

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 30, 2019**

AGENDA

9:30	Done	Presentations
10:00	Done	Update on the July 8, 2019, Rain Event
10:10	Done	Board Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups
10:20	Done	Items Presented by the County Executive

**ADMINISTRATIVE
ITEMS**

1	Approved	Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance to Establish the Westford Landing Community Parking District (Providence District)
2	Approved	Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance to Establish the Fair Oaks Farms Community Parking District (Sully District)
3	Approved	Approval of "\$200 Additional Fine for Speeding" Signs as Part of the Residential Traffic Administration Program (Lee District)
4	Approved	Approval of Traffic Calming Measures as Part of the Residential Traffic Administration Program (Dranesville District)
5	Approved	Authorization to Advertise a Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Peyton Run at Longwood Knolls Stream Restoration (Springfield District)
6	Approved	Authorization to Advertise a Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Glade Dr. Walkway – Colts Neck Rd. to Freetown Drive (Hunter Mill District)
7	Approved	Authorization to Advertise a Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Kirby Road Walkway – Halsey Road to Franklin Avenue (Dranesville District)
8	Approved	Extension of Review Period for 2232 Application (Hunter Mill District)
9	Approved with amendment	Authorization to Advertise a Public Hearing to Consider an Ordinance to Amend the Fairfax County Code by Adding a New Chapter 9.2 and Repealing Chapter 9.1, Relating to Cable Regulation and Franchising

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 30, 2019**

**ADMINISTRATIVE
ITEMS
(continued)**

10 **Approved** Authorization to Advertise a Public Hearing on the County and Schools' FY 2019 Carryover Review to Amend the Appropriation Level in the FY 2020 Revised Budget Plan

ACTION ITEMS

- 1 **Approved** Approval of a License Agreement to Relocate a Slug Line to Springfield United Methodist Church (Lee District)
- 2 **Approved** Approval of a Lease Agreement to Add Commuter Parking and a Slug Line at Springfield Town Center (Lee District)
- 3 **Approved** Approval of Agreement between the Commonwealth of Virginia, Department of Transportation and Fairfax County for the Utilization of Congestion Mitigation and Air Quality (CMAQ) Funds for Fiscal Year 2020 Transportation Demand Management (TDM) Programs
- 4 **Approved** Approval of and Authorization to Execute an Amended and Restated Agreement with Capital One Tysons Block C Owner, LLC for Use of Capital One Hall
- 5 **Approved** Approval of a Plain Language Explanation for the 2019 Bond Referendum for Improvements to Public Schools
- 6 **Approved with amendment** Authorization for the Fairfax County Redevelopment and Housing Authority (FCRHA) to Make a Housing Blueprint Loan in the Amount up to \$3,000,000 to The Residences at North Hill Bond 94, LLC to Finance the Development of The Residences at North Hill (Mount Vernon District)
- 7 **Approved** Authorization to Execute a Project Agreement between the Department of Rail and Public Transportation (DRPT) and Fairfax County to Provide Funding for the Operating Costs of Bus Service to Mitigate Impacts Resulting from the Washington Metropolitan Area Transit Authority (WMATA) Shutdown Along the Metrorail System's Blue and Yellow Lines South of the Ronald Reagan National Airport Metrorail Station (Lee, Mason, Mount Vernon and Springfield Districts)
- 8 **Approved** Endorsement of Design Plans for the Richmond Highway Corridor Improvements Project from Jeff Todd Way to Sherwood Hall Lane (Lee and Mount Vernon Districts)

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 30, 2019**

**ACTION ITEMS
(continued)**

- | | | |
|----|-----------------|--|
| 9 | Approved | Authorization to Amend a Project Administration Agreement with the Virginia Department of Transportation for the Implementation of Rolling Road Widening from Old Keene Mill Road to Hunter Village Drive (Springfield District) |
| 10 | Approved | Approval of a Draft Board of Supervisors' Meeting Schedule for Calendar Year 2020 |
| 11 | Approved | Approval of FY 2019 Year-End Processing |
| 13 | Approved | Adoption of a Resolution Terminating a Declaration of Local Emergency and Consenting to All Actions Taken by the Director of Emergency Management and County Staff |

**CONSIDERATION
ITEMS**

- | | | |
|---|-------------------------|--|
| 1 | Appeal Withdrawn | Appeal of a Notice of Violation of the Chesapeake Bay Preservation Ordinance for 10622 Belmont Boulevard (Mount Vernon District) |
|---|-------------------------|--|

**INFORMATION
ITEMS**

- | | | |
|------------------------|--|---|
| 1 | Noted | Contract Award - Consulting Services for a Comprehensive Water and Sewer Rate Study |
| 10:30 | Done | Matters Presented by Board Members |
| 11:20 | Held | Closed Session |
| 3:00 p.m.
Action 12 | Deferred to 9/24/19
at 3 p.m. | Board Approval of a Minor Variation Request for PCA 2003-MV-033, Fairfax County Board of Supervisors, to Add Craft Beverage Production Establishment and Small-Scale Production Establishment as Permitted Secondary Uses Under Proffer 6(a) at the Workhouse Arts Center (Mount Vernon District) |

**PUBLIC HEARING
ITEMS**

- | | | |
|------|-----------------|--|
| 3:30 | Approved | Public Hearing on RZ 2019-SU-002 (JDA Custom Homes, Inc.) (Sully District) |
| 3:30 | Approved | Public Hearing on RZ 2018-PR-024 (Williams Meadow, L.C.) (Providence District) |

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 30, 2019**

**PUBLIC HEARING
ITEMS
(continued)**

3:30	Approved	Public Hearing on SEA 83-D-095-04 (Great Falls Village Green Day School) (Dranesville District)
3:30	Approved	Public Hearing on SE 2019-SP-010 (Federal Realty Investment Trust) (Springfield District)
3:30	Deferred to 9/24/19 at 5:30 p.m.	Public Hearing on SE 2018-SU-027 (Stonebridge Investments, LLC) (Sully District)
4:00	Approved	Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Silverbrook Rd./Southrun Rd. EB Left Turn Lane (Mount Vernon District)
4:00	Approved	Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Seminary Road Walkway – Magnolia Lane to Colfax Ave (Mason District)
4:00	Approved	Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Quander Road Walkway (Mount Vernon District)
4:00	Approved	Public Hearing to Lease County-Owned Property at 7584 Leesburg Pike to the Friends of Tysons-Pimmit Library (Dranesville District)
4:30	Approved	Public Hearing on SE 2019-HM-005 (Madhuri Peddi) (Hunter Mill District)
4:30	Approved	Public Hearing to Consider Adopting an Ordinance Expanding the Oakton Residential Permit Parking District, District 19 (Providence District)
4:30	Approved	Public Hearing on Proposed Changes to Chapter 61 (Building Provisions); Chapter 101 (Subdivision Provisions); Chapter 108.1 (Noise Ordinance); Chapter 109.1 (Solid Waste Management); Chapter 114 (Agricultural and Forestal Districts of Statewide Significance); and Chapter 115 (Local Agricultural and Forestal Districts) of <i>The Code of the County of Fairfax</i>
4:30	Approved	Public Hearing on SE 2019-MA-003 (BENEVIS, LLC) (Mason District)
4:30	Approved	Public Hearing on RZ 2017-BR-030 (Roberts Road Investment LC) (Braddock District)

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 30, 2019**

**PUBLIC HEARING
ITEMS
(continued)**

5:00	Approved	Public Hearing on RZ 2018-PR-011 (Crown Tysons Properties LLC) (Providence District)
5:00	Approved	Public Hearing on SEA 78-D-075-03 (Crown Tysons Properties LLC) (Providence District)
5:00	Approved	Public Hearing on SE 2019-SP-006 (Clementine Twin Lakes, LLC) (Springfield District)
5:00	Held	Public Comment

REVISED



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

Tuesday
July 30, 2019

9:30 a.m.

FAREWELL AND THANK YOU

The Board of Supervisors will bid farewell and thank Dr. Ángel Cabrera, president of George Mason University, and his wife, Dr. Beth Cabrera, for their years of service in Fairfax County.

PRESENTATIONS

- CERTIFICATE — To recognize the Robinson Secondary School Wrestling Team for its accomplishment. Requested by Supervisors Cook and Herryty.
- PROCLAMATION — To designate Tuesday, August 6, 2019, as National Night Out in Fairfax County. Requested by Supervisor Hudgins.
- PROCLAMATION – To designate September 2019 as Environmental Health Awareness Month in Fairfax County. Requested by Chairman Bulova.
- PROCLAMATION — To designate September 2019 as Emergency Preparedness Month in Fairfax County. Requested by Chairman Bulova.

STAFF:

Tony Castrilli, Director, Office of Public Affairs
Bill Miller, Office of Public Affairs
Austin Hendrick, Office of Public Affairs

Board Agenda Item
July 30, 2019

10:00 a.m.

Update on the July 8, 2019, Rain Event

ENCLOSED DOCUMENTS:

None.

PRESENTED BY:

Seamus Mooney, Director, Office of Emergency Management

Board Agenda Item
July 30, 2019

10:10 a.m.

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

ENCLOSED DOCUMENTS:

Attachment 1: Appointments to be heard July 30, 2019
(An updated list will be distributed at the Board meeting.)

STAFF:

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

FINAL COPY

APPOINTMENTS TO BE HEARD JULY 30, 2019
(ENCOMPASSING VACANCIES PROJECTED THROUGH AUGUST 31, 2019)
 (Unless otherwise noted, members are eligible for reappointment)

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

Incumbent History	Requirement	Nominee	Supervisor	District
Eileen J. Garnett (Appointed 1/03-2/17 by Gross) Term exp. 1/18	Mason District Representative		Gross	Mason

AFFORDABLE DWELLING UNIT ADVISORY BOARD (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Mark Drake (Appointed 2/09-5/12 by McKay) Term exp. 5/16	Engineer/Architect/ Planner #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by James Francis Carey; appointed 2/95-5/02 by Hanley; 5/06 by Connolly) Term exp. 5/10 <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>
VACANT (Formerly held by George Page; appointed 1/05-1/16 by Hudgins) Term exp. 1/19 <i>Resigned</i>	Hunter Mill Business Representative		Hudgins	Hunter Mill

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Frieda A. Tatem; appointed 10/93-10/96 by Davis; 9/99-10/02 by Hanley; 10/05-10/08 by Connolly; 11/11-10/17 by Bulova) Term exp. 10/20 Deceased	At-Large #1 Representative		By Any Supervisor	At-Large
Grant J. Nelson (Appointed 10/95-5/01 by Hanley; 6/04-9/07 by Connolly; 6/10-1/17 by Bulova) Term exp. 6/19	At-Large #2 Representative		By Any Supervisor	At-Large
Darren Dickens (Appointed 11/96-5/01 by Hanley; 6/04-10/07 by Connolly; 6/10-11/16 by Bulova) Term exp. 6/19	At-Large #3 Representative		By Any Supervisor	At-Large

ARCHITECTURAL REVIEW BOARD (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by John A. Carter; appointed 2/17 by Hudgins) Term exp. 9/18 <i>Resigned</i>	Related Professional Group #4 Representative	Samantha Huang (Hudgins)	By Any Supervisor	At-Large

ATHLETIC COUNCIL (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Douglas Phung; appointed 12/17 by Bulova) Term exp. 12/19 <i>Resigned</i>	Diversity-At-Large Principal Representative		By Any Supervisor	At-Large
William C. Horrigan (Appointed 6/15-5/17 by Foust) Term exp. 3/19	Dranesville District Alternate Representative	Brian Luwis	Foust	Dranesville
VACANT (Formerly held by Karin Stamper; appointed 9/09-4/16 by McKay) Term exp. 4/18 <i>Resigned</i>	Lee District Alternate Representative		McKay	Lee
VACANT (Formerly held by Terry Adams; appointed 11/11-7/13 by Gross) Term exp. 6/15 <i>Resigned</i>	Mason District Alternate Representative		Gross	Mason

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ATHLETIC COUNCIL (2 years)

continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Paul J. Dean; appointed 6/17 by Storck) Term exp. 3/19	Mount Vernon District Alternate Representative	John Corley	Storck	Mount Vernon
Jane Dawber (Appointed 3/13-9/16 by Hudgins) Term exp. 6/18	Women's Sports Alternate Representative		By Any Supervisor	At-Large

BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Ken Balbuena (Appointed 9/11-6/18 by Bulova) Term exp. 6/19	At-Large Chairman's Representative	Ken Balbuena	Bulova	At-Large Chairman's
VACANT (Formerly held by Therese Martin; appointed 2/13-6/18 by Hudgins) Term exp. 6/19 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
Linda J. Waller (Appointed 9/16-6/18 by McKay) Term exp. 6/19	Lee District Representative		McKay	Lee
VACANT (Formerly held by Judith Fogel; appointed 6/12-5/15 by Gross) Term exp. 6/16 <i>Resigned</i>	Mason District Representative		Gross	Mason

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BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)
continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Emilie F. Miller (Appointed 7/05-6/18 by L. Smyth) Term exp. 6/19	Providence District Representative	Emilie F. Miller	L. Smyth	Providence

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

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

CHILD CARE ADVISORY COUNCIL (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Courtney Park; appointed 2/10-9/18 by Hudgins) Term exp. 9/20 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill

CITIZEN CORPS COUNCIL, FAIRFAX COUNTY (2 years)

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

CIVIL SERVICE COMMISSION (2 years)

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

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

COMMUNITY ACTION ADVISORY BOARD (CAAB) (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Lanita Thweatt; appointed 2/17-3/19 by Storck) Term exp. 2/22 <i>Resigned</i>	Mount Vernon District Representative	Theodore T. Choi	Storck	Mount Vernon

CONFIRMATION NEEDED:

- Mr. Morgan Jameson as the Federation of Citizens Associations Representative

CONSUMER PROTECTION COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Jacqueline G. Rosier (Appointed 9/08 by Connolly; 7/10-7/16 by Bulova) Term exp. 7/19	Fairfax County Resident #1 Representative		By Any Supervisor	At-Large
Dennis D. Kirk (Appointed 10/82-6/94 by Davis; 6/98-7/16 by Gross) Term exp. 7/19	Fairfax County Resident #4 Representative	Dennis D. Kirk (Gross)	By Any Supervisor	At-Large

CRIMINAL JUSTICE ADVISORY BOARD (CJAB) (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Brian D. Leclair (Appointed 10/13 by Hyland; 10/16 by Storck) Term exp. 8/19	Mount Vernon District Representative	Brian D. Leclair	Storck	Mount Vernon
VACANT (Formerly held by Eric Clingan; appointed 4/16 by K. Smith) Term exp. 4/19 <i>Resigned</i>	Sully District Representative		K. Smith	Sully

ECONOMIC ADVISORY COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Mark Silverwood; appointed 1/09-11/14 by Hudgins) Term exp. 12/17 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill

ENGINEERING STANDARDS REVIEW COMMITTEE (3 years)

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

**FAIRFAX AREA DISABILITY SERVICES BOARD
(3 years- limited to 2 full consecutive terms per MOU, after initial term)**
[NOTE: Persons may be reappointed after being off for 3 years. State Code requires that membership in the local disabilities board include at least 30 percent representation by individuals with physical, visual or hearing disabilities or their family members. For this 15-member board, the minimum number of representation would be 5.]

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Tapan Banerjee (Appointed 2/07-3/16 by Foust) Term exp. 11/18 <i>Not eligible for reappointment</i>	Dranesville District Representative	Elizabeth John	Foust	Dranesville
Michele Hymer Blitz (Appointed 6/06-3/16 by Hudgins) Term exp. 11/18 <i>Not eligible for reappointment</i>	Hunter Mill District Representative		Hudgins	Hunter Mill

**FAIRFAX COMMUNITY LONG TERM CARE COORDINATING COUNCIL
(2 years)**

CONFIRMATION NEEDED:

- Ms. Carol Edelstein as a Long Term Care Providers #20 Representative

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

CONFIRMATION NEEDED:

- Mr. Ricky L. Brown as the Fairfax County Employee Representative

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

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Jane H. Woods; appointed 11/08 by Connolly; 6/10-5/16 by Bulova) Term exp. 6/19 <i>Resigned</i>	At-Large #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Gary A. Ambrose; appointed 3/13-6/17 by Bulova) Term exp. 6/20 <i>Resigned</i>	At-Large #3 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Tom Burger; appointed 9/17 by Herrity) Term exp. 6/20 <i>Resigned</i>	Springfield District Representative		Herrity	Springfield

HEALTH CARE ADVISORY BOARD (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Timothy E. Yarboro (Appointed 7/96-6/03 by Hanley; 6/07 by Connolly; 6/11-6/15 by Bulova) Term exp. 6/19	At-Large Representative	Timothy E. Yarboro (Bulova)	By Any Supervisor	At-Large
VACANT (Formerly held by Carol Mizoguchi; appointed 5/18 by McKay) Term exp. 6/20 <i>Resigned</i>	Lee District Representative	Maia Cecire	McKay	Lee

**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>
Douglas A. Samuelson (Appointed 1/16 by Bulova) Term exp. 6/16	Consumer #4 Representative	Douglas A. Samuelson (Bulova)	By Any Supervisor	At-Large
Sally Singer Horwatt (Appointed 1/14-6/16 by Hudgins) Term exp. 6/19	Provider #4 Representative		By Any Supervisor	At-Large

HISTORY COMMISSION (3 years)

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

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Robert E. Beach (Appointed 11/00 by Hanley; 1/04-12/06 by Connolly; 12/09-1/16 by Bulova) Term exp. 12/18 <i>Braddock District Resident</i>	Architect Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Naomi D. Zeavin; appointed 1/95 by Trapnell; 1/96-11/13 by Gross) Term exp. 12/16 <i>Mason District Resident Resigned</i>	Historian #1 Representative		By Any Supervisor	At-Large

HUMAN RIGHTS COMMISSION (3 years)

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

HUMAN SERVICES COUNCIL (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Kevin H. Bell (Appointed 6/95-6/99 by Hanley; 7/03-7/07 by Connolly; 1/12-6/15 by Bulova) Term exp. 7/19	At-Large #1 Chairman's Representative	Kevin H. Bell	Bulova	At-Large #1 Chairman's
Patrice M. Winter (Appointed 5/16 by Cook) Term exp. 7/19	Braddock District #2 Representative	Patrice M. Winter	Cook	Braddock
Steven Bloom (Appointed 11/11-6/15 by Foust) Term exp. 7/19	Dranesville District #1 Representative	Steven Bloom	Foust	Dranesville
Michele Menapace (Appointed 7/15 by McKay) Term exp. 7/19	Lee District #1 Representative		McKay	Lee
VACANT (Formerly held by Adrienne Walters; appointed 3/14 by L. Smyth) Term exp. 7/17 <i>Resigned</i>	Providence District #2 Representative		L. Smyth	Providence
VACANT (Formerly held by Audrey F. Morton; appointed 2/16 by K. Smith) Term exp. 7/19 <i>Resigned</i>	Sully District #2 Representative		K. Smith	Sully

**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>
VACANT (Formerly held by Michael Berger; appointed 1/17-1/18 by McKay) Term exp. 1/20 <i>Resigned</i>	Lee District Representative		McKay	Lee
VACANT (Formerly held by Anya Gelernt-Dunkle; appointed 1/17 by L. Smyth) Term exp. 1/20 <i>Resigned</i>	Providence District Representative		L. Smyth	Providence

LIBRARY BOARD (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Jane Miscavage (Appointed 1/18 by Bulova) Term exp. 7/19	At-Large Chairman's Representative	Jane Miscavage	Bulova	At-Large Chairman's

**NORTHERN VIRGINIA COMMUNITY COLLEGE BOARD
(4 years – limited to 2 full terms)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Bruce H. Neilson (Appointed 1/11-6/15 by Bulova) Term exp. 6/19 <i>Not eligible for reappointment</i>	Fairfax County #1 Representative	Christopher Wade (Bulova)	By Any Supervisor	At-Large

OVERSIGHT COMMITTEE ON DISTRACTED AND IMPAIRED DRIVING (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Annette Koklauner (Appointed 1/16 by Bulova) Term exp. 6/19	At-Large Chairman's Representative		Bulova	At-Large Chairman's
VACANT (Formerly held by William Uehling; appointed 3/10-7/12 by Bulova) Term exp. 6/15 <i>Resigned</i>	Braddock District Representative		Cook	Braddock
VACANT (Formerly held by Amy K. Reif; appointed 8/09-6/12 by Foust) Term exp. 6/15 <i>Resigned</i>	Dranesville District Representative		Foust	Dranesville
Bob Tallman (Appointed 1/17 by McKay) Term exp. 6/19	Lee District Representative		McKay	Lee
Nabil S. Barbari (Appointed 1/07- 9/16 by Gross) Term exp. 6/19	Mason District Representative		Gross	Mason
VACANT (Formerly held by Jeffrey Levy; appointed 7/02-6/13 by Hyland) Term exp. 6/16 <i>Resigned</i>	Mount Vernon District Representative		Storeck	Mount Vernon
VACANT (Formerly held by Tina Montgomery; appointed 9/10-6/11 by L. Smyth) Term exp. 6/14 <i>Resigned</i>	Providence District Representative		L. Smyth	Providence

POLICE CIVILIAN REVIEW PANEL (3 Years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Gregory Gadson (Appointed 11/18) Term exp. 2/19	Seat #6 Representative		By Any Supervisor	At-Large

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Alexander Rough; appointed 10/17 by Foust) Term exp. 9/21 <i>Resigned</i>	Dranesville District Representative		Foust	Dranesville
NEW POSITION	Residential Owners and HOA/Civic Association #1 Representative		Foust or Hudgins	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #2 Representative		Foust or Hudgins	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #3 Representative		Foust or Hudgins	At-Large

ROAD VIEWERS BOARD (1 year)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Joseph Bunnell; appointed 9/05-12/06 by McConnell; 2/08-11/13 by Herrity) Term exp. 12/14 <i>Resigned</i>	At-Large #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Stephen E. Still; appointed 6/06-12/11 by L. Smyth) Term exp. 12/12 <i>Resigned</i>	At-Large #4 Representative		By Any Supervisor	At-Large
Micah D. Himmel (Appointed 12/11-1/18 by L. Smyth) Term exp. 12/18	At-Large #5 Representative		By Any Supervisor	At-Large

SMALL BUSINESS COMMISSION, FAIRFAX COUNTY (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Elizabeth Novak; appointed 10/05-1/16 by Gross) Term exp. 12/18 <i>Resigned</i>	Mason District Representative		Gross	Mason

TENANT LANDLORD COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Michael Congleton; appointed 7/13-2/17 by Herrity) Term exp. 1/20 <i>Resigned</i>	Citizen Member #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Antonio Gomez; appointed 1/99-1/02 by Hanley; 3/05-1/08 by Connolly; 1/11-1/17 by Bulova) Term exp. 1/20 <i>Resigned</i>	Citizen Member #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Sally D. Liff; appointed 8/04-1/11 by L. Smyth) Term exp. 1/14 Deceased	Condo Owner Representative		By Any Supervisor	At-Large
Christopher Lee Kocsis (Appointed 3/99-11/00 by Hanley; 1/04-12/06 by Connolly; 12/09-1/16 by Bulova) Term exp. 12/18	Landlord Member #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Angelina Panettieri; appointed 6/11-1/15 by L. Smyth) Term exp. 1/18	Tenant Member #1 Representative		By Any Supervisor	At-Large

TRAILS, SIDEWALKS AND BIKEWAYS COMMITTEE (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Jeffrey A. Anderson; appointed 5/11-1/18 by Hudgins) Term exp. 1/20 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill

TRANSPORTATION ADVISORY COMMISSION (2 years)

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

TREE COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Charles Ayers; appointed 6/16 by Herrity) Term exp. 10/19 <i>Resigned</i>	Springfield District Representative		Herrity	Springfield

TYSONS TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD (2 YEARS)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Barry Mark; appointed 3/15-2/17 by Bulova) Term exp. 2/19 <i>Resigned</i>	Commercial or Retail Ownership Representative #3		Bulova	At-Large
VACANT (Formerly held by Jay Klug; appointed 2/13-2/17 by Hudgins) Term exp. 2/19	Hunter Mill District Representative #1		Hudgins	Hunter Mill
VACANT (Formerly held by Molly Peacock; appointed 2/13-1/15 by L. Smyth) Term exp. 2/17 <i>Resigned</i>	Providence District Representative #2		L. Smyth	Providence
VACANT (Formerly held by Pindar Van Arman; appointed 11/16-2/17 by L. Smyth) Term exp. 2/19 <i>Resigned</i>	Residential Owners and HOA/Civic Association Representative #1		L. Smyth	Providence

WATER AUTHORITY (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Linda Singer; appointed 7/04-6/16 by Hudgins) Term exp. 6/19 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
Richard Dotson (Appointed 9/09-7/16 by L. Smyth) Term exp. 6/19	Providence District Representative	Richard Dotson	L. Smyth	Providence

Board Agenda Item
July 30, 2019

10:20 a.m.

Items Presented by the County Executive

Board Agenda Item
July 30, 2019

ADMINISTRATIVE - 1

Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance to Establish the Westford Landing 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 Westford Landing Community Parking District (CPD).

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for September 24, 2019, at 5:00 p.m. to consider adoption of a Fairfax County Code amendment (Attachment I) to establish the Westford Landing CPD.

TIMING:

The Board of Supervisors should take action on July 30, 2019, to provide sufficient time for advertisement of the public hearing on September 24, 2019, at 5:00 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 the following vehicles on the streets in the CPD: watercraft; boat trailers; motor homes; camping trailers; and any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds, except school buses used on a current and regular basis to transport students; and any vehicle of any size that is being used in the transportation of hazardous materials as defined in Virginia Code § 46.2-341.4.

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

Board Agenda Item
July 30, 2019

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

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

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

FISCAL IMPACT:

The cost of sign installation is estimated to be \$250. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

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

Attachment II: Area Map of Proposed Westford Landing CPD

STAFF:

Rachel Flynn, Deputy County Executive

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

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

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Henri Stein McCartney, Sr. Transportation Planner, FCDOT

Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Marc E. Gori, Assistant County Attorney

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

M-91 Westford Landing Community Parking District

(a) *District Designation.*

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

Landing Lane (Route 4012)

From Pioneer Lane to Westford Court.

Pioneer Lane (Route 2631)

From Shreve Road to the end.

Westford Court (Route 4013)

From the northern cul-de-sac to the southern cul-de-sac.

(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 Westford Landing 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

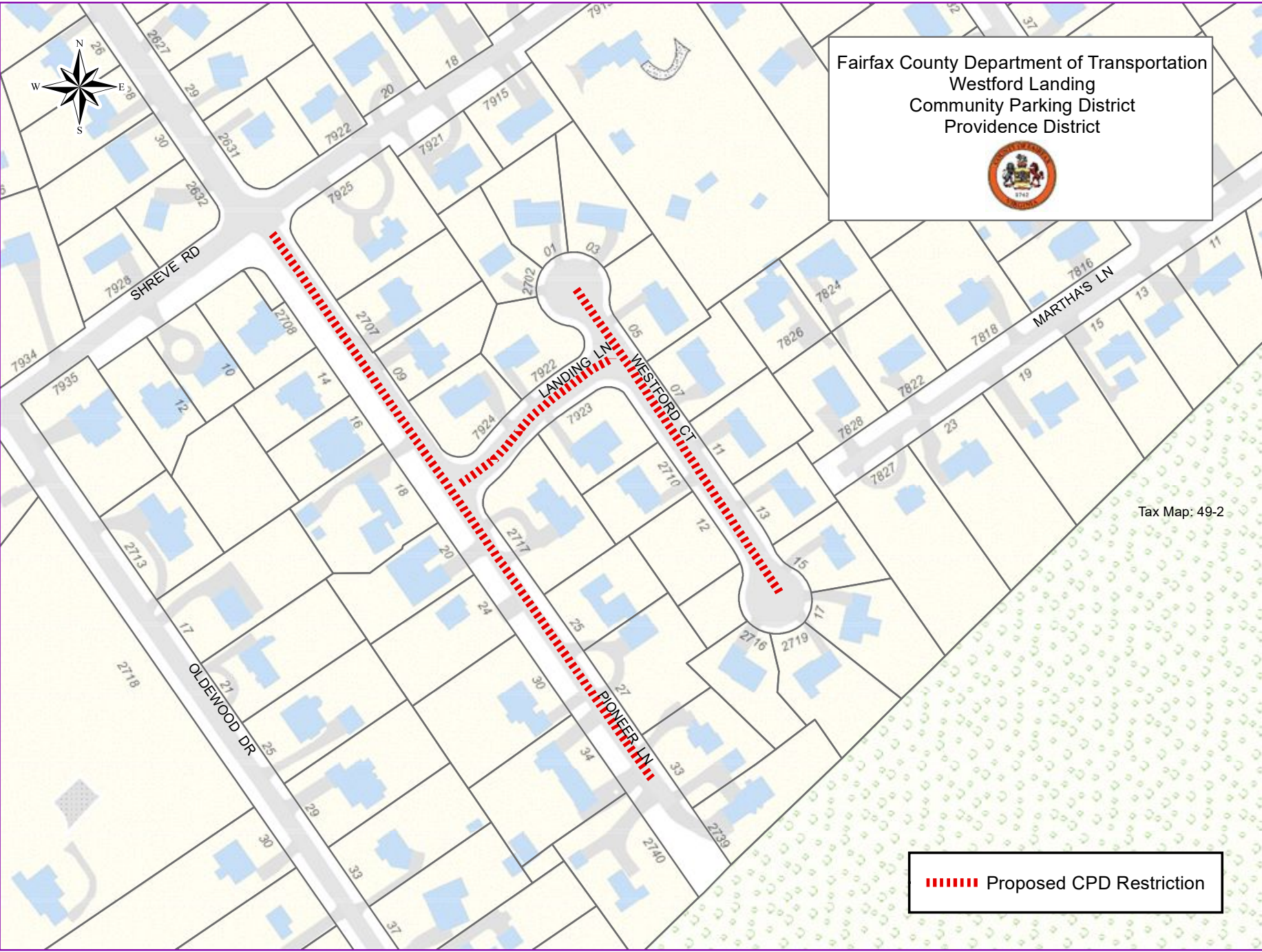

and being used to power network facilities during a loss of commercial power or (iii) restricted vehicles temporarily parked on a public street within any such District for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip or (iv) restricted vehicles that are temporarily 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 Westford Landing Community Parking District shall indicate community specific identification and/or directional information in addition to the following:

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

FAIRFAX COUNTY CODE §82-5B

Fairfax County Department of Transportation
Westford Landing
Community Parking District
Providence District



Tax Map: 49-2

Proposed CPD Restriction

Board Agenda Item
July 30, 2019

ADMINISTRATIVE - 2

Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance to Establish the Fair Oaks Farms Community Parking District (Sully 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 Fair Oaks Farms Community Parking District (CPD).

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for September 24, 2019, at 5:00 p.m. to consider adoption of a Fairfax County Code amendment (Attachment I) to establish the Fair Oaks Farms CPD.

TIMING:

The Board of Supervisors should take action on July 30, 2019, to provide sufficient time for advertisement of the public hearing on September 24, 2019, at 5:00 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 the following vehicles on the streets in the CPD: watercraft; boat trailers; motor homes; camping trailers; and any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds, except school buses used on a current and regular basis to transport students; 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.

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

Board Agenda Item
July 30, 2019

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

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

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

FISCAL IMPACT:

The cost of sign installation is estimated to be \$250. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

Attachment I: Amendment to the *Fairfax County Code*, Appendix M (CPD Restrictions)
Attachment II: Area Map of Proposed Fair Oaks Farms CPD

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Henri Stein McCartney, Sr. Transportation Planner, FCDOT
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Marc E. Gori, Assistant County Attorney

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

M-90 Fair Oaks Farms Community Parking District

(a) *District Designation.*

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

Carroll Court (Route 7769)

From Chevy Chase Lane to the cul-de-sac.

Chevy Chase Court (Route 7154)

From King Charles Drive to the cul-de-sac.

Chevy Chase Lane (Route 7154)

From King Charles Drive to the cul-de-sac.

King Charles Drive (Route 7153)

From Lees Corner Road to the cul-de-sac.

