishing such Federal standards, how should we most appropriately address the traditional responsibility of State and local governments for land use matters?

100. To the extent that we do adopt rules implementing Section 6409(a), we also seek comment on whether we should provide a transition period to allow States and localities time to implement the requirements in their laws, ordinances, and procedures. If so, how would we establish such a mechanism consistent with the provision? If so, what transition period would be appropriate?<sup>221</sup>

#### 1. Terms in Section 6409(a)

101. As noted above, under Section 6409(a), States and localities must grant an “eligible facilities request,” defined as “any request for modification of an existing wireless tower or base station” that involves collocation, removal or replacement of “transmission equipment,” if the request does not “substantially change the physical dimensions” of the tower or base station.<sup>222</sup> We will refer to an eligible request that does not substantially change the physical dimensions of the tower or base station, and therefore that shall be approved and must not be denied, as a “covered request.”

102. The scope of Section 6409(a) depends on the proper interpretation of a number of terms. We seek comment on how to interpret or define these terms, including “transmission equipment,” “existing wireless tower or base station,” “substantially change the physical dimensions,” and

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course of industry negotiations with local governments” but “urg[ing] the Commission not to view voluntary best practices as a substitute for a rulemaking process . . .”).

<sup>218</sup> See, e.g., Mich. Comp. Laws § 125.3514; MO ST § 67.590 *et seq.*, H.B. No. 331 (2013) (“Uniform Wireless Communications Infrastructure Deployment Act”), *stayed by* City of Liberty, Missouri, et al. v. State of Missouri (Mo. Cir. Ct. Aug. 27, 2013); N.C. Session Law 2013-185; PA ST 53 P.S. § 11702.1 *et seq.* (“Wireless Broadband Collocation Act”); 2013 Wisconsin Act 20, §§ 1269I, 1269K.

<sup>219</sup> Preemption of Local Zoning or Other Regulation of Receive-Only Satellite Earth Stations, CC Docket No. 85-87, 59 Rad. Reg. 2d (P&F) 1073, para. 39 (rel. Feb. 5, 1986); see also Preemption of Local Zoning Regulation of Satellite Earth Stations, IB Docket No. 95-59, *Notice of Proposed Rulemaking*, 10 FCC Rcd 6982, 6984 para. 5 (1995).

<sup>220</sup> See *Printz v. United States*, 521 U.S. 898, 925-26 (1997); *Cellular Phone Taskforce v. FCC*, 205 F.3d 82, 96 (2d Cir. 2000) (“The only onus placed on state and local governments exercising their local power is that they may not regulate personal wireless service facilities that conform to the FCC Guidelines on the basis of environmental effects of RF radiation”).

<sup>221</sup> Below, we discuss in greater detail whether and how Section 6409(a) limits local discretion over application processes for a covered request, including the maximum time period for review. See *infra*, Section IV. B.3.

<sup>222</sup> Spectrum Act, § 6409(a)(1), (2).

“collocation,” as they are used in and apply to an “eligible facilities request” under Section 6409(a). We also seek comment on whether the term “eligible facilities request” itself requires any further clarification beyond the statutory definition provided in Section 6409(a)(2). Commenters addressing these issues are strongly encouraged to offer specific definitions.

103. “*Transmission equipment*” and “*wireless*.” Section 6409(a) refers broadly to “transmission equipment” without referencing any particular service. Similarly, in defining eligible facilities to be modified, it refers broadly to a “wireless” tower or base station. In contrast, Section 332(c)(7) of the Act, an older provision that also places limits on State and local authority to regulate wireless facility siting, extends only to facilities used for “personal wireless services” as defined in that section.<sup>223</sup> In the *Section 6409(a) PN*, the Bureau opined that the scope of a “wireless” tower or base station under Section 6409(a) is not intended to be limited to facilities that support “personal wireless services” under Section 332(c)(7), given Congress’s decision not to use the pre-existing definition from another statutory provision relating to wireless siting.<sup>224</sup>

104. Consistent with the Bureau’s interpretation, we propose to find that Section 6409(a) applies to the collocation, removal, or replacement of equipment used in connection with any Commission-authorized wireless transmission, licensed or unlicensed, terrestrial or satellite, including commercial mobile, private mobile, broadcast, and public safety services, as well as fixed wireless services such as microwave backhaul or fixed broadband.<sup>225</sup> Similarly, we propose to define a “wireless” tower or base station to include one used for any such purpose. We believe this interpretation is warranted given the clear intent of Congress to facilitate collocation, the substantial number of broadcast and public safety towers that are potentially available for wireless collocation and that are, in many cases, already being used for collocation, and Congress’s use of the term “wireless” rather than a more restrictive term. We also note that the definitions of “tower” under both the Collocation Agreement and NPA have a similarly broad scope, encompassing structures used to support any Commission-licensed or authorized service.<sup>226</sup> We seek comment on our proposal and on whether there is a reason to exclude any type of services. With respect to the service involved, should the scope of “transmission equipment” to be collocated, replaced, or removed be different from the scope of structures to be modified? If we were to exclude structures used for certain services, how would we treat a tower or other structure that is used or usable for multiple types of service? What about a tower that is not yet used for any service?

105. We propose to further define “transmission equipment” to encompass antennas and other equipment associated with and necessary to their operation, including, for example, power supply cables and a backup power generator.<sup>227</sup> We believe this is consistent with Congressional intent to streamline the review of collocations and minor modifications and also with Congress’s use of the broad term “transmission equipment” rather than a more specific term such as “antenna.” We seek comment on this

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<sup>223</sup> See 47 U.S.C. § 332(c)(7)(C)(i) (defining “personal wireless services” as “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services”). We address the interpretation of Section 332(c)(7) in the next section.

<sup>224</sup> See *Section 6409(a) PN*, 28 FCC Rcd at 3.

<sup>225</sup> We note that microwave dishes provide high speed wireless backhaul from wireless antenna sites.

<sup>226</sup> Under the Collocations Agreement, “tower” is defined as “any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.” 47 C.F.R. Part 1, App. B § I.B. Under the NPA, “tower” is defined as “[a]ny structure built for the sole or primary purpose of supporting Commission-licensed or authorized Antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that Tower but not installed as part of an Antenna as defined herein.” 47 C.F.R. Part 1, App. C § II.A.14.

<sup>227</sup> See also *infra* (seeking comment on components of equipment encompassed by the term “base station” and whether such components should be defined to be the same as those included in the term “transmission equipment”).

proposal and analysis. In particular, we seek comment on including backup power equipment in light of the public interest in continued service during emergencies.<sup>228</sup> We also seek comment on whether we should specifically include or exclude any equipment to be considered as “transmission equipment” under Section 6409(a).

106. The NPA defines “antenna” in part as “[a]n apparatus designed for the purpose of emitting radio frequency (‘RF’) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a Tower, structure, or building as part of the original installation of the antenna.”<sup>229</sup> Should we adopt or adapt this definition of “antenna” to define the term “transmission facility” under Section 6409(a)?

107. “Existing wireless tower or base station.” We seek comment on how to define “wireless tower or base station” under Section 6409(a). Initially, we note that both “tower” and “base station” have been previously defined in Commission rules and documents. Under the Collocation Agreement, a “tower” is defined as “any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.”<sup>230</sup> The NPA includes a similar definition of a “tower” as “[a]ny structure built for the sole or primary purpose of supporting Commission-licensed or authorized Antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that Tower but not installed as part of an Antenna.”<sup>231</sup> In Part 90 of the Commission’s rules, “base station” is defined as a “station at a specified site authorized to communicate with mobile stations,”<sup>232</sup> whereas Part 2 and Part 24 of the Commission’s rules define “base station” as “[a] land station in the land mobile service.”<sup>233</sup> As noted in the *Section 6409(a) PN*, the Commission has also described a base station in more detail as consisting of “radio transceivers, antennas, coaxial cable, a regular and backup power supply, and other associated electronics.”<sup>234</sup> We seek comment generally on the relevance of these definitions for defining “wireless tower or base station” under Section 6409(a).

108. We seek comment on the types of structures that may be considered a “wireless tower or base station” under Section 6409(a). At a minimum, “tower” would appear to include, as in the NPA, structures built for the sole or primary purpose of supporting antennas used for any wireless communications service. However, many other types of structures, from buildings and water towers to

<sup>228</sup> See Improving 9-1-1 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies, PS Docket Nos. 13-75, 11-60, *Notice of Proposed Rulemaking*, 28 FCC Rcd 3414 (2013); see also Reliability and Continuity of Communications Networks, Including Broadband Technologies; Effects on Broadband Communications Networks of Damage or Failure of Network Equipment or Severe Overload; Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, PS Docket Nos. 11-60, 10-92, EB Docket No. 06-119, *Notice of Inquiry*, 26 FCC Rcd 5614, 5616 para. 5 (2011).

<sup>229</sup> See 47 C.F.R. Part 1, App. C § II.A.1.

<sup>230</sup> See Collocation Agreement, 47 C.F.R. Part 1, App. B, § I.B.

<sup>231</sup> 47 C.F.R. Part 1, App. C § II.A.14.

<sup>232</sup> 47 C.F.R. § 90.7.

<sup>233</sup> 47 C.F.R. §§ 2.1(c), 24.5.

<sup>234</sup> See *Section 6409(a) PN*, 28 FCC Rcd at 3 (citing Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, WT Docket No. 10-133, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, *Fifteenth Report*, 26 FCC Rcd 9664, 9841 para. 308 (2011) (“*Fifteenth Competition Report*”).

streetlights and utility poles, may also support antennas or other base station equipment.<sup>235</sup> We also note that the Commission has encouraged the use of these types of structures to enhance capacity for wireless networks.<sup>236</sup> In the *Section 6409(a) PN*, the Bureau opined that it is reasonable to interpret a “base station” to include a structure that supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station under Section 6409(a).<sup>237</sup> We propose to find, consistent with the Bureau’s guidance, that the term “wireless tower or base station” should be interpreted to encompass structures that support or house an antenna, transceiver, or other associated equipment that constitutes part of a base station, even if they were not built for the sole or primary purpose of providing such support. In particular, we believe that interpreting Section 6409(a) to include structures that house or support base station equipment not only is consistent with Congressional intent to streamline the facilities application process, but also accords with established principles of statutory construction by giving separate meaning to the term “base station” as well as “tower.”<sup>238</sup> We seek comment on this interpretation. Should this definition be limited in any way? For example, should a building or cabinet with equipment inside be included in this definition? Is it material to the application of Section 6409(a) whether a structure is a “tower” or a “base station,” and if so, how should we distinguish these terms?

109. The IAC argues that “base station” should not be interpreted to encompass structures that support or house only “part of a base station.”<sup>239</sup> Rather, the IAC argues, any interpretation of “base station” should reflect that a “base station” is “a set of equipment components that collectively provides a system for transmission and reception of personal wireless services.”<sup>240</sup> We seek comment on the IAC’s argument.

110. We also seek comment on what equipment constitutes a “base station” under Section 6409(a). We propose, consistent with the *Fifteenth Competition Report* and the definition of “transmission equipment” proposed above, to include antennas, transceivers, and other equipment associated with and necessary to their operation, including coaxial cable and regular and backup power equipment.<sup>241</sup> We seek comment on this proposal. Should the equipment that constitutes a base station be defined in the same way as transmission equipment, more expansively, or less expansively? Should structures housing any particular type of equipment not be included? We further seek comment on how to ensure that the definition of “base station” is sufficiently flexible to encompass, as appropriate to Section 6409(a)’s intent and purpose, future as well as current base station technologies and technological configurations, using either licensed or unlicensed spectrum.<sup>242</sup> In the *Section 6409(a) PN*, the Bureau indicated that the term “base station” encompasses the relevant equipment in any technological configuration, including DAS and small cells.<sup>243</sup> We seek comment on whether to adopt this

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<sup>235</sup> For example, new technologies, such as DAS or small cells, are often deployed on utility poles and other structures that were not built for the primary purpose of supporting antennas.

<sup>236</sup> See, generally, *Pole Attachment Order*.

<sup>237</sup> *Section 6409(a) PN*, 28 FCC Rcd at 3.

<sup>238</sup> See, e.g., *Miller v. Clinton*, 687 F.3d 1332, 1347 (D.C. Cir. 2012) (statutes should be construed “so that no provision is rendered inoperative or superfluous, void or insignificant”).

<sup>239</sup> IAC Recommendation at 3 (arguing that “a piece of a base station is not itself a base station” and that “[a] mere equipment or power supply box, for example, is not in and of itself a base station, nor is a structure that supports or houses such boxes.”).

<sup>240</sup> *Id.* at 3.

<sup>241</sup> *Fifteenth Competition Report*, 26 FCC Rcd at 9841 para. 308.

<sup>242</sup> We describe some of these technologies elsewhere in this Notice. See *supra*, Section II. A.

<sup>243</sup> *Section 6409(a) PN*, 28 FCC Rcd at 3.

interpretation, and on what constitutes the base station in the context of DAS or other wireless technologies where the various components of what might traditionally be considered a base station are dispersed over a large area and may be owned or controlled by different parties.

111. Under Section 6409(a), a wireless tower or base station must be “existing” in order for its modification to be covered. In the *Section 6409(a) PN*, the Bureau opined that an existing “base station” only includes a structure that “currently” supports or houses base station equipment.<sup>244</sup> Verizon, however, argues that modifications of base stations “encompass collocations on buildings and other structures, even if those structures do not currently house wireless communications equipment.”<sup>245</sup> Verizon argues that the Collocation Agreement defines collocation as encompassing the mounting of an antenna on an existing building or structure, and that “collocations” in Section 6409(a) should therefore be given similar scope.<sup>246</sup> We seek comment on this argument. Does “existing” require only that the structure be previously constructed at the time of the collocation application, or does this term also require that the structure be used at that time as a tower or base station? Do the statutory language and context argue in favor of one interpretation or the other? Which interpretation, or some other, would be more consistent with both facilitating deployments that are unlikely to conflict with local land use policies (including policies that favor use of existing structures) and preserving State and local authority to review construction proposals that may have impacts? Should the interpretation of “existing” depend on the type of structure involved? For example, should we consider a structure built for the primary purpose of supporting or housing transmission equipment “existing” under Section 6409(a) whether or not it currently hosts such equipment, while considering other structures “existing” only if they currently support or house transmission equipment?

112. We ask commenters, when discussing the scope of support structures encompassed by Section 6409(a), to discuss the economic costs and benefits of adopting their proposed interpretation and how these might relate to the intent of Congress. Are there different costs and benefits to mandatory approval depending on the type of structure involved?

113. “*Collocation, “removal,” and “replacement.”* We seek comment on how to define or interpret the terms “collocation,” “removal,” and “replacement.” Under the Collocation Agreement, collocation is defined as “the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.”<sup>247</sup> We seek comment on whether to adopt a similar definition of collocation under Section 6409(a).

114. We also propose to interpret a modification of a “wireless tower or base station” to include collocation, removal, or replacement of an antenna or any other transmission equipment associated with the supporting structure, even if the equipment is not physically located upon it. We note that the Collocation Agreement similarly construes the mounting of an antenna “on a tower” to encompass installation of associated equipment cabinets or shelters on the ground.<sup>248</sup> We seek comment on our proposed interpretation.

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<sup>244</sup> *Id.*

<sup>245</sup> Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 11-59, at 2 (filed Feb. 28, 2013) (“Verizon Feb. 28, 2013 *Ex Parte*”).

<sup>246</sup> Verizon Feb. 28, 2013 *Ex Parte*, at 2.

<sup>247</sup> 47 C.F.R. Part 1, App. B, Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, § I.A (“Collocation Agreement”).

<sup>248</sup> See Collocation Agreement, §§ IV.A.2 (providing that an antenna “may be mounted on an existing tower constructed after March 16, 2001 without such collocation being [subject to historic preservation review]” unless, among other specific cases, “[t]he mounting of the new antenna will result in a substantial increase in the size of the tower”), I.C (defining “substantial increase in the size of the tower” in part as “installation of more than the standard

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115. We seek comment on whether and to what extent a request to replace or harden a tower or other covered structure should be considered a covered request if the replacement would not substantially change the physical dimensions of the structure. For example, under some circumstances, a tower may need to be replaced; reinforced, or otherwise hardened in connection with an upgrade from 3G to heavier 4G facilities.<sup>249</sup> Should replacement of the underlying structure be covered if it is necessary to support the otherwise covered collocation or replacement of transmission equipment? What if the replacement is constructed with different materials, such as if a wooden pole must be replaced with steel? Should a requested structure replacement be covered only for certain types of structures, such as those originally constructed for the sole or primary purpose of supporting communications equipment?

116. “*Substantially Change the Physical Dimensions.*” We seek comment on whether and how to define when a modification would “substantially change the physical dimensions” of a wireless tower or base station.

117. As the Bureau noted in the *Section 6409(a) PN*, the Collocation Agreement establishes a four-prong test to determine whether a collocation will effect a “substantial increase in the size of a tower.”<sup>250</sup> The Commission later adopted the same test in the *2009 Declaratory Ruling* to determine whether an application will be treated as a collocation when applying Section 332(c)(7).<sup>251</sup> The Commission has also applied a similar definition to determine whether a modification of an existing registered tower requires public notice for purposes of environmental review.<sup>252</sup>

118. Under this test, a “substantial increase in the size of the tower” occurs if:

- 1) [t]he mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
- 2) [t]he mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- 3) [t]he mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- 4) [t]he mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

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number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter”).

<sup>249</sup> See Piedmont Environmental Council Comments, WC Docket No. 11-59, at 11-12.

<sup>250</sup> Collocation Agreement, § I.C.

<sup>251</sup> See *2009 Declaratory Ruling*, 24 FCC Rcd at 14012 para. 46.

<sup>252</sup> See 47 C.F.R. § 17.4(c)(1)(ii); *Order on Remand*, 26 FCC Rcd at 16720-21 para. 53.

119. We seek comment on whether to adopt the Collocation Agreement's definition of "substantial increase in the size of the tower" as the test for when a modification will "substantially change the physical dimensions" of a tower or base station under Section 6409(a). If we do so, should we apply this test to all modification requests, including collocation, replacement and removal of transmission equipment? Or should we modify or clarify any of the prongs of that test for any type of requests?

120. In determining what constitutes a "substantial change" in "physical dimensions" under Section 6409(a), we seek comment on how to address situations where the tower or other structure has been previously modified since it was originally approved. For example, it is theoretically possible that successive increases of 10 percent could cumulatively increase the height of a structure by double or more.<sup>253</sup> In such situations, should the physical change in dimensions resulting from a collocation be measured based on the structure's original dimensions or the existing dimensions taking into account all pre-existing modifications? Should it matter if previous expansions occurred before or after the enactment of Section 6409(a)?

121. We also seek comment on whether the standard for what constitutes a substantial change should be different depending on the type of structure to be modified. As we noted above, the Collocation Agreement definition applies to "towers," defined as "any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities." Should a different standard apply to other types of structures that may be defined as towers or base stations, such as buildings or utility poles? For example, what are the potential effects of adding up to 10 percent to the height of a building? Is a standard that allows for separation from the nearest existing antenna of up to twenty feet appropriate for structures that are much shorter than traditional towers, such as utility poles? We further seek comment on whether a different test should apply to "stealth structures," structures and associated base stations that have been constructed to blend in with their surroundings. Should changes in physical dimensions that would defeat or be inconsistent with the stealth characteristics of the structure be considered substantial?

122. We also seek comment on the views of the IAC regarding when a modification will "substantially change the physical dimensions" of a tower or base station. In particular, the IAC argues that "[t]he question of substantiality . . . cannot be resolved by the adoption of mechanical percentages or numerical rules applicable anywhere and everywhere in the United States, but rather must be evaluated in the context of specific installations and a particular community's land use requirements and decisions."<sup>254</sup> As an example, the IAC suggests that a change in a tower's height of only 5 percent that would "adversely affect substantial safety, esthetic or quality-of-life elements" would represent a substantial change in physical dimensions.<sup>255</sup> We seek comment on this interpretation, and on how, consistent with the IAC's interpretation, we might define the test for what constitutes a substantial change in physical dimensions.

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<sup>253</sup> See The National League of Cities, The National Association of Counties, The United States Conference of Mayors, The International Municipal Lawyers Association, The National Association of Telecommunications Officers and Advisors, The Government Finance Officers Association, The American Public Works Association, and The International City/County Management Association ("National League of Cities et al.") Comments, WC Docket No. 11-59, at 46-47 (arguing that "[t]hrough the collocation process, a single unobtrusive monopole can morph into a multi-pronged, unsightly structure" and that "each facility added to an existing structure can present safety issues . . . through the added impact on the original structure").

<sup>254</sup> IAC Recommendation at 2.

<sup>255</sup> *Id.*

## 2. Review and Processing of Applications, Time Limits, and Remedies

123. Section 6409(a)(1) provides that “[n]otwithstanding section 704 of the Telecommunications Act of 1996 . . . or any other provision of law, a State or local government *may not deny, and shall approve*, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”<sup>256</sup> We ask for comments on the extent to which the statutory language leaves State or local governments discretion or authority to deny or condition approval and what restrictions or requirements, if any, it may place on the processes that a State or locality may adopt for the review of applications. We further seek comment on whether Section 6409(a) warrants establishment of time limits for State and local review and prescription of remedies in the event of a failure to approve a covered request under Section 6409(a)(1).

124. “*May not deny and shall approve.*” We seek comment on whether, by directing that States and localities “may not deny and shall approve” covered requests, Section 6409(a) requires States and localities to approve all requests that meet the definition of eligible facilities requests and do not result in a substantial change in the dimensions of the facility, without exception and/or discretionary review. We also seek comment on whether there are any special circumstances under which, notwithstanding this unqualified language, Section 6409(a) would permit a State or local government to deny an otherwise covered request. We further seek comment on whether States and localities may make the grant of a covered request subject to conditions on or alterations to the request. If so, what types of conditions or alterations may they require that would be consistent with Section 6409(a)? In particular, we seek comment below on whether and/or to what extent States and localities may require any covered requests to comply with State or local building codes and land use laws and whether States and localities are required to approve an otherwise covered modification of a tower or base station that has legal, non-conforming status or that does not conform to a condition or restriction that the State or locality imposed as a prerequisite to its original approval of the tower or base station. We also propose below to find that the requirement that States and localities “may not deny and shall approve” covered requests in any case applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their capacities as property owners.

125. We seek comment whether and/or to what extent States and localities may require any covered requests to comply with State or local building codes and land use laws. For example, we seek comment on whether a State or local government must grant a facilities modification request that would result in an increase in height above the maximum height permitted by an applicable zoning ordinance. May States and localities require a covered request to be in compliance with general building codes or other laws reasonably related to health and safety? For example, we seek comment on whether States or localities can continue to enforce restrictions such as load-bearing limits on applications that otherwise meet the standard for approval under Section 6409(a)(1). May they condition the approval of a modification on the underlying structure’s compliance with the hardening standards under TIA-222 Revision G, Structural Standards for Antenna Supporting Structures and Antennas?<sup>257</sup> What is the cost of bringing a structure into compliance with these standards? Similarly, may a State or local government deny an application for an otherwise covered modification if the structure, as modified, would not meet the fall zone or setback distance that its ordinance requires?<sup>258</sup> We further seek comment on the

<sup>256</sup> Spectrum Act § 6409(a)(1) (emphasis added). Section 704 of the Telecommunications Act has in relevant part been codified at 47 U.S.C. § 332(c)(7).

<sup>257</sup> TIA-222 is a design standard for communications towers that is recognized in most United States building codes. The standard provides specifications for the structural design of new antenna-supporting structures and modifications to such structures to prevent structural failure. *See, e.g.,* [http://global.ihs.com/search\\_res.cfm?RID=TIA&INPUT\\_DOC\\_NUMBER=TIA-222](http://global.ihs.com/search_res.cfm?RID=TIA&INPUT_DOC_NUMBER=TIA-222). Revision G is the most recent version of this standard.

<sup>258</sup> Local zoning ordinances often require that towers and other structures maintain a “fall zone” or minimum setback distance from adjacent property lines to safeguard the adjacent land and nearby people, and may provide

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enforceability of codes that may not be designed for current technologies, *e.g.*, codes establishing set-back minimums appropriate for towers but excessive for much shorter utility poles. We ask commenters to discuss the extent to which principles of federalism require or permit us to construe Section 6409(a) in a manner that preserves traditional State or local land use authority with respect to any of these issues.

126. We also seek comment on whether Section 6409(a) is applicable to eligible facilities requests involving existing towers or base stations that were approved at the time of construction but that are no longer in conformance due to subsequent changes to the governing zoning ordinance. Some jurisdictions routinely deny such requests, while others require full zoning review and impose conditions such as replacement or retrofitting of the underlying structure.<sup>259</sup> We therefore seek comment on whether States and localities are required to approve an otherwise covered modification of a tower or base station that has legal, non-conforming status, and whether Section 6409(a) disallows a jurisdiction from subjecting such a request to full zoning review. We further seek comment on current municipal practices regarding modification or collocation requests in connection with legal, non-conforming wireless towers. What are the reasons or justifications for the local jurisdiction to require a full zoning review? What is the common time frame to process a local zoning review for a request to modify a legal, non-conforming tower? What sorts of conditions have local governments placed on their approval?

127. We also seek comment on whether States and localities are required to approve a modification of an existing tower or base station that does not conform to a condition or restriction that the State or locality imposed as a prerequisite to its original approval of the tower or base station. For example, if a municipality has approved initial installation of some transmission facilities on a building or other structure conditioned on the facilities meeting standards with regard to height, width, bulk, appearance, or other design characteristics intended to camouflage the deployment, is it required to approve subsequent collocations on the structure that do not meet those “stealth” conditions?<sup>260</sup> Should a

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that applicants can seek waivers or reductions in the setback distance in particular cases. *See* The Prince George’s County Government Comments, WC Docket No. 11-59, at 2-3; City of Wilmington, North Carolina Comments, WC Docket No. 11-59, Attach. at 2; National League of Cities et al. Reply Comments, WC Docket No. 11-59, at 24-25. We note that, in filing their Reply Comments, National League of Cities et al. also included the American Planning Association. For convenience, we refer to the group as “National League of Cities et al.” in connection with both Comments and Reply Comments.

<sup>259</sup> *See, e.g.*, PCIA and DAS Forum Comments, WC Docket No. 11-59, at 20-22; American Tower Corporation Reply Comments, WC Docket No. 11-59, at 11-14; National League of Cities et al. Reply Comments, WC Docket No. 11-59, at 20 (“Governments often must balance the value of requiring all entities to conform to new codes versus the impact on existing structures, and often resolve the issue by allowing ‘non-conforming structures’ to remain in place as long as they are unchanged.”); City of Scottsdale Comments, WC Docket No. 11-59, at 7 (acknowledging city ordinance that prevents collocation on an existing non-conforming use but indicating this aspect of ordinance was under review); City of Torrance, California Reply Comments, WC Docket No. 11-59, at 5 (asserting that “[i]t is common and usual for zoning requirements to change over time, such that once legal uses may become non-conforming ones” and that “a fundamental principle of zoning law is that non-conforming uses should be restricted”). City of Torrance, California explains that measures to promote community interests such as minimizing aesthetic impacts and siting wireless facilities outside of residential areas can lead to facilities becoming non-conforming over time. *Id.* at 5-6.

<sup>260</sup> *See, e.g.*, Letter from James R. Hobson, Attorney for City of Arlington et al., to Marlene H. Dortch, Secretary, FCC, filed Mar. 1, 2013 (“Arlington Mar. 1, 2013 *Ex Parte*”), Attach. at 6 (illustration showing rooftop stealth site with various antennas either concealed within faux screening or painted to match the exterior of screening or brick walls). Arlington et al. describe California Code Section 65850.6 as requiring authorities to approve attachments to “facilities that have already undergone a discretionary review, as long as the [collocation] is consistent with the conditions established as part of that initial discretionary review.” Arlington Mar. 1, 2013 *Ex Parte* at 2. They further state that “[a]s part of the initial review of a facility that is intended to support co-located facilities, the locality adopts standards for matters like the permitted height, width, bulk and location of the facility, and the permitted design of the facility.” *Id.* Arlington et al. assert that this approach “protects localities by ensuring, for

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different rule apply depending on whether the condition was imposed before or after the effective date of Section 6409(a)? We seek comment on whether interpreting the statute to require approval of modifications notwithstanding conditions on the original installation may create disincentives for States and localities to approve the initial siting of towers or base stations, and if so, how Section 6409(a) can be implemented to address this concern.<sup>261</sup>

128. More broadly, we seek comment on the extent to which any of these asserted grounds for local substantive review and potential denial of an application should alternatively be understood as factors in determining whether a “wireless tower” or “base station” should be considered “existing” or what constitutes a “substantial change” in the “physical dimensions” of a wireless tower or base station. For example, should modifications that alter a facility in a fashion inconsistent with local ordinance or with conditions on the structure’s use be considered to “substantially change” its physical dimensions?<sup>262</sup> Should a tower that is legal but non-conforming not be considered “existing” for purposes of Section 6409(a)?

129. The IAC argues that the mandate that States and localities “may not deny and shall approve” requests applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their capacities as property owners.<sup>263</sup> The IAC asserts, as example, that “[w]here . . . a county government, as landlord rather than as land use regulator, has by contract or lease chosen, in its discretion, to authorize the installation of an antenna on a county courthouse rooftop of certain exact dimensions and specifications, Section 6409 does not require the county, acting in its capacity as landlord rather than its capacity as regulator of private land use, to allow the tenant to exceed to any extent those mutually and contractually agreed-upon exact dimensions and specifications.”<sup>264</sup> We propose to adopt this interpretation of Section 6409(a) and seek comment, including comment on how to ensure it is clear in which capacity governmental action is requested and in which capacity a governmental entity is acting, and whether we need to address how Section 6409(a) applies to requests seeking a government’s approval in both capacities.<sup>265</sup> For example, would Section 6409(a) impose no limits on such a landlord’s ability to refuse or delay action on a collocation request?

130. *Application procedures.* We seek comment on whether Section 6409(a) places restrictions, limitations, or requirements on the filing and review process applicable to applications

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example, that a ‘stealth’ facility remains a stealth facility, and by allowing for approval of facilities that are not intended to support multiple antennas (allowing for placement of small equipment in sensitive areas).” *Id.* See also City of Davis, California Reply Comments, WC Docket No. 11-59, at 4 n.10; City of Lake Forest, California Reply Comments, WC Docket No. 11-59, at 4 (noting that California Government Code Section 65850.6 generally permits collocation where the collocation is consistent with the conditions placed on the underlying facility, including any stealth conditions).

<sup>261</sup> See City of Yuma, Arizona Reply Comments, WC Docket No. 11-59, at 6 (“a collocation rule that effectively says ‘if any is allowed, more must be’ would force the City to either exclude wireless altogether, or to abandon its efforts to protect the integrity of the historic district”).

<sup>262</sup> See, e.g., IAC Recommendation at 2 (arguing that the test for substantial change should permit denial in cases of a modification “that results in no change in the tower’s size, but results in, for example, new antennas that no longer meet local building code requirements for ice loads or wind resistance”).

<sup>263</sup> See *id.* at 3.

<sup>264</sup> *Id.*

<sup>265</sup> We note that the Conference Report accompanying the Spectrum Act describes the provision as applying to State and local “zoning law procedures.” See H.R. Rep. 112-399, at 133 (2012) (Conf. Rep.) (stating that, prior to the adoption of Section 6409(a), “State and local governments [had the] right to apply zoning law procedures for requests to modify existing towers,” but that the new provision would “require approval of requests for modification of cell towers.”).

subject to Section 6409(a), and if so, what Federal standards would appropriately implement such limitations. Some have suggested that because Section 6409(a) provides that State and local governments “shall approve” covered facilities requests, the provision requires an “expedited” process.<sup>266</sup> Other parties, on the other hand, have argued that a fact-finding is required to determine whether Section 6409(a) applies at all and that local governments need the freedom to adopt procedures that will enable them to resolve this question.<sup>267</sup> In the *Section 6409(a) PN*, the Bureau, noting that the provision on its face contemplates the submission of a “request,” indicated that the relevant government entity may still require the filing of an application for administrative approval.<sup>268</sup> The *Section 6409(a) PN* did not provide any further procedural guidance.

131. We propose to find, consistent with the Bureau guidance, that Section 6409(a) permits a State or local government at a minimum to require an application to be filed and to determine whether the application constitutes a covered request. This is consistent with the statutory language providing that the government shall “approve” the application. We seek comment on this proposed finding. We further seek comment on whether, given the directive that the State or local government “shall approve,” Section 6409(a) permits and warrants Federal limits on applicable fees, processes, or time for review. If so, should we define what these limits are, or are the variations in circumstances such that it is better to address them case-by-case? If we do define them, what should the limits be? For example, should we find that Section 6409(a) warrants specific expedited procedures or limits on the documentation that may be required with an application?

132. In particular, we seek comment on whether Section 6409(a) warrants limiting the procedures for filing and reviewing an application that the applicant characterizes as stating a covered request to those procedures relevant to resolving whether the request is in fact covered by Section 6409(a). We further seek comment on whether Section 6409(a) permits limitations on which officials may review an application, and if so, whether such limitations are warranted. For example, to the extent that review under Section 6409(a) is ministerial, approval by administrative staff may be more efficient, and no less effective, than submission to an elected Board. Would a Federal standard requiring State and local governments to utilize such an administrative process sufficiently protect their ability to identify applications that are not covered by Section 6409(a) and otherwise to exercise any permitted discretion? Would it be consistent with principles of federalism to constrain State and local government procedures in this manner, as a condition for continuing to review covered requests? Would such a standard contradict some local ordinances and, if so, would it raise concerns that, at least for an interim period, the affected community could not review applications at all? Are administrative practices sufficiently uniform among communities that any rules could be meaningful?

133. We also seek comment on whether Section 6409(a) permits or warrants imposing limits on the kinds of information and documentation that may be required in connection with an application asserted to be a covered request. We note that, in the *NOI* proceeding, some parties asserted that some jurisdictions were requesting extensive documentation for collocation approvals, thereby resulting in

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<sup>266</sup> *New York SMSA Ltd. Partnership v. Town of Hempstead*, No. CV 10-4997, 2013 WL 1148898, \*6 (E.D.N.Y. Mar. 19, 2013) (noting plaintiff’s argument that, under Section 6409(a), defendant “cannot impose exorbitant fees, lengthy application processes, and public hearings” on modifications subject to the provision).

<sup>267</sup> *See, e.g.*, IAC Recommendation at 3 (arguing that the Commission should clarify that applications submitted under Section 6409(a) “are not mere pro forma paperwork but rather reflect the role of the applicable state, local or tribal government as the threshold decisionmaker on the questions of whether the requested modification constitutes an ‘eligible facilities request’ and whether it would or would not ‘substantially change the physical dimensions’ of the applicable tower or base station.”). *See also McKay Brothers, LLC v. Zoning Bd. Of Adjustment of Tp. Of Randolph*, 13cv1383, 2103 WL 1621360, \*3 (D.N.J. Apr. 12, 2013) (finding that, even if Section 6409(a) applies, “there are certain questions that the Zoning Board of Adjustment would have to resolve....”).

<sup>268</sup> *See Section 6409(a) PN*, 28 FCC Rcd at 3.

delay, while other jurisdictions required only the limited information necessary to issue a common building permit.<sup>269</sup> We also note that, since the *NOI* was released, additional States have taken steps to streamline local processing of collocation requests, in part through clarifying what information may be required to support such requests.<sup>270</sup> We seek comment on such developments and on whether, given current practices, it is now necessary or appropriate to establish Federal standards governing the information that applicants may be required to provide in connection with an asserted Section 6409(a) request in order to ensure that such information requests do not unnecessarily extend the application process. For example, should we clarify that States and localities may not require information or documents in connection with an eligible facilities request asserted to be a covered request under Section 6409(a) that are not relevant to the criteria for approval under Section 6409(a)?<sup>271</sup>

134. We also seek comment on whether to establish a time limit for the processing of requests under Section 6409(a). In the *Section 6409(a) PN*, the Bureau noted that the *2009 Declaratory Ruling* established 90 days as a presumptively reasonable period of time to process collocation applications under Section 332(c)(7).<sup>272</sup> The Bureau stated that 90 days should be the maximum presumptively reasonable period of time for reviewing requests that are covered by Section 6409(a), whether for “personal wireless services” or other wireless facilities. We seek comment on whether to adopt this conclusion or adopt a shorter period, given that Section 6409(a) considerably narrows the scope of review. Should we also consider specific circumstances under which municipalities may extend the time period? For example, consistent with the Commission’s interpretation of Section 332(c)(7), should we provide that a municipality may toll the running of the period if it notifies the applicant in writing within 30 days that an application is incomplete and specifies the additional information or documentation required to complete the application? Does Section 6409(a) warrant imposing any limits on the ability of a municipality to require such additional information or documentation? Should municipalities be able to extend the time period by agreement with the applicant?

135. We note that some jurisdictions have adopted moratoria on the filing or processing of applications for new wireless facilities, including collocations and other modifications that may be covered under Section 6409(a).<sup>273</sup> We seek comment on current developments of this kind, and how they may relate to covered requests under Section 6409(a). Considering Congress’s explicit language that a

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<sup>269</sup> PCIA and DAS Forum Comments, WC Docket No. 11-59, at 20, 22-26.

<sup>270</sup> For example, prior to the adoption of Section 6409(a), New Jersey enacted a law streamlining the State’s review process for collocation of wireless facilities on existing, permitted structures. See NJ ST 40:55D-46.2. As noted above, in 2012, Pennsylvania passed the “Wireless Broadband Collocation Act,” which provides that an application for replacing, collocating equipment on, or modifying a wireless telecommunications facility or wireless support structure that is entitled to processing under that Act will not be subject to new zoning or land use approvals or review beyond the initial zoning or land use approvals issued for the previously approved wireless support structure or wireless telecommunications facility. See PA ST 53 P.S. § 11702.1 *et seq.*

<sup>271</sup> Cf. *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 81 (2d Cir. 2002) (invalidating provisions of local ordinance requiring certain disclosures in applications to place communications facilities in public rights-of-way, including service to be provided, because “[t]he disclosures mandated by the invalidated provisions were relevant only for regulating telecommunications, which § 253 [of the Act] does not permit White Plains to do, not for regulating use of the rights-of-way, which White Plains may do.”).

<sup>272</sup> See *Section 6409(a) PN*, 28 FCC Rcd at 4 (citing *2009 Declaratory Ruling*, 24 FCC Rcd at 14012-13 paras. 46-47).

<sup>273</sup> PCIA and DAS Forum Comments, WC Docket No. 11-59, at 33. See also *City of Agoura Hills Reply Comments*, WC Docket No. 11-59, at 3-5 (stating that California State law permits a city to adopt a temporary moratorium if it finds it is necessary to protect the public safety, health, and welfare” while also providing certain safeguards, including time limits, to protect developers and “balance the need for good planning with the right of private parties to develop their facilities”).

State or local government “may not deny, and shall approve” a covered application, we propose to preempt the application of any such moratoria to covered requests under Section 6409(a), including with respect to the running of any applicable time period. In other words, under our proposal, a State or local government may not prevent or delay the filing of applications asserted to be covered by Section 6409(a) due to a moratorium, and it must approved covered applications within the same time period as if no moratorium were in effect. We seek comment on this proposal. Alternatively, we seek comment on whether we should specify a maximum cumulative time that may be added to the process due to moratoria and, if so, what that time period should be, as well as whether any tolling should be limited to moratoria that are put in place prior to submission of the application or request.<sup>274</sup>

136. We anticipate that in general, review of applications submitted under Section 6409(a) will be limited to determining whether the application states an eligible facilities request, whether the request would substantially change the physical dimensions of the relevant tower or base station, and whether it satisfies any other criteria that, under interpretations we may adopt in this proceeding, allow the State or local government to deny or condition an otherwise covered application. Should we distinguish any set of applications that are unlikely to raise any significant questions of eligibility and therefore should be subject to more stringent limitations on process, timing, or fees? If so, what criteria should identify these applications and what limits are appropriate under Section 6409(a)? For example, should requests for removal of transmission equipment be eligible for a more expedited process than new collocations? Should replacement applications also be subject to a more expedited process and, if so, subject to what limitations on the size or appearance of the new equipment?

137. *Remedy and enforcement.* We seek comment on what remedies should be available to enforce Section 6409(a) in cases of failure to act or decisions adverse to the applicant. We first seek comment on whether we should provide that a covered request is “deemed granted” by operation of law if a State or local government fails to act within a specified period of time. In the *2009 Declaratory Ruling*, the Commission declined to adopt such a “deemed granted” remedy for local government failures to act on facilities siting applications under Section 332(c)(7)(B), finding that Section 332(c)(7)(B)(v) indicated a Congressional intent that courts should have the responsibility to fashion appropriate case-specific remedies.<sup>275</sup> Unlike Section 332(c)(7), however, Section 6409(a) does not explicitly include a judicial remedy. Indeed, whereas the terms of Section 332(c)(7) do not mandate approval of any particular request, Section 6409(a) provides that governments “shall approve” requests covered by the provision. Moreover, Section 6409(a) compels such action “[n]otwithstanding” Section 332(c)(7) in particular. We seek comment on whether this statutory distinction supports a deemed granted remedy for applications subject to Section 6409(a).

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<sup>274</sup> We seek comment below on how moratoria affect the running of the presumptively reasonable time periods for review of siting applications under Section 332(c)(7).

<sup>275</sup> See *2009 Declaratory Ruling*, 24 FCC Rcd at 14009 para. 39. We note that, in other contexts, the Commission has adopted a “deemed granted” or “deemed approved” remedy. See, e.g., Application of Bellsouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, *Memorandum Opinion and Order*, 13 FCC Rcd 20599, 20708-09 para. 176 (1998) (finding that under 47 C.F.R. § 1.1403(b), a pole owner “must deny a request for access within 45 days of receiving such a request or it will otherwise be deemed granted”); Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 5101, 5139 para. 77 (2007) (“*Cable Franchise R&O*”) (providing that, if a local cable franchising authority has not made a final decision on a franchise application within the specified period, the authority will be deemed to have granted the applicant an interim franchise until it delivers a final decision).

138. We also seek comment on whether such a remedy raises any constitutional concerns, including concerns under the Tenth Amendment.<sup>276</sup> While the adoption of a “deemed granted” rule for cases of State inaction would result in the grant of facilities siting applications by operation of Federal law pursuant to Section 6409(a), such a rule would not appear to “compel the States to enact or administer a Federal regulatory program.”<sup>277</sup> Indeed, rather than drawing the States into such involvement, the rule would simply end the application process without a need for any State or local action at all, since a “deemed granted” approach would operate automatically to grant the application when the trigger event occurs (e.g., inaction on the application for the amount of time specified by the rule). Moreover, other than establishing the automatic grant, a “deemed granted” rule would not prescribe any particular processes or place any obligations on State or local governments, thereby leaving their regulatory authority over the siting matter otherwise undisturbed. In these respects, it would appear that a “deemed granted” rule would no more constitute a Federal regulatory program imposed on the States than would a pure preemption of State action.

139. In addition to the “deemed granted” approach, we also seek comment on any alternative remedies to similarly ensure that cases of State inaction or inordinate delay are addressed as Congress intended. Should we, for example, exercise authority under *City of New York*<sup>278</sup> to preempt State or local authority with respect to covered requests that have been pending for more than a specified period of time? Would such preemption effectively serve the goals of Section 6409(a) by precluding State or local legal action against installations that meet the terms of Section 6409(a)? Would this type of remedy effectively enable the installation to proceed, or would the preemption of the State/local application process prior to its normal conclusion create other potential impediments? For example, if the State or local body typically issues a permit after granting a siting application, would the lack of a permit affect the wireless carrier’s ability to hire contractors to perform necessary work for the installation? While a similar problem is conceivable with the “deemed granted” approach, a carrier that receives a grant by operation of Federal law under Section 6409(a) should have recourse through established legal frameworks to obtain any necessary paperwork and credentials to which those receiving a grant from the State or local government are entitled. We seek comment on this aspect of the “deemed granted” approach, as well as on any other practical problems that may arise.

140. We also seek comment on the appropriate remedy when a State or local government impermissibly denies a covered request. Should such a denial also be subject to a deemed granted remedy? How feasible would this approach be when the ostensible reason for the denial is that the request does not qualify as a covered request? Could such denials be excluded from the deemed granted approach without rendering the approach ineffective for addressing impermissible denials of covered requests? Is there any other reason to treat a State or local government’s denial of an eligible facilities request differently from its failure to act within a specified period of time?

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<sup>276</sup> See *Printz v. United States*, 521 U.S. 898, 933 (1997) (holding that under the United States Constitution, the Federal Government “may not compel the States to enact or administer a federal regulatory program.”); *New York v. United States*, 505 U.S. 144 (1992).

<sup>277</sup> *Printz*, 521 U.S. at 933; see also *New York*, 505 U.S. at 167 (affirming that “where Congress has the authority to regulate private activity under the Commerce Clause,” it has the “power to offer States the choice of regulating [an] activity according to federal standards or having state law pre-empted by federal regulation.”) (citations omitted). See also *Cable Franchise R&O*, 22 FCC Rcd at 5162 para. 136 (finding that rule “requiring local franchising authorities to exercise their regulatory authority according to federal standards, or else local requirements will be preempted” did not violate the Tenth Amendment).

<sup>278</sup> *City of New York v. FCC*, 486 U.S. 57 (1988) (upholding Commission’s statutory authority to preempt all State and local technical standards governing the quality of cable television signals, where FCC properly determined that its authority was exclusive; existence of express congressional authorization to displace State law not required).

141. We further seek comment on how a “deemed granted” remedy, if adopted, should operate, when it should be applicable, and how it should be enforced under Section 6409(a). For example, should an applicant be required to notify a State or local government when it believes that a deemed grant has occurred, thus providing that State or local government the opportunity to go to court or the Commission to seek a finding that the “deemed granted” remedy has not been triggered? Or should the onus be placed on the applicant to go to court or the Commission and ask for a finding that an application is a covered request before it can be deemed granted? Would placing the burden on the applicant pursuant to the latter option negate many of the benefits of having a “deemed granted” remedy?

142. For the reasons discussed above, we propose to permit the filing of complaints with the Commission alleging violations of Section 6409(a) along with any implementing rules we choose to adopt,<sup>279</sup> and we propose that such complaints be filed as petitions for declaratory ruling. We seek comment on these proposals, including whether we should adopt other procedures, such as those we have adopted in connection with other local land use actions that affect Commission licensees.<sup>280</sup> What alternative judicial remedies would a party have? We also note that some zoning regulations require that only a court decision can overturn a zoning decision. We seek comment on whether and how Section 6409(a) might operate to preempt such requirements and how this issue should affect the remedies we provide.

143. Finally, we seek comment on the relation between Section 6409(a) and Section 332(c)(7). While the provisions are not coextensive,<sup>281</sup> many collocation applications under Section 6409(a) are also covered under Section 332(c)(7). Where both sections apply, we propose to find that Section 6409(a) governs, consistent with canons of statutory construction that a more recent statute takes precedence over an earlier one and that “normally the specific governs the general.”<sup>282</sup> Thus, under this interpretation, because the substantive standard requiring approval of covered requests under Section 6409(a) appears to provide significantly less leeway than Section 337(c)(7) and is therefore in conflict with the latter provision, where both apply, such covered requests would be governed by the substantive standard of Section 6409(a). We seek comment on this proposed finding and any alternatives.

## V. IMPLEMENTATION OF SECTION 332(C)(7)

144. In the following section, we seek comment on whether the Commission’s interpretations of Section 332(c)(7) in the *2009 Declaratory Ruling* should be clarified and certain additional questions of interpretation addressed in light of certain specific issues raised in comments on the *NOI*.

### A. Background

145. Section 332(c)(7) of the Communications Act, adopted as part of the Telecommunications Act of 1996, generally preserves State and local authority over personal wireless service facility siting, while also placing important limitations on that authority.<sup>283</sup> As one of these limits,

<sup>279</sup> See *supra*, Section IV.A.1.

<sup>280</sup> See 47 C.F.R. §§ 1.4000 (video reception devices), 25.104 (satellite earth stations). See also Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934, WT Docket No. 97-192, *Report and Order*, 15 FCC Rcd 22821 (2000) (establishing procedures under Section 332(c)(7)(B)(v) for petitions for declaratory ruling regarding State and local regulation of facilities siting based on the effects of RF emissions).

<sup>281</sup> See *supra*, Section IV.B.3.

<sup>282</sup> See, e.g., *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 170 (2007).

<sup>283</sup> See 47 U.S.C. § 332(c)(7)(A) (stating that, “[e]xcept as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless services facilities”). Personal wireless services are defined as “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access

(continued....)

Section 332(c)(7)(B)(i)(I) states that regulation of the placement, construction, and modification of personal wireless service facilities “shall not unreasonably discriminate among providers of functionally equivalent services . . . .”<sup>284</sup> A second substantive limit provides that a State or local government’s siting regulation “shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”<sup>285</sup> Further, Section 332(c)(7)(B)(ii) provides that State or local governments must act on requests for personal wireless service facility sitings “within a reasonable period of time.”<sup>286</sup> For a remedy, Section 332(c)(7)(B)(v) sets forth a judicial remedy, stating that “[a]ny person adversely affected by any final action or failure to act” by a State or local government on a personal wireless service facility siting application “may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction.”<sup>287</sup>

146. On July 11, 2008, CTIA filed a petition requesting clarification of what constitutes a “reasonable period of time” under Section 332(c)(7), after which an aggrieved applicant may file suit for a failure to act.<sup>288</sup> CTIA also requested clarification of zoning authorities’ power to restrict competitive entry by multiple providers in a given area under Section 332(c)(7)(B)(i)(II).<sup>289</sup>

147. The Commission addressed CTIA’s petition in a Declaratory Ruling on November 18, 2009.<sup>290</sup> In the *2009 Declaratory Ruling*, the Commission found, based on the record, that lengthy and unreasonable delays in a significant number of cases had obstructed the provision of wireless services.<sup>291</sup> Such delays, the Commission concluded, impeded advances in coverage, deployment of advanced

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 services.” 47 U.S.C. § 332(c)(7)(C)(i). As discussed above, in 2012, Congress expressly modified this preservation of local and State authority by adopting Section 6409(a) of the Spectrum Act, which requires local or State governments to approve certain types of facilities siting applications “[n]otwithstanding section 704 of the Telecommunications Act of 1996 [codified in substantial part as Section 332(c)(7)] . . . or any other provision of law . . . .” Spectrum Act, § 6409(a)(1). *See supra*.

<sup>284</sup> 47 U.S.C. § 332(c)(7)(B)(i)(I).

<sup>285</sup> 47 U.S.C. § 332(c)(7)(B)(i)(II).

<sup>286</sup> 47 U.S.C. § 332(c)(7)(B)(ii). Additional limitations on State and local authority over decisions regarding the placement, construction, and modification of personal wireless service facilities include Sections 332(c)(7)(B)(iii) (“Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record”) and 332(c)(7)(B)(iv) (“No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency [RF] emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions”).

<sup>287</sup> 47 U.S.C. § 332(c)(7)(B)(v). However, any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with the limitation on regulating on the basis of RF emissions under clause (iv) may petition the Commission for relief. *Id.*

<sup>288</sup> *See* Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, Petition for Declaratory Ruling of CTIA–The Wireless Association, WT Docket No. 08-165, filed July 11, 2008 (“CTIA Petition”).

<sup>289</sup> *Id.* at 30-35.

<sup>290</sup> Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, WT Docket No. 08-165, *Declaratory Ruling*, 24 FCC Rcd 13994 (2009) (“*2009 Declaratory Ruling*”).

<sup>291</sup> *See 2009 Declaratory Ruling*, 24 FCC Rcd at 14005-06 paras. 33-34.

wireless communications services, and competition that Congress has deemed critical.<sup>292</sup> The Commission further determined that it should define the statutory terms “reasonable period of time” and “failure to act” in order to clarify when an adversely affected service provider may file suit in court.<sup>293</sup>

148. Interpreting a “reasonable period of time” under Section 332(c)(7)(B)(ii), the Commission found that 90 days is generally a reasonable timeframe for processing applications to collocate antennas on existing structures, and that 150 days is generally a reasonable timeframe for processing applications other than collocations.<sup>294</sup> The Commission further determined that failure to meet the applicable timeframe presumptively constitutes a failure to act under Section 332(c)(7)(B)(v), enabling an applicant to pursue judicial relief within the next 30 days.<sup>295</sup> The Commission defined these time periods as rebuttable presumptions and recognized that more time may be needed in individual cases.<sup>296</sup> The Commission stated that, in the event an applicant pursues a judicial remedy, the State or local authority would have the opportunity to rebut the presumption that the delay was unreasonable.<sup>297</sup> Ultimately, the Commission stated, the court would find whether the delay was in fact unreasonable under the circumstances of each case.<sup>298</sup>

149. The Commission also defined certain circumstances that would warrant adjustments to the presumptive deadlines, including when the applicant fails to submit a complete application or to file necessary additional information in a timely manner.<sup>299</sup> Specifically, the Commission stated that “when applications are incomplete as filed, the time frames do not include the time that applicants take to respond to State and local governments’ requests for additional information.”<sup>300</sup> This automatic tolling, however, applies only if a zoning authority notifies an applicant within the first 30 days that its application is incomplete.<sup>301</sup> The Commission concluded that allowing for such tolling balances the State or local government’s need for sufficient time to review an application for completeness with the interests of the applicant against a last-minute decision finding its application incomplete.<sup>302</sup> In addition, the Commission clarified that the presumptive deadlines for acting on siting applications could be extended beyond 90 or 150 days by mutual consent, and that such an agreement would toll the commencement of the 30-day period for filing suit.<sup>303</sup>

150. Finally, addressing Section 332(c)(7)(B)(i)(II)’s direction that States and localities shall not regulate in a manner that prohibits or has the effect of prohibiting the provision of personal wireless services, the Commission found that this provision prohibits a State or local government from denying a

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<sup>292</sup> *Id.* at 14007-08 para. 35.

<sup>293</sup> *Id.* at 14008 para. 37.

<sup>294</sup> *See id.* at 14012 para. 45.

<sup>295</sup> *See id.* at 14005 para. 32, 14012 para. 45.

<sup>296</sup> *See, e.g., id.* at 14004-05 para. 32, 14010 para. 42, 14011 para. 44.

<sup>297</sup> *See id.* at 14004-05 para. 32.

<sup>298</sup> *See id.* at 13995 para. 4.

<sup>299</sup> *See id.* at 14010 para. 42.

<sup>300</sup> *Id.* at 14014 para. 52.

<sup>301</sup> *Id.* at 14014-15 para. 53.

<sup>302</sup> *See id.*

<sup>303</sup> *See id.* at 14013 para. 49.

personal wireless service facility siting application solely because service is available from another provider.<sup>304</sup>

151. In the *2010 Reconsideration Order*, the Commission denied requests by representatives of local governments to reconsider certain of its conclusions.<sup>305</sup> Subsequently, the Commission's interpretations of Section 332(c)(7), as well as its authority to render those interpretations, were upheld by the United States Court of Appeals for the Fifth Circuit.<sup>306</sup> On May 20, 2013, the United States Supreme Court affirmed the Fifth Circuit's decision.<sup>307</sup>

## B. Discussion

152. We do not intend in this Notice to seek comment on or otherwise revisit any aspect of our *2009 Declaratory Ruling*. As discussed below, we have received various comments in response to the *NOI* asserting that it is unclear how the standards established in the *2009 Declaratory Ruling* apply in certain specifically identified contexts or seeking clarification regarding questions arising under Section 332(c)(7) that were not addressed by the *2009 Declaratory Ruling*. Additionally, we have been asked to revisit our decision not to impose a "deemed granted" remedy in cases where a State or local government fails to comply with the time limits set forth in the *2009 Declaratory Ruling*.<sup>308</sup> From these comments, we have distilled six discrete issues that have been raised. While we therefore take this opportunity to address these issues, we stress that we are not revisiting – or seeking comment in this proceeding on – any of the matters decided by the *2009 Declaratory Ruling*.<sup>309</sup>

153. *Definition of collocation*. In the *2009 Declaratory Ruling*, the Commission held that the addition of an antenna to an existing tower or other structure constitutes a collocation for purposes of Section 332(c)(7) if it does not involve a "substantial increase in the size of a tower" as defined in the Collocation Agreement.<sup>310</sup> However, we did not further define that term. In the context of defining a substantial change in physical dimensions under Section 6409(a), we seek comment above on whether to adopt a different standard depending on the type of structure to be modified.<sup>311</sup> We similarly seek comment here on whether to refine the "substantial increase in size" test as applied to collocations on structures other than communications towers under Section 332(c)(7). Should we apply the test for substantial increase in size under Section 332(c)(7) in the same manner as we interpret the test under Section 6409(a) for substantial change in physical dimensions? We also seek comment on whether terms

<sup>304</sup> *Id.* at 14016 para. 56. In its petition, CTIA also requested that the Commission find that a State or local regulation that requires a variance or waiver for every wireless facility siting violates Section 253(a) of the Communications Act, 47 U.S.C. § 253(a). The Commission denied this request due to a lack of a specific controversy. *See 2009 Declaratory Ruling*, 24 FCC Rcd at 14019-20 paras. 66-67.

<sup>305</sup> *See generally*, Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, WT Docket No. 08-165, *Order on Reconsideration*, 25 FCC Rcd 11157 (2010) ("*2010 Reconsideration Order*").

<sup>306</sup> *City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S.Ct. 1863 (2013).

<sup>307</sup> *City of Arlington*, 133 S.Ct. at 1874 ("the preconditions to deference under *Chevron* are satisfied because Congress has unambiguously vested the FCC with general authority to administer the Communications Act through rulemaking and adjudication, and the agency interpretation at issue was promulgated in the exercise of that authority."); *see Chevron U.S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984).

<sup>308</sup> *See, e.g.*, PCIA and DAS Forum Comments, WC Docket No. 11-59, at 42-43

<sup>309</sup> As noted above, we do seek comment on whether requests subject to Section 6409(a) of the Spectrum Act should be governed by the substantive standards of that recently enacted statute.

<sup>310</sup> *See 2009 Declaratory Ruling*, 24 FCC Rcd at 14012 para. 46.

<sup>311</sup> *See supra*, Section IV.B.2.

that we define under both Section 332(c)(7) and Section 6409(a), such as “collocation,” should be defined in the same way.

154. *Completeness of applications.* Although the *2009 Declaratory Ruling* held that a State or local government’s period for acting on an application is tolled until the applicant completes its application in response to a request for additional information made within the first 30 days, it did not attempt to define when a siting application should be considered “complete” for this purpose. PCIA has asserted that, as a result, jurisdictions may delay processing by repeatedly requesting additional information.<sup>312</sup> AT&T also asserted that some local authorities have tried to extend their period for decision by delaying when they deem the application complete.<sup>313</sup> We seek comment on whether to clarify when a siting application is considered complete for the purpose of triggering the *2009 Declaratory Ruling* time frame and, if so, how that should be determined.

155. *Local moratoria.* Above, we seek comment on whether and how the requirements of Section 6409(a) apply to delays in processing applications that result from local moratoria.<sup>314</sup> Here, we similarly seek comment on whether and how the presumptively reasonable time frames under Section 332(c)(7) apply to such delays. PCIA in its comments to the *NOI* argued that because the *2009 Declaratory Ruling* on timelines for application review did not explicitly discuss moratoria, many jurisdictions have enacted them in an effort to avoid the *2009 Declaratory Ruling* time frames altogether.<sup>315</sup> PCIA asserted that siting moratoria lasting longer than six months are generally contrary to the industry-community agreement signed in 1998, and that local jurisdictions have not followed this agreement and have enacted moratoria extending well beyond the six-month time period.<sup>316</sup> Thus, PCIA requested that the Commission clarify the applicability of the *2009 Declaratory Ruling* to local moratoria.

156. We propose to find that the presumptively reasonable period for State or local government action on an application runs regardless of any local moratorium. Since the *2009 Declaratory Ruling* makes no special provision for moratoria, we believe this is consistent with the plain reading of that decision. Furthermore, we believe this approach creates an appropriate bright-line test for when a State or local government’s delay may be brought before a court. Under this reading, the reasonableness of the moratorium may be considered by a reviewing court in determining whether the delay violates Section 332(c)(7). We seek comment on this proposal and analysis.

157. Alternatively, we seek comment on whether the running of the applicable presumptively reasonable period of time should be tolled by a moratorium. We also seek comment on whether, if we adopt this ruling, the tolling period for moratoria should be limited to a maximum cumulative time, what that time period should be, and whether tolling should be limited to moratoria that are put in place prior to the submission of the application or request. We further seek comment on how frequently moratoria are invoked, the typical duration of moratoria, and the local interests served by or justifications for such moratoria. We note that if we hold that the Section 6409(a) substantive standards govern applications covered by both Section 6409(a) and Section 332(c)(7), such standards would include any decisions on moratoria under Section 6409(a). We seek comment on whether treatment of moratoria should be similar under the two provisions.

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<sup>312</sup> PCIA and DAS Forum Comments, WC Docket No. 11-59, at 14.

<sup>313</sup> AT&T Comments, WC Docket No. 11-59, at 15.

<sup>314</sup> *See supra*, Section IV.B.3.

<sup>315</sup> PCIA and DAS Forum Comments, WC Docket No. 11-59, at 33.

<sup>316</sup> *Id.* National League of Cities et al. noted, however, that the agreement also provides that “[a]ll parties understand that cases may arise where the length of a moratorium may need to be longer than 180 days.” National League of Cities et al. Reply Comments, WC Docket No. 11-59, at 55. *See also* Guidelines for Facility Siting Implementation, available at <http://transition.fcc.gov/statelocal/agreement.html>.

158. *Application to DAS.* The *NOI* record has shown that in the absence of any explicit discussion, some jurisdictions have interpreted the *2009 Declaratory Ruling* time frames as not applying to DAS deployments.<sup>317</sup> Neither Section 332(c)(7) nor any Commission decision interpreting Section 332(c)(7) makes any distinction among personal wireless service facilities based on technology, and absent a compelling reason to do so, we are not inclined to make such distinctions. In any event, we propose to clarify that to the extent DAS or small cell facilities, including third-party facilities such as neutral host DAS deployments, are or will be used for the provision of personal wireless services, such facilities are subject to the same presumptively reasonable time frames and other requirements as other personal wireless service facilities.

159. The City of Philadelphia responded to the *NOI* record on this issue, arguing that a number of factors, including the possibility that a DAS network may include a large number of discrete sites, the density of the sites, and their tendency to have a large presence in the public rights-of-way, “dictate a substantially greater time to review and evaluate permitting applications than for traditional cell site applications, making the time frames provided in the [*2009 Declaratory Ruling*] entirely inappropriate.”<sup>318</sup> The *2009 Declaratory Ruling* does not prevent a court from taking these factors into consideration in any determination of reasonableness, however, and applicants and municipalities can agree to extensions of time in appropriate cases. We seek comment on our proposal and analysis, including any reason DAS or small cell facilities should be subject to different time frames or other requirements.

160. *Section 332(c)(7)(B)(i)(I).* PCIA has asserted that some local ordinances establish preferences for placing wireless facilities on municipal property and argued that, by limiting the siting flexibility of subsequent wireless entrants in a given area, such ordinances unreasonably discriminate among providers of functionally equivalent services in violation of Section 332(c)(7)(B)(i)(I).<sup>319</sup> Other commenters have argued against such a *per se* conclusion.<sup>320</sup> We seek comment on whether ordinances establishing preferences for the placement of wireless facilities on municipal property are unreasonably discriminatory under Section 332(c)(7).

161. *“Deemed Granted” Remedy.* In our *2009 Declaratory Ruling*, we declined to establish a “deemed granted” remedy in cases where a State or local government failed to abide by the time limits established by the Commission.<sup>321</sup> We noted at the time that “Section 332(c)(7)(B)(v) states that when a failure to act has occurred, aggrieved parties should file with a court of competent jurisdiction within 30 days and that “[t]he court shall hear and decide such action on an expedited basis.”<sup>322</sup> We then concluded

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<sup>317</sup> See, e.g., PCIA and DAS Forum Comments, WC Docket No. 11-59, at 13, 47 (*2009 Declaratory Ruling* time frames have not been applied to DAS projects in some jurisdictions due to the lack of clarity or consensus regarding the applicability of the *Ruling* to applications for DAS deployments).

<sup>318</sup> City of Philadelphia Reply Comments, WC Docket No. 11-59, at 8. See also National League of Cities et al. Reply Comments, WC Docket No. 11-59, at 51 (arguing that DAS providers are attempting to gain the benefits of Section 332(c)(7) while ignoring the “local rules that the statute protects”).

<sup>319</sup> PCIA and DAS Forum Comments, WC Docket No. 11-59, at 44.

<sup>320</sup> See, e.g., National League of Cities et al. Reply Comments, WC Docket No. 11-59, at 52-53 (arguing that an “unreasonable discrimination” claim depends on case-specific facts, including whether the provider has “been treated differently from other providers whose facilities are ‘similarly situated’ . . .”). National League of Cities et al. also argued that PCIA’s interpretation would effectively mean that “local governments may *never* change their zoning ordinances, because any later ordinance will inevitably place different burdens on later applicants.” *Id.* at 54 (emphasis in original).

<sup>321</sup> See *2009 Declaratory Ruling*, 24 FCC Rcd at 14009 para. 39.

<sup>322</sup> *Id.*

that “this provision indicates Congressional intent that courts should have the responsibility to fashion appropriate case-specific remedies.”<sup>323</sup>

162. PCIA in its comments asks the Commission to revisit this decision and adopt a “deemed granted” remedy. Specifically, it claims that “[a]dding a deemed granted rule is critical to ensuring that states and localities act within the prescribed timelines.”<sup>324</sup> PCIA notes that seeking judicial relief for violations of Section 332(c)(7) can involve “great time and expense”<sup>325</sup> and that a “deemed granted” remedy would “reduce costly and time-consuming litigation, allowing those resources to be used to fund rather than defend the expansion of broadband deployment.”<sup>326</sup> What experiences have parties had since the end of the comment period for the NOI in WC Docket 11-59? Should we adopt remedies beyond the one provided in the *2009 Declaratory Ruling* for violations of Section 332(c)(7)? If so, what should they be? What authority do we have to adopt the proposed remedy?

## VI. PROCEDURAL MATTERS

### A. Initial Regulatory Flexibility Analysis

163. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities of the policies and rules addressed in this Notice. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this Notice and, if submitted together with comments to the Notice in a single filing, must have a separate and distinct heading designating them as responses to the IRFA. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

### B. Initial Paperwork Reduction Act Analysis

164. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (“OMB”) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

### C. Other Procedural Matters

#### 1. Ex Parte Rules – Permit-But-Disclose

165. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>327</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation

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<sup>323</sup> *Id.*

<sup>324</sup> PCIA and DAS Forum Comments, WC Docket, No. 11-59, at 43.

<sup>325</sup> *Id.* at 42.

<sup>326</sup> *Id.* at 43.

<sup>327</sup> 47 C.F.R. §§ 1.1200 *et seq.*

must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

## 2. Comment Filing Procedures

166. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS"). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

167. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

168. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's

Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

169. *Additional Information.* For additional information on this proceeding, contact Peter Trachtenberg, [Peter.Trachtenberg@fcc.gov](mailto:Peter.Trachtenberg@fcc.gov), of the Wireless Telecommunications Bureau, Spectrum and Competition Policy Division, (202) 418-7369, or Mania Baghdadi, [Mania.Baghdadi@fcc.gov](mailto:Mania.Baghdadi@fcc.gov), of the Wireless Telecommunications Bureau, Spectrum and Competition Policy Division, (202) 418-2133.

## VII. ORDERING CLAUSES

170. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 7, 201, 301, 303, 309, 332, 1403, and 1455, of the Communications Act of 1934, as amended 47 U.S.C. §§ 151, 152, 154(i), 157, 201, 301, 303, 309, 332, 1403, and 1455, Section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(C), and Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470f, that this Notice of Proposed Rulemaking IS hereby ADOPTED.

171. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before 60 days after publication of the Notice of Proposed Rulemaking in the *Federal Register* and reply comments on or before 90 days after publication in the *Federal Register*.

172. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX C

## Text of Section 6409(a)

**SEC. 6409. WIRELESS FACILITIES DEPLOYMENT.****(a) FACILITY MODIFICATIONS.**

(1) **IN GENERAL.** Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) **ELIGIBLE FACILITIES REQUEST.** For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves —

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

(3) **APPLICABILITY OF ENVIRONMENTAL LAWS.** Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

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ACTION – 9

Approval of Transportation Project Priorities for FY 2015 – FY 2020, and Project Submissions for Northern Virginia Transportation Authority’s Consideration for FY 2014 – FY 2016

ISSUE:

Board approval is requested for transportation project priorities for FY 2015 – FY 2020, and projects selected for Northern Virginia Transportation Authority’s (NVTA) FY 2014 – FY 2016 regional “Call for Projects.”

RECOMMENDATION:

The County Executive recommends that the Board take the actions below. These actions will establish the major County transportation projects for the next six years.

1. Approve transportation project priorities for FY2015 – FY2020 (Attachment I),
2. Approve projects selected for NVTA’s consideration for FY2014 – FY2016 regional funding (Attachment IV),
3. Direct staff to return to the Board with project timelines, and
4. Direct staff to pursue funding for these projects from regional, state, and federal sources.

TIMING:

The Board should act on this item on January 28, 2014, so staff can continue to move forward with implementation of projects as expeditiously as possible, and staff can submit the County’s FY 2014 – FY 2016 priorities to NVTA by January 31, 2014.

BACKGROUND:

**Funding Allocation/Project Selection**

During the Board’s retreat in February 2012, staff presented to the Board transportation funding needs and revenue estimates over a ten year period. This information included a deficit of approximately \$3 billion over the ten years. Staff discussed a variety of possible sources of revenue to address the deficit. The Board directed staff to conduct

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an outreach effort to inform the public of the County's transportation needs and discuss potential sources of new revenue.

In spring and summer 2012, staff worked collaboratively with the Transportation Advisory Commission (TAC), and various other stakeholders to develop a public outreach strategy. The Board subsequently approved the resulting approach to the outreach strategy known as the "*Countywide Dialogue on Transportation*" (CDOT).

In Fall 2012, staff held numerous public meetings countywide, developed a website of information concerning the effort, and conducted an online survey on potential new transportation funding sources. Upon completion of the outreach effort, staff and the TAC presented the public's comments on CDOT and results of the survey to the Board.

During the 2013 session of the Virginia General Assembly, a variety of transportation funding strategies and bills were considered. On April 3, 2013, the Governor's Transportation Plan (HB 2313) was adopted. The plan included new funds for transportation statewide and additional funds for Northern Virginia.

Starting July 1, 2013, HB 2313 secures about \$300 million per year for the Northern Virginia region, approximately half (or \$150 million) is anticipated to be available in Fairfax County. The Commonwealth also receives additional transportation funds from HB 2313. A portion of these funds are expected to be available for projects in Fairfax County. Between FY 2014 and FY 2020, it is estimated that approximately \$375 million in new state funding will be used for transit and roadway projects in Fairfax County.

The original CDOT effort did not address the prioritization and selection of projects. As a result, staff engaged the public in a second outreach effort in 2013 to determine which projects were most important to the public. In preparation for this outreach, FCDOT staff identified 214 unfunded projects and developed project description sheets, cost estimates, and cost benefit analysis information.

The outreach effort included five meetings and numerous meetings by request (i.e. chambers of commerce, civic associations, home owner associations, etc) with total attendance of over 360. Efforts to engage the public in project selection included an extensive presence on the web (Facebook, Twitter, YouTube, interactive web page, social voting), a survey to be taken online or in person, news releases through multiple sources, media interviews, Quick Read (QR) codes, and gas station advertising. The public was asked to select projects that were important to them. Respondents were encouraged to suggest other projects as well. Project categories included: interchanges, roadway extensions and widenings, spot improvements, transit capital and operating, and bicycle and pedestrian projects. The total estimate to complete the 214 projects is

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over \$4 billion. The survey was conducted between October 25, 2013, and November 22, 2013. A total of 2,554 responses were received.

FCDOT staff hired a consultant to develop a cost benefit analysis (CBA) to be used as one of the factors in project selection. The CBA included data related to congestion reduction, travel time savings, and emissions reductions to develop a ratio of benefits to cost which staff considered in identifying recommended priority projects.

Once the outreach effort concluded, staff compiled the results of the surveys and public comments, and incorporated the findings with other project prioritization criteria for project selection. Selection criteria that was presented to the public is shown below:

- Congestion Reduction
- Economically Disadvantaged Populations
- Mode Balance
- Safety
- Travel Time Savings
- Community Input
- School and Park Access
- Regional Consideration (included in NVTA TransAction 2040)
- Countywide Balance
- Disabled/Elderly Populations
- Economic Development (support for revitalization areas and major Activity Centers)
- Healthy Communities Initiative
- Air Quality

To ensure projects with the highest priority were selected, staff divided into subcommittees based on project type and employed the survey results and public comments along with the selection criteria above to determine which projects should be proposed to the Board for funding over the next six years. In addition to the selection criteria above, staff also considered projects that:

- Address high congestion areas
- Complete improvements on corridors
- Fill “gaps” in a network
- Are included in the 2009 Transit Development Plan (TDP)
- Connect to transit
- Connect neighborhoods
- Provide new transit links between residential and activity centers
- Enhance existing transit links
- Are included in the draft Bicycle Master Plan (BMP)
- Allocate funds for future design

On December 17, 2013, staff presented a proposed list of project priorities for FY2015 – FY2020 to the Board Transportation Committee (BTC). Since the BTC meeting, Board members and aides have provided feedback on the list of proposed projects. The revised list of proposed projects incorporates comments received from Board members.

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The revised list of proposed projects for funding, and those projects not proposed for funding at this time can be found as Attachments I and II, respectively.

In addition to the new project recommendations, staff requests approximately \$57.6 million of funds be used on projects previously approved by the Board (see below, Attachment III).

<b>\$ in Millions</b>	<b>Description</b>
\$30.10	Tysons Funding Plan; Board approved January 2013
\$23.60	Dulles Rail Phase I Connector Service; Board approved June 2013
\$ 3.00	Pedestrian Projects Cost Overruns
\$ 0.88	Increases in Project Estimates for Spot Improvements and the Springfield CBD Parking Garage Study
<b>\$57.60</b>	<b>Total</b>

The Board was also asked to consider allocating \$75 million to projects previously partially funded (see below, Attachment III). These projects are considered to have an immediate, critical need for funding. Some of them are necessary for further expansion of Fairfax Connector service.

<b>\$ in Millions</b>	<b>Description</b>
\$35	Tysons Funding Plan Deficit
\$ 3	Route 123 Superstreets (Tysons)
\$20	West Ox Phase II Construction
\$10	Richmond Highway Transit Center
\$ 1	Lorton VRE Park & Ride Expansion
\$ 6	Herndon Bus Garage Renovations
<b>\$75</b>	<b>Total</b>

Of the unfunded projects presented during the public outreach efforts, staff proposes allocating funds to each category of projects as follows. For a comprehensive list of projects by category, project descriptions, and cost estimates, please see Attachment I.

<b>\$ in Millions</b>	<b>Description</b>	<b>Percent of Total</b>
\$ 195.0	Interchanges	15.0%
\$ 115.3	Extensions	8.8%
\$ 66.0	Spot Improvements	5.1%
\$ 381.3	Roadway Widenings	29.4%
\$ 326.8	Transit Capital/Operating	25.2%
\$ 204.0	Bicycle and Pedestrian Projects	15.7%
\$ 10.0	Reserve for Capital Projects	0.8%
<b>\$1,298.4</b>		<b>100.0%</b>

Some of the project category allocations include funding for reserves. Staff proposes allocating some funding to four reserve categories, so that there are funds available to implement the results of study efforts. These reserves are:

- Transit capital needs for:
  - Virginia Railway Express capital improvements,
  - Metro 2025 projects,
  - Fairfax Connector capital improvements,
  - Implementation of the Richmond Highway and Route 7 alternatives analysis studies, and
  - The Countywide Transit Network Study.
- Improvements along the Fairfax County Parkway,
- Spot improvement projects, and
- Bicycle and pedestrian projects.

It is envisioned that the basic elements of the CDOT effort will be revisited each year resulting in a rolling County Six-Year Plan (CSYP) for transportation. It will also be updated to reflect actions of the Commonwealth Transportation Board, the Northern Virginia Transportation Authority, and other funding agencies and project schedules.

As the CSYP will be revised annually, projects that are not being proposed for funding at this time may be proposed in future years. It is also anticipated that revenue estimates will change. In addition, it is possible that the Board may modify project priorities in the future.

It should be noted that as this is a six year plan for priority projects, many projects may not start for a few years. Staff will return to the Board with proposed priorities for project scheduling and implementation.

### **NVTA Call for Projects**

NVTA released a "Call for Projects" for unallocated FY 2014 revenues, FY 2015, and FY 2016. This is the beginning of NVTA's Six Year Program (SYP). Funding for these capital projects is provided by NVTA's 70 percent regional share that NVTA retains. Project applications are due to NVTA's Project Implementation Working Group (PIWG) by January 31, 2014. NVTA is expected to approve agency and jurisdiction project submissions following a congestion analysis required by the General Assembly. The analysis is being conducted by VDOT.

This Call for Projects will allow NVTA to undertake a condensed schedule for development of the first three years of its SYP (FY 2014, FY 2015 and FY 2016). NVTA anticipates approving a full six years of projects during next year's Call for Projects.

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Projects recommended for NVRTA consideration for FY 2014 – FY 2016 funding have been included as Attachment IV. These projects are a subset of the projects included in Attachment I. Fairfax County's total request for funding from NVRTA is over \$220 million. Many of these projects will require funding beyond FY 2016, and staff will seek funding for projects in need of additional funding through NVRTA and other sources in FY 2017 – FY 2021.

FISCAL IMPACT:

The current estimate of revenues available for transportation projects in Fairfax County through FY 2020 is \$1.4 billion. There are multiple sources of revenues considered over the next six years, the largest sources of funding are due to HB 2313 and include, NVRTA local and regional funds (\$902 million), and additional state aid (\$376 million) for roadway construction and transit. Also included in this total are general obligation bonds and commercial and industrial property taxes for transportation that have not been previously allocated by the Board. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment I: Recommended Priority Project List for Funding (FY 2015 – FY 2020)  
Attachment II: Projects Not Recommended for the Priority Project List  
Attachment III: List of Previously Funded/Board Approved Projects  
Attachment IV: Recommended Projects for Northern Virginia Transportation Authority's FY 2014 – FY 2016 Call for Projects  
Attachment V: Fairfax County Funded Transportation Projects

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT  
Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT  
Todd Minnix, Chief, Transportation Design Division, FCDOT  
Karyn Moreland, Capital Projects and Operations Division, FCDOT  
Leonard Wolfenstein, Transportation Planning Division, FCDOT  
Randy White, Transit Services Division, FCDOT  
Ray Johnson, Coordination and Funding Division, FCDOT

**Attachment I: Revised Recommended Priority Project List for Funding  
FY 2015 - FY 2020**

ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
<b>Project Funding Recommendation - Interchanges</b>					
1	Fairfax County Parkway and Popes Head Road	Springfield	\$90.15	\$68.00	-Construct a grade-separated interchange at the intersection of the Fairfax County Parkway and Popes Head Road, with shared use paths on both sides. Provide for future connection to Shirley Gate Road to the east. Completes signal free corridor between Burke Lake Road and Route 50 (7.75 miles). -Pursue NVTA Regional Funding.
3	I-66 and Route 28	Sully	\$122.00	\$54.00	-VDOT study underway; VDOT has \$50M programmed already. VDOT Total project estimate: \$122M. -Reconstruct portions of the existing interchange at Route 28 and I-66. Remove four traffic signals on Route 28 to enhance safety and improve capacity. Widen and reconstruct westbound I-66 off ramp to northbound Route 28. Realign Braddock Road/Walney Road and construct overpass with ramp connection from northbound Route 28 to new bridge. Provide new connections from Braddock Road to eastbound and westbound I-66, from Braddock Road to and from southbound Route 28, and from southbound Route 28 to eastbound I-66 (flyover). Also extends Poplar Tree Road across Route 28 from Stonecroft Blvd. to Walney Road and constructs new access road to EC Lawrence Park.
4	I-95 and Fairfax County Parkway/NB Flyover	Mt. Vernon	\$83.00	\$59.00	-VDOT has programmed \$4.233M. Complements Project #27. -Construct a flyover ramp to carry traffic exiting northbound I-95 to westbound Fairfax County Parkway. The project would include construction of left turns at the Fairfax County Parkway off-ramp and Loisdale Road intersection. Reduces congestion on Fairfax County Parkway at Loisdale Road, and provides better access to the EPG area.
9	Seven Corners Interchange Improvements	Mason, Providence	TBD	\$3.00	-FCDOT conducting initial studies. Partial Funding for study/alternatives analysis. -Improvements to existing interchange at Seven Corners to reduce congestion on Route 7, improve access between Seven Corners/Falls Church/Bailey's Crossroads, and facilitate redevelopment of the area. Improve safety, navigation of vehicles and pedestrians in and through the area
10	South Van Dorn St. and Franconia Road	Lee	\$139.50	\$4.00	-Prelim Study completed in 2010. Partial funding for updating study and interim improvements. -The study recommended constructing a grade-separated interchange at the intersection of South Van Dorn Street and Franconia Road. The project would include pedestrian and bicycle facilities.
N/A	Cleveland Ramp	Dranesville		\$2.00	-Partial Funding for federal approvals/planning and preliminary design. Included and recommended as part of the Tysons East Central Consolidated Traffic Impact Analysis (CTIA)
N/A	Route 7/Route 123 Rebuild	Providence		\$5.00	-Partial funding for preliminary design. Included and recommended as part of the Tysons Central CTIA.
<b>Total Interchanges</b>				<b>\$195.00</b>	

<b>Project Funding Recommendation - Roadway Extensions</b>					
12	Dulles Toll Road - Rock Hill Overpass	Dranesville	\$218.20	\$0.50	-Planning level funding only. Contingent on development. -Construct a 4-lane roadway over the Dulles Toll Road from Sunrise Valley Drive on the south, to Davis Drive extension in Loudoun County on the north side. The project would include pedestrian and bicycle facilities. Identified in Reston Comp Plan Amendment to be considered by the BOS on 1/28/14.
13	Dulles Toll Road - South Lakes Drive Overpass	Hunter Mill	\$82.25	\$0.50	-Planning level funding only. Contingent on development. -Construct 4-lane roadway over the Dulles Toll Road from Sunrise Valley Drive to Sunset Hills Road. The project would include pedestrian and bicycle facilities. Identified in the Reston Comp Plan Amendment to be considered by the BOS on 1/28/14.
14	Dulles Toll Road - Town Center Parkway Underpass	Hunter Mill	\$157.00	\$13.85	-Planning level funding only. Contingent on development. \$6.148M already allocated under TMSAMS for use during Silver Line Phase II. Current estimate of underpinning necessary before rail construction, \$20M. -Construct 4-lane divided roadway under the Dulles Toll Road from Sunrise Valley Drive to Sunset Hills Road. Identified in Reston Comp Plan Amendment to be considered by the BOS on 1/28/14.

**Attachment I: Revised Recommended Priority Project List for Funding  
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ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
15	Dulles Toll Road - Soapstone Drive Overpass	Hunter Mill	\$91.75	\$2.50	-Planning level funding only. Contingent on development. -Construct a 4-lane roadway over the Dulles Toll Road from Sunrise Valley Drive to Sunset Hills Road. The project would include pedestrian and bicycle and transit facilities. Identified in the Reston Comp Plan Amendment to be considered by the BOS on 1/28/14.
16	Frontier Drive from Franconia Springfield Parkway to Loisdale Road plus braided ramps	Lee	\$84.50	\$63.00	-Extend Frontier Drive from Franconia-Springfield Parkway to Loisdale Road, including access to Franconia-Springfield Metrorail Station and braided ramps to and from the Parkway. Provide on-street parking along Frontier Drive as well as pedestrian and bicycle facilities. Supports future relocation of the FBI to Springfield, and provides greater access between Loisdale Road, Medical Campus, and Franconia-Springfield Metrorail Station. Reduces congestion on Loisdale Drive.
18	Shirley Gate Road from Braddock Road to Fairfax County Parkway/Popes Head Road	Braddock, Springfield	\$39.50	\$30.00	Extend 4-lane divided Shirley Gate Road from Braddock Road to the Fairfax County Parkway, north of Popes Head Road. The project would include a raised median and pedestrian and bicycle facilities. Provides alternative/shorter route to/from GMU and Fairfax City via Route 50/Jermantown area and potentially reduces congestion on Braddock Road (west of Shirley Gate), Fairfax County Parkway (north of Popes Head), and Route 29 (west of Shirley Gate). Provides access to expanded Patriot Park.
19	Stone Road Overpass over I-66 from Route 29 to Route 28	Sully	\$81.55	\$5.00	-Partial Funding for alignment study, environmental analysis and Preliminary Engineering. Provides Alternative Route to VA 28 from Centreville to Westfields. -Construct 4-lane divided road between Stone Road at Route 29 and New Braddock Road. Includes curb and gutter, 5' concrete sidewalk on east side, and 10' shared use path on west side of Stone Road. Construct a bridge over I-66 and another bridge over Big Rocky Run. Re-stripe westbound New Braddock Road to provide 2 through travel lanes. Provides alternative route other than VA 28 between Centreville and Westfields area. Reduces congestion at I-66/VA 28 and I-66/Rte. 29 Interchanges. Future Metrorail station on Comp Plan near this location.
<b>Total Extensions</b>				<b>\$115.35</b>	

**Project Funding Recommendation - Spot Improvements**

21	Backlick Road and Industrial Road	Lee, Mason	\$2.09	\$2.09	-Construct a left turn lane on northbound Backlick Road. This project would include sidewalk along the west side of Backlick Road, upgraded pedestrian signal, and drainage improvements.
22	Balls Hill Road and Old Dominion Drive	Dranesville	\$9.00	\$0.20	Partial funding for alternatives analysis.
23	Burke Road from Aplomado Drive to Parakeet Drive	Springfield	\$7.00	\$7.00	-Remove the sharp curve on Burke Road to improve safety. Raise profile and provide new stream crossing. Modify Heritage Square Drive alignment, and provide adequate sight distance. Provide 5' concrete sidewalk on one side, and 10' trail on the other. Improves access to Rolling Road VRE Station. -Complements Project 99 - Burke Road Lane Diet and On-Road Bike Lanes
26	Electric Avenue and Cedar Lane NB Left Turn Lane	Providence	\$1.61	\$1.61	-Add 250' of left turn lane on northbound Cedar Lane at Electric Avenue. The project would include curb and gutter and drainage improvements on the east side of Cedar Lane, 5' concrete sidewalk, crosswalks, and a new mast-arm signal.
27	Fairfax County Parkway from I-95 to Telegraph Road	Lee, Mt. Vernon	\$19.25	\$19.25	-Complements project #4. -Provide spot improvements along Route 286 (Fairfax County Parkway) from I-95 to Telegraph Road to provide additional capacity at intersections and reduce congestion in the through lanes. The project would include improvements
30	Fort Hunt Road and Collingwood Road	Mt. Vernon	\$2.22	\$2.22	-Construct left turn lanes on both northbound and southbound Fort Hunt Road at Collingwood Road. The project would include a new traffic signal, pedestrian signals, and walkways on both sides of Fort Hunt Road.
31	Georgetown Pike and Rte 123 (Dolley Madison Blvd.)	Dranesville	\$1.68	\$1.68	Add right turn lane on Georgetown Pike in eastbound direction. This project would include signalization improvements as well as pedestrian facilities. <i>Moved from unfunded list.</i>
32	Hunter Mill Road and Lawyers Road	Hunter Mill, Sully	\$15.50	\$15.50	Replace intersection with roundabout, provide 10' shared-used path and adequate pedestrian crossings throughout the roundabout, and relocate overhead utilities.

**Attachment I: Revised Recommended Priority Project List for Funding  
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ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
33	Kirby Road and Old Dominion Road	Dranesville	\$10.70	\$0.50	-Funding for Preliminary Engineering/Study Only. -Improve intersection safety and geometry, which may include adding or extending turn lanes. The project would include pedestrian facilities.
34	Lewinsville Road and Spring Hill Road	Dranesville	\$15.80	\$0.10	-Partial funding for alternatives analysis. Construct roundabouts to improve traffic flow. This project would include pedestrian crosswalks. Improves access to/from Tysons Corner area.
35	Old Courthouse Road and Besley Road	Hunter Mill	\$3.30	\$3.30	Improve alignment of Old Courthouse Road S-curve at Besley road. The project would include raising the road elevation to improve drainage and limit flooding. Includes bicycle/pedestrian facility. Addresses safety issues for vehicles, pedestrians and bicycles and reduces flooding problems.
38	Route 123 (Dolley Madison) and Great Falls/Lewinville Road Intersection	Dranesville	\$6.90	\$6.90	-Interim improvements ahead of potential grade separation per Tysons Neighborhood Study. -Add or extend existing turn lanes on all approaches, remove channelized islands, and construct missing sidewalk segments. Reduces congestion on Rte. 123 and improves access to/from Tysons and McLean Metrorail Station.
40	Silverbrook Road and Lorton Road	Mt. Vernon	\$3.60	\$0.50	-Funding for preliminary engineering and/or study only. -Construct an additional (triple) left turn lane from southbound Silverbrook Road onto eastbound Lorton Road. The project would include a new traffic signal and replacement of sidewalk on the west side of Silverbrook Road.
N/A	Route 50 and Waples Mill Road	Braddock, Providence		\$0.25	Partial funding for study of potential interim/low cost improvements. TransAction 2040 calls for Interchange.
N/A	Shields Avenue Improvements	Lee	\$5.00	\$0.20	Partial funding for alignment study.
N/A	Reserve for Future Spot Improvements	Countywide	\$4.72	<del>-\$6.40</del> \$4.72	Set aside funding for projects.
<b>Total Spot Improvements</b>				<b>\$66.01</b>	

Project Funding Recommendation - Roadway Widening					
ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
45	Braddock Road - Burke Lake Road to Guinea Road - 4 to 6 Lanes	Braddock	\$21.63	\$1.00	Partial funding for study only. The project would also include pedestrian and bicycle facilities.
46	Braddock Road - Burke Lake Road to I-495 - 6 to 8 Lanes	Braddock	\$63.00	\$47.00	Widen Braddock Road from 6 lanes to 6 lanes plus 1-HOV lane in each direction, from I-495 to Burke Lake Road. The project would include intersection improvements such as turn lanes and signalization improvements, as well as pedestrian and bicycle facilities.
49, 50, 51, 52, 53	Fairfax County Parkway Improvements - Lee Chapel to Rolling Rd - 4 to 6 Lanes - 123 to Lee Chapel - 4 to 6 Lanes - US 29 to VA 123 - 4 to 6 Lanes - Dulles Toll Rd to West Ox Rd - 4 to 6 Lanes - West Ox Rd to Rugby Rd - 4 to 6 Lanes	Braddock, Dranesville, Hunter Mill, Springfield, Sully	\$396.10	\$55.00	-Partial funding for corridor study, environmental analysis, preliminary engineering, and/or construction. -Coordinate improvements with proposed VDOT study.
54	Frying Pan Road - VA 28 to Centreville Road - 2 or 4 to 6 Lanes	Dranesville, Hunter Mill	\$54.30	\$40.80	-Widen Frying Pan Road from 2 and 4 lanes to 6 lanes from Route 28 to Centreville Road. The project would include intersection improvements such as a turn lanes and signalization as well as pedestrian and bicycle facilities. Improves access to future Silver Line Metrorail Station and Dulles Airport. Provides relief to Centreville Road. Completes "missing" segments between existing sections of roadway already widened by development.
55	Hooes Road - Fairfax County Parkway to Silverbrook Rd 2 to 4 Lanes	Mt. Vernon, Springfield	\$20.55	\$15.00	-Widen Hooes Road from 2 to 4 lanes from Fairfax County Parkway to Silverbrook Road. The project would include pedestrian signals at Newington Forest Avenue, and pedestrian and bicycle facilities.
57	Pohick Rd - US 1 (Richmond Hwy) to I-95 - 2 to 4 Lanes	Mt. Vernon	\$29.25	\$22.00	-Widen Pohick Road from 2 to 4 Lanes from Route 1 (Richmond Highway) to I-95. The project would include intersection signalization improvements, and pedestrian and bicycle facilities. Eliminates choke point between Rte. 1 and I-95.

**Attachment I: Revised Recommended Priority Project List for Funding  
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ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
58	Rolling Road - Old Keene Mill Rd to Franconia Springfield Pkwy - 2 to 4 Lanes	Springfield	\$35.20	\$27.70	Completes funding for the project. VDOT has \$7.5 M allocated thru FY19. -Widen Rolling Road from 2 to 4 lanes, including parking lanes in each direction for some sections of the roadway. The project would include an 8' asphalt trail along the west side and 5' concrete sidewalk along the east side of Rolling Road. Improves access to EPG and Ft. Belvoir.
59	US 1 (Richmond Hwy) - Occoquan River to CSX Overpass - 4 to 6 Lanes	Mt. Vernon	\$85.20	\$5.00	-Partial funding for study and environmental analysis. Complements project #60, and #61. Eliminates bottleneck at CSX RR underpass. Funding for EA/FONSI and Preliminary Engineering Only. -Widen Route 1 from 4 to 6 lanes from the CSX Railroad Underpass to the Occoquan River bridge. This project would include reconstruction of the CSX Railroad Underpass, and pedestrian and bicycle facilities. Provides improved access and reduces congestion between Prince William County (points south) to Ft. Belvoir.
60	US 1 (Richmond Hwy) - Mt Vernon Mem Hwy to Napper Road - 4 to 6 Lanes	Lee, Mt. Vernon	\$90.00	\$68.00	-Complements current project under construction from Telegraph to Mt. Vernon Mem. Highway/Mulligan Rd. -Widen Route 1 from 4 to 6 lanes from Mount Vernon Memorial Highway (VA 235) to Napper Road. This project would include pedestrian and bicycle facilities. Corridor of regional significance. Facilitates economic development and eliminates current choke point between Mulligan Road and Mt. Vernon Memorial Highway (north). Completes widening of Rte. 1 to 6 lanes from Ft. Belvoir to Alexandria. Project will include provisions for future transit.
61	US 1 (Richmond Hwy) - Armistead Road to CSX Overpass - 4 to 6 Lanes	Mt. Vernon	\$84.75	\$5.00	-Partial funding for study and environmental analysis. Complements project #60, and #61. Eliminates bottleneck at CSX RR underpass. Funding for EA/FONSI and Preliminary Engineering Only. -Widen Route 1 (Richmond Highway) from 4 to 6 lanes from Armistead Road to I-95 Ramps. The project would include a raised median, intersection signalization improvements, and pedestrian and bicycle facilities. Provides improved access and reduces congestion between Prince William County (points south) to Ft. Belvoir. With projects #60 and #61, completes widening of Rte. 1 to six lanes across entire County.
62	VA 28 (Centreville Road) - Old Centreville to PW County Line at Bull Run - 4 to 6 Lanes	Springfield, Sully	\$47.35	\$47.35	-Complements I-66/VA 28 Interchange, w/ Project #3, completes VA 28 corridor through entire County. -Widen Route 28 (Centreville Road) from 4 to 6 lanes from Old Centreville Road to Prince William County Line, including intersection improvements and pedestrian and bicycle facilities. Reduces significant congestion between Prince William County and Centreville. Corridor of Regional Significance and improves access to Dulles Airport, Reston and Herndon areas. Large development just south of County line will exacerbate existing congestion. On state Delegate/Senator radar. VDOT looking at interim safety and access improvements south of County line.
66	US 29 (Lee Hwy) West of Fairfax - Union Mill to Buckley's Gate Drive - 4 to 6 Lanes	Springfield, Sully	\$32.70	\$25.00	-Complements VDOT project at Little Rocky Run (Bridge Replacement) UPC 59094. Completes widening of Rte 29 from Shirley Gate to Centreville. -Widen Route 29 from 4 to 6 lanes from Union Mill Road to Buckley's Gate Drive and provide pedestrian facilities on the north side of Route 29. Last segment of Rte. 29 between Fairfax City and Centreville that is not 6-lanes. Eliminates last remaining bottleneck.
69	US 50 (Arlington Blvd) Inside Beltway - Cedar Hill to Annandale Road - 4 to 6 Lanes	Mason	\$47.50	\$5.00	-Partial funding for environmental analysis and preliminary engineering only. -Widen Route 50 (Arlington Boulevard) inside the Beltway from 4 to 6 lanes from Cedar Hill Road to Annandale Road. The project would include intersection improvements, including signalization improvements, and pedestrian and bicycle facilities. Reduces significant congestion on Route 50 inside the beltway. Provides improved access to Seven Corners area, and facilitates economic development.
N/A	Jefferson Manor Neighborhood Improvements	Lee	\$14.50	\$1.00	Partial funding for study, design, and/or construction. Cost estimates are for phase III and IV improvements.
N/A	Route 236/Little River Turnpike - I-495 to John Marr - 4 to 6 Lanes w/Streetscape	Braddock, Mason		\$2.50	Partial funding for environmental analysis and preliminary engineering only. Improves access to Annandale and facilitates economic redevelopment
N/A	Route 7 Widening - Dulles Toll Road Bridge	Providence		\$13.90	Shortfall in funding of existing VDOT Project
<b>Total Roadway Widening</b>				<b>\$381.25</b>	

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ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
<b>Project Funding Recommendation - Transit</b>					
75	Braddock Rd P&R Lot	Braddock	\$10.00	\$7.50	-Project supports both transit and future HOV operation along Braddock Road between Burke Lake Road and I-495. -Construct commuter parking lot with approximately 500 spaces adjacent to Braddock Road near Kings Park West.
76	Columbia Pike Transit Service	Mason	\$135.00	\$9.50	-Estimated cost for capital and 2 year of operation for streetcar service.
	Capital			\$3.50	\$3.5M is balance needed for Fairfax County share of approximately \$50M; remainder of share to be funded via CMAQ. Improves access to Baileys Crossroads and facilitates economic development and revitalization; encourages creation of a walkable, bikeable, Columbia Pike.
	Operating			\$6.00	\$3M per year operating.
81	Fairfax County Parkway (Rt 286) Enhanced Bus Service	Braddock, Hunter Mill, Lee, Mt. Vernon, Springfield, Sully	\$47.00	\$7.10	-Includes further study needed to identify sites and costs for potential transit stations and park-and-ride lots, and route-level planning. -Implement enhanced bus service in FY-20 between Herndon-Monroe Park-and-Ride and Fort Belvoir via Fairfax County Parkway. Provides significant missing cross-county transit link.
83	South County Feeder Bus Service	Braddock, Lee, Mason, Mt. Vernon	\$106.50	\$24.90	-Includes route-level planning. Project to be implemented in phases. Estimated cost of capital and 3 years of operating. -Purchase buses and improve service levels on bus routes serving Richmond Highway, Kingstowne, and Springfield.
	Capital			\$10.50	\$10.5M for 21 buses.
	Operating			\$14.40	\$4.8M per year operating.
84	Vienna Metro Feeder Bus Service Expansion	Braddock, Hunter Mill, Providence, Springfield, Sully	\$132.50	\$46.80	-Includes route-level planning. Project to be implemented in phases. Estimated cost of capital and operating for 3 years. -Purchase buses, add new routes, and improve service levels on existing routes that serve the Vienna Metrorail station.
	Capital			\$31.50	\$31.5M for 63 buses.
	Operating			\$15.30	\$5.1M per year operating.
85	Vienna/Centreville Cross-County Bus Service	Braddock, Dranesville, Hunter Mill, Providence, Springfield, Sully	\$116.50	\$31.50	-Includes route-level planning. Project to be implemented in phases. Estimated cost of capital and 3 years operating. -Purchase buses and implement new cross-county limited-stop/express bus service serving Vienna and Centreville.
	Capital			\$16.50	\$16.5M for 33 buses.
	Operating			\$15.00	\$5M per year operating.
N/A	Transit Reserve			\$199.46	Reserve for future transit needs, these needs may include capital and operating costs, including: Metro 2025 (Momentum), Virginia Railway Express, Fairfax Connector; implementation of the Richmond Highway and Route 7 Alternatives Analyses, and implementation of the Countywide Transit Network Study.
<b>Total Transit</b>				<b>\$326.76</b>	

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ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
<b>Project Funding Recommendation - Bicycle and Pedestrian</b>					
87	Arlington Boulevard (Route 50) Walkway	Providence	\$5.00	\$5.00	Complete missing links from Blake Lane to Prosperity Avenue.
88	Arlington Boulevard (Route 50) Walkway	Providence	\$0.70	\$0.70	Construct walkway on the south side from 8301 Arlington Boulevard to Gallows Road.
89	Backlick Road Walkway	Lee	\$1.00	\$1.00	Construct walkway on west side of Backlick Road south of Barta Road.
90	Backlick Road Walkway	Mason	\$1.10	\$1.10	Construct walkway on east side of Backlick Road from Kandel Court to Cindy Lane.
91	Backlick Road Walkway	Mason	\$2.00	\$2.00	Construct walkway on east side of Backlick Road from Industrial Drive to Hechinger Drive.
93	Baron Cameron Avenue/Lake Fairfax Drive	Hunter Mill	\$0.25	\$0.25	Install signalized crosswalk at Lake Fairfax Drive.
94	Baron Road Walkway	Dranesville	\$0.25	\$0.25	Construct walkway on the north side of Baron Road from Dead Run Park trailhead to Douglas Drive.
95	Braddock Road Walkway	Sully	\$0.35	\$0.35	Construct walkway on the south side of Braddock Road from Calbern Drive to Clubside Lane.
97	Browne Academy Paved Trail	Lee	\$0.40	\$0.40	Construct trail at Browne Academy from Edgehill Court to Dewey Drive.
99	Burke Road Lane Diet and On-Road Bike Lanes	Springfield	\$0.04	\$0.04	Re-striping from Liberty Bell Ct to Rolling Road VRE P&R lot. Existing lanes and on-street parking can remain, but widths may be adjusted. Includes bicycle signage and access improvements near Liberty Bell Ct to improve safety and sight distance. -Complements Project 23 - Burke Road from Aplomado Drive to Parakeet Drive (Spot Improvement).
100	Center Road Walkway	Springfield	\$0.80	\$0.80	Construct walkway on south side of Center Road from West Springfield High School to Garden Road.
101	Chain Bridge Road (Route 123)/Boone Boulevard	Providence	\$0.15	\$0.15	Install signalized crosswalks at Boone Boulevard.
102	Chain Bridge Road (Route 123) Walkway	Providence	\$1.80	\$1.80	Construct walkway on south side of Chain Bridge Road (Route 123) from Courthouse Road to Sutton Road.

**Attachment I: Revised Recommended Priority Project List for Funding  
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ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
103	Chain Bridge Road (Route 123) Walkway	Providence	\$2.00	\$2.00	Construct walkway on south side of Chain Bridge Road (Route 123) from Horse Shoe Drive (north intersection) to Niblick Drive.
104	Chain Bridge Road (Route 123) Walkway	Providence	\$6.00	\$0.25	Partial funding for study only. Construct walkway on east side of Chain Bridge Road (Route 123) over I-66 from White Granite Drive to Eaton Place.
105	Chesterbrook Road Walkway	Dranesville	\$0.85	\$0.85	Construct walkway on north side of Chesterbrook Road from Kirby Road to Golden Court.
106	Chesterbrook Road Walkway	Dranesville	\$1.20	\$1.20	Construct walkway on north side of Chesterbrook Road from Golden Court to Maddux Lane.
107	Chesterbrook Road Walkway	Dranesville	\$1.30	\$1.30	Construct walkway on south side of Chesterbrook Road from Chesterbrook Vale Court to North Albemarle Street.
108	Chichester Lane Walkway	Providence	\$0.30	\$0.30	Construct walkway on west side of Chichester Lane from existing sidewalk at Cherry Drive to existing Day Lilly Court Connecting Trail with new direct connection to Fairhill Elementary School Entrance near south entrance. Construct walkway from Lismore Lane to existing sidewalk on east side of Chichester Lane at Fairhill Elementary School.
109	Cinder Bed Road Bikeway	Lee	\$4.00	\$4.00	Provide approximately three miles of bikeway, extending from Fairfax County Parkway near Telegraph Road to the south side of the Franconia-Springfield Metrorail station. The southern segment could include an on-road facility on Cinder Bed Road.
110	Compton Road Walkway	Sully	\$1.40	\$1.40	Construct walkway on north side of Compton Road from east of pumping station to Centreville Road (Route 28).
111	Compton Road Walkway	Sully	\$3.00	\$3.00	Construct walkway on east side of Compton Road from Mt. Olive Road to Cub Run Stream Valley Trail.
112	Edsall Road/Montgomery Street	Mason	\$0.15	\$0.15	Install signalized crosswalks at Montgomery Street.
113	Edsall Road Walkway	Mason	\$0.70	\$0.70	Construct walkway on north side of Edsall Road from Timber Forest Drive to Edsall Gardens Apartments.
114	Edsall Road Walkway	Mason	\$4.00	\$4.00	Construct walkway on north side of Edsall Road over I-395 from Cherokee Avenue to Edsall Gardens Apartments.
115	Elm St/Dolley Madison Blvd Improved Pedestrian and Bicycle Crossing	Dranesville	\$0.10	\$0.10	The project will include lengthening the refuge area, upgrading ADA access, and installing rectangular rapid flashing beacons (RRFB) to improve safety at this intersection.

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ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
116	Fair Lakes Boulevard Walkway	Springfield	\$0.60	\$0.60	Construct walkway on south side of Fair Lakes Boulevard from Stringfellow Road to retail center.
117	Fairfax County Parkway Bicycle Wayfinding Signage	Braddock, Dranesville, Hunter Mill, Springfield, Braddock, Sully	\$0.08	\$0.08	Install bicycle way finding signs along the Fairfax County Parkway and Franconia-Springfield Parkway.
119	Fleet Drive Walkway	Lee	\$0.80	\$0.80	Construct walkway on east side of Fleet Drive from Yadkin Court to existing walkway south of Franconia Road.
120	Fort Hunt Road Walkway	Mount Vernon	\$0.40	\$0.40	Construct walkway on east side of Fort Hunt Road from Belle View Boulevard to Belle View Elementary School.
121	Fox Mill Road Walkway	Hunter Mill	\$2.40	\$2.40	Construct walkway on north side of Fox Mill Road from Fairfax County Parkway to Reston Parkway.
122	Franconia Road Median Refuge	Lee	\$0.20	\$0.20	Construct pedestrian median refuge area on Franconia Road at Westchester Street and Rose Hill Shopping Center.
123	Franconia-Springfield Metrorail Station/VRE Enhanced Bicycle Parking	Lee	\$0.13	\$0.13	Install covered bicycle parking to accommodate at least 30 bicycles. Improvements to the access driveway pavement and lighting and security may also be provided.
124	Gallows Road/Route 50	Providence	\$0.25	\$0.25	Install signalized crosswalks at Arlington Boulevard (Route 50) and Gallows Road interchange.
125	Georgetown Pike Walkway (Phase IV)	Dranesville	\$1.00	\$1.00	Construct walkway on north side of Georgetown Pike from Seneca Shopping Center to Falls Bridge Lane.
126	Glade Drive Walkway	Hunter Mill	\$0.20	\$0.20	Construct walkway on north side of Glade Drive from Middle Creek Lane to Glade Bank Way.
127	Glade Drive Walkway	Hunter Mill	\$0.40	\$0.40	Construct walkway on north side of Glade Drive from Colts Neck Road to Reston Parkway.
128	Glen Forest Drive Walkway	Mason	\$1.20	\$1.20	Construct walkway on south side of Glen Forest Drive from retail center on Route 7 to Glen Forest Elementary School.
129	Government Center Area Bicycle Demonstration Project	Braddock	\$0.18	\$0.18	Road diet on roadways to make the area more bicycle friendly. Government Center Pkwy from Random Hills Rd to Fairfax City. Post Forest Dr (West Ox Rd to Gov't Center Pkwy), Legato Rd (Post Forest Dr to US 29), and Ridge Top Rd (Random Hills Rd to US 29).
131	Gunston Cove Road Walkway	Mount Vernon	\$0.50	\$0.50	Construct walkway on north side of Gunston Cove Road from Cranford Street to Amsterdam Street.

**Attachment I: Revised Recommended Priority Project List for Funding  
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<b>ID #</b>	<b>Project Name</b>	<b>District</b>	<b>Est Cost (\$M)</b>	<b>6-Year Funding Recomm. (\$M)</b>	<b>Remarks/Scope</b>
132	Hooes Road Walkway	Mount Vernon	\$0.40	\$0.40	Construct walkway on north side of Hooes Road from Ox Road to Furnace Road.
133	Hunter Village Drive Bicycle Parking	Springfield	\$0.08	\$0.08	This project will complement the new on-road bike lanes by installing covered bicycle parking on the north end of Hunter Village Drive in the vicinity of Old Keene Mill Road.
134	Hunter Village Drive Walkway	Springfield	\$0.30	\$0.30	Construct walkway on north side of Hunter Village Drive from existing walkway east of Wentworth Place to Flax Street.
136	Idylwood Road Walkway	Dranesville	\$0.59	\$0.59	Construct walkway on east side of Idylwood Road from Norwalk Street to existing walkway two properties to the south.
137	Idylwood Road Walkway	Dranesville	\$0.81	\$0.81	Construct walkway on west side of Idylwood Road from Hillside Drive to Idylwood Court.
138	INOVA Center Medical Education Campus	Lee	\$0.21	\$0.21	This project will enhance both bicycle and pedestrian access from the medical education campus located off Metropolitan Center Drive in Springfield to the Franconia-Springfield Metrorail Station and nearby activity centers.
139	Jermantown Road/Oak Marr Recreation Center	Providence	\$0.15	\$0.15	Install signalized crosswalk at Oak Marr Recreation Center and existing trail/ramps.
140	Kirby Road Walkway	Dranesville	\$0.40	\$0.40	Construct walkway on south side of Kirby Road from Chesterbrook Elementary School to Halsey Road.
141	Kirby Road Walkway	Dranesville	\$1.50	\$1.50	Construct walkway on south side of Kirby Road from Halsey Road to Franklin Avenue.
142	Kirby Road Walkway	Dranesville	\$0.85	\$0.85	Construct walkway on north side of Kirby Road from Ivy Hill Drive to Corliss Court.
143	Kirby Road Walkway	Dranesville	\$0.95	\$0.95	Construct walkway on north side of Kirby Road from Chesterfield Avenue to Ivy Hill Drive.
144	Lee Chapel Road Walkway	Springfield	\$1.20	\$1.20	Construct walkway on the west side of Lee Chapel Road from Britford Drive to Burke Lake Road.
145	Lee Highway (Route 29) Walkway	Providence	\$3.00	\$3.00	Construct walkway on south side of Lee Highway (Route 29) from Circle Towers to Nutley Street.
146	Leesburg Pike (Route 7)/Utterback Store Road	Dranesville, Hunter Mill	\$0.15	\$0.15	Install signalized crosswalk at Utterback Store Road.

**Attachment I: Revised Recommended Priority Project List for Funding  
FY 2015 - FY 2020**

ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
147	Lisle Avenue Walkway	Dranesville	\$0.60	\$0.60	Construct walkway on the south side of Lisle Avenue from Griffith Road to Sportsman Drive.
148	Little River Turnpike (Route 236)/Old Columbia Pike	Mason	\$0.25	\$0.25	Install signalized crosswalks at Old Columbia Pike /Columbia Road.
150	Magarity Road Walkway	Dranesville	\$1.00	\$1.00	Construct walkway on south side of Magarity Road from Lusby Place to Peabody Drive near Westgate Elementary School.
151	Medford Drive Walkway	Mason	\$0.40	\$0.40	Construct walkway on east side of Medford Drive from Annandale High School to Davian Drive.
154	Mount Vernon Memorial Highway (Potomac Heritage National Scenic Trail)	Mount Vernon	\$6.50	\$6.50	Project will complete missing segments of the trail from southeast of Route 1 (Richmond Hwy) in the vicinity of the Washington's Mill Historic State Park to Grist Mill Park (southeast of Old Mill Rd). Includes bridge over Dogue Creek.
155	North Shore Drive Walkway	Hunter Mill	\$1.40	\$1.40	Construct walkway on south side of North Shore Drive from east of North Shore Court to Sycamore Valley Court.
157	Old Dominion Drive Walkway	Dranesville	\$0.25	\$0.25	Construct walkway on north side of Old Dominion Drive from northeast corner at Spring Hill Road to existing walkway at Duchess Drive.
158	Old Keene Mill Road Bike Shoulders	Springfield	\$9.10	\$9.10	This project includes the installation of bicycle shoulders on Old Keene Mill Road from Lee Chapel Road to Spring Road, providing connectivity for the south-central area of the County. Supplemental signage will be installed.
159	Olney Road Walkway	Dranesville	\$0.50	\$0.50	Replace existing sidewalk on Olney Road (southside) from Magarity Road to Lisle Avenue.
160	Peabody Drive Walkway	Dranesville	\$0.40	\$0.40	Construct walkway on east side of Peabody Drive from Magarity Road to Lisle Avenue near Westgate Elementary School.
161	Peace Valley Lane Walkway	Mason	\$0.50	\$0.50	Construct walkway on north side of Peace Valley Lane along Jeb Stuart High School.
162	Pleasant Valley Road Walkway	Sully	\$3.80	\$3.80	Construct walkway on east side of Pleasant Valley Road from north of Ellick Run to Dominion Virginia Power lines.
163	Post Forest Drive Walkway	Springfield	\$0.30	\$0.30	Construct walkway on south side of Post Forest Drive from Legato Road west to existing walkway.

**Attachment I: Revised Recommended Priority Project List for Funding  
FY 2015 - FY 2020**

ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
164	Post Forest Drive Walkway	Braddock	\$0.60	\$0.60	Construct walkway on south side of Post Forest Drive from Legato Road to Government Center Parkway.
165	Quander Avenue Walkway	Mount Vernon	\$1.30	\$1.30	Construct walkway on west side of Quander Avenue from southern West Potomac High School frontage to Quander Elementary School.
166	Riverside Road Walkway	Mount Vernon	\$0.40	\$0.40	Complete missing links on west side of Riverside Road from Elkin Street to Pennsylvania Boulevard.
167	Rolling Road Walkway	Braddock	\$0.80	\$0.80	Construct walkway on east side of Rolling Road from Roxbury Avenue to Tuttle Road.
168	Rugby Road Walkway	Sully	\$0.30	\$0.30	Construct walkway on west side of Rugby Road from Misty Creek Lane to Alder Woods Drive.
169	Seminary Road Walkway	Mason	\$1.60	\$1.60	Construct walkway on Seminary Road from north of Magnolia Lane to Colfax Avenue.
170	Shipplett Boulevard On-Road Bike Lanes	Springfield	\$0.04	\$0.04	Provide on-road bike lanes on Shipplett Boulevard from Burke Lake Road to Old Keene Mill Road by reducing roadway lane width. No roadway widening is anticipated.
171	Silverbrook Road Walkway	Springfield	\$0.20	\$0.20	Construct walkway on south side of Silverbrook Road from Oak Chase Circle to retail center.
172	Sleepy Hollow Road Walkways	Mason	\$4.30	\$4.30	Complete missing links on Sleepy Hollow Road from Columbia Pike to Route 7.
173	Soapstone Drive Walkway	Hunter Mill	\$1.20	\$1.20	Construct walkway on west side of Soapstone Drive from South Lakes Drive to Snakeden Branch.
174	<del>South Kings Highway</del>	Lee	<del>\$0.02</del>	<del>\$0.15</del>	<del>Install signalized crosswalks at The Parkway.</del> <del>Deleted from project list as VDOT has completed.</del>
175	South Lakes Drive Walkways	Hunter Mill	\$3.65	\$3.65	Complete missing links on South Lakes Drive from Greenkeepers Court to Sunrise Valley Drive.
176	Sunrise Valley Drive Walkway	Hunter Mill	\$0.50	\$0.50	Construct walkway on north side of Sunrise Valley Drive from Hitchcock Drive to Colts Brook Drive.
177	Sunset Hills Road Walkway	Hunter Mill	\$0.35	\$0.35	Construct walkway on north side of Sunset Hills Road from Old Reston Avenue to Reston Parkway.

**Attachment I: Revised Recommended Priority Project List for Funding  
FY 2015 - FY 2020**

ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
178	Telegraph Road/Franconia Road	Lee	\$0.15	\$0.15	Install signalized crosswalk at Franconia Road.
179	Telegraph Road - Hayfield Secondary School Pedestrian Improvements	Lee	\$0.20	\$0.20	Pedestrian safety improvements at crossing south of Broadmoor Street leading to Hayfield Secondary School.
180	Telegraph Road Walkways	Lee	\$2.10	\$2.10	Complete missing links from Huntington Avenue to Rose Hill Drive. Improves access to Metrorail station.
182	Van Dorn Street Pedestrian and Bicycle Access Improvements	Lee	\$0.50	\$0.50	Existing trail extending from Oakwood Rd (ramp underpass) to the Alexandria City Line will be improved to current geometric standards, including those segments under the Capital Beltway (I-95) and the railroad. Lighting and way finding signage included.
183	Vienna Metrorail Station Area Bicycle Connectivity Improvements	Providence	\$1.00	\$1.00	Enhance bike access to the Vienna Metrorail and Metro West Town Center; Vaden Dr Bridge, Five Oaks Rd from Vaden Dr to Blake Ln, and Virginia Centre Blvd through lane and road dieting. Includes bike wayfinding signage and shared lane markings.
185	Westmoreland Street On-Road Bike Lanes	Dranesville	\$0.04	\$0.04	Extend existing on-road bike lanes from Kirby Rd to Arlington County Line. Done as part of VDOT's repaving program. Westmoreland St is a priority route providing bicycle connectivity between McLean, Arlington, Metrorail stations, and the W&OD Trail.
186	Westmoreland Street Walkway	Dranesville	\$1.80	\$1.80	Construct walkway on west side of Westmoreland Street from Kirby Road to Lemon Road.
187	Westmoreland Street/Rosemont Drive	Dranesville	\$0.15	\$0.15	Widen east side of Westmoreland Street north of Rosemont Drive to accommodate proposed bike lanes.
188	Richmond Highway Pedestrian and Transit Initiative	Lee, Mount Vernon	\$12.00	\$12.00	These projects include construction of 19 intersection pedestrian improvements and 14 new sidewalks along the Richmond Highway (Route 1) Corridor between Fort Belvoir and the City of Alexandria.
189	Reston Metrorail Access Group (RMAG) Study Recommendations (Phase II)	Hunter Mill	\$25.00	\$21.55	These projects include construction of intersection pedestrian improvements, new sidewalks, new trails and new on-road bicycle facilities within a one-mile radius of the Reston Town Center Metrorail Station.
190	Herndon Metrorail Station Access Management Study (HMSAMS)	Dranesville, Hunter Mill	\$25.00	\$21.37	These projects include construction of intersection pedestrian improvements, new sidewalks, new trails and new on-road bicycle facilities within a one-mile radius of the Herndon and Innovation Center Metrorail Station.
191	Old Mount Vernon Road Walkway	Mount Vernon	\$2.10	\$2.10	Construct walkway on the west side of Old Mount Vernon Road from Mount Vernon Highway to Westgate Drive.

**Attachment I: Revised Recommended Priority Project List for Funding  
FY 2015 - FY 2020**

ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
192	Braddock Road Walkway	Sully	\$0.60	\$0.60	Construct walkway on the south side of Braddock Road from Pleasant Valley Road Intersection Project to Pleasant Forest Drive.
195	Crestview Drive Walkway	Dranesville	\$0.30	\$0.30	Construct walkway on the east side of Crestview Drive from Eldridge Lane to Builders Road.
196	Crestview Drive Walkway	Dranesville	\$0.40	\$0.40	Construct walkway on the west side of Crestview Drive from Ferris Avenue to Builders Road.
197	Georgetown Pike (Route 193) Crosswalk	Dranesville	\$0.10	\$0.10	Construct unsignalized crosswalk at Linganore Drive/Helga Place.
199	Georgetown Pike (Route 193) Walkway	Dranesville	\$1.00	\$0.05	Construct Cross County Trail underneath Georgetown Pike at Difficult Run in Great Falls National Park. Partial funding for study and/or design.
201	Great Falls Street Walkway	Dranesville	\$0.40	\$0.40	Construct walkway on the west side of Great Falls Street from Grande Lane to Haycock Road.
202	Great Falls Street Walkway	Dranesville	\$1.20	\$1.20	Construct walkway on Great Falls Street from I-66 Bridge to North West Street.
203	Idylwood Road Walkway	Dranesville	\$0.30	\$0.30	Construct walkway on the north side of Idylwood Road from Friendship Lane to Stephanie Marie Drive.
204	Ingleside Avenue Walkway	Dranesville	\$0.95	\$0.95	Construct walkway on the north side of Ingleside Avenue from McLean Community Center to Churchill Road.
205	Little River Turnpike (Route 236) Walkway	Mason	\$1.30	\$1.30	Construct walkway on the north side of Little River Turnpike both west of and east of Roberts Avenue.
206	Mason Neck Trail (Gunston Road Walkway)	Mount Vernon	\$5.00	\$5.00	Construct missing links of walkway on Gunston Road from Richmond Highway (Route 1) to Potomac River.
207	Monroe Street Walkway	Hunter Mill	\$0.20	\$0.20	Construct walkway on the west side of Monroe Street from the Dulles Toll Road Bridge to East Park Drive.
208	Redd Road Walkway	Dranesville	\$0.10	\$0.10	Construct walkway and bridge connecting Redd Road (Idylwood Road Side) to Redd Road (Pimmit Drive Side).
209	Scotts Run Stream Valley Trail	Dranesville	\$5.50	\$3.00	Partially funded to construct trail on the west side of I-495 from Georgetown Pike to the Scotts Run Stream Valley.

**Attachment I: Revised Recommended Priority Project List for Funding  
FY 2015 - FY 2020**

ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks/Scope
211	Rock Hill Road Walkway	Dranesville	\$1.75	\$1.75	Construct walkway on the east side of Rock Hill Road from Sterling Road to Astoria Circle.
N/A	Reston Town Center	Hunter Mill	\$0.04	\$0.04	Road/Lane Diets - add on-road bike lanes
N/A	<del>Georgetown Pike Crosswalk</del>	Dranesville	<del>\$0.23</del>	<del>\$0.23</del>	<del>I-495 Ramp or further west. Deleted as this project duplicates project 197.</del>
N/A	McWhorter Place	Mason	\$0.04	\$0.04	Construct missing segment of trail between cul de sacs
N/A	Rolling Valley Connector Trail	Springfield	\$1.40	\$0.25	Partial funding for study only. Construct new shared use path from Rolling Valley Park & Ride to Pohick Stream Valley Park
N/A	Belle View Blvd/ G.W. Parkway	Mount Vernon	\$0.40	\$0.10	Partial funding for study only. Add bike/ped crossing and connection to Mount Vernon trail. Examine signalization including HAWK
N/A	Franconia-Springfield Parkway Trail Connection	Lee	\$0.23	\$0.23	Extend shared use path from Spring Village Dr. to Ridgeway Dr. Access to Metrorail station.
N/A	Route 236 (LRT) Corridor Improvements	Mason	\$7.50	\$7.50	Add bike lanes, wide curb lanes, bike shoulders to complete network gaps
N/A	Holmes Run Stream Valley Trail	Mason	\$1.50	\$1.50	Upgrade pavement to better serve commuter bicyclists
N/A	Creek Crossing Pedestrian Enhancements	Hunter Mill		\$2.00	Upgrade existing pedestrian facility on east side of Creek Crossing from Fairway Dr to Old Courthouse Rd
N/A	Old Courthouse Rd Pedestrian Enhancements	Hunter Mill		\$1.50	Upgrade existing trail on northwest side of Old Courthouse Road From Freedom Hill Park to Westbriar Drive
N/A	Additional Countywide Dialogue on Transportation Requests	Countywide		<del>\$7.33</del> \$7.71	Countywide pedestrian and bicycle requests. Currently under review.
N/A	Little River Turnpike Walkway	Mason		\$3.00	South side from Hillbrook Dr to Little River Run Dr
N/A	Little River Turnpike Walkway	Mason		\$1.10	South side from Columbia Road to Mayhunt Ct
N/A	Lanier Street Bike/Ped Connection	Mason		\$0.15	Lanier Street from Exeter St to Carrico Dr
N/A	Dolley Madison Walkway	Dranesville	\$4.00	\$4.00	Southside from existing walkway east of Buchanan to Potomac School Rd/Georgetown Pike
N/A	Kirby Road Walkway	Dranesville	\$1.30	\$1.30	Eastside (Mori to Chesterbrook)
N/A	Chesterbrook Road Walkway	Dranesville	\$1.00	\$1.40	Southside (N Albemarle to Forest)
N/A	Chesterbrook Road Walkway	Dranesville	\$1.00	\$1.25	Southside (Forest to N 41st)
<b>Total Bicycle and Pedestrian</b>				<b>\$203.93</b>	

**Attachment II: Revised Projects Not Recommended for the Priority Project List**

ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks
<b>Interchange Projects</b>					
2	Franconia Springfield Pkwy/Neumann Street	Lee	\$58.05	\$0.00	Required if SOV Ramps are constructed (Proj. #5). Partial Funding for continued planning and studies included in Projects #49-#53
5	I-95 and Franconia Springfield Parkway/SOV Ramps	Lee	\$189.75	\$0.00	VDOT has preliminary plans in place. Need to re-evaluate after HOT Lanes are completed. Eligible for 90/10 Federal Match
6	Route 123 and Braddock Road	Braddock, Springfield	\$119.50	\$0.00	West Campus Connector and Interim Improvements to be completed by FY16. Funding for planning purposes only.
7	Route 28 and New Braddock Road	Sully	\$47.50	\$0.00	Widen Route 28 First. See project #62
8	Route 50 and Stringfellow Road	Springfield, Sully	\$80.00	\$0.00	Limited improvement to Rte. 50 Corridor
11	Ffx Cnty Parkway and Sunrise Valley Drive	Hunter Mill	\$230.90	\$0.00	Widen Ffx Pkwy to 6 lanes first. See Project #52
				\$0.00	

<b>Extension Projects</b>					
17	Poplar Tree Overpass and Route 28 (Sully Road)	Sully	\$41.00	\$0.00	Project is part of VDOT's plan for I-66/VA 28 Interchange. May separate out to standalone project.
				\$0.00	

<b>Spot Improvement Projects</b>					
20	Amherst Ave/Backlick Road and Cumberland Avenue	Lee		\$0.00	
24	Cedar Lane and Rte 50 - SB Right Turn Lane	Providence	\$2.28	\$0.00	
25	Coppermine Road and Riverbirch Road - Add signal and Turn Lanes	Dranesville	\$1.90	\$0.00	Plan for signal install completed. Proffer Funding available for new signal.
28	Fairfax County Parkway and Spring St/Sunset Hill Road Interim Improv.	Dranesville	\$34.20	\$0.00	
29	Fairfax Station Road and Innisvale Drive	Springfield	\$5.80	\$0.00	
21	Georgetown Pike and Rte 123 (Dolley Madison Blvd.)	Dranesville	\$1.68	\$1.68	Add right turn lane on Georgetown Pike in eastbound direction. This project would include signalization improvements as well as pedestrian facilities. <i>Moved to funded list.</i>
36	Pleasant Valley Road and Herndon Avenue	Sully	\$4.45	\$0.00	
37	Rolling Road and Old Keene Mill Road	Springfield	\$1.50	\$0.00	Widening of Rolling Road from Old Keene Mill to Ffx Pkwy recommended for funding. If it is funded, then no need for this spot improvement
39	Silverbrook Road and Southrun Road	Mt. Vernon	\$0.60	\$0.00	
	Lorton Road/Lorton Market Road	Mt. Vernon	\$0.42	\$0.00	Extend WB Left Turn Lane
41	Spring Hill Road and Old Dominion Drive	Dranesville	\$10.00	\$0.00	
42	Woodburn Road and Tobin Road	Providence	\$1.39	\$0.00	
				\$1.68	

<b>Widening Projects</b>					
43	Alban Road - Rolling Road to Boudinot Drive - Curb Improvements and Additional Turn Lanes	Lee, Mt Vernon	\$43.80	\$0.00	
44	Backlick Road - Calamo St to Franconia Springfield Parkway	Lee	\$29.80	\$0.00	
47	Center Rd - Garden Rd to Glen Oaks Ct - Improve Two Lane Roadway	Springfield	\$1.30	\$0.00	
48	Cinder Bed Road - Enhanced 2 Lane - Add Turn Lanes, Widen Existing Lanes	Lee, Mt Vernon	\$13.35	\$0.00	

**Attachment II: Revised Projects Not Recommended for the Priority Project List**

ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Remarks
56	Newington Road - Enhanced 2 Lanes - Widen Existing Lanes, Improve Alignment	Lee, Mt. Vernon	\$19.30	\$0.00	
63	VA 28 (Sully Rd) - Dulles Toll Road to US 50 - 6 to 8 Lanes*	Dranesville, Sully	\$57.85	\$0.00	Address once I-66/VA 28 Interchange is complete and interim widening completed (NVTA FY14 Projects)
64	VA 28 (Sully Rd) - US 50 to I-66 Interchange - 6 to 8 Lanes	Sully	\$57.95	\$0.00	Address once I-66/VA 28 Interchange is complete and interim widening completed (NVTA FY14 Projects)
65	US 29 (Lee Hwy) West of Fairfax - Pleasant Valley to O'Day - 4 to 6 Lanes	Sully	\$44.20	\$0.00	
67	US 29 (Lee Hwy) Inside Beltway - I-495 to Falls Church - 4 to 6 Lanes	Providence	\$111.90	\$0.00	
68	US 29 (Lee Hwy) Outside Beltway - Merrilee Dr to Blake Lane - 4 to 6 Lanes	Providence	\$182.45	\$0.00	Most of segment (Blake Lane to Espana Court) in CLRP
70	US 50 (Arlington Blvd) Outside Beltway - Blake Lane to Williams Dr - 4 to 6 Lanes	Providence	\$57.25	\$0.00	
71	Telegraph Road - Hayfield Rd to South Van Dorn St - 2 to 4 Lanes	Lee	\$59.50	\$0.00	VDOT Allocated 0.74M for PE (UPC 58453)
72	Telegraph Road - Leaf Rd to Hayfield Rd - 2 to 4 Lanes	Lee, Mt Vernon	\$18.85	\$0.00	VDOT Allocated 0.74M for PE (UPC 58453)
73	West Ox Road - Lawyers Rd to McLearn Rd - 2 to 4 Lanes	Hunter Mill, Sully	\$26.75	\$0.00	
74	Woodburn Road - Enhanced 2 Lane - Add Turn Lanes, Improve Road Alignment	Mason, Providence	\$49.50	\$0.00	
				<b>\$0.00</b>	

Transit Projects					
77	Herndon Metro Parking Garage	Hunter Mill	\$54.00	\$0.00	Funding anticipated through revenue bonds.
78	Innovation Ctr Metro Parking Garage	Dranesville	\$54.00	\$0.00	Funding anticipated through revenue bonds.
79	Richmond Hwy Transit AA	Lee, Mt. Vernon	pending	\$0.00	Partial funding for follow-on study when current study is completed. Funding available in transit reserve.
80	Route 28 (Sully Rd) Enhanced Bus Svc	Hunter Mill, Springfield, Sully	\$47.00	\$0.00	Further study needed to identify sites and costs for potential transit stations and park-and-ride lots, and to perform route-level planning. \$\$3M capital; \$2.2M per year operating.
82	Route 7 (Leesburg Pike) Transit Study	Dranesville, Hunter Mill, Mason, Providence	pending	\$0.00	Partial funding for follow-on study when current study is completed. Funding available in transit reserve.
				<b>\$0.00</b>	

**Attachment II: Revised Projects Not Recommended for the Priority Project List**

ID #	Project Name	District	Est Cost (\$M)	6-Year Funding Recomm. (\$M)	Scope
<b>Bicycle and Pedestrian Projects</b>					
86	Arlington Boulevard (Route 50) Pedestrian Bridge	Providence	\$8.00	\$0.00	Construct pedestrian bridge on the north side of Route 50 over I-495 from Gallows Road to Fain/Lev Park Drive.
92	Backlick Road/Amherst Avenue Pedestrian Improvements	Lee	\$0.30	\$0.00	Install signalized crosswalks at Highland Street. Project is included in 2014 bond.
96	Brawner Street Walkway	Dranesville	\$3.50	\$0.00	Construct walkway on Brawner Street in front of Franklin Sherman Elementary School from Calder Road to Julia Avenue.
98	Burke Road Curve (Walkway Only)	Springfield	\$1.00	\$0.00	Construct walkway on Burke Road from Aplomado Drive to Parakeet Drive.
118	Fairfax County Parkway Walkway	Springfield	\$2.70	\$0.00	Construct walkway on north side of Fairfax County Parkway from Huntsman Boulevard to Lee Chapel Road.
130	Greensboro Drive Walkway	Providence	\$1.40	\$0.00	Construct walkway on north side of Greensboro Drive from Spring Hill Road to Rotunda entrance.
135	I-495 Bicycle-Pedestrian Bridge	Providence	\$10.00	\$0.00	Construct a new bicycle and pedestrian bridge over I-495 in the vicinity of John Marshall High School.
149	Little Rocky Run Circle Walkway	Sully	\$0.20	\$0.00	Construct walkway on east side of Little Rocky Run Circle from Rockdale Court (north intersection) to Braddock Road.
152	Monument Drive Walkway	Braddock	\$0.20	\$0.00	Construct walkway on west side of Monument Drive from Government Center Parkway (south intersection) to existing bus stop.
153	Moore Road Walkway	Sully	\$0.20	\$0.00	Construct walkways on both sides of Moore Road east of Cavalier Woods Lane.
156	Old Dominion Drive On-Road Bike Lanes/Shoulders	Dranesville	\$3.64	\$0.00	This project will retrofit on-road bicycle facilities on Old Dominion Drive from the central business district of McLean west to Georgetown Pike with either bike shoulders or on-road bike lanes. Supplemental wayfinding signage is also included.
181	Twin Branches Road Walkway	Hunter Mill	\$0.20	\$0.00	Construct walkway on south side of Twin Branches Road from Villaridge Drive to South Lakes Drive.
184	Wayne Drive Walkway	Mason	\$0.60	\$0.00	Construct walkway on south side of Wayne Drive from Gallows Road/Annandale Road to Mason Crest Elementary School.
193	Arnon Chapel Road Walkway	Dranesville	\$11.25	\$0.00	Construct stonedust walkway on Arnon Chapel Road from Walker Road to River Bend Road.
194	Colvin Run Road Walkway	Dranesville	\$4.00	\$0.00	Construct stonedust walkway on Colvin Run Road from Leesburg Pike (West Intersection) to Leesburg Pike (East Intersection).
198	Georgetown Pike (Route 193) Walkway	Dranesville	\$0.35	\$0.00	Construct walkway on the north side of Georgetown Pike from the CIA Entrance to Colonial Farm Road.
200	Great Falls Street Bicycle Facility	Dranesville	\$10.00	\$0.00	Construct, add signage and pavement markings, for bicycle facilities from Route 123 to the City of Falls Church. The facility would be a combination of bike lanes, climbing lanes, bike shoulders, and sharrows.
210	Springvale Road Walkway	Dranesville	\$11.25	\$0.00	Construct stonedust walkway on Springvale Road from Leesburg Pike (Route 7) to Georgetown Pike (Route 193).
212	Sterling Road Walkway	Dranesville	\$0.45	\$0.00	Construct walkway on the north side of Sterling Road from Herndon Parkway to Rock Hill Road.
213	Utterback Store Road Walkway	Dranesville	\$0.70	\$0.00	Construct walkway on the east side of Utterback Store Road from Forestville Elementary School to Georgetown Pike (Route 193).
214	Walker Road Walkway	Dranesville	\$15.00	\$0.00	Construct 1/2 mile stonedust walkway on Walker Road from Colvin Run Road to Walker Mill.
	Braddock Road On-Road Bicycle Facilities	Braddock	\$0.18	\$0.00	Lane diet and bike shoulders from 123 to Guinea Road.
	Phoenix Drive Bikeway	Providence	\$2.50	\$0.00	Construct trail from Jermantown Rd to Fairfax Farms Rd on Phoenix Rd alignment (segment of Custis Extension)
	Phoenix Drive Bikeway	Providence	\$2.50	\$0.00	Construct trail from Jermantown Rd to Fairfax Farms Rd on Phoenix Rd alignment (segment of Custis Extension)
	Bedrock Road & Cold Springs Lane Bicycle Connectivity Improvements	Lee	\$0.04	\$0.00	Retrofit on-street barriers to accommodate bicycle travel
	Seven Corners Transit Center	Mason	\$0.03	\$0.00	Install 10 bicycle lockers or install covered bike parking
				\$0.00	

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ACTION – 10

Amendment to Deed of Lease with Comstock Reston Station Holdings, LC Regarding Private Development above County-Owned Garage at Wiehle-Reston East Metrorail Station

ISSUE:

Board approval of an amendment to the existing Deed of Lease (“Lease”) between the Board of Supervisors and Comstock Reston Station Holdings, LC, of County-owned property adjacent to the Wiehle-Reston East Metrorail Station, to advance the timing of the initial base rent reset, contingent on Comstock commencing construction of a building at the site by June 1, 2014.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the proposed amendment to the Lease.