(b) *District Provisions.*

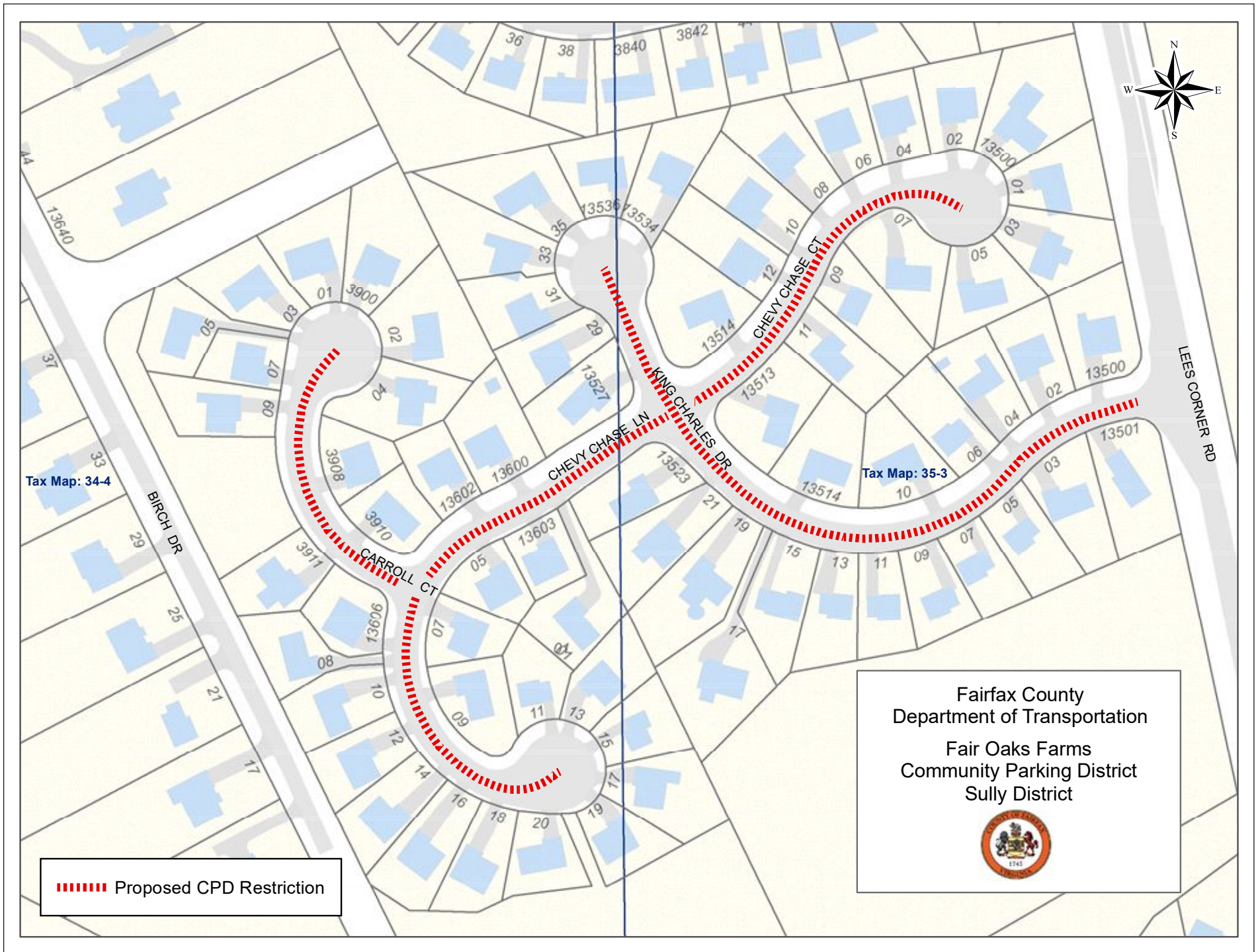
- (1) This District is established in accordance with and is subject to the provisions set forth in Article 5B of Chapter 82.
- (2) Parking of watercraft; boat trailers; motor homes; camping trailers; any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to 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 Fair Oaks Farms 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 Fair Oaks Farms Community Parking District shall indicate community specific identification and/or directional information in addition to the following:

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

FAIRFAX COUNTY CODE §82-5B



Board Agenda Item
July 30, 2019

ADMINISTRATIVE - 3

Approval of “\$200 Additional Fine for Speeding” Signs as Part of the Residential Traffic Administration Program (Lee District)

ISSUE:

Board endorsement of “\$200 Additional Fine for Speeding” signs as part of the Residential Traffic Administration Program (RTAP).

RECOMMENDATION:

The County Executive recommends that the Board approve a resolution (Attachment I) for the installation of “\$200 Additional Fine for Speeding” signs on the following road:

- Harrison Lane (Lee District)

In addition, the County Executive recommends that the Fairfax County Department of Transportation (FCDOT) request VDOT to schedule the installation of the approved “\$200 Additional Fine for Speeding” signs as soon as possible.

TIMING:

Board action is requested on July 30, 2019.

BACKGROUND:

Section 46.2-878.2 of the *Code of Virginia* permits a maximum fine of \$200, in addition to other penalties provided by law, to be levied on persons exceeding the speed limit on appropriately designated residential roadways. These residential roadways must have a posted speed limit of 35 mph or less. In addition, to determine that a speeding problem exists, staff performs an engineering review to ascertain that additional speed and volume criteria are met. Harrison Lane, from Polins Court to Robert E. Lee Place met the RTAP requirements for posting the “\$200 Additional Fine for Speeding Signs.” On June 6, 2019, FCDOT received written verification from the Lee District Supervisor’s Office confirming community support.

FISCAL IMPACT:

For the “\$200 Additional Fine for Speeding” signs an estimated cost of \$1,000 is to be paid out of the VDOT secondary road construction budget.

Board Agenda Item
July 30, 2019

ENCLOSED DOCUMENTS:

Attachment I: "\$200 Additional Fine for Speeding" Signs Resolution – Harrison Lane

Attachment II: Area Map of Proposed "\$200 Additional Fine for Speeding" Signs – Harrison Lane

STAFF:

Rachel Flynn, Deputy County Executive

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

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

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

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

RESOLUTION

**FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION
RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)
\$200 ADDITIONAL FINE FOR SPEEDING SIGNS
HARRISON LANE (LEE DISTRICT)**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, July 30, 2019, at which a quorum was present and voting, the following resolution was adopted:

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

WHEREAS, the Fairfax County Department of Transportation has verified that a bona-fide speeding problem exists on Harrison Lane from Polins Court to Robert E. Lee Place. Such road also being identified as a Collector Road; and

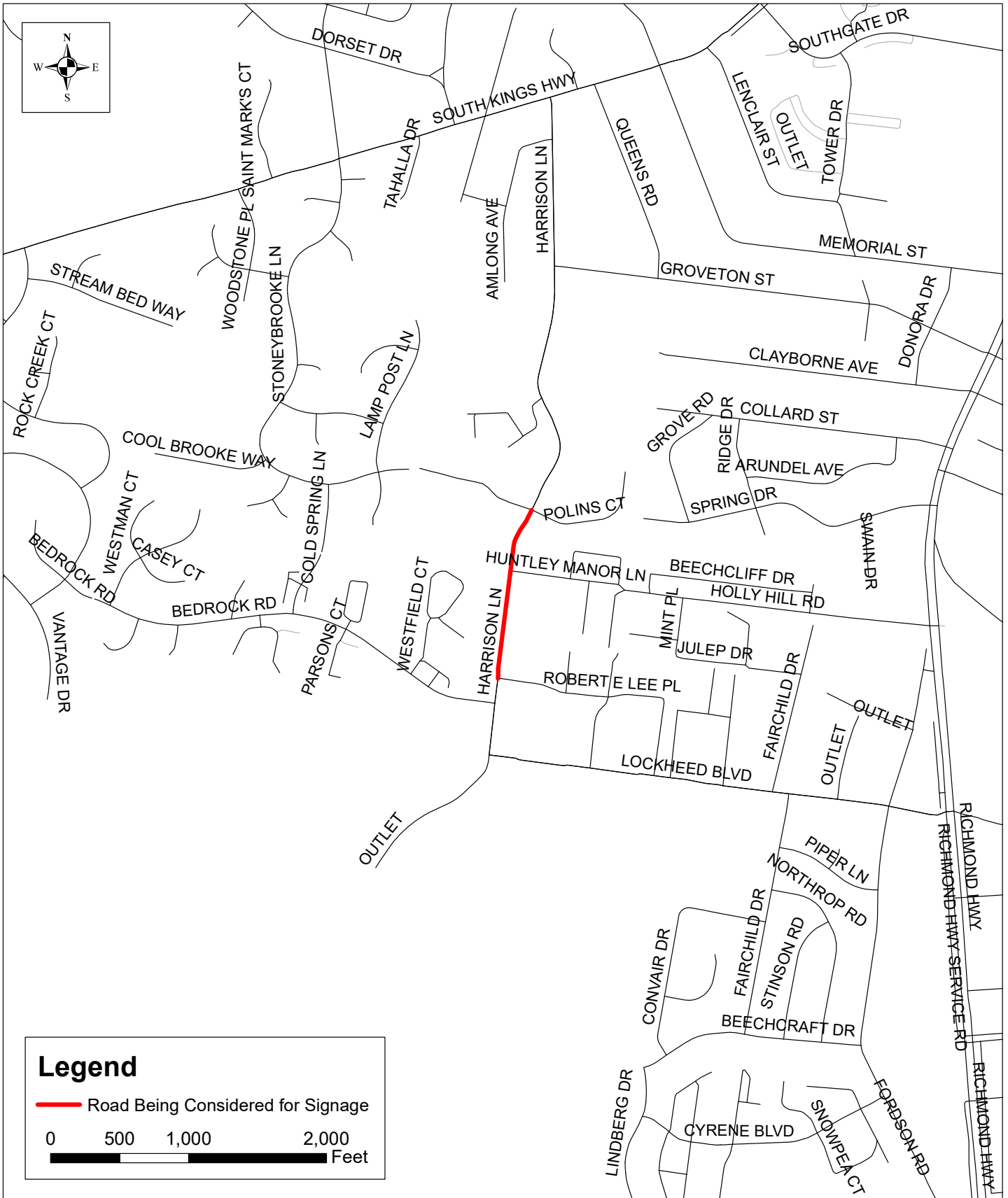
WHEREAS, community support has been verified for the installation of "\$200 Additional Fine for Speeding" signs on Harrison Lane.

NOW, THEREFORE BE IT RESOLVED that "\$200 Additional Fine for Speeding" signs are endorsed for Harrison Lane from Polins Court to Robert E. Lee Place.

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

A Copy Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors



July 2019



Fairfax County Department of Transportation
 Residential Traffic Administration Program (RTAP)
 PROPOSED \$200 FINE FOR SPEEDING
 HARRISON LANE
 Lee District



Board Agenda Item
July 30, 2019

ADMINISTRATIVE - 4

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

ISSUE:

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

RECOMMENDATION:

The County Executive recommends that the Board endorse the traffic calming plans for Youngblood Street (Attachment I) consisting of the following:

- Two Speed Tables on Youngblood Street (Dranesville District)

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

TIMING:

Board action is requested on July 30, 2019.

BACKGROUND:

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

On June 5, 2019, FCDOT received verification from the Dranesville District Supervisor's office confirming community support for the Youngblood Street traffic calming plan.

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FISCAL IMPACT:

Funding in the amount of \$20,000 for the traffic calming measures associated with these traffic calming projects is available in Fund 2G25-076-000, General Fund, under Job Number 40TTCP.

ENCLOSED DOCUMENTS:

Attachment I: Traffic Calming Plan for Youngblood Street

STAFF:

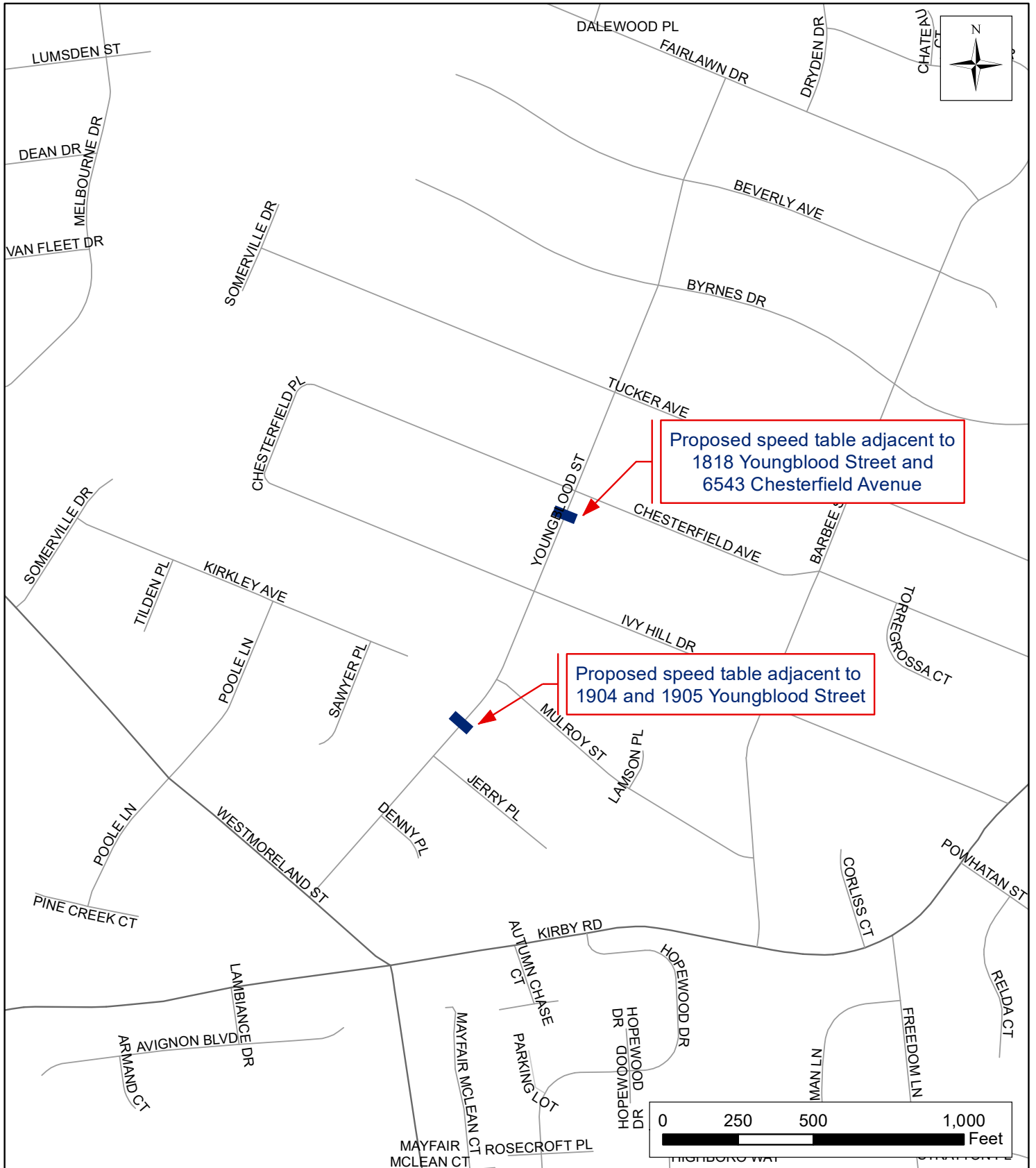
Rachel Flynn, Deputy County Executive

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

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

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

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



Tax Map: 40-2

July 2019

**Fairfax County Department of Transportation
 Residential Traffic Administration Program
 Traffic Calming Plan
 Youngblood Street
 Dranesville District**



Board Agenda Item
July 30, 2019

ADMINISTRATIVE - 5

Authorization to Advertise a Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Peyton Run at Longwood Knolls Stream Restoration (Springfield District)

ISSUE:

Board authorization to advertise a public hearing on the acquisition of certain land rights necessary for the construction of Project SD-000031, Stream and Water Quality Improvements, Peyton Run at Longwood Knolls Stream Restoration, Fund 40100, Stormwater Services.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for September 24, 2019, at 4:30 p.m.

TIMING:

Board action is requested on July 30, 2019, to provide sufficient time to advertise the proposed public hearing on the acquisition of certain land rights necessary to keep this project on schedule.

BACKGROUND:

This project consists of the restoration of approximately 4,200 linear feet of stream channel in the Pohick Creek Watershed. Restoration of this channel will prevent further damage to property and prevent significant tree loss due to stream erosion. The proposed project will also reduce the heavy sediment flow in the stream which impacts water quality downstream.

Land rights for these improvements are required on two properties, one of which has been acquired by the Land Acquisition Division (LAD). The construction of this project requires the acquisition of Flood Plain and Storm Drainage Easements.

The remaining property is in the name of a now-defunct homeowners association; therefore, it will be necessary for the Board to utilize quick-take eminent domain powers to commence construction of this project on schedule. These powers are conferred upon the Board by statute, namely, Va. Code Ann. Sections 15.2-1903 through 15.2-1905 (as amended). Pursuant to these provisions, a public hearing is required before property interests can be acquired in such an accelerated manner.

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FISCAL IMPACT:

Funding is available in Project SD-000031, Stream and Water Quality Improvements, Peyton Run at Longwood Knolls Stream Restoration, Fund 40100, Stormwater Services. This project is included in the Fiscal Years 2020 – 2024 Adopted Capital Improvement Program (with future fiscal years to 2023.) No additional funding is being requested from the Board.

ENCLOSED DOCUMENTS:

Attachments A and A1 - Project Location Maps
Attachment B - Listing of Affected Properties

STAFF:

Rachel Flynn, Deputy County Executive
Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)
Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

ASSIGNED COUNSEL:

Pamela K. Pelto, Assistant County Attorney

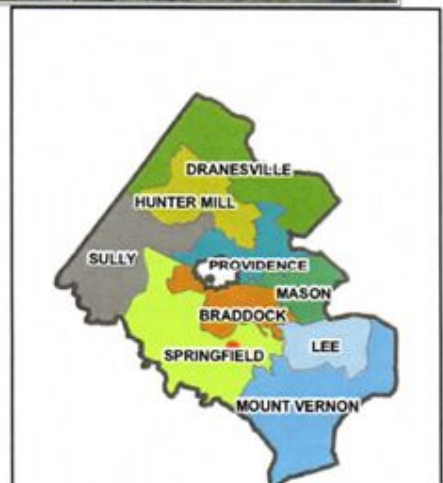
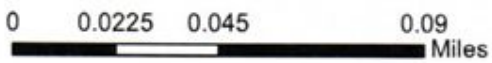


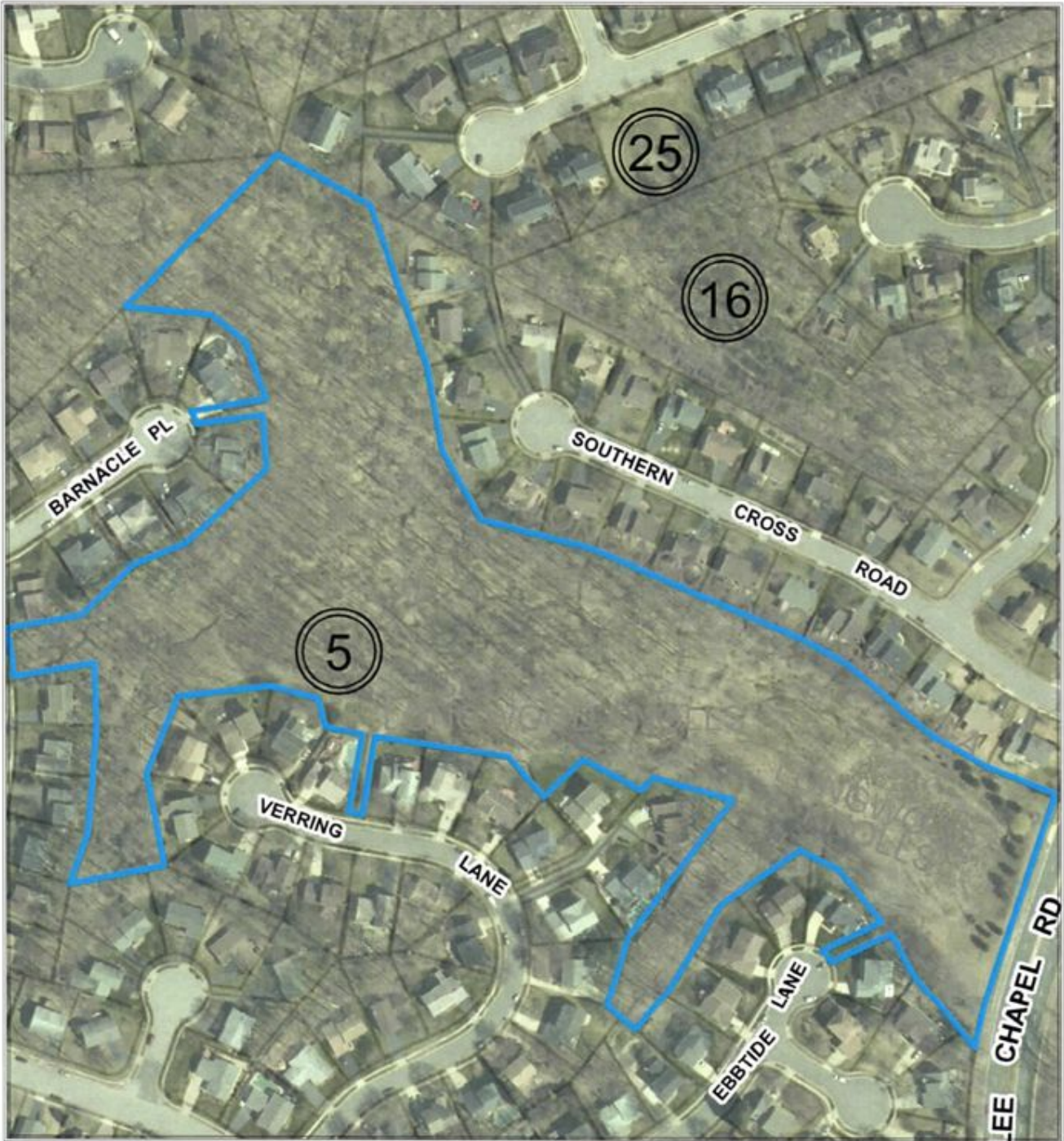
**PEYTON RUN AT LONGWOOD KNOLLS
STREAM RESTORATION
PROJECT: SD-000031-182**

SPRINGFIELD DISTRICT

TAX MAP #: 088-1

AFFECTED PROPERTIES:



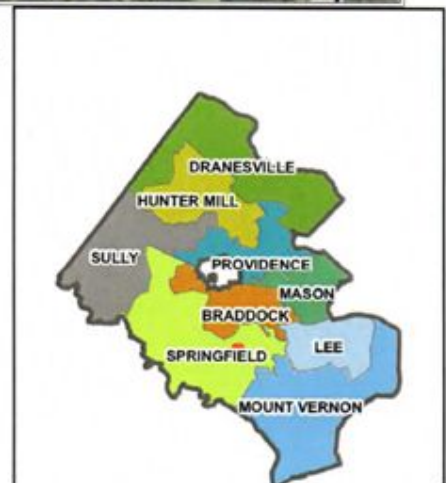
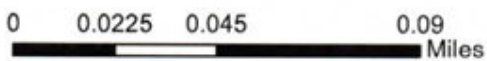


**PEYTON RUN AT LONGWOOD KNOLLS
STREAM RESTORATION
PROJECT: SD-000031-182**

SPRINGFIELD DISTRICT

TAX MAP #: 088-1

AFFECTED PROPERTIES:



LISTING OF AFFECTED PROPERTIES
Project SD-000031-182
Peyton Run at Longwood Knolls Stream Restoration
(Springfield District)

PROPERTY OWNER(S)

1. Edgemoore Woods
Homeowners Association, Incorporated,
and/or Unknown Owners

088-1-07-0000-G

Address:
Parcel G, Common Area

Board Agenda Item
July 30, 2019

ADMINISTRATIVE - 6

Authorization to Advertise a Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Glade Dr. Walkway – Colts Neck Rd. to Freetown Drive (Hunter Mill District)

ISSUE:

Board authorization to advertise a public hearing on the acquisition of certain land rights necessary for the construction of Project 2G40-088-007, Glade Dr. Walkway – Colts Neck Rd. to Freetown Drive, in Fund 40010, County and Regional Transportation Projects.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for September 24, 2019, at 4:30 p.m.

TIMING:

Board action is requested on July 30, 2019, to provide sufficient time to advertise the proposed public hearing on the acquisition of certain land rights necessary to keep this project on schedule.

BACKGROUND:

This project consists of a five-foot wide concrete sidewalk with ADA (Americans with Disabilities Act) ramps and curb and gutter along the north side of Glade Drive from Colts Neck Road to Reston Parkway and then along the south side of Glade Drive from Reston Parkway to Freedom Drive. The total project length is approximately 1,200 feet long.

Land rights for these improvements are required on five properties, four of which have been acquired by the Land Acquisition Division (LAD). The construction of this project requires the acquisition of Deeds of Dedication and Conveyance and Grading Agreement and Temporary Construction Easements.

Negotiations are in progress with the final affected property owner; however, because resolution of this acquisition is not imminent, it may be necessary for the Board to utilize quick-take eminent domain powers to commence construction of this project on schedule. These powers are conferred upon the Board by statute, namely, Va. Code

Board Agenda Item
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Ann. Sections 15.2-1903 through 15.2-1905 (as amended). Pursuant to these provisions, a public hearing is required before property interests can be acquired in such an accelerated manner.

FISCAL IMPACT:

Funding is available in Project 2G40-088-007, Glade Dr. Walkway – Colts Neck Rd. to Freetown Drive, Fund 40010, County and Regional Transportation Projects. This project is included in the Adopted FY 2020 – FY 2024 Capital Improvement Program (with future Fiscal Years to FY 2029). No additional funding is being requested from the Board.

ENCLOSED DOCUMENTS:

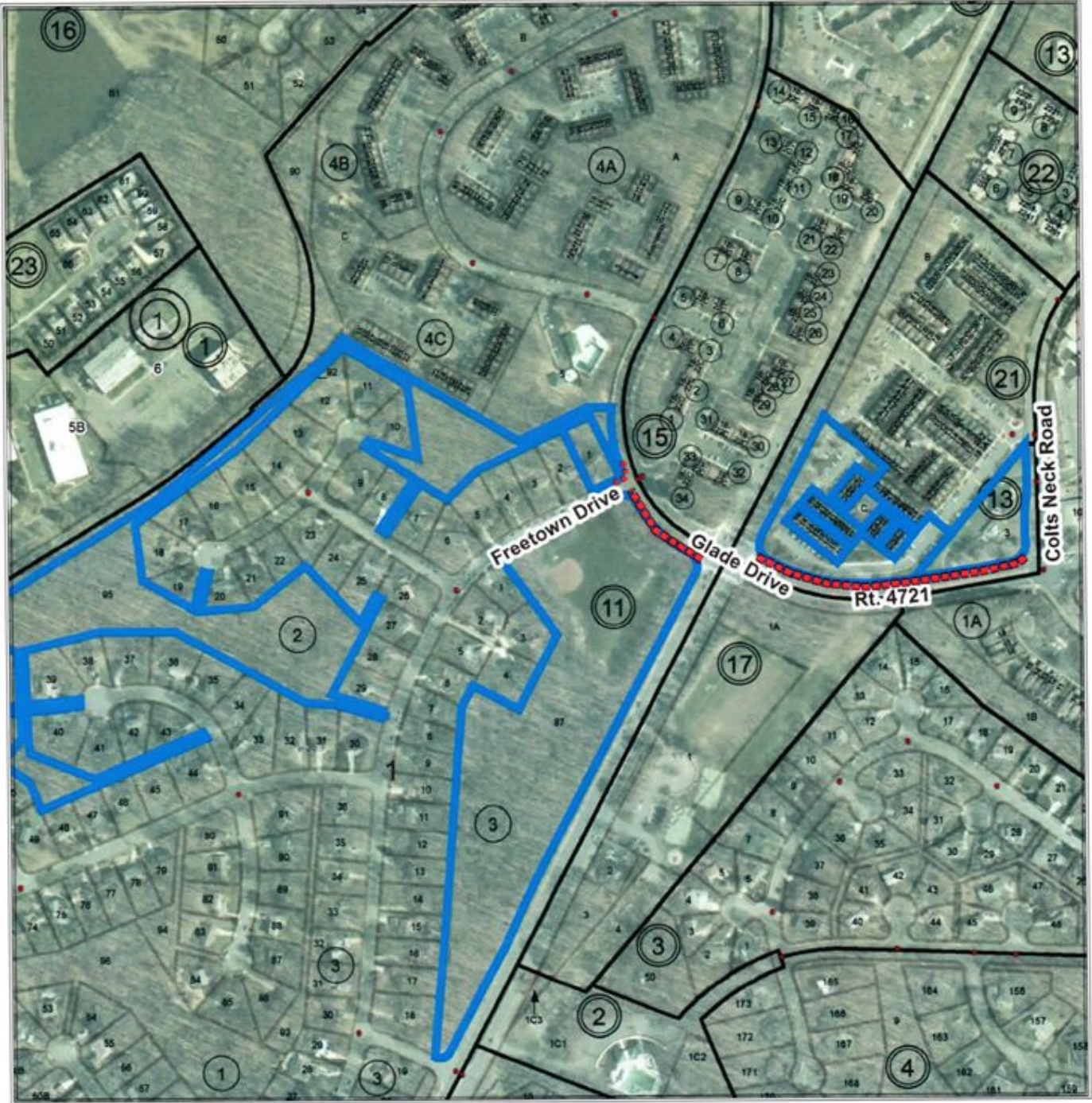
Attachment A - Project Location Map
Attachment B - Listing of Affected Properties

STAFF:

Rachel Flynn, Deputy County Executive
Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)
Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

ASSIGNED COUNSEL:

Pamela K. Pelto, Assistant County Attorney



GLADE DR WALKWAY - COLTS NECK RD. TO FREETOWN DRIVE

Tax Map: 26-1

Project 2G40-088-007
Hunter Mill

Affected Properties: 

Proposed Improvements: 



LISTING OF AFFECTED PROPERTIES
Project 2G40-088-007
Glade Dr. Walkway – Colts Neck Rd. to Freetown Drive
(Hunter Mill District)

PROPERTY OWNER(S)

1. Hunters Square Homeowners Association

026-1-21-0000-C

Address: Common Area situated on northeast
corner of Glade Drive and Reston Parkway

Board Agenda Item
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ADMINISTRATIVE - 7

Authorization to Advertise a Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Kirby Road Walkway – Halsey Road to Franklin Avenue (Dranesville District)

ISSUE:

Board authorization to advertise a public hearing on the acquisition of certain land rights necessary for the construction of Project ST-000036, County-Maintained Pedestrian Improvements – 2014, Kirby Road Walkway – Halsey Road to Franklin Avenue, Fund 30050, Transportation Improvements.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for September 24, 2019, at 5 p.m.

TIMING:

Board action is requested on July 30, 2019, to provide sufficient time to advertise the proposed public hearing on the acquisition of certain land rights necessary to keep this project on schedule.

BACKGROUND:

This project consists of the construction of approximately 1,300 LF of concrete sidewalk, including curb and gutter, along the south side of Kirby Road.

Land rights for these improvements are required on ten properties, nine of which have been acquired by the Land Acquisition Division (LAD). The construction of this project requires the acquisition of Storm Drainage Easements and Grading Agreement and Temporary Construction Easements.

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

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FISCAL IMPACT:

Funding is available in Project ST-000036, County Maintained Pedestrian Improvements - 2014 Kirby Road Walkway – Halsey Road to Franklin Avenue, Fund 30050, Transportation Improvements. This project is included in the Adopted FY2020 - FY2024 Capital Improvement Program (with future Fiscal Years to FY2029). No additional funding is being requested from the Board.