TIMING:

Board action is requested on January 28, 2014, to assist Comstock with commencing construction on a building at the site.

BACKGROUND:

On June 1, 2009, the Board approved a Comprehensive Agreement with Comstock Reston Station Holdings, LC and CRS Construction Services, LC (collectively, "Comstock") providing for Comstock to construct, on County-owned real estate on Wiehle Avenue in Reston, Virginia, certain public parking facilities (the "Project") to serve the new adjacent Silver Line Metrorail station, and for a lease of rest of the premises to Comstock for private development.

The Lease currently requires Comstock to pay a flat annual base rent of \$250,000 per year until one year after Metrorail operations commence on Phase I of the Silver Line, at which point base rent would reset to an annual amount equal to a set percentage of fair market value. (This timing of valuation was based on the notion that the land should be valued after Metro opens, in order for Metro’s impact on area land values to fully take effect.) Fair market value, in turn, is determined by an appraisal process described in the Lease and, as an initial step, would require the County to deliver its appraisal to Comstock between 6 and 9 months ahead of the one year anniversary of Silver Line

operations. Based on the currently anticipated scheduled opening of the Silver Line, the County would thus need to deliver its appraisal to Comstock sometime this summer, under the existing Lease process.

The County garage Project is largely complete. Comstock has indicated that they are interested in beginning construction of the first building at the site, a 400+ unit residential building, later this year. In addition to other final pre-construction steps, Comstock has stated that they will be unable to obtain financing for such construction until the rent obligation under the Lease following the initial reset is known.

To this end, staff has been negotiating with Comstock to value the leasehold – and thus to derive the initial reset base rent figure – earlier than contemplated under the current lease but otherwise in accordance with the lease valuation methodology. Upon the recommendation of the County's real estate advisors and after review of current market conditions, preliminary appraisals, and tax assessment data, staff have determined that an annual rental amount of \$2.9 million is appropriate under the lease methodology. This figure is also in line with previous assumptions.

Therefore, staff recommends that the Board authorize an amendment to the Lease that allows the base rent to be established now, earlier than originally contemplated. The amendment would also provide that Comstock would be required to commence construction of a building by June 1, 2014, and to diligently pursue construction thereafter; if Comstock fails to do so, the amendment would terminate and the lease would revert to the original valuation schedule.

It should be noted that base rent reset – i.e., from \$250,000 to \$2.9 million – will not actually take effect until one year after Metro commences Silver Line operations; the proposed amendment merely establishes, earlier than originally contemplated, the amount to which base rent will increase.

In the event this amendment is not approved, the process as described in the current agreement will proceed. This process includes a dispute resolution mechanism in the event the two parties do not agree to a figure after presenting competing appraisals in which a third appraiser is selected by agreement of each party's appraiser and who must choose between the County's appraisal and Comstock's appraisal; if the two appraisers cannot agree on a third appraiser, then either the County or Comstock can seek arbitration or court appointment of a third appraiser, as more fully described in the Lease.

On July 14, 2011 the County concluded a bond issue through the EDA that provided for the construction of the garage. The maximum annual debt service for the garage is approximately \$7.387 million per year to be primarily funded by revenues from the

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Commercial and Industrial Transportation Tax Fund, partially offset by ground rents under the Lease and parking fees net of operating and maintenance costs generated by the garage. The net expected annual cost to the C&I fund was expected to start at approximately \$4.8 million per year.

FISCAL IMPACT:

The maximum annual debt service on the bonds issued to finance construction of the County garage Project is approximately \$7.387 million per year commencing in FY 2015. The primary source of funds for the required debt service will be the County's C&I tax supplemented by the anticipated ground rents and net operating income generated by the facility. Ground rents under this scenario will commence at \$.967 million in FY 2015 rising to \$2.9 million by no later than 2020. Net operating income from the garage operations is expected to contribute approximately \$1.9 million per year at current Metrorail system parking rates. The gap to be filled by the C&I tax therefore remains approximately \$4.8 million per year to start in FY 2015 reducing thereafter to \$2.6 million in 2020 as ground rents increase with full build out.

ENCLOSED DOCUMENTS:

None

STAFF:

Rob Stalzer, Deputy County Executive  
Joseph LaHait, Debt Coordinator, Department of Management and Budget  
Ryan Wolf, Assistant County Attorney, Office of the County Attorney

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11:10 a.m.

Matters Presented by Board Members

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12:00 p.m.

CLOSED SESSION:

- (a) Discussion or consideration of personnel matters pursuant to Virginia Code § 2.2-3711(A) (1).
- (b) Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Virginia Code § 2.2-3711(A) (3).
- (c) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Virginia Code § 2.2-3711(A) (7).
  - 1. *Augusta E. Jackson v. Fairfax County Government*, Record No. 2244-13-2 (Va. Ct. App.) *Augusta E. Jackson v. Fairfax County Government*, Record No. 2244-13-2 (Va. Ct. App.)
  - 2. *Sheila E. Frace, Trustee v. John F. Ribble, III*, Case No. CL-2013-0017108); *Leslie B. Johnson v. Sheila E. Frace, Trustee*, Case No. CL-2014-0000128 (Fx. Co. Cir. Ct.) (Dranesville District)
  - 3. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Charilene N. Lucas, a/k/a Christine N. Lucas*, Case No. CL-2011-0012915 (Fx. Co. Cir. Ct.) (Lee District)
  - 4. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Tina M. Howard*, Case No. CL-2011-0017608 (Fx. Co. Cir. Ct.) (Providence District)
  - 5. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Sidney B. Hill and Wanda C. Hill*, Case No. CL-2012-0011053 (Fx. Co. Cir. Ct.) (Hunter Mill District)
  - 6. *Leslie B. Johnson, Fairfax County Zoning Administrator v. John B. Gardiner and Patricia S. Compton*, Case No. CL-2011-0010554 (Fx. Co. Cir. Ct.) (Braddock District)
  - 7. *Eileen M. McLane, Fairfax County Zoning Administrator v. Apolonia G. Fuentes*, Case No. CL-2009-0008361 (Fx. Co. Cir. Ct.) (Providence District)

8. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Robert D. Edmonds, Jr.*, Case No. CL-2012-0011472 (Fx. Co. Cir. Ct.) (Dranesville District)
9. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Wal-Mart Real Estate Business Trust*, Case No. CL-2014-0000288 (Fx. Co. Cir. Ct.) (Lee District)
10. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Frank L. Stevens and Mary E. T. Stevens*, Case No. CL-2012-0005051 (Fx. Co. Cir. Ct.) (Providence District)
11. *Eileen M. McLane, Fairfax County Zoning Administrator v. Tatjana Ute Fernandez and Gil Blanco Benitez*, Case No. CL-2012-0008162 (Fx. Co. Cir. Ct.) (Mason District)
12. *Leslie B. Johnson, Fairfax County Zoning Administrator v. David J. Soltis and Barbara J. Soltis*, Case No. CL-2013-0003833 (Fx. Co. Cir. Ct.) (Sully District)
13. *Leslie B. Johnson, Fairfax County Zoning Administrator and Michael R. Congleton, Property Maintenance Code Official v. Reina Meza and Silvio Meza*, Case No. CL-2012-0014556 (Fx. Co. Cir. Ct.) (Providence District)
14. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Zulma J. Funes*, Case No. CL-2013-0016706 (Fx. Co. Cir. Ct.) (Mason District)
15. *Leslie B. Johnson, Fairfax County Zoning Administrator and Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. John T. Wasdi*, Case No. CL-2013-0015808 (Fx. Co. Cir. Ct.) (Hunter Mill District)
16. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Gregg Riddiford*, Case No. CL-2013-0015905 (Fx. Co. Cir. Ct.) (Providence District)
17. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Juan A. Salguero and Sandra P. Salguero*, Case No. CL-2013-0014901 (Fx. Co. Cir. Ct.) (Providence District)
18. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Fred R. Torrez, Eulogia Torrez, Rodrigo Rojas Jaimes, and Judith S. Mendoza*, Case No. CL-2014-0000125 (Fx. Co. Cir. Ct.) (Providence District)

19. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Jacob Young and Eunmi Song, Case No. GV13-012670 (Fx. Co. Gen. Dist. Ct.) (Sully District)*
20. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Karl A. Eickmeyer, Case No. GV13-023914 (Fx. Co. Gen. Dist. Ct.) (Braddock District)*
21. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Karl A. Eickmeyer, Case No. GV13-023913 (Fx. Co. Gen. Dist. Ct.) (Braddock District)*
22. *Leslie B. Johnson, Fairfax County Zoning Administrator v. William O. Robinson, Jr., Case Nos. GV13-023476 and GV13-023477 (Fx. Co. Gen. Dist. Ct.) (Sully District)*
23. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Luis Escalona and Lidia Escalona, Case No. GV13-023860 (Fx. Co. Gen. Dist. Ct.) (Lee District)*
24. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Jose L. Zambrano, Case No. GV13-023859 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)*
25. *Leslie B. Johnson, Fairfax County Zoning Administrator v. David J. Moore, Jr., and Sterling E. Moore, Case No. GV13-022462 (Fx. Co. Gen. Dist. Ct.) (Mason District)*
26. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. David J. Moore, Jr., and Sterling E. Moore, Case No. GV13-022463 (Fx. Co. Gen. Dist. Ct.) (Mason District)*
27. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Candace K. Noonan, Case Nos. GV12-014862 and GV13-025682 (Fx. Co. Cir. Ct.) (Hunter Mill District)*
28. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Mark J. A. Nolen, Case No. GV13-023475 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)*
29. *Leslie B. Johnson, Fairfax County Zoning Administrator v. John L. Butterfield and Nancy S. Butterfield, Case No. GV13-018973 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)*
30. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Doris Harwitz Trust, Doris Harwitz and Stuart Harwitz, Trustees, Case Nos. GV13-023473 and GV13-023474 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)*

31. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Larry H. Wimer and Carolyn J. Wimer, Case No(s). GV13-025813 & GV13-025817 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)*
32. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Larry H. Wimer and Carolyn J. Wimer, Case Nos. GV13-025811 and GV13-025815 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)*
33. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Jarvis Barnwell Investments, LLC, Case No. GV13-011602 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)*
34. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Helen M. Parker-Smith, Case Nos. GV13-019039 and GV13-019040 (Fx. Co. Gen. Dist. Ct.) (Providence District)*
35. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Carl William Gaston, Sr., Case No. GV13-0265681 (Fx. Co. Gen. Dist. Ct.) (Lee District)*
36. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Jose Salome Portillo and Francisca E. Portillo, Case Nos. GV13-023469 and GV13-023470 (Fx. Co. Gen. Dist. Ct.) (Providence District)*
37. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Jose Salome Portillo and Francisca E. Portillo, Case Nos. GV13-023471 and GV13-023472 (Fx. Co. Gen. Dist. Ct.) (Providence District)*
38. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Gul Nabi, Case No. GV13-026060 (Fx. Co. Gen. Dist. Ct.) (Providence District)*
39. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Gul Nabi, Case No. GV13-026059 (Fx. Co. Gen. Dist. Ct.) (Providence District)*
40. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Kenneth L. Mobley and Magnolia M. Mobley, Case Nos. GV13-007301 and GV13-025678 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)*
41. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Janak R. Sachdev and Neelam Sachdev, Case Nos. GV13-025812, GV13-025814, and GV13-025816 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)*
42. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. 6440 Divine Street, LLC, Case No. GV13-025680 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)*

43. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Abdul H. Ebadi and Abdul M. Ebadi*, Case No. GV13-025685 (Fx. Co. Gen. Dist. Ct.) (Mason District)
44. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Ali H. Shwikhat and Anisa H. Sayoud*, Case No. GV13-027579 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
45. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Stephanie C. Ataide*, Case No. GV13-027578 (Fx. Co. Gen. Dist. Ct.) (Mason District)
46. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Wilfredo Bermudez and Carranza Romero*, Case No. GV13-027015 (Fx. Co. Gen. Dist. Ct.) (Lee District)
47. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Audrey J. Gearhart*, Case No. GV13-024989 (Fx. Co. Gen. Dist. Ct.) (Providence District)
48. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ebrahim A. Babazadeh Family Trust*, Case No. GV13-027378 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
49. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Raleigh W. Knight and Joyce M. Knight*, Case No. GV13-027178 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
50. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Christopher Brinsko*, Case No. GV13-027580 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
51. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Edwin Hercules Funk, Jr.*, Case No. GV13-015379 (Fx. Co. Gen. Dist. Ct.) (Lee District)
52. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Edwin Hercules Funk, Jr.*, Case Nos. GV13-003199 and GV13-003355 (Fx. Co. Gen. Dist. Ct.) (Lee District)
53. *Leslie B. Johnson, Fairfax County Zoning Administrator, Virginia v. Elizabeth Rojas*, Case No. GV14-000430 (Fx. Co. Gen. Dist. Ct.) (Lee District)
54. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Elizabeth Rojas*, Case No. GV14-000429 (Fx. Co. Gen. Dist. Ct.) (Lee District)

55. *Leslie B. Johnson, Fairfax County Zoning Administrator, Virginia v. Haji Noor Ahmad and Tahera Ahmad, Case Nos. GV14-000602 and GV14-001013 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)*
56. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Haji Noor Ahmad and Tahera Ahmad, Case Nos. GV14-000601 and GV14-001015 (Fx. Co. Gen. Dist. Ct.) (Lee District)*
57. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Sidney J. Silver, Trustee of the Special GST Tax Exemption Trust for the Benefit of Amanda Moorman, Case No. GV13-027380 (Fx. Co. Gen. Dist. Ct.) (Providence District/Town of Vienna)*

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Board Agenda Item  
January 28, 2014

3:00 p.m.

Annual Meeting of the Fairfax County Solid Waste Authority

ISSUE:

Fairfax County Solid Waste Authority annual meeting.

RECOMMENDATION:

The County Executive recommends that the Fairfax County Solid Waste Authority hold its annual meeting in accordance with the Bylaws for the Authority; appoint officers; approve the minutes of the last annual meeting on January 29, 2013; and review the fiduciary report.

TIMING:

Immediate. The Bylaws of the Fairfax County Solid Waste Authority require the annual meeting to coincide with the time for the last regular meeting of the Board of Supervisors set in January.

BACKGROUND:

The proposed agenda of the Authority meeting is included as Attachment I. The Bylaws further require a review and approval of the minutes of the previous year's meetings (Attachment II) and that officers of the authority be appointed to serve for a one-year term.

During FY 2013, the I-95 Energy/Resource Recovery Facility (E/RRF) processed 976,880 tons of municipal solid waste, 5% above the Guaranteed Annual Tonnage (GAT) of 930,750 tons required by the Service Agreement with Covanta Fairfax, Inc. (CFI), owner and operator of the facility. County waste delivered to the facility totaled 724,606 tons. This was below the GAT level but additional waste from the District of Columbia and Prince William County accounted for the remaining tons. Solid waste disposal is down overall due to the economy, increased recycling, and reduced sources such as packaging.

The June 2013 stack test and twice-yearly ash tests documented emissions from the E/RRF that were well below regulatory and permit limits established by the U.S. Environmental Protection Agency (EPA) and the Virginia Department of Environmental Quality. The report from the independent engineering firm of Dvirka and Bartilucci

Board Agenda Item  
January 28, 2014

confirmed in its October 2013 report that “CFI has complied with the requirements of the Service Agreement, as amended, and has complied with the Facility’s various environmental permit and regulatory obligations.” Covanta Fairfax continues to be certified as a Virginia Extraordinary Environmental Excellence Enterprise Program (E4) participant.

The construction bonds for the facility were paid in February 2011, with a resultant reduction in the tip fee paid by the county to Covanta. The Service Agreement extension continues through February 1, 2016. Other financial information is contained in the Fiduciary Report (Attachment III).

Now that the bonds have been paid, the Fairfax County Solid Waste Authority has assigned its lease interest in the property to Covanta Fairfax. An addendum to the lease is also being negotiated in conjunction with the negotiation of a Waste Disposal Agreement with Covanta, and that addendum would become effective when the current Service Agreement ends.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment I – Fairfax County Solid Waste Authority Meeting Agenda, January 28, 2014  
Attachment II – Minutes of the January 29, 2013, Solid Waste Authority Annual Meeting  
Attachment III – Fiduciary Report

STAFF:

Robert A. Stalzer, Deputy County Executive  
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)

**FAIRFAX COUNTY SOLID WASTE AUTHORITY**

**Annual Meeting Agenda**

**January 28, 2014**

1. Call-to-Order
2. Appointment of Officers.
  - Chairman - Sharon Bulova, Chairman, Fairfax County Board of Supervisors
  - Vice-Chairman - Penelope A. Gross, Vice-Chairman, Fairfax County Board of Supervisors
  - Secretary - Catherine A. Chianese, Clerk to the Fairfax County Board of Supervisors
  - Treasurer - Christopher Pietsch, Director, Department of Finance
  - Attorney - David P. Bobzien, County Attorney
  - Executive Director - Edward L. Long Jr., County Executive
  - Authority Representative - John Kellas, Director, Solid Waste Management Program Operations Division
3. Approval of the minutes from the January 29, 2013 meeting.
4. Approval of the fiduciary report for the Authority.

**MINUTES OF THE ANNUAL MEETING OF THE SOLID WASTE AUTHORITY**

**January 29, 2013**

At the Annual Meeting of the Fairfax County Solid Waste Authority held in accordance with Article III, Section I of the bylaws, in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, January 29, 2013, at 4:10 p.m., there were present:

**MEMBERS OF THE BOARD OF DIRECTORS AND OFFICERS:**

Chairman Sharon Bulova, presiding

Supervisor John C. Cook, of Braddock District

Supervisor John W. Foust, of Dranesville District

Supervisor Michael R. Frey, of Sully District

Supervisor Penelope A. Gross, of Mason District

Supervisor Patrick S. Herrity, of Springfield District

Supervisor Catherine M. Hudgins, of Hunter Mill District

Supervisor Gerald W. Hyland, of Mount Vernon District

Supervisor Jeffrey C. McKay, of Lee District

Supervisor Linda Q. Smyth, of Providence District

Edward L. Long, Jr., County Executive;

Catherine A. Chianese; Authority Secretary

Victor Garcia, Director, Department of Finance; Treasurer

David P. Bobzien, County Attorney; Authority Attorney

Joyce Doughty, Director, Division of Solid Waste Disposal and Resource Recovery, Department of Public Works and Environmental Services (DPWES); Authority Representative

**Meeting Minutes**  
**The Fairfax County Solid Waste Authority**  
**January 29, 2013**

Supervisor Gross moved that the Board appoint the following officers and officials to the Fairfax County Solid Waste Authority:

**OFFICERS**

Sharon Bulova Chairman, Fairfax County Board of Supervisors	- Chairman
Penelope A. Gross Vice-Chairman, Fairfax County Board of Supervisors	- Vice-Chairman
Catherine A. Chianese Clerk to the Fairfax County Board of Supervisors	- Secretary
Victor Garcia Director, Office of Finance	- Treasurer
David P. Bobzien County Attorney	- Attorney
Edward L. Long, Jr. County Executive	- Executive Director
Joyce M. Doughty Director, Division of Solid Waste Disposal and Resource Recovery, Department of Public Works and Environmental Services (DPWES)	- Authority Representative

Supervisor Foust seconded the motion and it carried by unanimous vote.

Supervisor Gross moved approval of the minutes from the May 22, 2012, special meeting of the Fairfax County Solid Waste Authority. Supervisor Foust seconded the motion and it carried by unanimous vote.

**Meeting Minutes**  
**The Fairfax County Solid Waste Authority**  
**January 29, 2013**

Supervisor Gross moved approval of the financial statements as contained in the Board Agenda Item dated January 29, 2013. Supervisor Foust seconded the motion and it carried by unanimous vote.

Joyce M. Doughty, Director, Division of Solid Waste Disposal and Resource Recovery, DPWES, provided a status report on the Solid Waste Planning, and alternatives for solid waste management planning in the future and expressions of interest to look at alternatives for recycling disposal and innovative technologies that are available.

Supervisor Gross moved to adjourn the Annual Meeting of the Fairfax County Solid Waste Authority. Supervisor Foust and Supervisor Hyland jointly seconded the motion and it carried by unanimous vote.

At 4:13 p.m., the Annual Meeting of the Fairfax County Solid Waste Authority was adjourned.

**Meeting Minutes  
The Fairfax County Solid Waste Authority  
January 29, 2013**

The foregoing minutes record the actions taken by the Fairfax County Solid Waste Authority at its meeting held on Tuesday, January 29, 2013, and reflects matters discussed by the Authority. Audio or video recordings of all proceedings are available in the Office of the Clerk to the Board of Supervisors of Fairfax County, Virginia.

Respectfully submitted,



Catherine A. Chianese  
Secretary  
Solid Waste Authority

**FAIRFAX COUNTY SOLID WASTE AUTHORITY**

Fiduciary Report

June 30, 2013 and 2012

**FAIRFAX COUNTY SOLID WASTE AUTHORITY**

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Statements of Fiduciary Assets and Liabilities .....	1
Notes to Fiduciary Report .....	2

**FAIRFAX COUNTY SOLID WASTE AUTHORITY**

Statements of Fiduciary Assets and Liabilities

June 30, 2013 and 2012

	<u>2013</u>	<u>2012</u>
<b>Assets:</b>		
Investments	<u>\$ -</u>	<u>\$ -</u>
<b>Liabilities:</b>		
Liability under reimbursement agreement	<u>\$ -</u>	<u>\$ -</u>

*See accompanying notes to fiduciary report.*

# FAIRFAX COUNTY SOLID WASTE AUTHORITY

## Notes to Fiduciary Report

June 30, 2013 and 2012

### 1. Organization

The Fairfax County Solid Waste Authority (the Authority) was formed by resolution of the Board of Supervisors of the County of Fairfax, Virginia (the County), on July 27, 1987. The Authority's board consists of the County's Board of Supervisors. Therefore, the Authority is considered a blended component unit of the County.

The Authority was formed for the purpose of constructing and overseeing the operations of a resource recovery facility (the Facility) in Lorton, Virginia, on a site that was purchased in July 2002 by the County from the United States. Prior thereto, legal title to the site was vested in the United States to the benefit of the District of Columbia; the site was leased by the District to the County, and the County assigned the leased site to the Authority. The Assignment of Site Lease to the Authority, dated as of February 1, 1988, has not been amended, terminated, rescinded, or revoked, and remains in full force and effect in accordance with its terms.

The construction of the Facility was partially financed by \$237,180,000 and \$14,900,000 of Series 1988A tax-exempt and Series 1988B taxable industrial revenue bonds, respectively, issued by the Fairfax County Economic Development Authority (EDA) during 1988. The Series 1988B Bonds were retired in February 1996. The Authority invests all bond proceeds through a trust account with a major bank. The Authority is responsible for making all investment decisions and authorizing all disbursements from the trust.

On February 1, 1988, an Installment Sales Agreement between the EDA and the Authority was executed whereby the Facility and the bond proceeds were sold to the Authority. Concurrent with this Installment Sales Agreement, the Authority entered into a Conditional Sale Agreement whereby the Facility, the bond proceeds and the Authority's leasehold interest in the site were sold to Covanta Fairfax, Inc. Under a related service agreement, Covanta designed, constructed, and operates the Facility. The Facility was completed and began commercial operations in June 1990. The County and the Authority have agreed to provide guaranteed minimum annual amounts of waste and annual tipping fees to the Facility. Under the terms of the Conditional Sale Agreement, debt service on the bonds was paid by Covanta through the Authority solely from solid waste system revenues generated by the Facility. The bonds were not general obligations of the Authority, the County, or the EDA.

During the fiscal year ended June 30, 1995, the EDA sold, at the request of the Authority for the benefit of the Facility, a call option on the Series 1988A Bonds to a financial institution for \$10,250,000. The option, which was exercised in November 1998, required the EDA to issue new bonds to the institution at certain agreed-upon interest rates. The proceeds of the new Series 1998A Resource Recovery Revenue Refunding Bonds together with certain proceeds remaining from the Series 1988A Bonds and certain other available funds were used to refund the remaining outstanding Series 1988A Bonds in February 1999. The final principal and interest payments on the Series 1998A Resource Recovery Revenue Refunding Bonds were made on February 1, 2011. The bank accounts held with the fiscal agent, US Bank, to service the debt payments and invest the debt service reserve were closed in FY2011. As a result, there were no fiduciary assets, obligations, or transactions to record or report in FY2013.

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Board Agenda Item  
January 28, 2014

3:30 p.m.

Decision Only on Proposed Area Plans Review Nominations 09-IV-IMV and 09-IV-15MV, Located Northwest of Richmond Highway, and Northeast Huntington Avenue (Mount Vernon District)

ISSUE:

Area Plans Review (APR) Nominations 09-IV-1MV and 09-IV-15MV propose to amend the Comprehensive Plan for Sub-unit A-1 (approximately 15.3 acres) and Sub-unit A-2 (approximately 2.5 acres), respectively, of the North Gateway Community Business Center of the Richmond Highway Corridor. Sub-unit A-1 is planned for retail, office and/or residential uses up to an intensity of .50 Floor Area Ratio (FAR), with an option for mixed-use development to include office, retail and residential uses up to an intensity of 1.0 FAR with conditions relating to consolidation, circulation, urban design, transportation and the environment. There is an alternative option for residential use at a density up to 30 dwelling units per acre (du/ac). Sub-unit A-2 is planned for neighborhood-serving retail use at an intensity up to .25 FAR, with an option for consolidation with Sub-unit A-1 in a unified mixed-use development at an intensity up to 1.0 FAR with conditions. The nominations propose to add an option for mixed-use development to include office, hotel and retail uses at an intensity up to 2.0 FAR with similar conditions and to delete the alternative option for residential use at a density up to 30 du/ac.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 14, 2013, the Planning Commission voted unanimously (Commissioners Donahue, Hall, Hedetniemi, Lawrence and Litzenberger not present for the vote) that the Board of Supervisors adopt an alternative for APR Nominations 09-IV-IMV and 09-IV-15MV. The Planning Commission alternative, as set forth in Attachment 1, supports the staff alternative for residential, office, hotel and retail mixed-use development up to an intensity of 1.65 FAR with additional language recommending: the reevaluation of guidance for Sub-units A-1 and A-2 after upcoming transportation studies have been completed; the access from Sub-unit A-2 be determined at the rezoning stage; and the transportation figures and text in the Plan be revised to show that Old Richmond Highway would be vacated from Cameron Run Terrace to Richmond Highway with redevelopment under the proposed option.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors adopt the Planning Commission recommendation as shown in the Planning Commission verbatim (Attachment I) and handout (Attachment II).

Board Agenda Item  
January 28, 2014

TIMING:

Planning Commission public hearing – November 14, 2013

Board of Supervisors public hearing – January 14, 2014 deferred Decision Only to  
January 28, 2014

BACKGROUND:

The Board of Supervisors designated 2009-2010 as the years to review and evaluate recommendations contained in the Comprehensive Plan for the southern part of the County.

The Mount Vernon APR Task Force recommended an alternative to the proposed nominations. The task force alternative retained the adopted Comprehensive Plan for a portion of Sub-unit A-1 and supported the nominated change to the Plan for the remainder of Sub-units A-1 and Sub-unit A-2. The alternative resulted in mixed-use development to include residential, office, hotel and retail uses at an overall intensity up to 1.65 FAR.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment I: Planning Commission Verbatim Excerpt

Attachment II: Planning Commission Handout dated November 14, 2013 with annotations to show the final Planning Commission Recommendations

Attachment III: Mount Vernon APR Task Force Recommendation, dated April 13, 2010.

Staff Report previously furnished and available online at:

<http://www.fairfaxcounty.gov/dpz/comprehensiveplan/amendments/09-iv-1mvand15mv.pdf>

STAFF:

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

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

Meghan Van Dam, Chief, Policy & Plan Development Branch, PD, DPZ

Aaron Klibaner, Planner II, PD, DPZ

Planning Commission Meeting  
November 14, 2013  
Verbatim Excerpt

APR 09-IV-1MV – COMPREHENSIVE PLAN AMENDMENT (NORTH GATEWAY)  
APR 09-IV-15MV – COMPREHENSIVE PLAN AMENDMENT (NORTH GATEWAY)

After Close of the Public Hearing

Chairman Murphy: All right, we're going to – the public hearing is – public hearing is closed; Mr. Flanagan.

Commissioner Flanagan: Thank you, Mr. Chairman. The Area Plan Review nomination 09-IV-1MV and 09-IV-15MV propose a change in land use and intensity at the northern gateway of the Richmond Highway Corridor, a location that provides an initial impression of the corridor and the County. By the way, this is one of only two commercial business centers that's on the Beltway, the other one being Tysons Corner. On April 3<sup>rd</sup>, 2010, the Mount Vernon APR Task Force recommended an alternative that reduced the overall intensity of the combined nominations and reintroduced residential use into the proposed mix of uses on a portion of the subject area. This recommendation is the basis of the staff alternative. Since the time of the task force recommendations, new transportation studies for the Huntington area and the Richmond Highway Corridor have either recently begun or are starting shortly. These studies may warrant a reexamination of the Plan recommendations. As a result, I support the staff alternative with a modification to encourage the future reevaluation of the subject area after the transportation studies have been completed and funding for improvements has been procured. Therefore, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE ADOPTION OF AN ALTERNATIVE TO THE STAFF RECOMMENDATIONS, AS SHOWN ON PAGES 1 THROUGH 6 OF MY HANDOUT DATED NOVEMBER 14, 2013. THE ALTERNATIVE SUPPORTS THE STAFF RECOMMENDATIONS WITH ADDITIONAL LANGUAGE THAT RECOGNIZES THE UPCOMING TRANSPORTATION STUDIES AND POSSIBLE FUTURE NEED TO REEXAMINE THE PLAN RECOMMENDATIONS. THE ALTERNATIVE ALSO MODIFIES LANGUAGE ABOUT ACCESS IN SUB-UNIT A-2, TO ALLOW FLEXIBILITY TO DETERMINE THE LOCATION AT REZONING STAGE.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the motion?

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Yes, Mr. Hart.

Commissioner Hart: A FRIENDLY AMENDMENT, I hope. THE BOTTOM OF PAGE 2 OF MR. FLANAGAN'S HANDOUT FROM TONIGHT, THE LAST BULLET – THAT BEFORE

Planning Commission Meeting  
November 14, 2013  
APR 09-IV-1MV AND APR 09-IV-15MV

Page 2

THE BOARD, STAFF WAS GOING TO CLARIFY THAT THAT FIRST BLOCK OF OLD RICHMOND HIGHWAY FROM HUNTINGTON AVENUE UP TO CAMERON RUN TERRACE, I GUESS, IS NOT BEING VACATED – THAT THAT WOULD STAY AND IT’S JUST THE PART TO THE RIGHT OF THAT THAT WOULD BE VACATED – in that last bullet on the bottom of page two.

Commissioner Flanagan: YES, I’LL ACCEPT THAT AS A FRIENDLY AMENDMENT.

Commissioner Hart: Thank you.

Chairman Murphy: All right, further discussion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt the alternative to these Plan Amendments, as articulated by Mr. Flanagan on items 09-IV-1MV and 09-IV-15MV, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much. Thank you folks for your work on this Plan Amendment. Mr. Klibaner, thank you – Ms. Van Dam – et. al.

//

(The motion carried by a vote of 7-0. Commissioners Donahue, Hall, Hedetniemi, Lawrence, and Litzenberger were absent from the meeting.)

JLC

**MOTION**

**November 14, 2013**

**Commissioner Early Flanagan, Mount Vernon District**

**Planning Commission Public Hearing**

**2009-2010 South County Area Plans Review items 09-IV-1MV and 09-IV-15MV**

**Motion:**

Mr. Chairman, Area Plans Review nominations 09-IV-1MV and 09-IV-15MV propose a change in land use and intensity at the northern gateway of the Richmond Highway Corridor, a location that provides an initial impression of the corridor and the county.

On April 3, 2010, the Mount Vernon APR Task Force recommended an alternative that reduced the overall intensity of the combined nominations and reintroduced residential use into the proposed mixture of uses on a portion of the subject areas. This recommendation is the basis for the staff alternative.

Since the time of the task force recommendation, new transportation studies for the Huntington area and the Richmond Highway Corridor have either recently begun or are starting shortly. These studies may warrant a reexamination of the Plan recommendations. As a result, I support the staff alternative with a modification to encourage the future reevaluation of the subject area after the transportation studies have been completed and funding for improvements has been procured.

Therefore, I move that the Planning Commission recommend to the Board of Supervisors the adoption of an alternative to the staff recommendation as shown on pages 1-6 of my handout dated November 14, 2013. The alternative supports the staff recommendation with additional language that recognizes the upcoming transportation studies and a possible future need to reexamine the Plan recommendations. The alternative also modifies language about access in Sub-unit A-2 to allow flexibility to determine the locations at the rezoning stage.

End of Motion

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**PLANNING COMMISSION RECOMMENDED PLAN TEXT  
NOVEMBER 14, 2013**

*(Additional modifications recommended by the Planning Commission during the public hearing are shown in italics.)*

2009-2010 SOUTH COUNTY APR NOMINATIONS 09-IV-1MV & 09-IV-15MV

Text to be added is shown as underlined and text to be deleted is shown as ~~strickethrough~~.

**MODIFY:** Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, amended through 4-9-2013, Richmond Highway Corridor Area, page 31.

Text to be added is shown as underlined and text to be deleted is shown as ~~strickethrough~~.

∴  
**“North Gateway Community Business Center**

Redevelopment in this area is anticipated to occur adjacent to I-495 primarily at the location of the auto dealerships. This area is planned to redevelop as a mixed-use project including residential, office, hotel, and retail uses. ~~or in the alternative as high rise residential use.~~ These planned uses complement the advantageous location near rail transit/transportation-oriented location and are compatible with the surrounding character and density.”

**MODIFY:** Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, Amended through 4-9-2013, Richmond Highway Corridor Area, pages 33-34.

**“Sub-unit A-1**

The area along the northwest side of Richmond Highway between the Capital Beltway and Old Richmond Highway I-495 and northeast of Huntington Avenue is planned for retail, office and/or residential uses up to .50 FAR.

As an option, mixed-use development to include residential, office, hotel and retail uses at an intensity up to 1.065 FAR may be appropriate as part of a unified redevelopment with full consolidation of Sub-units A-1 and A-2. If full consolidation is not achievable, an alternative may be pursued that logically consolidates parcels in Sub-unit A-1 and/or Sub-unit A-2 in order to provide the extension of Fort Hunt Road to Cameron Run Terrace in the initial phase. Further, a master plan for redevelopment of both Sub-units should be prepared to demonstrate how the future integration of unconsolidated parcels can be achieved.

In either option, if the following conditions are should be met:

- ~~A mix of uses, which may include office, retail and residential, is provided;~~
- ~~Substantial and logical parcel consolidation is achieved;~~
- ~~Pedestrian and vehicular connections are provided;~~
- Project Urban design and layout provide a high quality development elements incorporating the recommendations found at the end of the Richmond Highway Corridor section, such as complete streets, public art, pedestrian plazas, cultural/recreation facilities, landscaped open space, landmarks or building designs which will denote this area as a focal point of the North Gateway Community Business Center are included;
- A pedestrian circulation system is provided. Circulation should encourage pedestrian traffic within the development, and to and from adjacent developments, the Huntington Metrorail Station, and existing and planned pedestrian and bicycle routes, such as the Cameron Run Trail and other planned facilities. Streetscaping that includes elements such as space for outdoor dining, pedestrian sidewalks, landscaping, crosswalks, bicycle facilities, on-street parking, lighting, and/or transit accommodations, should be incorporated in the internal transportation network within the development. Adequate, well-positioned and safe pedestrian crossings across Richmond Highway and Huntington Avenue, with ramps, pavement markings and pedestrian countdown signals, should also be provided;
- A parking management program that may include parking reductions, providing less parking than required by code is prepared;
- Parking is consolidated into structures and integrated into the streetscape in order to avoid adverse visual impacts to major pedestrian, bicycle, or vehicular corridors. Façade treatment of parking structures should contribute to the visual appeal of the streetscape. Surface parking lots should be avoided or located in the rear of the buildings when necessary;
- ~~The A thorough traffic impact analysis of the proposed development is conducted with appropriate mitigation identified, thoroughly analyzed and mitigated so that Huntington Avenue and Richmond Highway adjacent to the site will operate at levels of service no less than Level of Service D; Grade-separated interchanges, new or extended roadways, roadway widening, and/or intersection turn lane improvements should be considered to assist in alleviating traffic congestion through the immediate area;~~
- ~~An efficient, pedestrian friendly, internal grid design for vehicular circulation system is provided;~~
- Old Richmond Highway should be vacated between Cameron Run Terrace and Richmond Highway and the extension of Fort Hunt Road from Richmond Highway to Cameron Run Terrace should be

constructed with any redevelopment of the subject area as shown on Figure 13;

- Access points are should be consolidated, and placed away from existing intersections and operate at levels of service no less than Level of Service D—Adequate storage capacity at the site access points should be provided to accommodate anticipated turn lane demands, into and out of the site;
- Adequate right-of-way is provided for the planned, grade-separated interchange at Richmond Highway and Huntington Avenue/Fort Hunt Road or for suitable, at-grade alternative mitigation developed through further study, and for any adjacent intersection, bicycle/pedestrian improvements, and/or road widenings to be defined through further study;
- Any proposed site design is coordinated with existing and planned transit in the area with bus shelters;
- A substantial Transportation Demand Management (TDM) program should be implemented as a component of the transportation mitigation. The TDM program should consider, but is not limited to, the following elements:
  - A TDM trip reduction goal of 30 percent should be sought for the office component of the site,
  - A TDM coordinator,
  - A commuter center/kiosk,
  - Incentives for residents and office workers to use alternative modes, such as transit, carpools, vanpools, bicycles and walking and to participate in flexible work schedules, alternative work schedules and teleworking,
  - Provision of, or funding for, long-term shuttle service and/or enhanced transit connections between the site, other area development, and the Huntington Metrorail Station, and
  - Covered and secure bicycle storage facilities and shower/locker facilities;
- A contribution for area-wide transportation improvements, including roadway and other multi-modal improvements that are generally proportional to the share of trips generated by the proposed development is provided at each improvement location. The contribution at each improvement location should be calculated based on a comparison of site generated trips versus regional/through trips;
- A pedestrian circulation system which encourages pedestrian traffic within the development, to adjacent developments and to the Huntington Metro Station is provided;

- ~~Adequate measures to mitigate against environmental impact should be provided. The related floodplain and wetland areas should be protected in accordance with Plan objectives, as well as, other applicable guidelines and regulations; and~~
- ~~Urban design elements, such as public art, pedestrian plazas, cultural/recreation facilities, landscaped open space, streetscaping, landmarks or building designs which will denote this area as a focal point of the North Gateway Community Business Center are included. The urban design recommendations found at the end of this Plan should be used as a guide.~~
- A linear park along the shoreline of Cameron Run that includes wayside areas with benches and construction of a portion of the proposed Cameron Run trail is provided;
- The Cameron Run floodplain is re-vegetated and the Resource Protection Area restored to the maximum extent possible;
- The amount of impervious surfaces is reduced to the maximum extent possible; if this is not achievable, there is no net increase in impervious surfaces;
- The total volume of stormwater runoff released from the site post-development for the 2-year, 24-hour storm should be at least 25% less than the total volume of runoff released in the existing condition for the same storm;
- Stormwater runoff is controlled such that either (a) the total phosphorus load for the property is no greater than what would be required for new development pursuant to Virginia's Stormwater Regulations and the County's Stormwater Management Ordinance; or (b) an equivalent level of water quality control is provided;
- As an alternative to the previous two bullets, stormwater management measures may be provided sufficient to attain the Rainwater Management credit(s) of the most current version of LEED-New Construction or LEED-Core and Shell rating system;
- As an alternative to the previous three bullets, stormwater management measures/and or downstream improvements may be pursued to optimize site-specific stormwater management and/or stream protection/restoration efforts, consistent with the adopted watershed management plan(s) that is/are applicable to the site. Such efforts should be designed to protect downstream receiving waters by reducing stormwater runoff volumes and peak flows from existing and proposed impervious surfaces to the maximum extent practicable, consistent with watershed plan goals; and
- A noise study is prepared to determine the extent of noise impacts and appropriate mitigation measures for interior areas of any residential, hotel and office uses and if necessary, outdoor activity areas.

~~As an alternative option, future redevelopment of Sub-unit A-1 northwest of Old Richmond Highway for residential use at a density up to 30 dwelling units per acre to be compatible with the surrounding high-rise residential uses may be appropriate. Substantial parcel consolidation, minimization of access points, provision of an efficient internal circulation pattern and mitigation of environmental and transportation impacts are required. See land use recommendations for Sub-units A-2 and B-2 for additional options.~~

Sub-units A1 and A2 may be appropriate for redevelopment at a higher intensity in the future when areawide transportation issues can be addressed. The plan for the mixture of uses and intensity should be evaluated following the completion of transportation studies for the Huntington area and the Richmond Highway Corridor, when mitigation strategies are identified.

### **Sub-unit A-2**

The redevelopment of the "island" formed by Richmond Highway and Old Richmond Highway would enhance the "gateway" character of this area and should be encouraged. Consolidation of all parcels within this "island" and redevelopment of this area with neighborhood-serving retail use up to .25 FAR is recommended. Building orientation should be to Richmond Highway but access should be to Old Richmond Highway.

As an option, if Sub-unit A-2 is fully consolidated and included in a unified mixed-use development plan with Sub-unit A-1, then Sub-unit A-2 may be appropriate for mixed-use development at an intensity up to 1.065 FAR. If full consolidation with Sub-unit A-1 is not achievable, an alternative option for logical consolidation of Sub-unit A-2 with at least Tax Map Parcel 83-2((1))2A is recommended for a mixed-use development to include residential, office, hotel and retail uses at a lower intensity than the maximum of 1.65 FAR. In addition to meeting the same conditions stated in the land use recommendation for Sub-unit A-1, as part of this mixed-use development, Old Richmond Highway should be vacated between Cameron Run Terrace and Richmond Highway and access should be provided from Sub-unit A-1 Richmond Highway."

**MODIFY FIGURES:** Figure 2, Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, Overview, Amended through 4-9-2013, page 6.

At the intersection of Richmond Highway and Huntington Avenue, replace the symbol and note that refers to the recommendation of a grade separated interchange, with the symbol and note that explains that further study is required to establish preliminary concepts and/or limits of restricted access.

Figure 13, Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, Amended through 4-9-2013, Richmond Highway Corridor Area, page 78.

Insert an arrow pointing to Old Richmond Highway with a caption that reads “Vacate Old Richmond Highway”. At the intersection of Richmond Highway and Huntington Avenue, replace the symbol and note that refers to the recommendation of a grade separated interchange, with the symbol and note that explains that further study is required to establish preliminary concepts and/or limits of restricted access.

Figure 29, Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, Amended through 4-9-2013, MV1-Huntington Community Planning Sector, page 123.

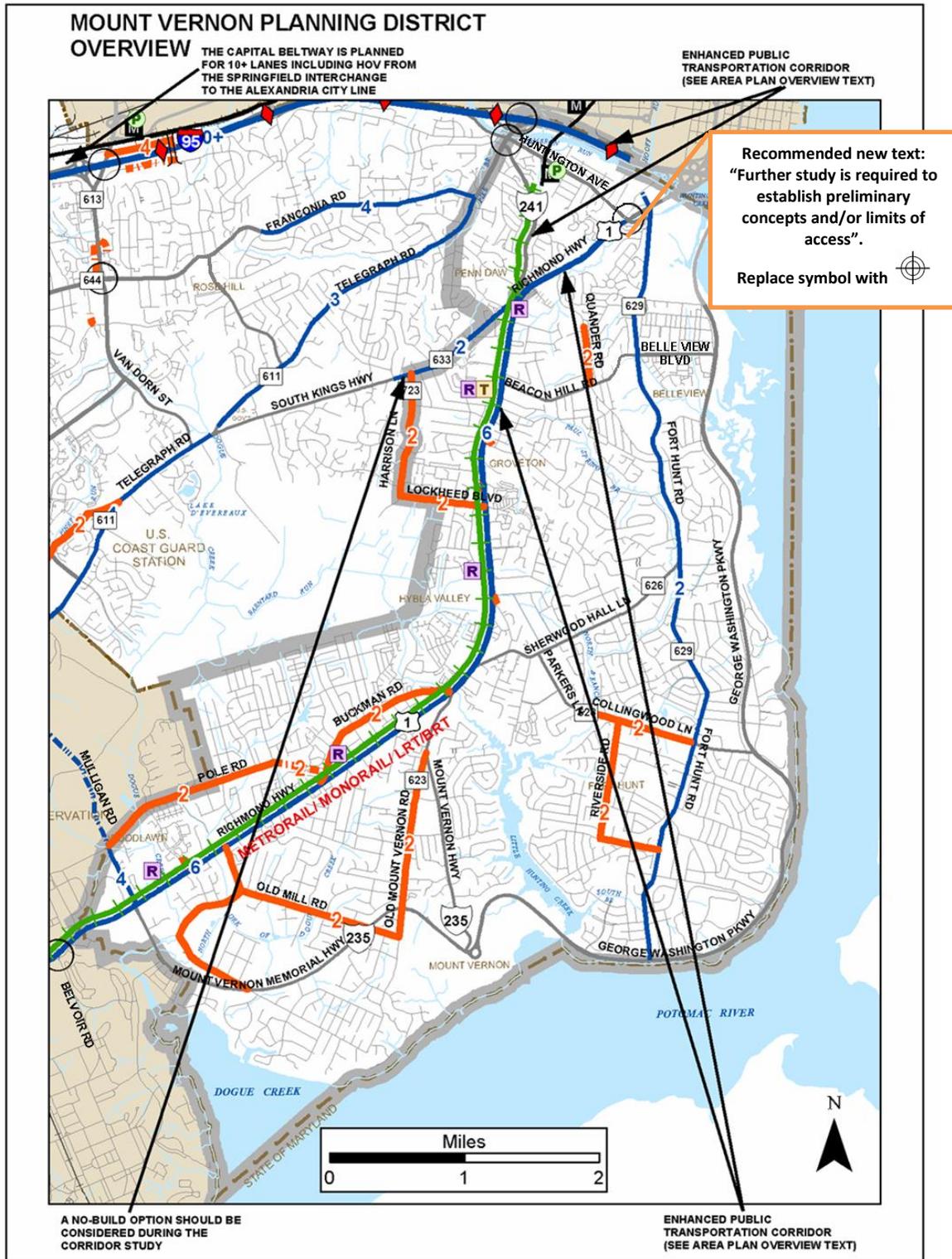
Insert an arrow pointing to Old Richmond Highway with a caption that reads “Vacate Old Richmond Highway”. At the intersection of Richmond Highway and Huntington Avenue, replace the symbol and note that refers to the recommendation of a grade separated interchange, with the symbol and note that explains that further study is required to establish preliminary concepts and/or limits of restricted access.

Figure 30, Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, Amended through 4-9-2013, MV1-Huntington Community Planning Sector, page 124.

Insert an arrow pointing to Old Richmond Highway with a caption that reads “Vacate Old Richmond Highway”. At the intersection of Richmond Highway and Huntington Avenue, replace the symbol and note that refers to the recommendation of a grade separated interchange, with the symbol and note that explains that further study is required to establish preliminary concepts and/or limits of restricted access.

**PLAN MAP:** The Comprehensive Land Use Plan Map will not change.

Proposed Changes To Transportation Figures  
 MV1 Huntington Community Planning Sector and North Gateway CBC

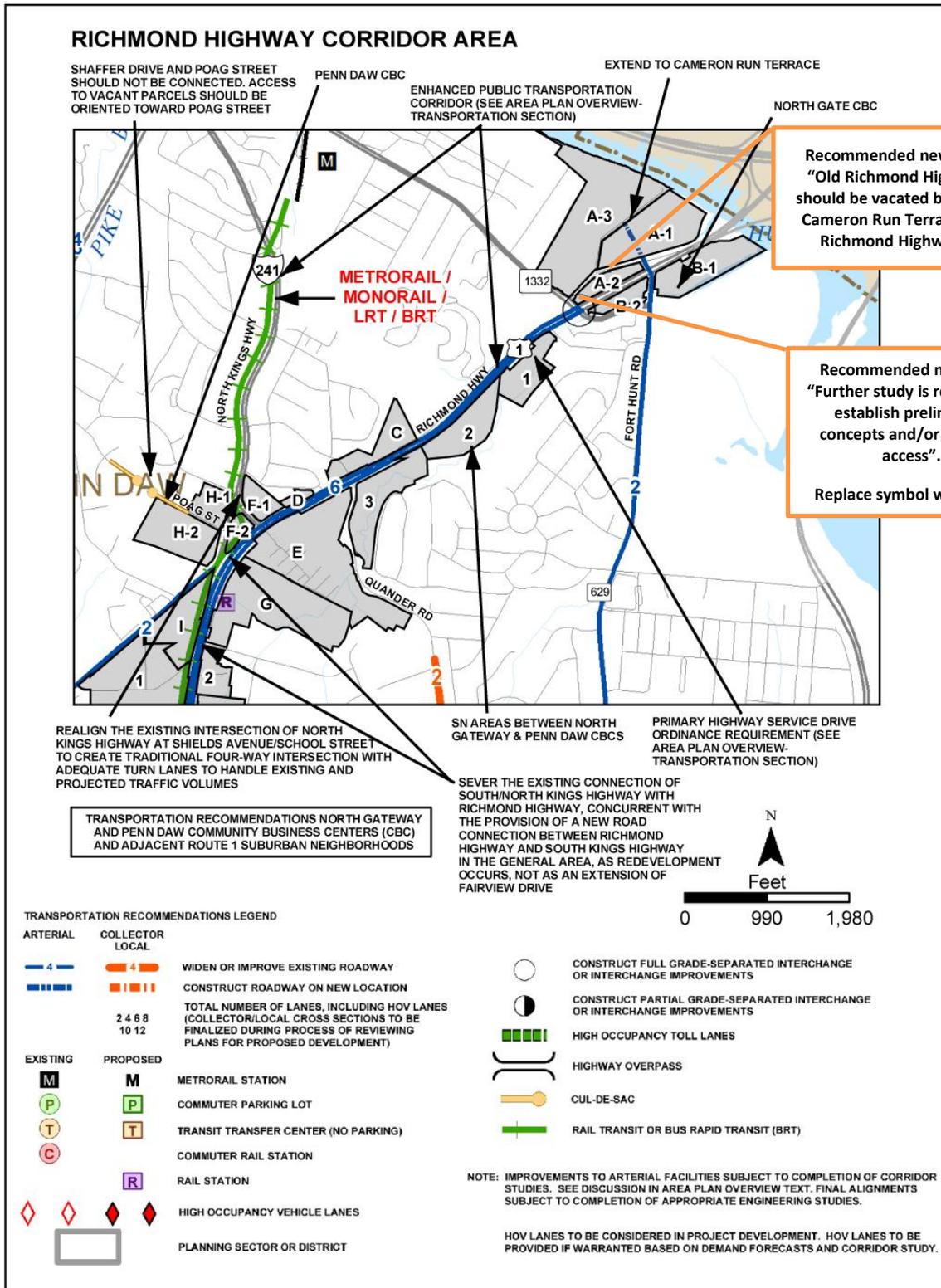


COUNTYWIDE TRANSPORTATION RECOMMENDATIONS  
 MOUNT VERNON PLANNING DISTRICT

FIGURE 2

(SEE SECTOR MAPS FOR DETAILED TRANSPORTATION RECOMMENDATIONS)

Proposed Changes To Transportation Figures  
 MV1 Huntington Community Planning Sector and North Gateway CBC

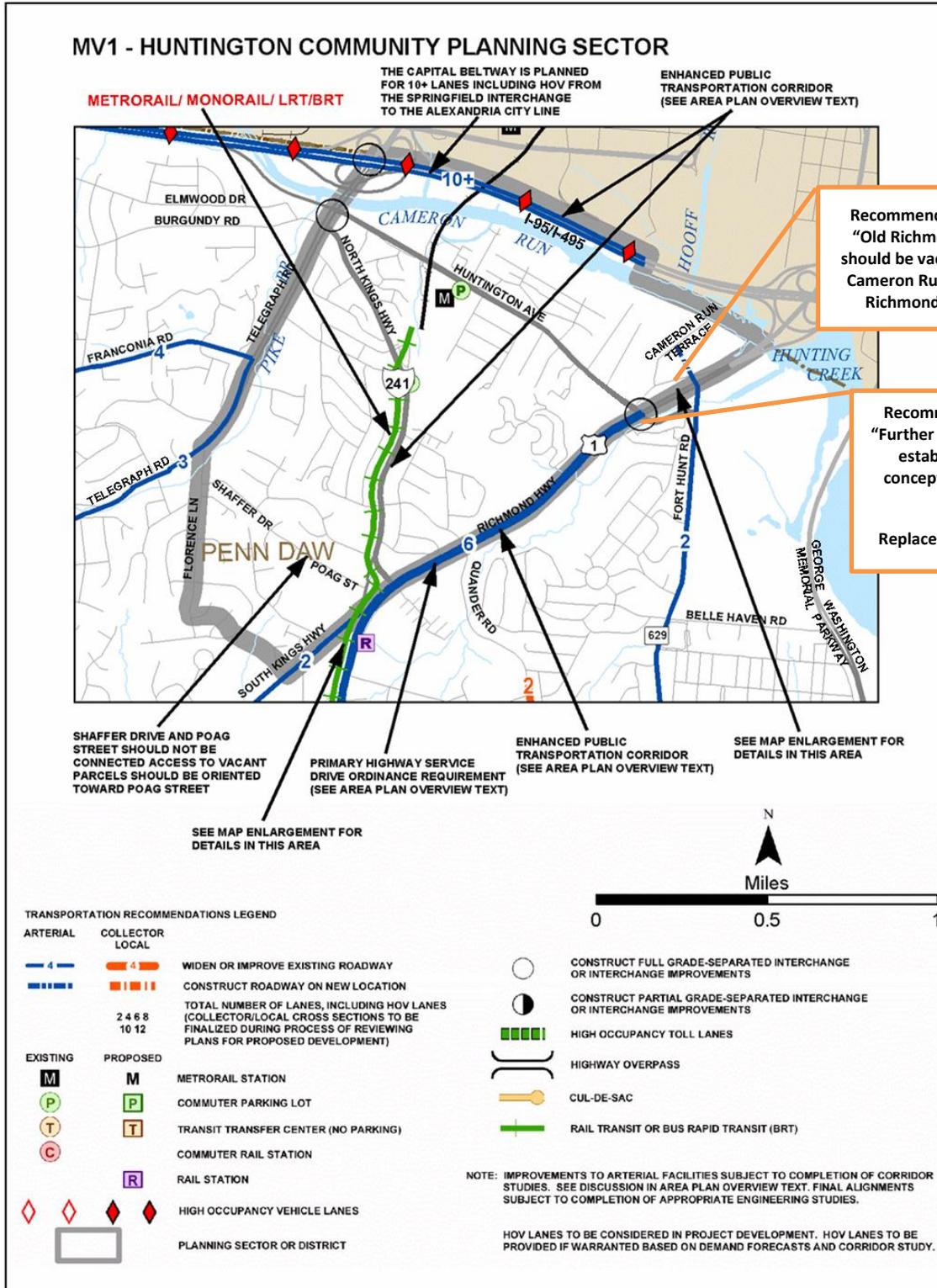


**TRANSPORTATION RECOMMENDATIONS** **FIGURE 13**

**NORTH GATEWAY AND PENN DAW CBCS AND**

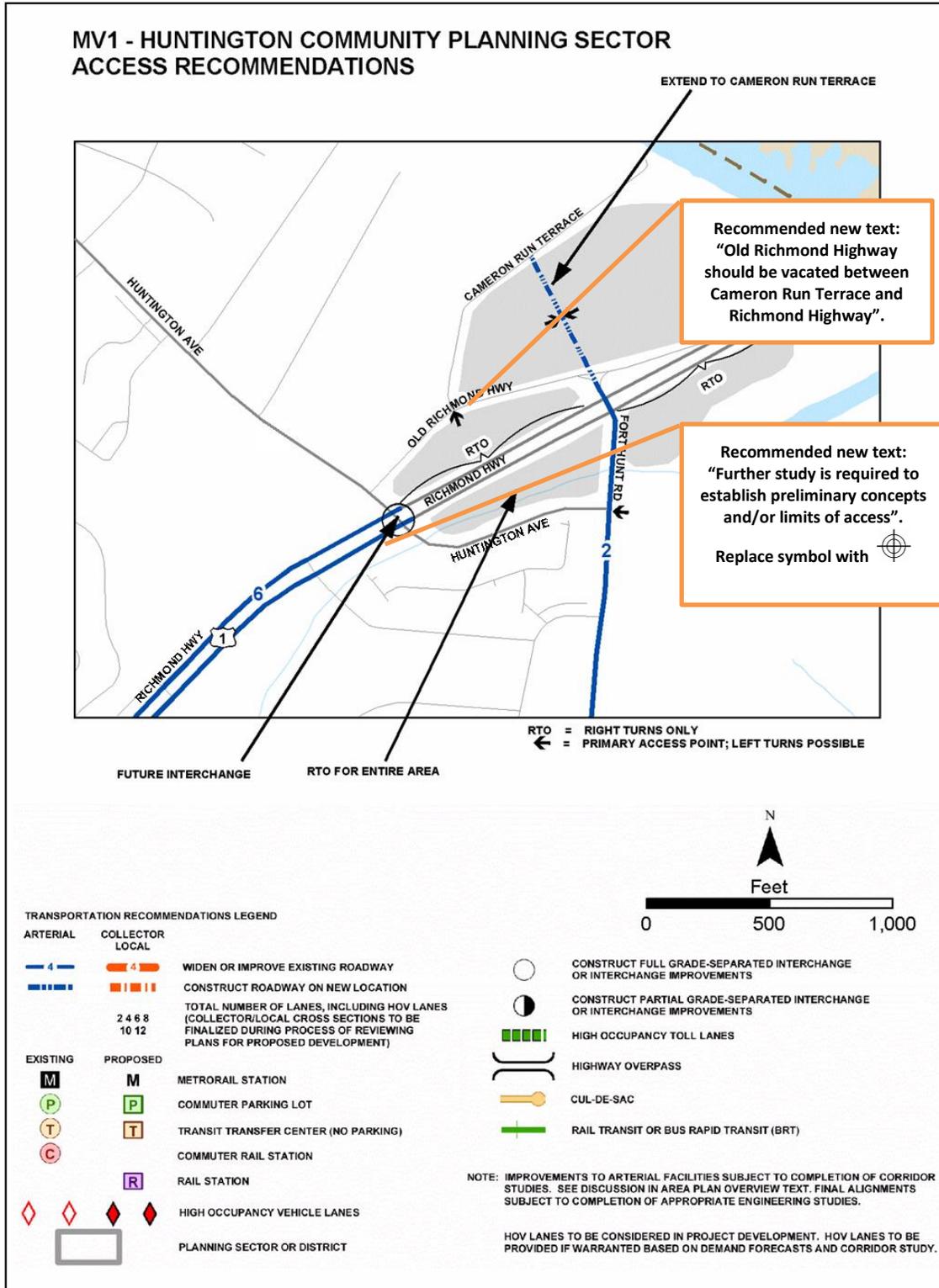
**ADJACENT RICHMOND HIGHWAY SUBURBAN NEIGHBORHOODS**

Proposed Changes To Transportation Figures  
 MV1 Huntington Community Planning Sector and North Gateway CBC



**TRANSPORTATION RECOMMENDATIONS** **FIGURE 29**

Proposed Changes To Transportation Figures  
 MV1 Huntington Community Planning Sector and North Gateway CBC



**ACCESS RECOMMENDATIONS  
 MV1 HUNTINGTON COMMUNITY PLANNING SECTOR**

**FIGURE 30**

MOUNT VERNON APR TASK FORCE  
RECOMMENDATION  
2009-2010 SOUTH COUNTY AREA PLANS REVIEW

APR ITEM # APR 1 MV & 15 MV

DATE(S) REVIEWED BY TASK FORCE: Reconciled on 4-13-2010  
NOMINATOR(S):

SUMMARY TASK FORCE RECOMMENDATION:

Approve Nomination as submitted \_\_\_\_\_  
Approve Nomination with Modification \_\_\_\_\_  
Retain Adopted Plan \_\_\_\_\_

see below

VOTE TALLY

In favor: 19  
Opposed: 0  
Abstentions: 0

Task Force member(s) who recused themselves from the vote:

TASK FORCE EXPLANATION/COMMENTS:

Retain the comp plan for Parc. 2A 6.24 Acr.  
and accept the nomination as submitted  
on the remaining parc.

Task Force Chairman (initials): JRB

Board Agenda Item  
January 28, 2014

3:30 p.m.

Public Hearing on RZ 2013-SU-010 (Christopher Land, L.L.C.) to Rezone from R-1 and WS to PDH-2 and WS to Permit Residential Development with an Overall Density of 1.89 du/ac and Approval of the Conceptual Development Plans, Located on Approximately 3.7 Acres of Land (Sully District)

This property is located at 13865 Walney Park Drive, Chantilly, 20151. Tax Map 44-4 ((1)) 18.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing was held on Wednesday, January 8, 2014, and decision was deferred to Wednesday, February 5, 2014. The Commission's recommendations will be forwarded to the Board of Supervisors subsequent to that date

ENCLOSED DOCUMENTS:

Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4437398.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Joe Gorney, Planner, DPZ

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Board Agenda Item  
January 28, 2014

4:00 p.m.

Public Hearing on RZ 2013-MV-001(A&R Huntington Metro, LLC) to Rezone from C-5 to PRM to Permit Mixed Use Development with an Overall Floor Area Ratio of 3.0, Approval of the Conceptual Plan, Waiver of Minimum District Size and Waiver #25678-WPFM-001-1 to Permit the Location of Underground Storm Water Management Facilities in a Residential Area, Located on Approximately 1.04 Acres of Land (Mount Vernon District)

This property is located at 2338, 2340, 2342 and 2344 Glendale Terrace and 2317 Huntington Avenue., Alexandria, 22303. Tax Map 83-1 ((8)) 92A, 92B, 93A, 93B and 94A.

The Board of Supervisors' public hearing was held on November 19, 2013; decision only was deferred to December 3, 2013. The public hearing was removed from the agenda on 12/3/13, and scheduled for public hearing on January 28, 2014.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 14, 2013, the Planning Commission voted 4-0-3 (Commissioners Hart, Migliaccio, and Murphy abstained and Commissioners Donahue, Hall, Hedetniemi, Lawrence, and Litzenberger were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2013-MV-001 and the associated Conceptual Development Plan (CDP), subject to the execution of proffers dated November 14, 2013;
- Waiver #25678-WPFM-001-1 to locate underground facilities in a residential area (PFM Section 6-0303.8), subject to the conditions dated July 10, 2013 contained in Appendix 10 as Attachment A;
- Waiver of Paragraph 1 of Section 6-407 of the Zoning Ordinance for the minimum district size for the PRM District;
- Waiver of Section 13-303 of the Zoning Ordinance for transitional screening and Section 13-304 for the barrier requirements between the uses within the proposed development, and modification of the transitional screening and waiver of the barrier requirements for the surrounding properties;
- Approval of a deviation from the tree preservation target pursuant to Section 12-0508 of the Public Facilities Manual (PFM);
- Modification of Section 12-0510.4e(5) of the PFM to permit a reduction of the minimum four-foot planting distance from a restrictive barrier;

Board Agenda Item  
January 28, 2014

- Waiver of Paragraph 3 of Section 8-0201 of the PFM and Paragraph 2 of Section 17-201 of the Zoning Ordinance for the requirement to construct an on-road bike lane in favor of a contribution for future funding;
- Waiver of Paragraph 3 of Section 17-201 of the Zoning Ordinance for the requirement to provide inter-parcel connections to adjoining parcels;
- Waiver of Paragraph 4 and 10 of Section 17-201 of the Zoning Ordinance for further construction and/or widening of existing roads surrounding the applicants property and of the requirement for under-grounding the existing utilities;
- Waiver of Section 6-1307-2e in the PFM for the minimum setbacks of bioretention filter basins from building foundations and property lines;
- Waiver of Section 7-0802-2 of the PFM for parking geometric standards to allow projections of the structural columns within the parking structures into the required parking stall area; and
- Direct the Director of the Department of Public Works and Environmental Services to approve a deviation from the tree preservation target, pursuant to Section 12-0508 of the PFM.

The Planning Commission voted 4-1-2 (Commissioner Hart voted in opposition; Commissioners Migliaccio and Murphy abstained; and Commissioners Donahue, Hall, Hedetniemi, Lawrence, and Litzenberger were absent from the meeting) to recommend the Board of Supervisors approve a modification of Section 11-203 of the Zoning Ordinance for required loading spaces to permit the loading space depicted on the CDP/FDP.

In a related action, the Planning Commission voted 4-0-3 (Commissioners Hart, Migliaccio, and Murphy abstained and Commissioners Donahue, Hall, Hedetniemi, Lawrence, and Litzenberger were absent from the meeting) to approve FDP 2013-MV-001, subject to the development conditions dated October 10, 2013, and the Board's approval of RZ 2013-MV-001 and the associated CDP.

ENCLOSED DOCUMENTS:

Attachment 1: Planning Commission Verbatim  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4431522.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Megan Brady, Planner, DPZ

Planning Commission Meeting  
November 14, 2013  
Verbatim Excerpt

RZ/FDP 2013-MV-001 – A&R HUNTINGTON METRO, LLC

Decision Only During Commission Matters  
(Public Hearing held on October 24, 2013)

Commissioner Flanagan: Yes, thank you, Mr. Chairman. This evening, we have on the agenda a decision only on RZ/FDP 2013-MV-001, A&R Huntington Metro, LLC. Before – before I move on this, and I do intend to move on this this evening, I would like to just go back and clarify what has happened since the public hearing, which was held on October 24. And at that public hearing, there was – we had not received any comments from the community – the Huntington Community Association with regard to how they regard the project, which is in the heart of their neighborhood, or from the Redevelopment Housing Authority, which supervises the Huntington Conservation Area. And so I deferred – the Commission deferred that – the decision until November 4 [sic], which was two weeks, in order to give those two organizations an opportunity to submit their written comments. In the meantime, the Huntington Community Association did file their comments on November 4<sup>th</sup>, three days before the scheduled decision on November 7<sup>th</sup> and I'm distributing that letter tonight because on November 7, I deferred again until November 14<sup>th</sup>, tonight, in order to give the Redevelopment Housing Authority additional time to provide comments. Those have not been forthcoming and so I am prepared to move ahead on this application since I do not – the only reason these deferrals are necessary is because this application didn't get to the Housing Authority on January the 18<sup>th</sup> when it was supposed to – should have been transmitted to them. And after that time – that amount of time, I would fully have had expected that RHA's comments would have been completed by tonight. And so I'm going to be moving ahead with the motion on this because I don't think that the bureaucracy should be the cause of holding the applicant hostage until next year. The – if – it doesn't appear from a memo that you received from RHA that they will not be able to get comments to us until the – until the – after the 12<sup>th</sup> of December. We do not have any meetings scheduled after that and so it would be deferred into 2014 and at some peril to the viability of the project. So consequently, I don't think there's probably – from what I've heard in the comments that RHA was going to make or that they have – they've already done the review – I don't think it would add much to the difference to what we're hearing from the housing – the Huntington Community Association in the letter which you have tonight. With that in mind, I would like though to review also some of the features of this application and if I could have the applicant come to the lectern, I would like to review some things with him because since the public hearing on October 24, they have made changes to the proffers – taking into consideration many of the comments that you Commissioners raised at the public hearing. And those particularly related to – to parking and to the guest parking, to deliveries, and that sort of thing – and we have in the process – in the intervening time – stumbled across the fact that they will have additional time to make their findings known. And so I'm asking Mr. Looney – if he, tonight, will answer some questions about some of those items. First of all –

Chairman Murphy: Hold – we're on verbatim now, I believe. Are we?

Commissioner Flanagan: Are we? No, I don't think we are until I move.

Commissioner de la Fe: No.

Chairman Murphy: No, you started calling the case so we're on verbatim.

Commissioner Flanagan: We are on verbatim? Okay, well –

Commissioner de la Fe: Make it quick.

Commissioner Flanagan: Anyway, you are aware of the fact that they're in the – could you give us the basis, basically, of the housing community or the – community association comments that's in their letter.

Mark Looney, Esquire, Cooley LLP: As to their comments?

Commissioner Flanagan: Yes, I think that they have – they stated in here that they find that the application satisfies the amendments to the conservation plan for this site.

Mr. Looney: Obviously, Mr. Flanagan – for the record, Mark Looney with Cooley on behalf of the applicant – obviously, the Huntington Community Association letter speaks for itself in terms of their view that the project meets the intent of the Conservation Plan. I don't know that I really have much to add to that beyond what their – what their letter already provides, as long as it has been entered into the record.

Commissioner Flanagan: And basically, that is that the – it – there are five points, I believe, in the Conservation Plan and they are satisfied that it meets all of those requirements.

Mr. Looney: Yes sir, that's my understanding.

Commissioner Flanagan: Fine. Thank you so much.

Chairman Murphy: Go ahead.

Commissioner Flanagan: Okay, with that then, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2013-MV-001 AND THE ASSOCIATED CONCEPTUAL DEVELOPMENT PLAN, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED NOVEMBER 14, 2013.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the motion? Mr. Migliaccio.

Commissioner Migliaccio: Thank you, Mr. Chairman. I'll be very brief since we are on verbatim. Simply put, I cannot support this application in its current form. Staff did a good – excuse me – staff did a good job of listing the outstanding issues of this application, many stemming from the lack of land consolidation. Out of a recognition of the difficulty and jump-starting projects near the Huntington Metro, I will abstain rather than vote no. Thank you.

Chairman Murphy: Is there further discussion?

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Yes, Mr. Hart.

Commissioner Hart: Thank you. This is a difficult case and I think it involves some countywide principles. I would have been more comfortable with a deferral to wait to see what the Redevelopment Housing Authority had to say. And I think from reading the resolution from 1976, I feel like – even though there's some sort of rush to get this done before the end of the year now – that that was what the Board had intended in the 70s. There is some good things about the application and I think that we want to encourage redevelopment in Huntington. Staff is still recommending denial and I agree with Commissioner Migliaccio's observations about staff's reasons. We, I think, have an obligation to the Board to point things out when maybe we don't agree with them and I think on this one where we've got a mixed use with retail with zero parking, that may have countywide implications. There's a lot of waivers on this case. Commissioner de la Fe has pointed out in the past the problems with applications with so many waivers and I think part of that is stemming from the fact that there really wasn't consolidation. This is such a small site and these things don't fit. The retail with zero parking is not going to work. The waiver of the loading space is making that worse. And I think in a neighborhood with an existing residential parking district with restricted parking, all of those things coming together are going to make this very, very challenging for the residents and the tenants in the retail space. There are good things in the application. I think the applicant has tried since the public hearing with some of the changes in the proffers to address some of these concerns. But in the final analysis, I think staff is still right. So I won't be supporting the application. Thank you.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2013-MV-001, say aye.

Commissioners: Opposed?

Commissioners Hart and Migliaccio: Abstain.

Chairman Murphy: Okay, motion carries. Mr. Migliaccio, Mr. Hart, and the Chair abstains. The Chair was not present for the public hearing. The motion carries.

Commissioner Flanagan: I also have another motion – a follow-on motion here.

Chairman Murphy: Go ahead.

Commissioner Flanagan: I MOVE THAT THE PLANNING COMMISSION APPROVE FINAL DEVELOPMENT PLAN 2013-MV-001, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED OCTOBER 10, 2013, AND THE BOARD'S APPROVAL OF RZ 2013-MV-001 AND THE ASSOCIATED CONCEPTUAL DEVELOPMENT PLAN.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor of the motion to approve FDP 2013-MV-001, subject to the Boards approval of the Rezoning and Conceptual Development Plan, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Hart and Migliaccio: Abstain.

Chairman Murphy: Motion carries, same abstentions.

Commissioner Flanagan: I have a third motion to move that the Planning Commission recommend to the Board of Supervisors approval of the following waivers and modifications – and those are listed in the staff report. And if you don't I will read all of those and include them in a single motion if that's without –

Chairman Murphy: Be my guest.

Commissioner Flanagan: -objection.

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Could we pull out the loading space waiver and vote on that one separate?

Commissioner Flanagan: Which one?

Commissioner Hart: The loading space waiver.

Commissioner Flanagan: Loading space?

Commissioner de la Fe: It's the last bullet.

Cathy Lewis, Zoning Evaluation Division, Department of Planning and Zoning: Mr. Flanagan, it's the first one on the second page of your motions.

Commissioner Flanagan: The loading space?

Ms. Lewis: Right.

Commissioner Flanagan: My first waiver is underground facilities.

Chairman Murphy: The second page – it's the first one on the second page.

Ms. Lewis: The second page – the first one on the second page.

Commissioner Flanagan: Okay. All right, THE MOTION THEN WOULD BE TO ADOPT ALL OF THOSE THAT ARE IN THE STAFF REPORT, WITH THE EXCEPTION OF THAT ONE ON LOADING SPACE.

Chairman Murphy: Is there a second?

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioners Hart and Migliaccio: Abstain.

Chairman Murphy: Same abstentions.

Commissioner Flanagan: Very good. And I WOULD ALSO LIKE TO MOVE TWO MORE WAIVERS THAT HAVE BEEN REQUESTED BY THE APPLICANT, WHICH ARE A WAIVER OF SECTION 6-1307-2E AND (sic) THE PFM FOR THE MINIMUM SETBACKS OF BIORETENTION FILTER BASINS FROM BUILDING FOUNDATIONS AND PROPERTY LINES AND A WAIVER OF SECTION 7-0802-2 OF THE PFM FOR PARKING GEOMETRIC STANDARDS TO ALLOW PROJECTIONS OF THE STRUCTURAL COLUMNS WITHIN THE PARKING STRUCTURES INTO THE REQUIRED PARKING STALL AREA.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries, same abstentions.

Commissioner de la Fe: We still have to vote on the loading.

Commissioner Flanagan: Yes. And finally, I would like to move – of the waivers, I WOULD LIKE TO MOVE THE MODIFICATION OF SECTION 11-203 OF THE ZONING ORDINANCE FOR REQUIRED LOADING SPACES TO PERMIT THE LOADING SPACES DEPICTED ON THE CDP/FDP.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant, is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Hart: Nay.

Commissioner Migliaccio: Abstain.

Chairman Murphy: Motion carries. Mr. Hart votes no. Mr. Migliaccio and Mr. Murphy abstain.

Commissioner Flanagan: Then my last and final motion is to MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS DIRECT THE DIRECTOR OF DPWES TO APPROVE A DEVIATION FROM THE TREE PRESERVATION TARGET, PURSUANT TO SECTION 12-0508 OF THE PUBLIC FACILITIES MANUAL.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor, say aye.

Commissioner Sargeant: Aye.

Chairman Murphy: You've got to do better than that.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries, same abstentions.

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(The first four motions carried by a vote of 4-0-3. Commissioners Hart, Migliaccio, and Murphy abstained. Commissioners Donahue, Hall, Hedetniemi, Lawrence, and Litzenberger were absent from the meeting.)

(The fifth motion carried by a vote of 4-1-2. Commissioner Hart voted in opposition. Commissioners Migliaccio and Murphy abstained. Commissioners Donahue, Hall, Hedetniemi, Lawrence, and Litzenberger were absent from the meeting.)

(The sixth motion carried by a vote of 4-0-3. Commissioners Hart, Migliaccio, and Murphy abstained. Commissioners Donahue, Hall, Hedetniemi, Lawrence, and Litzenberger were absent from the meeting.)

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January 28, 2014

4:00 p.m.

Public Hearing on Adoption of Chapter 124 (Stormwater Management Ordinance), Repeal of Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage), and Proposed Amendments to Chapters 101 (Subdivision Ordinance), 104 (Erosion and Sedimentation Control), 112 (Zoning Ordinance), 118 (Chesapeake Bay Preservation Ordinance), and Appendix Q (Land Development Services Fees) of The Code of the County of Fairfax, Virginia Re: Implementation of the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Regulation (9 VAC 25-870 et seq.)

ISSUE:

Board public hearing to consider adoption of Chapter 124 (Stormwater Management Ordinance), repeal of Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage), and adoption of proposed amendments to Chapters 101 (Subdivision Ordinance), 104 (Erosion and Sedimentation Control), 112 (Zoning Ordinance), 118 (Chesapeake Bay Preservation Ordinance), and Appendix Q (Land Development Services Fees) of *The Code of the County of Fairfax, Virginia*. The new ordinance and proposed amendments implement the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Regulation (9 VAC 25-870 et seq.).

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 21, 2013, the Planning Commission voted 10-0-1 (Commissioner Hall absent from the meeting and Commissioner Litzenberger abstaining) to recommend that the Board:

- Adopt the proposed amendments to Chapter 101 (Subdivision Ordinance), Chapter 112 (Zoning Ordinance), and Appendix Q of the County Code as contained in the Staff Report dated September 10, 2013.
- Repeal existing Chapter 105 (Pollution of State Waters) and Chapter 106 (Storm Drainage) of the Code of the County of Fairfax, Virginia as contained in the Staff Report dated September 10, 2013.
- Adopt the proposed amendments to Chapter 104 (Erosion and Sedimentation Control) of the Code of the County of Fairfax, Virginia with the revisions recommended by staff as contained in revised Attachment C dated November 14, 2013.

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- Adopt the proposed amendments to Chapter 118 (Chesapeake Bay Preservation Ordinance) of the Code of the County of Fairfax, Virginia with the revisions recommended by staff as contained in revised Attachment G dated November 14, 2013, except that proposed amendments to Articles 6 (Exceptions), 7 (Exception Review Committee), and 8 (Appeals) not be adopted with the exception of the corrected cross reference in Section 118-6-7(e).
- Adopt Chapter 124 (Stormwater Management Ordinance) of the Code of County of Fairfax, Virginia with the revisions recommended by staff as contained in revised Attachment A dated November 14, 2013, and that the exemption for single family homes in Section 124-7-1.3 be adopted as advertised without any changes.
- Direct staff to monitor the caseload of the Chesapeake Bay Exception Review Committee for a period of one year following the Board's adoption of the amendment package, and make appropriate recommendations to the Planning Commission and the Board for any further procedural amendments at that time. These recommendations need not necessarily include abolition of the committee, but also consideration of the number of members or alternates, or procedures to simplify quorum, or other administrative recommendations to facilitate timely and efficient processing of these applications.

RECOMMENDATION:

The County Executive recommends that the Board:

- Adopt the new Stormwater Management Ordinance, repeal Chapters 105 and 106, and adopt the proposed amendments to *The Code of the County of Fairfax, Virginia* as recommended by the Planning Commission with the additional revisions to the Stormwater Management Ordinance proposed by staff dated January 28, 2014.
- Authorize staff to review plans, at the request of an applicant, based on the new Stormwater Management Ordinance and amendments to the Public Facilities Manual (PFM) beginning two months in advance of the effective date. Plans could not be approved under the new Stormwater Management Ordinance and amendments to the PFM prior to the effective date.
- Approve a suggested list of civil penalty amounts for use in administering the violations and penalties provisions of the Stormwater Management Ordinance.

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The proposed amendments have been prepared by the Department of Public Works and Environmental Services and coordinated with the Department of Planning and Zoning and the Office of the County Attorney.

TIMING:

Board action is requested on January 28, 2014. On September 10, 2013, the Board authorized the advertising of public hearings. The Planning Commission held a public hearing October 9, 2014, with decision deferred to November 21, 2013. The new ordinance, repeal of existing ordinances, and amendments will become effective at 12:01 a.m. on July 1, 2014.

BACKGROUND:

The Virginia Soil and Water Conservation Board (SWCB) adopted final amendments to the Virginia Stormwater Management Program (VSMP) Permit Regulations (4 VAC 50-60 et seq.) on May 24, 2011, with an effective date of September 13, 2011. An earlier version of the amended regulations was adopted in 2010 but suspended by the SWCB prior to becoming effective because of issues raised by localities and the public. During the 2012 and 2013 legislative sessions, the General Assembly adopted amendments to the Code of Virginia (Chapters 785 & 819 of the 2012 Acts of Assembly and Chapter 756 of the 2013 Acts of Assembly) transferring regulatory and enforcement authority for the Erosion and Sediment Control Act, the Stormwater Management Act, and the Chesapeake Bay Preservation Act to the State Water Control Board and Virginia Department of Environmental Quality (DEQ). During the 2013 legislative session, the General Assembly also adopted a separate amendment to the Stormwater Management Act (Va. Code Ann. § 62.1-44.15:33 (2013)) that constrains localities' ability to adopt more stringent requirements than the minimum requirements of the regulations. As a result of the amendment passed during the 2013 legislative session, the County will need to justify any more stringent requirements unless the requirements were in effect prior to January 1, 2013. Additional amendments to the VSMP Permit Regulations, the Virginia Erosion and Sediment Control Regulations (4 VAC 50-30 et seq.) and the Chesapeake Bay Preservation Area Designation and Management Regulations (4 VAC 50-90 et seq.) were adopted by the VSWCB on September 28, 2012, with an effective date of November 21, 2012. Because of the transfer of program oversight to the State Water Control Board and DEQ, these regulations were republished on September 23, 2013, with an effective date of October 23, 2013, to make them consistent with the numbering sequence assigned to State Water Control Board regulations in the Virginia Administrative Code, as follows: VSMP Regulation (9 VAC 25-870 et seq.); Virginia Erosion and Sediment Control Regulations (9 VAC 25-840 et seq.); and Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 25-830 et seq.). On December 17, 2013, the State Water Control

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Board adopted additional amendments to the VSMP Regulation related to grandfathering, the general permit for discharges from construction sites, and fees.

The adoption of a local stormwater management ordinance by Fairfax County is mandatory under the Virginia Stormwater Management Act (Act). The Act gives localities until June 13, 2013, to adopt local ordinances to comply with the regulations. However, pursuant to the Act, the SWCB granted the County an extension to June 13, 2014. Adoption of a Stormwater Management Ordinance and amendments to the Subdivision Ordinance, Erosion and Sedimentation Control Ordinance, Zoning Ordinance, and Chesapeake Bay Preservation Ordinance are necessary at this time to implement revisions to state laws and regulations. In addition, current Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage) are proposed to be repealed because they are being incorporated, with minor revisions, into the new Stormwater Management Ordinance. In a separate action the Board is being asked to adopt related amendments to the Public Facilities Manual (PFM). After the County has amended its ordinances and the PFM, the State Water Control Board and DEQ will review the ordinances and PFM for consistency with state law and regulations. The County is required to submit the new and revised ordinances, revised PFM, a funding and staffing plan (see Attachment 4), and associated policies and procedures for administering the stormwater management program to DEQ by January 15, 2014. The final adopted ordinances must be submitted to DEQ by May 15, 2014.

The regulations delegate responsibility to localities for plan reviews and inspections related to the General VSMP Permit for Discharges from Construction Activities, and the state retains responsibility for issuance of coverage under the general permit to operators (land disturbers). Localities also will be responsible for inputting permit registration statements, provided by operators, into the state's online permitting system. This delegation will be effective July 1, 2014, which coincides with the effective date of the new general permit. Currently, DEQ performs all functions related to the general permit. The County's current responsibility related to the general permit is to inform DEQ when we have issued permits for land disturbing activity. Under the new regulations, localities may collect fees for plan review, inspection, and administrative functions related to the general permit. The regulations include a fee schedule for VSMP permits which is split between DEQ (28% of the total fee for initial coverage) and localities. Localities may increase or decrease the total fee provided that DEQ receives the amount listed as the state's share in the regulations. The new Stormwater Management Ordinance provides for DEQ's share of the fees to be paid directly to DEQ at the time permit coverage is requested. The County's share of the fees has been incorporated into the review and inspection fees for stormwater management facilities in the Land Development Services Fees in Appendix Q.

The Final Regulation Agency Background Document (June 10, 2011) prepared by DCR describes the issues associated with the regulatory action as follows:

*The primary advantage of this regulatory action is enhanced water quality and management of stormwater runoff in the Commonwealth. Citizens often complain about flooding caused by increased amounts of stormwater runoff and the runoff is also a contributor to excessive nutrient enrichment and sedimentation in numerous rivers, lakes, and ponds throughout the state, as well as a continued threat to estuarine waters and the Chesapeake Bay. The water quality and quantity criteria established by this regulatory action will improve upon today's stormwater management program and assist the Commonwealth in reducing nutrient and sediment pollution statewide and meeting Chesapeake Bay restoration goals. The regulations will have numerous benefits including reductions in flood risk, avoidance of infrastructure costs through the use of LID practices, improved aquatic life, and enhancement of recreational and commercial fisheries.*

*The implementation of local stormwater management programs will also have benefits for the regulated community. Today, construction activity operators must go to two sources in order to receive needed Erosion and Sediment Control (locality) and Stormwater (department) approvals. The development of local stormwater management programs will allow for both approvals to be received from a singular source, thus improving efficiency as well as saving time for the developer. Even in localities where the department is the stormwater program administrative authority, the program envisioned by these regulations will allow for greater customer service and oversight over today's more limited program.*

*The primary disadvantage of this regulatory action will be increased compliance costs in some instances for construction site operators. However, the final regulations have been modified in a number of ways to significantly reduce the fiscal impacts associated with compliance with the water quality and quantity technical standards and it is believed that the final regulations represent a reasonable balance between necessary water quality and quantity improvements and potential economic concerns. It should be noted that the offsite compliance options will help moderate compliance costs. It is anticipated that before the implementation of these regulations in 2014 that nutrient trading opportunities will be greatly expanded [The expansion of nutrient trading opportunities referenced in this 2011 document has not yet occurred; ed.].*

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Approximately 90 percent of the new Stormwater Management Ordinance consists of requirements from the state Stormwater Management Act and Regulations. For the remaining 10 percent of the ordinance, where the County had latitude to develop specific requirements, an extensive outreach program was implemented to gain input from stakeholders. Outreach efforts included:

- Stakeholder Meetings - Stakeholders included representatives from industry, citizens groups, design professionals, environmental groups, and other individuals interested in participating. A kickoff meeting was held on July 24, 2012; work sessions were held on September 24, 2012, October 17, 2012; and a close-out meeting was held on July 24, 2013.
- Web site (<http://www.fairfaxcounty.gov/dpwes/stormwaterordinance.htm>) – A website was created to keep the public updated on the ordinance adoption schedule, draft ordinances, and solicit input. Email notifications were sent to stakeholders to alert them to meetings and updates to draft ordinance postings on the website.
- Board Committee Presentations – Staff presented various options for the major policy issues at four Environmental Committee and Development Process Committee meetings between November 2012 and June 2013. A final presentation was made to the Environmental Committee on January 21, 2014, to discuss the public vs. private maintenance option for residential BMPs.
- Planning Commission Presentations – Staff presented an overview of the Stormwater Management Ordinance and the major policy issues to the Planning Commission Environment Committee at two meetings between October 2012 and April 2013. Staff presented updates on the ordinance to the Environment Committee on September 19, 2013, and November 6, 2013.
- Environmental Quality Advisory Council (EQAC) Presentations – Staff made presentations on the Stormwater Management Ordinance and policy issues at four EQAC meetings.
- Engineering Standards Review Committee (ESRC) – Staff worked with representatives on the ESRC from the development community, engineers, environmental groups, and citizen groups to develop the proposed amendments to the Public Facilities Manual.
- District Advisory Group Presentations – Staff presented various Stormwater Management Ordinance topics at meetings in the Mount Vernon, Braddock, and Providence Districts.

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- Industry Coordination – Staff has been and is continuing to work with a group of private sector engineers to review the impacts of the regulations and the proposed Stormwater Ordinance and identify implementation issues.

Through the overall outreach approach, the proposed Stormwater Management Ordinance represents an effort to achieve a balance between minimum state requirements, development community interests, and environmental interests.

PROPOSED AMENDMENTS:

Key elements of the County's proposed ordinance and amendments to existing ordinances are presented below.

Chapter 124 (Stormwater Management Ordinance):

The new Stormwater Management Ordinance was written to implement the Virginia Stormwater Management Program (VSMP) Regulation (9 VAC 25-870 et seq.) as required by the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.). It contains provisions from both the law and regulations. A table relating provisions of the ordinance to provisions in the law and renumbered regulations is included as Attachment I of the Staff Report Addendum. In addition, provisions have been included in the ordinance to facilitate compliance with the County's MS4 permit and incorporate elements of repealed Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage). The advertised amendments to the Stormwater Management Ordinance have been revised twice since authorization. The November 14, 2013, revisions, recommended by staff and the Planning Commission, are the result of the renumbering of and minor editorial corrections to the Virginia Stormwater Management Program (VSMP) Regulation that became effective on October 23, 2013, and changes developed by staff in consultation with industry to address issues related to the water quantity control requirements. The January 28, 2014, revisions to the proposed Stormwater Management Ordinance are the result of additional changes to the VSMP Regulation adopted by the State Water Control Board on December 17, 2014, related to grandfathering, the general permit for discharges from construction sites, and fees. The Planning Commission recommendation and the additional changes recommended by staff to comply with the most recent version of the VSMP Regulation have been combined in Attachment A to the Staff Report Addendum dated January 28, 2014. The ordinance includes nine articles whose key provisions are as follows:

Article 1 General Provisions:

- 1) Administration. The ordinance is to be administered by the Director of the Department of Public Works and Environmental Services.

2) Exemptions. Exemptions from provisions of the Virginia Stormwater Management Act are incorporated. Only the major exemptions impacting building and construction included in the ordinance are listed here.

- All land disturbing activities equal to or less than 2,500 square feet in area that are not part of a larger common plan of development are exempt.
- Single-family dwellings separately built and disturbing less than 1 acre (*The Board to select a value within an advertised range of range of 2,500 sq. ft. to 1 acre.*) and not part of a larger common plan of development or sale, including: additions to existing single-family detached dwellings; accessory structures to single-family detached dwellings; and demolitions of single-family detached dwellings or accessory structures all subject to the following (*The Board may select any or all or none of the advertised conditions below.*):
  - a) Control measures are not required to address a specific WLA for a pollutant that has been established in a TMDL and assigned to stormwater discharges from construction activities within the watershed; and
  - b) The proposed construction meets one of the following conditions:
    - i) Total imperviousness on the lot will be less than 2,500 square feet (*The Board to select a value within the advertised range of range of 1,000 sq. ft. to 5,000 sq. ft. or delete this half of the condition.*) or 18% of the lot area (*The Board to select a value within the advertised range of range of 10 – 50% or delete this half of the condition.*), whichever is greater; or
    - ii) Water quality controls meeting requirements in effect at the time were provided with the original subdivision construction and are currently in place; or
    - iii) The property is served by an existing regional stormwater management facility providing water quality control.

In order to demonstrate compliance with conditions (ii) or (iii) above, an applicant for a land-disturbing permit need only certify that water quality controls were included as part of the approved subdivision plans and have not been removed or that the site drains to an existing regional stormwater management facility providing water quality control.

3) Other laws and regulations. Compliance with the Stormwater Management Ordinance will meet stormwater control requirements of the Chesapeake Bay Preservation Ordinance and the adequate outfall requirements (MS-19) of the Virginia Erosion and Sediment Control Regulations.

4) Approved land-disturbing activities with VSMP permit coverage and grandfathering.

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- General Permit Coverage prior to July 1, 2014. If coverage is maintained, land-disturbing activities are not subject to the new technical requirements for 2 permit cycles (i.e. 10 years).
- Plats and plans including zoning actions approved prior to July 1, 2012, without general permit coverage prior to July 1, 2014, are not subject to the new technical requirements provided construction is completed prior to July 1, 2019.
- Projects with governmental bonding or debt financing issued prior to July 1, 2012, are not subject to the new technical requirements.

5) Chesapeake Bay Preservation Act Land-Disturbing Activities. Land-disturbing activities equal to or less than one acre must meet the new requirements for stormwater management but are not required to obtain VSMP permit coverage unless they are part of a larger common plan of development or sale that would disturb more than one acre of land. Under the revised general permit, a single-family residence separately built, disturbing less than one acre and part of a larger common plan of development or sale is authorized to discharge under the registration statement for the larger common plan of development and is not required to submit a registration statement or the State's portion of the permit fee, provided that the stormwater management plan for the larger common plan of development or sale provides permanent control measures encompassing the single-family residence. Multi-family residential construction and non-residential construction disturbing less than one acre and part of a larger common plan of development or sale is required to submit a separate registration statement and the state's portion of the permit fee.

Article 2 General Administrative Criteria for Regulated Land-Disturbing Activities:

- 1) The County may not approve any land-disturbing activity requiring a VSMP permit unless the applicant has provided evidence of VSMP permit coverage.
- 2) A County stormwater permit (This is a local permit separate and distinct from the state VSMP permit.) is required for all non-exempt land-disturbing activities.
- 3) The County stormwater permit is to be consolidated with the erosion and sediment control permit. A consolidated permit is required by the Act.
- 4) A stormwater management plan addressing permanent water quality and quantity controls is required for all non-exempt land-disturbing activities.
- 5) A pollution prevention plan is required for all land-disturbing activities subject to VSMP permit requirements. A pollution prevention plan addresses sources of

pollution from the land-disturbing activity not directly related to stormwater such as spillage from refueling stations, wash water, trash collection, etc. The pollution prevention plan may be reviewed by County staff as part of the land-development review process. There are no plans for County staff to review pollution prevention plans, during the land-development review process at this time.

6) The stormwater management plan, the erosion and sediment control plan, and the pollution prevention plan are collectively known as the Stormwater Pollution Prevention Plan (SWPPP). The County is responsible for enforcement of the VSMP permit and related SWPPP during construction inspection.

7) Requirements for bonding, long-term maintenance, and construction record drawings (as-builts) are included. These items are already required in connection with site, subdivision, and grading plans proposing public improvements or stormwater management facilities.

Article 3 Fees: See Appendix Q Amendments.

Article 4 Technical Criteria for Regulated Land-Disturbing Activities:

1) These criteria apply to all new land-disturbing activities that are not exempt or do not have existing permit coverage or are not grandfathered.

2) Water quality design criteria are provided for both new development and redevelopment. The new requirements meet but do not exceed the state minimum criteria except in instances where application of the Water Supply Protection Overlay District phosphorus reduction requirement may be more stringent than the state requirement. Compliance with the water quality design criteria is to be determined utilizing the Virginia Runoff Reduction Method developed by the state. This methodology is different than what is currently used by the County and its use is mandated under the Regulations.

3) Water quantity control criteria are provided for both channel protection and flood protection, known collectively as adequate outfall. Separate criteria are provided for manmade conveyance systems, natural channels, and restored channels. The minimum state requirements are significantly less stringent than current County requirements except for the extent of downstream review which is more stringent than current County requirements. A slightly modified version of the current County requirements for adequate outfall is being retained along with the County's current detention requirement and the state's extent of downstream review. In addition, an alternative extent of downstream review based on the County's current requirements

is provided for situations where outfalls are adequate and/or certain detention targets exceeding state minimum requirements are met.

4) As required by the regulations, the ordinance includes a number of offsite compliance options for water quality control. Nutrient credits may be purchased through a nutrient credit exchange for small projects that do not generate large amounts of nutrients or for projects that achieve 75 percent of the required nutrient reduction onsite or for projects that have exhausted possibilities for full compliance onsite.

Article 5 Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered Projects and Projects Subject to Time Limits on Applicability of Approved Design Criteria:

1) Article 5 contains the water quality control and adequate outfall requirements to be used with grandfathered projects and projects with existing VSMP permits as of July 1, 2014.

2) The requirements for water quality are what is currently required under the Chesapeake Bay Preservation Ordinance and the PFM and were approved by the Chesapeake Bay Local Assistance Board (which has since been dissolved) as an acceptable alternative to the State's requirements and methodology.

3) The state requirements for adequate outfall (stream channel erosion and flooding) as applied by the current PFM are included.

4) Developers have the option of using the new technical criteria in Article 4 in lieu of the technical criteria in Article 5.

Article 6 Exceptions:

Requirements for the granting of exceptions are directly from the State regulations. These requirements apply to both new and grandfathered projects.

Article 7 Appeals:

This article provides procedures and criteria for appeals of decisions by the Director. Appeals are subject to hearings, which are to be conducted by a hearing officer(s) appointed by the Director.

Article 8 Violations and Penalties:

- 1) This article provides for criminal violations and civil penalties in accordance with the Stormwater Management Act.
- 2) The Board will be asked to approve a suggested list of civil penalty amounts for use in administering these provisions.

Article 9 Illicit Discharges to the Storm Sewer System and State Waters:

- 1) This article establishes prohibitions against discharging to the County storm sewer system and state waters.
- 2) This article replaces Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage) of the County Code which are proposed to be repealed.
- 3) Standards for the inspection of industrial and commercial property discharging to the County MS4 are included.

Chapter 101 (Subdivision Ordinance):

Compliance with the requirements of the Stormwater Management Ordinance has been added to the minimum requirements for new subdivisions.

Chapter 104 (Erosion and Sedimentation Control):

During the 2013 legislative session, the Erosion and Sediment Control Law was re-enacted with regulatory authority and oversight of local programs transferred from the SWCB and DCR to the State Water Control Board and DEQ. The law and associated regulations also integrate erosion and sediment control requirements with stormwater management requirements, including VSMP permitting, and Chesapeake Bay preservation area requirements. The proposed amendments update the regulatory citations, definitions, administrative requirements, and conservation standards consistent with the re-enacted law and regulations. The proposed amendments also explicitly designate the Director of DPWES as responsible for administering the ordinance, incorporate a general right of entry provision for enforcement of the ordinance separate from the existing provisions for inspection related to permits, and incorporate variance provisions.

The advertised amendments to the Erosion and Sedimentation Control Ordinance have been revised since authorization. The November 14, 2013, revisions, recommended by

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staff and the Planning Commission, are the result of the renumbering of and minor editorial corrections to the Virginia Erosion and Sediment Control Regulations that became effective on October 23, 2013. These revisions are included as Revised Attachment C to the Staff Report Addendum dated January 28, 2014.

Chapter 112 (Zoning Ordinance):

Compliance with the requirements of the Stormwater Management Ordinance has been added to the minimum requirements for site plans.

Chapter 118 (Chesapeake Bay Preservation Ordinance):

The Chesapeake Bay Preservation Ordinance implements the Chesapeake Bay Preservation Area Designation and Management Regulations ( 9 VAC 25-830 et seq.). The regulations were revised, effective November 21, 2012, to eliminate stormwater management requirements duplicated in the Stormwater Management Program (VSMP) Permit Regulations (4 VAC 50-60 et seq.), and clarify that enforcement of provisions relating to requirements for erosion and sediment control be conducted under provisions of the Erosion and Sediment Control Act. The proposed amendments reflect these regulatory changes. In addition, the advertised amendments proposed elimination of the Chesapeake Bay Exception Review Committee. The review and approval of these types of exception requests would be transferred to the Board of Supervisors which is already hearing exception requests associated with ongoing zoning cases. The committee, appointed by the Board, is charged with review and approval of exception requests requiring public hearings that were not associated with zoning cases being heard concurrently by the Board. At the time the committee was created in 2003, the number of cases to be heard by the committee was projected to be significantly larger than it has turned out to be. The committee has averaged three public hearings per year since its inception. As a result, the committee meets on an irregular schedule and there are difficulties in finding citizens willing to serve on the committee. In the opinion of staff, the workload does not justify continuation of the committee. However, the Planning Commission has recommended that the committee be retained and their workload be monitored.

The advertised amendments to the Chesapeake Bay Preservation Ordinance have been revised twice since authorization. The November 14, 2013, revisions, recommended by staff and the Planning Commission, are the result of the renumbering of and minor editorial corrections to the Chesapeake Bay Preservation Area Designation and Management Regulations that became effective on October 23, 2013. The revised amendments, dated January 28, 2014, recommended by staff incorporate the November 14, 2014, revisions and the Planning Commission recommendation to

retain the Exception Review Committee. The latest revision is included as Revised Attachment A to the Staff Report Addendum dated January 28, 2014.

#### Appendix Q

Fees for activities related to local stormwater permits and state permits are incorporated into the general fee schedule for plan review and inspection for site and subdivision plans. The proposed amendments to Appendix Q incorporate fees for: Coverage Under the General Permit for Discharges of Stormwater from Construction Activities (\$308) and Permits for Chesapeake Bay Preservation Act Land-Disturbing Activities (\$308); Modification or Transfer of Registration Statements for the General Permit for Discharges of Stormwater from Construction Activities (\$200 - \$700 depending on disturbed acreage); Annual Permit Maintenance Fees (\$20 - \$1,400 depending on disturbed acreage); Modifications/Waivers/Exceptions (\$710); and Review and Inspection of Stormwater Management and BMP facilities (\$500 - \$3,200 by type of facility) with a maximum cumulative total of \$7,500. Fees for state permits will be paid directly to the state.

#### REGULATORY IMPACT:

The proposed Stormwater Management Ordinance is being adopted as required by the Virginia Stormwater Management Act and Regulations. Requirements for water quality and quantity control, currently located in the Public Facilities Manual and Chesapeake Bay Preservation Ordinance, are being consolidated in the new ordinance. Existing prohibitions related to pollution of state waters and discharges into County storm drains in Chapters 105 and 106 of the County Code are being expanded and consolidated in the new ordinance. The new ordinance establishes more stringent requirements for water quality controls than those currently contained in the PFM and Chesapeake Bay Preservation Ordinance. These requirements meet but do not exceed the minimum requirements of the Virginia Stormwater Management Act and Regulations. The new ordinance retains existing requirements currently in the PFM, with minor modifications, for water quantity control related to stream protection and flooding. These requirements exceed the minimum requirements of the Virginia Stormwater Management Act and Regulations. The new ordinance creates a requirement for a local stormwater permit and a consolidated stormwater and erosion and sediment control permit as required by the Virginia Stormwater Management Act and Regulations. Under the new ordinance and in accordance with the Virginia Stormwater Management Act and Regulations, the County will be responsible for plan review and inspections for the state for VSMP permits and enforcement of VSMP permit violations. Under the Virginia Stormwater Management Act and Regulations, the threshold for the requirement to obtain a state permit has been increased from 2,500 square feet to one acre making it less stringent than current requirements.

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In general, the new water quality control requirements will be more difficult to achieve for all development including County projects and result in the construction of more, albeit smaller, controls distributed throughout the project site. This impact is mitigated for land disturbances on existing residential lots by the exception provisions contained in the new ordinance and the option to purchase water quality control credits through a broker system set up by the state. It is unknown at this time if sufficient credits will be available to meet future demand for credits. The regulatory impacts also are mitigated by the provisions set forth in the ordinance for land-disturbing activities that have coverage under a state VSMP permit prior to July 1, 2014, and proposed land-disturbing activities that have County approvals prior to July 1, 2012, both of which are derived directly from the Virginia Stormwater Management Regulations. Projects that have coverage under a state VSMP permit are not subject to the new technical criteria in the proposed Stormwater Management Ordinance provided that construction is completed by July 1, 2024. Grandfathered projects are not subject to the new technical criteria provided that construction is completed by July 1, 2019. The types of projects grandfathered are currently valid proffered rezonings or P district rezonings or other rezonings with a plan of development, special exceptions, special permits, variances, preliminary or final subdivision plats, subdivision construction plans, preliminary or final site plans, or grading plans. In addition, County projects for which funding was obligated prior to July 1, 2012, are grandfathered until July 1, 2019, and County projects for which governmental bonding or public debt financing was issued prior to July 1, 2012, are grandfathered indefinitely.

The proposed PFM amendments are necessary to implement the new Stormwater Management Ordinance and the VSMP Regulation. Requirements for water quality and quantity control, currently located in the PFM and Chesapeake Bay Preservation Ordinance, are being consolidated in the new ordinance. The primary regulatory impact of the PFM amendments is related to the limitations on use and location of BMPs and, if approved, the maintenance of additional types of BMPs in residential areas by the County.

With respect to the limitations on use and location of BMPs, the limitations are less restrictive than current requirements but more restrictive than what is permitted under the Regulations. Currently, all BMPs must be located on outlots in new residential subdivisions except that some types of BMPs may be located on lots in residential subdivisions creating three or fewer lots with approval by the Director and on existing residential lots. BMPs currently may not be located in the VDOT right-of-way. Under the proposed amendments, the limit of three lots is being increased to seven lots and some BMPs may be located in the VDOT right-of-way subject to approval by VDOT. In order for BMPs to be located in the right-of-way, an agreement between the County and VDOT, similar to the one currently in place for the Tysons Corner Urban Center, will

have to be developed. Staff has begun talks with VDOT but it may take some time to negotiate an acceptable agreement(s).

FISCAL IMPACT:

The new ordinance will result in the need for four new DPWES positions to be included in this fiscal year (2014). Two new positions will be needed to address compliance and enforcement requirements of the ordinance. Based on the actual increase in constructed BMPs above current ordinance BMP construction levels coupled with increased enforcement efforts, additional positions may need to be requested in future budget submissions. Due to changes by the State to the VSMP permit application process in December 2013, two new permit technician positions will be needed as of July 1, 2014 (FY2015) to process these applications. The two enforcement and two permit technician positions will be included for the Board's consideration in the FY 2014 Third Quarter Review. Any additional positions beyond the four identified in the FY2014 process would be included in future year budget submissions based on workload requirements.

It is also anticipated that additional positions in the County Attorney's office may be needed in the future for enforcement activities. The need for additional maintenance staff will need to be reevaluated if the Board determines that the County should take over maintenance of most new BMP facilities. With respect to plan review and inspection activities, no new staff is being requested at this time.

It is difficult to assess what fiscal impact the addition of new BMP types and changes to the BMP design standards will have on the County, developers, or property owners. The primary fiscal impact is due to the increase in the number of BMPs required to meet the new water quality control requirements in the Stormwater Management Ordinance rather than the design standards for those BMPs. The increase in the number of BMPs per project would increase both design and construction costs.

If the number of BMP types eligible for public maintenance is expanded, the annualized cost for County maintenance of new BMPs added to the inventory of County maintained facilities is estimated to be approximately \$0.6 million versus approximately \$0.25 million under the current system. The costs to the County would increase by this amount every year. In addition, there would be additional costs if the County instituted a conversion program for existing privately maintained residential BMPs to be brought up to acceptable condition and turned over to the County. If all of the existing privately maintained residential BMPs were turned over to the County for maintenance (this likely would take many years), there would be an additional annualized cost estimated at \$3.5 million. Any staffing costs associated with the conversion program would be offset by less enforcement activity. Therefore, the fiscal impact of a change to the types of BMPs

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maintained by the County would be approximately \$3.5 million increasing at a rate of \$0.6 million per year from current Stormwater Program funding.

ENCLOSED DOCUMENTS:

Attachment 1 - Staff Report Dated September 10, 2013 (available online at:

<http://www.fairfaxcounty.gov/dpwes/stormwaterordinance.htm>)

Attachment 2 - Staff Report Addendum Dated January 28, 2014

Attachment 3 - Table of County Requirements More Stringent than State  
Law/Regulations

Attachment 4 - Funding and Staffing Plan

Attachment 5 – Planning Commission Verbatim

STAFF:

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

Michelle A. Brickner, Deputy Director, DPWES

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DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES

# STAFF REPORT

## ADDENDUM

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

Proposed Chapter 124 (Stormwater Management Ordinance), Repeal of Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage), and Proposed Amendments to Chapters 101 (Subdivision Ordinance), 104 (Erosion and Sedimentation Control), 112 (Zoning Ordinance), 118 (Chesapeake Bay Preservation Ordinance), and Appendix Q (Land Development Services Fees) of The Code of the County of Fairfax, Virginia Re: Implementation of the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Permit Regulations (4 VAC 50-60 et seq.).

Authorization to Advertise	September 10, 2013
Planning Commission Hearing	October 9, 2013
Board of Supervisors Hearing	January 28, 2014
Prepared by:	Code Development and Compliance Division JAF (703) 324-1780 January 28, 2014

## STAFF REPORT ADDENDUM

Adoption of Chapter 124 (Stormwater Management Ordinance), repeal of Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage), and proposed amendments to Chapters 101 (Subdivision Ordinance), 104 (Erosion and Sedimentation Control), 112 (Zoning Ordinance), 118 (Chesapeake Bay Preservation Ordinance), and Appendix Q (Land Development Services Fees) of The Code of the County of Fairfax, Virginia. The new ordinance and proposed amendments implement the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Regulations (9 VAC 25-870 et seq.).

### A. Recommended Action:

Staff recommends that the Board adopt the new Stormwater Management Ordinance, repeal existing ordinances, and proposed amendments to *The Code of the County of Fairfax, Virginia* as recommended by the Planning Commission with the additional revisions to the new ordinance recommended by staff dated January 28, 2014.

Staff further recommends that the Board:

- Authorize staff to review plans, at the request of an applicant, based on the new Stormwater Management Ordinance and amendments to the Public Facilities Manual (PFM) beginning two months in advance of the effective date. Plans could not be approved under the new Stormwater Management Ordinance and amendments to the PFM prior to the effective date.
- Approve a suggested list of civil penalty amounts for use in administering the violations and penalties provisions of the Stormwater Management Ordinance.

### B. Background:

Subsequent to publishing the original Staff Report on September 10, 2013, the state regulations were republished on September 23, 2013, with an effective date of October 23, 2013, to make them consistent with the numbering sequence assigned to State Water Control Board regulations in the Virginia Administrative Code, as follows: VSMP Regulation (9 VAC 25-870 et seq.); Virginia Erosion and Sediment Control Regulations (9 VAC 25-840 et seq.); and Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 25-830 et seq.). On December 17, 2013, the State Water Control Board adopted additional amendments to the VSMP Regulations related to grandfathering, the general permit for discharges from construction sites, and fees. Under the most recent version of the regulations and the general permit adopted by the State Water Control Board on December 17, 2013, all land-disturbing activities equal to or greater than one acre must obtain coverage under the general permit by submitting registration

statements. Land-disturbing activities less than one acre in size that are part of a common plan of development also must obtain coverage under the general permit. However, single-family residences separately built that are part of a larger common plan of development will be covered by the registration statement for the common plan of development and will not have to submit separate registration statements. These amendments necessitate additional changes to the proposed Stormwater Management Ordinance.

The County is required to submit the new and revised ordinances, revised PFM, a funding and staffing plan, and associated policies and procedures for administering the stormwater management program to DEQ for review. The deadline for the required submission has been extended from December 15, 2013, to January 15, 2014, and the deadline for final submission of the adopted ordinances and PFM has been extended from April 1, 2014, to May 15, 2014.

The regulations delegate responsibility to localities for plan reviews and inspections related to the General VSMP Permit for Discharges from Construction Activities, and the state retains responsibility for issuance of coverage under the general permit to operators (land disturbers). DEQ has recently advised localities that localities also will be responsible for inputting permit registration statements, provided by operators, into the state's online permitting system. Previously, operators were to have access to the online permitting system to input the data and localities would review the data for consistency with submitted plans.

See Agenda Item for full background statement.

### C. Proposed Amendments

#### Chapter 124 (Stormwater Management Ordinance):

The advertised amendments to the Stormwater Management Ordinance have been revised twice since authorization. The November 14, 2013, revisions, recommended by staff and the Planning Commission, are the result of the renumbering of and minor editorial corrections to the Virginia Stormwater Management Program (VSMP) Regulation that became effective on October 23, 2013, and changes developed by staff in consultation with industry to address issues related to the water quantity control requirements. The January 28, 2014, revisions are the result of additional changes to the VSMP Regulation adopted by the State Water Control Board on December 17, 2014, related to grandfathering, the general permit for discharges from construction sites, and fees. The Planning Commission recommendation and the additional changes recommended by staff to comply with the most recent version of the VSMP Regulation have been combined in Revised Attachment A to the Staff Report Addendum dated January 28, 2014.

Significant revisions to the advertised ordinance are listed below.

- Chesapeake Bay Preservation Act Land-Disturbing Activities. Land-disturbing activities equal to or less than one acre must meet the new

requirements for stormwater management but are not required to obtain VSMP permit coverage unless they are part of a larger common plan of development or sale that would disturb more than one acre of land. Under the revised general permit adopted by the State Water Control Board on December 17, 2013, a single-family residence separately built, disturbing less than one acre and part of a larger common plan of development or sale is authorized to discharge under the registration statement for the larger common plan of development and is not required to submit a registration statement or the State's portion of the permit fee, provided that the stormwater management plan for the larger common plan of development or sale provides permanent control measures encompassing the single-family residence. Multi-family residential construction and non-residential construction disturbing less than one acre and part of a larger common plan of development or sale is required to submit a separate registration statement and the state's portion of the permit fee.

- A pollution prevention plan is required for all land-disturbing activities subject to VSMP permit requirements. A pollution prevention plan addresses sources of pollution from the land-disturbing activity not directly related to stormwater such as spillage from refueling stations, wash water, trash collection, etc. The pollution prevention plan may be reviewed by County staff as part of the land-development review process. There are no plans for County staff to review pollution prevention plans, during the land-development review process at this time.
- Water quantity control criteria are provided for both channel protection and flood protection, known collectively as adequate outfall. Separate criteria are provided for manmade conveyance systems, natural channels, and restored channels. The minimum state requirements are significantly less stringent than current County requirements except for the extent of downstream review which is more stringent than current County requirements. A slightly modified version of the current County requirements for adequate outfall is being retained along with the County's current detention requirement and the state's extent of downstream review. As a result of discussions with industry during the Planning Commission's deliberations, an alternative extent of downstream review based on the County's current requirements is provided for situations where outfalls are adequate and/or certain detention targets exceeding state minimum requirements are met.

#### Chapter 104 (Erosion and Sedimentation Control):

During the 2013 legislative session, the Erosion and Sediment Control Law was re-enacted with regulatory authority and oversight of local programs transferred from the SWCB and DCR to the State Water Control Board and DEQ. The law and associated regulations also integrate erosion and sediment control requirements with stormwater management requirements, including VSMP permitting, and Chesapeake Bay preservation area requirements. The November 14, 2013,

revisions, recommended by staff and the Planning Commission, are the result of the renumbering of and minor editorial corrections to the Virginia Erosion and Sediment Control Regulations that became effective on October 23, 2013. These revisions are included as Revised Attachment C dated January 28, 2014.

#### Chapter 118 (Chesapeake Bay Preservation Ordinance):

The November 14, 2013, revisions, recommended by staff and the Planning Commission, are the result of the renumbering of and minor editorial corrections to the Chesapeake Bay Preservation Area Designation and Management Regulations that became effective on October 23, 2013. The proposed amendments reflect these regulatory changes. In addition, the advertised amendments proposed elimination of the Chesapeake Bay Exception Review Committee. The review and approval of these types of exception requests would be transferred to the Board of Supervisors which is already hearing exception requests associated with ongoing zoning cases. The committee, appointed by the Board, is charged with review and approval of exception requests requiring public hearings that were not associated with zoning cases being heard concurrently by the Board. At the time the committee was created in 2003, the number of cases to be heard by the committee was projected to be significantly larger than it has turned out to be. The committee has averaged three public hearings per year since its inception. As a result, the committee meets on an irregular schedule and there are difficulties in finding citizens willing to serve on the committee. In the opinion of staff, the workload does not justify continuation of the committee. However, the Planning Commission has recommended that the committee be retained and their workload be monitored. The final amendments recommended by staff and the Planning Commission retain the Exception Review Committee. The final recommended amendments are included as Revised Attachment G dated January 28, 2014.

#### H. Regulatory Impact:

Under the revised general permit adopted by the State Water Control Board on December 17, 2013, a single-family residence separately built, disturbing less than one acre and part of a larger common plan of development or sale is authorized to discharge under the registration statement for the larger common plan of development and is not required to submit a registration statement or the State's portion of the permit fee, provided that the stormwater management plan for the larger common plan of development or sale provides permanent control measures encompassing the single-family residence. Previously, registration statements and state fees were required for such projects. Multi-family residential construction and non-residential construction disturbing less than one acre and part of a larger common plan of development or sale is required to submit a separate registration statement and the state's portion of the permit fee.

#### H. Fiscal Impact:

See revised fiscal impact statement in Board Agenda Item

I. Attached Documents:

Revised Attachment A – Chapter 124 (Stormwater Management Ordinance)

Revised Attachment C – Amendments to Chapter 104 (Erosion and Sedimentation Control)

Revised Attachment G – Amendments to Chapter 118 (Chesapeake Bay Preservation Ordinance)

Revised Attachment I – Table of State Law and Virginia Administrative Code Citations for Provisions in the Stormwater Management Ordinance.

**PROPOSED AMENDMENT  
TO  
THE CODE OF THE COUNTY OF FAIRFAX VIRGINIA  
ADDING  
CHAPTER 124 (STORMWATER MANAGEMENT ORDINANCE)**

**Revisions to advertised amendments recommend by staff  
November 14, 2013 & January 28, 2014**

*The proposed Stormwater Management Ordinance (9/10/13) was advertised without underlining for readability. The revisions (11/14/13) to the proposed ordinance recommended by staff are indicated by single underlines for additions and single strikethroughs for deletions. The revisions (1/28/14) to the proposed ordinance recommended by staff are indicated by double underlines for additions and double strikethroughs for deletions.*

**Amend the Code of the County of Fairfax Virginia by adding new Chapter 124  
(Stormwater Management Ordinance to read as follows:**

**CHAPTER 124.**

**Stormwater Management Ordinance**

**Article 1. General Provisions.**

- § 124-1-1. Title.
- § 124-1-2. Authority.
- § 124-1-3. Enactment.
- § 124-1-4. Purpose and Administration.
- § 124-1-5. Definitions.
- § 124-1-6. Areas of Applicability.
- § 124-1-7. Exemptions.
- § 124-1-8. Right of Entry.
- § 124-1-9. Severability.
- § 124-1-10. Applicability of and Conflicts with Other Laws and Regulations.
- § 124-1-11. Time Limits on Applicability of Approved Design Criteria.
- § 124-1-12. Grandfathering.
- § 124-1-13. Chesapeake Bay Preservation Act Land-Disturbing Activity.

**Article 2. General Administrative Criteria for Regulated Land-Disturbing Activities.**

- § 124-2-1. Applicability
- § 124-2-2. Permit Required.
- § 124-2-3. Annual Standards and Specifications for State Agencies, Federal Entities, and Other Specified Entities.
- § 124-2-4. Security for Performance.
- § 124-2-5. Monitoring, Reports, Investigations, and Inspections.
- § 124-2-6. Stormwater Pollution Prevention Plan Requirements.
- § 124-2-7. Stormwater Management Plans.
- § 124-2-8. Pollution Prevention Plans.
- § 124-2-9. Stormwater Management Plan Review.

- 1 § 124-2-10. Long-term Maintenance of Permanent Stormwater Management Facilities.  
2 § 124-2-11. Construction Record Drawings.

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4 **Article 3. Fees.**  
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- 6 § 124-3-1. General.  
7 § 124-3-2. Exemptions.  
8 § 124-3-3. Fees for Coverage Under the General Permit for Discharges of Stormwater  
9 from Construction Activities and Permits for Chesapeake Bay Preservation  
10 Act Land-Disturbing Activities.  
11 § 124-3-4. Fees for the Modification or Transfer of Registration Statements for the  
12 General Permit for Discharges of Stormwater from Construction Activities.  
13 § 124-3-5. Permit Maintenance Fees.  
14

15 **Article 4. Technical Criteria for Regulated Land-Disturbing Activities.**  
16

- 17 § 124-4-1. Applicability.  
18 § 124-4-2. Water Quality Design Criteria Requirements.  
19 § 124-4-3. Water Quality Compliance.  
20 § 124-4-4. Water Quantity.  
21 § 124-4-5. Offsite Compliance Options.  
22 § 124-4-6. Design Storms and Hydrologic Methods.  
23 § 124-4-7. Stormwater Harvesting.  
24 § 124-4-8. Linear Development Projects.  
25 § 124-4-9. Comprehensive Stormwater Management Plans.  
26

27 **Article 5. Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered**  
28 **Projects and Projects Subject to Time Limits on Applicability of Approved Design**  
29 **Criteria.**  
30

- 31 § 124-5-1. Definitions.  
32 § 124-5-2. Applicability.  
33 § 124-5-3. General.  
34 § 124-5-4. Water Quality.  
35 § 124-5-5. Stream Channel Erosion.  
36 § 124-5-6. Flooding.  
37 § 124-5-7. Regional (watershed-wide) Stormwater Management Plans.  
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39 **Article 6. Exceptions.**  
40

- 41 § 124-6-1. Exceptions.  
42

43 **Article 7. Appeals.**  
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- 45 § 124-7-1. Right to Administrative Review.  
46 § 124-7-2. Hearings.  
47 § 124-7-3. Appeals of Final Orders.  
48

49 **Article 8. Violations and Penalties.**  
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- 51 § 124-8-1. General Provisions .  
52 § 124-8-2. Criminal Violations and Penalties.  
53 § 124-8-3. Civil Penalties.

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**Article 9. Illicit Discharges to the Storm Sewer System and State Waters**

- § 124-9-1. Purpose.
- § 124-9-2. Responsibilities of the Director.
- § 124-9-3. Illicit Discharges to the Storm Sewer System and State Waters.
- § 124-9-4. Standards for Inspection of Industrial and Commercial Property Discharging to the County's Storm Sewer System.

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**ARTICLE 1.**

**General Provisions**

**Section 124-1-1. Title.**

This Chapter shall hereafter be known, cited, and referred to as the "Stormwater Management Ordinance" of Fairfax County.

**Section 124-1-2. Authority.**

This ordinance is enacted pursuant to the authority and mandates of the Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the Virginia Stormwater Management Program (VSMP) ~~Permit Regulations (4VAC50-60 et seq.~~ 9VAC25-870 et seq.), and §§ 15.2-1200, 15.2-2109, and 15.2-2122 of Chapter 21 of Title 15.2 of the Code of Virginia.

**Section 124-1-3. Enactment.**

This Chapter shall be effective at 12:01 A.M. on July 1, 2014.