ENCLOSED DOCUMENTS:

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

STAFF:

Rachel Flynn, Deputy County Executive
Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)
Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

ASSIGNED COUNSEL:

Pamela K. Pelto, Assistant County Attorney




Kirby Road Walkway - Halsey Rd-Franklin Av

Project: ST-000036-011

Tax Map: 041-1 & 031-3

Dranesville District

Affected Properties: 

Proposed Improvements: 



ATTACHMENT B

LISTING OF AFFECTED PROPERTIES
Project ST-000036-011
Kirby Road Walkway – Halsey Road to Franklin Avenue
(Dranesville District)

PROPERTY OWNER(S)

1. Zaid Salameh

031-3-06-0101

Address:
1815 Kirby Road
McLean, Virginia 22101

Board Agenda Item
July 30, 2019

ADMINISTRATIVE - 8

Extension of Review Period for 2232 Application (Hunter Mill District)

ISSUE:

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

RECOMMENDATION:

The County Executive recommends that the Board extend the review period for the following application: 2232-H19-6

TIMING:

Board action is required July 30, 2019, to extend the review period for the application noted above before its expiration date.

BACKGROUND:

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

The review period for the following application should be extended:

2232-H19-6 Fairfax County Park Authority
 Lake Fairfax Park
 Tax Map Nos. 18-1 ((1)) 6, 18-1 ((1)) 7; 18-1 ((7)) C; 18-2 ((1)) 39;
 18-3 ((1)) 1a; 18-3 ((1)) 3; and 18-4 ((1)) 1
 1400 Lake Fairfax Drive
 Reston, VA
 Hunter Mill District
 Accepted June 11, 2019
 Extend to May 11, 2020

FISCAL IMPACT:

None.

Board Agenda Item
July 30, 2019

ENCLOSED DOCUMENTS:

None.

STAFF:

Rachel Flynn, Deputy County Executive

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

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

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

Board Agenda Item
July 30, 2019

ADMINISTRATIVE - 9

Authorization to Advertise a Public Hearing to Consider an Ordinance to Amend the Fairfax County Code by Adding a New Chapter 9.2 and Repealing Chapter 9.1, Relating to Cable Regulation and Franchising

ISSUE:

Authorization to advertise a public hearing to consider the adoption of an ordinance that amends the Fairfax County Code by adding a new Chapter 9.2 and repealing Chapter 9.1, relating to cable regulation and franchising.

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of a public hearing at 5:30 p.m. on September 24, 2019.

TIMING:

The Board should take action on July 30, 2019, to advertise a public hearing on September 24, 2019, at 5:30 p.m. This will allow sufficient lead time for the County's three cable operators to implement the requirements of the new ordinance by January 1, 2020.

BACKGROUND:

The chapter of the County Code dealing with cable television, Chapter 9.1 (the "Cable Ordinance"), provides the regulatory framework for all cable companies operating in Fairfax County. The County grants each individual cable operator a franchise, subject to a negotiated cable franchise agreement specific to that company. Such franchise agreements are typically renegotiated at ten- or fifteen-year intervals. The Cable Ordinance, however, remains in effect throughout franchise renewals. It establishes the baseline rules that apply to all cable companies, and sets up procedures to accept new cable franchise applications.

The Cable Ordinance and the cable franchise agreements are subject to conditions imposed by federal and state laws and regulations. These external laws limit the County's authority, both in its general lawmaking power (the Cable Ordinance) and in the individual franchise agreements. For example, the rate regulation prohibition in federal law must be taken into account in any requirement for free or reduced-cost service to subscribers. Similarly, Virginia law controls the extent to which localities can impose construction requirements on certificated providers of telecommunications services. See Va. Code Ann. § [15.2-2108.24](#).

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The Cable Ordinance was last amended in 2001. Since that time, many changes have occurred in cable technology, the relevant markets, and applicable law. In addition, the entry of a competitive cable provider, Verizon, in 2005 changed the structure of the market and expanded the range of entities regulated by the Cable Ordinance. At present, Comcast provides cable service in Reston and Cox Communications provides cable service in the rest of the County, while Verizon provides competitive cable service in both areas.

Over a period of several years, and in preparation for upcoming franchise renewals in 2020, County staff carried out a detailed technical analysis of how the existing provisions have worked and what changes are needed to meet conditions that have changed since 2001. Consumer issues are the primary concern, based on staff's work with County residents on consumer complaints and inquiries since the last amendments to the Ordinance. At the same time, given the significant capital investment that cable companies make in building out infrastructure in the County's rights-of-way, changes in the Ordinance should also be reviewed with the cable operators. Moreover, these interests must be integrated with the overlapping and changing sets of limitations in applicable federal and state law. In this highly technical effort, County staff has worked closely with the Consumer Protection Commission (CPC) and the local cable operators to develop a revised Cable Ordinance that provides for fair use of the County's rights-of-way, looks out for the interests of County residents, and ensures a stable regulatory environment for the three cable providers.

The proposed Ordinance will replace Chapter 9.1 with a new Chapter 9.2. In Chapter 9.2, the Code has been reorganized in a more logical order, corresponding where applicable to the organization of the franchise agreements. Substantive changes in the new Ordinance include those described below.

Chapter 9.2 creates a new Article on consumer protection, Article 9, expanding the current § 9.1-7-6. Among the new issues addressed by Article 9 are clear and accurate disclosure of price terms (§ 9.2-9-9(g)-(h)); installation times and deadlines, including special provisions for multiple dwelling units (§ 9.2-9-3(c)(1)-(4)); placement of equipment in homeowners' yards (§ 9.2-9-10); interruptions of service (§ 9.2-9-3(c)(5)-(8)); and cable operators' terms of service (§ 9.2-9-7). Existing provisions, such as those dealing with telephone answering (§ 9.2-9-2) and local offices (§ 9.2-9-3(a)), have been updated to address changes in the way companies today meet customers' needs, such as the use of automatic telephone response units and the use of third parties to receive payments and ship equipment. Additional consumer protections in Chapter 9.2 include the provisions dealing with the restoration of damaged property (§ 9.2-6-4(c)) and expanded provisions regarding notice of planned construction (§ 9.2-6-4(o)).

The updated Cable Ordinance also removes provisions that are obsolete or incompatible with changes in the law since 2001. For example, language regarding rate regulation

Board Agenda Item
July 30, 2019

(former § 9.1-6-1) has been deleted, since federal law currently forbids rate regulation. Similarly, the provisions dealing with franchise fees (which are now subsumed into the communications sales and use tax in Virginia), former § 9.1-5-8, have been adapted into general requirements regarding payments to the County (see Article 7).

Chapter 9.2 has been designed to avoid redundancies and potential conflicts. The existing Cable Ordinance contains a number of provisions that parallel those in the franchise agreements: for instance, those covering the provision of free cable service to County and school sites (former § 9.1-7-2(d)); annual and quarterly reports (former § 9.1-6-3); insurance and bonding requirements (former § 9.1-5-9); and legal penalties (former § 9.1-9-9) comparable to the liquidated damages already provided for in franchise agreements. This sort of overlap is generally duplicative and may result in conflicts between the agreements and the Ordinance, since such requirements in the agreements are generally updated to ensure the most effective ways to meet the County's needs and interests (for example, by providing video service over the County's institutional network or I-Net). Provisions of this kind are more appropriate to the franchise agreements so that each agreement can take into account how that particular provider fulfills these requirements.

Chapter 9.2 is drafted to eliminate such redundancies as far as possible, so that the Ordinance and agreements mesh with each other to cover all necessary issues without inconsistency. The County intends to obtain similar franchise agreement terms for all cable companies, but this can be achieved by negotiation without requiring those terms to be codified in an ordinance. State laws regarding the adoption of one company's terms and conditions by another (see Va. Code Ann. § 15.2-2108.26) ensure that the County will not reduce such requirements arbitrarily for a single cable operator.

It is unlikely that additional competitors will seek to provide cable service in the County, given the size of the capital investment required to build out a system in comparison to the progressively smaller market share a new entrant can expect to gain. However, Chapter 9.2 also updates the application process for a new franchise in Article 4 to ensure that no unnecessary barriers are placed in the way of potential competitors – for example, allowing electronic submissions and focusing on essential financial, legal, and technical qualifications as opposed to matters such as the proposed rate structure (now deregulated) and pro forma financial projections (more applicable to small startup companies than to today's cable providers).

County staff discussed the draft ordinance in detail with all three cable operators to obtain their input, to ensure that the ordinance provisions are effective in serving the interests of consumers without unnecessarily burdening the operators or complicating compliance.

On May 21, 2019, staff from the Department of Cable and Consumer Services (DCCS) requested approval to advertise a public hearing to be held during the CPC meeting on Tuesday, June 18, 2019. The CPC voted to advertise the public hearing.

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On June 18, 2019, the CPC held the public hearing on the proposed ordinance revisions, with representatives from all three cable operators present. During the public hearing, staff reviewed the draft ordinance with the CPC. After deliberation, the CPC voted to recommend that the Board approve adding a new Chapter 9.2 and repealing Chapter 9.1, Relating to Cable Regulation and Franchising, with two changes that have been incorporated into the attached draft of the proposed Chapter 9.2. In § 9.2-9-1, the word “Section” was changed to “Article” to reflect the fact that the entire Article represents minimum customer service standards. In § 9.2-9-9(f), the final version removes an earlier condition that would have limited the scope of the paragraph to termination for nonpayment, while adding an exception for cases where public safety is at issue (for example, if signal leakage could affect aircraft electronics).

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – Redlined version of proposed ordinance showing changes to existing Chapter 9.1

STAFF:

Joseph M. Mondoro, Chief Financial Officer
Michael S. Liberman, Director, Department of Cable and Consumer Services (DCCS)
Frederick E. Ellrod III, Director, Communications Policy and Regulation Division, DCCS

ASSIGNED COUNSEL:

Erin C. Ward, Deputy County Attorney
Joanna L. Faust, Assistant County Attorney

**CHAPTER 9.2 AMENDMENTS TO CHAPTER 9.1 OF THE FAIRFAX COUNTY CODE
RELATING TO CABLE TELEVISION**

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1

2 **CHAPTER 9.2 AMENDMENTS TO CHAPTER 9.1 OF THE FAIRFAX COUNTY CODE**
3 **RELATING TO CABLE TELEVISION**

4

5

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[Amendments to previous text are indicated by ~~strikeout~~ and underline.]

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9

AN ORDINANCE to amend the Fairfax County Code by adding a new chapter numbered ~~9.1~~9.2
and by repealing Chapter 9.1, relating generally to cable regulation and franchising.

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

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1. That the Fairfax County Code is amended by adding a new chapter number ~~9.1~~ 9.2 as follows:

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ARTICLE 1.

~~Short Title; General Provisions.~~

~~9.1-1-1. Short title.~~

~~This ordinance shall be known as the Fairfax County Communications Ordinance.~~

[Formerly Sec. 9.1-1-1]

Section 9.2-1-1. Existing rights.

Nothing in this Chapter shall be deemed to abrogate the constitutionally protected rights of a cable system operating in the County on the date of the adoption of this ordinance.

[Formerly Sec. 9.1-1-2; new Sec. 9.2-1-1]

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ARTICLE 2.

Definitions.

Section 9.2-2-1. Definitions.

The following words and phrases when used in this Chapter shall, for the purpose of this Chapter, have the meanings respectively ascribed to them in this Section except in those instances where the context clearly indicates a different meaning. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in the Cable Act, Title 47 U.S.C. §§ 521 et seq., as amended, and, if not defined therein, their common and ordinary meaning.

[Formerly Sec. 9.1-2-1; new Sec. 9.2-2-1]

~~Access channel means any channel on a cable system set aside by a Grantee for public, educational, or governmental use.~~

(a) ~~Affiliate~~ means any person who owns or controls, is owned or controlled by, or is under common ownership or control with, a Grantee. For purposes of this definition, “owns” means an ownership interest of more than five percent.

~~Basic service means (i) any service tier that includes the retransmission of local television broadcast signals; (ii) any public, educational, and governmental access programming required by a Franchise agreement to be provided to Subscribers as basic service; and (iii) any additional video programming signals or services added to basic service by a Grantee.~~

(b) ~~Board~~ means the Board of Supervisors of the County of Fairfax, Virginia.

(c) ~~Cable Act~~ means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended from time to time.

1 (d) Cable service means: (i) the one-way transmission to Subscribers of video
2 programming or other programming services; and (ii) Subscriber interaction, if any, which is
3 required for the selection or use of such video programming or other programming service.

4 (e) Cable system ~~or~~ or system means a facility, consisting of a set of closed
5 transmission paths and associated signal generation, reception, and control equipment that is
6 designed to provide Cable service which includes video programming and which is provided to
7 multiple Subscribers within the County, except that ~~such~~ this definition ~~shall~~ does not include: (i)
8 a system ~~which~~ that serves fewer than twenty Subscribers; (ii) a facility that serves only to
9 retransmit the television signals of one or more television broadcast stations; (iii) a facility ~~which~~
10 that serves Subscribers without using any public ways; (iv) a facility of a common carrier ~~which~~
11 that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934,
12 47 U.S.C. § 201, et seq., except that such facility shall be considered a Cable system (other than
13 for purposes of 47 U.S.C. § 541(c)) to the extent ~~such~~ the facility is used in the transmission of
14 video programming directly to Subscribers, unless the extent of such use is solely to provide
15 interactive on-demand services; (v) an open video system that complies with 47 U.S.C. § 573; (vi)
16 any facilities of any electric utility used solely for operating its electric systems; or (vii) any portion
17 of a system that serves fewer than fifty Subscribers in the County where such portion is a part of
18 a larger system franchised in an adjacent county, city or town. The foregoing definition of “cable
19 system” ~~shall not be deemed to~~ does not circumscribe or limit the valid authority of the County to
20 regulate or franchise the activities of any other communications system or provider of
21 communications services to the full extent permitted by law.

22 (f) ~~Communications Administrator~~ Cable Television Administrator means the present
23 or succeeding employee of Fairfax County designated by the County as the Cable Television

1 Administrator, who may be referred to in a franchise agreement ~~or~~ as the Communications
2 Administrator, and who shall have the duties and authority prescribed in this Chapter and otherwise
3 prescribed by the Board.

4 (g) County or Fairfax County means the County of Fairfax, Virginia, excluding the
5 Towns of Clifton, Herndon, and Vienna.

6 ~~Customer means "Subscriber" or "former Subscriber".~~

7 (h) Days means calendar days unless otherwise specified.

8 [New in Chapter 9.2]

9 (i) Department means the Department of Cable and Consumer Services or any
10 successor agency.

11 [New in Chapter 9.2]

12 ~~Educational Access Channel or Educational Channel~~ means any Channel required by a
13 Franchise agreement to be provided by a Grantee on its Basic service tier to the County for
14 educational use.

15 (j) Equitable Pprice means fair market value adjusted downward for the harm to the
16 County or Ssubscribers, if any, resulting from a Grantee's breach of its Ffranchise agreement or
17 violation of this Chapter, and as further adjusted to account for other equitable factors that may be
18 considered consistent with 47 U.S.C. § 547.

19 (k) Fair market value means the price which property will bring when it is offered for
20 sale by one who desires, but is not obligated, to sell it, and is bought by one who is under no
21 necessity of having it.

1 (1) Federal Communications Commission or *FCC* means that Federal agency as
2 presently constituted by the Communications Act of 1934, as amended, its designee, or any
3 successor agency.

4 (m) Force Majeure has the meaning specified in a Grantee's franchise agreement.
5 ~~means, notwithstanding any other provision of this Chapter or a Franchise agreement, that a~~
6 ~~Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part,~~
7 ~~its obligations pursuant to this Chapter or a Franchise agreement due, directly or indirectly, to~~
8 ~~severe or unusual weather conditions, strike, labor disturbance, lockout, war or act of war (whether~~
9 ~~an actual declaration of war is made or not), insurrection, riot, act of public enemy, action or~~
10 ~~inaction of any government instrumentality or public utility including condemnation, accidents for~~
11 ~~which a Grantee is not primarily responsible, fire, flood or other act of God, sabotage or other~~
12 ~~events to the extent that such causes or other events are beyond the reasonable control of a Grantee.~~
13 ~~In the event that any such delay in performance or failure to perform affects only part of a Grantee's~~
14 ~~capacity to perform, a Grantee shall perform to the maximum extent it is able to perform and shall~~
15 ~~take all reasonable steps within its power to correct such cause(s) in as expeditious a manner as~~
16 ~~possible.~~

17 (n) Franchise means a nonexclusive initial authorization, or renewal thereof, issued by
18 the County which authorizes the construction, maintenance, ~~or~~ and operation of a Cable system
19 along the public ways within ~~one or more~~ a specified Franchise areas area of the County ~~with~~
20 ~~boundaries as described in Section 9.1-7-1. A Franchise shall not be construed to~~ does not include
21 any general license or grant of permission ~~required~~ for the privilege of transacting and carrying on
22 a business within the County ~~as~~ that may be required by other ordinances and laws ~~of the County,~~
23 or for attaching devices to poles or structures, whether owned by the County or a private entity, or

1 for excavating or performing other work in or along public ways, unless otherwise provided in a
2 Grantee's Franchise agreement.

3 (o) Franchise agreement means a contract entered into pursuant to this Chapter
4 between the County and a Grantee that sets forth, subject to this Chapter, the terms and conditions
5 under which a Franchise will be granted and exercised.

6 (p) Franchise area means each of the North County, South County, or Reston
7 Franchise areas of the County, with boundaries as more fully described in ~~Section 9.1-7-1~~ Section
8 9.2-3-3, that a Grantee is authorized to serve by its Franchise agreement.

9 ~~Governmental Access Channel or Government Channel means any Channel required by a~~
10 ~~Franchise agreement to be provided by a Grantee on its Basic service tier to the County for~~
11 ~~government use.~~

12 (q) Grantee means a natural Person, domestic or foreign corporation, partnership,
13 limited liability company, association, joint venture, or organization of any kind granted a
14 Franchise to provide cable service by the Board under this ordinance, and any lawful successor
15 thereto, or transferee or assignee thereof.

16 (r) Gross revenues has the meaning assigned to it in a Grantee's franchise agreement.
17 ~~means any and all cash, credits, property or consideration of any kind or nature from the operation~~
18 ~~of the Cable system to provide Cable services as specified in a Franchise agreement arising from,~~
19 ~~attributable to, or in any way derived directly or indirectly by a Grantee, its affiliates, or any Person~~
20 ~~in which a Grantee has a financial interest, or by any other entity that is a cable operator of the~~
21 ~~system. Gross revenues shall not include any taxes on services furnished by a Grantee which are~~
22 ~~imposed directly on any Subscriber or user by the Commonwealth of Virginia, the County, or other~~
23 ~~governmental unit and which are collected by a Grantee on behalf of said governmental unit or as~~

1 ~~specified in a Franchise agreement. A franchise fee is not such a tax. Gross revenues shall not~~
2 ~~include any revenues specifically excluded in a Grantee's Franchise agreement.~~

3 (s) Institutional network or I-Net means an institutional network, as that term is defined
4 in 47 U.S.C. § 531(f), constructed for the County's use, which is not generally available to the
5 public.

6 [New in Chapter 9.2]

7 ~~Leased access channel means any channel on a cable system designated or dedicated for~~
8 ~~use by a person unaffiliated with a Grantee pursuant to 47 U.S.C. § 532.~~

9 (t) Multiple dwelling unit or MDU means a residential building containing three or
10 more separate dwelling units located on a single lot or parcel of ground, generally with a common
11 outside entrance(s) for all the dwelling units, where "dwelling unit" means one or more rooms that
12 are arranged, designed, used, or intended for use as a complete, independent living facility,
13 including provisions for living, sleeping, eating, cooking, and sanitation.

14 [New in Chapter 9.2]

15 (u) Normal business hours means those hours during which most similar businesses in
16 the community are open to serve customers. In all cases, "normal business hours" must include
17 some evening hours at least one night per week and/or some weekend hours.

18 [New in Chapter 9.2]

19 (v) Normal operating conditions means those conditions that are within the control of
20 the a Grantee, i.e., not force majeure conditions. Conditions that are not within the control of the
21 Grantee include, but are not limited to, natural disasters, civil disturbances, power outages,
22 telephone network outages, weather or traffic conditions impairing construction or normal

1 operation activities, vandalism, accidents for which Grantee is not primarily responsible, sabotage,
2 and the action or inaction of any governmental unit. Consistent with the foregoing, ~~e~~ Conditions
3 that are within the control of a Grantee include, but are not limited to, special promotions, pay-
4 per-view events, rate increases, regular ~~or reasonably anticipatable~~ peak or seasonal demand
5 periods, and ~~construction~~, maintenance or upgrade of a Grantee's Ccable system.

6 (w) PEG means public, educational, and governmental.

7 (x) Person means an individual, partnership, association, joint stock company,
8 organization, corporation, joint venture, limited liability company, or any lawful successor thereto
9 or transferee thereof, but such term does not include the County.

10 ~~Public access channel means any channel required by a Franchise agreement to be~~
11 ~~provided by a Grantee on its Basic service tier to the County or set aside by a Grantee for use by~~
12 ~~the general public, including groups and individuals, and which is available for such use on a non-~~
13 ~~discriminatory basis.~~

14 (y) Public way or Public Rights of Way means the surface, the air space above the
15 surface, and area below the surface of any public street, highway, lane, path, alley, sidewalk,
16 boulevard, drive, concourse, bridge, tunnel, ~~park~~, parkway, waterway, dock, bulkhead, wharf, pier,
17 ~~public water or public easements~~, easement dedicated for public use, or other public way within
18 the County, which, consistent with the purposes for which it was dedicated, may be used for the
19 purpose of installing and maintaining a Ccable system.

20 ~~Rate regulated services means all services, including related equipment and installation~~
21 ~~fees, subject to rate regulation by the County pursuant to applicable federal and Virginia law.~~

22 ~~Regular subscriber service means the distribution to Subscribers of signals over a Cable~~
23 ~~system on all channels except those for which a per program or per channel charge is made, two-~~

1 ~~way services, and those services intended for reception by equipment other than a television~~
2 ~~receiver.~~

3 (z) Service interruption means the loss of picture or sound on one or more cable
4 channels.

5 (aa) Service tier means a category of ~~C~~cable service or other services provided by a
6 Grantee ~~and~~ for which a separate rate is charged by the Grantee.

7 (bb) Subscriber means any ~~P~~person who legally receives or contracts with a Grantee to
8 receive ~~C~~cable service(s) ~~and does not further distribute such Cable service(s).~~

9 ~~_____ User means any Person or organization using a PEG or leased access channel or equipment~~
10 ~~and facilities for purposes of producing or transmitting material, as contrasted with the receipt~~
11 ~~thereof in the capacity of a Subscriber.~~

12 (cc) Video programming means programming provided by, or generally considered
13 comparable to programming provided by, a television broadcast station.

14 (dd) Written or in writing means, unless otherwise specified, communication in written
15 form, which may be made via hardcopy, e-mail to a verified e-mail address, or other similar
16 medium that the recipient can reasonably be expected to read. Such communication may direct
17 the recipient to clearly specified Web pages containing the complete details.

18 [New in Chapter 9.2]

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ARTICLE 3.

Grant of Franchises.

Section 9.2-3-1. Requirement of a Franchise.

No person shall construct, install, maintain, or operate a cable system or part of a cable system on, over, through, or within a public way in the County, or on, over, through, or within any other public property of the County, unless that person has been granted a franchise by the Board and its franchise agreement is in full force and effect.

[Formerly Sec. 9.1-3-1; new Sec. 9.2-3-1]

Section 9.2-3-2. Grant of Franchise.

(a) The Board may grant one or more non-exclusive cable franchises, and each such franchise shall be awarded by ordinance in accordance with and subject to the provisions of this Chapter.

(b) This Chapter may be amended from time to time, and in no event shall this Chapter be considered a contract between the County and a Grantee such that the County would be prohibited from amending any provision hereof.

(c) A franchise agreement may only be amended by mutual written consent of the Board and Grantee.

[Formerly Sec. 9.1-3-2; new Sec. 9.2-3-2]

Section 9.2-3-3. Franchise areas.

~~Applications for a Franchise will be accepted for one or more of the following Franchise areas:~~

1 (a) *Reston Franchise Area:* That portion of Fairfax County beginning at the
2 intersection of Fox Mill Road, Route No. 665, and Stuart Mill Road, Route No. 671; thence
3 proceeding in a northwesterly direction on Fox Mill Road, Route No. 665, to a point where Fox
4 Mill Road crosses the Columbia Gas Transmission Corporation pipeline easement; thence
5 following said pipeline easement in a northeasterly direction to the Dulles Airport Access Road;
6 thence westerly on the Dulles Airport Access Road to the easterly limits of the Town of Herndon;
7 thence northeasterly along the boundary of the Town of Herndon to Elden Street, Route No. 606,
8 said point also being at the intersection of Stuart Road, Route No. 680; thence northeasterly on
9 Stuart Road, Route No. 680, to Sugarland Road, Route No. 604; thence northeasterly on Sugarland
10 Road, Route No. 604, to Leesburg Pike, Route No. 7; thence southeasterly on Leesburg Pike, Route
11 No. 7, to Baron Cameron Avenue, Route No. 606; thence southwesterly on Baron Cameron
12 Avenue, Route No. 606, to Hunter Mill Road, Route No. 674; thence following Hunter Mill Road,
13 Route No. 674, thence southerly to the northeastern corner of that parcel identified by Fairfax
14 County Tax Map Reference No. 18-3, 001, parcel 1; thence following southwesterly along the
15 northern boundary of parcel 1 to the northern boundary of the Equestrian Park subdivision; thence
16 following the northern and western boundaries of the Equestrian Park subdivision to the
17 intersection of Sunset Hills Road, Route No. 675; thence following Sunset Hills Road easterly to
18 the intersection of Hunter Mill Road, Route No. 674; thence following Hunter Mill Road southerly
19 to the intersection of Sunrise Valley Drive, Route No. 5320; thence proceeding southeasterly along
20 the eastern boundary of Reston, Section 22, to the eastern corner of that parcel identified by Fairfax
21 County Tax Map Reference No. 27-2, 005, parcel 57; thence following southwesterly along the
22 eastern border of Reston, Section 22, and Reston, Section 24; thence following the southern
23 boundary of Reston, Section 24 and Reston, Section 24A; thence proceeding southeasterly along

1 the eastern boundary of that parcel identified by Fairfax County Tax Map Reference No. 27-1,
2 0012, parcel 3; thence following southeasterly along the eastern boundary of Reston, Section 10,
3 to the intersection of Lawyers Road, Route No. 673, and Hunter Station Road, Route No. 677;
4 thence proceeding westerly on Lawyers Road, Route No. 673, past the intersection of Birdfoot
5 Lane, Route No. 671, to the northeast corner of the Lawyer's Glen subdivision; thence proceeding
6 southwesterly along the southern and eastern boundaries of the Lawyer's Glen subdivision; thence
7 following northwesterly along the western boundary of the Lawyer's Glen subdivision to a point
8 of intersection with the southeast corner of the Lawyer's Ridge subdivision; thence proceeding
9 southwesterly along the southern boundary of the Lawyer's Ridge subdivision to a point of
10 intersection with the eastern boundary of Reston, Section 18; thence following southeasterly to a
11 point of intersection with the eastern corner of the Stoneledge subdivision; thence proceeding in a
12 southerly direction along the eastern boundary of the Stoneledge subdivision ; thence following in
13 a westerly direction along the northern boundary of five parcels identified by Fairfax County Tax
14 Map Reference Nos. 36-2, 001, parcel 2A, 13A, 13, 12A and 11, to a point of intersection with the
15 southernmost corner of Reston, Section 18; thence proceeding in a westerly direction along the
16 southern boundary of Reston; Section 18, to a point of intersection with the eastern boundary of
17 Reston, Section 16; thence following southwesterly from said intersection along the eastern
18 boundary of Reston, Section 16, to the northeastern boundary of that parcel identified by Fairfax
19 County Tax Map Reference No. 36-2, 009, parcel 2; thence proceeding northerly along the
20 northeastern boundary of that parcel identified by Fairfax County Tax Map Reference No. 36-2,
21 009, parcel 2, to the border of that parcel identified by Fairfax County Tax Map Reference No. 36-
22 2, 009, parcel 1; thence following southwesterly on the southeastern boundary of those two parcels
23 identified by Fairfax County Tax Map Reference Nos. 36-2, 009, parcel 1 and 3, to the intersection

1 of the southeastern boundary of Fox Mill District Park; thence following the eastern and northern
2 boundaries of Fox Mill District Park northwesterly to Fox Mill Road, Route No. 665; thence
3 northwesterly on Fox Mill Road, Route No. 665, to the intersection of Fox Mill Road, Route No.
4 665, and Reston Avenue, Route No. 602; thence following Reston Avenue, Route No. 602,
5 northeasterly to the intersection of Fox Mill Road, Route No. 665; thence northwesterly on Fox
6 Mill Road, Route No. 665, to the point where Fox Mill Road, Route No. 665, crosses the Columbia
7 Gas Transmission Corporation pipeline easement, being the point of beginning.

8 Whenever the Reston Ffranchise area is described by reference to the Columbia Gas
9 Transmission Corporation pipeline easement or to roads, the Ffranchise area shall be delineated
10 by the line following the middle of the aforementioned pipeline easement or roads. However, if
11 construction of a franchise for the Reston Franchise Area reasonably requires a Grantee to use
12 poles or easements along any roadway which serves as a border for that Ffranchise area, and if
13 such poles or easements are located beyond the centerline of any such roadway, and if the Grantee
14 obtains proper permission for the use of such poles or easements and pays any applicable usage or
15 attachment fees, then the Grantee may use such poles or easements to construct and operate its
16 system in the Reston Franchise aArea so long as the Grantee does not provide Ccable service to
17 an area for which it does not hold a Ffranchise. The map which shows the above-described
18 boundaries and which is dated May 18, 1988, is incorporated herein and is designated as the official
19 map of the Reston Franchise aArea. That map shall be kept by the Clerk to the Board among the
20 official records of the Board of Supervisors, and to the extent that the boundaries of the map and
21 the boundaries described by the text of this Ssubsection are in conflict either by realignment of a
22 road or otherwise, and where it cannot be determined clearly where the boundary may lie, then the
23 boundaries shown on the official map shall take precedence over the text of this Ssubsection.

1 (b) *North County Franchise Area*: The area of the County north of a line beginning at
2 the intersection of Little River Turnpike, Route No. 236, and westerly city limits of the City of
3 Alexandria; thence westerly along Little River Turnpike, Route No. 236, to the eastern boundary
4 of the City of Fairfax; thence along the eastern and northern boundary of the City of Fairfax to
5 Jermantown Road, Route No. 665; thence northeasterly on Jermantown Road to Oakton Road,
6 Route No. 644; thence westerly on Oakton Road, Route No. 644, to Waples Mill Road, Route No.
7 664; thence westerly on Waples Mill Road to West Ox Road, Route No. 608; thence northwesterly
8 on West Ox Road, Route No. 608, to Centreville Road, Route No. 657; thence northerly on
9 Centreville Road to Frying Pan Road, Route No. 608; thence northwesterly on Frying Pan Road
10 to the end of said road; thence due west to point in the center of Sully Road, Route No. 28; thence
11 north on Sully Road to the County line, for the point of ending; excluding the Reston Franchise
12 Area as defined herein, the Town of Herndon, and the Town of Vienna.

13 Whenever the North County Franchise aArea is described by reference to the Columbia
14 Gas Transmission Corporation pipeline easement or to roads, the Ffranchise area shall be
15 delineated by the line following the middle of the aforementioned pipeline easement or roads.
16 However, if construction of the North County Franchise aArea reasonably requires a Grantee to
17 use poles or easements along any roadway which serves as a border for that Ffranchise area, and
18 if such poles or easements are located beyond the centerline of any such roadway, and if the
19 Grantee obtains proper permission for the use of such poles or easements, then the Grantee may
20 use such poles or easements to construct and operate its system in the North County Franchise
21 aArea so long as a Grantee does not provide cable service to an area for which it does not hold a
22 Ffranchise.

1 The map which shows the boundaries of the Reston Franchise Area is designated above as
2 the official map of the Reston Franchise aArea. To the extent that the boundaries of that map and
3 the boundaries described by the text of this subsection are in conflict, either by realignment of a
4 road or otherwise, and where it cannot be determined clearly where the boundary may lie, then the
5 boundary between the Reston Franchise aArea and the North County Franchise aArea, as shown
6 on the official map, shall take precedence over the text of this subsection.

7 (c) *South County Franchise Area*: That area of the County lying south of the southern
8 border of the North County Franchise aArea.