**Section 124-1-4. Purpose and Administration.**

The purpose and intent of this Chapter is to ensure the general health, safety, and welfare of the citizens of Fairfax County and to protect property, state waters, stream channels, and other natural resources from the potential harm of illicit discharges of pollutants and unmanaged stormwater by establishing requirements for managing stormwater and procedures whereby those requirements shall be administered and enforced. The Director shall be responsible for the administration of this Chapter. This Chapter establishes a local stormwater management program that shall be administered in conjunction with the County's MS4 program and erosion and sediment control program.

**Section 124-1-5. Definitions.**

The following words and terms used in this Chapter have the following meanings unless the context clearly indicates otherwise.

"Act" means the Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Applicant" means any person submitting an application for a permit or requesting issuance of a permit under this Chapter.

"Best management practice" or "BMP" means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

"Board" means the Fairfax County Board of Supervisors.

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2 "Channel" means a natural or manmade waterway.  
3

4 "Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity  
5 including clearing, grading, or excavation that results in a land disturbance equal to or greater  
6 than 2,500 square feet and less than one acre.  
7

8 "Code" or "the Code" means the Code of the County of Fairfax, Virginia.  
9

10 "Common plan of development or sale" means a contiguous area where separate and distinct  
11 construction activities may be taking place at different times on different schedules.  
12

13 "Comprehensive stormwater management plan" means a plan, which may be integrated with  
14 other land use plans or regulations, that specifies how the water quality components, quantity  
15 components, or both of stormwater are to be managed on the basis of an entire watershed or a  
16 portion thereof. The plan may also provide for the remediation of erosion, flooding, and water  
17 quality and quantity problems caused by prior development.  
18

19 "Control measure" means any BMP, stormwater facility, or other method used to minimize  
20 the discharge of pollutants to state waters.  
21

22 "Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.),  
23 formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution  
24 Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217,  
25 Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions  
26 thereto.  
27

28 "Department" means the Department of Public Works and Environmental Services.  
29

30 "Department of Conservation and Recreation" or "DCR" means the Virginia Department of  
31 Conservation and Recreation.  
32

33 "Department of Environmental Quality" or "DEQ" means the Virginia Department of  
34 Environmental Quality.  
35

36 "Development" means land disturbance and the resulting landform associated with the  
37 construction of residential, commercial, industrial, institutional, recreation, transportation, or  
38 utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural  
39 purposes.  
40

41 "Director" means the Director of the Department of Public Works and Environmental  
42 Services or his designee.  
43

44 "Flood fringe" means the portion of the floodplain outside the floodway that is usually  
45 covered with water from the 100-year flood or storm event. This includes, but is not limited to,  
46 the flood or floodway fringe designated by the Federal Emergency Management Agency.

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2 "Flooding" means a volume of water that is too great to be confined within the banks or walls  
3 of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby  
4 causing or threatening damage.  
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6 "Floodplain" means the area adjacent to a channel, river, stream, or other water body that is  
7 susceptible to being inundated by water normally associated with the 100-year flood or storm  
8 event. This includes, but is not limited to any floodplain designated by the Federal Emergency  
9 Management Agency or meets the definition of floodplain in Chapter 112 (Zoning Ordinance) of  
10 the Code.  
11

12 "Flood-prone area" means the component of a natural or restored stormwater conveyance  
13 system that is outside the main channel. Flood-prone areas may include, but are not limited to,  
14 the floodplain, the floodway, the flood fringe, wetlands, riparian buffers or other areas adjacent to  
15 the main channel.  
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17 "Floodway" means the channel of a river or other watercourse and the adjacent land areas,  
18 usually associated with flowing water, that must be reserved in order to discharge the 100-year  
19 flood or storm event without cumulatively increasing the water surface elevation more than one  
20 foot . This includes, but is not limited to, any floodway designated by the Federal Emergency  
21 Management Agency.  
22

23 "General permit" means the state permit titled General (VPDES) Permit for Discharges from  
24 Construction Activities found in Part XIV of the Regulations (~~4 VAC 50-60-1100 et seq.~~  
25 9VAC25-880-1 et seq.) authorizing a category of discharges under the CWA and the Act within a  
26 geographical area of the Commonwealth of Virginia.  
27

28 "Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent  
29 version of Virginia's 6th Order National Watershed Boundary Dataset.  
30

31 "Illicit discharge" means any discharge to a municipal separate storm sewer that is not  
32 composed entirely of stormwater, except discharges pursuant to a separate VPDES or state  
33 permit (other than the state permit for discharges from the municipal separate storm sewer),  
34 discharges resulting from fire-fighting activities, and discharges identified by and in compliance  
35 with ~~4VAC50-60-1220.C.2~~ 9VAC25-870-400.D.2.c(3).  
36

37 "Impervious cover" means a surface composed of material that significantly impedes or  
38 prevents natural infiltration of water into soil.  
39

40 "Inspection" means an on-site review of the project's compliance with the permit or the state  
41 permit, the Fairfax County stormwater management program, and any applicable design criteria;  
42 or an on-site review to obtain information or conduct surveys or investigations necessary in the  
43 implementation or enforcement of the Act, the Regulations, and this Chapter.  
44

45 "Land disturbance" or "land-disturbing activity" means a man-made change to the land  
46 surface that potentially changes its runoff characteristics including clearing, grading, or

1 excavation, except that the term shall not include those exemptions specified in § 124-1-7 of this  
2 Chapter.

3  
4 "Layout" means a conceptual drawing sufficient to provide for the specified stormwater  
5 management facilities required at the time of approval.

6  
7 "Linear development project" means a land-disturbing activity that is linear in nature such as,  
8 but not limited to, (i) the construction of electric and telephone utility lines, and natural gas  
9 pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other  
10 related structures of a railroad company; (iii) highway construction projects; (iv) construction of  
11 stormwater channels and stream restoration activities; and (v) water and sewer lines. Private  
12 subdivision roads or streets shall not be considered linear development projects.

13  
14 "Localized flooding" refers to smaller scale flooding that may occur outside of a stormwater  
15 conveyance system. This may include high water, ponding or standing water from stormwater  
16 runoff, which is likely to cause property damage or unsafe conditions.

17  
18 "Main channel" means the portion of the stormwater conveyance system that contains the  
19 base flow and small frequent storm events.

20  
21 "Minor modification" means, for the purposes of this Chapter, minor modification or  
22 amendment of an existing state permit before its expiration for the reasons listed at 40 CFR  
23 122.63 and as specified in ~~4VAC50-60-640~~ 9VAC25-870-640. Minor modification for the  
24 purposes of this Chapter also means other modifications and amendments not requiring extensive  
25 review and evaluation including, but not limited to, changes in EPA promulgated test protocols,  
26 increasing monitoring frequency requirements, changes in sampling locations, and changes to  
27 compliance dates within the overall compliance schedules. A minor state permit modification or  
28 amendment does not substantially alter state permit conditions, substantially increase or decrease  
29 the amount of surface water impacts, increase the size of the operation, or reduce the capacity of  
30 the facility to protect human health or the environment.

31  
32 "Municipal separate storm sewer system" or "MS4" means a conveyance or system of  
33 conveyances otherwise known as a municipal separate storm sewer system, including roads with  
34 drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or  
35 storm drains:

- 36  
37 1. Owned or operated by a federal, state, city, town, county, district, association, or other  
38 public body, created by or pursuant to state law, having jurisdiction or delegated authority for  
39 erosion and sediment control and stormwater management, or a designated and approved  
40 management agency under § 208 of the CWA that discharges to surface waters;  
41 2. Designed or used for collecting or conveying stormwater;  
42 3. That is not a combined sewer; and  
43 4. That is not part of a publicly owned treatment works.

44  
45 "Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means  
46 a management program covering the duration of a state permit for a municipal separate storm

1 sewer system that includes a comprehensive planning process that involves public participation  
2 and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent  
3 practicable, to protect water quality, and to satisfy the appropriate water quality requirements of  
4 the CWA and regulations and the Act and attendant regulations, using management practices,  
5 control techniques, and system, design and engineering methods, and such other provisions that  
6 are appropriate.  
7

8 "Natural channel design concepts" means the utilization of engineering analysis based on  
9 fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance  
10 system for the purpose of creating or recreating a stream that conveys its bankfull storm event  
11 within its banks and allows larger flows to access its floodplain.  
12

13 "Natural stream" means a tidal or nontidal watercourse that is part of the natural topography.  
14 It usually maintains a continuous or seasonal flow during the year and is characterized as being  
15 irregular in cross-section with a meandering course. Natural streams may include sections of  
16 braided channels or wetlands as determined by the Director. Constructed channels such as  
17 drainage ditches or swales shall not be considered natural streams; however, channels designed  
18 utilizing natural channel design concepts may be considered natural streams.  
19

20 "Operator" means the owner or operator of any facility or activity subject to the Act, the  
21 Regulations, and this Chapter.  
22

23 "Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a  
24 particular location.  
25

26 "Percent impervious" means the impervious area within the site divided by the area of the site  
27 multiplied by 100.  
28

29 "Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity  
30 issued by the Director for the initiation of a land-disturbing activity, in accordance with this  
31 Chapter, and which may only be issued after evidence of general permit coverage has been  
32 provided, where applicable.  
33

34 "Permittee" means the person to whom the state or County permit is issued, including any  
35 owner or operator whose construction site is covered under a state construction general permit.  
36

37 "Person" means any individual, corporation, partnership, association, state, municipality,  
38 commission, or political subdivision of a state, governmental body, including a federal, state, or  
39 local entity as applicable, any interstate body or any other legal entity.  
40

41 "Point of discharge" means a location at which concentrated stormwater runoff is released.  
42

43 "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage,  
44 garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials  
45 (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et  
46 seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and

1 agricultural waste discharged into water. It does not mean:

- 2
- 3 1. Sewage from vessels; or
- 4 2. Water, gas, or other material that is injected into a well to facilitate production of oil or
- 5 gas, or water derived in association with oil and gas production and disposed of in a well if the
- 6 well is used either to facilitate production or for disposal purposes is approved by the State Water
- 7 Control Board and if the State Water Control Board determines that the injection or disposal will
- 8 not result in the degradation of groundwater or surface water resources.
- 9

10 "Pollution" means such alteration of the physical, chemical or biological properties of any  
11 state waters as will or is likely to create a nuisance or render such waters (a) harmful or  
12 detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or  
13 aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources  
14 of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or  
15 other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological  
16 property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to  
17 state waters by any owner which by itself is not sufficient to cause pollution, but which, in  
18 combination with such alteration of or discharge or deposit to state waters by other owners, is  
19 sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state  
20 waters; and (iii) contributing to the contravention of standards of water quality duly established  
21 by the State Water Control Board, are "pollution" for the terms and purposes of this Chapter.  
22

23 "Postdevelopment" refers to conditions that reasonably may be expected or anticipated to  
24 exist after completion of the land development activity on a specific site.  
25

26 "Predevelopment" refers to the conditions that exist at the time that plans for the land  
27 development of a tract of land are submitted to Fairfax County. Where phased development or  
28 plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities,  
29 etc.), the existing conditions at the time prior to the first item being submitted shall establish  
30 predevelopment conditions.  
31

32 "Prior developed lands" means land that has been previously utilized for residential,  
33 commercial, industrial, institutional, recreation, transportation or utility facilities or structures,  
34 and that will have the impervious areas associated with those uses altered during a land-  
35 disturbing activity.  
36

37 "Public Facilities Manual" or "PFM" means the Fairfax County Public Facilities Manual  
38 which contains design and construction standards adopted by the Board.  
39

40 "Regulations" means the Virginia Stormwater Management Program (VSMP) ~~Permit~~  
41 ~~Regulations~~ (4VAC50-60-10 ~~et seq~~ 9VAC25-870-10 ~~et seq.~~, as amended).  
42

43 "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as  
44 runoff.  
45

46 "Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across

1 the land surface or through conveyances to one or more waterways.

2  
3 "Runoff characteristics" include maximum velocity, peak flow rate, volume, and flow  
4 duration.

5  
6 "Runoff volume" means the volume of water that runs off the site from a prescribed design  
7 storm.

8  
9 "Site" means the land or water area where any facility or land-disturbing activity is physically  
10 located or conducted, a parcel of land being developed, or a designated area of a parcel of land  
11 being developed, including adjacent land used or preserved in connection with the facility or  
12 land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be  
13 considered part of a site.

14  
15 "Site hydrology" means the movement of water on, across, through and off the site as  
16 determined by parameters including, but not limited to, soil types, soil permeability, vegetative  
17 cover, seasonal water tables, slopes, land cover, and impervious cover.

18  
19 "Soil and Water Conservation Board" means the Virginia Soil and Water Conservation  
20 Board.

21  
22 "State" means the Commonwealth of Virginia.

23  
24 "State Permit" means an approval to conduct a land-disturbing activity issued by the SWCB  
25 in the form of a state stormwater individual permit or coverage issued under a state general  
26 permit or an approval issued by the SWCB for stormwater discharges from an MS4. Under these  
27 state permits, the Commonwealth imposes and enforces requirements pursuant to the federal  
28 Clean Water Act and regulations, the Act, and the Regulations.

29  
30 "State Water Control Board" or "SWCB" means the Virginia State Water Control Board.

31  
32 "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code  
33 of Virginia.

34  
35 "State waters" means all water, on the surface and under the ground, wholly or partially  
36 within or bordering the Commonwealth or within its jurisdiction, including wetlands.

37  
38 "Stormwater" means precipitation that is discharged across the land surface or through  
39 conveyances to one or more waterways and that may include stormwater runoff, snow melt  
40 runoff, and surface runoff and drainage.

41  
42 "Stormwater conveyance system" means a combination of drainage components that are used  
43 to convey stormwater discharge, either within or downstream of the land-disturbing activity. This  
44 includes:

45  
46 (i) "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or

1 other stormwater conveyance system constructed by man except for restored stormwater  
2 conveyance systems;

3 (ii) "Natural stormwater conveyance system" means the main channel of a natural stream  
4 and the flood-prone area adjacent to the main channel. Natural stormwater conveyance systems  
5 may include sections of braided channels or wetlands as determined by the Director; or

6 (iii) "Restored stormwater conveyance system" means a stormwater conveyance system  
7 that has been designed and constructed using natural channel design concepts. Restored  
8 stormwater conveyance systems include the main channel and the flood-prone area adjacent to  
9 the main channel.

10  
11 "Stormwater management facility" means a control measure that controls stormwater runoff  
12 and changes the characteristics of that runoff including, but not limited to, the quantity and  
13 quality, the period of release or the velocity of flow.

14  
15 "Stormwater management plan" means a document(s) containing material for describing  
16 methods for complying with the requirements of this Chapter.

17  
18 "Stormwater Pollution Prevention Plan" or "SWPPP" means a document, prepared in  
19 accordance with good engineering practices, that identifies potential sources of pollutants that  
20 may reasonably be expected to affect the quality of stormwater discharges from the construction  
21 site and meets the requirements of ~~the~~ this Chapter. A SWPP required under a VSMP for  
22 construction activities shall identify and require the implementation of control measures, and  
23 shall include, but not be limited to the inclusion of, or the incorporation by reference of an  
24 approved erosion and sediment control plan, an approved stormwater management plan, and a  
25 pollution prevention plan.

26  
27 "Subdivision" means the same as defined in Chapter 101 (Subdivision) of the Code.

28  
29 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload  
30 allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, natural  
31 background loading and a margin of safety. TMDLs can be expressed in terms of either mass per  
32 time, toxicity, or other appropriate measure. The TMDL process provides for point versus  
33 nonpoint source trade-offs.

34  
35 "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of  
36 Chapter 3.1 of Title 62.1 of the Code of Virginia.

37  
38 "Virginia Stormwater BMP Clearinghouse website" means a state sponsored website that  
39 contains detailed design standards and specifications for control measures that may be used in  
40 Virginia to comply with the requirements of the Virginia Stormwater Management Act and  
41 associated regulations.

42  
43 "Virginia Stormwater Management Handbook" means a collection of pertinent information  
44 that provides general guidance for compliance with the Act and associated regulations developed  
45 by the Department of Environmental Quality.

1 "Virginia Stormwater Management Program " or "VSMP" means a program approved by the  
2 ~~VS~~SWCB after September 13, 2011, that has been established by a locality to manage the quality  
3 and quantity of runoff resulting from land-disturbing activities and shall include such items as  
4 local ordinances, rules, permit requirements, annual standards and specifications, policies and  
5 guidelines, technical materials, and requirements for plan review, inspection, enforcement, where  
6 authorized in the Act and associated regulations, and evaluation consistent with the requirements  
7 of the Act and associated regulations.

8  
9 "Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface  
10 water's loading or assimilative capacity allocated to one of its existing or future point sources of  
11 pollution. WLAs are a type of water quality-based effluent limitation.

12  
13 "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a  
14 frequency and duration sufficient to support, and that under normal circumstances do support, a  
15 prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands  
16 generally include swamps, marshes, bogs, and similar areas.

17  
18 **Section 124-1-6. Areas of Applicability.**

19  
20 This Chapter and all regulations adopted hereunder shall apply to all land located within the  
21 unincorporated areas of Fairfax County.

22  
23 **Section 124-1-7. Exemptions.**

24  
25 Notwithstanding any other provisions of this Chapter, the following activities are exempt,  
26 unless otherwise required by federal law:

27  
28 1. Permitted surface or deep mining operations and projects, or oil and gas operations and  
29 projects conducted under the provisions of Title 45.1 of the Code of Virginia;

30 2. Clearing of lands specifically for agricultural purposes and the management, tilling,  
31 planting or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations,  
32 or as additionally set forth by the State Water Control Board in regulations, including engineering  
33 operations as follows: construction of terraces, terrace outlets, check dams, desilting basins,  
34 dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing,  
35 land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest  
36 crops unless the area on which harvesting occurs is reforested artificially or naturally in  
37 accordance with the provisions of Chapter 11 of the Code of Virginia (§ 10.1-1100 et seq.) or is  
38 converted to bona fide agricultural or improved pasture use as described in subsection B of §  
39 10.1-1163, Code of Virginia;

40 3. Single-family dwellings separately built and disturbing less than 1 acre (*The Board to*  
41 *select a value within an advertised range of range of 2,500 sq. ft. to 1 acre.*) and not part of a  
42 larger common plan of development or sale, including: additions to existing single-family  
43 detached dwellings; accessory structures to single-family detached dwellings; and demolitions of  
44 single-family detached dwellings or accessory structures all subject to the following (*The Board*  
45 *may select any or all or none of the advertised conditions below.*):

1 a) Control measures are not required to address a specific WLA for a pollutant that  
2 has been established in a TMDL and assigned to stormwater discharges from construction  
3 activities within the watershed; and

4 b) The proposed construction meets one of the following conditions:

5 i) Total imperviousness on the lot will be less than 2,500 square feet (*The Board*  
6 *to select a value within the advertised range of range of 1,000 sq. ft. to 5,000 sq. ft. or delete this*  
7 *half of the condition.*) or 18% of the lot area (*The Board to select a value within the advertised*  
8 *range of range of 10 – 50% or delete this half of the condition.*), whichever is greater; or

9 ii) Water quality controls meeting requirements in effect at the time were provided  
10 with the original subdivision construction and are currently in place; or

11 iii) The property is served by an existing regional stormwater management facility  
12 providing water quality control.

13 In order to demonstrate compliance with conditions (ii) or (iii) above, an applicant  
14 for a land-disturbing permit need only certify that water quality controls were included as part of  
15 the approved subdivision plans and have not been removed or that the site drains to an existing  
16 regional stormwater management facility providing water quality control.

17 4. Land-disturbing activities that disturb less than or equal to 2,500 square feet except for  
18 land-disturbing activities that are part of a larger common plan of development or sale;

19 5. Discharges to a sanitary sewer or a combined sewer system;

20 6. Activities under a State or federal reclamation program to return an abandoned  
21 property to an agricultural or open land use;

22 7. Routine maintenance that is performed to maintain the original line and grade,  
23 hydraulic capacity, or original construction of the project. The paving of an existing road with a  
24 compacted or impervious surface and reestablishment of existing associated ditches and  
25 shoulders shall be deemed routine maintenance if performed in accordance with this subsection;  
26 and

27 8. Conducting land-disturbing activities in response to a public emergency where the  
28 related work requires immediate authorization to avoid imminent endangerment to human health  
29 or the environment. In such situations, the County shall be advised of the disturbance within  
30 seven days of commencing the land-disturbing activity and compliance with the administrative  
31 requirements of this Chapter is required within 30 days of commencing the land-disturbing  
32 activity.

### 33 **Section 124-1-8. Right of Entry.**

34 A. The Director, or any duly authorized agent of the Director, may, at reasonable times and  
35 under reasonable circumstances, enter any establishment or upon any property, public or private,  
36 for the purpose of obtaining information or conducting surveys or investigations necessary in the  
37 enforcement of the provisions of the Act and this Chapter.

38 B. In accordance with a performance bond with surety, cash escrow, letter of credit, any  
39 combination thereof, or such other legal arrangement, the Director, or any duly authorized agent  
40 of the Director also may enter any establishment or upon any property, public or private, for the  
41 purpose of initiating or maintaining appropriate actions that are required by the permit conditions  
42 associated with a land-disturbing activity when a permittee, after proper notice, has failed to take  
43 acceptable action within the time specified.  
44  
45  
46  
47

1 C. If the Director, or any duly authorized agent of the Director, has been refused access to a  
2 property for the purpose of conducting an investigation under this Article, he may obtain a search  
3 warrant upon demonstrating, to the satisfaction of any judge or magistrate or other person having  
4 the authority to issue warrants, that probable cause exists to support issuance of a search or  
5 administrative warrant to conduct an inspection or investigation necessary to carry out the  
6 provisions of this Chapter.  
7

8 **Section 124-1-9. Severability.**  
9

10 If any of the articles, sections, paragraphs, sentences, clauses, or phrases of this Chapter shall  
11 be declared unconstitutional or invalid by a valid judgment or decree of a court of competent  
12 jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the Chapter in its  
13 entirety or any of the remaining articles, sections, paragraphs, sentences, clauses, and phrases.  
14

15 **Section 124-1-10. Applicability of and Conflicts with Other Laws and Regulations.**  
16

17 A. Nothing in this Chapter shall be construed as limiting the applicability of other laws and  
18 regulations, including, but not limited to, the CWA, the Virginia Stormwater Management Act,  
19 the Virginia Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act and  
20 all applicable regulations adopted in accordance with those laws with the following exceptions:  
21 compliance with the requirements of this Chapter shall be considered to meet the stormwater  
22 management requirements under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.)  
23 and attendant regulations and Chapter 118 of the Code; and compliance with the minimum  
24 standards set out in §124-4-4 shall be deemed to satisfy the requirements of ~~4VAC50-30-40.19~~  
25 4VAC25-840-40.19 (Minimum Standard 19 of the Virginia Erosion and Sediment Control  
26 Regulations) and Chapter 104 of the Code.  
27

28 B. Nothing in the Regulations shall be construed as limiting the rights of other federal  
29 agencies, state agencies, or the County to impose more stringent technical criteria or other  
30 requirements as allowed by law.  
31

32 C. The Department of Environmental Quality shall consider any requirements imposed by  
33 this Chapter that are more stringent than those imposed by the Regulations and any requirements  
34 of a comprehensive stormwater management plan in its review of state agency projects.  
35

36 D. Nothing in this Chapter shall be construed as authorizing the County to regulate, or to  
37 require prior approval by the County for, a state or federal project, unless authorized by separate  
38 statute.  
39

40 E. Whenever any provision of this Chapter imposes a greater requirement or a higher  
41 standard than is required in any State or Federal statute or other County ordinance or regulation,  
42 the provision of this Chapter shall govern. Whenever any provision of any State or Federal  
43 statute or other County ordinance or regulation imposes a greater requirement or a higher  
44 standard than is required by this Chapter, the provision of such State or Federal statute or other  
45 County ordinance or regulation shall govern.  
46

47 **Section 124-1-11. Time Limits on Applicability of Approved Design Criteria.**  
48

49 ~~Beginning with the General Permit for Discharges of Stormwater from Construction~~

1 ~~Activities issued July 1, 2009, all land-disturbing activities that receive general permit coverage~~  
2 ~~shall be conducted in accordance with Article 4 or Article 5 technical criteria in place at the time~~  
3 ~~of initial state permit coverage and shall remain subject to those criteria for an additional two~~  
4 ~~state permit cycles, except as provided for in subsection D of § 124-1-12. After the two~~  
5 ~~additional state permit cycles have passed, or should permit coverage not be maintained, portions~~  
6 ~~of the project not under construction shall be subject to technical criteria adopted after the~~  
7 ~~original state permit coverage was issued. For land-disturbing projects issued coverage under the~~  
8 ~~July 1, 2009, permit and for which coverage was maintained, such projects shall remain subject~~  
9 ~~to the technical criteria of Article 5 for an additional two state permits.~~ A. Land-disturbing  
10 activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014,  
11 shall be conducted in accordance with the technical criteria in Article 5. Such projects shall  
12 remain subject to the technical criteria in Article 5 for two additional state permit cycles. After  
13 such time, portions of the project not under construction shall become subject to any new  
14 technical criteria adopted by the State Water Control Board.

15 B. Land-disturbing activities that obtain an initial state permit on or after July 1, 2014, shall  
16 be conducted in accordance with the technical criteria in Article 4, except as provided for in §  
17 124-1-12. Land-disturbing activities conducted in accordance with the technical criteria in  
18 Article 4 shall remain subject to the technical criteria in Article 4 for two additional state permit  
19 cycles. After such time, portions of the project not under construction shall become subject to  
20 any new technical criteria adopted by the State Water Control Board.

21 C Nothing in this section shall preclude an operator from constructing to a more stringent  
22 standard at their discretion.

### 23 **Section 124-1-12. Grandfathering.**

24  
25  
26 A. Until June 30, 2019, a ~~Any land-disturbing activity for which shall be considered~~  
27 grandfathered by the Director and shall be subject to the technical criteria in Article 5 provided:  
28

29 1. a ~~A currently valid proffered rezoning or P district rezoning or other rezoning with a~~  
30 ~~plan of development, special exception, special permit, variance, preliminary or final subdivision~~  
31 ~~plat, subdivision construction plan, preliminary or final site plan, or grading plan, was approved~~  
32 ~~by the County prior to July 1, 2012; and for which no coverage under the VSMP General Permit~~  
33 ~~for Discharges of Stormwater from Construction Activities has been issued prior to July 1, 2014,~~  
34 ~~shall be considered grandfathered and shall not be subject to the technical criteria of Article 4,~~  
35 ~~but shall be subject to the technical criteria of Article 5 for those areas that were included in the~~  
36 ~~approval, provided that~~

37 2. the Director finds that such ~~The~~ proffered rezoning or P district rezoning or other  
38 rezoning with a plan of development, special exception, special permit, variance, preliminary or  
39 final subdivision plat, subdivision construction plan, preliminary or final site plan, or grading  
40 plan provides sufficient information to demonstrate that the resulting land-disturbing activity  
41 will be compliant comply with the technical requirements of Article 5 and include, as a  
42 minimum, the following: (i) a conceptual drawing that identifies the location of the proposed  
43 stormwater facilities; (ii) pre- and post-development calculations that detail the required pollutant  
44 reduction necessary to comply with the water quality design criteria; and (iii) calculations  
45 necessary to determine compliance with the water quantity design criteria; and

46 3. In the event that the County approved document is The proffered rezoning or P district

1 rezoning or other rezoning with a plan of development, special exception, special permit,  
2 variance, preliminary or final subdivision plat, subdivision construction plan, preliminary or final  
3 site plan, or grading plan has not been subsequently modified or amended in a manner ~~such that~~  
4 ~~there is no~~ resulting in an increase over the previously approved plat or plan in the amount of  
5 phosphorus leaving each point of discharge ~~of the land-disturbing activity through stormwater~~  
6 ~~runoff, and such that there is no increase over the previously approved plat or plan in~~ or the  
7 volume or rate of runoff, ~~the grandfathering shall continue as before; and,~~

8 4. A state permit has not been issued prior to July 1, 2014; and

9 5. Land disturbance did not commence prior to July 1, 2014.

10  
11 B. ~~Until June 30, 2019, for~~ Localities, state, and federal projects shall be considered  
12 grandfathered and shall be subject to the technical criteria in Article 5 provided; for which

13 1. There has been an obligation of locality, state, or federal funding, in whole or in part,  
14 prior to July 1, 2012, or

15 ~~2. for which~~ the Department of Conservation and Recreation has approved a stormwater  
16 management plan prior to July 1, 2012, ~~such projects shall be considered grandfathered and shall~~  
17 ~~not be subject to the technical criteria of Article 4, but shall be subject to the technical criteria of~~  
18 ~~Article 5 for those areas that were included in the approval; and~~

19 2. A state permit has not been issued prior to July 1, 2014; and

20 3. Land disturbance did not commence prior to July 1, 2014.

21  
22 C. ~~For~~ Land-disturbing activities grandfathered under subsections A and B above,  
23 ~~construction must be completed by June 30, 2019, or~~ shall remain subject to the technical criteria  
24 of Article 5 for one additional state permit cycle. After such time, portions of the project not  
25 under construction shall become subject to the technical criteria of Article 4 any new technical  
26 criteria adopted by the State water Control Board. For the purpose of administering the  
27 ~~grandfathering requirements only, construction is considered complete when requirements for~~  
28 ~~termination of state permit coverage have been met.~~

29  
30 D. In cases where governmental bonding or public debt financing has been issued for a  
31 project prior to July 1, 2012, such project shall be subject to the technical criteria of Article 5.

32  
33 E. Nothing in this section shall preclude an operator from constructing to a more stringent  
34 standard at their discretion.

### 35 **Section 124-1-13. Chesapeake Bay Preservation Act Land-Disturbing Activity.**

36  
37  
38 In order to protect the quality of state waters and to control the discharge of stormwater  
39 pollutants from land-disturbing activities, runoff associated with Chesapeake Bay Preservation  
40 Act land-disturbing activities shall be controlled unless otherwise exempt under § 124-1-7. Such  
41 land-disturbing activities shall not require completion of a registration statement or require  
42 coverage under the General Permit for Discharges of Stormwater from Construction Activities  
43 ~~unless they are part of a larger common plan of development or sale that ultimately will disturb~~  
44 equal to or greater than one acre of land unless they are part of a larger common plan of  
45 development or sale that ultimately will disturb equal to or greater than one acre of land but shall  
46 be subject to the following technical criteria and program and administrative requirements:

1  
2 A. An erosion and sediment control plan consistent with the requirements of Chapter 104  
3 (Erosion and Sedimentation Control) of the Code and the Virginia Erosion and Sediment Control  
4 Law and regulations must be designed and implemented during land disturbing activities. Prior  
5 to land disturbance, this plan must be approved by the Director in accordance with Chapter 104  
6 and the Virginia Erosion and Sediment Control Law and attendant regulations.  
7

8 B. A stormwater management plan consistent with the requirements of this Chapter and the  
9 Virginia Stormwater Management Act and regulations must be designed and implemented during  
10 the land disturbing activity. The stormwater management plan shall be developed and submitted  
11 in accordance with § 124-2-7. Prior to land disturbance, this plan must be approved by the  
12 Director.  
13

14 C. Exceptions may be requested in accordance with Article 6.  
15

16 D. Long-term maintenance of stormwater management facilities shall be provided for and  
17 conducted in accordance with § 124-2-10.  
18

19 E. Water quality design criteria in § 124-4-2 shall be applied to the site.  
20

21 F. Water quality compliance shall be achieved in accordance with § 124-4-3.  
22

23 G. Channel protection and flood protection shall be achieved in accordance with § 124-4-4.  
24

25 H. Offsite compliance options in accordance with § 124-4-5 shall be available to Chesapeake  
26 Bay Preservation Act land-disturbing activities.  
27

28 I. Such land-disturbing activities shall be subject to the design storm and hydrologic methods  
29 set out in § 124-4-6, linear development controls in § 124-4-8, and criteria associated with  
30 stormwater impoundment structures or facilities in the PFM.  
31

32 Single-family residences separately built, disturbing less than one acre and part of a larger  
33 common plan of development that ultimately will disturb equal to or greater than one acre of land  
34 are authorized to discharge under the General Permit for Discharges of Stormwater from  
35 Construction Activities and are not required to submit a registration statement or the state portion  
36 of the permit fee, provided that the stormwater management plan for the larger common plan of  
37 development or sale provides permanent control measures (i.e. stormwater management  
38 facilities) encompassing the single-family residence.  
39

## 40 **ARTICLE 2.**

### 41 **General Administrative Criteria for Regulated Land-Disturbing Activities.**

#### 42 **Section 124-2-1. Applicability.**

43  
44  
45 This Part applies to all regulated land-disturbing activities unless exempt under § 124-1-7.  
46  
47

1 **Section 124-2-2. Permit Required.**  
2

3 A. A person shall not conduct any land-disturbing activity without a stormwater permit.  
4 Permits will not be issued until the following items have been submitted to the County and  
5 approved by the Director as prescribed herein:  
6

- 7 1. A permit application that includes a state VSMP permit registration statement except  
8 for Chesapeake Bay Preservation Act land-disturbing activities;  
9 2. Evidence of VSMP permit coverage except for Chesapeake Bay Preservation Act land-  
10 disturbing activities;  
11 3. An erosion and sediment control plan in accordance with Chapter 104 of the Code; and  
12 4. A stormwater management plan meeting the requirements of § 124-2-7.  
13

14 B. No permit shall be issued until the fees required to be paid pursuant to Article 3 of this  
15 Chapter are received, and the Applicant has provided surety for performance as required pursuant  
16 to § 124-2-4.  
17

18 C. Permit applications shall be acted on within 60 days after it has been determined by the  
19 Director to be a complete application. The Director may either issue the permit or deny the  
20 permit and shall provide written rationale for the denial. Any permit application that has been  
21 previously disapproved shall be acted on within 45 days after the application has been revised,  
22 resubmitted for approval, and deemed complete.  
23

24 **Section 124-2-3. Annual Standards and Specifications for State Agencies, Federal Entities,**  
25 **and Other Specified Entities.**  
26

27 A. State entities, including the Department of Transportation, and for linear projects set out in  
28 subsection B, electric, natural gas, and telephone utility companies, interstate and intrastate  
29 natural gas pipeline companies shall, and federal entities and authorities created pursuant to §  
30 15.2-5102 of the Code of Virginia may, annually submit a single set of standards and  
31 specifications for Department of Environmental Quality approval that describes how land-  
32 disturbing activities shall be conducted. Such standards and specifications shall be consistent  
33 with the requirements of the Act and associated regulations, including regulations governing the  
34 General Virginia Stormwater Management Program (VSMP) Permit for Discharges of  
35 Stormwater from Construction Activities (~~4 VAC 50-60-1100 et seq.~~ 9VAC25-880 et seq.), and  
36 the Erosion and Sediment Control Law (§ 62.1-44.15.51 et seq.) and associated regulations.  
37 Each project constructed in accordance with the requirements of the Act, its attendant  
38 regulations, and where required standards and specifications shall obtain coverage issued under  
39 the state general permit prior to land disturbance.  
40

41 B. Linear projects subject to annual standards and specifications include:  
42

- 43 1. Construction, installation, or maintenance of electric transmission, natural gas, and  
44 telephone utility lines and pipelines, and water and sewer lines; and  
45 2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other  
46 related structures and facilities of a railroad company.  
47

48 Linear projects not included in subdivisions 1 and 2 shall comply with the requirements of this  
49 Chapter.  
50

1 **Section 124-2-4. Security for Performance.**

2  
3 Prior to approval to begin land-disturbing activity, the applicant shall submit a performance  
4 bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal  
5 arrangement acceptable to the County, to ensure that measures could be taken by the County at  
6 the applicant's expense should the applicant fail, after proper notice, within the time specified to  
7 take or complete all appropriate actions which may be required of him by the permit conditions  
8 as a result of the applicant's land-disturbing activity. If the County takes such action upon such  
9 failure by the applicant, the County may collect from the applicant for the difference should the  
10 amount of the reasonable cost of such action exceed the amount of the security held. Within 60  
11 days of the completion of the requirements of the permit conditions, such bond, cash escrow,  
12 letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall  
13 be refunded to the applicant or terminated. These requirements are in addition to all other  
14 provisions of law relating to the issuance of permits and are not intended to otherwise affect the  
15 requirements for such permits including performance guarantees for items unrelated to the  
16 stormwater permit.  
17

18 **Section 124-2-5. Monitoring, Reports, Investigations, and Inspections.**

19  
20 A. The Director (i) shall provide for periodic inspections of the installation of stormwater  
21 management measures, (ii) may require monitoring and reports from the person responsible for  
22 meeting the permit conditions to ensure compliance with the permit and to determine whether the  
23 measures required in the permit provide effective stormwater management, and (iii) conduct such  
24 investigations and perform such other actions as are necessary to carry out the provisions of this  
25 Chapter.  
26

27 B. Land-disturbing activity shall be inspected during construction for:

- 28  
29 1. Compliance with the approved erosion and sediment control plan;  
30 2. Compliance with the approved stormwater management plan;  
31 3. Development, updating, and implementation of a pollution prevention plan; and  
32 4. Development and implementation of any additional control measures necessary to  
33 address a TMDL.  
34

35 C. Every permit applicant, permittee, or any person subject to state permit requirements under  
36 this Chapter shall furnish, when requested by the County, such application materials, plans,  
37 specifications, and other pertinent information as may be necessary to determine the effect of his  
38 discharge on the quality of state waters, or such other information as may be necessary to  
39 accomplish the purposes of this Chapter.  
40

41 **Section 124-2-6. Stormwater Pollution Prevention Plan Requirements.**

42  
43 A. A stormwater pollution prevention plan shall include, but not be limited to, an approved  
44 erosion and sediment control plan, an approved stormwater management plan, a pollution  
45 prevention plan for regulated land-disturbing activities, and a description of any additional  
46 control measures necessary to address a TMDL pursuant to subsection E.

1  
2 B. An erosion and sediment control plan consistent with the requirements of the Virginia  
3 Erosion and Sediment Control Law and regulations, Chapter 104, and the PFM must be designed  
4 and implemented during construction activities. Prior to land disturbance, this plan must be  
5 approved by the Director in accordance with the Virginia Erosion and Sediment Control Law and  
6 attendant regulations, Chapter 104, and the PFM.  
7

8 C. A stormwater management plan consistent with the requirements of § 124-2-7 must be  
9 designed and implemented during construction activities. Prior to land disturbance, this plan  
10 must be approved by the Director.  
11

12 D. A pollution prevention plan consistent with the requirements § 124-2-8 must be  
13 developed before land disturbance commences.  
14

15 E. In addition to the above requirements, if a specific WLA for a pollutant has been  
16 established in ~~a~~ an approved TMDL and is assigned to stormwater discharges from a construction  
17 activity, additional control measures must be identified and implemented by the operator so that  
18 discharges are consistent with the assumptions and requirements of the WLA ~~in a State Water~~  
19 ~~Control Board approved TMDL~~ as specified in 40 CFR 450.21.  
20

21 F. The stormwater pollution prevention plan must address the following requirements, to the  
22 extent otherwise required by state law or regulations and any applicable requirements of a state  
23 permit in ~~4 VAC 50-60-1170~~ 9VAC25-880-1:  
24

- 25 1. Control stormwater volume and velocity within the site to minimize soil erosion;
- 26 2. Control stormwater discharges, including both peak flow rates and total stormwater  
27 volume, to minimize erosion at outlets and to minimize downstream channel and stream bank  
28 erosion;
- 29 3. Minimize the amount of soil exposed during construction activity;
- 30 4. Minimize the disturbance of steep slopes;
- 31 5. Minimize sediment discharges from the site. The design, installation and maintenance  
32 of erosion and sediment controls must address factors such as the amount, frequency, intensity  
33 and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics,  
34 including the range of soil particle sizes expected to be present on the site;
- 35 6. Provide and maintain natural buffers around surface waters, direct stormwater to  
36 vegetated areas to increase sediment removal and maximize stormwater infiltration, unless  
37 infeasible;
- 38 7. Minimize soil compaction and, unless infeasible, preserve topsoil;
- 39 8. Stabilization of disturbed areas must, at a minimum, be initiated immediately  
40 whenever any clearing, grading, excavating or other earth disturbing activities have permanently  
41 ceased on any portion of the site, or temporarily ceased on any portion of the site and will not  
42 resume for a period exceeding 14 calendar days. Stabilization must be completed within a period  
43 of time determined by the County. In drought stricken areas where initiating vegetative  
44 stabilization measures immediately is infeasible, alternative stabilization measures must be  
45 employed as specified by the County; and  
46 9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when

1 discharging from basins and impoundments.  
2

3 G. The SWPPP shall be amended whenever there is a change in design, construction,  
4 operation, or maintenance that has a significant effect on the discharge of pollutants to state  
5 waters and that has not been previously addressed in the SWPPP. The SWPPP must be  
6 maintained at a central location onsite. If an onsite location is unavailable, notice of the  
7 SWPPP's location must be posted near the main entrance at the construction site.  
8

9 **Section 124-2-7. Stormwater Management Plans.**  
10

11 A. A stormwater management plan shall be developed and submitted to the County. The  
12 stormwater management plan shall be implemented as approved or modified by the Director and  
13 shall be developed in accordance with the following:  
14

15 1. A stormwater management plan for a land-disturbing activity shall apply the  
16 stormwater management technical criteria set forth in Article 4 or Article 5 as applicable to the  
17 entire land disturbing activity. Individual lots in new residential, commercial, or industrial  
18 developments shall not be considered separate land-disturbing activities.

19 2. A stormwater management plan shall consider all sources of surface runoff and all  
20 sources of subsurface and groundwater flows converted to surface runoff.

21 3. Stormwater management plans shall meet all requirements of the PFM.  
22

23 B. A complete stormwater management plan shall include the following elements:  
24

25 1. Information on the type of and location of stormwater discharges, information on the  
26 features to which stormwater is being discharged including surface waters, and predevelopment  
27 and postdevelopment drainage areas;

28 2. Contact information including the name, address, ~~and~~ telephone number, and email  
29 address of the owner and the tax reference number and parcel number of the property or  
30 properties affected;

31 3. A narrative that includes a description of current site conditions and final site  
32 conditions and any proffers or conditions relating to stormwater management;

33 4. A general description of the proposed stormwater management facilities and the  
34 mechanism through which the facilities will be operated and maintained after construction is  
35 complete;

36 5. Information on the proposed stormwater management facilities, including the type of  
37 facilities, location, including geographic coordinates, acres treated, and the surface waters into  
38 which the facility will discharge;

39 6. Hydrologic and hydraulic computations, including runoff characteristics;

40 7. Documentation and calculations verifying compliance with the water quality and  
41 quantity requirements of this Chapter;

42 8. A map or maps of the site that depicts the topography of the site and includes:  
43

44 a. All contributing drainage areas;

45 b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and  
46 floodplains;

- 1 c. Soil types, forest cover, and other vegetative areas;  
2 d. Current land use including existing structures, roads, and locations of known  
3 utilities and easements;  
4 e. Sufficient information on adjoining parcels to assess the impacts of stormwater  
5 from the site on these parcels;  
6 f. The limits of clearing and grading, and the proposed drainage patterns on the site;  
7 g. Proposed buildings, roads, parking areas, utilities, and stormwater management  
8 facilities; and  
9 h. Proposed land use with tabulation of the percentage of surface area to be adapted to  
10 various uses, including but not limited to planned locations of utilities, roads, and easements.

11  
12 9. If an operator intends to meet the requirements established in § 124-4-2 or § 124-4-4  
13 through the use of off-site compliance options, where applicable, then a letter of availability from  
14 the off-site provider must be included.

15 10. Any other information deemed necessary by the Director to evaluate potential impacts  
16 of the proposed land-disturbing activity.

17  
18 C. Stormwater management plans shall be appropriately sealed and signed by a professional  
19 registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter  
20 4 of Title 54.1.

### 21 **Section 124-2-8. Pollution Prevention Plans.**

22  
23 A. A plan for implementing pollution prevention measures during construction activities  
24 shall be developed, implemented and updated as necessary. The pollution prevention plan shall  
25 detail the design, installation, implementation and maintenance of effective pollution prevention  
26 measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a  
27 minimum, such measures must be designed, installed, implemented and maintained to:  
28

29  
30 1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash  
31 water, and other wash waters. Wash waters must be treated in a sediment basin or alternative  
32 control that provides equivalent or better treatment prior to discharge;

33 2. Minimize the exposure of building materials, building products, construction wastes,  
34 trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other  
35 materials present on the site to precipitation and to stormwater; and

36 3. Minimize the discharge of pollutants from spills and leaks and implement chemical  
37 spill and leak prevention and response procedures.

38  
39 B. The pollution prevention plan shall include effective best management practices to  
40 prohibit the following discharges in accordance with 40 CFR 450.21(e):

41  
42 1. Wastewater from washout of concrete, unless managed by an appropriate control;  
43 2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing  
44 compounds and other construction materials;

45 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and  
46 maintenance; and

1 4. Soaps or solvents used in vehicle and equipment washing  
2

3 C. Discharges from dewatering activities, including discharges from dewatering of trenches  
4 and excavations, are prohibited unless managed by appropriate controls in accordance with 40  
5 CFR 450.21(c).  
6

7 **Section 124-2-9. Stormwater Management Plan Review.**  
8

9 A. A stormwater management plan shall be approved or disapproved by the Director in  
10 accordance with the following:  
11

12 1. The completeness of a plan shall be determined in accordance with § 124-2-7.B. The  
13 applicant shall be notified of any determination within 15 calendar days of receipt of the plan.  
14 Where available to the applicant, electronic communication may be considered communication  
15 in writing.  
16

17 a. If within those 15 calendar days the plan is deemed to be incomplete, the applicant  
18 shall be notified in writing of the reasons the plan is deemed incomplete.

19 b. If a determination of completeness is made and communicated to the applicant  
20 within the 15 calendar days, an additional 60 calendar days from the date of the communication  
21 will be allowed for the review of the plan.

22 c. If a determination of completeness is not made and communicated to the applicant  
23 within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a  
24 total of 60 calendar days from the date of submission will be allowed for the review of the plan.

25 d. Any plan that has been previously disapproved shall be reviewed within 45  
26 calendar days of the date of resubmission.  
27

28 2. During the review period, the plan shall be approved or disapproved and the decision  
29 communicated in writing to the person responsible for the land-disturbing activity or his  
30 designated agent. If the plan is not approved, the reasons for not approving the plan shall be  
31 provided in writing. Approval or denial shall be based on the plan's compliance with the  
32 requirements of this Chapter and all applicable codes, regulations, and policies, as determined by  
33 the Director. Where available to the applicant, electronic communication may be considered  
34 communication in writing.  
35

36 3. If a plan meeting all requirements of this Chapter and all applicable codes, regulations,  
37 and policies, as determined by the Director, is submitted and no action is taken within the time  
38 specified above, the plan shall be deemed approved.  
39

40 B. Each approved plan may be modified as follows:  
41

42 1. Modifications to an approved stormwater management plan shall be allowed only after  
43 review and written approval by the Director. Requests for modifications containing all required  
44 information shall be approved or disapproved in writing within 60 calendar days of receipt of  
45 such requests.  
46

1           2. Based on an inspection, the Director may require amendments to the approved  
2 stormwater management plan to address any deficiencies within a time frame set by the Director.

3  
4           C. The Director will not provide authorization to begin land disturbance until provided  
5 evidence of state permit coverage, where it is required, in accordance with § 124-2-2.

6  
7           **Section 124-2-10. Long-term Maintenance of Permanent Stormwater Management**  
8 **Facilities.**

9  
10          A. Provisions for long-term responsibility for and maintenance of stormwater management  
11 facilities and other techniques specified to manage the quality and quantity of runoff are required.  
12 For all facilities and techniques intended to be privately maintained, such requirements shall be  
13 set forth in a Private Maintenance Agreement recorded in the Fairfax County land records prior  
14 to approval to begin land-disturbing activity. Private Maintenance Agreements shall, at a  
15 minimum:

- 16  
17           1. Be submitted in a form acceptable to the Director for review and approval and  
18 executed prior to the approval of the stormwater management plan;  
19           2. Be stated to run with the land;  
20           3. Provide for all necessary access to the property for purposes of maintenance and  
21 regulatory inspections;  
22           4. Provide for inspections and maintenance and the submission of inspection and  
23 maintenance reports to the County on an annual basis;  
24           5. Be enforceable by all appropriate governmental parties;  
25           6. Ensure that measures could be taken by the County to maintain the stormwater  
26 management facilities or perform inspections at the owner's expense should the owner fail to  
27 maintain the stormwater management facilities in good working order in accordance with the  
28 maintenance specifications in the agreement or perform the periodic inspections required by the  
29 agreement;  
30           7. Provide that in the event the County, pursuant to the agreement, performs work of any  
31 nature or expends any funds in performance of said work for labor, use of equipment, supplies,  
32 materials, and the like, the owner will reimburse the County for all costs incurred by the County;  
33 and  
34           8. Provide for liens to be placed on the property should the owner fail to reimburse the  
35 County for costs incurred by the County.

36  
37          B. The Director may utilize the inspection reports of the owner of a stormwater management  
38 facility as part of an inspection program established in subsection C of this section if the  
39 inspection is conducted by a person who is licensed as a professional engineer, architect,  
40 landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of  
41 Title 54.1; a person who works under the direction and oversight of the licensed professional  
42 engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate  
43 certificate of competence from the SWCB.

44  
45          C. The Director shall establish an inspection program that ensures that stormwater  
46 management facilities are being adequately maintained as designed after completion of land-

1 disturbing activities. The inspection programs shall:  
2

- 3 1. Be approved by the SWCB;
  - 4 2. Ensure that each stormwater management facility is inspected by the Director, or his  
5 designee, not to include the owner, except as provided in subsections B and E of this section, at  
6 least once every five years; and
  - 7 3. Be documented by records.
- 8

9 **Section 124-2-11. Construction Record Drawings.**

10  
11 Upon satisfactory completion, inspection and approval of the installation of all required  
12 permanent stormwater management facilities, a construction record drawing (a.k.a. as-built) for  
13 permanent stormwater management facilities shall be submitted to the Director for review and  
14 approval for conformance with the approved stormwater management plan. Construction record  
15 drawings shall be prepared in accordance with the provisions set forth in the Public Facilities  
16 Manual. The construction record drawing shall be appropriately sealed and signed by a  
17 professional registered in the Commonwealth of Virginia, pursuant to Article 1 (§ 54.1-400 et  
18 seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, certifying that the stormwater  
19 management facilities have been constructed in accordance with the approved plan. The  
20 Director may elect not to require construction record drawings for stormwater management  
21 facilities for which maintenance agreements are not required pursuant to § 124-2-10.B.

22  
23 **ARTICLE 3.**

24  
25 **Fees.**

26  
27 **Section 124-3-1 General.**

28  
29 This Article establishes the fees associated with coverage under the General Permit for  
30 Discharges of Stormwater from Construction Activities (permits for stormwater management for  
31 land-disturbing activities) permit maintenance, modification, and transfer, and permits for  
32 Chesapeake Bay Preservation Act land-disturbing activities.

33  
34 A. The fees for general permit coverage, permit or registration statement modification, or  
35 permit transfers are considered separate actions and shall be assessed a separate fee, as  
36 applicable.

37  
38 B. Persons whose coverage under the General Permit for Discharges of Stormwater from  
39 Construction Activities has been revoked shall reapply to DEQ for an Individual Permit for  
40 Discharges of Stormwater from Construction Activities.

41  
42 C. Requests for a state permit, state permit modification, or general permit coverage shall not  
be processed until the fees required pursuant to this Article are paid.

43  
44 D. General permit coverage maintenance fees shall be paid annually to the County by the  
anniversary date of general permit coverage. No state permit will be reissued or automatically

1 continued without payment of the required fee. General permit coverage maintenance fees shall  
2 be applied until a Notice of Termination is effective.

3 E. All incomplete payments will be deemed as nonpayments. The Department of  
4 Environmental Quality or the County, as applicable, shall provide notification to the applicant of  
5 any incomplete payments. Interest may be charged for late payments at the underpayment rate  
6 set forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the  
7 applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90  
8 days past due) account. The Department of Environmental Quality and the County are entitled to  
9 all remedies available under the Code of Virginia in collecting any past due amount.

10  
11 **Section 124-3-2 Exemptions.**

12  
13 A. No state permit application fees will be assessed to:

14  
15 1. State permittees who request minor modifications to permits as defined in § 124-1-5 or  
16 other minor amendments at the discretion of the County.

17  
18 2. State permittees whose permits are modified or amended at the request of the County  
19 or DEQ by the State Water Control Board. This does not include errors in the registration  
20 statement identified by the County, DEQ, or State Water Control Board or errors related to the  
21 acreage of the site.

22  
23 B. State permit modifications at the request of the state permittee resulting in changes to  
24 stormwater management plans that require additional review by the County shall not be exempt  
25 pursuant to this section and shall be subject to fees specified under §124-3-4.

26  
27 **Section 124-3-3 Fees for Coverage Under the General Permit for Discharges of Stormwater**  
28 **from Construction Activities and Permits for Chesapeake Bay Preservation Area Land-**  
29 **Disturbing Activities.**

30  
31 The state's portion of the fees for coverage under the General Permit for Discharges of  
32 Stormwater from Construction Activities shall be paid directly to the state in accordance with  
33 ~~4VAC50-60-700 et seq~~ 9VAC25-870-700 et seq. The fee due to the state shall be the  
34 Department of Environmental Quality portion of the total fee to be paid by the applicant listed in  
35 ~~4VAC50-60-820~~ 9VAC25-870-820. Fees for permits for Chesapeake Bay Preservation Act land-  
36 disturbing activities and the County's portion of the fees for coverage under the General Permit  
37 for Discharges of Stormwater for Construction Activities shall be paid to the County at such  
38 times and amounts as provided for in Appendix Q of the Code.

39  
40 **Section 124-3-4. Fees for the Modification or Transfer of Registration Statements for the**  
41 **General Permit for Discharges of Stormwater from Construction Activities.**

42  
43 Fees for the modification or transfer of registration statements for the General Permit for  
44 Discharges of Stormwater from Construction Activities shall be paid to the County at such times  
45 and amounts as provided for in Appendix Q of the Code. If the permit modifications result in

1 changes to stormwater management plans that require additional review by the County, such  
2 reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the  
3 total disturbed acreage of the site. In addition to the permit modification fee, modifications  
4 resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee  
5 paid and the permit fee that would have applied for the total disturbed acreage in § 124-3-3  
6

7 **Section 124-3-5. Permit Maintenance Fees.**

8  
9 Annual permit maintenance fees for General Permits for Discharges of Stormwater from  
10 Construction Sites including expired permits that have been administratively continued and  
11 Chesapeake Bay Preservation Act land-disturbing activities shall be paid to the County at such  
12 times and amounts as provided for in Appendix Q of the Code. With respect to the General  
13 Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until  
14 the permit coverage is terminated  
15

16 **ARTICLE 4.**

17 **Technical Criteria for Regulated Land-Disturbing Activities.**

18 **Section 124-4-1. Applicability.**

19  
20  
21  
22 Except as grandfathered in §124-1-12, this Article establishes the minimum technical criteria that  
23 shall be employed to protect the quality and quantity of state waters from the potential harm of  
24 unmanaged stormwater runoff resulting from land-disturbing activities.  
25

26 **Section 124-4-2. Water Quality Design Criteria Requirements.**

27  
28 A. In order to protect the quality of state waters and to control the discharge of stormwater  
29 pollutants from regulated activities, the following minimum design criteria and standards for  
30 stormwater management shall be applied to the site.  
31

32 1. New development. The total phosphorus load of new development projects shall not  
33 exceed 0.41 pounds per acre per year, as calculated pursuant to §124-4-3.  
34

35 2. Development on prior developed lands.

36 a. For land-disturbing activities disturbing greater than or equal to one (1) acre that  
37 result in no net increase in impervious cover from the predevelopment condition, the total  
38 phosphorus load shall be reduced at least 20% below the predevelopment total phosphorus load.

39 b. For regulated land-disturbing activities disturbing less than one (1) acre that result  
40 in no net increase in impervious cover from the predevelopment condition, the total phosphorus  
41 load shall be reduced at least 10% below the predevelopment total phosphorus load.

42 c. For land-disturbing activities that result in a net increase in impervious cover over  
43 the predevelopment condition, the design criteria for new development shall be applied to the  
44 increased impervious area. Depending on the area of disturbance, the criteria of subdivisions (a)  
45 or (b) above, shall be applied to the remainder of the site.

46 d. In lieu of subdivision (c), the total phosphorus load of a linear development project  
47 occurring on prior developed lands shall be reduced 20% below the predevelopment total

1 phosphorus load.

2 e. The total phosphorus load shall not be required to be reduced to below the  
3 applicable standard for new development unless a more stringent standard has been established  
4 by the County.

5  
6 B. The Board has established a Water Supply Protection Overlay District (WSPOD) in the  
7 Occoquan Watershed to prevent water quality degradation of the Occoquan Reservoir due to  
8 pollutant loadings within the watershed. WSPOD boundaries have been established on the  
9 Official Zoning Map. Use limitations are established which require that there shall be water  
10 quality control measures designed to reduce the projected phosphorus runoff by at least one-half  
11 for any subdivision which is subject to the provisions of Chapter 101 of the Code or any use  
12 requiring the approval of a site plan in accordance with the provisions of Article 17 of Chapter  
13 112 of the Code, unless a modification or waiver is approved by the Director. In no instance  
14 shall the requirement for water quality control measures be modified or waived except where  
15 existing site characteristics make the provision impractical or unreasonable on-site and an  
16 alternative provision is not or cannot be accommodated off-site, and where it can be established  
17 that the modification or waiver will not affect the achievement of the water quality goals for the  
18 public water supply watershed as set forth in the adopted comprehensive plan.

19  
20 C. Compliance with subsections A and B above shall be determined in accordance with  
21 §124-4-3.

22  
23 D. Requirements of all applicable TMDL action plans developed by the County in  
24 accordance with the County's MS4 permit shall be met.

25  
26 **Section 124-4-3. Water Quality Compliance.**

27  
28 A. Compliance with the water quality design criteria set out in subsections A and B of §124-  
29 4-2 shall be determined by utilizing the Virginia Runoff Reduction Method or another equivalent  
30 methodology that is approved by the State Water Control Board.

31  
32 B. The BMPs listed in ~~4VAC50-60-65.B~~ 9VAC25-870-65.B are approved for use, subject to  
33 the restrictions and conditions in the PFM, as necessary to effectively reduce the phosphorus load  
34 and runoff volume in accordance with the Virginia Runoff Reduction Method. Other approved  
35 BMPs found on the Virginia Stormwater BMP Clearinghouse Website may also be utilized,  
36 subject to review and approval by the Director. Design specifications and the pollutant removal  
37 efficiencies for all approved BMPs are found on the Virginia Stormwater BMP Clearinghouse  
38 Website. Modifications to the design specifications, to address local requirements, are included  
39 in the PFM.

40  
41 C. Where a site drains to more than one HUC, the pollutant load reduction requirements shall  
42 be applied independently within each HUC unless reductions are achieved in accordance with a  
43 comprehensive watershed stormwater management plan in accordance with § 124-4-9. Pollutant  
44 load reduction requirements to meet TMDL action plans developed by the County in accordance  
45 with the County's MS4 permit shall be applied independently to the areas of the site subject to  
46 the TMDL.

47  
48 D. Offsite alternatives where allowed in accordance with § 124-4-5 may be utilized to meet

1 the design criteria of subsection A of § 124-4-2.

2  
3 **Section 124-4-4. Water Quantity.**

4  
5 A. Channel protection and flood protection shall be addressed in accordance with the  
6 minimum standards set out in this section.

7  
8 B. Channel protection. Concentrated stormwater flow shall be released into a stormwater  
9 conveyance system and shall meet criteria 1, 2 or 3 of this subsection, where applicable, from the  
10 point of discharge to a point to the limits of analysis in ~~subsection 4 § 124-4-4.B.5~~ as  
11 demonstrated by use of acceptable hydrologic and hydraulic methodologies.

12  
13 1. Manmade stormwater conveyance systems. When stormwater from a development is  
14 discharged to a manmade stormwater conveyance system, following the land-disturbing activity,  
15 either:

16  
17 a. The manmade stormwater conveyance system shall convey the postdevelopment  
18 peak flow rate from the two-year 24-hour storm event without causing erosion of the system.  
19 Detention of stormwater or downstream improvements may be incorporated into the approved  
20 land-disturbing activity to meet this criterion, at the discretion of the Director; or

21 b. The peak discharge requirements for concentrated stormwater flow to natural  
22 stormwater conveyance systems in ~~criteria 3a or 3b of this subsection~~ § 124-4-4.B.3(a) or 3(b)  
23 shall be met.

24  
25 2. Restored stormwater conveyance systems. When stormwater from a development is  
26 discharged to a restored stormwater conveyance system that has been restored using natural  
27 channel design concepts, following the land-disturbing activity, either:

28  
29 a. The development shall be consistent, in combination with other stormwater runoff,  
30 with the design parameters of the restored stormwater conveyance system that is functioning in  
31 accordance with the design objectives; or

32 b. The peak discharge requirements for concentrated stormwater flow to natural  
33 stormwater conveyance systems in ~~criteria 3a or 3b of this subsection~~ § 124-4-4.B.3(a) or 3(b)  
34 shall be met.

35  
36 3. Natural stormwater conveyance systems. When stormwater from a development is  
37 discharged to a natural stormwater conveyance system, the maximum peak flow rate from the  
38 one-year 24-hour storm following the land-disturbing activity shall be calculated by one of the  
39 following:

40  
41 a. In accordance with the following methodology:

42  
43 
$$Q_{\text{Developed}} \leq (Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$$

44  
45 Where:

46  $Q_{\text{Developed}}$  = The allowable peak flow rate of runoff from the developed site.

1  $RV_{\text{Developed}}$  = The volume of runoff from the site in the developed condition.  
2  $Q_{\text{Forest}}$  = The peak flow rate of runoff from the site in a forested condition.  
3  $RV_{\text{Forest}}$  = The volume of runoff from the site in a forested condition.  
4

5 b. In accordance with another methodology that is determined by the Director to  
6 achieve equivalent results and is approved by the State Water Control Board.  
7

8 c. If the maximum peak flow rate for the 2-year 24-hour storm can be conveyed  
9 within the system from the point of discharge to the limit of analysis in § 124-4-4.B.6 without  
10 causing erosion, the maximum peak flow rate from the one-year 24-hour storm following the  
11 land-disturbing activity may be calculated in accordance with the following methodology:  
12

$$13 \quad Q_{\text{Developed}} \leq \text{I.F.} * (Q_{\text{Pre-Developed}} * RV_{\text{Pre-Developed}}) / RV_{\text{Developed}}$$

14 Under no condition shall  $Q_{\text{Developed}}$  be greater than  $Q_{\text{Pre-Developed}}$   
15

16 Where:  
17

18 I.F. (Improvement Factor) = 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre

19  $Q_{\text{Developed}}$  = The allowable peak flow rate of runoff from the developed site.

20  $RV_{\text{Developed}}$  = The volume of runoff from the site in the developed condition.

21  $Q_{\text{Pre-Developed}}$  = The peak flow rate of runoff from the site in a pre-developed condition.

22  $RV_{\text{Pre-Developed}}$  = The volume of runoff from the site in a pre-developed condition.  
23

24 4. If § 124-4-4.B.3(a) or 3(b) is used to show compliance with the channel protection  
25 criteria, the downstream review shall be limited to providing cross-sections to show a defined  
26 channel, which may include sections of natural streams with braided channels or wetlands as  
27 determined by the Director, or man-made drainage facility for the extent of review described in §  
28 124-4-4.B.6.  
29

30 ~~45. Limits of analysis. Unless criteria 3a or 3b of this subsection~~ § 124-4-4.B.3 is utilized  
31 to show compliance with the channel protection criteria, stormwater conveyance systems shall be  
32 analyzed for compliance with channel protection criteria to a point where either:  
33

34 a. Based on land area, the site's contributing drainage area is less than or equal to  
35 1.0% of the total watershed area; or

36 b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm  
37 is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior  
38 to the implementation of any stormwater quantity control measures.  
39

40 6. Alternative limits of analysis. If § 124-4-4.B.3 is used to show compliance with the  
41 channel protection criteria above the downstream limit of analysis may extend to a point where:  
42

43 a. Based on land area, the site's contributing drainage area is less than or equal to  
44 1.0% of the total watershed area; or

1           b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm  
2 is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior  
3 to the implementation of any stormwater quantity control measures; or

4           c. To a point that is at least 150 feet downstream of a point where the receiving pipe  
5 or channel is joined by another that has a drainage area that is at least 90 percent of the size of the  
6 first drainage area at the point of confluence; or

7           d. To a point that is at least 150 feet downstream of a point where the drainage area  
8 is 360 acres or greater.