9 [Formerly Sec. 9.1-7-1; new Sec. 9.2-3-3]

10 **Section 9.2-3-4. Franchise term.**

11 The term of ~~an original F~~a franchise shall not exceed fifteen years from the date the
12 ~~F~~franchise is accepted by a Grantee. ~~The term of a renewed F~~franchise shall be no more than
13 ~~fifteen years~~. This provision shall not be construed to prohibit or restrict the extension of an
14 existing ~~F~~franchise term pending renewal proceedings pursuant to applicable law.

15 [Formerly Sec. 9.1-5-1; new Sec. 9.2-3-4]

16 **Section 9.2-3-5. Continuity of service.**

17 ~~(a) A Grantee shall operate its C~~cable system pursuant to this Chapter and its
18 ~~F~~franchise agreement without interruption, except as otherwise provided by this Chapter or its
19 ~~F~~franchise agreement. Following the expiration or revocation of its ~~F~~franchise, a Grantee shall, at
20 the County's request, as trustee for its successor in interest, operate its ~~C~~cable system for a
21 temporary period (the "~~Transition Period~~") as necessary to maintain service to Subscribers, and
22 shall cooperate with the County to assure an orderly transition from it to the County or another

1 ~~Ffranchise holder.~~ A Grantee shall operate its cable system pursuant to its franchise requirements
2 without interruption, except as otherwise provided in this Chapter or its franchise agreement. If
3 the Grantee's system is transferred to another party, the Grantee shall ensure an orderly transfer of
4 operations so that subscribers' service is not interrupted.

5 ~~(b) — During the Transition Period, a Grantee shall not sell any of its Ccable system~~
6 ~~assets, nor make any physical, material, administrative or operational change that would tend to~~
7 ~~degrade the quality of service to Subscribers, decrease Gross Revenues, or materially increase~~
8 ~~expenses without the express permission, in writing, of the County or its assigns.~~

9 ~~—— (c) — The County may seek legal and/or equitable relief to enforce the provisions of this~~
10 ~~Section.~~

11 ~~—— (d) — The Transition Period shall be no longer than the reasonable period required to~~
12 ~~arrange for an orderly transfer of the Ccable system to the County or to another Ffranchise holder,~~
13 ~~unless mutually agreed to by a Grantee and the County. During the Transition Period, a Grantee~~
14 ~~will continue to be obligated to comply with the terms and conditions of this Chapter, its Ffranchise~~
15 ~~agreement, and applicable laws and regulations.~~

16 ~~—— (e) — If a Grantee abandons its Ccable system during the Ffranchise term, or fails to~~
17 ~~operate its Ccable system in accordance with the terms of this Chapter and its Ffranchise agreement~~
18 ~~during any Transition Period, the County, at its option, may operate a Grantee's Ccable system,~~
19 ~~designate another entity to operate the Grantee's Ccable system temporarily until the Grantee~~
20 ~~restores service under conditions acceptable to the County or until a Grantee's Ffranchise~~
21 ~~agreement is revoked and a new Grantee selected by the County is providing service, or obtain an~~
22 ~~injunction requiring a Grantee to continue operations.~~

1 ~~——(f)—— For its management services during the Transition Period, the Grantee shall be~~
 2 ~~entitled to receive as compensation the "Net Income" generated during the Transition Period. For~~
 3 ~~the purposes of this Subsection, "Net Income" means the amount remaining after deducting from~~
 4 ~~Gross revenues all of the actual, direct and indirect, expenses associated with operating the~~
 5 ~~Grantee's Cable system, including the Franchise Fee, interest, depreciation and all taxes, all as~~
 6 ~~determined in accordance with generally accepted accounting principles.~~

7 [Formerly Sec. 9.1-5-7; new Sec. 9.2-3-5]

8 **Section 9.2-3-6. Service availability.**

9 Pursuant to the conditions in its franchise agreement, Aa Grantee shall make its Ccable
 10 services available at all residences, businesses, and other structures within its Ffranchise area or
 11 areas as long as the current or potential Ssubscriber's financial and other obligations to the Grantee
 12 are satisfied. ~~A Grantee shall make Ccable service available without line extension surcharges to~~
 13 ~~at least 85% of the total occupied dwelling units in its Ffranchise area or areas pursuant to the~~
 14 ~~terms and conditions specified in its Ffranchise agreement.~~ A Grantee may refuse to provide
 15 Ccable service when: (i) when it is unable pursuant to normal industry practice after reasonable
 16 efforts to obtain necessary programming, real property or access rights; (ii) when its prior service,
 17 payment, or theft of service history with a Pperson has been unfavorable; or, (iii) ~~pursuant to~~
 18 ~~written waiver by the Communications Administrator~~ for other grave causes, such as threats to the
 19 Grantee's employees, subject to the right of the Cable Television Administrator or designee to
 20 review and approve such refusal.

21 [Formerly Sec. 9.1-7-2(a); new Sec. 9.2-3-6]

1 **Section 9.2-3-7. Line extension requirements.**

2 (a) Subject to the requirements established in ~~§subsection 9.1-7-2(a)~~, Section 9.2-3-6,
3 a Grantee may condition the extension of its ~~C~~cable service to lower-density areas of the County
4 on the potential ~~S~~subscriber's payment of a line extension surcharge. ~~Such extensions shall be~~
5 ~~subject to the least burdensome of: (i) the line extension requirements of its Franchise agreement;~~
6 ~~or, (ii) the line extension requirements in any other Franchise agreement then in effect for the same~~
7 ~~Franchise area. For the purposes of this Subsection, "least burdensome" means those requirements~~
8 ~~for line extension that take effect at the highest densities of occupied dwelling units per mile~~
9 ~~passed at which line extension surcharges could be applied. Such surcharge shall be no more than~~
10 the amount necessary to recover the Grantee's additional actual costs of construction from the
11 subscribers paying the surcharge.

12 (b) If a resident or the County requests a cost estimate for a line extension or drop
13 installation to a particular potential subscriber, a Grantee shall provide such estimate within 45
14 days, without charge to the resident or the County. Such time period may be extended by the Cable
15 Television Administrator. Such an estimate shall include the Grantee's calculation of density, a
16 design, and a breakdown of the cost, including but not limited to materials and labor, as worked
17 out by the Grantee. A Grantee may include reasonable site survey costs in its estimate, but may
18 not charge the resident or the County for such site survey costs unless the resident or the County
19 agrees to pay for the extension. Upon its request, the County may review such cost estimate, which
20 review may include, without limitation, investigation of alternative routes; however, the Grantee
21 shall have sole discretion as to the use of any alternative route. If a resident signs an agreement to
22 pay the Grantee for costs relating to a line extension or drop installation, the agreement shall
23 include the specific amount the resident is obliged to pay.

1 [New in Chapter 9.2]

2 ~~(b)~~(c) To the extent that may be allowed by a Grantee's Ffranchise agreement or by federal
3 or state law, tThe County may require such a Grantee to interconnect its Ccable system with other
4 cable systems or other broadband communications facilities (e.g., a television communication
5 network connecting public institutions or facilities) located adjacent to or within the County.
6 Interconnection shall be made at such time as provided by applicable Franchise agreement or
7 within ~~one hundred eighty~~ 180 days from the effective date of a request by the County, or within
8 a longer period of time as may be specified by the County in its request. ~~No interconnection shall~~
9 ~~take place without the prior approval of the County.~~ All signals to be interconnected shall comply
10 with FCC technical standards for all classes of signals. This Ordinance Chapter does not grant any
11 retransmission rights.

12 ~~(e) — Each Grantee shall make every reasonable effort to cooperate with cable Ffranchise~~
13 ~~holders in contiguous communities in order to provide Ccable service in areas within the County.~~

14 ~~(d) — The County shall make every reasonable effort to cooperate with the franchising~~
15 ~~authorities in contiguous communities, and with each Grantee, in order to provide Ccable service~~
16 ~~in areas outside the County.~~

17 [Formerly Sec. 9.1-7-3; new Sec. 9.2-3-7]

18 **Section 9.2-3-8. Franchise validity.**

19 A Grantee agrees, by its acceptance of a Ffranchise, to accept the validity of the terms and
20 conditions of ~~this Chapter and its Ffranchise agreement, and of this Chapter as it stands at the time~~
21 of acceptance, in their entirety and that it will not, at any time, proceed against the County in any
22 claim or proceeding challenging any term or provision of this Chapter or its Ffranchise as

1 unreasonable, arbitrary, or void, or that the County did not have the authority to impose such term
2 or condition.

3 [Formerly Sec. 9.1-9-3; new Sec. 9.2-3-8]

4 **Section 9.2-3-9. Acts at Grantee's expense.**

5 Any act that a Grantee is or may be required to perform under this Chapter, a franchise
6 agreement, or applicable law shall be performed at the Grantee's expense, unless expressly
7 provided to the contrary in this Chapter, a franchise agreement, or applicable law.

8 [Formerly Sec. 9.1-3-3; new Sec. 9.2-3-9]

9 **Section 9.2-3-10. Eminent Domain.**

10 Nothing in this Chapter shall be deemed or construed to impair or affect, in any way or to
11 any extent, the County's rights of eminent domain.

12 [Formerly Sec. 9.1-3-4; new Sec. 9.2-3-10]

13 **Section 9.2-3-11. Notice to Grantee.**

14 The Board shall not grant a renewal, approve a transfer, or shorten or revoke a franchise
15 unless the County has given the Grantee at least ~~thirty~~ 30 days' advance written notice of the initial
16 meeting at which the Board will consider such action. The notice shall advise the Grantee of the
17 time, place, and purpose of the meeting. The Board's consideration or decision may be carried
18 over to a later date with oral notice to the Grantee.

19 [Formerly Sec. 9.1-5-2; new Sec. 9.2-3-11]

20 **Section 9.2-3-12. Acceptance.**

21 ~~(a) — An applicant or Grantee to whom the Board grants one or more non-exclusive~~
22 ~~Franchises shall, in addition to the non-refundable application fee specified herein, pay to the~~

1 County at the time the Grantee files its Franchise agreement acceptance, Seventy five Thousand
2 Dollars per Franchise area. The payment shall be non-refundable, shall be made payable to the
3 order of the "County of Fairfax" and may be used to offset in whole or in part any direct costs
4 incurred by the County in granting the Franchise.

5 (b)A Grantee acknowledges by its acceptance of a Franchise that it has not been induced
6 to accept the same by any promise, oral or written, by or on behalf of the County or by any third
7 Pperson regarding any term or condition of this Chapter or a Franchise agreement which is not
8 expressed therein, and that no promise or inducement, oral or written, has been made to any County
9 employee or official regarding receipt of a cable Franchise.

10 (c)(b) A Grantee acknowledges by its acceptance of a Franchise that it has carefully read
11 the terms and conditions of this Chapter and the Franchise agreement and accepts all of the terms
12 and conditions imposed by this Chapter and the Franchise agreement and agrees to abide by the
13 same.

14 (d)(a) A Franchise and all of its terms and conditions shall be accepted by a Grantee by
15 written instrument filed in hardcopy with the County Executive within ~~thirty calendar~~ 30 days after
16 the granting of the Franchise.

17 [Formerly Sec. 9.1-9-8; new Sec. 9.2-3-12]

1 Franchise awarded in conformity with this Chapter, or to strictly adhere to the substance
2 of its Franchise proposal.

3 ~~_____ (2) _____~~ Such bond or bonds shall be maintained for a period of two years from the
4 time of a Grantee's acceptance of a Franchise.

5 (c) The application for a grant of an initial Franchise shall provide, at a minimum, the
6 following information, and shall clearly identify, by Code section, where each item of information
7 required by this Section appears in the application:

8 (1) ~~_____~~ The name and address of the applicant;
9 ~~_____ (2) _____~~ and an identification of the ownership and control of the applicant,
10 including: the names and addresses of the ten largest holders of an ownership interest in the
11 applicant and affiliates of the applicant, and all Persons with five percent or more ownership
12 interest in the applicant and any person that controls the applicant, repeating such disclosure for
13 any persons that control or own more than five percent of those persons, and so on until the ultimate
14 owners and controllers of the applicant are reached and its affiliates; the Persons who control the
15 applicant and its affiliates; all officers and directors of the applicant and its affiliates; and any other
16 business affiliation and cable system ownership interest of each named Person.; provided,
17 however, that if a person with five percent or more ownership interest at any stage is a publicly
18 traded company, no further information on that publicly traded company's ownership is required;

19 ~~(2)(3)~~ A demonstration of the applicant's technical ability to construct and/or
20 operate the proposed Cable system, including identification of key personnel.;

21 ~~(3)(4)~~ A demonstration of the applicant's legal qualifications to construct and/or
22 operate the proposed Cable system, including but not limited to a demonstration that the applicant
23 meets the following criteria:;

1 ~~_____ (A) The applicant shall have the necessary authority under Virginia law~~
2 ~~to operate a Cable system;~~

3 ~~_____ (B) The applicant shall have the necessary authority under federal law~~
4 ~~to hold the Franchise and to operate a Cable system. An applicant must have, or show that it is~~
5 ~~qualified to obtain, any necessary federal licenses or authorizations required to operate the system~~
6 ~~proposed;~~

7 ~~_____ (C)(5) The applicant shall report if, whether, at any time during the ten years~~
8 ~~preceding the submission of the application, the applicant was convicted of any act or omission of~~
9 ~~such character that the applicant cannot be relied upon to deal truthfully with the County and the~~
10 ~~§subscribers of the Ccable system, or to substantially comply with its lawful obligations under~~
11 ~~applicable law, including but not limited to obligations under consumer protection laws and laws~~
12 ~~prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct. This same criterion~~
13 ~~shall be applied to each party person owning an interest of five percent or more in the applicant;~~

14 ~~(4)(6) A a demonstration of the applicant's financial qualifications of the~~
15 ~~applicant, including at least the following: to construct and operate the proposed cable system;~~

16 ~~_____ (A) The applicant's proposed rate structure, including projected charges~~
17 ~~for each service tier, installation, converters and other proposed equipment or services;~~

18 ~~_____ (B) A statement prepared by a certified public accountant regarding the~~
19 ~~applicant's financial ability to complete the construction proposed, to meet the time frame~~
20 ~~proposed, and to operate the Cable system proposed; and~~

21 ~~_____ (C) Pro forma financial projections for the proposed franchise term,~~
22 ~~including a statement of projected income, and a schedule of planned capital expenditures, with~~
23 ~~all significant assumptions explained in notes or supporting schedules.~~

1 ~~Information on the availability of space in conduits including, where~~
2 ~~appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.~~

3 ~~(8)(9) A~~a demonstration of how the applicant will reasonably meet the future
4 cable-related needs and interests of the community, ~~including descriptions of how the applicant~~
5 ~~will meet the needs described in any community needs assessment conducted by or for the County,~~
6 ~~and how the applicant will provide adequate PEG or other access channel capacity, facilities, or~~
7 ~~financial support to meet the community's needs and interests as authorized by 47 U.S.C. § 531,~~
8 ~~and will provide leased access channels as required by 47 U.S.C. § 532..~~

9 ~~(9) A demonstration to support the findings required by Virginia Code § 15.2-~~
10 ~~2108(B), as amended.~~

11 ~~(10) A proposed Franchise agreement with supporting analysis that demonstrates~~
12 ~~that the terms and conditions of the proposed Franchise agreement are not more favorable or less~~
13 ~~burdensome than those in any existing Franchise agreement within the Franchise area.~~

14 ~~(11) Any other information that may be reasonably necessary to demonstrate~~
15 ~~compliance with the requirements of this Chapter.~~

16 ~~(12)(10) Any additional information that the County may have requested of~~
17 ~~the applicant in writing prior to application that is relevant to the County's consideration of the~~
18 ~~application;~~

19 ~~(13)(11) An affidavit or declaration of ~~the applicant or~~ an authorized officer~~
20 ~~of the applicant certifying the truth and accuracy of the information in the application;~~

21 ~~(12) the names, addresses, phone numbers, and e-mail addresses of all persons~~
22 ~~authorized to act on behalf of the applicant with respect to the application, pursuant to Section 9.1-~~
23 ~~3-7 Section 9.2-4-3;~~

1 (13) a cover letter prominently describing any deadline by which the applicant
2 believes the County must act on the application pursuant to federal or state law, including but not
3 limited to 47 C.F.R. § 76.41 and Virginia Code § 15.2-2108.21.

4 ~~(d)(14) The Communications Administrator~~ Cable Television Administrator shall review
5 any application received by the County to determine whether it is complete. ~~The County~~
6 ~~Communications Administrator~~ Cable Television Administrator may, ~~at its discretion and upon~~
7 ~~request of an applicant,~~ waive in writing the provision of any of the information required by this
8 Section. ~~The Communications Administrator~~ Cable Television Administrator may reject any
9 application that the Communications Administrator Cable Television Administrator deems
10 incomplete with respect to the information required in subsection (c), specifying in such rejection
11 what additional information must be supplied to complete the application, and such rejection shall
12 constitute denial of the application without prejudice for purposes of federal and state law.

13 ~~(d) — All Franchise applications for a Franchise area or areas described in this Chapter~~
14 ~~shall include a map of suitable scale showing all federal, state, and County roads that identifies the~~
15 ~~schedule pursuant to which the applicant proposes to construct its Cable system, which shall be~~
16 ~~incorporated into a Franchise granted pursuant to this Chapter.~~

17 (e) An application pursuant to subsections (a)-(d) shall not be required to the extent
18 that an entity submits a request to negotiate a franchise pursuant to Virginia Code § 15.2-2108.21.

19 ~~(e)(f)~~ ~~The Communications Administrator~~ Cable Television Administrator may
20 reasonably request further information in addition to the information provided in the application
21 from any entity seeking a cable franchise. ~~The applicant~~ entity seeking a franchise shall provide
22 such information in full cooperation with the County, pursuant to such reasonable deadlines as the
23 ~~Communications Administrator~~ Cable Television Administrator may establish.

1 (g) In evaluating ~~an application for~~ a potential franchise, the County may consider,
2 ~~but not be limited to, without limitation,~~ the following factors:

3 (1) The extent to which the ~~applicant~~ potential Grantee has substantially
4 complied with applicable law and the material terms of any existing cable ~~franchise for~~ in the
5 County;

6 (2) Whether the quality of the ~~applicant's~~ potential Grantee's service under any
7 existing ~~franchise in the County,~~ including but not limited to signal quality, response to ~~customer~~
8 subscriber or former subscriber complaints, and billing practices, ~~and the like,~~ has been reasonable
9 in light of the needs and interests of the communities served;

10 (3) Whether the ~~applicant~~ potential Grantee has the financial, technical, and
11 legal qualifications to provide ~~Cable~~ cable service;

12 (4) Whether the ~~application satisfies any minimum requirements established by~~
13 ~~the County and is otherwise~~ applicant's potential Grantee's proposal is reasonable to meet the
14 future cable-related needs and interests of the community, taking into account the cost of meeting
15 such needs and interests;

16 (5) Whether the ~~applicant~~ potential Grantee will provide adequate PEG ~~or other~~
17 access ~~channel~~ capacity, facilities, and financial support ~~and leased access; and;~~

18 (6) Whether the potential Grantee files materially misleading information in its
19 application or intentionally withholds material information that the potential Grantee lawfully is
20 required to provide;

21 (7) Whether there is any reason why issuance of a ~~franchise to the potential~~
22 Grantee under the applicable circumstances would not be ~~is~~ in the public interest.

1 _____ (h) The Consumer Protection Commission may hold one or more public hearings for
2 purposes of public input.

3 _____ (i) Any franchise granted by the Board shall be granted by adoption of an ordinance.

4 _____ (j) If the Board decides not to grant a franchise, it will adopt a resolution stating why
5 the franchise was not granted.

6 _____ (k) This Chapter does not grant any existing Grantee or other third party standing to
7 challenge either (1) the denial of any other person's application or request, or (2) the issuance of a
8 franchise to any other person.

9 [Formerly Sec. 9.1-3-5; new Sec. 9.2-4-1]

10 **Section 9.2-4-2. Application for grant of renewal franchise.**

11 ~~(a) If the provisions of 47 U.S.C. § 546(a) (g) are properly invoked, the County shall~~
12 ~~issue a Request for Renewal Proposal ("RFRP") after conducting a proceeding to: (i) review the~~
13 ~~renewal applicant's past performance; and (ii) identify the County's future cable-related~~
14 ~~community needs and interests. The County shall establish deadlines and procedures for~~
15 ~~responding to the RFRP, may seek additional information from the applicant, and shall establish~~
16 ~~deadlines for the submission of that additional information. Following receipt of the application~~
17 ~~responding to the RFRP (and such additional information as may be provided in response to~~
18 ~~requests), the Board shall determine that the Franchise should be renewed or make a preliminary~~
19 ~~assessment that the Franchise should not be renewed. If the Board makes a preliminary assessment~~
20 ~~that the Franchise should not be renewed, and the applicant that submitted the renewal application~~
21 ~~notifies the County, either in its RFRP response or within ten working days of the preliminary~~
22 ~~assessment, that it wishes to pursue any rights to an administrative proceeding it has under the~~
23 ~~Cable Act, then the County shall commence an administrative proceeding after providing prompt~~

1 ~~public notice thereof, in accordance with the Cable Act.~~The renewal of any franchise to provide
2 cable service shall be conducted in a manner consistent with applicable federal and state law.

3 (b) ~~— If an administrative hearing is commenced pursuant to 47 U.S.C. § 546(e), the~~
4 ~~applicant's renewal application shall be evaluated pursuant to federal law.~~

5 (e) ~~— If the County decides to grant renewal, it shall prepare a final Franchise agreement~~
6 ~~that incorporates, as appropriate, the commitments made by the applicant in the renewal~~
7 ~~application. If the applicant accepts the Franchise agreement, the Franchise shall be renewed. If~~
8 ~~the Franchise agreement is not accepted within the time limits established by 47 U.S.C.~~
9 ~~§ 546(e)(1), renewal shall be deemed preliminarily denied, and an administrative proceeding~~
10 ~~commenced if the applicant that submitted the renewal application requests it within ten days of~~
11 ~~the expiration of the time limit established by 47 U.S.C. § 546(e)(1).~~

12 (d) ~~— Notwithstanding the preceding subsections, a cable operator may submit an~~
13 ~~application for renewal of a Franchise pursuant to 47 U.S.C. § 546(h). Such a proposal may be~~
14 ~~submitted at any time and the Board may, after affording the public adequate notice and~~
15 ~~opportunity for comment, grant or deny such proposal at any time. An informal renewal~~
16 ~~application may be denied for any reason. If an informal renewal application is granted, then the~~
17 ~~steps specified in this Subsection pursuant to 47 U.S.C. § 546(a) (g) need not be taken.~~

18 (f)(b) Misrepresentation or fraud by the applicant shall be grounds for denial of an
19 application.

20 (e)(c) If a renewal of a Ffranchise is denied, the Board may acquire ownership of the
21 Ccable system or effect a transfer of ownership of the system to another Pperson, subject to
22 applicable law and the Grantee's franchise agreement. Any such acquisition or transfer shall be at

1 fair market value of the system as of the expiration date of the Ffranchise valued as a going concern
2 but with no value allocated to the Ffranchise itself.

3 ~~(g) The provisions of this Section shall be read and applied so that they are consistent~~
4 ~~with 47 U.S.C. §§ 546 and 547.~~

5 [Formerly Sec. 9.1-3-6; new Sec. 9.2-4-2]

6 **Section 9.2-4-3. Applicant representatives.**

7 Any Pperson who files seeks an initial or renewal Ffranchise application with the County
8 shall forthwith, at all times, disclose to the County, in writing, the names, addresses ~~and~~
9 occupations, phone numbers, and e-mail addresses of all Ppersons who are authorized to represent
10 or act on behalf of the applicant in those matters pertaining to the application proposed franchise.
11 This disclosure shall specifically identify at least one individual who has authority to make
12 negotiating decisions on behalf of the applicant and will participate in negotiations. The
13 requirement to make the disclosure described in this Section shall continue until the County has
14 granted or ~~rejected~~ denied an applicant's application, or until an applicant entity withdraws its
15 application or ceases to seek a franchise with the County.

16 [Formerly Sec. 9.1-3-7; new Sec. 9.2-4-3]

17 **Section 9.2-4-4. Franchise modification.**

18 ~~(b)(a) No franchise agreement shall be modified without approval by Fthe Board and the~~
19 ~~Grantee. shall consider requests for a Franchise modification upon request by the County or~~
20 ~~Grantee. The Franchise modification request shall include a review and recommendation by the~~
21 ~~Communications Administrator.~~

1 ~~(a)~~(b) A Grantee may request a ~~Franchise~~ modification of its franchise agreement by
2 submitting a written application to the Cable Television Administrator. To be acceptable for filing,
3 a signed original of the application shall be submitted together with ~~twelve copies~~ an electronic
4 copy of the application in searchable PDF format or other searchable electronic format acceptable
5 to the County. The application must ~~conform to any applicable request for proposals,~~ and contain
6 all ~~required~~ information required in this Section or pursuant to applicable federal or state
7 law. ~~Communications Administrator for any modification of a Franchise agreement requested in~~
8 ~~accordance with~~ 47 U.S.C. § 545;

9 (c) An application for modification shall provide, at a minimum, the following
10 information, and shall clearly identify, by Code section, where each item of information required
11 by this Section appears in the application:

12 (1) the specific modification requested;

13 (2) the justification for the requested modification, including but not limited to the
14 impact of the requested modification on subscribers and others, and the financial impact on the
15 applicant if the modification is approved or disapproved, demonstrated through, inter alia,
16 submission of pro forma financial statements;

17 (3) a statement indicating ~~that~~ whether the modification is sought pursuant to
18 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards
19 set forth in 47 U.S.C. § 545;

20 (4) any additional information that the County may have requested of the
21 applicant in writing prior to application that is relevant to the County's consideration of the
22 application;

1 _____(5) any other information that the applicant believes is necessary for the County to
2 make an informed determination on the application for modification;

3 _____(6) a cover letter prominently describing any deadline by which the applicant
4 believes the County must act on the application pursuant to federal or state law; and

5 (7) an affidavit or declaration of ~~the applicant or~~ an authorized officer of the
6 applicant certifying the truth and accuracy of the information.

7 [Formerly Sec. 9.1-5-3; new Sec. 9.2-4-4, reversing (a) and (b)]

8 _____(d) An application for modification shall be reviewed as indicated in Section 9.2-4-
9 1(d). The Cable Television Administrator may request further information as provided in Section
10 9.2-4-1(f).

11 [New in Chapter 9.2]

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ARTICLE 5.

Transfers.

Section 9.2-5-1. Transfer of Franchise.

(a) A franchise is a privilege that is in the public trust and personal to a Grantee. A Grantee's obligations under its franchise involve personal services, the performance of which involves personal credit, trust, and confidence in the Grantee.

(b) No transfer shall occur without prior written notice to and approval of the Board. For purposes of this Section, written approval shall be expressed by ordinance. A transfer without the prior written approval of the Board shall be considered to impair the County's assurance of due performance. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.

(c) A Grantee shall promptly notify the County of any proposed transfer. If any ostensible transfer takes place without prior notice to the County, the Grantee shall promptly notify the County that the ~~transfer~~ transaction has occurred.

(d) At least ~~one hundred twenty calendar~~ 120 days prior to the contemplated effective date of a transfer, a Grantee shall submit to the County an application for approval of a transfer. The application shall provide complete information on the proposed transaction, including but not limited to details on the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application:

- (1) all information and forms required under federal law;
- (2) any shareholder reports or filings with the Securities and Exchange Commission that pertain to the transaction;

1 (3) other information ~~necessary~~ sufficient to provide a complete and accurate
2 understanding of the financial position of the ~~C~~cable system before and after the proposed transfer;

3 (4) complete information regarding any potential impact of the transfer on
4 ~~S~~subscriber rates and service;

5 (5) information sufficient to show the proposed transferee's legal, technical,
6 and financial qualifications to operate the cable system and satisfy the franchise obligations; and

7 ~~(5)(6)~~ any contracts or other documents that relate to the proposed transaction, and
8 all documents, schedules, exhibits, or information referred to therein ~~as the County may request,~~
9 that the County requests in writing prior to the submission of the application.

10 (e) To the extent consistent with federal law, the County may waive in writing any
11 requirement that information be submitted as part of the transfer application, without thereby
12 waiving any rights the County may have to request such information after the application is filed.

13 (f) For the purposes of determining whether the Board should ~~consent to~~ approve a
14 transfer, the County or its agents may inquire into all qualifications of the prospective transferee
15 and such other matters as the County may deem necessary to determine whether the transfer is in
16 the public interest and should be approved, denied, or conditioned as provided under subsection

17 (g). A Grantee and any prospective transferees shall assist the County in any such inquiry, and if
18 they fail to do so, the request for a transfer may be denied.

19 (g) In making a determination as to whether to ~~grant, approve, deny, or grant approve~~
20 subject to conditions, an application for a transfer of a ~~F~~franchise, the Board may consider, by way
21 of example and not limitation, the legal, financial, and technical qualifications of the transferee to
22 operate the ~~C~~cable system; any potential impact of the transfer on ~~S~~subscriber rates or services;
23 whether a Grantee is in compliance with its ~~F~~franchise agreement and this Chapter and, if not, the

1 proposed transferee's commitment to cure such noncompliance; whether the transferee owns or
2 controls any other ~~C~~cable system in the County, and whether operation by the transferee may
3 eliminate or reduce competition in the delivery of ~~C~~cable service in the County; and whether
4 operation by the transferee or approval of the transfer would adversely affect ~~S~~subscribers, the
5 public, or the County's interest under this Chapter, a ~~F~~franchise, or other applicable law. The
6 Board shall not withhold its ~~consent~~ approval unreasonably.

7 (h) Any ~~F~~franchise transfer without the Board's prior written approval shall be
8 ineffective, shall make the ~~F~~franchise subject to revocation at the County's sole discretion, and
9 shall subject the Grantee and/or ~~transferee~~ transferee to any other remedies available under a
10 ~~F~~franchise agreement, this Chapter, or other applicable law.

11 (i) No application for a transfer of a ~~F~~franchise shall be ~~granted~~ approved unless the
12 transferee agrees in writing that it will abide by and accept all terms of this Chapter, ~~and~~ the
13 ~~F~~franchise agreement, and any terms the Board requires as a condition of the transfer pursuant to
14 subsection (g), and that it will assume the obligations, liabilities, and responsibility for all acts and
15 omissions, known and unknown, of the previous Grantee(s) under this Chapter and the ~~F~~franchise
16 agreement, for all purposes, including renewal, unless the County, in its sole discretion, expressly
17 waives ~~this~~ these requirements in whole or in part.

18 (j) Approval by the Board of a transfer shall not constitute a waiver or release of any
19 of the rights of the County under this Chapter and a ~~F~~franchise agreement, whether arising before
20 or after the date of the transfer.

21 (k) For the purposes of this Section, a transfer means ~~any assignment of a Franchise~~
22 ~~that requires FCC Form 394 or equivalent~~ any transaction for which the County's approval is
23 required pursuant to the Grantee's franchise agreement.

1 [Formerly Sec. 9.1-5-10; new Sec. 9.2-5-1]

2 **~~Section 9.1-5-11. Change in ownership control of a Franchise.~~**

3 ~~Approval by an action of the Board shall be required for any transfer of control that requires~~
4 ~~FCC Form 394 or equivalent. By its acceptance of a Franchise agreement a Grantee shall~~
5 ~~specifically grant and agree that any such transfer of control without approval of the Board~~
6 ~~constitutes a violation of this Chapter and its Franchise.~~

7 [Formerly Sec. 9.1-5-11]

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ARTICLE 6.

System Design, Construction, and Operations.

Section 9.2-6-1. Cable service and system description characteristics.

~~(b)~~(a) A ~~C~~cable system to be installed by a Grantee shall meet or exceed ~~the~~all applicable technical standards specified by the FCC and any other applicable technical standards (to the extent permitted by law). If the FCC should delete these standards, or otherwise fail to preempt this area of regulation, the County may prescribe technical standards, to the extent permitted by applicable law.