9  
10           C. Flood protection. Concentrated stormwater flow shall be released into a stormwater  
11 conveyance system and shall meet criteria 1, 2, or 3 below, where applicable, from the point of  
12 discharge to a point to the limits of analysis in ~~subsection 5~~ § 124-4-4.C.5 as demonstrated by use  
13 of acceptable hydrologic and hydraulic methodologies:  
14

15           1. Concentrated stormwater flow to stormwater conveyance systems that currently do not  
16 experience localized flooding during the 10-year 24-hour storm event. The point of discharge  
17 releases stormwater into a stormwater conveyance system that, following the land-disturbing  
18 activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm event  
19 within the stormwater conveyance system. Detention of stormwater or downstream  
20 improvements may be incorporated into the approved land-disturbing activity to meet this  
21 criterion, at the discretion of the Director.  
22

23           2. Concentrated stormwater flow to stormwater conveyance systems that currently  
24 experience localized flooding during the 10-year 24-hour storm event. The point of discharge  
25 releases stormwater into a stormwater conveyance system that, following the land-disturbing  
26 activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm event  
27 within the stormwater conveyance system to avoid the localized flooding. Detention of  
28 stormwater or downstream improvements may be incorporated into the approved land-disturbing  
29 activity to meet this criterion, at the discretion of the Director.  
30

31           3. Localized flooding is defined as follows:  
32

33           a. For manmade stormwater conveyance systems, localized flooding occurs when: the  
34 capacity of the channel, pipe system, or culvert is exceeded for the 10-year 24-hour storm event  
35 or the design storm, whichever is greater; or existing dwellings or buildings constructed under an  
36 approved building permit are flooded by the 100-year storm event.

37           b. For natural stormwater conveyance systems, localized flooding occurs when: the  
38 capacity of the channel, or a system of braided channels or wetlands as determined by the  
39 Director, is exceeded for the 2-year 24-hour storm event; or existing dwellings or buildings  
40 constructed under an approved building permit are flooded by the 100-year storm event.

41           c. For a restored stormwater conveyance system that has been designed using natural  
42 channel design concepts, localized flooding occurs when: the capacity of the channel and  
43 overbanks are exceeded for the stated design storm; or existing dwellings or buildings  
44 constructed under an approved building permit are flooded by the 100-year storm event.  
45

1 4. As an alternative to criteria 1 or 2 above, detention of stormwater may be provided that  
2 releases the postdevelopment peak flows for the 2-year 24-hour storm event and the 10-year 24-  
3 hour storm event at rates that are determined utilizing the method in § 124-4-4.B.3(a) or 3(b). If  
4 this method is used, the downstream review analysis shall be limited to providing cross-sections  
5 to show a defined channel, which may include sections of natural streams with braided channels  
6 or wetlands as determined by the Director, or man-made drainage facility, and checking for  
7 flooding of existing dwellings or buildings constructed under an approved building permit from  
8 the 100-year storm event for the extent of review described in ~~5 below~~ § 124-4-4.C.6.  
9

10 5. Limits of analysis. Unless § 124-4-4.C.4 is utilized to comply with the flood  
11 protection criteria, stormwater conveyance systems shall be analyzed for compliance with flood  
12 protection criteria to a point where:  
13

14 a. The site's contributing drainage area is less than or equal to 1.0% of the total  
15 watershed area draining to a point of analysis in the downstream stormwater conveyance system;  
16 or

17 b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm  
18 event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24- hour storm  
19 event prior to the implementation of any stormwater quantity control measures; or

20 c. The stormwater conveyance system enters a mapped floodplain or other flood prone  
21 area, adopted by ordinance.<sup>1</sup>  
22

23 6. Alternative limits of analysis. If § 124-4-4.C.4 is utilized to comply with the flood  
24 protection criteria, or the detention requirements of § 124-4-4.D are met and the receiving  
25 conveyance system complies with the flood protection criteria from the point of discharge to the  
26 limits of analysis in this subdivision, the downstream limit of analysis may extend to a point  
27 where:  
28

29 a. The site's contributing drainage area is less than or equal to 1.0% of the total  
30 watershed area draining to a point of analysis in the downstream stormwater conveyance system;  
31 or

32 b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm  
33 event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24- hour storm  
34 event prior to the implementation of any stormwater quantity control measures; or

35 c. The stormwater conveyance system enters a mapped floodplain or other flood prone  
36 area, adopted by ordinance; or

37 d. To a point that is at least 150 feet downstream of a point where the receiving pipe  
38 or channel is joined by another that has a drainage area that is at least 90 percent of the size of the  
39 first drainage area at the point of confluence; or

40 e. To a point that is at least 150 feet downstream of a point where the drainage area is  
41 360 acres or greater.  
42

<sup>1</sup> Floodplains adopted by ordinance include any Special Flood Hazard Area depicted on the County's Flood Insurance Rate Map or any floodplain included in Appendix A of the Code.

1           67. If an existing dwelling or a building constructed under an approved building permit,  
2 which is located within the extent of review described in § 124-4-4.C.56, is flooded by the 100-  
3 year storm, the peak flow of the 100-year storm at the development site shall be reduced to a  
4 level below the pre-development based on the methodology in § 124-4-4.B.3(a) or 3(b).  
5

6           D. Detention. Unless waived by the Director, the postdevelopment peak flow for the 2-year  
7 24-hour storm event shall be released at a rate that is equal to or less than the predevelopment  
8 peak flow rate from the 2-year 24-hour storm event and the postdevelopment peak flow for the  
9 10-year 24-hour storm event shall be released at a rate that is less than or equal to the  
10 predevelopment peak flow rate from the 10-year 24-hour storm event. In the Four Mile Run  
11 watershed, the postdevelopment peak flow for the 100-year storm event shall be released at a rate  
12 that is equal to or less than the predevelopment peak flow rate from the 100-year storm unless it  
13 is contraindicated by the watershed model developed for the Four Mile Run Watershed  
14 Management Program.  
15

16           E. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas,  
17 or from physical spreading of concentrated flow through level spreaders, must be identified and  
18 evaluated for potential impacts on down-gradient properties or resources. Increased volumes of  
19 sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient  
20 properties or resources shall be diverted to a stormwater management facility or a stormwater  
21 conveyance system that conveys the runoff without causing down-gradient erosion,  
22 sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this  
23 subsection are met, no further water quantity controls are required.  
24

25           F. For purposes of computing predevelopment runoff, all pervious lands on the site shall be  
26 assumed to be in good hydrologic condition in accordance with the U.S. Department of  
27 Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of  
28 conditions existing at the time of computation. Predevelopment runoff calculations utilizing  
29 other hydrologic conditions may be utilized provided that it is demonstrated to and approved by  
30 the Director that actual site conditions warrant such considerations.  
31

32           G. Predevelopment and postdevelopment runoff characteristics and site hydrology shall be  
33 verified by site inspections, topographic surveys, available soil mapping or studies, and  
34 calculations consistent with good engineering practices. Guidance provided in the Virginia  
35 Stormwater Management Handbook and by the Virginia Stormwater BMP Clearinghouse shall  
36 be considered appropriate practices as modified and supplemented by the Public Facilities  
37 Manual.  
38

#### 39 **Section 124-4-5. Offsite Compliance Options.**

40  
41           A. The Director, at his discretion, may allow an operator to use the following offsite  
42 compliance options to meet required phosphorus nutrient reductions:  
43

- 44           1. Offsite controls utilized in accordance with a comprehensive stormwater management  
45 plan adopted pursuant to § 124-4-9 for the local watershed within which a project is located;
- 46           2. A locality pollutant loading pro rata share program established pursuant to § 15.2-2243

1 of the Code of Virginia or similar local funding mechanism;

2 3. The nonpoint nutrient offset program established pursuant to § 62.1-44.15:35 of the  
3 Code of Virginia;

4 4. Any other offsite options approved by an applicable state agency or state board; and

5 5. When an operator has additional properties available within the same HUC or upstream  
6 HUC that the land-disturbing activity directly discharges to or within the same watershed as  
7 determined by the Director, offsite stormwater management facilities on those properties may be  
8 utilized to meet the required phosphorus nutrient reductions from the land-disturbing activity.  
9

10 B. Notwithstanding subsection A, and pursuant to § 62.1-44.15:35, operators shall be allowed  
11 to utilize offsite options identified in subsection A under any of the following conditions:  
12

13 1. Less than five acres of land will be disturbed;

14 2. The postconstruction phosphorus control requirement is less than 10 pounds per year;

15 or

16 3. At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at  
17 least 75% of the required phosphorus nutrient reductions can not be met on-site, and the operator  
18 can demonstrate to the satisfaction of the Director that (i) alternative site designs have been  
19 considered that may accommodate on-site best management practices, (ii) on-site best  
20 management practices have been considered in alternative site designs to the maximum extent  
21 practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full  
22 compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot  
23 practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in  
24 whole or in part, through the use of off-site compliance options.  
25

26 C. Notwithstanding subsections A and B, offsite options shall not be allowed:  
27

28 1. Unless the selected offsite option achieves the necessary nutrient reductions prior to the  
29 commencement of the operator's land-disturbing activity. In the case of a phased project, the  
30 operator may acquire or achieve offsite nutrient reductions prior to the commencement of each  
31 phase of land-disturbing activity in an amount sufficient for each phase.

32 2. In contravention of local water quality-based limitations at the point of discharge that  
33 are (i) consistent with the determinations made pursuant to subsection B of § 62.1-44.19:7 of the  
34 Code of Virginia, (ii) contained in a municipal separate storm sewer system (MS4) program plan  
35 accepted by the Department of Environmental Quality, or (iii) as otherwise may be established or  
36 approved by the State Water Control Board. Such limitations include but are not limited to the  
37 phosphorous reduction requirement in the Water Supply Protection Overlay District and any  
38 applicable nutrient-based TMDL in Fairfax County.  
39

40 D. In order to meet the requirements of § 124-4-4, offsite options 1 and 2 of subsection A  
41 above may be utilized.  
42

43 F. In accordance with § 62.1-44.15:35F of the Code of Virginia, nutrient credits used  
44 pursuant to subsection A shall be generated in the same or adjacent eight-digit hydrologic unit  
45 code as defined by the United States Geological Survey as the permitted site except as otherwise  
46 limited in subsection C. Nutrient credits outside the same or adjacent eight-digit hydrologic unit

1 code may only be used if it is determined by the Director that no credits are available within the  
2 same or adjacent eight-digit hydrologic unit code when the Director accepts the final site design.  
3 In such cases, and subject to other limitations imposed in this section, credits available within the  
4 same tributary may be used. In no case shall credits from another tributary be used.  
5

6 **Section 124-4-6. Design Storms and Hydrologic Methods.**  
7

8 A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and  
9 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended  
10 by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial  
11 duration time series shall be used for the precipitation data.  
12

13 B. Unless otherwise specified, all hydrologic analyses shall be based on the existing  
14 watershed characteristics and how the ultimate development condition of the subject project will  
15 be addressed.  
16

17 C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS)  
18 synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-  
19 20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other  
20 standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in  
21 this part.  
22

23 D. For drainage areas of 200 acres or less, the Rational Method may be used for evaluating  
24 peak discharges.  
25

26 E. For drainage areas of 200 acres or less, the Rational Method may be used for evaluating  
27 volumetric flows to stormwater conveyances.  
28  
29

30 **Section 124-4-7. Stormwater Harvesting.**  
31

32 In accordance with § 62.1-44.15:28 of the Code of Virginia, stormwater harvesting is  
33 encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing  
34 water closets and urinals, and other water handling systems to the extent such systems are  
35 consistent with federal, state, and County regulations.  
36

37 **Section 124-4-8. Linear Development Projects.**  
38

39 Linear development projects, not subject to annual standards and specifications administered  
40 and enforced by the Department of Environmental Quality, shall control postdevelopment  
41 stormwater runoff in accordance with a site-specific stormwater management plan or a  
42 comprehensive watershed stormwater management plan developed in accordance with this  
43 Chapter.  
44

45 **Section 124-4-9. Comprehensive Stormwater Management Plans.**  
46

1 The County may develop comprehensive stormwater management plans to be approved by  
2 the Department of Environmental Quality that meet the water quality objectives, quantity  
3 objectives, or both of this Chapter:  
4

5 1. Such plans shall ensure that offsite reductions equal to or greater than those that would be  
6 required on each contributing site are achieved within the same HUC or within another locally  
7 designated watershed. Pertaining to water quantity objectives, the plan may provide for  
8 implementation of a combination of channel improvement, stormwater detention, or other  
9 measures that are satisfactory to the local stormwater management program to prevent  
10 downstream erosion and flooding.  
11

12 2. If the land use assumptions upon which the plan was based change or if any other  
13 amendments are deemed necessary by the local stormwater management program, such program  
14 shall provide plan amendments to the Department of Environmental Quality for review and  
15 approval.  
16

17 3. During the plan's implementation, the local stormwater management program shall  
18 document nutrient reductions accredited to the BMPs specified in the plan.  
19

20 4. State and federal agencies may develop comprehensive stormwater management plans,  
21 and may participate in locality-developed comprehensive stormwater management plans where  
22 practicable and permitted by the local stormwater management program.  
23

## 24 **ARTICLE 5.**

### 25 **Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered Projects and** 26 **Projects Subject to Time Limits on Applicability of Approved Design Criteria.** 27

#### 28 **Section 124-5-1. Definitions.** 29

30 For the purposes of Article 5 only, the following words and terms have the following  
31 meanings unless the context clearly indicates otherwise:  
32

33 "Adequate channel" means a channel that will convey the designated frequency storm event  
34 without overtopping the channel bank nor causing erosive damage to the channel bed or banks.  
35  
36

37 "Aquatic bench" means a 10- to 15-foot wide bench around the inside perimeter of a  
38 permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the  
39 bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations,  
40 and enhances safety.  
41

42 "Average land cover condition" means a measure of the average amount of impervious  
43 surfaces within a watershed, assumed to be 18%.  
44

45 "Bioretention basin" means a water quality BMP engineered to filter the water quality volume  
46 through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch,

1 ground cover), planting soil, and sand bed, and into the in-situ material.

2  
3 "Bioretention filter" means a bioretention basin with the addition of a sand filter collector  
4 pipe system beneath the planting bed.

5  
6 "Constructed wetlands" means areas intentionally designed and created to emulate the water  
7 quality improvement function of wetlands for the primary purpose of removing pollutants from  
8 stormwater.

9  
10 "Development" means the construction, rehabilitation, rebuilding or substantial alteration of  
11 residential, commercial, industrial, institutional, recreational, transportation, or utility uses,  
12 facilities or structures which results in a net increase in impervious area within an RPA and/or a  
13 net increase in impervious area within an RMA of greater than 20%, relative to conditions prior  
14 to development.

15  
16 "Grassed swale" means an earthen conveyance system which is broad and shallow with  
17 erosion resistant grasses and check dams, engineered to remove pollutants from stormwater  
18 runoff by filtration through grass and infiltration into the soil.

19  
20 "Infiltration facility" means a stormwater management facility that temporarily impounds  
21 runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility  
22 may also be equipped with an outlet structure to discharge impounded runoff, such discharge is  
23 normally reserved for overflow and other emergency conditions. Since an infiltration facility  
24 impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration  
25 basin, infiltration trench, infiltration dry well, and porous pavement shall be considered  
26 infiltration facilities.

27  
28 "Intensely Developed Area" or "IDA" means an area of existing development and infill sites  
29 where development is concentrated and little of the natural environment remains as of July 1,  
30 1993 and which is so designated on the map of Chesapeake Bay Preservation Areas adopted by  
31 the Board of Supervisors pursuant to § 118-1-9. An IDA must satisfy at least one of the  
32 following conditions as of July 1, 1993: development has severely altered the natural state of the  
33 area such that it has more than fifty percent (50%) impervious surface; public sewer and water  
34 systems, or a constructed stormwater drainage system, or both, have been constructed and serve  
35 the area as of the date of adoption of this Chapter; or housing density is equal to or greater than  
36 four dwelling units per acre.

37  
38 "Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount  
39 of a particular pollutant measured in pounds per year, delivered in a diffuse manner by  
40 stormwater runoff.

41  
42 "Planning area" means a designated portion of the parcel on which the land development  
43 project is located. Planning areas shall be established by delineation on a master plan. Once  
44 established, planning areas shall be applied consistently for all future projects.

45  
46 "Redevelopment" means the substantial alteration, rehabilitation, or rebuilding of a property  
47 for residential, commercial, industrial, or other purposes where there is no net increase in  
48 impervious area by the proposed redevelopment within an RPA and no more than a net increase  
49 in impervious area within an RMA of 20% relative to conditions prior to redevelopment, or any

1 construction, rehabilitation, rebuilding, or substantial alteration of residential, commercial,  
2 industrial, institutional, recreational, transportation, or utility uses, facilities or structures within  
3 an IDA.  
4

5 "Resource Management Area" or "RMA" means that component of the Chesapeake Bay  
6 Preservation Area comprised of lands that, if improperly used or developed, have a potential for  
7 causing significant water quality degradation or for diminishing the functional value of the  
8 Resource Protection Area.  
9

10 "Resource Protection Area" or "RPA" means that component of the Chesapeake Bay  
11 Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an  
12 intrinsic water quality value due to the ecological and biological processes they perform or are  
13 sensitive to impacts which may result in significant degradation of the quality of state waters. In  
14 their natural condition, these lands provide for the removal, reduction, or assimilation of  
15 sediments, nutrients, and potentially harmful or toxic substances from runoff entering the Bay  
16 and its tributaries, and minimize the adverse effects of human activities on state waters and  
17 aquatic resources.  
18

19 "Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The  
20 runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or  
21 infiltrated into the in-situ soils.  
22

23 "Shallow marsh" means a zone within a stormwater extended detention basin that exists from  
24 the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and,  
25 therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area,  
26 to maintain the desired water surface elevations to support emergent vegetation.  
27

28 "Stormwater detention basin" or "detention basin" means a stormwater management facility  
29 that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a  
30 downstream conveyance system. While a certain amount of outflow may also occur via  
31 infiltration through the surrounding soil, such amounts are negligible when compared to the  
32 outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a  
33 detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.  
34

35 "Stormwater extended detention basin" or "extended detention basin" means a stormwater  
36 management facility that temporarily impounds runoff and discharges it through a hydraulic  
37 outlet structure over a specified period of time to a downstream conveyance system for the  
38 purpose of water quality enhancement or stream channel erosion control. While a certain amount  
39 of outflow may also occur via infiltration through the surrounding soil, such amounts are  
40 negligible when compared to the outlet structure discharge rates and, therefore, are not  
41 considered in the facility's design. Since an extended detention basin impounds runoff only  
42 temporarily, it is normally dry during nonrainfall periods.  
43

44 "Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced"  
45 means an extended detention basin modified to increase pollutant removal by providing a  
46 shallow marsh in the lower stage of the basin.  
47

48 "Stormwater retention basin" or "retention basin" means a stormwater management facility

1 that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing  
2 water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff  
3 inflows may be temporarily stored above this permanent impoundment for the purpose of  
4 reducing flooding, or stream channel erosion.

5  
6 "Stormwater retention basin I" or "retention basin I" means a retention basin with the volume  
7 of the permanent pool equal to three times the water quality volume.

8  
9 "Stormwater retention basin II" or "retention basin II" means a retention basin with the  
10 volume of the permanent pool equal to four times the water quality volume.

11  
12 "Stormwater retention basin III" or "retention basin III" means a retention basin with the  
13 volume of the permanent pool equal to four times the water quality volume with the addition of  
14 an aquatic bench.

15  
16 "Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff  
17 as overland sheet flow from upstream development. It shall adopt any natural vegetated form,  
18 from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through  
19 filtration, sediment deposition, infiltration and absorption, and is dedicated for that purpose.

20  
21 "Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by  
22 the impervious surface of the land development project.

23  
24 **Section 124-5-2. Applicability.**

25  
26 This part specifies the technical criteria for regulated land-disturbing activities that are not  
27 subject to the technical criteria of Article 4 in accordance with § 124-1-12. Regulated land-  
28 disturbing activities may comply with the technical criteria of Article 4 in lieu of the technical  
29 requirements of this article in accordance with § 124-1-12 paragraph E.

30  
31 **Section 124-5-3. General.**

32  
33 A. Determination of flooding and channel erosion impacts to receiving streams due to land-  
34 disturbing activities shall be measured at each point of discharge from the land disturbance and  
35 such determination shall include any runoff from the balance of the watershed that also  
36 contributes to that point of discharge.

37  
38 B. The specified design storms shall be defined as either a 24-hour storm using the rainfall  
39 distribution recommended by the U.S. Department of Agriculture's Natural Resources  
40 Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration  
41 that produces the greatest required storage volume at the site when using a design method such as  
42 the Modified Rational Method.

43  
44 C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to  
45 development to be in good condition (if the lands are pastures, lawns, or parks), with good cover  
46 (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of

1 conditions existing at the time of computation.  
2

3 D. Construction of stormwater management facilities or modifications to channels shall  
4 comply with all applicable laws regulations, and ordinances. Evidence of approval of all  
5 necessary permits shall be presented.  
6

7 E. Impounding structures that are not covered by the Impounding Structure Regulations  
8 (4VAC50-20) shall, at a minimum, be engineered for structural integrity during the 100-year  
9 storm event and shall comply with the requirements of § 6-1600 of the PFM.  
10

11 F. Predevelopment and postdevelopment runoff rates shall be verified by calculations that are  
12 consistent with good engineering practices and the PFM.  
13

14 G. Outflows from a stormwater management facility or stormwater conveyance system shall  
15 be discharged to an adequate channel.  
16

17 H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater  
18 management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall  
19 not be considered separate land-disturbing activities, but rather the entire subdivision shall be  
20 considered a single land development project. Hydrologic parameters shall reflect the ultimate  
21 land disturbance and shall be used in all engineering calculations.  
22

23 I. All stormwater management facilities shall have an inspection and maintenance plan that  
24 identifies the owner and the responsible party for carrying out the inspection and maintenance  
25 plan.  
26

27 J. Construction of stormwater management impoundment structures within a Federal  
28 Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided ~~to the~~  
29 ~~extent~~ whenever possible. When this is unavoidable, all stormwater management facility  
30 construction shall be in compliance with all applicable regulations under the National Flood  
31 Insurance Program, 44 CFR Part 59.  
32

33 K. Natural channel characteristics shall be preserved to the maximum extent practicable.  
34

35 L. Land-disturbing activities shall comply with Chapter 104 (Erosion and Sedimentation  
36 Control) of the County Code and the Virginia Erosion and Sediment Control Law (§ 62.1-  
37 44.15:51 et seq. of the Code of Virginia) and attendant regulations.  
38

39 M. Flood control and stormwater management facilities that drain or treat water from  
40 multiple development projects or from a significant portion of a watershed may be allowed in  
41 resource protection areas defined in the Chesapeake Bay Preservation Act , provided that (i) the  
42 County has conclusively established that the location of the facility within the resource protection  
43 area is the optimum location; (ii) the size of the facility is the minimum necessary to provide  
44 necessary flood control, stormwater treatment, or both; and (iii) the facility must be consistent  
45 with a stormwater management program that has been approved by the State Water Control  
46 Board, Soil and Water Conservation Board, the Chesapeake Bay Local Assistance Board, or the

1 Board of Conservation and Recreation.

2  
3 **Section 124-5-4. Water Quality.**

4  
5 *The requirements set forth below are what is currently in the PFM and were approved by the*  
6 *Chesapeake Bay Local Assistance Board as an acceptable alternative to the State's*  
7 *requirements and methodology.*

8  
9 A. For any development or redevelopment, stormwater runoff shall be controlled by the use  
10 of BMPs as follows:

11  
12 1. For development, the projected total phosphorus runoff pollution load for the proposed  
13 development shall be reduced by no less than forty (40) percent compared to phosphorus loads  
14 projected for the development without BMPs. This requirement shall not apply to any  
15 development that does not require a site plan pursuant to Article 17 of the Zoning Ordinance, that  
16 does not require subdivision approval pursuant to Chapter 101 of the Fairfax County Code, and  
17 that does not result in an impervious area of 18% or greater on the lot or parcel on which the  
18 development will occur.

19 2. For development and redevelopment within the Water Supply Protection Overlay  
20 District, the phosphorus removal requirements for the overlay district shall apply if such  
21 requirements impose a higher standard than the requirements of this Chapter.

22 3. For redevelopment of any property not currently served by one or more BMPs, the  
23 total phosphorus runoff pollution load from the property shall be reduced by at least ten (10)  
24 percent from the phosphorus runoff pollution load prior to redevelopment.

25 4. For redevelopment of any property that is currently and adequately served by one or  
26 more BMPs, the projected phosphorus runoff pollution load after redevelopment shall not exceed  
27 the existing phosphorus runoff pollution load.

28 5. BMPs shall be reviewed, modified, waived and/or approved by the Director in  
29 accordance with Article 6 of the Public Facilities Manual in effect on June 30, 2014.

30  
31 B. The following options shall be considered to comply with this Section:

32  
33 1. Incorporation on the site of BMPs that achieve the required control as set forth in  
34 paragraphs (1) through (5) above. For the purposes of this subsection, the "site" may include  
35 multiple projects or properties that are adjacent to one another or lie within the same drainage  
36 area where a single BMP or a system of BMPs will be utilized by those projects in common to  
37 satisfy water quality protection requirements;

38 2. Compliance with a locally adopted regional stormwater management program, which  
39 may include a Virginia Pollution Discharge Elimination System (VPDES) permit issued by the  
40 Department of Environmental Quality or the Department of Conservation and Recreation to a  
41 local government for its municipally owned separate storm sewer system discharges, that is  
42 reviewed and found by the State Water Control Board or the Soil and Water Conservation Board  
43 to achieve water quality protection equivalent to that required by this subsection; or

44 3. Compliance with a site-specific VPDES permit issued by the Department of  
45 Environmental Quality, provided that the local government specifically determines that the  
46 permit requires measures that collectively achieve water quality protection equivalent to that  
47 required by this subsection.

48  
49 C. Any maintenance, alteration, use or improvement to an existing structure or use that does  
50 not degrade the quality of surface water discharge, as determined by the Director, may be  
51 exempted from the requirements of subsection A.

1 **Section 124-5-5. Stream Channel Erosion.**

2  
3 A. Properties and receiving waterways downstream of any land-disturbing activity shall be  
4 protected from erosion and damage due to changes in runoff rate of flow and hydrologic  
5 characteristics, including, but not limited to, changes in volume, velocity, frequency, duration,  
6 and peak flow rate of stormwater runoff in accordance with the minimum design standards set  
7 out in this section.

8  
9 B. Land-disturbing activity shall comply with subdivision 19 of ~~4VAC50-30-40~~ 9VAC25-  
10 840-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 2.4 (§  
11 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

12  
13 C. Land-disturbing activity shall comply with the requirements of Chapter 6 of the Fairfax  
14 County Public Facilities Manual in effect on June 30, 2014.

15  
16 D. In addition to subsections B and C of this section, the County, by local ordinance may, or  
17 the State Water Control Board by state regulation may, adopt more stringent channel analysis  
18 criteria or design standards to ensure that the natural level of channel erosion, to the maximum  
19 extent practicable, will not increase due to the land-disturbing activities. These criteria may  
20 include, but are not limited to, the following:

- 21  
22 1. Criteria and procedures for channel analysis and classification.  
23 2. Procedures for channel data collection.  
24 3. Criteria and procedures for the determination of the magnitude and frequency of  
25 natural sediment transport loads.  
26 4. Criteria for the selection of proposed natural or manmade channel linings.

27  
28 **Section 124-5-6. Flooding.**

29  
30 A. Downstream properties and waterways shall be protected from damages from localized  
31 flooding due to changes in runoff rate of flow and hydrologic characteristics, including, but not  
32 limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater  
33 runoff in accordance with the minimum design standards set out in this section.

34  
35 B. The 10-year postdeveloped peak rate of runoff from the development site shall not  
36 exceed the 10-year predeveloped peak rate of runoff.

37  
38 C. Land-disturbing activity shall comply with the requirements of Chapter 6 of the  
39 Fairfax County Public Facilities Manual in effect on July 30, 2014.

40  
41 D. Linear development projects shall not be required to control postdeveloped stormwater  
42 runoff for flooding, except in accordance with a watershed or regional stormwater management  
43 plan.

44  
45 **Section 124-5-7. Regional (watershed-wide) Stormwater Management Plans.**

1 Water quality requirements and where allowed, water quantity requirements, may be  
2 achieved in accordance with §§ 124-4-5 and 124-4-9.

3  
4 **ARTICLE 6.**

5  
6 **Exceptions.**

7  
8 **Section 124-6-1. Exceptions.**

9  
10 A. Exceptions to the provisions of Articles 4 or 5 of this Chapter may be granted by the  
11 Director. An exception may be granted provided that:

- 12  
13 1. The exception is the minimum necessary to afford relief;  
14 2. Reasonable and appropriate conditions shall be imposed as necessary upon any  
15 exception granted so that the intent of the Act and this Chapter are preserved;  
16 3. Granting the exception will not confer any special privileges that are denied in other  
17 similar circumstances; and  
18 4. Exception requests are not based upon conditions or circumstances that are self-  
19 imposed or self-created.

20  
21 B. Economic hardship alone is not sufficient reason to grant an exception from the  
22 requirements of this Chapter.

23  
24 C. Under no circumstance will an exception to the requirement that the land-disturbing  
25 activity obtain required state permits be granted nor will the use of a BMP not found on the  
26 Virginia Stormwater BMP Clearinghouse Website be approved except where allowed under  
27 Article 5.

28  
29 D. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite  
30 options available through § 124-4-5 have been considered and found not available.

31  
32 E. In no instance shall the requirement for BMPs meeting the provisions of the Water Supply  
33 Protection Overlay District be modified or waived except where existing site characteristics  
34 make the provision impractical or unreasonable on-site and an alternative provision is not or  
35 cannot be accommodated off-site, and where it can be established that the modification or waiver  
36 will not affect the achievement of the water quality goals for the public water supply watershed  
37 as set forth in the adopted comprehensive plan.

38  
39 **ARTICLE 7.**

40  
41 **Appeals.**

42  
43 **Section 124-7-1. Right to Administrative Review.**

44  
45 A. The Director shall appoint a hearing officer or officers for the purpose of hearing appeals  
46 of actions or the failure to take action by the Director under this Chapter.

1 B. Any permit applicant, permittee, person subject to state permit requirements under this  
2 Chapter, or person subject to an enforcement action under this Chapter who is aggrieved by an  
3 action or inaction by the Director pursuant to this Chapter without a formal hearing may demand  
4 in writing a formal hearing by the hearing officer, provided that a petition requesting a hearing is  
5 filed with the Director within 30 days after notice of the Director's action is received by the  
6 aggrieved party. As provided for in this Chapter, the Director may seek an injunction in the  
7 absence of an administrative hearing.  
8

9 **Section 124-7-2. Hearings**

10  
11 A. Any hearing for administrative review of an action or inaction by the Director held  
12 pursuant to § 124-7-1 shall be conducted by the hearing officer.  
13

14 B. After a petition requesting a hearing is filed with the Director, the Director or hearing  
15 officer shall issue a notice of hearing to the aggrieved party providing the date, time, and location  
16 of the hearing, and shall include the facts and legal requirements related to the challenged action.  
17 The notice of hearing shall be issued in accordance with the notice requirements of § 124-8-1(F).  
18

19 C. The County and the aggrieved party may present evidence including witnesses regarding  
20 the facts and occurrences giving rise to the action subject to review. The aggrieved party may  
21 examine any of the County's witnesses.  
22

23 D. A verbatim record of the proceedings of any hearing for administrative review under this  
24 Chapter shall be made.  
25

26 E. The hearing officer shall have the power to issue subpoenas and subpoenas duces tecum,  
27 and at the request of any party shall issue such subpoenas. The failure of a witness without legal  
28 excuse to appear or to testify or to produce documents shall be acted upon by the Director, whose  
29 action may include the procurement of an order of enforcement from the circuit court. Witnesses  
30 who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil  
31 actions.  
32

33 F. The hearing officer shall issue a final order within 30 days after the conclusion of the  
34 hearing, which shall be served upon the parties, become part of the record, and briefly state the  
35 findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and  
36 relevant to the basic law under which the agency is operating and, as appropriate, an order  
37 imposing civil charges under Va. Code Ann. § 62.1-44.15:48(D)(2).  
38

39 **Section 124-7-3. Appeals of Final Orders.**

40  
41 The permit applicant, permittee, or person to whom a final order is issued by the hearing  
42 officer may seek judicial review of the final order issued by the hearing officer by appeal to the  
43 Circuit Court of Fairfax County on the record of the proceedings before the hearing officer. To  
44 commence an appeal, a party shall file a petition in the Circuit Court of Fairfax County within 30  
45 days of the date of the final order issued by the hearing officer. Failure to do so shall constitute a  
46 waiver of the right to appeal.  
47

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**ARTICLE 8.**

**Violations and Penalties.**

**Section 124-8-1. General Provisions.**

A. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Chapter, or permits any such violations, or fails to comply with any of the requirements hereof, or who fails to comply with the conditions of any permit issued in connection with the requirements of the Act or this Chapter shall be subject to the enforcement provisions of this Chapter. The County may pursue enforcement in accordance with any of the remedies provided herein.

B. Upon becoming aware of any violation of any provisions of this Chapter, the Director, or his designee, may issue a verbal warning and request to take corrective action for any such violation to the property owner or the person committing or permitting the same, and may serve a Notice of Violation on the property owner or the person committing or permitting the violation of this Chapter. The notice of violation shall (i) specify the provisions of this Chapter which have been violated, (ii) identify the remedial measures necessary to cure the violation, and (iii) provide a reasonable time in which to remedy the violations. Failure to take steps to comply with notice Notice of Violation within the time provided for therein shall constitute a separate violation of this Chapter.

C. If a permittee or a person receiving a Notice of Violation fails to comply within the time specified therein, the County may issue a Stop Work Order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed. Such orders shall become effective upon service. Failure to comply with a Stop Work Order shall constitute a separate violation of this Chapter.

D. If the County finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an Emergency Order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such Emergency Order. If a person who has been issued such order is not complying with the terms thereof, the County may institute a proceeding in accordance with subsection H. Failure to comply with an Emergency Order shall constitute a separate violation of this Chapter.

E. It is unlawful and constitutes a separate violation of this Chapter for any person to fail to comply with any Stop Work Order or Emergency Order issued in accordance with this Article. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance,

1 approved standard and specification, order, or any permit condition issued by the County, or any  
2 provisions of this Article may be compelled in a proceeding instituted in any appropriate court by  
3 the Director, on behalf of the Board of Supervisors, to obey same and to comply therewith by  
4 injunction, mandamus, or other appropriate remedy.  
5

6 F. The service requirement under this Chapter shall be satisfied if any Notice of Violation or  
7 other order is delivered by registered or certified mail, return receipt requested or in person to the  
8 property owner or his authorized representative, the permittee, or the person committing or  
9 permitting a violation of this Chapter.  
10

11 G. Any person violating or failing, neglecting, or refusing to obey any injunction,  
12 mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of  
13 the court, to a civil penalty in accordance with the provisions of the Article.  
14

15 H. The Director may apply to the Fairfax County Circuit Court for injunctive relief to enjoin  
16 a violation or a threatened violation of any provision of this Chapter without the necessity of  
17 showing that an adequate remedy at law does not exist.  
18

### 19 **Section 124-8-2. Criminal Violations and Penalties.**

20

21 A. Any person who willfully or negligently violates any provision of this Chapter, excluding  
22 Article 9, any condition of a permit or state permit, or any order of a court shall be guilty of a  
23 misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not  
24 less than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates any  
25 provision this Chapter, excluding provisions of Article 9, any condition of a permit or state  
26 permit or any order of a court issued as herein provided, or who knowingly makes any false  
27 statement in any form required to be submitted under this Chapter or knowingly renders  
28 inaccurate any monitoring device or method required to be maintained under this Chapter, shall  
29 be guilty of a felony punishable by a term of imprisonment of not less than one year nor more  
30 than three years, or in the discretion of the jury or the court trying the case without a jury,  
31 confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than  
32 \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a  
33 violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of  
34 violation of each requirement shall constitute a separate offense.  
35

36 B. Any person who knowingly violates any provision of this Chapter, excluding Article 9,  
37 and who knows at that time that he thereby places another person in imminent danger of death or  
38 serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of  
39 imprisonment of not less than two years nor more than 15 years and a fine of not more than  
40 \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a  
41 violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million  
42 or an amount that is three times the economic benefit realized by the defendant as a result of the  
43 offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for  
44 any subsequent conviction of the same person under this subsection.  
45

### 46 **Section 124-8-3. Civil Penalties.**

1  
2 A. Any person who violates any provision of this Chapter or standards and specifications  
3 adopted or approved thereunder, neglects or refuses to comply with any order issued hereunder  
4 by the Director or a court, shall be subject to a civil penalty not to exceed \$32,500 for each  
5 violation within the discretion of the court. Each day of violation of each requirement shall  
6 constitute a separate offense.  
7

8 B. Violations for which a civil penalty may be imposed under this subsection shall include  
9 but are not limited to the following:

- 10  
11 (i) No state permit registration;  
12 (ii) No SWPPP;  
13 (iii) Incomplete SWPPP;  
14 (iv) SWPPP not available for review;  
15 (v) No approved erosion and sediment control plan;  
16 (vi) Failure to install stormwater BMPs or erosion and sediment controls;  
17 (vii) Stormwater BMPs or erosion and sediment controls improperly installed or  
18 maintained;  
19 (viii) Operational deficiencies;  
20 (ix) Failure to conduct required inspections;  
21 (x) Incomplete, improper, or missed inspections;  
22 (xi) Discharges not in compliance with the requirements of Section ~~4VAC 50-60-1170~~  
23 9VAC25-880-70 of the general permit; and  
24 (xii) Illicit discharges into the Storm Sewer System and State Waters, and illicit  
25 connections to the County MS4 under Article 9 of this Chapter.  
26

27 C. The Director may issue a summons for collection of the civil penalty and the action may  
28 be prosecuted in the appropriate circuit court. Any civil penalties assessed by a court as a result  
29 of a summons issued by Fairfax County shall be paid into the treasury of Fairfax County, except  
30 where the violator is Fairfax County, or its agent. Such civil penalties paid into the treasury of  
31 Fairfax County are to be used for the purpose of minimizing, preventing, managing, or mitigating  
32 pollution of the waters of the locality and abating environmental pollution therein in such manner  
33 as the court may, by order, direct.  
34

35 D. With the consent of any person who has violated or failed, neglected, or refused to obey  
36 this Chapter, any condition of a permit or state permit, or any order of the VSMP authority, the  
37 Director may provide, in an order issued against such person, for the payment of civil charges or  
38 violations in specific sums, not to exceed the limit specified in this section. Any civil charges  
39 collected shall be paid into the treasury of Fairfax County.  
40

## 41 **ARTICLE 9**

### 42 **Illicit Discharges to the Storm Sewer System and State Waters**

#### 43 **Section 124-9-1. Purpose.**

44  
45  
46

1 The purpose of this Article is to enable the County to comply with state and federal laws and  
2 regulations, including the Clean Water Act (33 U.S.C. §§ 1251 et seq.), and the County’s MS4  
3 permit by preventing the discharge of non-stormwater substances into the Fairfax County  
4 Municipal Separate Storm Sewer System (“County MS4”) and to prevent discharges of  
5 prohibited substances into waters of the Commonwealth of Virginia that are located within the  
6 jurisdictional boundaries of the County and five miles beyond such jurisdictional boundary. The  
7 objective of this Article is to:

8  
9 A. Prevent the discharge of non-stormwater and/or prohibited substances into the County  
10 MS4 and state waters;

11  
12 B. Prevent illicit connections to the County MS4;

13  
14 C. Facilitate compliance with the state-issued Fairfax County Municipal Separate  
15 Stormwater Sewer System permit; and

16  
17 D. Authorize the Director to investigate and enforce violations of this Article.  
18

19 **Section 124-9-2. Responsibilities of the Director.**

20  
21 The Director shall have direct charge over the County MS4, including responsibility for the  
22 operation, maintenance, and administration thereof, and responsibility for the enforcement of  
23 violations of this Article.  
24

25 **Section 124-9-3. Illicit Discharges to the Storm Sewer System and State Waters.**

26  
27 A. It shall be unlawful for any Person to discharge or deposit, or to cause or allow to be  
28 discharged or deposited any wastes, trash, leaves, grass clippings, soil, oil, petroleum products,  
29 noxious or flammable substances, or any matter causing or adding pollution in any state waters of  
30 this County or on any property in this County in any manner so as to allow any such substance to  
31 be washed into state waters by storm or flood water. Nothing in this section shall prohibit the  
32 discharge or deposit of waste in state waters when such discharging has been approved by a state  
33 agency.  
34

35 B. It shall be unlawful for any Person to discharge or deposit, or to cause or allow to be  
36 discharged or deposited in the County MS4, any wastes, trash, leaves, grass clippings, oil,  
37 petroleum products, noxious or flammable substances, or any matter causing or adding pollution;  
38 provided however, that leaves may be piled at curbs during such seasons and in such areas as  
39 may now or in the future be furnished mechanical leaf collection service. It is the intent of this  
40 provision to prohibit the entry into the County MS4 of any substance, whether solid or liquid,  
41 other than naturally occurring surface or subsurface waters.  
42

43 C. It shall be unlawful to connect any plumbing fixtures, drains, appurtenances, or appliances  
44 that discharge any substance other than stormwater into the County MS4.  
45

1 **Section 124-9-4. Standards for Inspection of Industrial and Commercial Property**  
2 **Discharging to the County MS4.**

3  
4 The Director shall develop a program for the routine inspection of properties, which because  
5 of the nature of the industrial or commercial use thereon, present a high risk of discharging non-  
6 stormwater substances to the County MS4 that may, in the opinion of the Director, result in a  
7 significant pollutant load. The Director shall make publicly available the methodology and  
8 criteria for including properties in the inspection program and the basis for selecting a particular  
9 property for inspection under this program.

**PROPOSED AMENDMENTS  
TO  
CHAPTER 104 (EROSION AND SEDIMENTATION CONTROL)  
OF THE CODE OF THE COUNTY OF FAIRFAX VIRGINIA**

**Revisions to advertised amendments recommend by staff  
November 14, 2013**

*Advertised amendments (9/10/13) are indicated by single strikethroughs and single underlines.  
The revisions (11/14/13) to the proposed amendments recommended by staff are indicated by  
double strikethroughs and double underlines.*

1 **Amend Article 1, Purpose and Administration, by revising Section 104-1-1, Purpose, to**  
2 **read as follows:**

3  
4 Section 104-1-1. Purpose and administration.

5  
6 Pursuant to the powers granted by general law, including the provisions of Code of  
7 Virginia, Title 62.1, Chapter 3.1, Article 2.4 ~~Title 10.1, Chapter 5, Article 4~~, Erosion and  
8 Sediment Control Law, this Chapter is adopted for the following purposes: To conserve and  
9 protect the land, water, air, vegetation and other natural resources of Fairfax County; to alleviate  
10 erosion, siltation and other harmful effects of land-disturbing activities on neighboring land and  
11 streams, by ensuring that the owner of the property on which land-disturbing activities are to be  
12 carried out provides adequate controls of erosion and sedimentation; and takes necessary  
13 measures to preserve and protect trees and other vegetation during all phases of any land-  
14 disturbing activity. The Director shall be responsible for the administration of this Chapter.

15  
16 **Amend Article 1, Purpose and Administration, by revising Section 104-1-2, Applicability;**  
17 **regulated land-disturbing activities; submission and approval of a conservation plan, to**  
18 **read as follows:**

19  
20 Section 104-1-2. Applicability; regulated land-disturbing activities; submission and approval of a  
21 conservation plan.

22  
23 Except as noted herein, no person may engage in any land-disturbing activity in Fairfax  
24 County until he has submitted to the County a conservation plan for the land-disturbing activity  
25 and the plan has been reviewed and approved by the Director. The conservation plan shall be  
26 included in the grading plan required under Paragraph 3 of Part 6 of Article 2 of the Zoning  
27 Ordinance unless the following applies. Where the land disturbing activity results from the  
28 demolition of a single family dwelling, demolition of an accessory structure to a single family  
29 dwelling, construction of an addition to a single family dwelling as defined in Chapter 61 of the  
30 Code, or construction of an accessory structure to a single family dwelling, that results in a  
31 disturbed area of 5,000 square feet or less and does not require the installation of water quality  
32 controls or other drainage improvements, the conservation plan may be included in a plat  
33 certified by a land surveyor, engineer, landscape architect or architect authorized by the State to

1 practice as such meeting the requirements of Part 6 of Article 18 of the Zoning Ordinance in lieu  
2 of a grading plan. The standards in ~~Section~~ § 104-1-8 are to be used by the applicant when  
3 making a submittal under the provisions of this Chapter and in the preparation of a conservation  
4 plan. The Director, in considering the adequacy of a submitted plan, shall be guided by these  
5 standards. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the  
6 approved plan, the person responsible for carrying out the plan shall provide the name of an  
7 individual holding a certificate of competence to the Director, as provided in § 62.1-44.15:52  
8 ~~Section 10.1-561~~ of the Code of Virginia, who will be in charge of and responsible for carrying  
9 out the land-disturbing activity. Failure to provide the name of an individual holding a certificate  
10 of competence prior to engaging in land-disturbing activities may result in revocation of the  
11 approval of the plan and the person responsible for carrying out the plan shall be subject to the  
12 penalties provided in this Chapter. In order to prevent further erosion, the County may require  
13 approval of a conservation plan for any land identified as an erosion impact area. The provisions  
14 of this Article shall not limit the powers or duties presently exercised by the State Water Control  
15 Board or the Department of Mines, Minerals and Energy.

16  
17 (a) Electric, natural gas and telephone utility companies, interstate and intrastate natural  
18 gas pipeline companies and railroad companies shall file general erosion and sediment control  
19 specifications annually with the ~~Virginia Soil and Water Conservation~~ State Water Control  
20 Board for review and approval in accordance with § 62.1-44.15:55.D ~~Section 10.1-563.D~~ of the  
21 Virginia Code.

22  
23 (b) Any person engaging, in more than one jurisdiction, in the creation and operation of  
24 wetland mitigation or stream restoration banks, which have been approved and are operated in  
25 accordance with applicable federal and state guidance, laws, or regulations for the establishment,  
26 use, and operation of wetland mitigation or stream restoration banks, pursuant to a mitigation  
27 banking instrument signed by the Department of Environmental Quality, the Marine Resources  
28 Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general  
29 erosion and sediment control specifications for wetland mitigation or stream restoration banks  
30 annually with the ~~Virginia Soil and Water Conservation~~ State Water Control Board for review  
31 and approval in accordance with § 62.1-44.15:55.E ~~Section 10.1-563.E~~ of the Virginia Code.  
32 Approval of general erosion and sediment control specifications by the ~~Virginia Soil and Water~~  
33 ~~Conservation~~ State Water Control Board does not relieve the owner or operator from compliance  
34 with any other Fairfax County ordinances and regulations including requirements to submit plans  
35 and obtain permits as may be required by such ordinances and regulations.

36  
37 (c) Except as provided for in § 62.1-44.15:56 ~~Section 10.1-564~~ of the Virginia Code,  
38 land-disturbing activities undertaken by an agency of the Commonwealth of Virginia shall be  
39 exempt from the requirements of this Chapter. Notwithstanding § 62.1-44.15:56 of the Virginia  
40 Code, public institutions of higher education, including community colleges, colleges, and  
41 universities, shall be subject to project review and compliance for state erosion and sediment  
42 control requirements by the Director, unless such institution submits annual specifications to the  
43 Department of Conservation and Recreation, in accordance with § 62.1-44.15:56 A (i) of the  
44 Virginia Code.

45  
46 **Amend Article 1, Purpose and Administration, Section 104-1-3 Plan review and approval,**

1 **by revising paragraph (b) to read as follows:**  
2

3 (b) The Director must act on all plans submitted within forty-five (45) days from receipt  
4 thereof by either approving said plan in writing or by disapproving said plan in writing and  
5 giving the specific reasons for its disapproval. When a plan submitted for approval under this  
6 Section is found upon review by the Director to be inadequate, he/she shall specify such  
7 modifications, terms, and conditions as will permit approval of the plan and communicate these  
8 requirements to the applicant. If no action is taken by the Director within the time specified  
9 above, the plan shall be deemed approved and the person authorized to proceed with the  
10 proposed activity. Where proposed land-disturbing activities involve lands under the jurisdiction  
11 of more than one (1) local erosion and sediment control program, at the option of the applicant,  
12 an erosion and sediment control plan may be submitted to the State Water Control Board ~~Soil~~  
13 ~~and Water Conservation Board~~ for review and approval rather than to each jurisdiction  
14 concerned.  
15

16 **Amend Article 1, Purpose and Administration, Section 104-1-3 Plan review and approval,**  
17 **by adding new paragraph (f) to read as follows:**  
18

19 (f) The Director may waive or modify any of the standards that are deemed inappropriate  
20 or too restrictive for site conditions, by granting a variance. A variance may be granted under  
21 these conditions:  
22

23 (1) At the time of plan submission, an applicant may request a variance to become  
24 part of the approved erosion and sediment control plan. The applicant shall explain the  
25 reasons for requesting variances in writing. Specific variances which are allowed by the  
26 Director shall be documented in the plan.

27 (2) During construction, the person responsible for implementing the approved  
28 plan may request a variance in writing from the Director. The Director shall respond in  
29 writing either approving or disapproving such a request. If the Director does not approve  
30 a variance within 10 days of receipt of the request, the request shall be considered to be  
31 disapproved. Following disapproval, the applicant may resubmit a variance request with  
32 additional documentation.

33 (3) The Director shall consider variance requests judiciously, keeping in mind  
34 both the need of the applicant to maximize cost effectiveness and the need to protect off-  
35 site properties and resources from damage.  
36

37 **Amend Article 1, Purpose and Administration, by revising Section 104-1-4, Approved plan**  
38 **required for issuance of grading, building or other permits; security for performance, to**  
39 **read as follows:**  
40

41 Section 104-1-4. - Approved plan required for issuance of grading, building or other permits;  
42 security for performance.  
43

44 Neither the Director, nor any agency authorized under any law to issue grading,  
45 building, or other permits for activities involving land-disturbing activities, may issue any such  
46 permits unless the applicant submits with his application an approved conservation plan, ~~and~~

1 certification that the plan will be followed, and, where required, evidence of VSMP permit  
2 coverage. Prior to issuance of any permit, the person responsible for carrying out the plan shall  
3 provide the name of an individual holding a certificate of competence to the Director, as  
4 provided by Virginia Code, § 62.1-44.15:52 ~~§ 10.1-561~~, who will be in charge of and  
5 responsible for carrying out the land-disturbing activity. The Director, prior to issuance of any  
6 permit, may also require from any applicant a reasonable performance bond with surety, cash  
7 escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to  
8 the Director, to ensure that measures could be taken by the County at the applicant's expense  
9 should he fail, after proper notice, within the time specified to initiate or maintain appropriate  
10 conservation action which may be required of him by the approved plan as a result of his land-  
11 disturbing activity. If the County takes such conservation action upon any failure by the  
12 permittee, the County may collect from the permittee the reasonable cost of such action which  
13 exceeds the amount of security held. Following the issuance of any permit, the Director, or his  
14 agents, shall have the right to enter and inspect the permittee's property at all times prior to  
15 release of the project. Within 60 days of the completion of adequate stabilization of the land-  
16 disturbing activity, as determined by the Director, such bond, cash escrow, letter of credit or  
17 other legal arrangement, or the unexpended or unobligated portion thereof shall be refunded to  
18 the applicant or terminated. These requirements are in addition to all other provisions of law  
19 relating to the issuance of such permits and are not intended to otherwise affect the requirements  
20 for such permits.

21  
22 **Amend Article 1, Purpose and Administration, by revising Section 104-1-5, Monitoring and**  
23 **inspections, to read as follows:**  
24

25 Section 104-1-5. Monitoring and inspections.  
26

27 The Director shall provide for periodic inspections of any land-disturbing activity in accordance  
28 with Section ~~4VAC50-30-60.B~~ 9VAC25-840-60.B of the Virginia Erosion and Sediment Control  
29 Regulations and require that an individual holding a certificate of competence, as provided by  
30 Virginia Code, § 62.1-44.15:52 ~~§ 10.1-561~~, will be in charge of and responsible for carrying out  
31 the land-disturbing activity. Failure to provide the name of an individual holding a certificate of  
32 competence prior to engaging in land-disturbing activities may result in revocation of the  
33 approval of the plan and the person responsible for carrying out the plan shall be subject to the  
34 penalties provided in this Chapter. The Director may require monitoring and reports from the  
35 person responsible for carrying out the plan to ensure compliance with (1) the approved plan, and  
36 (2) the field practices specified in the standards defined herein, to determine whether the  
37 measures required in the plan and standards are effective in preserving and protecting trees and  
38 other vegetation, and controlling erosion and sediment resulting from the land-disturbing  
39 activities. Notice of such right of inspection shall be included in the permit. The owner,  
40 permittee, or person responsible for carrying out the plan shall be given notice of the inspection.  
41 If the Director determines that the permittee has failed to comply with the plan, the standards  
42 defined herein, or this Section, the Director shall immediately serve upon the permittee, his  
43 agent, or the person responsible for carrying out the plan either in person or by registered or  
44 certified mail to the address specified by the permittee in his permit application, or by delivery at  
45 the site of the permitted activities to the agent or employee of the permittee supervising such  
46 activities a notice to comply.

1  
2 Such notice shall specifically set forth the measures needed to comply with the plan and shall  
3 specify the time within which such measures shall be completed. If the permittee fails to comply  
4 within the time specified, he may be subject to revocation of the permit; furthermore, the  
5 permittee or the person responsible for carrying out the plan shall be deemed to be in violation of  
6 this Article and shall be subject to the penalties provided by this Article.  
7  
8

9 **Amend Article 1, Purpose and Administration, by revising Section 104-1-7, Definitions, to**  
10 **read as follows:**

11  
12 For the purpose of this Chapter, the following terms shall have the meanings respectively  
13 ascribed to them by this Section:  
14

15 (a) Applicant means any person submitting an erosion and sediment control plan for approval  
16 or requesting the issuance of a permit, when required, authorizing land-disturbing activities to  
17 commence.  
18

19 (b) Board means the Virginia State Water Control Board ~~Soil and Water Conservation Board~~.  
20

21 (c) *Certified inspector* means an employee or agent of a ~~program~~ VESCP authority who (i)  
22 holds a certificate of competence from the Board in the area of project inspection or (ii) is  
23 enrolled in the Board's training program for project inspection and successfully completes such  
24 program within one (1) year after enrollment.  
25

26 (d) *Certified plan reviewer* means an employee or agent of a ~~program~~ VESCP authority who  
27 (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in  
28 the Board's training program for plan review and successfully completes such program within  
29 one (1) year after enrollment, or (iii) is licensed as a professional engineer, architect, ~~certified~~  
30 landscape architect or land surveyor pursuant to Code of Virginia, Title 54.1, Chapter 4, Article  
31 1, ~~Sections § 54.1-400 et seq., or is a professional soil scientist as defined in Code of Virginia,~~  
32 Title 54.1, Chapter 22, § 54.1-2200 et seq.  
33

34 (e) *Certified program administrator* means an employee or agent of a ~~program~~ VESCP  
35 authority who (i) holds a certificate of competence from the Board in the area of program  
36 administration or (ii) is enrolled in the Board's training program for program administration and  
37 successfully completes such program within one (1) year after enrollment.  
38

39 (f) *Clearing* means removing or causing to be removed the vegetation growing in the soil  
40 which protects and stabilizes the soil. Such removing or causing to be removed shall include any  
41 intentional or negligent act to (1) cut down, (2) remove all or a substantial part of, or (3) damage  
42 a tree or other vegetation which will cause the tree or other vegetation to decline and/or die. Such  
43 acts shall include but not be limited to damage inflicted upon the root system of the vegetation  
44 by the application of toxic substances, by the operation of equipment and vehicles, by storage of  
45 materials, or by the damage of natural grade due to unapproved excavation or filling, or damage  
46 caused by the unapproved alteration of natural physical conditions.

1  
2 (g) *Conservation plan or erosion and sediment control plan or plan* means a document  
3 containing methods for the conservation of soil and water and other natural resources of a unit or  
4 group of units of land, pursuant to the requirements of this Chapter. It may include appropriate  
5 maps, an appropriate soil and water plan inventory and management information with needed  
6 interpretations, and a record of decisions contributing to conservation treatment. The plan shall  
7 contain all major conservation decisions to assure that the entire unit or units of land will be so  
8 treated to achieve the conservation objectives and demonstrate compliance with the standards of  
9 ~~Section~~ § 104-1-8. The conservation plan shall contain the tree conservation requirements  
10 specified in Chapter 122 of the Code and in Chapter 12 of the Public Facilities Manual.

11  
12 (h) *Conservation standards or standards* shall be defined in ~~Section~~ § 104-1-8,  
13 "Conservation standards," of this Article.

14  
15 (i) *Director* means the Director of the Department of Public Works and Environmental  
16 Services, or his/her agent.

17  
18 (j) *Disturbed land area* means that land on which the soil has been disturbed or on which soil  
19 disturbances may be caused by natural elements due to clearing of the vegetation or on which  
20 pavement or other impervious surfaces have been placed over existing pervious surfaces.

21  
22 (k) *Engage* means to take part in or to allow, direct or permit another person to take part in, a  
23 land-disturbing activity.

24  
25 (l) *Erosion impact area* means an area of land not associated with current land-disturbing  
26 activities but subject to persistent soil erosion resulting in the delivery of sediment onto  
27 neighboring properties or into state waters. This definition shall not apply to any lot or parcel of  
28 land 10,000 square feet or less used for residential purposes or to shorelines where the erosion  
29 results from wave action or other coastal processes.

30  
31 (m) *Land-disturbing activity* means any ~~land~~ man-made change to the land surface that ~~which~~  
32 may result in soil erosion from water or wind and the movement of sediments into State waters  
33 or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating,  
34 transporting, and filling of land, paving of existing pervious areas or otherwise creating new  
35 impervious areas, except that the term shall not include:

36  
37 (1) Minor land-disturbing activities such as home gardens and individual home  
38 landscaping, repairs and maintenance work;

39 (2) Individual service connections;

40 (3) Installation, maintenance or repair of any underground public utility lines when such  
41 activity occurs on an existing hard-surfaced road, street or sidewalk provided such land-  
42 disturbing activity is confined to the area of the road, street or sidewalk ~~which~~ that is hard  
43 surfaced;

44 (4) Septic tank lines or drainfields unless included in an overall plan for land-disturbing  
45 activity relating to construction of the building to be served by the septic tank system;

46 (5) Permitted sSurface or deep mining operations and projects, or oil and gas operations

1 and projects conducted pursuant to Code of Virginia Title 45.1;

2 ~~(6) Exploration or drilling for oil and gas including the well site, roads, feeder lines and~~  
3 ~~off-site disposal areas;~~

4 ~~(67) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or~~  
5 ~~livestock feedlot operations, or as additionally set forth by the Board in regulation; including~~  
6 ~~engineering operations as follows: the construction of terraces, terrace outlets, check dams,~~  
7 ~~desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating,~~  
8 ~~contour furrowing, land drainage and land irrigation; however, this exception shall not apply to~~  
9 ~~harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or~~  
10 ~~naturally in accordance with the provisions of Virginia Code, Chapter 11, Section (§ 10.1-1100~~  
11 ~~et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as~~  
12 ~~described in Subsection (B) of § 10.1-1163;~~

13 ~~(78) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities~~  
14 ~~and other related structures and facilities of a railroad company.~~

15 ~~(89) Agricultural engineering operations, including but not limited to the construction of~~  
16 ~~terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with~~  
17 ~~the Dam Safety Act (Virginia Code, Section § 10.1-604 et seq.), ditches, strip cropping, lister~~  
18 ~~furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;~~

19 ~~(940) Disturbed land areas for commercial or noncommercial uses of 2,500 square feet or~~  
20 ~~less in size;~~

21 ~~(1044) Installation of fence and sign posts or telephone and electric poles and other kinds~~  
22 ~~of posts or poles;~~

23 ~~(1142) Shoreline erosion control projects on tidal waters when all of the land-disturbing~~  
24 ~~activities are within the regulatory authority of and approved by the Fairfax County Wetlands~~  
25 ~~Board, the Marine Resources Commission or the United States Army Corps of Engineers;~~  
26 ~~however, any associated land that is disturbed outside of this exempted area shall remain subject~~  
27 ~~to this Chapter;~~

28 ~~(1243) Emergency work to protect life, limb or property, and emergency repairs;~~  
29 ~~however, if the land-disturbing activity would have required an approved erosion and sediment~~  
30 ~~control plan, if the activity were not an emergency, then the land area disturbed shall be shaped~~  
31 ~~and stabilized in accordance with the requirements of the Director.~~

32  
33 (n) Natural channel design concepts means the utilization of engineering analysis and  
34 fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance  
35 system for the purpose of creating or recreating a stream that conveys its bankfull storm event  
36 within its banks and allows larger flows to access its bankfull bench and its floodplain.

37  
38 ~~(o) Owner means the owner or owners of the freehold of the premises or lesser estate~~  
39 ~~therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee~~  
40 ~~or other person, firm or corporation in control of a property.~~

41  
42 (p) Peak flow rate means the maximum instantaneous flow from a given storm condition  
43 at a particular location.

44  
45 ~~(q) Permittee means the person to whom the permit authorizing land-disturbing~~  
46 ~~activities is issued or the person who certified that the approved erosion and sediment control~~

1 plan will be followed.

2  
3 (rp) *Person* means any individual, partnership, firm, association, joint venture, public or  
4 private corporation, trust, estate, commission, board, public or private institution, utility,  
5 cooperative, county, city, town, or other political subdivision of this State, any interstate body, or  
6 any other legal entity.

7  
8 ~~(q) *Plan approving authority* means the Director.~~

9  
10 ~~(r) *Program authority* means the County of Fairfax, Virginia which has adopted an~~  
11 ~~erosion and sediment control program which has been approved by the Board.~~

12  
13 (s) *Runoff volume* means the volume of water that runs off the land development project  
14 from a prescribed storm event.

15  
16 ~~(ts) *Soil and water conservation district* means a political subdivision of this the~~  
17 ~~Commonwealth organized in accordance with the provisions of Virginia Code Article 1.5 (§~~  
18 ~~10.1-1187.21 et seq.) of Chapter 11.1 of Title 10.1. ~~Article 3 (Section 10.1-506 et seq.) of~~~~  
19 ~~Chapter 5~~

20  
21 (ut) *State waters* means all waters on the surface and under the ground wholly or partially  
22 within or bordering the Commonwealth or within its jurisdiction.

23  
24 (v#) *Vegetation* includes but is not limited to trees, shrubs and plants of any kind.

25  
26 (w) *Virginia Erosion and Sediment Control Program or VESCP* means a program  
27 approved by the Board that has been established by a VESCP authority for the effective control  
28 of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing  
29 activity to prevent the unreasonable degradation of properties, stream channels, waters, and other  
30 natural resources and shall include such items where applicable as local ordinances, rules, permit  
31 requirements, annual standards and specifications, policies and guidelines, technical materials,  
32 and requirements for plan review, inspection, enforcement where authorized in this article, and  
33 evaluation consistent with the requirements of this article and its associated regulations.

34  
35 (x) *Virginia Erosion and Sediment Control Program authority or VESCP authority* means  
36 the County of Fairfax, Virginia which has been approved by the Board to operate a VESCP.

37  
38 **Amend Article 1, Purpose and Administration, by adding new paragraph (c) to Section**  
39 **104-1-8, Conservation Standards, to read as follows:**

40  
41 (c) *Stream restoration and relocation projects that incorporate natural channel design*  
42 concepts are not man-made channels and shall be exempt from any flow rate capacity and  
43 velocity requirements for natural or man-made channels as defined in any regulations  
44 promulgated pursuant to Virginia Code §§ 62.1-44.15:52, 62.1-44.15:54 or 62.1-44.15:65 or this  
45 section. Any plan approved prior to July 1, 2014, that provides for stormwater management that  
46 addresses any flow rate capacity and velocity requirements for natural or man-made channels

1 shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if  
2 the practices are designed to (i) detain the water quality volume and to release it over 48 hours;  
3 (ii) detain and release over a 24-hour period the expected rainfall resulting from the one-year, 24-  
4 hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year,  
5 and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site  
6 assuming it was in a good forested condition, achieved through multiplication of the forested  
7 peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was  
8 in a good forested condition divided by the runoff volume from the site in its proposed condition,  
9 and shall be exempt from any flow rate capacity and velocity requirement for natural or man-  
10 made channels as defined in regulations promulgated pursuant to Virginia Code §§ 62.1-  
11 44.15:54 or 62.1-44.15:65 or this section. For plans approved on and after July 1, 2014, the flow  
12 rate capacity and velocity requirements of this subsection shall be satisfied by compliance with  
13 water quantity requirements in the Stormwater Management Act (Virginia Code § 62.1-44.15:24  
14 et seq.) and attendant regulations, unless such land-disturbing activities are in accordance with  
15 the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Permit  
16 Regulations.