~~(e)~~(b) As authorized by 47 U.S.C. § 531, a Grantee shall provide PEG access. ~~Such PEG access channel capacity, facilities, and financial support shall be provided as specified in its Franchise agreement.~~

~~(d)~~ A Grantee shall provide without charge within its Franchise area(s), one activated service outlet and free regular subscriber service to each fire station, public school, police station, public library, and such buildings used for public purposes as may be designated by the County; provided, however, that if it is necessary to extend a Grantee's trunk or feeder lines more than three hundred feet solely to provide service to any such school or public building, the County shall have the option of paying the Grantee's direct costs for such extension in excess of three hundred feet, or of releasing the Grantee from or postponing the Grantee's obligation to provide service to such building. Furthermore, a Grantee shall not be permitted to recover, from any public building owner entitled to free service, more than the Grantee's actual cost for any additional converters required and the direct cost of installing, when requested so to do, more than one outlet, or concealed inside wiring, or a service outlet requiring more than two hundred fifty feet of drop cable; provided, however, that the Grantee shall not charge for the provision of regular subscriber service to the

1 ~~additional service outlets so installed in public schools, police stations, fire stations, public~~
2 ~~libraries, and County offices in addition to any such other public facilities as are specified in the~~
3 ~~Grantee's Franchise agreement. The Grantee shall provide full operational capability to the service~~
4 ~~outlets in its Franchise area. The County, at its sole discretion, may waive the provisions of this~~
5 ~~Subsection in exchange for goods and/or services of equal value to the County.~~

6 [Formerly Sec. 9.1-7-2(b)-(c); new Sec. 9.2-6-1]

7 **Section 9.2-6-2. Emergency Alert System.**

8 ~~——(f) A Grantee shall install and thereafter maintain for use by the County an Emergency~~
9 ~~Alert System ("EAS") comply with the federal Emergency Alert System ("EAS") regulations, 47~~
10 ~~C.F.R. Part 11.~~

11 [Formerly Sec. 9.1-7-4(f); new Sec. 9.2-6-2]

12 ~~(1) This EAS shall at all times be operated in compliance with FCC~~
13 ~~requirements. Subject to the foregoing, the EAS shall be remotely activated by telephone and shall~~
14 ~~allow a representative of the County to override the audio and video on all channels on a Grantee's~~
15 ~~Cable system that may lawfully be overridden (subject to any contractual or other rights of local~~
16 ~~broadcasters) without the assistance of the Grantee, for emergency broadcasts from a location~~
17 ~~designated by the County in the event of a civil emergency or for reasonable tests.~~

18 ~~————(2) The County will provide reasonable notice to a Grantee prior to any test use~~
19 ~~of the EAS. A Grantee shall cooperate with the County in any such test to the maximum extent~~
20 ~~feasible.~~

1 **Section 9.2-6-3. Operational requirements ~~and construction.~~**

2 (a) Sections 9.2-6-3 and 9.2-6-4 shall not apply to certificated providers of
3 telecommunications service to the extent they would impose on them any restrictions or
4 requirements concerning the use of the public rights-of-way that are any greater than those imposed
5 on all providers of telecommunications services and nonpublic providers of cable television,
6 electric, natural gas, water, and sanitary sewer services. These Sections shall, however, apply to
7 any such providers to the extent that their activities occur on public or private property outside the
8 public rights-of-way.

9 (b) A Grantee shall construct, operate, and maintain its ~~C~~cable system subject to the
10 supervision of the County or its designees, and in compliance with all applicable laws, ordinances,
11 rules, and regulations, including any amendments thereto. The ~~C~~cable system and all its parts shall
12 be subject to inspection by the County. The County may upon request review a Grantee's
13 ~~construction plans~~ for any construction project prior to commencement of construction.

14 ~~(b) A Grantee shall design, construct, operate, and maintain the system at all times so~~
15 ~~that signals carried are delivered to Ssubscribers with the minimum material degradation in quality.~~

16 (c) No construction, reconstruction, or relocation of a system or any part thereof within
17 the public ways shall be commenced until all applicable ~~written~~ permits have been obtained. The
18 County may impose such conditions and regulations as are necessary for the purpose of protecting
19 any structures in the public ways and for the proper restoration of such public ways and structures,
20 and for the protection of the public and the continuity of pedestrian and vehicular traffic.

21 (d) A Grantee shall perform maintenance on its system so that activities likely to result
22 in an interruption of service are performed during periods of minimum ~~S~~subscriber use of the
23 system. A Grantee shall provide reasonable notice to ~~S~~subscribers and the County before

1 interrupting service for planned maintenance or construction that is expected to take ~~one~~ four hours
2 or more, except that no such notice shall be necessary for planned maintenance or construction
3 taking place between 12 midnight and 6 a.m. Notice shall be provided by a method reasonably
4 calculated to give ~~S~~subscribers actual notice of the planned interruption.

5 (e) Maintenance of a system shall be performed in accordance with technical
6 performance and operating standards established pursuant to FCC rules and regulations. The
7 County may monitor a Grantee's maintenance practices and, to the extent permitted by applicable
8 law, may waive requirements or adopt additional requirements as reasonable to ensure the system
9 remains capable of providing high-quality service.

10 [Formerly Sec. 9.1-7-4(a)-(e); new Sec. 9.2-6-3]

11 ~~(f)~~ A Grantee shall have the authority to trim trees and shrubs on ~~public~~ County
12 property at its own expense as may be necessary to protect its wires and facilities, subject to the
13 regulation, supervision, and/or direction of the County ~~or other local government authority~~.

14 [Formerly Sec. 9.1-7-7(l); new Sec. 9.2-6-3(f)]

15 (g) In the event of an emergency, or where a ~~C~~ cable system creates or is contributing
16 to an imminent danger to health, safety, or property, or is an unauthorized use of property, a
17 Grantee, at its own expense, shall remove, replace, or relocate any or all parts of its system at the
18 request of the County. If the Grantee fails to comply with the County's request, the County may
19 remove, ~~relay~~, or relocate any or all parts of the Grantee's ~~C~~ cable system without prior notice, at
20 the sole expense of the Grantee. A Grantee shall not be responsible under this Chapter or its
21 ~~F~~ franchise agreement if such County action results in a breach of any applicable obligation of a

1 Grantee. The County shall not be held liable to the Grantee for any damages arising from such
2 removal or relocation.

3 [Formerly Sec. 9.1-7-7(j); new Sec. 9.2-6-3(g)]

4 **Section 9.2-6-4. ~~Street occupancy; Construction standards and procedures.~~**

5 ~~—(a)— All installation of electronic equipment shall be of a permanent nature, using~~
6 ~~durable components.~~

7 (a) A Grantee shall maintain all wires, conduits, cables, and other real and personal
8 property and facilities comprising its ~~C~~cable system in good condition, order, and repair.

9 (b) No construction, upgrade, rebuild, reconstruction, or relocation of a ~~C~~cable system,
10 or any part thereof, within any public way shall be commenced unless valid permits have been
11 obtained. ~~A Grantee assumes the full burden of risk in securing the required permits. Failure to~~
12 ~~obtain required permits or other approvals shall in no way relieve a Grantee of its obligations under~~
13 ~~this Chapter and/or a F~~franchise agreement, except that in case of emergency, a Grantee may carry
14 out work to the extent necessary pending the issuance of such permits, as long as the Grantee acts
15 to secure the permits as soon as possible.

16 (c) In the event of disturbance of any ~~road~~public way or public or private property by a
17 Grantee, it shall, at its own expense and in a manner approved by the County, ~~replace and restore such~~
18 ~~road or private property in as good a condition as before the work causing the disturbance was done,~~
19 repair, restore, and replace any property disturbed, damaged, or in any way injured by or on
20 account of its activities substantially to its condition immediately prior to the disturbance, damage,
21 or injury. Under normal operating conditions, such repair, restoration, or replacement shall be
22 completed at the later of 30 days from the date the damage is incurred or 30 days from when the work
23 causing such damage is completed, weather permitting. In the event the Grantee fails to timely

1 perform such repair, restoration, or replacement ~~or restoration~~, the County shall have the right to do
2 so at the sole expense of the Grantee. Payment to the County for such repair, restoration or
3 replacement ~~or restoration~~ shall be upon demand. Nothing in this Section shall be construed to impair
4 any rights of the owners of such private property to assert any claim against a Grantee arising out of
5 such disturbance.

6 (d) A Grantee shall cooperate with all gas, electric, telephone, water, sewer, and other
7 utilities in the placement of its facilities, equipment, or fixtures, so as to minimize the costs and
8 disruption caused by ~~its~~ any construction ~~or maintenance~~ activities.

9 (e) A Grantee shall maintain the service of, shore up, sling, support, protect, and make
10 good, as directed, all water pipes, gas pipes, service pipes, sewers and sewer connections, conduits,
11 ducts, manholes, drains, vaults, buildings, tracks or other structures, sub-structures of public utility
12 companies, and all service lines and structures, including sub-structures of private abutting owners,
13 that are located within the lines of system construction ~~that~~ and may be ~~liable~~ subject to disturbance
14 or injury during the progress of the construction, ~~and all~~ A Grantee shall provide at its own cost
15 and expense all supports, and all labor, and material necessary to reconnect and restore to
16 substantially their original condition all such structures that become disturbed or damaged ~~to their~~
17 ~~original condition shall be provided by the Grantee at its own cost and expense.~~

18 (g) ~~Any and all public ways, public property, or private property that are disturbed or~~
19 ~~damaged during the construction, installation, operation, maintenance, repair, replacement, or~~
20 ~~relocation of a Cable system shall be promptly repaired by a Grantee within thirty days after the~~
21 ~~disturbance or damage, at the Grantee's sole cost and expense. The Communications~~
22 ~~Administrator may extend this thirty-day period for good cause shown.~~

1 ~~(h)(f)~~ Upon reasonable notice, a Grantee shall, by a time specified by the County, protect,
2 support, temporarily disconnect, relocate, or remove any of its property when required by the
3 County by reason of traffic conditions; public safety; construction, maintenance, repair (including
4 resurfacing or widening), or change of grade in public ways or on other public property; ~~public~~
5 ~~way construction; public way maintenance or repair (including resurfacing or widening); change~~
6 ~~of public way grade; or~~ construction, installation or repair of sewers, drains, water pipes, power
7 lines, signal lines, tracks, or any other type of government-owned communications system, public
8 work or improvement or any government-owned utility; provided, however, that a Grantee shall,
9 in all such cases, with the County's consent, have the option of abandoning any property in place.

10 ~~(i)(g)~~ If any ~~P~~person that is authorized to place facilities in the public ways requests a
11 Grantee to protect, support, temporarily disconnect, remove, or relocate its facilities to
12 accommodate the construction, installation, operation, maintenance, or repair of the facilities of
13 such other ~~P~~person, the Grantee shall, after ~~thirty~~ 30 days' advance written notice, take action to
14 effect the necessary changes requested. Unless the matter is governed by a valid contract between
15 the parties, a pole attachment agreement, or federal law or regulation or ~~Virginia~~ state law, or in
16 any cases where the ~~C~~cable system that is being requested to move was not lawfully located in the
17 public ways, then the reasonable cost of the same shall be borne by the ~~P~~person requesting the
18 protection, support, temporary disconnection, removal, or relocation and performed at no charge
19 to the County.

20 ~~(j)~~ ~~In the event of an emergency, or where a Ccable system creates or is contributing~~
21 ~~to an imminent danger to health, safety, or property, or is an unauthorized use of property, a~~
22 ~~Grantee, at its own expense, shall remove, replace, or relocate any or all parts of its system at the~~
23 ~~request of the County. If the Grantee fails to comply with the County's request, the County may~~

1 ~~remove, relay, or relocate any or all parts of the Grantee's Cable system without prior notice, at~~
2 ~~the sole expense of the Grantee. A Grantee shall not be responsible under this Chapter or its~~
3 ~~Franchise agreement if such County action results in a breach of any applicable obligation of a~~
4 ~~Grantee. The County shall not be held liable to the Grantee for any damages arising from such~~
5 ~~removal or relocation.~~

6 ~~(k)(h)~~ A Grantee shall, on the request of any ~~P~~person holding a valid building moving
7 permit issued by the County, or on request of the County, temporarily raise or lower its wires to
8 permit the moving of buildings. The expense of such temporary removal or raising or lowering of
9 wires shall be paid by the requesting party ~~Person requesting the same.~~ ~~If and the Grantee shall~~
10 ~~have the authority to require payment in advance, except in the case where the requesting Person~~
11 ~~party is the County, in which case the Grantee will invoice the County, and the County will pay,~~
12 ~~following completion of work. If the requesting party is not the County, the Grantee shall have~~
13 ~~the authority to require payment in advance.~~ The Grantee shall be given reasonable advance notice
14 in writing to arrange for such temporary wire changes.

15 ~~(m)(i)~~ A Grantee shall utilize existing poles, conduits, and other facilities whenever
16 possible. However, no location of any pole or wire-holding structure of a Grantee shall be a vested
17 interest, ~~and A Grantee shall remove, replace, or modify such poles, structures, or facilities shall~~
18 ~~be removed, replaced or modified by a Grantee at its own expense whenever the Board County or~~
19 ~~other governmental authority determines that doing so would enhance the public convenience~~
20 ~~would be enhanced thereby. A Grantee shall file cCopies of agreements for use of conduits or~~
21 ~~other facilities shall be filed with the County upon County request.~~

22 ~~(n)(j)~~ Where the County, ~~other unit of government, or a public utility serving the County~~
23 ~~desires to make use of the poles or other wire-holding structures of a Grantee, but cannot reach~~

1 agreement ~~therefor~~ with the Grantee ~~cannot be reached~~, the Board may require the Grantee to permit
2 such use if the Board determines that the use would enhance the public convenience and would not
3 unduly interfere with the Grantee's operations.

4 ~~(k)~~ Unless otherwise regulated, all transmission lines, equipment, and structures shall be
5 installed and located to cause minimum interference with the rights and reasonable convenience of
6 owners of property ~~which that~~ adjoins or abuts a street, way, or other property upon which a Grantee
7 has placed its facilities, and at all times such facilities shall be kept and maintained in a safe, ~~adequate~~
8 functional condition, and in good order. A Grantee shall at all times employ reasonable care and
9 shall install and maintain commonly accepted methods and devices for preventing failures and
10 accidents that are likely to cause damage, injuries, or nuisances to the public. Suitable barricades,
11 flags, lights, flares, or other devices shall be used at such times and places as are reasonably required
12 for the safety of all members of the public. Any poles or other fixtures placed in any public way by
13 a Grantee shall be placed in such a manner as not to interfere with the usual travel on such public
14 way.

15 ~~(l)~~ New buried plant shall be capable of location using ~~currently~~generally-available
16 locating devices.

17 ~~(m)~~ A Grantee shall be a member of the regional notification center for subsurface
18 installations (Miss Utility) and shall field mark the locations of its underground facilities upon
19 request. A Grantee shall locate its facilities for the County or other governmental authority at no
20 charge.

21 ~~(r)~~ No Grantee shall erect or place any towers, poles, or conduits, or construct,
22 upgrade, or rebuild a Cable system without first obtaining County approval of a complete
23 description of the Cable system facilities proposed to be erected or installed, including engineering

1 drawings, if required by the County, together with a map and plans indicating the proposed location
2 of all such facilities.

3 ~~(s)~~(n) Any contractor or subcontractor used for work or construction, installation,
4 operation, maintenance, or repair of system equipment must be properly licensed under ~~the laws~~
5 ~~of the Commonwealth of Virginia and all local ordinances~~ state and local law, where applicable,
6 and each contractor or subcontractor shall have the same obligations with respect to its work as a
7 Grantee would have if the work were performed by the Grantee. A Grantee must ensure that
8 contractors, subcontractors, and all employees who ~~will~~ perform work for it are trained and
9 experienced, and that one member of each work crew is responsible for communicating in the
10 official language of the Commonwealth with County and other governmental personnel at the
11 work site. A Grantee shall ~~be~~ responsible for ensuring that the work of contractors and
12 subcontractors is performed consistent with its ~~F~~franchise agreement and applicable laws,
13 regulations, policies, and procedures; ~~be responsible~~ for all acts or omissions of contractors or
14 subcontractors; ~~be responsible and for~~ promptly correcting acts or omissions by any contractor or
15 subcontractor; A Grantee shall and have a quality control program to ensure that the work is
16 properly performed.

17 ~~(t)~~(o) A Grantee shall notify ~~the general public~~ affected parties prior to commencing any
18 proposed construction, repair, or general preventive maintenance, except for emergency
19 maintenance or repair, that will significantly disturb or disrupt private property, public property,
20 or public ways, or have the potential to present a danger or affect the safety of the public generally.
21 ~~Except for emergency maintenance or repair, Where possible,~~ a Grantee shall publicize proposed
22 construction work at least ~~one week~~ five days prior to commencement of that work ~~by causing~~
23 ~~written notice of the construction work to be delivered to the County and by notifying those~~

1 ~~Persons~~ residents and others in the immediate vicinity of where work is to be done and most likely
2 to be affected by the work in at least one of the following ways: ~~by telephone, in person,~~ by print
3 or electronic mail, by distribution of door hangers or flyers to residences, ~~by publication in local~~
4 ~~newspapers,~~ or in any other manner reasonably ~~calculated~~ designed to provide adequate notice.
5 Notice to affected Persons must include the ~~name and~~ local telephone number of a Grantee
6 representative who is qualified to answer questions concerning ~~the~~ proposed construction, repair,
7 or general preventive maintenance. ~~In addition, except for emergency maintenance or repair,~~
8 ~~before entering onto any Person's property, a Grantee shall provide reasonable notice to the~~
9 ~~resident or tenant. The Grantee shall provide affected residents or tenants with a local name and~~
10 ~~phone number they can call to discuss the Grantee's actions.~~

11 ~~(u)(p)~~ A Grantee shall provide the ~~Communications Administrator~~ Cable Television
12 Administrator a daily report identifying the location and time of any scheduled maintenance and/or
13 construction. The Grantee shall send the report in such a manner ~~reasonably calculated~~ to insure
14 delivery to the ~~Communications Administrator~~ Cable Television Administrator no later than ~~8:00~~
15 ~~7:30~~ a.m. on the day the maintenance and/or construction is scheduled.

16 [Formerly Sec. 9.1-7-7; new Sec. 9.2-6-4]

17 **Section 9.2-6-5. Construction schedule and reports.**

18 (a) ~~Upon~~ Before accepting a ~~F~~franchise, a Grantee shall obtain all necessary federal,
19 ~~Virginia,~~ state, and local licenses, permits, and authorizations required for the conduct of its business
20 and its initial construction, installation, operation, maintenance, and repair of its facilities. ~~A Grantee~~
21 ~~shall submit a report to the Communications Administrator documenting its compliance with this~~
22 ~~requirement.~~

1 (b) Every ~~F~~franchise agreement shall specify the construction schedule that will apply to
2 any required initial construction ~~or County~~franchise-wide upgrade of a ~~C~~cable system. The schedule
3 shall provide for timely completion of the project, considering the amount and type of construction
4 required, and shall show areas of the County that will be affected. For the purposes of this Section,
5 construction shall be deemed to have commenced when the first aerial strands of coaxial or fiber optic
6 cable have been attached to a pole, or the first underground trench has been opened. The failure of a
7 Grantee to secure the necessary federal, ~~Virginia~~ state, and local licenses, permits, and authorizations
8 required for the conduct of its business shall in no way relieve the Grantee from the obligations of
9 this Section. The failure to meet the construction schedule specified in a ~~F~~franchise agreement shall,
10 among other rights and remedies available to the County under a ~~F~~franchise agreement or applicable
11 law, constitute grounds for ~~termination or~~ shortening or revocation of the ~~F~~franchise, as a failure to
12 construct its cable system in accordance with its franchise agreement pursuant to Section 9.2-10-
13 6(a).

14 (c) Litigation instituted by a third party shall not suspend the Grantee's obligation to
15 construct, install, and operate its ~~C~~cable system in accordance with the construction or upgrade
16 schedule set forth in its ~~F~~franchise agreement.

17 (d) An initial ~~F~~franchise shall include a timetable showing the percentage of occupied
18 dwelling units within the applicable ~~F~~franchise area ~~or areas~~ that will be capable of receiving ~~C~~cable
19 service at the end of each year following the beginning of construction.

20 (e) Within three months after accepting an initial ~~F~~franchise, a Grantee shall furnish the
21 ~~Communications Administrator~~ Cable Television Administrator a construction schedule and map
22 setting forth target dates consistent with paragraphs (b) and (d) of this Section, for commencement of

1 service to ~~S~~subscribers, and identifying the areas to be served. The schedule and map shall be updated
2 whenever substantial changes become necessary.

3 (f) Every three months after the start of initial construction, a Grantee shall furnish the
4 ~~Communications Administrator~~ Cable Television Administrator a map that clearly defines the areas
5 ~~wherein where~~ regular Subscriber cable service is available, until the construction scheduled pursuant
6 to subsection (e) is complete.

7 (g) The ~~Communications Administrator~~ Cable Television Administrator may waive any
8 provision of this Section for just good cause shown.

9 [Formerly Sec. 9.1-7-8; new Sec. 9.2-6-5]

10 **Section 9.2-6-6. Tests and ~~performance monitoring~~ inspections.**

11 (a) A Grantee shall perform all tests necessary to ~~demonstrate~~ ensure compliance with
12 the requirements of a ~~F~~franchise agreement and other performance and technical standards
13 established by applicable law or regulation, and to ensure that system components are operating
14 as expected. All tests shall be conducted in accordance with federal rules and applicable technical
15 standards, such as the most recent ~~and relevant~~ edition of the ~~National Cable Television~~
16 ~~Association's "Recommended Practices for Measurements on Cable Television Systems,"~~ SCTE
17 Measurement Recommended Practices for Cable System and the ANSI/SCTE 40 2011 Digital
18 Interface Standard ~~or if no recent or relevant edition exists, such other appropriate manual as a~~
19 ~~Grantee proposes and the County approves.~~ In the event that such technical performance standards
20 ~~pursuant to Federal law~~ are repealed or are no longer ~~applicable to a Cable system~~ specified in
21 applicable law, such standards shall remain in force and effect until the County, to the extent
22 permitted by applicable law, imposes standards as it shall deem necessary for the operation of the

1 ~~C~~cable system in accordance with good engineering practices.—The words "good engineering
2 practices" shall have the meaning specified in Title 47 of the Code of Federal Regulations.

3 (b) A Grantee shall conduct tests as follows:

4 ~~————— (1) ——— acceptance tests on each newly constructed or rebuilt segment prior to~~
5 ~~Subscriber connection or activation, but not later than ninety days after any~~
6 ~~newly constructed or substantially rebuilt segment is made available for~~
7 ~~service to Subscribers;~~

8 ~~————— (2) ——— proof of performance tests on the system at least once every six months or~~
9 ~~as required by FCC rules, whichever is more often, except as federal law~~
10 ~~otherwise limits a Grantee's obligation; and~~

11 ~~————— (3) ——— special tests at the direction of the Communications Administrator;~~

12 (1) A Grantee shall conduct semiannual system tests to determine compliance
13 with applicable standards and rules if so directed by the Cable Television
14 Administrator; and

15 ~~(e)(2) At any time after commencement of a Grantee commences service to~~
16 ~~Ssubscribers, If a subscriber is affected by repeated signal problems, the~~
17 ~~County may require the Grantee to conduct additional reasonable tests,~~
18 ~~including full or partial repeat tests, different test procedures, or tests~~
19 ~~involving a the specific Ssubscriber's terminal, at a Grantee's expense, to~~
20 ~~the extent such tests are in accordance with FCC rules and may be~~
21 ~~performed by the Grantee's employees utilizing its existing facilities and~~
22 ~~equipment. The County, or a consultant designated by the County, may~~
23 ~~observe any tests conducted by the Grantee for this purpose, and the Grantee~~

1 will cooperate with the County or its consultant. The County may conduct
2 independent tests upon reasonable notice to the Grantee and if
3 noncompliance is found, the expense thereof shall be borne by the Grantee
4 within the subscriber's premises. The County will endeavor to arrange its
5 request for such tests so as to minimize hardship or inconvenience to a
6 Grantee or to Subscribers. The County may, if the signal problems continue,
7 and if permitted by the subscriber, conduct independent tests within the
8 subscriber's premises. The County will coordinate in writing with the
9 Grantee the timing of such tests so that Grantee's personnel may observe
10 the tests. The County and the Grantee will cooperate to ensure that such
11 tests do not interfere with Grantee's cable system, do not cause damage to
12 subscriber's equipment, and are conducted in accordance with applicable
13 technical standards.

14 ~~—— (d) System monitor test points shall be established in accordance with good~~
15 ~~engineering practices and shall be approved in advance by the County.~~

16 (c) Tests conducted pursuant to subsection (b) shall be supervised by a Grantee's senior
17 engineer, who shall sign all records of tests provided to the County.

18 (d) The County shall have the right to witness and/or review ~~all tests on newly~~
19 ~~constructed or rebuilt segments of a Grantee's C~~cable system conducted pursuant to subsection (b),
20 and any tests that affect the I-Net, or affect service to County or Fairfax County Public School
21 sites. A Grantee shall provide the County with at least two business days' notice of, and an
22 opportunity to observe, any such tests performed on the Grantee's System reasonable advance
23 notice of tests the County has the right to witness pursuant to this paragraph.

1 (e) A Grantee shall file a ~~A~~ written report of ~~all~~ test results under subsection (b) ~~shall~~
2 ~~be filed~~ with the County within seven days of each test. Such reports shall, at a minimum, describe
3 test results, instrumentation, calibration, and test procedures. In addition, the Grantee shall retain
4 written reports of the results of any tests required by the FCC, and such reports shall be submitted
5 to the County upon the County's request. The County shall have the same rights the FCC has to
6 inspect a Grantee's performance test data.

7 (f) If any test under subsection (b) indicates that any part or component of a system
8 fails to meet applicable requirements, the Grantee, without requirement of additional notice or
9 request from the County, shall take corrective action, ~~retest the locations,~~ and advise the County
10 of the action taken and results achieved, and supply the County with a copy of the results within
11 ~~thirty~~ 30 days from the date corrective action was completed.

12 (g) The County may ~~also conduct inspections of~~ inspect construction areas and
13 ~~S~~subscriber installations, including but not limited to inspections to assess compliance with a
14 Grantee's construction and installation requirements. The County shall notify a Grantee of any
15 violations found during the course of inspections, identifying the locations with particularity and
16 stating the specific nature of the violation. The Grantee ~~must~~ shall bring violations specified in
17 the notice that are within Grantee's control into compliance as follows: (i) safety violations ~~must~~
18 shall be made safe within ~~forty eight~~ 48 hours of receiving notice of the violation; (ii) Virginia
19 Department of Transportation violations ~~must~~ shall be brought into compliance within five days
20 of receiving notice of the violation; and (iii) all other violations ~~must~~ shall be brought into
21 compliance within ~~thirty~~ 30 days of receiving notice of the violation. After the specified time
22 period, the Grantee ~~must~~ shall submit a ~~report to the County~~ written response, describing the steps

1 it has taken to bring itself into compliance. Inspection does not relieve a Grantee of its obligation
2 to build in compliance with all provisions of a ~~Fits~~ franchise.

3 [Formerly Sec. 9.1-7-5; new Sec. 9.2-6-6]

4 **Section 9.2-6-7. Connections to the ~~C~~cable system; ~~Use of Antennas~~.**

5 To the extent consistent with federal law, ~~S~~subscribers shall have the right to attach devices
6 to a Grantee's ~~C~~cable system to allow them to transmit signals or service to video ~~cassette~~
7 recorders, receivers, and other terminal equipment, and to use their own remote control devices
8 and converters, and other similar equipment, so long as such devices do not interfere with the
9 operation of a Grantee's ~~C~~cable system, or the reception of any cable ~~S~~subscriber, nor serve to
10 circumvent a Grantee's security procedures, nor for any purpose to obtain services illegally. A
11 Grantee shall ~~provide~~ make information available to consumers ~~that will allow them to~~ to assist
12 them in-adjusting such devices so that they may be used with a Grantee's ~~C~~cable system.

13 [Formerly Sec. 9.1-9-12; new Sec. 9.2-6-7]

1 The County shall have the right to reasonably require further supporting information.

2 ~~(d)~~(b) The County shall have the right to inspect books and records and to audit and
3 recompute any amounts ~~determined to be payable under this Chapter or a Ffranchise agreement or~~
4 applicable law, whether the records are held by a Grantee, an Affiliate, or any other agent of a
5 Grantee.

6 ~~(e)~~(c) A Grantee shall be responsible for making available to the County all records
7 necessary to confirm the accurate payment of ~~franchise fees~~ amounts payable under a franchise
8 agreement or applicable law, without regard to by whom ~~they~~ such records are held. Such records
9 shall be made available pursuant to the requirements of this Chapter and the franchise agreement.

10 ~~(f)~~(d) The County's audit expenses shall be borne by the County unless the audit discloses
11 an underpayment of more than three percent of any quarterly payment, in which case the County's
12 out-of-pocket costs of the audit shall be borne by a Grantee as a cost incidental to the enforcement
13 of its Ffranchise. Any additional undisputed amounts due to the County as a result of the audit
14 shall be paid within ~~thirty~~ 30 days following written notice to a Grantee by the County of the
15 underpayment, which notice shall include a copy of the audit report. If recomputation results in
16 additional revenue to be paid to the County, interest will be due as specified in this Section.

17 ~~—(g)—~~ ~~The County shall have three years from the time a Grantee delivers a franchise fee~~
18 ~~payment to question that payment, and if the County fails to question the payment within that time~~
19 ~~period, the Grantee shall not be liable for adjustment to that payment. If the County gives written~~
20 ~~notice to a Grantee within that three-year period, the three-year period shall be tolled for one year,~~
21 ~~to allow the County to conduct an audit. Any legal action by either party relating to a franchise~~
22 ~~fee payment will toll the remaining term, if any, of the three-year time period and the one-year~~
23 ~~audit period with respect to that payment.~~

1 ~~(h)~~ The franchise fee payments required by this section shall be in addition to any and
2 all taxes of a general nature or other fees or charges which a Grantee shall be required to pay to
3 the County or to any state or federal agency or authority, as required herein or by law, all of which
4 shall be separate and distinct obligations of a Grantee. A Grantee shall not have or make any claim
5 for any deduction or other credit of all or any part of the amount of the franchise fee payments
6 from or against any of said County taxes or other fees or charges which a Grantee is required to
7 pay to the County, except as required by law, this Chapter, or a Franchise agreement. A Grantee
8 shall not apply nor seek to apply all or any part of the amount of the franchise fee payments as a
9 deduction or other credit from or against any of said County taxes or other fees or charges, each
10 of which shall be deemed to be separate and distinct obligations of a Grantee. Nor shall a Grantee
11 apply or seek to apply all or any part of the amount of any of said taxes or other fees or charges as
12 a deduction or other credit from or against any of its Franchise obligations, each of which shall be
13 deemed to be separate and distinct obligations of a Grantee. Notwithstanding the above provisions
14 of this paragraph, however, a Grantee shall have the right to a credit, in the amount of its franchise
15 fee payments under its Franchise agreement, against any general utility tax on Cable services that
16 may be imposed by the County, to the extent such a tax is applicable to a Grantee or its Subscribers.
17 A Grantee shall not designate or characterize its franchise fee as a tax.

18 ~~(i)~~(e) In the event that any franchise fee payment or recomputation amount less than Five
19 Thousand Dollars is not made on or before the required date, interest shall be charged from the
20 due date at an annual rate equal to the commercial prime interest rate of the County's primary
21 depository bank, compounded annually, during the period the unpaid amount is due. In the event
22 that any franchise fee payment (or payments) or any recomputation amount totaling Five Thousand
23 Dollars or more is not paid by the due date, then interest shall accrue to the County from the due

1 date at a rate equal to the interest rate then chargeable for unpaid federal income taxes for large
2 corporate underpayments (26 U.S.C. § 6621), compounded annually. In addition to the foregoing,
3 the failure of a Grantee to make a timely payment (as defined by ~~Va. Code~~ Virginia Code § 6.1-
4 330.80) of any amount required or recomputed under this Section shall subject a Grantee to an
5 additional late charge of five percent of the amount of such payment. However, for good cause
6 ~~shown~~, the ~~Communications Administrator~~ Cable Television Administrator may waive the
7 provisions of this Subsection for a period not to exceed five business days.