17  
18 **Amend Article 1, Purpose and Administration, by adding new Section 104-1-13, Right of**  
19 **Entry, to read as follows:**

20  
21 **Section 104-1-13, Right of Entry**

22  
23 The Director or any duly authorized agent of the Director may, at reasonable times and under  
24 reasonable circumstances, enter any establishment or upon any property, public or private, for  
25 the purpose of obtaining information or conducting surveys or investigations necessary in the  
26 enforcement of the provisions of Virginia Erosion and Sediment Control Law and this Chapter.

**PROPOSED AMENDMENT  
TO  
CHAPTER 118 (CHESAPEAKE BAY PRESERVATION ORDINANCE)  
OF  
THE CODE OF THE COUNTY OF FAIRFAX VIRGINIA**

**Revisions to advertised amendments recommend by staff  
January 28, 2014**

*Advertised amendments (9/10/13) are indicated by single underlines for additions and single strikethroughs for deletions. The revisions (11/14/13) to the proposed amendments recommended by staff are indicated by a double underlines for additions and double strikethroughs for deletions. The revisions (1/28/14) to the proposed amendments recommended by staff are indicated by a double underlines with italics for additions and double strikethroughs with italics for deletions.*

1 **Amend Article 1. General Provisions and Definitions, by revising Section 118-1-2**  
2 **Authority, to read as follows:**

3  
4 **Section 118-1-2. Authority.**

5  
6 This ordinance is enacted pursuant to the authority and mandates of the Chesapeake Bay  
7 Preservation Act, Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 [formerly  
8 Article 1 (~~§ Sections 10.1-2100, et seq.~~) of Chapter 21 of Title 10.1], of the *Code of Virginia*.

9  
10 **Amend Article 1. General Provisions and Definitions, by revising Section 118-1-6,**  
11 **Definitions, paragraphs (f), (g), (k), and (v) to read as follows:**

12  
13 (f) "Chesapeake Bay Preservation Area" or "CBPA" means any land designated by the County  
14 pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management  
15 Regulations and § 62.1-44.15:72 ~~Section 10.1-2107~~ of the *Code of Virginia*. A Chesapeake Bay  
16 Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

17  
18 (g) "Development" means the construction, rehabilitation, rebuilding or substantial alteration  
19 of residential, commercial, industrial, institutional, recreational, transportation, or utility uses,  
20 facilities or structures ~~which results in a net increase in impervious area within an RPA and/or a~~  
21 ~~net increase in impervious area within an RMA of greater than 20%, relative to conditions prior~~  
22 ~~to development.~~

23  
24 (k) "Impervious area" or "impervious surface" means a surface composed of any material that  
25 significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces  
26 include, but are not limited to, roofs, buildings, streets, and concrete, asphalt, or compacted  
27 gravel surfaces. ~~"Impervious area" or "impervious surface" does not include the water surface~~  
28 ~~area of a swimming pool.~~

29  
30 (v) "Redevelopment" means the process of developing land that is or has been previously  
31 ~~developed-substantial alteration, rehabilitation, or rebuilding of a property for residential,~~  
32 ~~commercial, industrial, or other purposes where there is no net increase in impervious area by the~~

1 ~~proposed redevelopment within an RPA and no more than a net increase in impervious area~~  
2 ~~within an RMA of 20% relative to conditions prior to redevelopment, or any construction,~~  
3 ~~rehabilitation, rebuilding, or substantial alteration of residential, commercial, industrial,~~  
4 ~~institutional, recreational, transportation, or utility uses, facilities or structures within an IDA.~~

5  
6 **Amend Article 2 Allowed Uses, Development and Redevelopment, by revising Section**  
7 **118-2-1 Allowed Uses, Development and Redevelopment in Resource Protection Areas**  
8 **paragraphs (b) and (e) to read as follows:**  
9

10 (b) Redevelopment outside of IDAs only if there is no increase in the amount of impervious  
11 cover and no further encroachment within the RPA, including and all development or  
12 redevelopment within IDAs, subject to compliance with the performance criteria of Article 3 of  
13 this Chapter; and  
14

15 (e) Flood control and stormwater management facilities that drain or treat water from multiple  
16 development projects or from a significant portion of a watershed, provided that:  
17

18 (1) Such facilities are allowed and constructed in accordance with the Stormwater  
19 Management Act (§ 62.1-44.15:24 et seq.) of the Code of Virginia, the Virginia Stormwater  
20 Management Program (VSMP) Permit Regulations (~~4 VAC 50-60 et seq.~~ 9 VAC 25-870-92 et  
21 seq.), and Chapter 124 of the Code;

22 (2) ~~1~~ The Director has conclusively established that location of the facility within the  
23 Resource Protection Area is the optimum location;

24 (3) ~~2~~ The size of the facility is the minimum necessary to provide necessary flood control  
25 or stormwater treatment, or both;

26 (4) ~~3~~ The facility must be consistent with ~~Fairfax County's stormwater management~~  
27 ~~program as approved by the Chesapeake Bay Local Assistance Board a comprehensive~~  
28 stormwater management plan approved in accordance with ~~4 VAC 50-60-92~~ 9 VAC 25-870-92  
29 of the VSMP Permit Regulations;

30 (5) ~~4~~ All applicable permits for construction in state or federal waters must be obtained  
31 from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the  
32 Virginia Department of Conservation and Recreation, the Virginia Department of Environmental  
33 Quality, and the Virginia Marine Resources Commission; and

34 (6) ~~5~~ Approval must be received from the Director prior to construction; and

35 (7). Routine maintenance is allowed to be performed on such facilities to assure that they  
36 continue to function as designed.  
37

38 It is not the intent of this subsection to allow a best management practice that collects and treats  
39 runoff from only an individual lot or some portion of the lot to be located within a Resource  
40 Protection Area.

41  
42 **Amend Article 3 Land Use and Development Performance Criteria, by revising Section**  
43 **118-3-2. General Performance Criteria for Resource Management Areas and Resource**  
44 **Protection Areas to read as follows:**  
45

46 **Section 118-3-2. General Performance Criteria for Resource Management Areas and**  
47 **Resource Protection Areas.**  
48

49 Unless ~~waived or modified by other~~ an exception is granted pursuant to provisions of this  
50 Chapter, it shall be demonstrated to the satisfaction of the Director that any use, development, or

1 redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance  
2 criteria:

3  
4 (a) No more land shall be disturbed than is necessary to provide for the proposed use,  
5 development, or redevelopment.  
6

7 (b) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with  
8 the use, development, or redevelopment proposed.  
9

10 ~~(c) Where the best management practices utilized require regular or periodic maintenance in  
11 order to continue their functions, such maintenance shall be ensured through a maintenance  
12 agreement with the owner or through some other mechanism or agreement that achieves an  
13 equivalent objective.~~  
14

15 ~~(cd) Impervious cover shall be minimized consistent with the use, development, or  
16 redevelopment proposed.~~  
17

18 ~~(de) Any land disturbing activity that exceeds an area of 2,500 square feet shall comply with  
19 the requirements of Chapter 104 of the Fairfax County Code. The construction of single family  
20 dwellings, septic tanks and drainfields shall not be exempt from this requirement. Enforcement  
21 for noncompliance with the erosion and sediment control requirements referenced in this criteria  
22 shall be conducted under the provisions of Chapter 104 of the County Code.~~  
23

24 ~~(ef) For any development or redevelopment, stormwater runoff shall be controlled by the use of  
25 best management practices (BMPs) in accordance with the requirements of Chapter 124 of the  
26 County Code. as follows:~~  
27

28 ~~(1) For development, the projected total phosphorus runoff pollution load for the proposed  
29 development shall be reduced by no less than forty (40) percent compared to phosphorus loads  
30 projected for the development without BMPs. This requirement shall not apply to any  
31 development that does not require a site plan pursuant to Article 17 of the Zoning Ordinance,  
32 that does not require subdivision approval pursuant to Chapter 101 of the Fairfax County Code,  
33 and that does not result in an impervious area of 18% or greater on the lot or parcel on which the  
34 development will occur.~~

35 ~~—— (2) For development and redevelopment within the Water Supply Protection Overlay  
36 District, the phosphorus removal requirements for the overlay district shall apply if such  
37 requirements impose a higher standard than the requirements of this Chapter.~~

38 ~~—— (3) For redevelopment of any property not currently served by one or more BMPs, the total  
39 phosphorus runoff pollution load from the property shall be reduced by at least ten (10) percent  
40 from the phosphorus runoff pollution load prior to redevelopment.~~

41 ~~—— (4) For redevelopment of any property that is currently and adequately served by one or  
42 more BMPs, the projected phosphorus runoff pollution load after redevelopment shall not exceed  
43 the existing phosphorus runoff pollution load.~~

44 ~~—— (5) Best management practices (BMPs) shall be reviewed, modified, waived and/or  
45 approved by the Director in accordance with Article 6 of the Public Facilities Manual. Waivers  
46 or modifications shall be subject to the following criteria:~~  
47

48 ~~(i) The requested waiver or modification to the criteria is the minimum necessary  
49 to afford relief;~~

50 ~~(ii) Granting the waiver or modification will not confer upon the applicant any  
51 special privileges that are denied by this part to other property owners who are subject to its  
52 provisions and who are similarly situated;~~

1 (iii) ~~The waiver or modification is in harmony with the purpose and intent of this~~  
2 ~~part and is not of substantial detriment to water quality;~~

3 (iv) ~~The waiver or modification request is not based upon conditions or~~  
4 ~~circumstances that are self created or self imposed;~~

5 (v) ~~Reasonable and appropriate conditions are imposed, as warranted, that will~~  
6 ~~prevent the allowed activity from causing a degradation of water quality; and~~

7 (vi) ~~Other findings, as appropriate and required herein, are met.~~

8  
9 (6) ~~The following options shall be considered to comply with paragraph (f) of this Section:~~

10  
11 ~~(i) Incorporation on the site of BMPs that achieve the required control as set forth~~  
12 ~~in paragraphs (1) through (5) above. For the purposes of this subsection, the “site” may include~~  
13 ~~multiple projects or properties that are adjacent to one another or lie within the same drainage~~  
14 ~~area where a single BMP or a system of BMPs will be utilized by those projects in common to~~  
15 ~~satisfy water quality protection requirements;~~

16 ~~(ii) Compliance with a locally adopted regional stormwater management program,~~  
17 ~~which may include a Virginia Pollution Discharge Elimination System (VPDES) permit issued~~  
18 ~~by the Department of Environmental Quality to a local government for its municipally owned~~  
19 ~~separate storm sewer system discharges, that is reviewed and found by the Chesapeake Bay~~  
20 ~~Local Assistance Board to achieve water quality protection equivalent to that required by this~~  
21 ~~subsection; or~~

22 ~~(iii) Compliance with a site specific VPDES permit issued by the Department of~~  
23 ~~Environmental Quality, provided that the local government specifically determines that the~~  
24 ~~permit requires measures that collectively achieve water quality protection equivalent to that~~  
25 ~~required by this subsection.~~

26  
27 (7) ~~The requirements of paragraph (f) of this Section may be waived or modified for a~~  
28 ~~property if the Director determines that the provision of BMPs is not practical or desirable due to~~  
29 ~~constraints imposed by the dimensions or location of the property. Waivers or modifications~~  
30 ~~shall be subject to the following criteria:~~

31  
32 (i) ~~The requested waiver or modification to the criteria is the minimum necessary~~  
33 ~~to afford relief;~~

34 (ii) ~~Granting the waiver or modification will not confer upon the applicant any~~  
35 ~~special privileges that are denied by this part to other property owners who are subject to its~~  
36 ~~provisions and who are similarly situated;~~

37 (iii) ~~The waiver or modification is in harmony with the purpose and intent of this~~  
38 ~~part and is not of substantial detriment to water quality;~~

39 (iv) ~~The waiver or modification request is not based upon conditions or~~  
40 ~~circumstances that are self created or self imposed;~~

41 (v) ~~Reasonable and appropriate conditions are imposed, as warranted, that will~~  
42 ~~prevent the allowed activity from causing a degradation of water quality; and~~

43 (vi) ~~Other findings, as appropriate and required herein, are met.~~

44  
45 ~~(8) Any maintenance, alteration, use or improvement to an existing structure or use that~~  
46 ~~does not degrade the quality of surface water discharge, as determined by the Director, may be~~  
47 ~~exempted from the requirements of paragraph (f).~~

48  
49 (fg) ~~The Director shall require certification on all plans of development that all wetlands~~  
50 ~~permits required by law will be obtained prior to commencement of land disturbing activities in~~  
51 ~~any area subject to the plan of development review. No land disturbing activity on the land~~

1 subject to the plan of development shall commence until all such permits have been obtained by  
2 the applicant and evidence of such permits has been provided to the Director.  
3

4 (gh) All on-site sewage disposal systems requiring a Virginia Pollutant Discharge Elimination  
5 System (VPDES) permit shall be subject to the restrictions imposed by the State Water Control  
6 Board or the Virginia Department of Health. All on-site sewage disposal systems not requiring a  
7 VPDES permit shall be administered by the Director of the Department of Health and shall  
8 comply with the following provisions:  
9

10 (1) Each disposal system shall be pumped out at least once every five years.

11 (2) For new development or redevelopment, each disposal system shall be provided with a  
12 reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal  
13 site.  
14

15 (i) Compliance with Chapter 68 of the Fairfax County Code shall be deemed to  
16 constitute compliance with this requirement. This requirement shall not apply to any parcel of  
17 land for which a site plan or preliminary subdivision plat was filed on or before May 21, 1973,  
18 and approved by November 20, 1976 if the Director of the Department of Health determines the  
19 parcel to have insufficient capacity to accommodate a reserve sewage disposal site except as may  
20 be required in the Commonwealth of Virginia Sewage Handling and Disposal Regulations.  
21

22 (ii) Building shall be prohibited on the area of all such sewage disposal sites,  
23 including the reserve sewage disposal site, until the structure is connected to a public sewer or an  
24 on-site sewage treatment system which operates under a permit issued by the State Water  
25 Control Board.  
26

27 (hi) Land upon which agricultural activities are being conducted, including but not limited to  
28 crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as  
29 agricultural land by the local government, shall have a soil and water quality conservation  
30 assessment conducted that evaluates the effectiveness of existing practices pertaining to soil  
31 erosion and sediment control, nutrient management, and management of pesticides, and where  
32 necessary, results in a plan that outlines additional practices needed to ensure that water quality  
33 protection is being accomplished consistent with the Chesapeake Bay Preservation Act and this  
34 chapter.  
35

36 (1) Recommendations for additional conservation practices need address only those  
37 conservation issues applicable to the tract or field being assessed. Any soil and water quality  
38 conservation practices that are recommended as a result of such an assessment and are  
39 subsequently implemented with financial assistance from federal or state cost-share programs  
40 must be designed, consistent with cost-share practice standards effective in January 1999 in the  
41 "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources  
42 Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the  
43 Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in  
44 this section, general standards pertaining to the various agricultural conservation practices being  
45 assessed shall be as follows:  
46

47 (i) For erosion and sediment control recommendations, the goal shall be, where  
48 feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as  
49 defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office  
50 Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation  
51 Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative  
Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide"

1 of the U.S. Department of Agriculture Natural Resources Conservation Service.

2 (ii) For nutrient management, whenever nutrient management plans are  
3 developed, the operator or landowner must provide soil test information, consistent with the  
4 Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15).

5 (iii) For pest chemical control, referrals shall be made to the local cooperative  
6 extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative  
7 Extension Service. Recommendations shall include copies of applicable information from the  
8 “Virginia Pest Management Guide” or other Extension materials related to pest control.

9  
10 (2) A higher priority shall be placed on conducting assessments of agricultural fields and  
11 tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a  
12 tract also has Resource Management Area fields or tracts in his operation, the assessment for that  
13 landowner or operator may be conducted for all fields or tracts in the operation. When such an  
14 expanded assessment is completed, priority must return to Resource Protection Area fields and  
15 tracts.

16 (3) The findings and recommendations of such assessments and any resulting soil and  
17 water quality conservation plans will be submitted to the Northern Virginia Soil and Water  
18 Conservation District Board, which will be the plan-approving authority.

19  
20 (i) Unless required by other provisions of the County Code, the Director may grant exceptions  
21 to the requirements of this Section subject to the following criteria:

22  
23 (1) The requested exception to the criteria is the minimum necessary to afford relief;

24 (2) Granting the exception will not confer upon the applicant any special privileges that  
25 are denied by this article to other property owners who are subject to its provisions and who are  
26 similarly situated;

27 (3) The exception is in harmony with the purpose and intent of this article and is not of  
28 substantial detriment to water quality;

29 (4) The exception request is not based upon conditions or circumstances that are self-  
30 created or self-imposed;

31 (5) Reasonable and appropriate conditions are imposed, as warranted, that will prevent  
32 the allowed activity from causing a degradation of water quality; and

33 (6) Other findings, as appropriate and required herein, are met.

34  
35  
36 **Amend Article 3 Land Use and Development Performance Criteria, by revising Section**  
37 **118-3-3 Additional Performance Criteria for Resource Protection Areas paragraph (c) to**  
38 **read as follows:**

39  
40 (c) Redevelopment, outside of IDAs, is allowed within RPAs only if there is no increase in the  
41 amount of impervious area within the RPA and no further encroachment within the RPA and  
42 shall conform to ~~the criteria set forth in this Chapter~~ all applicable erosion and sediment control  
43 and stormwater management criteria in Chapters 104 and 124 of the County Code as well as all  
44 applicable stormwater management requirements of Commonwealth of Virginia and federal  
45 agencies.

46  
47 **Amend Article 5 Nonconformities, Waivers, Exceptions, and Exemptions, by revising**  
48 **Section 118-5-2. Public Utilities, Railroads, Public Roads, and Facilities Exemptions**

1 **paragraph (a) to read as follows:**  
2

3 (a) The construction, installation, operation and maintenance of electric, natural gas, fiber-optic  
4 and telephone transmission lines, railroads, and public roads and their appurtenant structures in  
5 accordance with:

6 (1) The Erosion and Sediment Control Law (~~§ 62.1-44.15:51 Section 10.1-560~~ et seq. of the  
7 *Code of Virginia*) and with Chapter 104 of the ~~Fairfax County Code~~ and with the Stormwater  
8 Management Act (~~§ 62.1-44.15:24 Section 10.1-603.1~~ et seq. of the *Code of Virginia*) and with  
9 Chapter 124 of the County Code;

10 (2) An erosion and sediment control plan and a stormwater management plan approved by  
11 the Virginia Department of Conservation and Recreation; or

12 (3) Local water quality protection criteria at least as stringent as the above state  
13 requirements will be deemed to constitute compliance with this chapter.  
14

15 The exemption of public roads is further conditioned on the optimization of the road alignment  
16 and design, consistent with other applicable requirements, to prevent or otherwise minimize  
17 encroachment in the Resource Protection Area and adverse effects on water quality.  
18

19 **Amend Article 5 Nonconformities, Waivers, Exceptions, and Exemptions, by revising**  
20 **Section 118-5-4. Waivers for Loss of Buildable Area in a Resource Protection Area**  
21 **paragraph (a) to read as follows:**  
22

23 (a) When the application of the RPA buffer area would result in the effective loss of a  
24 reasonable buildable area on a lot or parcel recorded prior to October 1, 1989, in accordance with  
25 all applicable provisions of the County Code in effect at the time of recordation, encroachments  
26 into the buffer area may be approved by the Director in accordance with the following criteria:  
27

28 (1) Encroachments into the buffer area shall be the minimum necessary to achieve a  
29 reasonable buildable area for a principal structure and necessary utilities;

30 (2) Where practicable, a vegetated area that will maximize water quality protection,  
31 mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the  
32 buffer area shall be established elsewhere on the lot or parcel;

33 (3) The encroachment may not extend into the seaward 50 feet of the buffer area;

34 (4) The proposed development shall not exceed 10,000 square feet of land disturbance in  
35 the RPA buffer, exclusive of land disturbance necessary for the installation of a soil absorption  
36 field associated with an individual sewage disposal facility and land disturbance necessary to  
37 provide access to the lot or parcel and principal structure pursuant to Section 118-2-1(d);

38 (5) The proposed development shall not create more than 5,000 square feet of impervious  
39 surface within the RPA buffer, exclusive of impervious surface necessary to provide access to  
40 the lot or parcel and principal structure pursuant to Section 118-2-1(d);

41 (6) The lot or parcel must meet the minimum lot size specified for the zoning district in  
42 which located or meet the requirements of Section 2-405 of Chapter 112, the Zoning Ordinance,  
43 and any other applicable ordinances and laws;

44 (7) The requirements of Section 118-3-2 shall be satisfied or waived pursuant to Section  
45 ~~118-3-2(f)(7)~~ 118-3-2(i); and

46 (8) The requirements of Section 118-3-3 shall be satisfied except as specifically provided  
47 for in this section to permit an encroachment into the RPA buffer area.  
48

1 **Amend Article 6 Exceptions, by revising Sections 118-6-1 Granting of Exceptions, 118-6-2**  
2 **Conduct of Public Hearings, 118-6-3 Required Notice for Public Hearings, and 118-6-7**  
3 **Exceptions for Loss of Buildable Area in a Resource Protection Area to read as follows:**

4  
5 **Section 118-6-1. Granting of Exceptions.**

6  
7 Exceptions to the criteria and requirements of this Chapter to permit encroachment into the  
8 RPA that do not qualify for administrative review under Article 5 may be granted ~~by the~~  
9 ~~Exception Review Committee or~~ by the Exception Review Committee or by the Board of  
10 Supervisors ~~in conjunction with a rezoning or special exception approval~~ in conjunction with a  
11 rezoning or special exception approval as set forth in this Article with appropriate conditions  
12 necessary to preserve the purposes and intent of this Chapter. No exception shall be granted  
13 under this Article except after notice and a public hearing and upon the findings as required  
14 herein. All exception requests shall be in writing and submitted to the Director. All exception  
15 requests shall be submitted in accordance with the requirements of Section 118-6-5 unless  
16 modified by the Director and will not be accepted until all the submission requirements have  
17 been met. Except as noted below, the Director shall, within 90 days of receipt of a complete  
18 application for an exception pursuant to this Article, unless an extended period is mutually  
19 agreed to by the applicant and the Director, forward such exception request to the ~~Board of~~  
20 ~~Supervisors~~ Exception Review Committee Exception Review Committee for a public hearing  
21 along with a recommendation for approval, denial, or approval with conditions. All exception  
22 requests for property that is also the subject of a rezoning or special exception application shall  
23 be scheduled concurrently for public hearing with the rezoning or special exception application  
24 within twelve (12) months of the date of acceptance, unless an extended period is agreed to by  
25 the applicant, and shall be forwarded by the Director to the Board of Supervisors for public  
26 hearing along with a recommendation of approval, denial or approval with conditions. If an  
27 application is denied or dismissed by the ~~Exception Review Committee or~~ Exception Review  
28 Committee or Board of Supervisors, no new application concerning any or all of the same  
29 property for the same general use as applied for originally shall be heard by ~~said Exception~~  
30 ~~Review Committee or~~ said Exception Review Committee or ~~the~~ Board for a period of less than  
31 twelve (12) months from the date of action by the ~~Exception Review Committee or~~ Exception  
32 Review Committee or Board on the original application unless otherwise waived by the  
33 ~~Exception Review Committee or~~ Exception Review Committee or Board. If an application is  
34 withdrawn prior to commencement of the public hearing, there shall be no limit on a rehearing.  
35 If an application is withdrawn after commencement of the public hearing, no new application  
36 concerning any or all of the same property for the same general use as applied for originally shall  
37 be heard by ~~said Exception Review Committee or~~ Exception Review Committee or ~~the~~ Board of  
38 Supervisors for a period of less than twelve (12) months from the date of action by the ~~Exception~~  
39 ~~Review Committee or~~ Exception Review Committee or Board on the original application unless  
40 otherwise waived by the ~~Exception Review Committee or~~ Exception Review Committee or  
41 Board. The time limits set forth in Section 15.2-2259 of the *Code of Virginia* shall be tolled  
42 during the pendency of an exception request. Approval of an exception shall constitute approval  
43 for the normal and routine maintenance of the facilities which are developed.

44  
45 **Section 118-6-2. Conduct of Public Hearings.**

46  
47 All public hearings required by this Article shall be conducted in accordance with the  
48 following provisions:

49  
50 (a) No public hearing shall be held unless the required notice for same has been satisfied in  
51 accordance with the provisions of Section 118-6-3.

52  
53 (b) All hearings shall be open to the public. Any person may appear and testify at such

1 hearing, either in person or by an authorized agent or attorney.

2  
3 ~~(e) The Exception Review Committee shall by general rule prescribe procedures for the~~  
4 ~~conduct of hearings to be heard by the Exception Review Committee.~~

5  
6 (c) The Exception Review Committee shall by general rule prescribe procedures for the  
7 conduct of hearings to be heard by the Exception Review Committee.

8  
9 ~~(e) (d)~~ (d) The Chairman of the ~~Exception Review Committee~~ Board of Supervisors Exception  
10 Review Committee, upon a vote of the majority of the members, may continue or defer a hearing.  
11 If a hearing has been opened and public testimony has been received and there is cause for  
12 continuation of a hearing, no formal notice as required by Section 118-6-3 shall be required if the  
13 hearing is continued to a date certain. If a hearing is concluded, but action is deferred until a  
14 future date, no formal notice as set forth in Section 118-6-3 shall be required prior to action  
15 being taken. If a hearing has not been opened, and there is cause for deferral of the hearing,  
16 written notice to adjacent property owners as required by Section 118-6-3 shall be remailed,  
17 except such notice shall be mailed not less than five (5) days in advance of the public hearing.

18  
19 **Section 118-6-3. Required Notice for Public Hearings.**

20  
21 No public hearing shall be held unless documented evidence can be presented that the notice  
22 requirements herein have been satisfied. The subject of the public hearing need not be advertised  
23 in full, but may be advertised by reference. Every such advertisement shall contain a descriptive  
24 summary of the proposed action and shall contain a reference to the place or places within the  
25 County where copies of the subject of the public hearing may be examined.

26  
27 ~~(a) Exceptions not associated with proposed rezoning or special exception applications.~~

28  
29 ~~1-~~ (a) (a) Publication: Public notice of any hearing to be held by the ~~Exception~~  
30 ~~Review Committee~~ by the Exception Review Committee shall be published once a week for two  
31 (2) successive weeks in a local newspaper having general circulation in the County. ~~Such~~ The  
32 ~~second~~ Such notice shall be published not less than five (5) days nor more than twenty-one (21)  
33 days before the date of the hearing, and there shall be a minimum of six (6) days between the  
34 first and second publication. The notice shall specify the date, time and place of the hearing and  
35 the nature of the matter before the ~~Exception Review Committee~~ Board of Supervisors Exception  
36 Review Committee. The public notice shall be the responsibility of the ~~Exception Review~~  
37 ~~Committee~~ Director Exception Review Committee.

38  
39 ~~2-~~ (b) (b) Written Notice to Applicant: ~~For an application for an exception to be~~  
40 ~~heard by the Exception Review Committee, the Exception Review Committee~~ The Director For  
41 an application for an exception to be heard by the Exception Review Committee, the Exception  
42 Review Committee shall send written notice of the public hearing to the applicant. Such written  
43 notice shall be sent by either first class or certified mail postmarked a minimum of twenty (20)  
44 days before the day of the hearing.

45  
46 ~~3-~~ (c) (c) Written Notice to Adjacent Property Owners: ~~For applications to be heard~~  
47 ~~by the Exception Review Committee, the~~ The For applications to be heard by the Exception  
48 Review Committee, the applicant shall send written notice to all owners of property abutting and  
49 immediately across the street from and within 500 feet of the subject property and one (1)  
50 homeowner association or civic association within the immediate area as approved by the  
51 ~~Department of Public Works and Environmental Services~~ Director Department of Public Works  
52 and Environmental Services. Such notice shall include notice to owners of properties abutting  
53 and immediately across the street and within 500 feet of the subject property which lie in an  
54 adjoining county or city. If such notice does not result in the notification of five (5) different

1 property owners, then additional notices shall be sent to other property owners in the immediate  
2 vicinity so that notices are sent to different owners of not less than five (5) properties. Notice  
3 shall be sent to the last known address of the owner(s) as shown in the current Real Estate Tax  
4 Assessment files. Notice to homeowner associations or civic associations shall be sent to the  
5 registered office address kept on file with the State Corporation Commission. The applicant  
6 shall send a copy of the notification letter to the Board Member in whose district the subject  
7 property is located on the same date the abutting property owners are notified. All written notice  
8 shall be sent by certified mail, return receipt requested, and postmarked not less than fifteen (15)  
9 days prior to the hearing as evidenced by the postmark date on the white receipts for the certified  
10 mailings. Written notice shall include the tax map reference number, the street address of the  
11 parcel, the date, time and place of the hearing, and the nature of the matter before the ~~Exception~~  
12 ~~Review Committee~~ ~~Board of Supervisors~~ Exception Review Committee. A party's actual notice  
13 of, or participation in, the proceedings for which the written notice is required shall waive the  
14 right of that party to challenge the validity of the proceeding due to failure of the party to receive  
15 the written notice required.

16  
17 ~~(b) (d) Exceptions associated with proposed rezoning or special exception applications.~~

18  
19 (d) If an exception is heard concurrently with a public hearing on proposed rezoning or  
20 special exception applications, notification of the proposed exception shall be conducted  
21 concurrently with the rezoning and special exception notification and shall meet the requirements  
22 of Article 18 of the Zoning Ordinance in lieu of paragraph ~~(e)~~ ~~(c)~~ above.  
23

#### 24 **Section 118-6-7. Exceptions for Loss of Buildable Area in a Resource Protection Area.**

25  
26 Where the application of the RPA criteria will result in the effective loss of a reasonable  
27 buildable area on a lot or parcel recorded prior to November 18, 2003, in accordance with all  
28 applicable provisions of the County Code in effect at the time of recordation and the proposed  
29 development does not satisfy the criteria for an administrative waiver by the Director under  
30 Section 118-5-4, exceptions may be approved in accordance with the following criteria:  
31

32 (a) The proposed development does not exceed 10,000 square feet of land disturbance,  
33 exclusive of land disturbance necessary for the installation of a soil absorption field associated  
34 with an individual sewage disposal facility and land disturbance necessary to provide access to  
35 the lot or parcel and principal structure pursuant to Section 118-2-1(d);

36 (b) The proposed development does not create more than 5,000 square feet of impervious  
37 surface within an RPA, exclusive of impervious surface necessary to provide access to the lot or  
38 parcel and principal structure pursuant to Section 118-2-1(d);

39 (c) The lot or parcel must meet the minimum lot size specified for the zoning district in which  
40 located or meet the requirements of Section 2-405 of Chapter 112, the Zoning Ordinance, and  
41 any other applicable ordinances and laws;

42 (d) Where practicable, a vegetated area that will maximize water quality protection, mitigate  
43 the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer  
44 area shall be established elsewhere on the lot or parcel;

45 (e) The requirements of Section 118-3-2 shall be satisfied or an exception granted ~~waived~~  
46 pursuant to Section ~~118-3-2(f)(7)~~ 118-3-2(i); and

47 (f) The requirements of Section 118-3-3 shall be satisfied except as specifically provided for in  
48 this section to permit an encroachment into the RPA buffer area.  
49

50 ~~Delete Article 7 Exception Review Committee in its entirety.~~

#### 51 **ARTICLE 7.**

1 ~~**Exception Review Committee.** *Deleted by Amendment xx-13-118, adopted December 3, 2013,*~~  
2 ~~*effective December 4, 2013.*~~

3  
4 **Section 118-7-1. Purpose.**

5  
6 —The purpose of the Exception Review Committee shall be to administer the provisions of  
7 Article 6 of this Chapter in such a manner that the intent of the Chapter is maintained.

8  
9 **Section 118-7-2. Authority and Establishment.**

10  
11 —The Exception Review Committee is established in accordance with the requirements of this  
12 Chapter and 9 VAC 10-20-140. The official title of this body shall be the “Exception Review  
13 Committee”.

14  
15 **Section 118-7-3. Membership.**

16  
17 —(a) The Exception Review Committee shall be composed of eleven (11) members, all of whom  
18 shall be residents of the County, with demonstrated knowledge of and interest in environmental  
19 issues and shall be appointed by the Board of Supervisors for a term of four (4) years. There  
20 shall be one (1) member representing each Magisterial District and two (2) at-large members.

21  
22 —(b) Members shall exempt themselves from voting on any action in which their financial  
23 interests or those of their immediate family or employer are directly involved.

24  
25 **Section 118-7-4. Officers.**

26  
27 —The officers of the Exception Review Committee shall consist of a Chairman, Vice Chairman,  
28 and Secretary.

29  
30 —The Chairman, Vice Chairman, and Secretary shall be elected by majority vote of the  
31 Exception Review Committee at the first Committee meeting each calendar year.

32  
33 **Section 118-7-5. Meetings.**

34  
35 —(a) The Exception Review Committee shall meet at a time and place to be designated by  
36 resolution of the Exception Review Committee.

37  
38 —(b) Six (6) members of the Exception Review Committee shall constitute a quorum but a lesser  
39 number may meet and adjourn.

40  
41 —(c) Special meetings may be called by the Chairman provided at least five (5) days notice of  
42 such meeting is given each member in writing.

43  
44 —(d) All public hearings conducted by the Exception Review Committee shall be in accordance  
45 with the provisions of Section 118-6-2. All hearings shall be open to the public, and any person  
46 affected may appear and testify at such hearing, either in person or by an authorized agent or  
47 attorney.

48  
49 **Section 118-7-6. Records.**

50  
51 —(a) The Exception Review Committee shall keep written records and minutes of all its  
52 proceedings, showing evidence presented, findings of fact by the Exception Review Committee,  
53 and the vote of each member upon each question, or if absent or failing to vote, such fact.

1 —(b) Every decision of the Exception Review Committee shall be recorded in accordance with  
2 standard forms prescribed by the Exception Review Committee, and shall fully set forth the  
3 circumstances of the application and the findings on which the decision is based. Every decision  
4 of the Exception Review Committee shall be made by resolution adopted by a majority of all of  
5 the members present, except as otherwise specifically provided in this Chapter.  
6

7 **Section 118-7-7. Duties.**

8  
9 —The purpose of the Exception Review Committee shall be to administer the provisions of  
10 Article 6 of this Chapter, hold public hearings as required herein, and approve/disapprove  
11 exception requests in such a manner that the intent of the Chapter is maintained.  
12

13 **Exception Review Committee.**

14  
15 **Section 118-7-1. Purpose.**

16  
17 The purpose of the Exception Review Committee shall be to administer the provisions of  
18 Article 6 of this Chapter in such a manner that the intent of the Chapter is maintained.  
19

20 **Section 118-7-2. Authority and Establishment.**

21  
22 The Exception Review Committee is established in accordance with the requirements of this  
23 Chapter and 5 VAC 25-830-150. The official title of this body shall be the “Exception Review  
24 Committee”.  
25

26 **Section 118-7-3. Membership.**

27  
28 (a) The Exception Review Committee shall be composed of eleven (11) members, all of whom  
29 shall be residents of the County, with demonstrated knowledge of and interest in environmental  
30 issues and shall be appointed by the Board of Supervisors for a term of four (4) years. There  
31 shall be one (1) member representing each Magisterial District and two (2) at-large members.  
32

33 (b) Members shall exempt themselves from voting on any action in which their financial  
34 interests or those of their immediate family or employer are directly involved.  
35

36 **Section 118-7-4. Officers.**

37  
38 The officers of the Exception Review Committee shall consist of a Chairman, Vice-Chairman,  
39 and Secretary.  
40

41 The Chairman, Vice-Chairman, and Secretary shall be elected by majority vote of the  
42 Exception Review Committee at the first Committee meeting each calendar year.  
43

44 **Section 118-7-5. Meetings.**

45  
46 (a) The Exception Review Committee shall meet at a time and place to be designated by  
47 resolution of the Exception Review Committee.  
48

49 (b) Six (6) members of the Exception Review Committee shall constitute a quorum but a lesser  
50 number may meet and adjourn.  
51

52 (c) Special meetings may be called by the Chairman provided at least five (5) days notice of  
53 such meeting is given each member in writing.

1  
2 (d) All public hearings conducted by the Exception Review Committee shall be in accordance  
3 with the provisions of Section 118-6-2. All hearings shall be open to the public, and any person  
4 affected may appear and testify at such hearing, either in person or by an authorized agent or  
5 attorney.

6  
7 **Section 118-7-6. Records.**

8  
9 (a) The Exception Review Committee shall keep written records and minutes of all its  
10 proceedings, showing evidence presented, findings of fact by the Exception Review Committee,  
11 and the vote of each member upon each question, or if absent or failing to vote, such fact.

12  
13 (b) Every decision of the Exception Review Committee shall be recorded in accordance with  
14 standard forms prescribed by the Exception Review Committee, and shall fully set forth the  
15 circumstances of the application and the findings on which the decision is based. Every decision  
16 of the Exception Review Committee shall be made by resolution adopted by a majority of all of  
17 the members present, except as otherwise specifically provided in this Chapter.

18  
19 **Section 118-7-7. Duties.**

20  
21 The purpose of the Exception Review Committee shall be to administer the provisions of  
22 Article 6 of this Chapter, hold public hearings as required herein, and approve/disapprove  
23 exception requests in such a manner that the intent of the Chapter is maintained.

24  
25 **Amend Article 8 Appeals to read as follows:**

26  
27 **ARTICLE 8.**

28  
29 **Appeals.**

30  
31 (a) An applicant aggrieved by any decision of the Director of the Department of Public Works  
32 and Environmental Services or the Director of the Department of Health in the administration of  
33 this Chapter may, within fifteen (15) days of such decision, appeal the decision to the Board of  
34 Supervisors.

35  
36 ~~(b) An applicant or any other party aggrieved by any decision of the Exception Review~~  
37 ~~Committee in the administration of this Chapter may, within thirty (30) days of such decision,~~  
38 ~~appeal the decision to the Board of Supervisors. (b) An applicant or any other party aggrieved by~~  
39 any decision of the Exception Review Committee in the administration of this Chapter may,  
40 within thirty (30) days of such decision, appeal the decision to the Board of Supervisors.

41  
42 ~~(c)~~ Such appeal shall be filed with the Clerk to the Board of Supervisors and shall state with  
43 specificity the provisions of this Chapter which the applicant alleges to have been violated by the  
44 decision and the reasons therefore. A copy of the appeal shall also be delivered to the Director  
45 of the Department of Public Works and Environmental Services within such thirty (30) day  
46 period.

47  
48 ~~(d)~~ The time limits set forth in Section 15.2-2259 of Va. Code Ann. shall be tolled during the  
49 pendency of an application filed pursuant to Paragraph (a) above.

## State Law and Virginia Administrative Code Citations for Provisions in the Stormwater Management Ordinance

Co. SWM Ordinance		Virginia SWM Law/Regulations	County Requirements that are More Stringent than Virginia SWM Law/Regulations
Article 1	General Provisions	Regs. Parts I & II	
§ 124-1-1.	Title.		
§ 124-1-2.	Authority. <sup>1</sup>	§ 62.1-44.15:27A 9 VAC 25-870-30 § 15.2-1200 § 15.2-2109 § 15.2-2122	
§ 124-1-3.	Enactment.	§ 62.1-44.15:27 9 VAC 25-870-45	
§ 124-1-4.	Purpose and Intent.	§ 62.1-44.15:27 9 VAC 25-870-20 9 VAC 25-870-46	
§ 124-1-5.	Definitions.	9 VAC 25-870-10	
§ 124-1-6.	Areas of Applicability.		
§ 124-1-7.	Exemptions.	§ 62.1-44.15:34C	Proposed exemption for single-family residences more restrictive than the full exemption provided in the Act but within the authority granted by the Act to Chesapeake Bay localities. Proposed exemption for single-family residences is less stringent than current requirements in the County's Chesapeake Bay Preservation Ordinance.
§ 124-1-8.	Right of Entry.	§ 62.1-44.15:39	
§ 124-1-9.	Severability.		

§ 124-1-10.	Applicability of and Conflicts with Other Laws and Regulations.	§ 62.1-44.15.27K § 62.1-44.15.52 9 VAC 25-870-47 9 VAC 25-870-66.A 9 VAC 25-870-104.B 9 VAC 25-870-104.C	
§ 124-1-11.	Time Limits on Applicability of Approved Design Criteria.	9 VAC 25-870-47.1	
§ 124-1-12.	Grandfathering. <sup>2</sup>	9 VAC 25-870-48	
§ 124-1-13.	Chesapeake Bay Preservation Act Land-Disturbing Activity. <sup>3</sup>	9 VAC 25-870-51	
Article 2	General Administrative Criteria for Regulated Land-Disturbing Activities.	Regs. Part IIA	
§ 124-2-1.	Applicability	9 VAC 25-870-53	
§ 124-2-2.	Permit Required. <sup>4</sup>	§ 62.1-44.15:34A 9 VAC 25-870-108.B 9 VAC 25-870-108.D	
§ 124-2-3.	Annual Standards and Specifications for State Agencies, Federal Entities, and Other Specified Entities.	§ 62.44.15:31	
§ 124-2-4.	Security for Performance.	§ 62.44.15:34A 9 VAC 25-870-104.D	

§ 124-2-5.	Monitoring, Reports, Investigations, and Inspections.	§ 62.44.15:37 9 VAC 25-870-114 9 VAC 25-870-1170 Section III para. D	
§ 124-2-6.	Stormwater Pollution Prevention Plan Requirements.	9 VAC 25-870-54	
§ 124-2-7.	Stormwater Management Plans.	9 VAC 25-870-55	
§ 124-2-8.	Pollution Prevention Plans.	9 VAC 25-870-56	
§ 124-2-9.	Stormwater Management Plan Review.	9 VAC 25-870-108	
§ 124-2-10.	Long-term Maintenance of Permanent Stormwater Management Facilities.	§ 62.44.15:27E2 9 VAC 25-870-58 9 VAC 25-870-112	
§ 124-2-11.	Construction Record Drawings.	9 VAC 25-870-55.D 9 VAC 25-870-108.E	
Article 3	Fees. <sup>5</sup>	Regs. Part XIII	
§ 124-3-1.	General	9 VAC 25-870-700 9 VAC 25-870-730 9 VAC 25-870-750 9 VAC 25-870-770 9 VAC 25-870-790	
§ 124-3-2.	Exemptions.	9 VAC 25-870-740	
§ 124-3-3.	Fees for Coverage Under the General Permit for Discharges of Stormwater from Construction Activities and Permits for Chesapeake Bay Preservation Area Land-Disturbing Activities.	9 VAC 25-870-820	
§ 124-3-4.	Fees for the Modification or Transfer of Registration Statements for the general permit for Discharges of Stormwater from Construction Activities.	9 VAC 25-870-825	

§ 124-3-5.	Permit Maintenance Fees	9 VAC 25-870-830	
Article 4	Technical Criteria for Regulated Land-Disturbing activities	Regs. Part IIB	
§ 124-4-1.	Applicability.	9 VAC 25-870-62	
§ 124-4-2.	Water Quality Design Criteria Requirements. <sup>6</sup>	9 VAC 25-870-63	WSPOD requirements may be more stringent than minimum state requirements for redevelopment. These requirements have been in effect since 1980 and are derived from the Zoning Ordinance.
§ 124-4-3.	Water Quality Compliance.	9 VAC 25-870-65	See the PFM for limitations on use of specific BMPs. New BMPs approved by the state also must be approved by the County prior to use.
§ 124-4-4.	Water Quantity.	9 VAC 25-870-66	Proposed requirements for channel protection and flooding are more stringent than minimum requirements of the Regulations. Forested conditions are assumed for pre-development when utilizing the detention method. An option has been added that if adequate outfall can be demonstrated then existing conditions can be used in to determine detention requirements for the 1-year storm when discharge is to a natural channel. Definition of localized flooding added. Detention requirements added. These requirements are consistent with existing provisions in the PFM.
§ 124-4-5.	Offsite Compliance Options.	§ 62.1-44.15:35 9 VAC 25-870-69	
§ 124-4-6.	Design Storms and Hydrologic Methods.	9 VAC 25-870-72	
§ 124-4-7.	Stormwater Harvesting.	9 VAC 25-870-74	
§ 124-4-8.	Linear Development Projects.	9 VAC 25-870-76	
§ 124-4-9.	Comprehensive Stormwater Management Plans.	9 VAC 25-870-92	

Article 5	Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered Projects and Projects Subject to Time Limits on Applicability of Approved Design Criteria.	Regs. Part IIB	
§ 124-5-1.	Definitions. <sup>7</sup>	9 VAC 25-870-93.1	
§ 124-5-2.	Applicability. <sup>8</sup>	9 VAC 25-870-94	
§ 124-5-3.	General.	9 VAC 25-870-48 9 VAC 25-870-95	
§ 124-5-4.	Water Quality. <sup>9</sup>	9 VAC 25-870-96	
§ 124-5-5.	Stream Channel Erosion.	9 VAC 25-870-97	
§ 124-5-6.	Flooding.	9 VAC 25-870-98	
§ 124-5-7.	Regional (watershed-wide) Stormwater Management Plans.	9 VAC 25-870-99	
Article 6	Exceptions		
§ 124-6-1.	Exceptions	9 VAC 25-870-57 9 VAC 25-870-122	
Article 7	Appeals		
§ 124-7-1.	Right to Administrative Review.	§ 62.1-44.15:44 9 VAC 25-870-118	
§ 124-7-2.	Hearings.	§ 62.1-44.15:45 § 62.1-44.26 9 VAC 25-870-118	
§ 124-7-3.	Appeals of Final Orders.		
Article 8	Violations and Penalties		

§ 124-8-1.	General Provisions .	§ 62.1-44.15:37 § 62.1-44.15:42 § 62.1-44.15:48.D.1 § 62.1-44.15:49 9 VAC 25-870-116.A	
§ 124-8-2.	Criminal Violations and Penalties.	§ 62.1-44.15:48.B § 62.1-44.15:48.C	
§ 124-8-3.	Civil Penalties.	§ 62.1-44.15:48.A § 62.1-44.15:48.D.2 § 62.1-44.15:49 9 VAC 25-870-116.C	
Article 9	Illicit Discharges to the Storm Sewer System and State Waters		
§ 124-9-1.	Purpose.	§ 62.1-44.5 County MS4 Permit County Code Chapters 105 & 106	
§ 124-9-2.	Responsibilities of the Director.		
§ 124-9-3.	Illicit Discharges to the Storm Sewer System and State Waters.	§ 15.2-1200 § 15.2-2109 § 15.2-2122	
§ 124-9-4.	Standards for Inspection of Industrial and Commercial Property Discharging to the County's Storm Sewer System.	County MS4 Permit	
FOOTNOTES			
1) Reference to § 15.2-1200 § 15.2-2109, and § 15.2-2122 added for provisions in Article 9 Illicit Discharges to Storm Sewer System and State Waters.			
2) List of grandfathered plans reflects County terminology and includes all plans that the County would consider to be equivalent to the types of plans listed in the regulations.			

3) Language added to make it clear that land-disturbing activities that are part of a larger common plan of development or sale equal to or greater than one acre would require a VSMP permit.
4) Language from law modified to reflect that VSMP permits are not required for Chesapeake Bay Act Land Disturbing Activities.
5) Fees incorporated into Appendix Q of the County Code.
6) WSPOD and TMDL requirements have been included in this section.
7) Additional definitions specific to existing Fairfax County requirements added
8) Allowance for compliance with Article 4 in lieu of Article 5 added.
9) State requirements replaced with reference to current PFM requirements. Current PFM requirements and methodology and were approved by the Chesapeake Bay Local Assistance Board as an acceptable alternative to the State's requirements and methodology.

### County Stormwater Management Ordinance - Sections More Stringent than State Minimum Regulations

County Ordinance Section and Title		Virginia Law/Regulations	County Requirements More Stringent than State Law/Regulations	Current County Requirements that are More Stringent than the new State Law/Regulations
§ 124-1-7.3	Exemptions - Single Family Detached residential lots, separately built	§ 62.1-44.15:34C	The proposed exemption for single-family residences that are not part of a common plan of development is more restrictive than the full exemption provided in the Stormwater Management Act but within the authority granted by the Act to Chesapeake Bay localities.	Land disturbances exceeding 2,500 square feet are currently required to provide a plan that addresses erosion, sedimentation, and stormwater drainage. Under the Chesapeake Bay Preservation Ordinance (Code Chapter 118), if impervious area exceeds 18% of the property a water quality BMP is required.  Note: The proposed residential exemption that allows up to 2,500 total square feet of impervious area after construction, is less stringent than the current Chesapeake Bay Preservation Ordinance.
§ 124-4-2.	Water Quality Design Criteria Requirements.	9 VAC 25-870-63	The County's stormwater management requirements for development within the Water Supply Protection Overlay District (WSPOD) may be more stringent than minimum state requirements for redevelopment.	The WSPOD requirements have been in effect since 1980 and are derived from the Zoning Ordinance.
§ 124-4-3.	Water Quality Compliance.	9 VAC 25-870-65	The PFM limits the use and location of specific BMPs on single family residential lots and limits the maximum drainage area for grass channels and filtering practices.	The limitations are based on current constraints within the PFM, recommended limits within the state specifications, or are based on lessons learned from county experience with design and maintenance of certain BMP types.
§ 124-4-3.	Water Quality Compliance.	9 VAC 25-870-65	New BMPs approved by the Virginia BMP Clearinghouse must also be approved by the County prior to use.	PFM 6-0402.4 states that other innovative BMP measures may be permitted but, due to the design variables that could affect their appropriateness, requests for use of these techniques will be reviewed on a case by case basis and approved by the Director as appropriate.
§ 124-4-4.B	Water Quantity. Channel Protection	9 VAC 25-870-66	Proposed requirements for channel protection and flooding (e.g. "adequate outfall") are more stringent than minimum requirements of the State Regulations.	These requirements are consistent with existing provisions in the PFM.

## County Stormwater Management Ordinance - Sections More Stringent than State Minimum Regulations

<i>County Ordinance Section and Title</i>		<i>Virginia Law/Regulations</i>	<i>County Requirements More Stringent than State Law/Regulations</i>	<i>Current County Requirements that are More Stringent than the new State Law/Regulations</i>
§ 124-4-4.B.3.a	Water Quantity. Channel Protection	9 VAC 25-870-66.B.3	Pre-development is assumed to be "good forested condition" when utilizing the County's detention method, which reduces the post-development peak discharge to below state requirements and increases the required detention volume. The state only requires detention be provided assuming the pre-development condition, not "good forested". An option has been added that if an applicant can demonstrate that the outfall is adequate, then existing conditions can be used in lieu of "good forested condition" to determine detention requirements for the 1-year storm when discharge is to a natural channel.	These requirements are consistent with existing provisions in the PFM.
§ 124-4-4.B.3.a	Water Quantity. Limits of Analysis for Channel Protection	9 VAC 25-870-66	Outfall channels must be analyzed for erosion to the limits of analysis unless onsite detention is provided using the County's detention method and pre-development is assumed to be "good forested condition". Whether or not onsite detention is provided, the applicant must demonstrate that a "defined channel or man-made drainage facility" exists for the full limits of analysis. Under the state regulations, if onsite detention is provided such that the 1-year storm discharge meets the energy balance equation for pre-development conditions, no outfall analysis is required.	This requirement is consistent with existing provisions in the PFM.
§ 124-4-4.C.3	Water Quantity. Flood Protection	9 VAC 25-870-66	Definition of localized flooding added.	This requirement is consistent with existing provisions in the PFM.
§ 124-4-4.C.5	Water Quantity. Limits of Analysis for Flood Protection	9 VAC 25-870-66	Outfall channels must be analyzed for flooding to the limits of analysis unless onsite detention is provided for the 2-year and 10-year storm event using the County's detention method and pre-development is assumed to be "good forested condition". Whether or not onsite detention is provided, the applicant must demonstrate that a "defined channel or man-made drainage facility" exists for the full limits of analysis and check for flooding of downstream structures during the 100-year event. Under the state regulations, if detention is provided such that the 10-year storm discharge is less than the 10-year pre-development peak discharge, no outfall analysis for flooding is required.	This requirement is consistent with existing provisions in the PFM.

**County Stormwater Management Ordinance - Sections More Stringent than State Minimum Regulations**

<i>County Ordinance Section and Title</i>		<i>Virginia Law/Regulations</i>	<i>County Requirements More Stringent than State Law/Regulations</i>	<i>Current County Requirements that are More Stringent than the new State Law/Regulations</i>
§ 124-4-4.C.5	Water Quantity. Flood Protection	N/A	Requires detention of the post-development peak rate 100-year such that it does not exceed the pre-development 100-year peak discharge if an existing dwelling or a building constructed under an approved building permit is located within the limits of downstream analysis, is flooded.	This requirement is consistent with existing provisions in the PFM.
§ 124-4-4.D	Water Quantity.	9 VAC 25-870-66	Unless waived by the Director of DPWES, detention must be provided such that the 2-year and 10-year post-development peak discharge from the site does not exceed the pre-development 2-year and 10-year peak discharges.	This requirement is consistent with existing provisions in the PFM.
§ 124-4-4.D	Water Quantity.	9 VAC 25-870-66	In the Four Mile Run watershed, the post-development peak flow for the 100-year storm event must be equal to or less than the predevelopment peak flow rate from the 100-year storm unless it is contraindicated by the watershed model developed for the Four Mile Run Watershed Management Program.	This requirement is consistent with existing provisions in the PFM.

**Fairfax County Department of Public Works & Environmental Services - Land Development Services  
Site Development Services and Business Support Services  
DRAFT Stormwater Management Program Staffing Plan**

Percent of staff time devoted to Stormwater Management Program

Position Summary					
% SWM	<u>Land Development Svcs Admin</u>	% SWM	<u>Customer and Technical Support Center</u>	<u>Information Technology Branch</u>	
25%	1 DPWES Deputy Director		1 Director, Building Inspections	1 Business Analyst IV	
	1 Asst. Director of Public Works		3 Management Analysts II	1 Business Analyst III	
	1 Director, Land Dev. Services		1 Engineer IV	1 Info. Tech. Program Manager II	
	1 Safety Analyst		4 Engineering Technicians III	1 Info. Technology Tech. III	
	4 Administrative Assistants IV		21 Engineering Technicians II	1 Internet/Intranet Architect III	
	1 Tysons Corner Urban Center Coordinator		1 Code Specialist II	2 Internet/Intranet Architect II	
	1 Reston Coordinator (1)		2 Administrative Assistants III	1 Programmer Analyst IV	
	Staff will spend some time on administration of Stormwater Program.			7 Administrative Assistant II	1 Programmer Analyst III
	<u>Financial Management Branch</u>			1 Asst. Supv. Engineer Inspector	2 Programmer Analyst II
		1 Financial Specialist IV		Staff will take in plans and coordinate data entry to state database.	
	1 Financial Specialist II			1 Network/Telecom Analyst III	
	1 Management Analyst III			1 Network/Telecom Analyst II	
	2 Administrative Assistants V	30%	Some time will be spent by IT staff on data transfer.		
	5 Administrative Assistants III	40% of each	<u>Site Development and Inspections</u>		
	Staff will assist with fee collection.		65%	1 Division Director, Land Dev. Svcs.	
	<u>Code Development and Compliance</u>		95% of each	3 Engineers V	
	1 Division Director, Land Dev. Svcs.	10%		2 Engineer IV (1)	
	1 Director, Land Dev. Services	50% of each		8 Senior Engineers III (see below)	
	2 Engineers V	50% of each		--3 Stormwater Reviewers	
100% of two	4 Engineers IV	30% of each		--1 Geotech Reviewer	
	1 Management Analyst III	50%		--3 Generalists	
	1 Management Analyst II	50% of each		21 Engineers III	
	1 Training Specialist III	80% of each		2 Code Specialist III	
50% of one	3 Code Specialists III	80% of each		1 Code Specialist II	
100% of each	2 Senior Engineering Inspectors	5-10%		4 Supervising Engineer Inspectors	
	1 Combination Inspector	5-10% of each		2 Asst. Supv. Engineer Inspectors	
	1 Administrative Assistant III			28 Senior Engineering Inspectors	
				1 Administrative Assistants III	
				2 Administrative Assistants II	
				1 Urban Forester III	

TOTAL POSITIONS  
170 Positions / 170.0 Staff Years

**Please see the attached FY 2014 Adopted Budget Plan for Land Development Services - (Site Development Services and Business Support Services) - as the County's Funding Plan submission.**

**Fairfax County Department of Public Works & Environmental Services - Stormwater Services  
Stormwater Management Program Staffing Plan**

<b>Position Summary</b>			
<u>Maintenance and Stormwater</u>	<u>Engineering/Technical Support</u>	<u>Maintenance Inspections</u>	<u>Stormwater Planning Division</u>
<u>Management (MSMD)</u>	1 Engineer IV	1 Engineer IV	1 Director Stormwater Planning
<u>MSMD Administration</u>	5 Engineers III	5 Engineering Technicians III	3 Engineers V
1 Director Maintenance and SW	1 Ecologist III	1 Engineering Technician II	4 Engineers IV
1 Engineers V	1 Ecologist II	1 Project Manager II	2 Senior Engineers III
2 Management Analysts II	3 Engineering Technicians III	1 Project Manager I	9 Engineers III
1 Safety Analyst	1 Engineering Technician II	1 Engineer Technician I	1 Project Coordinator
1 Network/Telecom Analyst I	1 GIS Analyst III		3 Project Manager II
1 Administrative Assistant V	1 GIS Analyst I	<u>Materials Support</u>	2 Project Manager I
1 Administrative Assistant IV	1 GIS Technician	1 Inventory Manager	3 Ecologists III
2 Administrative Assistants III	2 Project Manager 11	1 Material Mgmt. Specialist III	5 Ecologists II
2 Administrative Assistants II	2 Project Manager 1	1 Motor Equipment Operator	1 Accountant I
1 Information Technology Tech. III		1 Engineer Technician III	3 Management Analysts II
1 Business Analyst II	<u>Field Operations</u>		1 Management Analyst I
1 Public Works Envir. Serv. Mgr	4 Env. Services Supervisors	<u>Equipment/Specialty Trades</u>	2 Code Specialists II
	3 Senior Maintenance Supervisors	1 Heavy Equipment Operator	1 Administrative Assistant III
	9 Maintenance Supervisors	1 Carpenter I	1 Landscape Architect III
	5 Maintenance Crew Chiefs	1 Equipment Repairer	2 Engineering Technicians III
<u>Contracting Services</u>	14 Senior Maintenance Workers	1 Welder II	1 Engineering Technician I
1 Contract Analyst I	6 Maintenance Workers		1 Communications Specialist II
1 Engineering Technician III	8 Heavy Equipment Operators		1 GIS Analyst II
	9 Motor Equipment Operators		1 Management Analyst III
	2 Masons		2 Ecologist IV
			1 Contract Specialist II
			<u>Urban Forestry</u>
			1 Division Urban Forester
			1 Urban Foresters III
			5 Urban Foresters II

TOTAL POSITIONS  
172 (26) Positions / 172.0 Staff Years (26.0)  
( ) Denotes New Positions

All positions in Stormwater Services are allocated to the County's Stormwater Management Program except:

- 7 Urban Forestry Positions in Stormwater Planning Division
- 23 Positions in MSMD allocated to the Transportation Program

The specific positions completing the work for Transportation Planning will vary from Field Operations staff, Engineering staff, and Support staff depending on the work that needs to be done.

**The County's Funding Plan submission includes the attached FY 2014 Adopted Budget Plan for Stormwater Services and the additional funding needed for the positions below.**

The following are additional positions and additional funding that are anticipated to be needed to support the new Stormwater Management Ordinance\*:

	<u>Salary</u>	<u>Total Salary</u>
1 Code Compliance Investigator III	\$76,280.00	\$76,280.00
3 Code Compliance Investigator II	\$69,246.00	\$207,738.00
2 Project Manager I	\$79,822.00	\$159,644.00
2 Engineering Technician II	\$57,257.00	\$114,514.00
1 Financial Administrative Assistant IV	\$52,447.00	\$52,447.00
1 Engineering Technician III	\$63,139.00	\$63,139.00
<b>10** Total</b>		<b>\$673,762.00</b>
Fringe:		\$221,625.00
Other Post Employment Benefits (OPEB):		\$26,384.00
Indirect:		\$83,555.00
Operating: (one time cost)		\$56,000.00
Vehicles: (one time cost)		\$80,000.00
<b>Total Additional Cost:</b>		<b>\$1,141,326.00</b>

\*The positions above are based on the assumption that most new stormwater facilities are maintained by property owners. These estimates will change if the county determines that the county should take over the maintenance of some of these facilities.

\*\*Two Code Compliance Investigator II positions are anticipated to be established in FY 2014. 2 Permit Engineering Technician II positions are needed in FY2015. The remaining 6 positions will be subject to an evaluation of staffing needs as part of the annual budget process in future years.

Planning Commission Meeting  
November 21, 2013  
Verbatim Excerpt

PUBLIC FACILITIES MANUAL AMENDMENT (STORMWATER MANAGEMENT  
ORDINANCE) AND PUBLIC FACILITIES MANUAL AMENDMENT (STORM DRAINAGE  
AND VEGETATION PRESERVATION AND PLANTING)

Decision Only During Commission Matters  
(Public Hearing held on October 9, 2013)

Commissioner Hart: Thank you, Mr. Chairman. Last month, the Commission held a public hearing on a package of important amendments dealing with stormwater regulations. Stormwater is at or near the top of the list of citizen issues debated in the land use process. Recommendations on how development should implement stormwater policy are a critical part of the Planning Commission's role in the land use process. Recent legislative changes in Richmond require that Fairfax County amend its regulatory framework in advance of an upcoming June 2014 deadline. We deferred the Planning Commission decision twice until tonight, fine tuning the proposal. I believe we are now ready to move forward. I want to first thank all the citizens who contributed input on this topic, the speakers at the public hearing, as well as the many meetings leading up to it, and the many folks who submitted letters and emails. More importantly, I want to thank the outstanding team of staff, many of whom are here tonight, including Paul Shirey, John Friedman, Bruce McGranahan, James Patteson, Randy Bartlett, Tom Williamson, John Bell, and Michelle Brickner, for their dedicated, thorough, and very professional handling of a complicated and important topic. We civilians are fortunate to have technical staff who can understand and digest some very complicated issues. Staff has done 99 percent of the heavy lifting on this project. I want to thank the many citizens and industry folks who participated in the dialogue over the last several months for their contributions. Staff conducted a wide-ranging communication effort, including at least four public outreach meetings to invited stakeholders, at least three community meetings offsite, review of the PFM issues with the Engineering Standards Review Committee, four sessions with the Environmental Quality Advisory Committee, four sessions with the Planning Commission Environment Committee, several meetings with design industry professionals, website information, and thorough and timely responses to many citizen and industry questions. The lack of controversy at the Planning Commission level confirms the success of the community outreach effort. I believe that the staff recommendations, as most recently amended in the November 14 handout, largely represent a consensus on these complicated issues. In general, we hope that these amendments will help with stormwater management, environmental, and water quality concerns. I wanted to add a couple observations about our recommendations. One of staff's recommendations was that the Chesapeake Bay Exceptions Review Committee be abolished. The most significant factor was that there have been very few cases – fewer than had been anticipated. The committee rarely meets, compared to the Planning Commission and Board of Supervisors. It has been difficult for the Board to keep the committee fully appointed and sometimes difficult to achieve quorum, which can cause delay, uncertainty, and expense to the applicants, making a difficult process even more challenging. The committee opposes staff's recommendation and all the committee members may not have been specifically aware of the pending abolition until recently. That dilemma was one of the issues to be sorted out before the matter goes to the Board. I have decided to

PFM AMENDMENTS (STORMWATER ORDINANCE)

recommend retaining the "Exceptions Review Committee, coupled with a recommendation for a follow-on motion to have staff monitor the workload of the committee, and make appropriate recommendations in one year in light of our experience with the new regulations. The staff recommendation would have retained a public hearing process, but have future exception review cases go before the Board of Supervisors instead of the committee. With the historically small caseload for these requests, I believe the Board probably is capable of making these additional decisions and that, as long as a public hearing process is preserved, we are maintaining transparency in the process and an opportunity for notice and citizen input to the decision makers. At the same time, the Board of Supervisors has an extensive workload already and further assignment of additional categories of public hearings, even incrementally, impacts the length of the Board's meetings. I want to make clear that staff's recommendation and the continued study of this issue for another year is not intended to denigrate in any way the work of the committee or the importance of the contributions of qualified citizens to the land use process, but recognizes instead the administrative difficulty with maintaining many separate layers of review and decision-making. Staff can continue to monitor the situation and the Board could revisit the procedure. I believe also there may be options short of abolition which might ease the quorum requirements or modify the size of the committee or otherwise streamline the processing of applications while retaining an independent voice and the benefit of perhaps more detailed review of technical water quality issues. With respect to the technical aspects of the amendment, I am comfortable with staff's recommendations. I wanted to observe that this package, although it contains fairly rigorous requirements, is about 90 percent predetermined with the particulars already directed from Richmond. On the additional 10 percent where we have some flexibility, I have not departed from staff's recommended figures in the ranges advertised. Staff's recommended approach should result in significant improvement over the current regulations. Although we would have the flexibility to make some of these regulations even more severe than recommended, we need to be mindful of the economic realities. We do not want stormwater regulation to be a disincentive to redevelopment in the older areas of the County, especially where stormwater management is weakest and the stream quality worst, right now. We want, instead, to encourage responsible redevelopment and improvement of those existing conditions. A balanced package, in my judgment, in line with the staff recommendations, is the best way to achieve that result. Finally, we recognize that there are some additional stormwater regulation changes in the pipeline from Richmond, too late to be included in the advertised staff report, but also details which Fairfax County will be required to incorporate. Staff anticipates some minor edits to the Planning Commission recommendation, incorporating the additional changes mandated from Richmond but not yet ready for us before this matter goes to the Board on January 28<sup>th</sup>. I understand from staff that the County Attorney is agreeable with that approach and that we need not delay our recommendation pending resolution of those loose ends. I understand that any such required edits will be deemed within the scope of the advertising as less stringent than what was advertised. Therefore, Mr. Chairman, I will have seven motions. First, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD ADOPT THE PROPOSED AMENDMENTS TO CHAPTER 101 (SUBDIVISION ORDINANCE), CHAPTER 112 (ZONING ORDINANCE), AND APPENDIX Q OF THE COUNTY CODE, AS CONTAINED IN THE STAFF REPORT DATED SEPTEMBER 10, 2013.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant, is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt the amendment on stormwater management – on the Stormwater Management Ordinance [sic], as articulated by Mr. Hart, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Litzenberger: I abstain. I was not present for the –

Chairman Murphy: Okay, Mr. Litzenberger abstains, not present for the public hearing.