8 [Formerly Sec. 9.1-5-8(c)-(g); new Sec. 9.2-7-2]

9 **Section 9.2-7-3. Termination, acceptance, and methodology.**

10 ~~(j)~~(a) In the event a Franchise is shortened or revoked prior to its expiration date, a
11 Grantee shall file with the County, within ~~ninety~~ 90 days of the effective date of
12 ~~revocation~~termination, a financial statement certified by an independent certified public
13 accountant that clearly shows the ~~G~~gross revenues received by ~~a~~ the Grantee from the end of the
14 previous fiscal quarter through the effective date of ~~revocation~~ termination and any other
15 information required to support the computation of Grantee's payments, and shall pay within that
16 time ~~the franchise fees~~ any fees or other financial obligations accrued or accruing as of the effective
17 date of ~~revocation~~ termination.

18 ~~(k)~~(b) The County's acceptance of any payment ~~required herein by the County~~ shall not
19 be construed as an acknowledgment or an accord and satisfaction that the amount paid is the correct
20 amount due, nor shall such acceptance of payment be construed as a release or waiver of any claim
21 that the County may have for additional sums due and payable. However, the County's acceptance
22 of full payment of the amount determined to be due by the County through an audit shall be
23 construed as an accord and satisfaction.

1 (c) If a Grantee proposes to change (i) its methodology for calculating or paying any
2 amounts payable under a franchise agreement, (ii) its methodology for calculating or paying the
3 state Communications Sales and Use Tax amounts attributable to the County, or (iii) its
4 methodology for itemizing or passing any through to Subscribers any such amounts (where
5 applicable), the Grantee shall first provide written notice to the Cable Television Administrator
6 explaining the nature of the change, the reason for the change, and the effect of the change on the
7 amounts paid to the County.

8 [Formerly Sec. 9.1-5-8(j)-(k); new Sec. 9.2-7-3]

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ARTICLE 8.

Reports and Records.

Section 9.2-8-1. Books and records.

(a) Access to information.

(1) Subject to applicable law, the County shall have the right to inspect and copy at any time during normal business hours at a Grantee's office, or at another mutually agreed location, all books and records, including all documents in whatever form maintained, including electronic media ("books and records") to the extent that such books and records relate to a Grantee's cable system or to a Grantee's provision of cable service.

(2) In lieu of the terms specified in subsection (1), if so provided in a Grantee's franchise agreement, or if a Grantee subsequently agrees in writing: upon written request, which shall include a reasonable time to respond, a Grantee shall expeditiously provide the County with information contained in any books, maps, records, or other documents, in whatever form maintained, including electronic media ("books and records") held by the Grantee or an Affiliate, to the extent such books and records relate to the Grantee's cable system or to the Grantee's provision of cable service. Such a request shall specify the purpose of the request.

(A) "Reasonable time to respond" will normally be within 30 days from receipt of the request depending on the complexity of the response, but (1) shall be extended to 45 days upon written request by the Grantee, and (2) may be further extended by the Cable Television Administrator.

(B) The County may require the Grantee to provide copies of documents containing the requested information.

1 _____ (C) If any books, records, maps, plans, or other ~~requested~~ documents
2 requested pursuant to this subsection (a) are too voluminous, or for security reasons cannot be
3 copied and moved, then a Grantee may request that the inspection take place at a location mutually
4 agreed to by the County and the Grantee, provided that (i) the Grantee must make necessary
5 arrangements for copying documents selected by the County after its review; and (ii) the Grantee
6 must pay all travel and additional copying expenses incurred by the County (above those that
7 would have been incurred had the documents been produced in the County) in inspecting those
8 documents or having those documents inspected by its designee.

9 ~~_____ (b) To the extent permitted by law, the County shall take reasonable steps to protect~~
10 ~~the proprietary and confidential nature of any such documents to the extent they are designated as~~
11 ~~such by a Grantee. The County shall have the right to copy any such books and records, except to~~
12 ~~the extent that such books and records are proprietary and/or confidential pursuant to the Virginia~~
13 ~~Uniform Trade Secrets Act or other applicable law.~~

14 (b) A Grantee shall keep complete and accurate books of account and records of its
15 business and operations under and in connection with its ~~F~~franchise agreement.

16 ~~_____ (c) Unless otherwise provided in this Chapter, all materials and information specified~~
17 ~~in this Chapter shall be maintained for a period of three years or until the Franchise expires, which~~
18 ~~ever is longer.~~

19 _____ (c) For the time period specified in its franchise agreement, a Grantee shall maintain:

20 _____ (1) Financial records sufficient to provide full support for the calculation of any
21 payments to the County or any PEG programmer, or of any state tax that is distributed to the
22 County in whole or in part, and for any audit and recomputation thereof, including but not limited

1 to records sufficient to enable County review of all allocation of gross revenues among bundled
2 services.

3 (2) Records of complaints. The term "complaints" as used herein and
4 throughout this Chapter refers to complaints recorded through a Grantee's normal procedures
5 about any aspect of the Grantee's cable system or its operations, including but not limited to
6 complaints about employee courtesy. This paragraph does not apply to service calls, which are
7 treated under paragraph (4) below.

8 (3) Records of outages, indicating date, estimated duration, estimated area, and
9 the estimated number of Subscribers affected, type of outage, and cause.

10 (4) Records of service calls for repair and maintenance indicating the date and
11 time service was required, the date and time service was scheduled (if it was scheduled), and the
12 date and time service was provided.

13 (5) Records of installation/reconnection and evaluation of line extension
14 requests, indicating date of request, and the date and time service was extended.

15 ~~(d) — A Grantee shall at all times maintain:~~

16 ~~(1) — Complete and accurate books of account and records of its business and~~
17 ~~operations under and in connection with this Chapter and a Franchise agreement. At a minimum,~~
18 ~~a Grantee's financial books and records shall be maintained in accordance with generally accepted~~
19 ~~accounting principles, and shall identify:~~

20 ~~————— (A) — gross revenues, by service category;~~

21 ~~————— (B) — operating expenses, categorized by general and administrative~~
22 ~~expenses, technical expenses, programming expenses, and overhead, if any;~~

1 ~~_____ (C) capital expenditures, including capitalized interest and overhead, if~~
2 ~~any; and~~

3 ~~_____ (D) depreciation expenses, by category.~~

4 ~~(2) Records of all written complaints received. The term "complaints" as used~~
5 ~~herein and throughout this Chapter refers to complaints about any aspect of the Cable system or a~~
6 ~~Grantee's operations, including, without limitation, complaints about employee courtesy.~~
7 ~~Complaints recorded may not be limited to complaints requiring an employee service call.~~

8 ~~(3) A full and complete set of plans, records, and "as built" maps showing the~~
9 ~~exact location of all system equipment installed or in use in the County, exclusive of Subscriber~~
10 ~~service drops.~~

11 ~~(4) Records of outages, indicating date, estimated duration, estimated area, and~~
12 ~~the estimated number of Subscribers affected, type of outage, and cause.~~

13 ~~(5) Records of service calls for repair and maintenance indicating the date and~~
14 ~~time service was requested, the date of acknowledgment and date and time service was scheduled~~
15 ~~(if it was scheduled), and the date and time service was provided, and (if different) the date and~~
16 ~~time the problem was solved.~~

17 ~~(6) Records of installation/reconnection and requests for service extension,~~
18 ~~indicating date of request, date of acknowledgment, and the date and time service was extended.~~

19 ~~(7) A general plan and schedule for construction of its Cable system available~~
20 ~~to the public upon request.~~

21 (d) The County may require additional information, records, and documents from time
22 to time.

1 (e) A Grantee shall maintain a file of records open to public inspection in accordance
2 with applicable FCC rules and regulations.

3 ~~—— (f) — Each Grantee shall maintain accurate maps and improvement plans which show the~~
4 ~~location, size and a general description of all facilities installed in the public ways and any power~~
5 ~~supply sources, including voltages and connections. Maps shall be based on post construction~~
6 ~~inspection to verify location. Each Grantee shall provide a map to the County showing the location~~
7 ~~of its facilities, in such detail and scale as may be directed by the Communications Administrator.~~
8 ~~New maps shall be promptly submitted to the County when a Cable system expands or is relocated.~~
9 ~~Copies of maps shall be provided in hardcopy and in any CAD or other electronic format used by~~
10 ~~a Grantee.~~

11 (f) Each Grantee shall take all reasonable steps required to ensure that it is able to
12 provide the County with all information that must be provided or may be requested under this
13 Chapter, a Franchise agreement, or applicable law, ~~including the issuance of appropriate~~
14 ~~subscriber privacy notices.~~ Each Grantee shall be responsible for redacting any data that applicable
15 law prevents it from providing to the County. Nothing in this Section shall be read to require a
16 Grantee to violate federal or state law protecting subscriber privacy.

17 ~~—— (i) — If any books, records, maps, plans, or other requested documents requested~~
18 ~~pursuant to subsection (a)(1) are too voluminous, or for security reasons cannot be copied and~~
19 ~~moved, then a Grantee may request that the inspection take place at a location mutually agreed to~~
20 ~~by the County and the Grantee, provided that (i) the Grantee must make necessary arrangements~~
21 ~~for copying documents selected by the County after its review; and (ii) the Grantee must pay all~~
22 ~~travel and additional copying expenses incurred by the County (above those that would have been~~

1 incurred had the documents been produced in the County) in inspecting those documents or having
2 those documents inspected by its designee.

3 ~~(j)~~(g) Subject to the requirements of the Virginia Freedom of Information Act, ~~Va. Code~~
4 ~~Ann. Virginia Code~~ § 2.2-3700, et seq., and the disclosure requirements of any other applicable
5 law, ~~the~~ County shall take reasonable steps to protect the proprietary and confidential nature of
6 any books, records, maps, plans, or other County-requested documents that are provided pursuant
7 to this Chapter or a ~~franchise~~ agreement to the extent they are reasonably designated as such by
8 a Grantee.

9 ~~(k)~~(h) The ~~Communications Administrator~~ Cable Television Administrator may, for good
10 cause ~~shown~~, waive in writing any of the reporting provisions in this Section a franchise agreement
11 or this Chapter.

12 [Formerly Sec. 9.1-6-2; new Sec. 9.2-8-1]

13 **~~9.1-6-3. Communications with regulatory agencies; Reports.~~**

14 (a) ~~A Grantee shall file with the County a copy of communications with regulatory~~
15 ~~agencies, as follows:~~

16 ~~————— (1) ——— any document (other than routine, publicly available agency mailings or~~
17 ~~publications) the Grantee files with or receives from the FCC, the United States Securities and~~
18 ~~Exchange Commission, or the Virginia State Corporation Commission, or any successor agency~~
19 ~~of any of these agencies, that relates to its Cable system and/or the provision of Cable services~~
20 ~~under this Chapter or its Franchise agreement, within five working days of such filing or receipt;~~

21 ~~————— (2) ——— any document a Grantee files with or receives from other agencies, upon the~~
22 ~~County's request;~~

1 ~~_____ (3) any document that any parent of a Grantee files with or receives from any~~
2 ~~agency that directly and materially relates to a Grantee's Cable system and/or the provision of~~
3 ~~Cable services under this Chapter or its Franchise agreement, within five working days of such~~
4 ~~filing or receipt.~~

5 ~~_____ (4) For purposes of this Subsection, documents filed by a Grantee or a parent~~
6 ~~shall include all documents filed by or on behalf of a Grantee or its parent, but shall not include~~
7 ~~documents filed by trade associations to which a Grantee or its parent belong unless a Grantee or~~
8 ~~a parent has authorized the use of its name by such trade association among the filing parties and~~
9 ~~its name is used.~~

10 ~~_____ (b) To the extent that such documents contain, to the satisfaction of the~~
11 ~~Communications Administrator, the information required by other reports hereunder, the~~
12 ~~Communications Administrator may suspend the requirement to file such other reports with the~~
13 ~~County so as to avoid duplication and the administrative costs attendant thereto.~~

14 ~~_____ (c) Unless this requirement is waived in whole or in part by the County, a Grantee shall~~
15 ~~submit a written report to the County no later than April 30th of each year during the term of its~~
16 ~~Franchise agreement, in a form reasonably satisfactory to the County, which shall include:~~

17 ~~_____ (1) a summary of the previous calendar year's activities in development of a~~
18 ~~Grantee's Cable system, including but not limited to descriptions of services begun or dropped;~~

19 ~~_____ (2) a summary of complaints, identifying both the number and nature of the~~
20 ~~complaints received and an explanation of their dispositions, as such records are kept by a Grantee.~~

21 ~~Where a Grantee has identified recurrent Cable system problems, the nature of any such problems~~
22 ~~and the corrective measures taken or to be taken shall be identified;~~

1 ~~————— (3) — A copy of a Grantee's rules, regulations and policies available to Subscribers~~
2 ~~of a Grantee's Cable system, including but not limited to (i) all Subscriber rates, fees and charges,~~
3 ~~including promotional offers made to potential or current Subscribers; (ii) copies of a Grantee's~~
4 ~~contract or application forms for Cable services; and (iii) a detailed summary of a Grantee's~~
5 ~~policies concerning the processing of Subscriber complaints; delinquent Subscriber disconnect and~~
6 ~~reconnect procedures; A/B switches; Subscriber privacy; and any other terms and conditions~~
7 ~~adopted by a Grantee in connection with the provision of Cable service to Subscribers;~~

8 ~~————— (4) — An annual financial report for the previous calendar or fiscal year, certified~~
9 ~~by a Grantee's chief financial officer or, upon ninety days notice by the County, an independent~~
10 ~~certified public accountant, including a year end balance sheet; an income statement showing~~
11 ~~Subscriber revenue and every material category of non-Subscriber revenue, operating expenses by~~
12 ~~category, depreciation expenses, interest expenses, taxes paid and a statement of sources and~~
13 ~~applications of funds;~~

14 ~~————— (5) — A current statement of costs of construction by component categories;~~

15 ~~————— (6) — A projected income statement, balance sheet, statement of sources and~~
16 ~~applications of funds and statement of projected construction for the next two years;~~

17 ~~————— (7) — A reconciliation between previously projected construction and/or financial~~
18 ~~estimates, as the case may be, and actual results;~~

19 ~~————— (8) — A list of Persons, including all entities controlling such Persons, holding~~
20 ~~five percent or more of the voting stock or interests of Grantee, or its parents or partners, or~~
21 ~~Grantee's subsidiaries, if any;~~

1 ~~————— (9) — A list of officers and members of the Board of Directors of a Grantee and~~
2 ~~its parents or partners and Grantee's subsidiaries, if any, or similar officers if a Grantee is not a~~
3 ~~corporation; and~~

4 ~~————— (10) — A copy of any annual reports issued by Grantee, its parents or partners and~~
5 ~~subsidiaries.~~

6 ~~——— (d) — Unless this requirement is waived in whole or in part by the County, no later than~~
7 ~~thirty days after the end of each calendar quarter during the term of its Franchise agreement, a~~
8 ~~Grantee shall submit a written report to the County, in a form reasonably satisfactory to the County,~~
9 ~~which shall include:~~

10 ~~————— (1) — A report showing the number of service calls received by type during that~~
11 ~~quarter, including any property damage to the extent such information is available to a Grantee,~~
12 ~~and any line extension requests received during that quarter;~~

13 ~~————— (2) — A report showing the number of outages for that quarter, and identifying~~
14 ~~separately each planned outage of one or more nodes for more than one hour at a time, the time it~~
15 ~~occurred, its duration, the tax map area and, when available to a Grantee, the number of homes~~
16 ~~affected; and, when a Grantee can reasonably determine that at least 500 homes were affected,~~
17 ~~each unplanned outage affecting more than 500 homes for more than one hour, the time it occurred,~~
18 ~~the reason for the disruption and its causes, its estimated duration, the tax map area and, when~~
19 ~~available to a Grantee, the number of homes affected; and~~

20 ~~————— (3) — A report showing a Grantee's performance with respect to all applicable~~
21 ~~customer service standards established in 47 C.F.R. 576.309(e), this Chapter, and its Franchise~~
22 ~~agreement, signed by an officer or employee certifying its performance with these customer~~
23 ~~service standards. If a Grantee is unable to certify full compliance for any calendar quarter, it must~~

1 indicate in its filing each standard with which it is in compliance and in noncompliance, the dates
2 of noncompliance, the reason for the noncompliance and a remedial plan. A Grantee that fails to
3 file a compliance certificate or noncompliance statement as required herein shall be liable for the
4 penalty specified for violation of customer service standards in this Chapter. A Grantee shall keep
5 such records as are reasonably required to enable the County to determine whether a Grantee is
6 substantially complying with all such customer service standards, and shall maintain adequate
7 procedures to demonstrate substantial compliance.

8 ——— (e) ——— Unless this requirement is waived in whole or in part by the County, a Grantee shall
9 deliver to the County the following special reports:

10 ——— (1) ——— A Grantee shall submit monthly construction reports and weekly status
11 reports after the effective date for any construction undertaken during the term of a Franchise
12 agreement until such construction is complete, including any rebuild that may be specified in a
13 Franchise agreement. If consistent with a Grantee's Franchise agreement, a Grantee shall provide
14 the County, free of charge, twenty four hour/seven day a week remote read only access to a
15 Grantee's as built system design maps (which the County may print by section, but not in their
16 entirety), including any physical connections and software necessary to provide such access,
17 subject to the County's signing any requisite software license agreement;

18 ——— (2) ——— A Grantee shall submit a full explanation and copy of any notice of
19 deficiency, forfeiture, or other document relating to the Grantee issued by any state or federal
20 agency if the notice or other document would require Securities and Exchange Commission Form
21 8(k) disclosure or would require footnote disclosure in the annual financial statements of the
22 Grantee or a parent or partner. This material shall be submitted in accordance with deadlines
23 specified by the Communications Administrator;

1 ~~————— (3) — A Grantee shall submit a copy and an explanation of any request for~~
2 ~~protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the~~
3 ~~Grantee or by any partnership or corporation that owns or controls the Grantee directly or~~
4 ~~indirectly. This material shall be submitted in accordance with deadlines specified by the~~
5 ~~Communications Administrator;~~

6 ~~————— (4) — A Grantee shall submit a full description and explanation within thirty days~~
7 ~~of any change or acquisition of control of a Grantee that would be cognizable pursuant to 47 C.F.R.~~
8 ~~§ 73.3555 (Notes 1, 2, and 3) or any change or substitution in the managing general partners of a~~
9 ~~Grantee, where applicable. “Control” for purposes of this definition is not limited to majority~~
10 ~~stock ownership, but includes actual working control in whatever manner exercised.~~

11 ~~————— (5) — A Grantee shall summarize the results of any annual opinion surveys it~~
12 ~~conducts as part of its annual report provided that, if a Grantee considers such results to be~~
13 ~~proprietary, it shall make such results available at its offices for the County’s review.~~

14 ~~(f) — The County may, upon reasonable written notice, require such additional~~
15 ~~information with respect to the reports to be submitted pursuant to this Chapter or a Franchise~~
16 ~~agreement as may be reasonably necessary for the performance of any of the Communications~~
17 ~~Administrator’s or any other County official’s duties.~~

18 ~~(g)~~

19 [Formerly Sec. 9.1-6-3]

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ARTICLE 9.

Consumer Protection.

Section 9.2-9-1. Customer service standards and consumer protection generally.

This ~~Section~~ Article sets forth the minimum customer service standards that a Grantee must satisfy. In addition, a Grantee shall at all times satisfy any additional or stricter minimum requirements established by a Franchise agreement or other applicable federal, state, or local law or regulation, as the same may be amended from time to time, including, ~~without limitation, but~~ not limited to consumer protection laws.

[Formerly Sec. 9.1-7-6 (preamble); new Sec. 9.2-9-1]

(a) A Grantee shall comply with the customer service standards set forth in 47 C.F.R. § 76.309-(c), 76.1602, 76.1603, and 76.1619, or any successor provisions, and with the Virginia Consumer Protection Act of 1977, as such standards may be amended from time to time.

[Formerly Sec. 9.1-7-6(a); new Sec. 9.2-9-1(a)]

~~(h)~~(b) The failure of a Grantee to hire sufficient staff or to properly train its staff shall not justify a Grantee's failure to comply with the provisions in this ~~Section 9.1-7-6~~ ARTICLE 9.

[Formerly Sec. 9.1-7-6(h); new Sec. 9.2-9-1(b)]

(c) The Cable Television Administrator may waive any provision of this Section for good cause.

[New in Chapter 9.2]

Section 9.2-9-2. Telephone answering.

~~(b)~~(a) A Grantee shall maintain a publicly-listed, toll-free telephone number, answered by a customer service representative or automated answering system, that shall be available to

1 subscribers 24 hours per day, each day of the year. A customer service representative shall be
2 available at this number to respond to service calls 24 hours per day, each day of the year, and to
3 respond to other inquiries at least during normal business hours.~~A Grantee shall employ an~~
4 ~~operator or maintain a telephone answering device twenty-four hours per day, each day of the year,~~
5 ~~to receive Subscriber complaints.~~

6 [Formerly Sec. 9.1-7-6(b) (subparagraphs are new); new Sec. 9.2-9-2]

7 (1) Measurement of the standards in 47 C.F.R. § 76.309(c)(1)(ii) shall include
8 all calls received by the Grantee at all call centers receiving calls from subscribers or former
9 subscribers in the County, whether they are answered by a customer service representative,
10 answered by an automated system, or abandoned by the caller while waiting.

11 (2) Upon the County's request, a Grantee shall provide the full calculation for
12 its call percentages, including but not limited to a full explanation of any adjustment or
13 normalization of call data by the Grantee.

14 (3) A Grantee shall make it possible for subscribers who are deaf or hard of
15 hearing to communicate with the Grantee by telephone.

16 [New in Chapter 9.2]

17 **Section 9.2-9-3. Offices and service.**

18 ~~(e)~~(a) A Grantee shall maintain an office a location within the County that shall be open
19 and accessible to the public with adequate telephone service during normal business hours to make
20 payments and to pick up or drop off equipment; provided, however, that a Grantee may satisfy the
21 pick-up and drop-off requirement by having a representative go to the subscriber's or former
22 subscriber's residence or by using a prepaid mailer rather than by performing that function at a

1 location in the County; and that a Grantee may satisfy the payment requirement by providing other
2 locations within the franchise area where such payments can be made. A Grantee shall maintain
3 a convenient location that shall be open and accessible to the public to make inquiries during
4 normal business hours.

5 [Formerly Sec. 9.1-7-6(c); new Sec. 9.2-9-3(a)]

6 ~~(d)~~(b) A Grantee shall ~~establish~~ provide maintenance service capable of promptly locating
7 and correcting system malfunctions. ~~Said~~ This maintenance service shall respond at all hours to
8 correct system malfunctions affecting one or more percent of a Grantee's total number of
9 §subscribers or 500 or more homes, whichever is less, for more than one hour.

10 [Formerly Sec. 9.1-7-6(d); new Sec. 9.2-9-3(b)]

11 (c) A Grantee shall use its best efforts to comply with the following standards;
12 however, a Grantee shall not be subject to enforcement measures for noncompliance with these
13 standards if, under normal operating conditions, the standards are met at least 95 percent of the
14 time, measured quarterly. Calculation of the 95 percent standard for installations shall exclude
15 any installation that requires a line extension.

16 (1) For purposes of this ~~Section 9.1-7-6~~ Section 9.2-9-3, "standard installation"
17 means one where the potential subscriber's premises are within 200 feet of the existing distribution
18 system.

19 (2) A Grantee shall complete all standard installations within seven business
20 days after the order is placed; except that where a Grantee is installing fiber to the premises, the
21 Grantee shall complete all standard installations within 14 business days after the order is placed.

22 (3) A Grantee shall complete all installations other than standard installations

1 within 30 days after the order is placed, unless, for reasons beyond the Grantee's control, the work
2 could not be completed in that time period even with the exercise of all due diligence, in which
3 case the Grantee shall complete the work in the shortest time possible.

4 _____ (4) If the management or builder of a multiple dwelling unit (MDU) contacts a
5 Grantee to inquire as to service, the Grantee shall respond to the initial inquiry and any subsequent
6 communications from the MDU within 14 days of each such communication. If a site visit is
7 required, the Grantee shall schedule the site visit at a mutually convenient time no later than 30
8 days after the MDU signs an access agreement with the Grantee. In an occupied MDU, the Grantee
9 shall commence construction no later than 120 days after the MDU and the Grantee have approved
10 a site design. The Cable Television Administrator may waive the deadlines in this paragraph for
11 good cause.

12 _____ (5) A Grantee shall commence work on service interruptions affecting more
13 than 100 subscribers within four hours after the Grantee becomes aware of the interruption,
14 including Saturdays, Sundays, and legal holidays.

15 _____ (6) A Grantee shall commence work on service interruptions affecting 100 or
16 fewer subscribers within 24 hours after the Grantee becomes aware of the interruption, including
17 Saturdays, Sundays, and legal holidays. If the Grantee needs to arrange a subscriber appointment
18 to do such work, this requirement shall be satisfied if, within that 24-hour period, the Grantee
19 offers the subscriber an appointment time convenient for the subscriber, and Grantee commences
20 work at that time. If a total interruption of all channels is not repaired at the time of the scheduled
21 appointment, the subscriber will receive a pro-rated credit for each 24-hour period, or segment
22 thereof, that the service interruption continues beyond the scheduled repair call.

23 _____ (7) A Grantee shall commence work on all requests for service other than

1 service interruptions by the next business day after it receives the request for service or otherwise
2 becomes aware of the need for service. If the Grantee needs to arrange a subscriber appointment
3 to do such work, this requirement shall be satisfied if the Grantee offers the subscriber an
4 appointment time convenient for the subscriber, and Grantee shall commence work at that time.

5 (8) All service for which a completion time is not otherwise specified in this
6 subsection (c) must be completed within five business days from the date work must commence
7 pursuant to paragraphs (5) through (7) above, unless, for reasons beyond the Grantee's control, the
8 work could not be completed in five business days even with the exercise of all due diligence, in
9 which case the Grantee shall complete the work in the shortest time possible.

10 [New in Chapter 9.2]

11 ~~(e)(d) A Grantee shall maintain a publicly listed, local toll free telephone number that~~
12 ~~shall be available to Ssubscribers to request service calls, twenty four hours per day, each day of~~
13 ~~the year. Under Normal operating conditions, corrective action shall be initiated by a Grantee not~~
14 ~~later than the next business day after a service call is received, and corrective action shall be~~
15 ~~completed as promptly as practicable. Appropriate records shall be made A Grantee shall maintain~~
16 records of service calls; showing when and what corrective action was completed.

17 [Formerly Sec. 9.1-7-6(e); new Sec. 9.2-9-3(d)]

18 ~~(f)(e) A Grantee shall arrange for pickup and/or replacement of converters or other~~
19 ~~Grantee equipment at the Ssubscriber's or former subscriber's address, or by a satisfactory~~
20 ~~equivalent (such as the provision of a postage-prepaid mailer) if requested by a subscriber or~~
21 former subscriber with a disability that limits mobility~~mobility limited customer.~~

22 [Formerly Sec. 9.1-7-6(f); new Sec. 9.2-9-3(e)]

1 **Section 9.2-9-4. Outages.**

2 (a) In the event that service to a sSubscribers is totally interrupted for more than 24
3 hours, then if the Grantee is reasonably able to identify the affected subscriber, the Grantee shall
4 provide the affected Ssubscribers, whether or not the subscriber requests it, with a pro rata credit
5 or rebate of the Ssubscriber's fees paid or payable (unless the Grantee's policy is to provide a
6 greater credit or rebate, in which case the credit or rebate with the greater benefit to the subscriber
7 shall have effect).

8 [Formerly Sec. 9.1-7-6(g); new Sec. 9.2-9-4]

9 (b) In the event of an unplanned outage of all channels lasting more than four hours
10 and affecting ten percent or more of a Grantee's total number of subscribers, a Grantee shall take
11 reasonable steps to keep subscribers and the Department informed of the outage and the estimated
12 time for restoring service. Such information may be provided via the Grantee's Web site, social
13 media, or other reasonable means. The Grantee's customer service representatives shall be
14 reasonably kept up to date with such information so that they can respond effectively to subscriber
15 calls.

16 [New in Chapter 9.2]

17 ~~(i) A Grantee shall maintain a public file containing all notices provided to~~
18 ~~S~~subscribers under these customer service standards. ~~The notices shall be placed immediately in~~
19 ~~the public file and maintained for at least one year from the date of the notice.~~

20 [Formerly Sec. 9.1-7-6(i); omitted in Sec. 9.2-9]

21 **Section 9.2-9-5. Complaint procedures.**

22 ~~(a)~~ (a) A Grantee shall establish a clear procedure for resolving complaints ~~filed by~~

1 ~~Subscribers~~. Complaints may be made orally or in writing, at the complainant's option.

2 [Formerly Sec. 9.1-7-6(j); new Sec. 9.2-9-5(a)]

3 ~~(b)~~ A Grantee shall provide an initial response to a complaint within five days of its
4 receipt and a final written response within ~~thirty~~ 30 days after a written complaint is received. The
5 response shall include a complaint number by which the complaint can be tracked. The final
6 written response shall include a notice stating that if the complaint has not been resolved to the
7 complainant's satisfaction, the matter may be referred to the ~~Communications Administrator~~
8 Department.

9 [Formerly Sec. 9.1-7-6(k); new Sec. 9.2-9-5(b)]
10 [New in Chapter 9.2]

11 **Section 9.2-9-6. Opt-out.**

12 If a Grantee offers subscribers or potential subscribers an opportunity to opt out of a term
13 or condition of service, the opt-out period shall not be less than 30 days, and the Grantee shall be
14 responsible for ensuring that the subscribers are given clear and evident notice that alerts a
15 reasonable subscriber to the nature of the option and its deadline.

16 [New in Chapter 9.2]

17 **Section 9.2-9-7. Terms of service.**

18 (a) If a Grantee changes the terms or conditions of service that bind subscribers, it shall
19 be responsible for ensuring that the subscribers are given written notice of such change, indicating
20 what provisions have changed. A general instruction to subscribers to consult the Grantee's Web
21 site periodically, for example, shall not constitute such notice.

22 [New in Chapter 9.2]

1 (b) A Grantee shall make available to a subscriber at any time complete written copies
2 of all agreements and terms of service to which the subscriber is subject, in such a way that a
3 reasonable subscriber can readily identify all the agreements and terms of service that apply to that
4 subscriber.

5 [New in Chapter 9.2]

6 **Section 9.2-9-8. Signal quality issues.**

7 If a subscriber experiences a signal problem documented by pictures or recordings that
8 have not been resolved by a Grantee by thirty days after the problem was first reported to the
9 Grantee, the County may require the Grantee to prove that the subscriber is consistently receiving
10 a signal that meets technical standards as defined in FCC regulations or other applicable law.

11 [New in Chapter 9.2]

12 **Section 9.2-9-9. ~~Regulation of rates~~Subscriber rates and notice.**

13 (a) ~~To the extent allowed by law, the Board shall regulate Subscriber rates and charges~~
14 ~~for Rate regulated services. Except as otherwise provided herein, all rates and charges for Rate~~
15 ~~regulated services shall be approved by the Board. In establishing such rates and charges, the~~
16 ~~Board shall comply with the rate regulatory rules and procedures adopted by the Federal~~
17 ~~Communications Commission pursuant to 47 U.S.C. § 543(b). Provided, however, proposals for~~
18 ~~automatic adjustments that are in compliance with 47 C.F.R. §§ 76.922 and 76.923 may be~~
19 ~~implemented after review and approval by the Communications Administrator. The County~~
20 reserves the right to regulate all rates and charges except to the extent it is prohibited from doing so
21 by law.

1 (b) ~~All charges to Subscribers shall be consistent with a schedule of rates and charges~~
2 ~~for all services offered by a Grantee. Except as otherwise provided by the Board, any increase in~~
3 ~~the schedule of rates and charges shall not take effect until at least sixty days after approval. A~~
4 Grantee shall maintain a publicly available schedule of all rates and charges for all services offered
5 over its cable system.

6 (c) ~~In addition, no A Grantee shall not implement an increase in rates or charges shall~~
7 ~~be implemented unless the Cable Television Administrator and each Ssubscriber subject to the~~
8 ~~increase in rates and charges has been notified of the change in writing at least sixty 60 days in~~
9 ~~advance of the change. In lieu of a Grantee providing sixty days such written notice to each~~
10 ~~Subscriber subject to the increase, a Grantee may provide notification may be cablecast to~~
11 ~~Ssubscribers by a Grantee in a an alternative manner approved by the Communications~~
12 ~~AdministratorCable Television Administrator in each such case. but iIn the event a cablecast~~
13 ~~notice is provided to Subscribers approved by the Cable Television Administrator, a Grantee also~~
14 ~~shall give each Ssubscriber subject to the increase written notice of the increase no less than thirty~~
15 ~~30 days before the increase is implemented. In addition, the Grantee shall provide oral or written~~
16 ~~notification of any pending increases to rates and charges to any Person who requests Cable service~~
17 ~~or becomes a Subscriber after any approval of increases to rates and charges but before the rate~~
18 ~~increase becomes effective.~~

19 (e)(d) A Grantee shall notify in writing each Ssubscriber of all applicable fees and charges
20 for providing Ccable service prior to executing a contract of service with such Ssubscriber or
21 installing any equipment to serve such Ssubscriber.

22 (d)(e) Except as may be otherwise provided in a Ffranchise agreement, a Ssubscriber shall
23 have the right to have Ccable service terminated without charge. A Ssubscriber or former

1 subscriber shall not be charged for ~~€~~cable service for more than two business days following the
2 ~~Subscriber's~~ notice of termination to the Grantee. No Grantee shall enter into any agreement with
3 a ~~S~~subscriber ~~which~~ that imposes any charge ~~following for a time period after~~ disconnection of
4 service, except to the extent an early termination fee may apply for reconnection and subsequent
5 monthly or periodic charges, and those charges shall be no greater than charges for new customers.

6 ~~(e)~~(f) A Grantee shall, at least ~~thirty~~ 30 days prior to the date it intends to terminate
7 service to any ~~S~~subscriber ~~for reason(s) of nonpayment of S~~subscriber fees, notify the ~~S~~subscriber
8 in writing of such intention, the reason therefor and the date termination is to be effective, except
9 for reasons of public safety.

10 [Formerly Sec. 9.1-6-1(e); new Sec. 9.2-9-9]

11 (g) All Grantee promotional materials, announcements, and advertising of residential
12 cable service to subscribers and the general public that include price information shall clearly and
13 accurately disclose price terms. In the case of telephone orders, the Grantee shall take appropriate
14 steps to ensure that price terms are clearly and accurately disclosed to subscribers or potential
15 subscribers before the order is accepted. Such price terms shall include all taxes and fees (to the
16 extent the Grantee can determine the amount of the taxes and fees at the time of order), surcharges,
17 necessary equipment, and other charges that may result from the subscriber's acceptance of the
18 offered product. Services and equipment shall be described in promotions or conversations in such
19 a way that the subscriber or potential subscriber can readily identify the corresponding line items
20 on bills. Once the order has been completed, the Grantee shall promptly, before the subscriber's
21 next bill is generated, provide the subscriber with a complete written description of the order as
22 implemented by the Grantee, fully itemized and showing the actual cost to the subscriber as it will

1 be reflected on the Grantee's bills. Such written description shall be provided in a way that allows
2 the subscriber to confirm that the order is what the subscriber intended.

3 [New in Chapter 9.2]

4 (h) Bills shall be clear, concise, and understandable, and shall not be such as to mislead
5 a reasonable subscriber as to any matter reflected on the bill. In particular, all line items on a bill
6 shall be explained on the bill in such a way that a reasonable subscriber can understand the general
7 nature of the charge or other entry without reference to information outside the bill.

8 (1) All descriptions in the bill shall be correct, truthful, and not misleading.

9 (2) The bill shall clearly delineate all activity during the billing period,
10 including but not limited to optional charges, rebates, credits, and late charges.

11 (3) Bills shall be fully itemized, with itemizations including but not limited to
12 basic and premium service charges and equipment charges.

13 (4) A Grantee may itemize charges that a subscriber must pay in connection
14 with a service or item of equipment as permitted by applicable law, as long as such included
15 charges are not represented in such a way as to mislead the subscriber as to the full cost of the
16 service or equipment.

17 (5) A Grantee may itemize line items relating to costs imposed by governmental
18 entities or pursuant to a franchise agreement, including but not limited to those specified in 47
19 U.S.C. § 542(c), as permitted by applicable law, as long as such included charges are not
20 represented in such a way as to mislead the subscriber as to the full amount the Grantee charges
21 the subscriber.

22 [New in Chapter 9.2]

1 **Section 9.2-9-10. Placement of equipment.**

2 If requested by a property owner and to the extent practicable, a Grantee shall take into
3 consideration the property owner’s preferences as to the location of the Grantee’s above-ground
4 pedestals or other above-ground equipment placed on private property. A Grantee may require a
5 property owner to pay the cost of any request by the property owner to move an existing pedestal
6 or other above-ground equipment, and the Grantee shall provide the property owner with an
7 estimate of such cost at the property owner’s request.

8 [New in Chapter 9.2]

9 **Section 9.2-9-11. Protection of subscriber privacy.**

10 (a) A Grantee shall at all times protect the privacy rights of all §subscribers and former
11 subscribers in accordance with applicable law, including but not limited to those rights secured by
12 47 U.S.C. § 551.

13 (b) A §subscriber or former subscriber may at any time revoke any written or electronic
14 consent to release information by delivering to a Grantee in writing, by mail, or otherwise, the
15 §subscriber's or former subscriber's decision to revoke the authorization. Any such revocation
16 shall be effective upon receipt by the Grantee. Any §subscriber's prior written or electronic
17 consent to release information shall be revoked upon termination of a Grantee's service to that
18 §subscriber.

19 [Formerly Sec. 9.1-7-9; new Sec. 9.2-9-11]

20 **Section 9.2-9-12. Methodology for standards.**

21 A Grantee shall, upon the County’s request, disclose the Grantee’s methodology for
22 calculating and determining compliance with each standard in this ARTICLE 9. Upon the

1 County's request, the Grantee shall also provide a calculation based on a common methodology
2 specified by the County for all Grantees. A Grantee shall not calculate its performance with respect
3 to any such standard in a way that has the purpose or effect of evading applicable standards or
4 obscuring Grantee's actual performance.

5 [New in Chapter 9.2]

6 ~~——(1)—— The customer service standards set forth herein shall be in addition to the rights and~~
7 ~~remedies provided by the Virginia Consumer Protection Act of 1977, as amended.~~

8 [Formerly Sec. 9.1-7-6(l); combined with 9.2-7-6(a)]

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ARTICLE 10.

Performance Guarantees and Remedies.

Section 9.2-10-1. Insurance.

~~(a) — A Grantee shall maintain, and by its acceptance of a Franchise specifically agrees that it will maintain, throughout the entire length of a Franchise period, insurance as required by its franchise agreement, at least the following liability insurance coverage insuring the County and a Grantee: (i) commercial general liability insurance with respect to the construction, operation, and maintenance a Grantee's Cable system, and the conduct of a Grantee's business in the County, in the minimum amounts of \$2,000,000 per occurrence; \$2,000,000 aggregate for each occurrence; and (ii) copyright infringement insurance in the minimum amount of \$2,000,000 for copyright infringement occasioned by the operation of a Grantee's Cable system.~~

~~—— (b) — Such commercial general liability insurance must include coverage for all of the following: comprehensive form, premises operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.~~

~~—— (c) — The County may review these amounts and shall have the right to require reasonable adjustments to them consistent with the public interest.~~

~~—— (d) — A Grantee shall be solely responsible for the payment of premiums due for each policy of insurance required pursuant to this Chapter and its Franchise agreement.~~

~~(e) — All insurance policies and certificates maintained pursuant to this Chapter or a Franchise agreement shall contain the following endorsement:~~

~~It is hereby understood and agreed that this insurance coverage may not be canceled by the insurance company nor the intention not to renew be stated by the insurance~~

1 ~~company until at least 30 days after receipt by the County Communications~~
2 ~~Administrator, by registered mail, of a written notice of such intention to cancel or~~
3 ~~not to renew.~~

4 ~~(f) All insurance policies shall be with insurers qualified to do business in the~~
5 ~~Commonwealth of Virginia, with an A-1 or better rating of insurance by Best's Key Rating Guide,~~
6 ~~Property/Casualty Edition.~~

7 ~~(g) All insurance policies shall be available for review by the County, and a Grantee~~
8 ~~shall submit to the County certificates of insurance for each policy required herein.~~

9 ~~(h) All commercial general liability insurance policies shall name the County, its~~
10 ~~elected and appointed officials, officers, boards, commissions, commissioners, agents, and~~
11 ~~employees as additional insureds.~~

12 [Formerly Sec. 9.1-5-9; new Sec. 9.2-10-1]

13 **Section 9.2-10-2. Indemnity.**

14 ~~(a)~~ (a) A Grantee shall, at its sole cost and expense, fully indemnify, hold harmless, and
15 defend the County and its boards, authorities, commissions, and committees, and, in their capacity
16 as such, the elected and appointed officials, officers, commissioners, agents, and employees
17 thereof (collectively referred to in this Section as "indemnites"), as provided in subsection (b).

18 (b) The Grantee shall provide the defense and indemnification specified in subsection
19 (a) against any and all claims, suits, causes of actions, proceedings, liability, and judgments,
20 whether for damages or equitable relief or otherwise arising out of or alleged to arise out of the
21 installation, construction, maintenance, or operation of a Grantee's cable system (to the extent
22 that a Grantee has operation or maintenance responsibilities pursuant to this Chapter, its
23 franchise agreement, or applicable law); , or the conduct of a Grantee's cable service business in

1 the County, or in any way arising out of a Grantee's enjoyment or exercise of its Franchise
2 (collectively referred to in this Section as a "claim"), subject to 47 U.S.C. § 558. agreement

3 (c) Grantee's obligations specified in subsections (a) and (b) shall include, but are not
4 limited to, indemnification against claims for infringements of any copyright, trade mark, trade
5 name, service mark, or patent; failure by a Grantee to secure consents from the owners or
6 authorized distributors of programs to be delivered by a Grantee's cable system; invasion of the
7 right of privacy; or defamation of any person, firm or corporation.

8 (d) Grantee's obligations specified in subsections (a) through (c) shall not apply unless
9 that if the specific act or omission that gives rise to the claim has been authorized by indemnitees.

10 A general statement of authorization pursuant to this Chapter or a Franchise agreement shall not
11 be construed to be such an authorization.

12 (e) Grantee's obligations specified in subsections (a) through (c) shall not apply if the
13 events that give rise to the claim are the direct result of any act or omission by indemnitees that
14 results in personal injury or property damage.

15 (f) This indemnity does not apply to PEG programming to the extent it is provided by
16 a person other than a Grantee or its agent, or programming carried on channels leased pursuant to
17 47 U.S.C. § 532, or any content on the I-Net.

18 (g) The County shall provide a Grantee with timely written notice, sufficient to allow
19 the Grantee to respond, of any obligation to indemnify and defend the County. The County shall
20 take action to avoid entry of a default judgment. The County will reasonably cooperate with the
21 Grantee in the Grantee's defense of such a claim or action.

22 ~~(j) Specifically, a Grantee shall fully indemnify, defend, and hold harmless the County~~
23 ~~and, in their capacity as such, the its elected and appointed officials, officers, agents, commissions,~~

1 commissioners, and employees thereof, from and against any and all claims, suits, actions, liability,
2 and judgments, whether for damages or otherwise, subject to 47 U.S.C. § 558, arising out of or
3 alleged to arise out of the installation, construction, operation, or maintenance of a Grantee's Cable
4 system, including but not limited to any claim against a Grantee for invasion of the right of privacy,
5 defamation of any Person, firm or corporation, or the violation or infringement of any copyright,
6 trade mark, trade name, service mark, or patent, or of any other right of any Person, firm, or
7 corporation. This indemnity does not apply to programming carried on any Channel set aside for
8 PEG use, or Channels leased pursuant to 47 U.S.C. § 532, ² or to operations of the PEG Channels
9 to the extent such operations are carried out by a Person other than a Grantee or its agents.

10 ~~(k)~~(h) In the event that a Grantee fails, after notice, to undertake ~~the County's~~
11 indemnitees' defense ~~of any claims pursuant to this Section, a Grantee's indemnification shall~~
12 include, but is not limited to, ~~the County's~~ indemnitees' reasonable attorneys' fees incurred in such
13 defensedefending against any such action, claim, suit, or proceeding, any associated interest
14 charges arising from any action, claim, suit or proceeding arising under this Chapter or its
15 ~~Franchise agreement, the County's~~ indemnitees' out-of-pocket expenses, and the reasonable value
16 of any services rendered by the County Attorney or other County staff.

17 ~~——(l)——~~ In addition to the other insurance policies required by this Chapter, a Grantee shall
18 obtain and keep in force and effect during the entire term of its Franchise agreement, including
19 any extension thereof, commercial general liability insurance coverage (owner's protection policy)
20 in a minimum amount of two million dollars covering bodily injury and property damage, subject
21 to exclusions, for the benefit of the County, its elected and appointed officials, boards,
22 commissions, commissioners, agents, employees, and officers. A Grantee shall deliver to the
23 County on or before the date of execution of a Franchise agreement an indemnification insurance

1 ~~policy duly executed by the officers or authorized representatives of a responsible and non-~~
2 ~~assessable insurance company, evidencing this coverage for the benefit of the County, its elected~~
3 ~~and appointed officials, agents, boards, commissions, commissioners, employees, and officers,~~
4 ~~which policy of insurance shall provide for at least 30 days' prior written notice to the County of~~
5 ~~the insurer's intention to cancel or not to renew said policy.~~

6 ~~(m)(i)~~ Neither the provisions of this Section nor any damages recovered by ~~the County~~
7 indemnitees shall be construed to limit the liability of a Grantee or its ~~subcontractors~~ agents for
8 damages under this Chapter or its ~~F~~franchise agreement or to excuse the faithful performance of
9 obligations required by this Chapter and its ~~F~~franchise agreement, except to the extent that any
10 monetary damages suffered by ~~the County~~ indemnitees have been satisfied by a financial recovery
11 under this Section or other provisions of this Chapter or the fFranchise agreement.

12 ~~(n)(j)~~ ~~The County~~ Indemnitees shall at no time be liable for any injury or damage
13 occurring to any ~~P~~person or property from any acts or omissions of a Grantee in the construction,
14 maintenance, use, operation, or condition of a Grantee's ~~C~~cable system, ~~to the extent that a Grantee~~
15 ~~has responsibilities for such maintenance, use, operation or condition pursuant to this Chapter, its~~
16 ~~Franchise agreement, or applicable law. The County~~ Indemnitees shall not and ~~does~~ do not assume
17 any liability whatsoever of a Grantee for injury to ~~P~~persons or damage to property.

18 ~~(o)~~ ~~The provisions of this Section constitute the minimum requirements of a Grantee~~
19 ~~under this Chapter and its Franchise agreement, but shall not be additional requirements to those~~
20 ~~identified in a Grantee's Franchise agreement.~~

21 [Formerly Sec. 9.1-5-9; new Sec. 9.2-10-2]

1 **Section 9.2-10-3. Security Instruments.**

2 ~~(p)(a)~~ A Grantee shall obtain and maintain during the entire term of a Franchise, and any
3 renewal or extensions thereof, a performance bond in the County's favor in the amount ~~not less~~
4 ~~than \$500,000~~ provided in its franchise agreement to ensure a Grantee's faithful performance of
5 its obligations under its Franchise agreement, this Chapter, and other applicable law. The County
6 may, at its sole discretion, reduce the amount of the bond upon written application by a Grantee.
7 Reductions granted or denied upon application by a Grantee shall be without prejudice to the
8 Grantee's subsequent applications or to the County's right to require the full bond at any time
9 thereafter. However, no application for a reduction of bond shall be submitted by a Grantee within
10 one year of any prior application. In no event shall such performance bond or bonds be reduced
11 to less than Fifty Thousand Dollars.

12 ~~———— (q)(h) A performance bond shall provide the following conditions:~~

13 ~~———— (1) There shall be recoverable by the County from the principal and surety, any~~
14 ~~and all fines and penalties due to the County and any and all damages, losses, costs, and expenses~~
15 ~~suffered or incurred by the County resulting from the failure of a Grantee to faithfully comply with~~
16 ~~the material provisions of a Franchise agreement, this Chapter, and other applicable law, to comply~~
17 ~~with all orders, permits and directives of any County agency or body having jurisdiction over a~~
18 ~~Grantee's acts or defaults, to pay fees due to the County, or to pay any claims, taxes or liens due~~
19 ~~the County. Such losses, costs and expenses shall include, but not be limited to, reasonable~~
20 ~~attorney's fees and other associated expenses.~~

21 ~~———— (2) The total amount of the performance bond required by this Chapter shall be~~
22 ~~forfeited in favor of the County in the event:~~

1 ~~_____ (A) a Grantee abandons its system at any time during the term of its~~
2 ~~Franchise or any extension thereto; or~~

3 ~~_____ (B) a Grantee carries out a transfer without the express written approval~~
4 ~~of the Board as required in this Chapter.~~

5 ~~_____ (r)(i) All performance bonds shall be issued by a surety with an A-1 or better rating of~~
6 ~~insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be in a form satisfactory~~
7 ~~to the County Attorney; and shall be subject to the approval of the County; and shall contain the~~
8 ~~following endorsement:~~

9 ~~This bond may not be allowed to lapse until at least ninety days after receipt by the~~
10 ~~County, by certified mail, return receipt requested, of a written notice from the~~
11 ~~issuer of the bond of intent not to renew.~~

12
13 ~~_____ (s)(j) All performance bonds and insurance policies required herein shall be in a form~~
14 ~~satisfactory to the County. The County may, at any time, increase the amount of the required~~
15 ~~performance bond to reflect increased risks to the County and the public and/or require a Grantee~~
16 ~~to provide additional sureties to any and all bonds or to replace existing bonds with new bonds that~~
17 ~~satisfy the criteria in this Section. No bond or insurance policy shall be cancelable. Insurance~~
18 ~~policies written for a period less than the term of a Franchise shall be renewed at least thirty days~~
19 ~~before the policy's expiration, and the renewed policies and evidence of premium payments shall~~
20 ~~be promptly delivered to the County.~~

21 ~~(t)(b) No Grantee shall permit any insurance policy or performance bond to expire or~~
22 ~~approach less than ~~thirty~~ 30 days prior to expiration without securing and delivering to the County~~

1 a substitute, renewal, or replacement policy or bond in conformance with the provisions of this
2 Chapter.

3 ~~(c)~~ (c) The County may require performance bonds and insurance policies described in
4 this Section to run to the benefit of the County.

5 (d) The following procedures shall apply to drawing on any bond or letter of credit
6 provided by a Grantee:

7 (1) If the County notifies a Grantee of any amounts due pursuant to its franchise
8 agreement or applicable law, and the Grantee does not make such payment within 30 business
9 days, the County may draw the amount in question, with any applicable interest and penalties,
10 from the bond or letter of credit after providing written notice to the Grantee and the issuing
11 financial institution, specifying the amount and purpose of such draw.

12 (2) Within three business days of a draw on the bond or letter of credit, the
13 County shall mail to the Grantee, by certified mail, return receipt requested, written notification of
14 the amount, date, and purpose of such draw.

15 (3) If at the time of a draw on the bond or letter of credit by the County, the
16 amount available is insufficient to provide the total payment of the claim asserted in the County's
17 draw notice, the balance of such claim shall not be discharged or waived, but the County may
18 continue to assert the same as an obligation of the Grantee to the County.

19 (4) No later than 30 days after the County mails notice to the Grantee by
20 certified mail, return receipt requested, of a draw on the bond or letter of credit, the Grantee shall
21 restore the amount of the bond or letter of credit to its original amount as specified in the franchise
22 agreement. However, if the Grantee has initiated a legal action contesting the alleged default or
23 amount owed, the County shall not further draw on the bond or letter of credit for the issue disputed

1 in the legal action or subsequent cases arising out of the same facts and circumstances, pending
2 final resolution. The County may, however, continue to draw on the bond or letter of credit for
3 other violations.

4 (5) Upon termination of the Grantee's franchise and satisfaction of all its
5 outstanding obligations under the franchise and applicable law, the bond may be canceled by the
6 Grantee and the County shall release the issuing bank of its obligations under the letter of credit,
7 provided that there is then no outstanding default on the part of the Grantee. Upon renewal of the
8 franchise, the bond and letter of credit may be canceled and replaced, as applicable, by any similar
9 instrument that may be required upon such renewal.

10 [Formerly Sec. 9.1-5-9; new Sec. 9.2-10-3]

11 **Section 9.2-10-4. Remedies~~Financial penalties.~~**

12 ~~(a) — For violation of this Chapter or a Franchise agreement entered into pursuant to this~~
13 ~~Chapter, penalties shall be assessable against a Grantee. Such penalties shall: (i) be chargeable to~~
14 ~~the Grantee, its performance bond, or any other security fund of the Grantee, in any amount up to~~
15 ~~the limits specified below, at the County's discretion; (ii) be subject to cure periods, to the extent~~
16 ~~listed below, that begin to run at the time the Grantee is notified in writing of a penalty by the~~
17 ~~County; and, (iii) not be deemed cured without written evidence from a Grantee and acceptance~~
18 ~~thereof by the County for those violations that are subject to a cure period. The County may waive~~
19 ~~or reduce the penalties specified in this Section for good cause shown.~~

20 ~~————— (1) — For failure to submit any required plans indicating expected dates of~~
21 ~~installation of various parts of the system: a penalty of \$400 per day for each day the plans are not~~
22 ~~submitted beyond a seven day cure period;~~

1 ~~————— (2) — For failure to commence operations in accordance with the~~
2 ~~requirements of a Franchise agreement: a penalty of \$1,000 per day for each day commencement~~
3 ~~of operations in accordance with such requirements is delayed beyond a thirty _day cure period;~~

4 ~~————— (3) — For failure to substantially complete construction and installation of~~
5 ~~a system in accordance with this Chapter and/or a Franchise agreement: a penalty of \$2,000 per~~
6 ~~day for each day the construction or installation is delayed beyond a thirty _day cure period;~~

7 ~~————— (4) — For a transfer without approval: a penalty of \$2,000 per day for each~~
8 ~~day the transfer remains in effect without the County's approval;~~

9 ~~————— (5) — For failure to comply with requirements for PEG use of the system:~~
10 ~~a penalty of \$1,000 per day for each day compliance is delayed beyond a fourteen _day cure period;~~

11 ~~————— (6) — For failure to provide complete and accurate information, reports, or~~
12 ~~filings lawfully required under a Franchise agreement or applicable law or by the County: a~~
13 ~~penalty of \$200 per day for each day that each such filing is delayed beyond a thirty _day cure~~
14 ~~period;~~

15 ~~————— (7) — For violation of a customer service standard as set forth in Section~~
16 ~~9.1-7-6: a penalty of \$200 per violation, treating each failure to comply as a separate violation;~~

17 ~~————— (8) — For failure to render payment for reimbursement of any franchise~~
18 ~~expenses, or failure to pay franchise fees or liquidated damages or any payment due and owing to~~
19 ~~the County: a penalty of \$100 for each day each such payment is delayed;~~

20 ~~————— (9) — For failure to file, obtain or maintain any required performance bond~~
21 ~~or other security fund in a timely fashion: a penalty of \$200 per day for each day compliance is~~
22 ~~delayed;~~

1 ~~—————(10) For failure to restore damaged property: a penalty of \$50 per day~~
2 ~~for each day such property is not replaced beyond a ten-day cure period, in addition to the cost of~~
3 ~~the restoration as required in this Chapter or a Franchise agreement;~~

4 ~~—————(11) For failure to bring into compliance any violation of applicable~~
5 ~~construction standards: \$200 per day for each day such violation is not remedied beyond a ten-~~
6 ~~day cure period, in addition to the cost of the remedy;~~

7 ~~—————(11)(12) For violation of applicable technical standards pursuant to~~
8 ~~federal law: a penalty of \$100 per day for each day the violation is not remedied beyond a seven~~
9 ~~-day cure period;~~

10 ~~—————(12)(13) For rate regulation violations or failure to conform to County~~
11 ~~orders or resolutions, for each day that the same violation occurs or continues: a penalty of \$200~~
12 ~~for each day the violation is not remedied;~~

13 ~~—————(13)(14) For violation of federal, Virginia, or local privacy~~
14 ~~requirements: a penalty of \$1,000 per incident; and~~

15 ~~—————(14)(15) For any other violations of this Chapter, a Franchise~~
16 ~~agreement or other applicable law: a penalty of \$200 per day for each violation for each day the~~
17 ~~violation is not remedied beyond a seven-day cure period.~~

18 ~~————(b) A Grantee shall pay any penalty assessed in accordance with this Chapter~~
19 ~~within thirty days after receipt of notice from the Communications Administrator.~~

20 ~~————(b)(c) To the extent that financial penalties are applied to a Grantee under this~~
21 ~~Section, the Grantee shall not be subject to liquidated damages established in a Franchise~~
22 ~~agreement for the same violation.~~

1 ~~(e)(d)~~—Violation of this Chapter shall be subject to such ~~other remedies and penalties as~~
2 shall be prescribed by federal, state, or local law or ordinance, or by franchise agreement.

3 [Formerly Sec. 9.1-9-9; new Sec. 9.2-10-2]

4 **Section 9.2-10-5. Force majeure.**

5 Notwithstanding any other provision of this Chapter, a Grantee shall not be liable for delay
6 in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Chapter
7 due, directly or indirectly, to force majeure as defined in the Grantee's franchise agreement. In
8 the event that any such delay in performance or failure to perform affects only part of a Grantee's
9 capacity to perform, the Grantee shall perform to the maximum extent it is able to perform and
10 shall take all reasonable steps within its power to correct such cause(s) in as expeditious a manner
11 as possible.

12 [New in Chapter 9.2]

13 **Section 9.2-10-6. Franchise revocation.**

14 (a) The Board shall have the right, by ordinance, to revoke a ~~F~~franchise or to shorten
15 the term of a ~~F~~franchise to a term not less than ~~thirty-six~~ 36 months from the date of the action
16 shortening the ~~F~~franchise term, for a Grantee's failure to construct, operate, or maintain its ~~C~~cable
17 system in accordance with this Chapter and its ~~F~~franchise agreement; for failing to comply with
18 the conditions of occupancy for any public lands; for failing to make required extensions of
19 service; for willfully or knowingly making false statements on or in connection with an initial or
20 renewal ~~F~~franchise application; for willfully or knowingly making false statements on or in
21 connection with any application for a transfer or a ~~F~~franchise modification; for defrauding or
22 attempting to defraud the County or ~~S~~subscribers; for any substantial violation of the Virginia

1 Consumer Protection Act of 1977; for any substantial violation of the Cable Act or any regulations
2 promulgated pursuant thereto; or for any other material breach of a Franchise agreement or
3 violation of this Chapter. Board actions ~~taken~~ pursuant to this Subsection shall be taken in
4 accordance with ~~such~~ any other terms ~~and or~~ conditions to revoke a Franchise regarding revocation
5 ~~or to shorten the term of a Franchise agreement or shortening of the term to the extent established~~
6 that may be established in that Grantee's Franchise agreement.

7 (b) A Grantee shall not be subject to the sanctions of this Section for any act or
8 omission ~~wherein such act or omission was beyond the Grantee's control. An act or omission shall~~
9 ~~not be deemed to be beyond a Grantee's control if committed, omitted, or caused by a corporation~~
10 ~~or other business entity that holds a controlling interest in the Grantee, whether held directly or~~
11 ~~indirectly. Further, the inability of a Grantee to obtain financing, for whatever reason, shall not be~~
12 ~~an act or omission that is "beyond the Grantee's control."~~ caused by force majeure as defined in
13 the Grantee's franchise agreement.

14 (c) Any Franchise shall be deemed revoked ~~one hundred twenty calendar~~ 120 days
15 after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take
16 over the business of a Grantee, whether in a receivership, reorganization, bankruptcy, assignment
17 for the benefit of creditors, or other action or proceeding. ~~Provided, however, that~~ However, that a Franchise
18 may be reinstated at the Board's sole discretion if, within that ~~one hundred twenty~~ 120 day period:

- 19 (1) Such assignment, receivership, or trusteeship has been vacated; or
20 (2) Such assignee, receiver, or trustee has fully complied with the terms and
21 conditions of this Chapter and the applicable Franchise agreement and has executed an agreement,
22 approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by

1 the terms and conditions of this Chapter and the applicable Ffranchise agreement, and such other
2 conditions as may be established or as are required by applicable law; or

3 _____ (3) If the Board determines that reinstatement is in the public interest for other
4 reasons.

5 (d) Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of
6 any of the facilities, equipment, or property of a Grantee, the Board may revoke the Ffranchise by
7 serving notice on the Grantee and the successful bidder, in which event the Ffranchise and all
8 rights and privileges of the Ffranchise will be revoked and will terminate ~~thirty calendar~~ on a date
9 established by the Board, but not less than 30 days after serving such notice, unless:

10 (1) The Board has approved the transfer of the Ffranchise to the successful
11 bidder; and

12 (2) The successful bidder has covenanted and agreed with the Board to assume
13 and be bound by the terms and conditions of the Ffranchise agreement and this Chapter, and such
14 other conditions as may be established or as are required pursuant to this Chapter or a Ffranchise
15 agreement.

16 (e) If the Board revokes a Ffranchise, or if for any reason not constituting force majeure
17 a Grantee terminates service to its subscribers, or fails to provide service to all its Ssubscribers for
18 72 consecutive hours, ~~or~~ abandons its system, ~~forfeits~~ or fails to operate its system, the following
19 rights are effective:

20 (1) the Board may acquire ownership of or effect a transfer of the Ccable system
21 at an equitable price, subject to applicable provisions of the Grantee's franchise agreement and
22 applicable law; and

1 (2) if a ~~C~~cable system is abandoned by a Grantee, the Board may sell, assign or
2 transfer all or part of the assets of the system, subject to applicable provisions of the Grantee's
3 franchise agreement and applicable law.

4 ~~——(f)—— To the extent permitted by applicable law, The Board may acquire ownership of~~
5 ~~and operate a Cable system, regardless of whether such ownership is acquired following revocation~~
6 ~~or forfeiture of a Franchise.~~

7 ~~(g)(f)~~ The termination of a Grantee's ~~F~~franchise shall in no way affect, ~~limit, or foreclose~~
8 ~~any rights or remedies the County may have under the Ffranchise or under any provision of law~~
9 the validity of any act or violation done or committed before that termination; or any liquidated
10 damage, penalty, sanction, or forfeiture incurred, or any right established, accrued, or accruing
11 under the franchise before that termination; or any notice of violation or enforcement action
12 initiated pursuant to the franchise before that termination.

13 [Formerly Sec. 9.1-5-4; new Sec. 9.2-10-4]

14 **Section 9.2-10-7. Termination of Franchise.**

15 Upon termination of a ~~F~~franchise, ~~whether by action of the Board, as provided above, or~~
16 ~~upon expiration of a Ffranchise term without extension or renewal,~~ a Grantee shall be obligated to
17 cease using its system for the purposes authorized by the ~~F~~franchise ~~unless the Board requires the~~
18 ~~Grantee to operate its system pursuant to Section 9.1-5-6~~ except to the extent required by Section
19 9.2-3-5.

20 [Formerly Sec. 9.1-5-12; new Sec. 9.2-10-5]

1 **Section 9.2-10-8. Transfer of ownership to County; Arbitration.**

2 (a) ~~In those circumstances provided for in this Chapter wherein~~ If the County shall
3 ~~have~~ has the right under applicable law and the Grantee's franchise agreement to acquire
4 ownership of a Grantee's ~~C~~cable system or substantially all of its assets, and ~~the~~ County and the
5 Grantee agree upon the price for the Cable system pursuant to this Chapter, shall have been
6 ~~mutually agreed upon, within sixty days after such agreement, then~~ the County shall give written
7 notice to the Grantee ~~if~~ whether it elects to exercise such right. The County shall give such notice
8 within 60 days after agreement on the price, unless the County and the Grantee agree to a different
9 time period. The County's written notice shall indicate whether the entire system or substantially
10 all of ~~its~~ Grantee's assets will be purchased. Ownership of the system or the identified assets will
11 transfer to the County at the time the County tenders the purchase price for the system or assets,
12 which shall not be later than 180 days after the County's notice of its exercise of a right of purchase,
13 unless the County and the Grantee agree to a different time period.