Commissioner Hart: That one wasn't stormwater. It was subdivision.

Chairman Murphy: Oh, I'm sorry. Okay.

Commissioner Hart: Then secondly, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD REPEAL EXISTING CHAPTER 105 (POLLUTION OF STATE WATERS) AND CHAPTER 106 (STORM DRAINAGE) OF THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA, AS CONTAINED IN THE STAFF REPORT DATED SEPTEMBER 10, 2013.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: Same –

Chairman Murphy: Same abstention all the way through.

Commissioner Hart: Next, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD ADOPT THE

PROPOSED AMENDMENTS TO CHAPTER 104 (EROSION AND SEDIMENTATION CONTROL) OF THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA, WITH THE REVISIONS RECOMMENDED BY STAFF, AS CONTAINED IN REVISED ATTACHMENT C DATED NOVEMBER 14, 2013.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: And Mr. Litzenberger –

Chairman Murphy: And Mr. Litzenberger – I said all the way through.

Commissioner Hart: Next, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD ADOPT THE PROPOSED AMENDMENTS TO CHAPTER 118 (CHESAPEAKE BAY PRESERVATION ORDINANCE) OF THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA, WITH THE REVISIONS RECOMMENDED BY STAFF, AS CONTAINED IN REVISED ATTACHMENT G DATED NOVEMBER 14, 2013, EXCEPT THAT PROPOSED AMENDMENTS TO ARTICLES 6, EXCEPTIONS; 7, EXCEPTION REVIEW COMMITTEE; AND 8, APPEALS, NOT BE ADOPTED, WITH THE EXCEPTION OF THE CORRECTED CROSS-REFERENCE IN SECTION 118-6-7(E).

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Hart: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD ADOPT CHAPTER 124 (STORMWATER MANAGEMENT ORDINANCE) OF THE CODE OF COUNTY OF FAIRFAX, VIRGINIA, WITH THE REVISIONS RECOMMENDED BY STAFF, AS CONTAINED IN REVISED ATTACHMENT A, DATED NOVEMBER 14, 2013, AND THAT THE EXEMPTION FOR SINGLE-FAMILY HOMES IN SECTION 124-7-1.3 BE ADOPTED AS ADVERTISED WITHOUT ANY CHANGES.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: Next, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD ADOPT THE AMENDMENTS TO THE PUBLIC FACILITIES MANUAL, AS CONTAINED IN THE STAFF REPORT DATED SEPTEMBER 10, 2013, SELECTING ALTERNATIVE 2 THROUGHOUT THE AMENDMENTS, WHICH EXPANDS THE RESIDENTIAL BMPS ELIGIBLE FOR PUBLIC MAINTENANCE, AND WITH THE REVISIONS TO SECTION 6-0203 (ANALYSIS OF DOWNSTREAM DRAINAGE SYSTEMS) RECOMMENDED BY STAFF DATED NOVEMBER 14, 2013.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Hart: Finally, Mr. Chairman, I MOVE THAT THE COMMISSION RECOMMEND THAT THE BOARD DIRECT STAFF TO MONITOR THE CASELOAD OF THE CHESAPEAKE BAY EXCEPTION REVIEW COMMITTEE FOR A PERIOD OF ONE YEAR FOLLOWING THE BOARD'S ADOPTION OF THE AMENDMENT PACKAGE AND MAKE APPROPRIATE RECOMMENDATIONS TO THE PLANNING COMMISSION AND THE BOARD FOR ANY PROCEDURAL AMENDMENTS AT THAT TIME. THESE RECOMMENDATIONS NEED NOT NECESSARILY INCLUDE ABOLITION OF THE COMMITTEE, BUT ALSO CONSIDERATION OF THE NUMBERS OF MEMBERS OR ALTERNATES OR PROCEDURES TO SIMPLIFY QUORUM OR OTHER ADMINISTRATIVE RECOMMENDATIONS TO FACILITATE TIMELY AND EFFICIENT PROCESSING OF THESE APPLICATIONS.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: Thank you, Mr. Chairman.

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(Each motion carried by a vote of 10-0-1. Commissioner Litzenberger abstained. Commissioner Hall was absent from the meeting.)

JLC

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Board Agenda Item  
January 28, 2014

4:00 p.m.

Public Hearing on Proposed Amendments to Chapter 6 (Storm Drainage) and Chapter 12 (Vegetation Preservation and Planting) of the Public Facilities Manual (PFM) Re: Water Quality Controls, Adequate Outfall, Detention, Maintenance of Stormwater Management Facilities, and Replanting of Disturbed Areas

ISSUE:

Public hearing to consider Board adoption of proposed amendments to Chapter 6 (Storm Drainage) and Chapter 12 (Vegetation Preservation and Planting) of the Public Facilities Manual (PFM) related to water quality controls, adequate outfall, detention, maintenance of stormwater management facilities, and replanting of disturbed areas. The proposed amendments are necessary to implement the proposed Stormwater Management Ordinance and the Virginia Stormwater Management Program (VSMP) Regulations (9 VAC 25-870 et seq.).

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 21, 2013, the Planning Commission voted 10-0-1 (Commissioner Hall absent from the meeting and Commissioner Litzenberger abstaining) to recommend that the Board adopt the proposed amendments to the PFM as set forth in the Staff Report dated September 10, 2013, selecting Alternative #2 throughout the amendments, which expands the residential BMPS eligible for public maintenance, and with the revisions to Section 6-0203 (Analysis of Downstream Drainage Systems) recommended by staff dated November 14, 2013, as set forth in Attachment II.

RECOMMENDATION:

The County Executive recommends that the Board:

- 1) Adopt the proposed amendments to the PFM as recommended by the Planning Commission except that Alternative #1, which does not expand the BMPs eligible for public maintenance, be selected instead of Alternative #2 which was recommended by the Planning Commission and that the amendments become effective at 12:01 a.m. on July 1, 2014.
- 2) Authorize staff to review plans, at the request of an applicant, based on the new Stormwater Management Ordinance and amendments to the Public Facilities Manual (PFM) beginning two months in advance of the effective date. Plans could

Board Agenda Item  
January 28, 2014

not be approved under the new Stormwater Management Ordinance and amendments to the PFM prior to the effective date.

The proposed amendments have been prepared by Department of Public Works and Environmental Services and coordinated with the Office of the County Attorney. The proposed amendments to the PFM have been recommended for approval by the Engineering Standards Review Committee.

TIMING:

Board action is requested on January 28, 2014. On September 10, 2013, the Board authorized the advertising of public hearings. The Planning Commission held a public hearing October 9, 2014, with decision deferred to November 21, 2013. The amendments will become effective at 12:01 a.m. on July 1, 2014.

BACKGROUND:

The proposed amendments to the PFM are a part of the implementation of the proposed County Stormwater Management Ordinance and the Virginia Stormwater Management Program (VSMP) Regulation (9 VAC 25-870 et seq.). In a separate action, the Board is being asked to adopt Chapter 124 (Stormwater Management Ordinance), repeal Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage), and adopt amendments to Chapters 101 (Subdivision Ordinance), 104 (Erosion and Sedimentation Control), 112 (Zoning Ordinance) and 118 (Chesapeake Bay Preservation Ordinance) of *The Code of the County of Fairfax, Virginia*. The new ordinance and proposed County Code amendments implement the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Regulations (9 VAC 25-870 et seq.).

The Virginia Soil and Water Conservation Board (SWCB) adopted final amendments to the Virginia Stormwater Management Program (VSMP) Permit Regulations (4 VAC 50-60 et seq.) on May 24, 2011, with an effective date of September 13, 2011. An earlier version of the amended regulations was adopted in 2010 but suspended by the SWCB prior to becoming effective because of issues raised by localities and the public. During the 2012 and 2013 legislative sessions, the General Assembly adopted amendments to the Code of Virginia (Chapters 785 & 819 of the 2012 Acts of Assembly and Chapter 756 of the 2013 Acts of Assembly) transferring regulatory and enforcement authority for the Erosion and Sediment Control Act, the Stormwater Management Act, and the Chesapeake Bay Preservation Act to the State Water Control Board and the Department of Environmental Quality (DEQ). During the 2013 legislative session, the General Assembly also adopted a separate amendment to the Stormwater Management Act (Va. Code Ann. § 62.1-44.15:33 (2013)) that constrains localities'

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ability to adopt more stringent requirements than the minimum requirements of the regulations. As a result of the amendment passed during the 2013 legislative session, the County will need to justify any more stringent requirements unless the requirements were in force prior to January 1, 2013. Additional amendments to the VSMP Permit Regulations, the Virginia Erosion and Sediment Control Regulations (4 VAC 50-30 et seq.) and the Chesapeake Bay Preservation Area Designation and Management Regulations (4 VAC 50-90 et seq.) were adopted by the SWCB on September 28, 2012, with an effective date of November 21, 2012. Because of the transfer of program oversight to the State Water Control Board and DEQ, these regulations were republished on September 23, 2013, with an effective date of October 23, 2013, to make them consistent with the numbering sequence assigned to State Water Control Board regulations in the Virginia Administrative Code, as follows: VSMP Regulations (9 VAC 25-870 et seq.); Virginia Erosion and Sediment Control Regulations (9 VAC 25-840 et seq.); and Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 25-830 et seq.). On December 17, 2013, the State Water Control Board adopted additional amendments to the VSMP Regulations related to grandfathering, the general permit for discharges from construction sites, and fees.

The adoption of a local stormwater management ordinance by Fairfax County is mandatory under the Virginia Stormwater Management Act (Act). The Act gives localities until June 13, 2013, to adopt local ordinances to comply with the regulations. However, pursuant to the Act, the SWCB granted the County an extension to June 13, 2014. Adoption of amendments to the PFM is necessary at this time to implement the Stormwater Management Ordinance and the regulations. After the County has amended its ordinances and the PFM, the State Water Control Board and DEQ will review the ordinances and PFM for consistency with state law and regulations. The County is required to submit the new and revised ordinances, revised PFM, a funding and staffing plan, and associated policies and procedures for administering the stormwater management program to DEQ by January 15, 2014. The final adopted ordinances and PFM must be submitted to DEQ by May 15, 2014.

Chapter 6 of the PFM currently includes the County's requirements for water quality control, water quantity control (adequate outfall), and BMPs. The requirements for water quality control and water quantity control are being removed from the PFM and consolidated in the new Stormwater Management Ordinance. The requirements for design and construction of BMPs are more technical in nature and will remain in the PFM. The VSMP Permit Regulations list fifteen specific Best Management Practices (BMPs) that are approved for use statewide. The State also has published design standards for these BMPs. Any additional BMPs not on this list must be approved by DEQ before they may be used for credit towards meeting the water quality control requirements of the regulations. The regulations allow localities to establish limitations on the use of specific BMPs with written justification provided to DEQ. The amendment

to the Stormwater Management Act, Va. Code Ann. § 62.1-44.15:33, limits localities' ability to adopt more stringent requirements than the minimum requirements of the regulations and the County's ability to exercise the authority provided in the regulations to establish limitations on the use of specific BMPs as follows:

*C. Localities shall not prohibit or otherwise limit the use of any best management practice (BMP) approved for use by the Director or the Board except as follows:*

*1. When the Director or the Board approves the use of any BMP in accordance with its stated conditions, the locality serving as a VSMP authority shall have authority to preclude the onsite use of the approved BMP, or to require more stringent conditions upon its use, for a specific land-disturbing project based on a review of the stormwater management plan and project site conditions. Such limitations shall be based on site-specific concerns. Any project or site-specific determination purportedly authorized pursuant to this subsection may be appealed to the Department and the Department shall issue a written determination regarding compliance with this section to the requesting party within 90 days of submission. Any such determination, or a failure by the Department to make any such determination within the 90-day period, may be appealed to the Board.*

*2. When a locality is seeking to uniformly preclude jurisdiction-wide or otherwise limit geographically the use of a BMP approved by the Director or Board, or to apply more stringent conditions to the use of a BMP approved by the Director or Board, upon the request of an affected landowner or his agent submitted to the Department, with a copy submitted to the locality, within 90 days after adoption, such authorizing ordinances, design manuals, policies, or guidance documents developed by the locality that set forth the BMP use policy shall be provided to the Department in such manner as may be prescribed by the Department that includes a written justification and explanation as to why such more stringent limitation or conditions are determined to be necessary. The Department shall review all supporting materials provided by the locality to determine whether the requirements of this section have been met and that any determination made by the locality pursuant to this section is reasonable under the circumstances. The Department shall issue its determination to the locality in writing within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.*

*D. Based on a determination made in accordance with subsection B or C, any ordinance or other requirement enacted or established by a locality that is found to not comply with this section shall be null and void, replaced with state minimum standards, and remanded to the locality for revision to ensure*

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*compliance with this section. Any such ordinance or other requirement that has been proposed but neither enacted nor established shall be remanded to the locality for revision to ensure compliance with this section.*

*E. Any provisions of a local stormwater management program in existence before January 1, 2013, that contains more stringent provisions than this article shall be exempt from the requirements of this section. However, such provisions shall be reported to the Board at the time of the locality's VSMP approval package. (Va. Code Ann. § 62.1-44.15:33)*

Of the fifteen BMPs listed in the VSMP Permit Regulations, “rooftop disconnection” is the only BMP not currently available for use in Fairfax County in some form, either by inclusion in the PFM or various DPWES-LDS Technical Memoranda related to the use of innovative BMPs or with site-specific approval (rainwater harvesting). The restrictions proposed for the BMPs listed in the PFM are all based on current restrictions. Therefore, staff believes that the restrictions satisfy the requirement of § 62.1-44.15:33(E) as being in place prior to January 1, 2013.

Approximately 90 percent of the new Stormwater Management Ordinance consists of requirements from the state Stormwater Management Act and Regulations. For the remaining 10 percent of the ordinance, where the County had latitude to develop specific requirements, an extensive outreach program was implemented to gain input from stakeholders. Outreach efforts included:

- Stakeholder Meetings - Stakeholders included representatives from industry, citizens groups, design professionals, environmental groups, and other individuals interested in participating. A kickoff meeting was held on July 24, 2012; work sessions were held on September 24, 2012, October 17, 2012; and a close-out meeting was held on July 24, 2013.
- Web site (<http://www.fairfaxcounty.gov/dpwes/stormwaterordinance.htm>) – A website was created to keep the public updated on the ordinance adoption schedule, draft ordinances, and solicit input. Email notifications were sent to stakeholders to alert them to meetings and updates to draft ordinance postings on the website.
- Board Committee Presentations – Staff presented various options for the major policy issues at four Environmental Committee and Development Process Committee meetings between November 2012 and June 2013. A final presentation was made to the Environmental Committee on January 21, 2014, to discuss the public vs. private maintenance option for residential BMPs.

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- Planning Commission Presentations – Staff presented an overview of the Stormwater Management Ordinance and the major policy issues to the Planning Commission Environment Committee at two meetings between October 2012 and April 2013. Staff presented updates on the ordinance to the Environment Committee on September 19, 2013, and November 6, 2013.
- Environmental Quality Advisory Council (EQAC) Presentations – Staff made presentations on the Stormwater Management Ordinance and policy issues at four EQAC meetings.
- Engineering Standards Review Committee (ESRC) – Staff worked with representatives on the ESRC from the development community, engineers, environmental groups, and citizen groups to develop the proposed amendments to the Public Facilities Manual.
- District Advisory Group Presentations – Staff presented various Stormwater Management Ordinance topics at meetings in the Mount Vernon, Braddock, and Providence Districts.
- Industry Coordination – Staff has been and is continuing to work with a group of private sector engineers to review the impacts of the regulations and the proposed Stormwater Ordinance and identify implementation issues.

Through the overall outreach approach, the proposed Stormwater Management Ordinance represents an effort to achieve a balance between minimum state requirements, development community interests, and environmental interests.

PROPOSED AMENDMENTS:

1) The extent of review of downstream drainage systems to determine adequacy is being replaced by a reference to the extent of review required under the Stormwater Management Ordinance. The extent of review required under the Stormwater Management Ordinance is the State minimum requirement, which extends farther downstream than the current requirement in the PFM. In addition, an alternative extent of downstream review based on the County's current requirements is provided for situations where outfalls are adequate and/or certain detention targets are met.

2) The use of the critical shear stress method in determining adequacy is being eliminated. This method has not been used for a number of years and currently is not approved for use by the State. However, it still could be used at some future time under a provision in the PFM that allows the Director to consider alternative methods to the detention method that achieve an equivalent degree of stream protection and that are subsequently approved by the State.

3) The detention method is being removed from the PFM and relocated to the Stormwater Management Ordinance in a slightly modified version. Use of the detention method eliminates the need for a review of the downstream drainage system (outfall) to determine adequacy.

4) Water quality control criteria related to the Chesapeake Bay Preservation Ordinance is being removed from the PFM. At the State level, compliance with the water quality control criteria in the VSMP Permit Regulations is deemed to meet the criteria in the Chesapeake Bay Preservation Area Designation and Management Regulations. Because the new Stormwater Management Ordinance includes these requirements it is not necessary to have them duplicated in the PFM.

5) The table of assigned phosphorus removal efficiencies has been deleted. The state has developed design specifications and total phosphorus removal efficiencies for fifteen BMPs (available on the Virginia Stormwater BMP Clearinghouse web site) which must be used by localities. The section covering tree box filters, which are a type of bioretention facility, has been deleted; it is adequately covered by the section on bioretention and the Virginia design specifications. A separate section for each type of BMP is included in the PFM. BMPs must be designed in accordance with the state design specifications except as supplemented and modified in the PFM. The basic sizing criteria and other essential design criteria developed by the State for all fifteen BMPs is used to assure that the state's assigned total phosphorus removal is not compromised. Whenever any provision of the PFM imposes a different standard than the state design specifications, the PFM standard shall be followed. The County's dam standards, soils testing, and maintenance provisions of the PFM must be adhered to for all designs. Restrictions on the use and location for each BMP are included. The restrictions are based on general applicability for different types of development, site constraints, inspection and maintenance needs, and the potential burden on homeowners.

6) Nineteen plates related to design standards and criteria for BMPs, standard BMP plan views, the critical shear stress method, and example problems are being deleted. Standard BMP plan views are included in the online State BMP specifications.

7) Two alternatives, previously discussed with the Board, are presented for maintenance of stormwater management facilities in residential areas. Under the first alternative, which is a continuation of the current policy, the County will maintain dry ponds, extended detention ponds, and regional wet ponds. All other types of BMPs will be maintained by Homeowner Associations (HOAs) or property owners. Under the second alternative, the County will maintain the following stormwater management facilities constructed after adoption of the proposed amendments:

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- Sheet flow to a vegetated filter or conserved open space
- Infiltration practices
- Bioretention
- Vegetated swales
- Wet swales (linear wetlands)
- Filtering practices (e.g. sand filters)
- Constructed wetlands
- Wet ponds
- Extended detention ponds
- Manufactured (proprietary) BMPs

Under the second alternative, the HOAs or property owners will maintain the following:

- Rooftop disconnections
- Soil compost amendment
- Reforestation
- Vegetated roof
- Rainwater harvesting
- Permeable pavement

Under the second alternative, involving expanded County maintenance of residential BMPs, the County would be responsible for functional maintenance of the facilities and the property owners would be responsible for aesthetic maintenance. In addition to maintaining new residential BMPs, the Board may also want to consider development of a conversion program to allow property owners to turn over eligible existing facilities to the County for maintenance. The transfer of the BMPs to the County for maintenance would be optional for the BMP owners. Prior to transfer, the BMPs would need to be brought up to an acceptable condition and easements dedicated to the County. Some advantages of County maintenance are:

- Greater assurance that the BMPs are functional, resulting in greater control of MS4 permit compliance terms
- Reduction in the potential need for enforcement actions against homeowners and associated costs and staff time
- Reduction in the perceived inequity of owners of privately maintained BMPs versus owners of publicly maintained BMPs and residents of older communities without BMPs
- County may be able to trade or pursue more cost effective solutions in the future with greater control of the countywide system

Some disadvantages of County maintenance are:

- County will be working on private property within easements which may be perceived as intrusive by the owners
- Costs for regular inspections and most maintenance assumed by the County
- Costs would be passed on to all County property owners via the countywide stormwater service district tax which might be perceived as inequitable by owners who currently don't have BMPs to maintain
- Conversion program would be needed to transfer over 1,000 existing privately maintained residential BMP facilities to the County inventory
- Increased County liability issues associated with transferred facilities ( there are approximately 300 existing private residential wet ponds)

REGULATORY IMPACT:

The proposed Stormwater Management Ordinance is being adopted as required by the Virginia Stormwater Management Act and Regulations. Requirements for water quality and quantity control, currently located in the Public Facilities Manual and Chesapeake Bay Preservation Ordinance, are being consolidated in the new ordinance. Existing prohibitions related to pollution of state waters and discharges into County storm drains in Chapters 105 and 106 of the County Code are being expanded and consolidated in the new ordinance. The new ordinance establishes more stringent requirements for water quality controls than those currently contained in the PFM and Chesapeake Bay Preservation Ordinance. These requirements meet but do not exceed the minimum requirements of the Virginia Stormwater Management Act and Regulations. The new ordinance retains existing requirements currently in the PFM, with minor modifications, for water quantity control related to stream protection and flooding. These requirements exceed the minimum requirements of the Virginia Stormwater Management Act and Regulations. The new ordinance creates a requirement for a local stormwater permit and a consolidated stormwater and erosion and sediment control permit as required by the Virginia Stormwater Management Act and Regulations. Under the new ordinance and in accordance with the Virginia Stormwater Management Act and Regulations, the County will be responsible for plan review and inspections for the state for VSMP permits and enforcement of VSMP permit violations. Under the Virginia Stormwater Management Act and Regulations, the threshold for the requirement to obtain a state permit has been increased from 2,500 square feet to one acre making it less stringent than current requirements.

In general, the new water quality control requirements will be more difficult to achieve for all development including County projects and result in the construction of more, albeit smaller, controls distributed throughout the project site. This impact is mitigated for land disturbances on existing residential lots by the exception provisions contained

Board Agenda Item  
January 28, 2014

in the new ordinance and the option to purchase water quality control credits through a broker system set up by the state. It is unknown at this time if sufficient credits will be available to meet future demand for credits. The regulatory impacts also are mitigated by the provisions set forth in the ordinance for land-disturbing activities that have coverage under a state VSMP permit prior to July 1, 2014, and proposed land-disturbing activities that have County approvals prior to July 1, 2012, both of which are derived directly from the Virginia Stormwater Management Regulations. Projects that have coverage under a state VSMP permit are not subject to the new technical criteria in the proposed Stormwater Management Ordinance provided that construction is completed by July 1, 2024. Grandfathered projects are not subject to the new technical criteria provided that construction is completed by July 1, 2019. The types of projects grandfathered are currently valid proffered rezonings or P district rezonings or other rezonings with a plan of development, special exceptions, special permits, variances, preliminary or final subdivision plats, subdivision construction plans, preliminary or final site plans, or grading plans. In addition, County projects for which funding was obligated prior to July 1, 2012, are grandfathered until July 1, 2019, and County projects for which governmental bonding or public debt financing was issued prior to July 1, 2012, are grandfathered indefinitely.

The proposed PFM amendments are necessary to implement the new Stormwater Management Ordinance and the VSMP Regulation. Requirements for water quality and quantity control, currently located in the PFM and Chesapeake Bay Preservation Ordinance, are being consolidated in the new ordinance. The primary regulatory impact of the PFM amendments is related to the limitations on use and location of BMPs and, if approved, the maintenance of additional types of BMPs in residential areas by the County.

With respect to the limitations on use and location of BMPs, the limitations are less restrictive than current requirements but more restrictive than what is permitted under the Regulations. Currently, all BMPs must be located on outlots in new residential subdivisions except that some types of BMPs may be located on lots in residential subdivisions creating three or fewer lots with approval by the Director and on existing residential lots. BMPs currently may not be located in the VDOT right-of-way. Under the proposed amendments, the limit of three lots is being increased to seven lots and some BMPs may be located in the VDOT right-of-way subject to approval by VDOT. In order for BMPs to be located in the right-of-way, an agreement between the County and VDOT, similar to the one currently in place for the Tysons Corner Urban Center, will have to be developed. Staff has begun talks with VDOT but it may take some time to negotiate an acceptable agreement(s).

FISCAL IMPACT:

The new ordinance will result in the need for four new DPWES positions to be included in this fiscal year (2014). Two new positions will be needed to address compliance and enforcement requirements of the ordinance. Based on the actual increase in constructed BMPs above current ordinance BMP construction levels coupled with increased enforcement efforts, additional positions may need to be requested in future budget submissions. Due to changes by the State to the VSMP permit application process in December 2013, two new permit technician positions will be needed as of July 1, 2014 (FY2015) to process these applications. The two enforcement and two permit technician positions will be included for the Board's consideration in the FY 2014 Third Quarter Review. Any additional positions beyond the four identified in the FY2014 process would be included in future year budget submissions based on workload requirements.

It is also anticipated that additional positions in the County Attorney's office may be needed in the future for enforcement activities. The need for additional maintenance staff will need to be reevaluated if the Board determines that the County should take over maintenance of most new BMP facilities. With respect to plan review and inspection activities, no new staff is being requested at this time.

It is difficult to assess what fiscal impact the addition of new BMP types and changes to the BMP design standards will have on the County, developers, or property owners. The primary fiscal impact is due to the increase in the number of BMPs required to meet the new water quality control requirements in the Stormwater Management Ordinance rather than the design standards for those BMPs. The increase in the number of BMPs per project would increase both design and construction costs.

If the number of BMP types eligible for public maintenance is expanded, the annualized cost for County maintenance of new BMPs added to the inventory of County maintained facilities is estimated to be approximately \$0.6 million versus approximately \$0.25 million under the current system. The costs to the County would increase by this amount every year. In addition, there would be additional costs if the County instituted a conversion program for existing privately maintained residential BMPs to be brought up to acceptable condition and turned over to the County. If all of the existing privately maintained residential BMPs were turned over to the County for maintenance (this likely would take many years), there would be an additional annualized cost estimated at \$3.5 million. Any staffing costs associated with the conversion program would be offset by less enforcement activity. Therefore, the fiscal impact of a change to the types of BMPs maintained by the County would be approximately \$3.5 million increasing at a rate of \$0.6 million per year from current Stormwater Program funding.

Board Agenda Item  
January 28, 2014

ENCLOSED DOCUMENTS:

Attachment I - Staff Report Dated September 10, 2013 (available online at  
<http://www.fairfaxcounty.gov/dpwes/stormwaterordinance.htm>)

Attachment II – Revisions to the Advertised PFM Amendments Recommended by Staff  
dated November 14, 2013 (available online at:  
<http://www.fairfaxcounty.gov/dpwes/stormwaterordinance.htm>)

Attachment III – Staff Report Addendum dated January 28, 2014

Attachment IV – Planning Commission Verbatim

STAFF:

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

Michelle A. Brickner, Deputy Director, DPWES

DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES

# STAFF REPORT

## ADDENDUM

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

Proposed Amendments to Chapter 6 (Storm Drainage) and Chapter 12 (Vegetation Preservation and Planting) of the Public Facilities Manual Re: Water Quality Controls, Adequate Outfall, Detention, Maintenance of Stormwater Management Facilities, and Replanting of Disturbed Areas.

Authorization to Advertise

September 10, 2013

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Planning Commission Hearing

October 9, 2013

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Board of Supervisors Hearing

January 28, 2014

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Prepared by:

Code Development and  
Compliance Division  
JAF (703) 324-1780  
January 28, 2014

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## STAFF REPORT ADDENDUM

Proposed amendments to Chapter 6 (Storm Drainage) and Chapter 12 (Vegetation Preservation and Planting) of the Public Facilities Manual (PFM) related to water quality controls, adequate outfall, detention, maintenance of stormwater management facilities, and replanting of disturbed areas. The proposed amendments are necessary to implement the proposed Stormwater Management Ordinance and the Virginia Stormwater Management Program (VSMP) Regulations (9 VAC 25-870 et seq.).

### A. Recommended Action:

Staff recommends that the Board of Supervisors (the Board) adopt the proposed amendments to Chapter 6 (Storm Drainage) and Chapter 12 (Vegetation Preservation and Planting) of the Public Facilities Manual (PFM) as recommended by the Planning Commission except that Alternative #1, which does not expand the BMPs eligible for public maintenance, be selected instead of Alternative #2 which was recommended by the Planning Commission. Staff further recommends that the Board authorize staff to review plans, at the request of an applicant, based on the new Stormwater Management Ordinance and amendments to the PFM beginning two months in advance of the effective date. Plans could not be approved under the new Stormwater Management Ordinance and amendments to the PFM prior to the effective date.

### B. Background:

Subsequent to the publishing of the original Staff Report on September 10, 2013, the regulations were republished on September 23, 2013, with an effective date of October 23, 2013, to make them consistent with the numbering sequence assigned to State Water Control Board regulations in the Virginia Administrative Code, as follows: VSMP Regulations (9 VAC 25-870 et seq.); Virginia Erosion and Sediment Control Regulations (9 VAC 25-840 et seq.); and Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 25-830 et seq.). On December 17, 2013, the State Water Control Board adopted additional amendments to the VSMP Regulations, with an effective date of February 15, 2014, related to grandfathering, the general permit for discharges from construction sites, and fees. These amendments do not necessitate any changes to the proposed PFM amendments.

The proposed amendments to the PFM are a part of the implementation of the proposed County Stormwater Management Ordinance and the Virginia Stormwater Management Program (VSMP) Permit Regulations (9 VAC 25-870 et seq.). The County is required to submit the new and revised ordinances, revised PFM, a funding and staffing plan, and associated policies and procedures for administering the stormwater management program to DEQ for review. The deadline for the required submission has been extended from December 15, 2013, to January 15, 2014, and the deadline for final submission of the adopted ordinances and PFM has been extended from April 1, 2014, to May 15, 2014. See Agenda Item for full background statement.

C. Fiscal Impact:

See updated fiscal impact statement in Agenda Item.

Planning Commission Meeting  
November 21, 2013  
Verbatim Excerpt

PUBLIC FACILITIES MANUAL AMENDMENT (STORMWATER MANAGEMENT ORDINANCE) AND PUBLIC FACILITIES MANUAL AMENDMENT (STORM DRAINAGE AND VEGETATION PRESERVATION AND PLANTING)

Decision Only During Commission Matters  
(Public Hearing held on October 9, 2013)

Commissioner Hart: Thank you, Mr. Chairman. Last month, the Commission held a public hearing on a package of important amendments dealing with stormwater regulations. Stormwater is at or near the top of the list of citizen issues debated in the land use process. Recommendations on how development should implement stormwater policy are a critical part of the Planning Commission's role in the land use process. Recent legislative changes in Richmond require that Fairfax County amend its regulatory framework in advance of an upcoming June 2014 deadline. We deferred the Planning Commission decision twice until tonight, fine tuning the proposal. I believe we are now ready to move forward. I want to first thank all the citizens who contributed input on this topic, the speakers at the public hearing, as well as the many meetings leading up to it, and the many folks who submitted letters and emails. More importantly, I want to thank the outstanding team of staff, many of whom are here tonight, including Paul Shirey, John Friedman, Bruce McGranahan, James Patteson, Randy Bartlett, Tom Williamson, John Bell, and Michelle Brickner, for their dedicated, thorough, and very professional handling of a complicated and important topic. We civilians are fortunate to have technical staff who can understand and digest some very complicated issues. Staff has done 99 percent of the heavy lifting on this project. I want to thank the many citizens and industry folks who participated in the dialogue over the last several months for their contributions. Staff conducted a wide-ranging communication effort, including at least four public outreach meetings to invited stakeholders, at least three community meetings offsite, review of the PFM issues with the Engineering Standards Review Committee, four sessions with the Environmental Quality Advisory Committee, four sessions with the Planning Commission Environment Committee, several meetings with design industry professionals, website information, and thorough and timely responses to many citizen and industry questions. The lack of controversy at the Planning Commission level confirms the success of the community outreach effort. I believe that the staff recommendations, as most recently amended in the November 14 handout, largely represent a consensus on these complicated issues. In general, we hope that these amendments will help with stormwater management, environmental, and water quality concerns. I wanted to add a couple observations about our recommendations. One of staff's recommendations was that the Chesapeake Bay Exceptions Review Committee be abolished. The most significant factor was that there have been very few cases – fewer than had been anticipated. The committee rarely meets, compared to the Planning Commission and Board of Supervisors. It has been difficult for the Board to keep the committee fully appointed and sometimes difficult to achieve quorum, which can cause delay, uncertainty, and expense to the applicants, making a difficult process even more challenging. The committee opposes staff's recommendation and all the committee members may not have been specifically aware of the pending abolition until recently. That dilemma was one of the issues to be sorted out before the matter goes to the Board. I have decided to

PFM AMENDMENTS (STORMWATER ORDINANCE)

recommend retaining the "Exceptions Review Committee, coupled with a recommendation for a follow-on motion to have staff monitor the workload of the committee, and make appropriate recommendations in one year in light of our experience with the new regulations. The staff recommendation would have retained a public hearing process, but have future exception review cases go before the Board of Supervisors instead of the committee. With the historically small caseload for these requests, I believe the Board probably is capable of making these additional decisions and that, as long as a public hearing process is preserved, we are maintaining transparency in the process and an opportunity for notice and citizen input to the decision makers. At the same time, the Board of Supervisors has an extensive workload already and further assignment of additional categories of public hearings, even incrementally, impacts the length of the Board's meetings. I want to make clear that staff's recommendation and the continued study of this issue for another year is not intended to denigrate in any way the work of the committee or the importance of the contributions of qualified citizens to the land use process, but recognizes instead the administrative difficulty with maintaining many separate layers of review and decision-making. Staff can continue to monitor the situation and the Board could revisit the procedure. I believe also there may be options short of abolition which might ease the quorum requirements or modify the size of the committee or otherwise streamline the processing of applications while retaining an independent voice and the benefit of perhaps more detailed review of technical water quality issues. With respect to the technical aspects of the amendment, I am comfortable with staff's recommendations. I wanted to observe that this package, although it contains fairly rigorous requirements, is about 90 percent predetermined with the particulars already directed from Richmond. On the additional 10 percent where we have some flexibility, I have not departed from staff's recommended figures in the ranges advertised. Staff's recommended approach should result in significant improvement over the current regulations. Although we would have the flexibility to make some of these regulations even more severe than recommended, we need to be mindful of the economic realities. We do not want stormwater regulation to be a disincentive to redevelopment in the older areas of the County, especially where stormwater management is weakest and the stream quality worst, right now. We want, instead, to encourage responsible redevelopment and improvement of those existing conditions. A balanced package, in my judgment, in line with the staff recommendations, is the best way to achieve that result. Finally, we recognize that there are some additional stormwater regulation changes in the pipeline from Richmond, too late to be included in the advertised staff report, but also details which Fairfax County will be required to incorporate. Staff anticipates some minor edits to the Planning Commission recommendation, incorporating the additional changes mandated from Richmond but not yet ready for us before this matter goes to the Board on January 28<sup>th</sup>. I understand from staff that the County Attorney is agreeable with that approach and that we need not delay our recommendation pending resolution of those loose ends. I understand that any such required edits will be deemed within the scope of the advertising as less stringent than what was advertised. Therefore, Mr. Chairman, I will have seven motions. First, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD ADOPT THE PROPOSED AMENDMENTS TO CHAPTER 101 (SUBDIVISION ORDINANCE), CHAPTER 112 (ZONING ORDINANCE), AND APPENDIX Q OF THE COUNTY CODE, AS CONTAINED IN THE STAFF REPORT DATED SEPTEMBER 10, 2013.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant, is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt the amendment on stormwater management – on the Stormwater Management Ordinance [sic], as articulated by Mr. Hart, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Litzenberger: I abstain. I was not present for the –

Chairman Murphy: Okay, Mr. Litzenberger abstains, not present for the public hearing.

Commissioner Hart: That one wasn't stormwater. It was subdivision.

Chairman Murphy: Oh, I'm sorry. Okay.

Commissioner Hart: Then secondly, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD REPEAL EXISTING CHAPTER 105 (POLLUTION OF STATE WATERS) AND CHAPTER 106 (STORM DRAINAGE) OF THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA, AS CONTAINED IN THE STAFF REPORT DATED SEPTEMBER 10, 2013.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: Same –

Chairman Murphy: Same abstention all the way through.

Commissioner Hart: Next, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD ADOPT THE

PROPOSED AMENDMENTS TO CHAPTER 104 (EROSION AND SEDIMENTATION CONTROL) OF THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA, WITH THE REVISIONS RECOMMENDED BY STAFF, AS CONTAINED IN REVISED ATTACHMENT C DATED NOVEMBER 14, 2013.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: And Mr. Litzenberger –

Chairman Murphy: And Mr. Litzenberger – I said all the way through.

Commissioner Hart: Next, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD ADOPT THE PROPOSED AMENDMENTS TO CHAPTER 118 (CHESAPEAKE BAY PRESERVATION ORDINANCE) OF THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA, WITH THE REVISIONS RECOMMENDED BY STAFF, AS CONTAINED IN REVISED ATTACHMENT G DATED NOVEMBER 14, 2013, EXCEPT THAT PROPOSED AMENDMENTS TO ARTICLES 6, EXCEPTIONS; 7, EXCEPTION REVIEW COMMITTEE; AND 8, APPEALS, NOT BE ADOPTED, WITH THE EXCEPTION OF THE CORRECTED CROSS-REFERENCE IN SECTION 118-6-7(E).

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Hart: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD ADOPT CHAPTER 124 (STORMWATER MANAGEMENT ORDINANCE) OF THE CODE OF COUNTY OF FAIRFAX, VIRGINIA, WITH THE REVISIONS RECOMMENDED BY STAFF, AS CONTAINED IN REVISED ATTACHMENT A, DATED NOVEMBER 14, 2013, AND THAT THE EXEMPTION FOR SINGLE-FAMILY HOMES IN SECTION 124-7-1.3 BE ADOPTED AS ADVERTISED WITHOUT ANY CHANGES.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: Next, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD ADOPT THE AMENDMENTS TO THE PUBLIC FACILITIES MANUAL, AS CONTAINED IN THE STAFF REPORT DATED SEPTEMBER 10, 2013, SELECTING ALTERNATIVE 2 THROUGHOUT THE AMENDMENTS, WHICH EXPANDS THE RESIDENTIAL BMPS ELIGIBLE FOR PUBLIC MAINTENANCE, AND WITH THE REVISIONS TO SECTION 6-0203 (ANALYSIS OF DOWNSTREAM DRAINAGE SYSTEMS) RECOMMENDED BY STAFF DATED NOVEMBER 14, 2013.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Hart: Finally, Mr. Chairman, I MOVE THAT THE COMMISSION RECOMMEND THAT THE BOARD DIRECT STAFF TO MONITOR THE CASELOAD OF THE CHESAPEAKE BAY EXCEPTION REVIEW COMMITTEE FOR A PERIOD OF ONE YEAR FOLLOWING THE BOARD'S ADOPTION OF THE AMENDMENT PACKAGE AND MAKE APPROPRIATE RECOMMENDATIONS TO THE PLANNING COMMISSION AND THE BOARD FOR ANY PROCEDURAL AMENDMENTS AT THAT TIME. THESE RECOMMENDATIONS NEED NOT NECESSARILY INCLUDE ABOLITION OF THE COMMITTEE, BUT ALSO CONSIDERATION OF THE NUMBERS OF MEMBERS OR ALTERNATES OR PROCEDURES TO SIMPLIFY QUORUM OR OTHER ADMINISTRATIVE RECOMMENDATIONS TO FACILITATE TIMELY AND EFFICIENT PROCESSING OF THESE APPLICATIONS.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: Thank you, Mr. Chairman.

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(Each motion carried by a vote of 10-0-1. Commissioner Litzenberger abstained. Commissioner Hall was absent from the meeting.)

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Board Agenda Item  
January 28, 2014

4:30 p.m.

Public Hearing on SEA 2009-DR-008 (Oakcrest School) to Amend SE 2009-DR-008 Previously Approved for a Private School of General Education to Permit Modifications to Development Conditions and Site Access with no Increase in Enrollment, Located on Approximately 22.67 Acres of Land Zoned R-E (Hunter Mill District)

This property is located on the South side of Crowell Road, approximately 1,200 feet East of its intersection with Hunter Mill Road and North of Dulles Toll Road. Tax Map 18-4 ((1)) 26C; 18-4 ((8)) A and 4.

This public hearing was deferred on September 24, 2013 to January 28, 2014 at 4:30 p.m.

PLANNING COMMISSION RECOMMENDATION:

On Wednesday, July 31, 2013, the Planning Commission voted 6-5-1 (Commissioners Donahue, Hall, Hart, Hedetniemi, and Lawrence opposed and Commissioner Sargeant abstaining) to recommend that the Board of Supervisors approve SEA 2009-DR-008, subject to the development conditions dated July 30, 2013.

The Commission also voted 8-2-1 (Commissioners Hart and Lawrence opposed; Commissioner Sargeant abstaining; and Commissioner Hall not present for the vote) to recommend the following actions to the Board of Supervisors:

- Reaffirmation of the transitional screening requirements on the east and south to favor existing vegetation and as shown on the special exception amendment plat; and
- Reaffirmation of the modification of the location of the required barrier along the eastern and southern boundaries to favor that barrier shown on the special exception amendment plat.

ENCLOSED DOCUMENTS:

Attachment 1 – Planning Commission Verbatim  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4419579.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Joe Gorney, Planner, DPZ

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Planning Commission Meeting  
July 31, 2013  
Verbatim Excerpt

SEA-2009-DR-008 – OAKCREST SCHOOL (Hunter Mill District)

Decision Only During Commission Matters  
(Public Hearing held on June 20, 2013)

Commissioner de la Fe: Thank you, Mr. Chairman. Mr. Chairman, I have a decision only. It's on SEA 2009-DR-008, Oakcrest School. Mr. Chairman, the public hearing for this case was held on June 20<sup>th</sup>, 2013. At the public hearing, 16 individuals presented testimony. Most were opposed to granting the SEA. Though there were a variety of issues raised, the predominant one related to the traffic impact on Crowell Road. During the deferral period, we have received a significant amount of further public comment, both supporting and opposing the application. All of those comments will be incorporated into the public record. In order to address not only the traffic management issues, but also removal of the berm, screening, and the relationship to previous actions related to the application property, the decision was deferred until July 25<sup>th</sup>. A staff report addendum was published on the 25<sup>th</sup>, which recommended a further deferral to tonight to allow staff additional time to review the submissions from the applicant. A second addendum dated July 30<sup>th</sup> was published and distributed electronically. As discussed in the addenda, development conditions were developed to attempt to address the issues. Condition 3 references the new date for the SE Plat, which, among other things, changes – which, among other changes, primarily relate to a reduction in the amount of berm to be removed and additional screening. Condition 4 was added to clarify the relationship between land disturbance activities associated with this SEA and the prior approvals collectively known as SP 91-C-070. Conditions 18 and 19 were added to address traffic and transportation demand issues. Conditions 33 and 34 were added to address issues related to the removal of portions of the berm. By approving the original SE, the Board of Supervisors determined that the land use, a Category 3, Private School of General Education, was appropriate. This application is an amendment to the previously-approved Special Exception because the applicant has been unable to acquire the land necessary to achieve the traffic mitigation anticipated in the approved SE. To state the obvious, this is a complicated case. Many of the issues raised with respect to this application had their origins long before this application; however, we must deal with the application before us now, which basically involves site access and traffic management. There is no question that the access point on Crowell will increase traffic on that road and exacerbate an already difficult situation; however, the traffic analyses and conclusions of the folks that we look to for advice tell us that, with the installation of a traffic signal at the intersection of Crowell and Hunter Mill roads, lane improvements, and provision of safety devices to alert vehicular traffic traveling west on Crowell, the increased traffic can be handled. At one point, I considered adding a requirement that a second site access point be provided; however, since the staff has concluded that the single access point, with the associated road improvements, could handle student enrollment at its highest allowable limit, I did not find it prudent to make such a requirement at this time. I believe that the provisions of Development Condition 19 allow the staff to monitor the situation and make the necessary changes. As I stated before, this is a complicated case. It is particularly complicated for me because of the divergent recommendations provided by the Hunter Mill Land Use Committee and staff. When the Land Use Committee and staff agree, it is less complicated for

me to arrive at a recommendation to present to the Commission, whether it's to approve or deny. In this case, the Land Use Committee has recommended denial and staff has recommended approval. I know that in the past I have disagreed with staff. I can't recall a case when I disagreed with the Land Use Committee. In this case, however, since I believe that the issue before us relates not to the appropriate use of the land – since that issue was settled when the Board approved the original SE – but is basically a traffic management issue, I will recommend approval. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SEA 2009-DR-008, SUBJECT TO THE DEVELOPMENT CONDITIONS NOW DATED JULY 30<sup>TH</sup>, 2013. Thank you.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there a discussion of the motion?

Commissioner Lawrence: Mr. Chairman?

Chairman Murphy: Mr. Lawrence.

Commissioner Lawrence: Thank you, Mr. Chairman. I was not present for the public hearing, but I reviewed the video and read all the materials so I think I'm competent to vote. Mr. Chairman, I've learned that every case is different, but successful applications have a common attribute. An acceptable balance is struck between what the applicant seeks in such terms as use, intensity, and land design, and the interests of the community in offsetting the impact of the development. The previous version of this application had achieved a balance. For a number of reasons, in my view, this version does not and I cannot support it. Thank you.

Chairman Murphy: Is there further discussion of the motion? Ms. Hedetniemi.

Commissioner Hedetniemi: Thank you, Mr. Chairman. I took the time to go to Crowell Road and drive it and I concur with Mr. Lawrence's comments. I am not convinced that this solution is appropriate for the neighbors and for the traffic congestion that is very likely in that area – in an already congested area. So I will not support it.

Chairman Murphy: Further discussion of the motion? Ms. Hall.

Commissioner Hall: Yes. Mr. Chairman, I also agree with Commissioner Lawrence. I cannot support the application – probably for the more simple reason that – when we work with our communities they've got to trust what we say. And if we get their support for a particular remedy, then we have to ensure that remedy stays as part of the application. So, therefore, I cannot support any traffic going out on Crowley (sic).

Commissioner Flanagan: Mr. Chairman?

Chairman Murphy: Yes, Mr. Flanagan.

Commissioner Flanagan: Yes, I also had hoped that in the interim we would be given more consideration to a transportation alternative that would have located the circle – the proposed circle of the previous SE further south so that it would be only on two properties. And – however, in consulting with staff, I was found out that that was – that the owners of those properties were not amendable to that alternative. And so it would require condemnation if they wanted to pursue that and they – so I’m going to support the motion as enunciated.

Chairman Murphy: Mr. Sargeant?

Commissioner Sargeant: I’ll wait until the end, Mr. Chairman.

Chairman Murphy: All right. All those in favor of the motion –

Commissioner Donahue: Mr. Chairman? Mr. Chairman?

Commissioner de la Fe: Mr. Donahue.

Chairman Murphy: Oh, I’m sorry.

Commissioner Donahue: Yes, Mr. Chairman. I’m not sure exactly what some of these comments mean because not supporting the motion can take one of two directions. I’m going to have to oppose the motion. I’m going to have to oppose this application. And the reason I’m going to have to oppose it because I am clearly and emphatically on record with respect to Crowell Road – a number of years ago – saying this application doesn’t work with Crowell Road access. I’ve always believed that. I believed it three years ago; I believe it now. And we still have Crowell Road access. I’m going to tell just a little story that goes a little further. We’ve been all wound up about – about the turn – about the roundabout. The roundabout, for me, has always been a secondary consideration. The need for the roundabout – or it is made necessary by the fact that the Crowell Road access point does not work. That leaves us with Hunter Mill. If you have a Hunter Mill access point and a right-out only – and you would sure as heck have to have that – most of the folks dropping people off there, I think, are going to want to get back to the Toll Road. And with a right-out only, in order to get back to the Toll Road, they’re going to go a long, long ways without a roundabout to do so. That’s what made the roundabout necessary; nothing else. There’s nothing independent with respect to the roundabout other than you need the roundabout if you’re going to have a route (sic) – a right-only out on Hunter Mill Road. But the Crowell Road issue, it just has never – it has never gotten my support. Crowell Road is not going to accommodate, I don’t think, what it’s going to have to accommodate as an access point to this application without greatly, greatly inconveniencing people in the area. And also, I think it’s a dangerous – I think it’s a dangerous situation. So I’m going to have to oppose the application. Thank you, Mr. Chairman.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SEA 2009-DR-008, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Donahue, Hall, Hart, Hedetniemi, and Lawrence: No.

Chairman Murphy: Motion carries – well, I believe I'm going to take a division on this. Mr. Donahue?

Commissioner Donahue: No.

Chairman Murphy: Ms. Hedetniemi?

Commissioner Hedetniemi: No.

Chairman Murphy: Mr. Litzenberger?

Commissioner Litzenberger: Yes.

Chairman Murphy: Mr. Flanagan?

Commissioner Flanagan: Yes.

Chairman Murphy: Mr. Lawrence?

Commissioner Lawrence: No.

Chairman Murphy: Mr. de la Fe?

Commissioner de la Fe: Yes.

Chairman Murphy: Ms. Hall?

Commissioner Hall: Yes. No! N, no. Yes, on Ms. Hall, but the answer is no.

Chairman Murphy: I thought Ms. Harsel came back.

Commissioner Hall: We'll have words over that one.

Chairman Murphy: Mr. Hart?

Commissioner Hart: No.

Chairman Murphy: Mr. Sargeant?

Commissioner Sargeant: Mr. Chairman, in addition to not participating in the public hearing, I want the record to show that I am I not participating in the vote.

Chairman Murphy: Okay. Mr. Migliaccio?

Commissioner Migliaccio: Yes.

Chairman Murphy: Ms. Hurley?

Commissioner Hurley: Yes.

Chairman Murphy: The chair votes aye. And the motion passes 7 – 5 to one.

Commissioner de la Fe: Too many – 6-5-1.

Chairman Murphy: 6-5-1, I'm sorry.

Commissioner Hall: I want an auditor.

Commissioner de la Fe: Mr. Chairman –

Chairman Murphy: Yes, well you confused me with your vote. You're lucky I put it down in the right column.

Commissioner de la Fe: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND REAFFIRMATION OF THE PREVIOUS MODIFICATION OF THE TRANSITIONAL SCREENING REQUIREMENTS ON THE EAST AND SOUTH TO FAVOR EXISTING VEGETATION AND AS SHOWN ON THE SPECIAL EXCEPTION AMENDMENT PLAT.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there a discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Hart and Lawrence: No.

Chairman Murphy: Motion carries. Is it the same division?

Commissioner Donahue: I support that motion, Mr. Chairman. As long as we're going to have the project anyway, I think it's a good motion to support.

Chairman Murphy: Okay, who votes no on that one? Mr. Lawrence votes no and Mr. Hart votes no.

Commissioner Sargeant: Not participating.

Chairman Murphy: And same abstention; Mr. Sargeant. Motion carries.

Commissioner de la Fe: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND REAFFIRMATION OF THE PREVIOUS MODIFICATION OF THE LOCATION OF THE REQUIRED BARRIER ALONG THE EASTERN AND SOUTHERN BOUNDARIES TO FAVOR THAT BARRIER THAT IS SHOWN ON THE SPECIAL EXCEPTION AMENDMENT PLAT.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Hart and Lawrence: No.

Chairman Murphy: Motion carries. Mr. Lawrence and Mr. Hart vote no. Mr. Sargeant abstains. Is that it?

Commissioner de la Fe: That's it.

Chairman Murphy: Well you were right about one thing. You carried all the votes when you said this is a complicated application.

Commissioner de la Fe: Yes. Thank you, Mr. Chairman. And I realize that this is not satisfactory, probably, to anyone. And I also believe that given the development conditions that exist, this may not be the end of the case.

Chairman Murphy: You heard it here first.

Commissioner de la Fe: So, as I said, the origins on this extend more than 20 years and may be around another 20 years. And then it will be back in Dranesville.

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(The first motion carried by a vote of 6-5-1 with Commissioners Donahue, Hall, Hart, Hedetniemi, and Lawrence opposed; Commissioner Sargeant abstaining.)

(The second and third motions carried by a vote of 8-2-1 with Commissioners Hart and Lawrence opposed; Commissioner Sargeant abstaining; Commissioner Hall not present for the vote.)

JLC

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Board Agenda Item  
January 28, 2014

4:30 p.m.

Public Hearing on Proposed Reston Master Plan Special Study (Phase I) Plan Amendment Item ST09-III-UP1(A), Consisting of the Reston-Herndon Suburban Center (Hunter Mill and Dranesville District)

ISSUE:

Plan Amendment ST09-III-UP1(A) proposes revisions to the Comprehensive Plan for the Reston-Herndon Suburban Center and the areas around the planned Wiehle-Reston East, Reston Town Center and Herndon Metrorail stations. The Suburban Center designation is proposed to be replaced by plans for three contiguous Transit Station Areas that are part of the overall Reston plan. Each Transit Station Area is proposed to have mixed-use Transit Oriented Development (TOD) that is planned with the highest intensities located within a half mile of the Metro stations. Much of the area outside of the TODs are proposed to maintain their existing character, uses and intensity. The proposed Plan amendment also provides recommendations for creating a multi-modal transportation system, fostering environmental stewardship, and providing urban parks and recreation facilities and schools. Further guidance is proposed to address urban design with an emphasis on creating a high-quality urban environment that is highly walkable. Changes to other sections of the Comprehensive Plan to reflect the above revisions are also proposed.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, January 9, 2014, the Planning Commission voted unanimously to recommend to the Board of Supervisors the adoption of Plan Amendment ST09-III-UP1A as recommended by Staff and shown in the handout dated January 9, 2014 and as further modified by the four page handout dated January 9, 2014. In addition, the Planning Commission voted unanimously to recommend to the Board of Supervisors the adoption of three follow-on motions to address additional work on urban design, transportation analysis and transportation funding.

RECOMMENDATION:

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

TIMING:

Planning Commission public hearing – November 13, 2013  
Planning Commission decision deferred – December 5, 2013  
Planning Commission decision – January 9, 2014  
Board of Supervisors' public hearing – January 28, 2014

Board Agenda Item  
January 28, 2014

**BACKGROUND:**

The Board of Supervisors authorized the Reston Master Plan Special Study on May 18, 2009 and directed staff to initiate Phase I of the study, which is a review of Comprehensive Plan recommendations pertaining to the areas around the three planned Reston Metrorail stations: Reston Town Center Station, Wiehle-Reston East Station and the Herndon Station. Phase II of the Reston Master Plan Special Study will review the wider Reston community including the Village Centers and selected commercial areas. In the fall of 2009, a community Task Force was appointed for the Phase I effort by the Board of Supervisors, which included representatives of Reston resident groups, owners of commercial property in the study area and other interested members of the community. Working with staff, the Task Force was charged with evaluating existing Comprehensive Plan recommendations and identifying changes to guide future transit-oriented development (TOD) in the vicinity of the three Reston stations.

The Task Force and several sub-committees of the full Task Force met regularly from 2010 through 2013 to develop an approach to furthering TOD development at the stations. Subsequently, the Task Force worked with staff to develop their recommendations which were finalized at their meeting on October 29, 2013.

**FISCAL IMPACT:**

None

**ENCLOSED DOCUMENTS:**

Attachment I: Planning Commission Recommendation and Verbatim

Attachment II: Planning Commission Recommended Text dated January 9, 2014 available online at:

[http://www.fairfaxcounty.gov/dpz/projects/reston/bospacket/attachment\\_ii\\_-\\_st09-iii-up1\\_a\\_bos\\_item.pdf](http://www.fairfaxcounty.gov/dpz/projects/reston/bospacket/attachment_ii_-_st09-iii-up1_a_bos_item.pdf) (Hard copies delivered to Board members under separate cover)

Attachment III: Planning Commission Recommended follow-on motions and Verbatim

Staff Report (November 1, 2013) previously provided and available online at:

<http://www.fairfaxcounty.gov/dpz/comprehensiveplan/amendments/st09-iii-up1-a.pdf>

**STAFF:**

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

Marianne R. Gardner, Director, Planning Division, DPZ

Faheem Darab, Planner II, Planning Division, DPZ

Richard Lambert, Planner II, Planning Division, DPZ

Deborah Pemberton, Planner II, Planning Division, DPZ

Leonard Wolfenstein, Chief, Transportation Planning Section (TPS), Fairfax County Department of Transportation, (FCDOT)

Michael Garcia, Transportation Planner, TPS, FCDOT

Planning Commission Meeting  
January 9, 2014  
Verbatim Excerpt

ST09-III-UP1 (A) – COMPREHENSIVE PLAN AMENDMENT (RESTON TRANSIT STATION)

Decision Only During Commission Matters  
(Public Hearing held on November 13, 2013)

Commissioner de la Fe: Thank you, Mr. Chairman. The second decision has to do with ST09-III-UP1 (A), Comprehensive Plan Amendment related to the Reston Transit Stations in the Hunter Mill District. The public hearing on this was held on November 13<sup>th</sup>, 2013, and we deferred decision in order to incorporate as many of the comments that we made and to try to satisfy as many of the folks that commented as we could. We have, I believe – are now ready to move on this. You have received a document which – I think your copy has a yellow copy dated January 9<sup>th</sup>, which all of the changes that have been made. Attached to that document is also a sheet that – a number of sheets that show the changes that were made. And I have not heard from anybody so I trust that everybody is satisfied with this. However, since we're – you know, something with 115 pages is never finished – tonight you received four pages, which look like this and I will incorporate into my motion. Please be assured that all of these are truly edits and, you know, typographical errors, things that were underlined that shouldn't have been underlined, capitals that weren't there – you know, that kind of stuff that really – you know, the things to clarify and perfect the document. So with that in mind, I will move ahead to my main motion and I will have some follow-on motions after that. Mr. Chairman, for the past four years, the Reston Master Plan Special Study Task Force, along with members of the community and County staff, has been working – worked diligently on updating the Comprehensive Plan's guidance for Reston in preparation for the operation of Metrorail's Silver Line service. Plan Amendment ST09-III-UP1 (A), the first part of a two-phase study of the Reston Master Plan, addresses the Reston-Herndon Suburban Center, which consists of approximately 1,700 acres bisecting the community of Reston along the Dulles Airport Access and Toll Road. The proposed amendment plans the area as three contiguous Transit Station Areas, which are located proximate to the Wiehle East, Reston Town Center, and Herndon Metrorail Stations. It's officially known as the Herndon Metrorail and most of us in Reston like to call it the Reston West Herndon, but the official name is the Herndon Metrorail Station. Sorry, Mr. Donahue. You're leaving anyways. Staff presented the draft Plan text, which was supported by the Task Force, at the Planning Commission public hearing on November 13<sup>th</sup>. Subsequently, we have reviewed the extensive public testimony and distributed to the Commission my proposed mark-up of the proposed Plan text. This mark-up is found in the document that I referenced before entitled, "Reston Transit Station Areas Comprehensive Plan Text," dated January 9<sup>th</sup>, 2014. For the Commission's benefit, I have shown my changes to the staff and Task Force recommendations using underlines and strikethroughs. This mark-up text is supportive of the staff and Task Force recommendation and responds to some of the specific comments from the public. Many of the revisions are editorial in nature or meant to help clarify the Plan text. These changes have been summarized and are included with my proposed mark-up as Attachment I. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE

ADOPTION OF THE “RESTON TRANSIT STATION AREAS COMPREHENSIVE PLAN TEXT” DATED JANUARY 9<sup>TH</sup>, 2014. THIS PROPOSED TEXT WILL REPLACE THE CURRENT PLAN GUIDANCE FOR THE RESTON-HERNDON SUBURBAN CENTER AND TRANSIT STATION AREAS CURRENTLY FOUND ON PAGES 28 THROUGH 80 OF THE AREA III PLAN, UPPER POTOMAC PLANNING DISTRICT. IN ADDITION, I MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE ADOPTION OF SEVERAL OTHER PROPOSED CHANGES, AS SPECIFIED IN ATTACHMENT II OF THE MARK-UP PLAN TEXT WHICH ALIGNS, MAPS, FIGURES, AND REFERENCES IN OTHER SECTIONS OF THE PLAN WITH THE PROPOSED NEW PLAN TEXT AND RECOMMENDATIONS. AND FINALLY, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE ADOPTION OF THE STAFF-IDENTIFIED EDITS OF TYPOS AND GRAMMAR, WHICH I’VE DISTRIBUTED TONIGHT.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt ST09-III-UP1 (A), say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The motion carried by a vote of 12-0.)

JLC

Planning Commission Meeting  
January 9, 2014  
Verbatim Excerpt

ST09-III-UP1 (A) – COMPREHENSIVE PLAN AMENDMENT (RESTON TRANSIT STATION)

Decision Only During Commission Matters  
(Public Hearing held on November 13, 2013)

Commissioner de la Fe: Thank you, Mr. Chairman. Mr. Chairman, I have three follow-on motions that I would like to make at this time. Mr. Chairman, this special attention to design has been a hallmark of Reston from the beginning. The Task Force, community, and staff have recognized this and have included urban design guidance unique to Reston in their recommended Plan text. However guided, this guidance may require further refinement. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS TO DIRECT STAFF TO WORK WITH A GROUP OF STAKEHOLDERS TO REVIEW AND MAKE RECOMMENDATIONS ON HOW BEST TO INCORPORATE RESTON-SPECIFIC DESIGN FEATURES INTO FUTURE DEVELOPMENT, AS OUTLINED IN THE PROPOSED PLAN.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there a discussion of that motion? All those in favor of the motion, as articulated by Mr. de la Fe, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner de la Fe: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS TO DIRECT STAFF AND THE PLANNING COMMISSION TO DEVELOP AN INCLUSIVE PROCESS TO PREPARE A FUNDING PLAN FOR THE TRANSPORTATION IMPROVEMENTS RECOMMENDED IN THE RESTON MASTER PLAN AND RETURN TO THE BOARD WITH ITS RECOMMENDATIONS AT AN APPROPRIATE TIME. THE FUNDING PLAN SHOULD INCLUDE ARRANGEMENTS OR FINANCING THE PUBLIC SHARE OF RESTON INFRASTRUCTURE IMPROVEMENTS AND FACILITATE COOPERATIVE FUNDING AGREEMENTS WITH THE PRIVATE SECTOR. THE PLANNING COMMISSION STRONGLY BELIEVES THAT THE PUBLIC AND PRIVATE INVESTMENT IN RESTON IS BOTH CRITICAL AND RESPONSIBLE FOR ENSURING RESTON'S FUTURE SUCCESS.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Discussion? All those in favor of the motion, as articulated by Mr. de la Fe, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner de la Fe: And finally, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND to the Board of – THAT THE BOARD OF SUPERVISORS DIRECT STAFF TO CONDUCT A DETAILED EVALUATION AND OPERATIONAL ANALYSIS OF THE ENHANCED STREET NETWORK SHOWN ON THE RESTON MASTER PLAN, PRIORITIZE THESE IMPROVEMENTS, AND DEVELOP AN IMPLEMENTATION STRATEGY.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner de la Fe: Thank you, Mr. Chairman. That concludes my formal remarks.

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(Each motion carried by a vote of 12-0.)

JLC