14 (b) In the event the Board ~~considers the~~ elects to purchase or transfer of a Grantee's
15 ~~C~~cable system, or any of its assets, pursuant to the terms of a ~~F~~franchise agreement and/or this
16 Chapter, and the ~~final~~ price cannot be agreed upon, the price shall be determined by a panel of
17 arbitrators. The panel shall be composed of one arbitrator chosen by the County, one arbitrator
18 chosen by the Grantee, and a third arbitrator chosen by the first two. The expenses of the
19 arbitration, including the fees of the arbitrators, shall be borne by the parties in such a manner as
20 the arbitrators provide in their award, but in no event will the County be responsible for more than
21 one-half of the expenses. The arbitrators shall follow the rules and procedures of the American
22 Arbitration Association, except where such procedures conflict with an express provision of this

1 Chapter. The arbitration hearing shall take place in Fairfax County, Virginia, unless otherwise
2 agreed to by the parties in writing.

3 (c) Where the purchase price of a ~~C~~cable system has been submitted to arbitration, the
4 County may ~~affirmatively~~ accept the price determined by the arbitrators within ~~sixty~~ 60 days after
5 the rendering of the arbitrators' decision, and make payment of such price in full to the Grantee
6 within 180 days after the rendering of the arbitrators' price, ~~at which time~~ in which case the system
7 or any assets shall ~~automatically~~ be transferred to the County. If the County fails to accept the
8 arbitrators' price within the aforesaid ~~sixty~~60-day period, and tender the purchase price in full to the
9 Grantee within 180 days after the rendering of the arbitrators' price, the rights of the County to
10 acquire shall expire.

11 (d) No matter or dispute between the County and a Grantee relating to this Chapter or
12 a ~~F~~franchise agreement shall be arbitrable unless specifically provided for in this Chapter or a
13 ~~F~~franchise agreement.
14 ~~County's right to assign.~~

15 ~~A Franchise agreement shall not limit the right of the County to assign its rights to acquire~~
16 ~~any or all of the assets of a Grantee's Cable system.~~

17 [Formerly Sec. 9.1-5-5; new Sec. 9.2-10-6]

18 ~~Section 9.1-5-6. — County's right to assign.~~

19 ~~A Franchise agreement shall not limit the right of the County to assign its rights to acquire~~
20 ~~any or all of the assets of a Grantee's Cable system.~~

21 [Formerly Sec. 9.1-5-6; omitted in Ch. 9.2]

1 control the applicant and its affiliates; all officers and directors of the applicant and its affiliates;
2 and any other business affiliation and cable system ownership interest of each named Pperson.

3 ~~————— (2) — A detailed description of the physical facilities the applicant proposes to~~
4 ~~place in public ways.~~

5 ~~(3) — Any information that may be reasonably necessary to demonstrate~~
6 ~~compliance with the requirements of federal law, including without limitation, all applicable FCC~~
7 ~~regulations and orders.~~

8 ~~(4) — Any information that may be reasonably necessary to demonstrate~~
9 ~~compliance with the requirements of this Article.~~

10 ~~————— (5) — An affidavit or declaration of the applicant or authorized officer certifying~~
11 ~~the truth and accuracy of the information in the application and certifying that the application~~
12 ~~meets all federal, and state, and local law requirements.~~

13 ~~(6)(2) The County Cable Television Administrator may, at its discretion and upon~~
14 ~~request of an applicant, waive in writing the provision of any of the information required by this~~
15 ~~Section.~~

16 ~~———— (b) — Upon the Board's grant of open video system authorization, the applicant shall pay~~
17 ~~to the County an amount of Seventy five Thousand Dollars per Franchise area. The payment shall~~
18 ~~be non-refundable, shall be made payable to the order of the "County of Fairfax" and may be used~~
19 ~~to offset in whole or in part any direct costs incurred by the County in granting the~~
20 ~~authorization.~~

21 [Formerly Sec. 9.1-8-2; new Sec. 9.2-11-2]

1 **Section 9.2-11-3. Fee in lieu of franchise fee.**

2 An open video system operator shall pay to the County a fee of five percent of gross
3 revenues in lieu of the a franchise fee required in this Chapter, pursuant to the terms, procedures
4 and conditions specified in this Chapter for franchise fees, unless cable service provided by the
5 open video system operator is subject to the Virginia Communications Sales and Use Tax levied
6 under Virginia Code § 58.1-648 or any successor provision, in which case the open video system
7 operator shall be responsible for such Communications Sales and Use Tax in lieu of a franchise
8 fee.

9 [Formerly Sec. 9.1-8-3; new Sec. 9.2-11-3]

10 **Section 9.2-11-4. Public, educational, and governmental access obligations.**

11 An open video system operator shall be subject to obligations pertaining to public,
12 educational, and governmental access pursuant to 47 C.F.R. § 76.1505.

13 [Formerly Sec. 9.1-8-4; new Sec. 9.2-11-4]

14 **Section 9.2-11-5. Usage of public ways.**

15 (a) An open video system operator shall be subject to all requirements of state and local
16 law regarding authorization to use or occupy the public ways, except to the extent specifically
17 prohibited by federal law. FCC approval of an open video system operator's certification pursuant
18 to 47 U.S.C. § 573 shall not confer upon such operator any authority to use or occupy the public
19 ways that the operator would not otherwise possess.

20 (b) No ~~P~~person shall construct, install, maintain, or operate an open video system or
21 part of an open video system on, over, through, or within a public way in the County, or on, over,
22 through, or within any other public property of the County, unless an agreement has first been

1 obtained pursuant to the provisions of this Article, and unless such open video system agreement
2 is in full force and effect.

3 [Formerly Sec. 9.1-8-5; new Sec. 9.2-11-5]

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ARTICLE 12.

~~Administration and Advisory Bodies to the Board of Supervisors.~~

Section 9.2-12-1. Powers and responsibilities.

(a) The Board delegates the performance of any act, duty, or obligation, or exercise of any power under this Chapter or any Franchise agreement to the ~~Communications Administrator~~ Cable Television Administrator, except where this Chapter specifies that the Board shall take an action or federal or ~~Virginia state~~ law requires action by the ~~Franchising Authority~~.

(b) Day-to-day administration of ~~cable communications operations this Chapter and~~ Franchises within the County shall be assigned to the ~~Communications Administrator~~ Cable Television Administrator. The ~~Communications Administrator's~~ Cable Television Administrator's powers and responsibilities include, but are not limited to, the following functions:

(1) ~~Preparing invitations to bid for a Franchise; establishing criteria for review and ranking of Franchise applications; r~~Reviewing and evaluating applications for Franchises and making ~~selection~~ recommendations to the Board;

(2) Monitoring the timely performance of Grantees ~~Grantee(s) in submitting applications for and obtaining all certificates, permits and agreements required by this Chapter and applicable law and the performance of Grantee(s) in meeting applicable construction timetables in~~ fulfilling their obligations under their franchise agreements and this Chapter;

~~(3) Monitoring and reviewing changes in, additions to, or reductions of Subscriber fees and rates for conformity with the requirements of this Chapter and federal law; advising and making recommendations to the Board on the regulation of rates in accordance with this Chapter; administering and enforcing the rate regulation provisions of the Cable Act and~~

1 federal law; promulgating rules and procedures concerning rate regulation; and exercising any
2 authority granted by the Board under this Chapter;

3 (4)(3) Advising and making recommendations to the Board on technical,
4 engineering, and police power regulations of cable and other communications systems within the
5 County;

6 (5)(4) Cooperating with other cable and other communications systems, system
7 operators and governmental units in the development and supervision of the interconnection of
8 systems;

9 (6)(5) Reviewing books, records, and reports a Grantee is required to provide
10 pursuant to this Chapter ~~and or a F~~franchise agreement, as well as ~~all franchise~~ reports filed with
11 the FCC or any other regulatory agencies ~~with jurisdiction over any cable or communications~~
12 ~~system in the County~~, and, at the ~~Communications Administrator's~~ Cable Television
13 Administrator's discretion, requiring the preparation and filing of information in addition to that
14 otherwise required by this Chapter or applicable law, ~~as may reasonably be required to accomplish~~
15 ~~the purposes pursuant to Section 9.1-6-2~~ Section 9.2-8-1 of this Chapter;

16 (7)(6) Monitoring a Grantee's performance under and compliance with the terms
17 of an applicable ~~F~~franchise agreement and this Chapter and making recommendations to the Board
18 to ensure such compliance or advising and making recommendations on matters that may
19 constitute grounds for revoking or shortening the term of a Franchise;

20 (8)(7) Receiving and investigating complaints against a Grantee and advising a
21 Grantee of the receipt of ~~S~~subscriber complaints affecting a Grantee's system;

1 ~~(9)~~(8) Seeking recovery of ~~penalties or~~ liquidated damages provided for in ~~this~~
2 ~~Chapter or a F~~franchise agreement, including but not limited to withdrawing money from a security
3 ~~fund~~ instruments pursuant to a ~~F~~franchise agreement;

4 ~~(10)~~(9) Advising the Board with regard to the County's authority to regulate,
5 ~~F~~franchise, or authorize cable and other communications systems in the County;

6 ~~(11)~~(10) Developing policies to encourage growth and competition in
7 communications, and evaluating the impact of cable and other communications systems on the
8 County, for review and implementation by the Board;

9 ~~(12)~~(11) Executing agreements with Grantees and other third parties as
10 appropriate to (A) establish safeguards, subject to the requirements of the Virginia Freedom of
11 Information Act, Virginia Code § 2.2-3700, et seq., and the disclosure requirements of any other
12 applicable law, to protect proprietary and confidential documents that Grantees provide pursuant
13 to this Chapter or a cable franchise; and (B) toll the running of statutes of limitation, contractual
14 limitations periods, or other deadlines when doing so will protect the County's rights and interests
15 under this Chapter or a cable franchise agreement; and

16 (12) Other duties as assigned by the Board and the County Executive.

17 (c) The Board shall have the sole authority to: (i) ~~regulate rates for rate-regulated~~
18 ~~services, except to the extent such authority is delegated to the Communications Administrator in~~
19 ~~this Chapter; (ii) grant F~~franchises; ~~(iii)~~ (ii) authorize the entering into of ~~F~~franchise agreements;
20 ~~(iv)~~ (iii) renew ~~F~~franchises; ~~(v)~~-(iv) revoke or shorten the term of a ~~F~~franchise; (v) modify a
21 franchise; and (vi) authorize the transfer of a Ffranchise; ~~and, (vii) authorize a change of ownership~~
22 ~~control of a Grantee.~~

23 [Formerly Sec. 9.1-4-1; new Sec. 9.2-12-1]

1 **Section 9.2-12-2. Advisory bodies to the Board of Supervisors.**

2 The Consumer Protection Commission (as defined in Chapter 10, Article 3 of the Code of
3 the County of Fairfax) may, as directed by the Board or requested by the ~~Communications~~
4 ~~Administrator~~ Cable Television Administrator, advise and inform the Board on issues relating to
5 Cable systems.

6 [Formerly Sec. 9.1-4-2; new Sec. 9.2-12-2]

1 insist upon a Grantee's performance or to seek a Grantee's compliance with any one or more of
2 such terms or conditions.

3 [Formerly Sec. 9.1-9-4; new Sec. 9.2-13-3]

4 **Section 9.2-13-4. Rights reserved to the County.**

5 The County hereby expressly reserves the following rights:

6 1. To exercise its governmental powers, now or hereafter, to the full extent that such
7 powers may be vested in or granted to the County.

8 2. To adopt, in addition to the provisions contained herein, in a Franchise agreement
9 and in ordinances, such additional regulations as it shall find necessary in the exercise of its police
10 power.

11 3. The right to amend this Chapter.

12 [Formerly Sec. 9.1-9-5; new Sec. 9.2-13-4]

13 **Section 9.2-13-5. Employment requirement.**

14 A Grantee shall adhere to the Equal Employment Opportunity regulations of the FCC and
15 to all federal, ~~Virginia state,~~ and local laws and executive orders pertaining to discrimination, equal
16 employment opportunity, and affirmative action that are applicable to a Grantee.

17 [Formerly Sec. 9.1-9-6; new Sec. 9.2-13-5]

18 **Section 9.2-13-6. Time of essence.**

19 (a) Whenever this Chapter or a Franchise agreement sets forth any time for any act to
20 be performed by or on the behalf of a Grantee, such time shall be deemed of the essence and the
21 Grantee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the

1 County to invoke the remedies available under the terms and conditions of this Chapter and its
2 Franchise agreement.

3 (b) Unless otherwise indicated, when the performance or doing of any act, duty, matter,
4 or payment is required under this Chapter or any franchise agreement, and a period of time or
5 duration for the fulfillment of doing thereof is prescribed and is fixed herein or in a franchise
6 agreement, the time shall be computed so as to exclude the first and include the last day of the
7 prescribed or fixed period of time.

8 [Formerly Sec. 9.1-9-7; new Sec. 9.2-13-6]

9 ~~9.1-9-10. Severability.~~

10 ~~— If any section of this Chapter or a Franchise agreement, or any portion thereof, is held~~
11 ~~invalid or unconstitutional by any court of competent jurisdiction or administrative agency, such~~
12 ~~decision shall not affect the validity of the remaining portions.~~

13 [Formerly Sec. 9.1-9-10]

14 **Section 9.2-13-7. Preemption.**

15 In the event that federal or state laws, rules, or regulations preempt a provision or limit the
16 enforceability of a provision of this Chapter, then the provision shall be read to be preempted to
17 the extent and for the time, but only to the extent and for the time, required by law. In the event
18 such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended, or
19 otherwise changed so that the provision herein that had been preempted is no longer preempted,
20 such provision shall thereupon return to full force and effect, and shall thereafter be binding on all
21 Grantees, without the requirement of further action on the part of the County.

22 [Formerly Sec. 9.1-9-11; new Sec. 9.2-13-7]

1

2 2. That Chapter 9.1 of the Fairfax County Code is repealed, except as set forth in enactment
3 clause 3 below.

4 [Formerly § 2 of ordinance amending Chapter 9]

5

6 ~~3. That any person providing cable service within the County on the effective date of this~~
7 ~~ordinance pursuant to a cable Franchise previously granted by the Board, who was in full~~
8 ~~compliance with Fairfax County Code Section 9-5-12 and that cable Franchise prior to the~~
9 ~~effective date of this ordinance and who continues to meet the requirements established therein,~~
10 ~~shall be deemed to be in compliance with Fairfax County Code Section 9.1-5-9 while that cable~~
11 ~~Franchise remains in force and effect.~~

12 [Formerly § 3 of ordinance amending Chapter 9]

13

14 ~~4.3. That the provisions of this ordinance are severable, and if any provision of this ordinance~~
15 ~~or any application thereof is held invalid, that invalidity shall not affect the other provisions or~~
16 ~~applications of this ordinance which can be given effect without the invalid provision or~~
17 ~~application. The repeal of Chapter 9.1 shall not affect the validity of any act or violation done or~~
18 ~~committed before the repeal of that Chapter; or any liquidated damage, penalty, sanction, or~~
19 ~~forfeiture incurred, or any right established, accrued, or accruing, under that Chapter before the~~
20 ~~repeal; or any notice of violation or enforcement action initiated pursuant to that Chapter before~~
21 ~~the repeal. Any such acts, violations, liquidated damages, penalties, sanctions, forfeitures, rights,~~

1 or enforcement actions shall be governed by Chapter 9.1, which is continued in effect for that
2 purpose.

3 [Formerly § 4 of ordinance amending Chapter 9]

4

5 4. With respect to occurrences after the repeal of Chapter 9.1, any references to Chapter 9.1
6 in cable franchise agreements shall be construed to refer to the corresponding provisions of
7 Chapter 9.2.

8 [Not included in Chapter 9.1]

9

10 5. That this ordinance shall become effective ~~on adoption~~ on January 1, 2020.

11 [Formerly § 5 of ordinance amending Chapter 9]

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Board Agenda Item
July 30, 2019

ADMINISTRATIVE - 10

Authorization to Advertise a Public Hearing on the County and Schools' FY 2019 Carryover Review to Amend the Appropriation Level in the FY 2020 Revised Budget Plan

ISSUE:

Board approval of an advertisement to increase the FY 2020 appropriation level. The advertisement encompasses both the County and the Schools' *FY 2019 Carryover Reviews*. Section 15.2 – 2507 of the Code of Virginia requires that a public hearing be held prior to Board Action.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to publish the advertisement for a public hearing to be held on September 24, 2019 at 10:30 a.m.

TIMING:

Board action is requested on July 30, 2019.

BACKGROUND:

As the *FY 2019 Carryover Review* includes potential increases in appropriation greater than 1 percent, a public hearing is required prior to Board action. In addition, the Code of Virginia requires that a synopsis of proposed changes be included in the advertisement for a public hearing.

Details of the proposed changes shown in the advertisement are provided to the Board in the enclosed *FY 2019 Carryover Review* documents.

The School Board funding adjustments included in the advertisement are based upon the School Board's actions on July 25, 2019.

ENCLOSED DOCUMENTS:

These attachments will be available online on Monday, July 29, 2019:

<https://www.fairfaxcounty.gov/budget/fy-2019-carryover-budget-package>

Attachment A: Proposed advertisement for public hearing

Attachment B: July 30, 2019 Memorandum to the Board of Supervisors from Bryan J. Hill, County Executive, with attachments, transmitting the County's *FY 2019 Carryover Review* with appropriate resolutions

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Attachment C: Fairfax County School Recommended FY 2019 Final Budget Review and
Appropriation Resolutions

STAFF:

Bryan J. Hill, County Executive

Joseph M. Mondoro, Chief Financial Officer

Christina Jackson, Director, Department of Management and Budget

Philip Hagen, Budget Services Coordinator, Department of Management and Budget

Board Agenda Item
July 30, 2019

ACTION - 1

Approval of a License Agreement to Relocate a Slug Line to Springfield United Methodist Church (Lee District)

ISSUE:

Board approval to execute a License Agreement (Attachment I) with Springfield United Methodist Church, that would allow a slug line to operate in the Church parking lot located on Tax Map Parcel Numbers 90-1 ((2)) A and 80-3 ((1)) 8. Construction of the Springfield Community Business Center (CBC) Commuter Parking Garage is scheduled to begin in late 2019 or early 2020 at the existing 278 parking space Old Keene Mill Commuter Lot located on Tax Map Parcel Number 80-3 ((1)) 6. Prior to the garage construction, the existing Old Keene Mill Commuter Lot slug lines will need to be relocated to new locations.

RECOMMENDATION:

The County Executive recommends that the Board:

1. Approve in substantial form the attached license agreement (Attachment I) to relocate a slug line to the Springfield United Methodist Church parking lot.
2. Authorize the Director of Fairfax County Department of Transportation to execute this agreement on behalf of the County.

TIMING:

Board approval is requested on July 30, 2019, so that the new License Agreement with Springfield United Methodist Church can be executed in a timely manner to provide a temporary slug line location for commuters during construction of the new Springfield CBC Commuter Parking Garage.

BACKGROUND:

The Springfield CBC Commuter Parking Garage project will construct a six-story, approximately 1,000-space parking garage and transit center on the 2.71-acre Old Keene Mill Park-and-Ride site that is owned by Fairfax County and currently used as a surface commuter parking lot. The future transit center will include bus bays, bicycle storage, and slug lines. A pedestrian bridge will connect the garage to the Springfield Plaza parking lot on the north side of Old Keene Mill Road opposite the project site.

Given the upcoming construction, the commuter facilities at the existing Old Keene Mill Commuter Lot will be relocated. This includes the two slug lines that currently operate at this site. The other nearby commuter lots: American Legion, Springfield Plaza, and Springfield United Methodist are currently fully utilized. In light of the fact that all the adjacent commuter lots are operating at capacity, Fairfax County Department of Transportation (FCDOT) has

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determined that establishing a slug line at Springfield United Methodist is necessary to supply adequate commuting options during the Springfield CBC Commuter Parking Garage construction. As a result, the County must execute a license agreement to cover that portion of the Springfield United Methodist Church property that will be used for the slug line. This license will be in addition to the parking spaces that the Springfield United Methodist Church currently leases to the county.

Since 2009, the Springfield United Methodist Church has permitted the county to use 54 parking spaces on Church property for commuter parking. In 2016, Springfield United Methodist Church required that the county pay to continue to use these parking spaces, and an amended agreement was approved by the Board on December 6, 2016, to provide financial compensation to the Church for the use of the 54 commuter parking spaces. Springfield United Methodist Church is located directly adjacent to the existing Old Keene Mill Park-and-Ride surface lot.

FISCAL IMPACT:

Sufficient funds are available to cover the anticipated FY 2020 license cost of \$22,500. The total anticipated license cost for FY 2020 - 2023 is \$92,500 and sufficient funding is available in the Springfield CBC Commuter Parking Garage Project (ST-000033) in Fund 40010, County and Regional Transportation Projects. If authorized, the license agreement will continue during construction of the Springfield CBC Commuter Parking Garage, which is estimated to be completed in fall 2022. Use of these funds will not impact implementation of the parking garage project. Insurance coverage will be maintained by the county with Springfield United Methodist Church listed as an additional insured under the county's Commercial General Liability policy. No General Fund dollars are included in this action.

ENCLOSED DOCUMENTS:

Attachment I - License Agreement between Fairfax County and Springfield United Methodist Church for Slug Line Hosting

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Dwayne Pelfrey, Division Chief, Transit Services Division, FCDOT
Ray Johnson, Chief, Funding Oversight, FCDOT
Michael J. Guarino, Chief, Capital Projects Section, FCDOT
Kris Miller, Sr. Transportation Planner, FCDOT
Nathan Wilkinson, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Robert M. Falconi, Assistant County Attorney

**LICENSE AGREEMENT BETWEEN FAIRFAX COUNTY AND SPRINGFIELD
UNITED METHODIST CHURCH FOR SLUG LINE HOSTING**

THIS LICENSE AGREEMENT made this _____ day of _____ 2019 (the “Effective Date”), by and between **SPRINGFIELD UNITED METHODIST CHURCH** (hereinafter referred to as “OWNER”), having an address at 7047 Old Keene Mill Rd, Springfield, Virginia 22150 and the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY** (hereinafter referred to as the “COUNTY”), a body of politic of Virginia, having an address at 12000 Government Center Parkway, Fairfax, Virginia 22035.

WHEREAS, the COUNTY continues to support public transportation services, facilities, and commuter park-and-ride lots as effective traffic mitigation facilities; and

WHEREAS, the COUNTY desires to provide satellite parking spaces in various places in Fairfax County to supplement parking at Metrorail, Virginia Railway Express stations, and other parking areas; and

WHEREAS, the property that is the subject of this License Agreement is located at 7047 Old Keene Mill Rd, Springfield, Virginia 22150, in Fairfax COUNTY; and

WHEREAS, a “slug line” is defined as unofficial meeting place where commuters wait in a queue to receive free rides from drivers who need additional passengers in order to use high occupancy vehicle (HOV) lanes.

WHEREAS, the OWNER has space available for the operation of one (1) slug line at the subject property;

NOW THEREFORE, for and in consideration of the mutual promises and agreements set forth below OWNER and the COUNTY agree as follows:

1. The area of the Church parking lot indicated on **Exhibit A** (which identifies the intended slug line traffic flow only, with no parking spaces provided as part of this agreement), hereto will be available on weekdays (i.e., Monday through Friday) between 5:00 a.m. and 8:00 p.m. for use by persons who carpool, vanpool, slug line, or ride public transportation. It is understood that VDOT-imposed HOV restrictions begin in the morning at 6:00 a.m. and end at 9:00 a.m., which nominally defines the anticipated peak period of the day for traffic use associated with this License Agreement. It is also understood that returning slug line users are primarily dropped off across the street at the Springfield Plaza in the evening by drivers heading west.
 - a. Subject to the provisions of this Agreement, the COUNTY shall make license payments to OWNER.

- b. The amount of license payments payable to OWNER shall be \$2,500 per month. Quarterly payments shall be in the amount of \$7,500 for each full quarter. Yearly payment shall total \$30,000.
- c. The COUNTY shall make license payments to OWNER on a quarterly basis upon receiving an invoice, with payment being made within thirty (30) working days after receipt of OWNER's quarterly invoice. Quarters are designated as July 1 – September 30, October 1 – December 31, January 1 – March 31, and April 1 – June 30.
- d. The COUNTY shall make an advanced initial payment to OWNER, equivalent to the first two (2) quarterly license payments in order to mitigate the upfront costs of making repairs to the existing pavement in preparation for the increased usage resulting from the slug line. The advanced initial payment of \$15,000 shall be paid to OWNER at least 30 days prior to commencement of slug line activities on the OWNER's lot. As a result of receiving an advanced initial payment, OWNER shall not submit quarterly invoices or receive payment for the first two (2) quarters of the license period, having already received those payments in the onetime, upfront lump sum amount.
- e. OWNER shall submit all invoices for this Agreement separately from the invoices submitted for that certain "Fairfax COUNTY Park and Ride License Agreement" dated as of December 6, 2016 by and between the OWNER and COUNTY.
- f. OWNER shall submit to the COUNTY a quarterly invoice to the following person:
 - Attn: Park and Ride Manager
 - Fairfax County Department of Transportation
 - 4050 Legato Road, Suite 400
 - Fairfax, Virginia 22033
- g. The license payment to OWNER shall be forwarded to:
 - Springfield United Methodist Church
 - 7047 Old Keene Mill Road
 - Springfield, Virginia 22150
- h. The parties may elect to utilize electronic mail for invoicing and electronic payment for direct deposit.

2. As part of its continuing maintenance of the parking lot on the subject property, OWNER shall continue to provide lighting, sweeping, and snow removal with respect to the areas covered by this License Agreement.
3. In cooperation with OWNER, the COUNTY shall designate with appropriate means where persons may drive, queue, stand, and pickup passengers on the subject property in accordance with this License Agreement. The COUNTY shall be responsible for the installation, maintenance, and removal of all signage subject to this license agreement.
4. There are no parking spaces intended or implied as a result of this agreement. However, the OWNER shall monitor and enforce all parking regulations concerning where and when parking is permitted on the subject property in accordance with this License Agreement.
5. This Agreement shall become operative within five (5) business days after receipt of written notice by the OWNER from the COUNTY stating that use of the lot shall begin and shall continue in force until such time that the construction of the Springfield CBC Commuter Garage is complete and opened to the public. Thereafter, this Agreement may be terminated by the COUNTY, with or without cause, 90 calendar days after the OWNER's receipt of the COUNTY's written termination notice or terminated by the OWNER, with or without cause, 180 calendar days after the COUNTY's receipt of the OWNER's written termination notice.
6. The COUNTY shall be permitted to advertise the availability of the slug line at the Springfield United Methodist Church lot in its promotional materials about commuter parking located in Fairfax County.
7. All requirements for funding by the COUNTY under this Agreement and any other financial obligation required by this License Agreement are subject to annual or other appropriations by the Fairfax County Board of Supervisors.
8. Nothing herein shall vest any rights in any third parties.
9. Nothing herein shall give rise to any personal liability on the part of any official, employee, or agent of Fairfax County relative to this Agreement.
10. All notices under this Agreement shall be sent to the following addresses:

As to the COUNTY:

Tom Biesiadny, Director

Department of Transportation
County of Fairfax
4050 Legato Road, Suite 400
Fairfax, Virginia 22033

As to OWNER:

Springfield United Methodist Church
7047 Old Keene Mill Road
Springfield, Virginia 22150

11. Nothing in this Agreement shall be construed or interpreted as creating anything other than a license; that is, this agreement shall not be construed or interpreted as creating any property rights at said location.
12. Nothing in this Agreement shall be construed as a waiver of the sovereign immunities of the County of Fairfax and no provision of this license shall be construed as giving any rights to any third party.
13. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.
14. This License Agreement shall be governing in all respects to Virginia law. If any provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective
Date:

COUNTY OF FAIRFAX, VIRGINIA

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

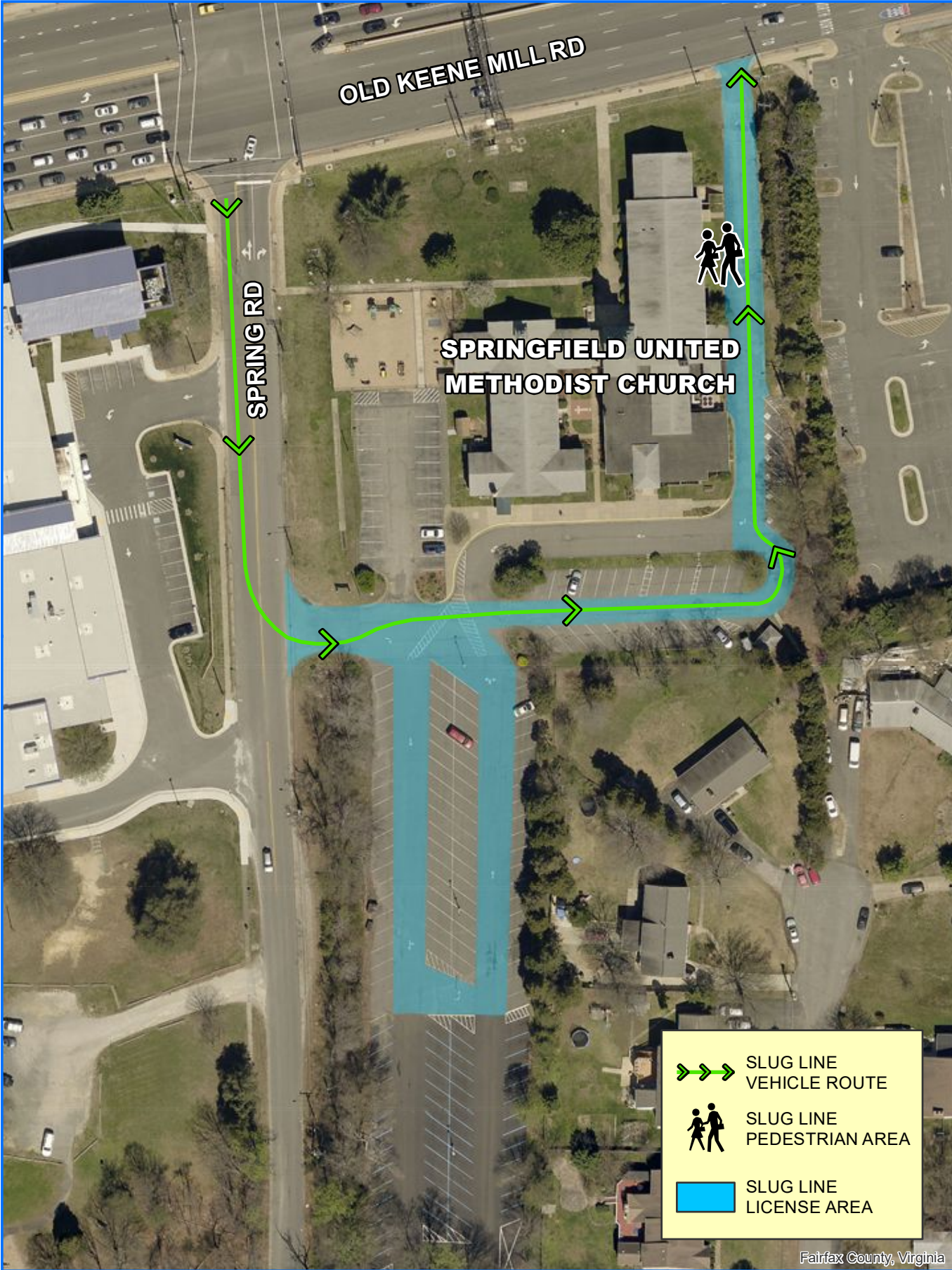
Date

SPRINGFIELD UNITED METHODIST CHURCH

BY: _____
Chairman, Board of Trustees
Springfield United Methodist Church

Date

EXHIBIT A



ACTION - 2

Approval of a Lease Agreement to Add Commuter Parking and a Slug Line at Springfield Town Center (Lee District)

ISSUE:

Board approval to execute a Lease Agreement (Attachment I) with PR Springfield Town Center LLC, that would provide 308 additional commuter parking spaces and slug line staging at the Springfield Town Center Frontier Parking Garage located on Tax Map Parcel Number 90-2 ((13)) 4A1. Construction of the Springfield Community Business Center (CBC) Commuter Parking Garage is scheduled to begin in late 2019 or early 2020 at the existing 278 parking space Old Keene Mill Commuter Lot located on Tax Map Parcel Number 80-3 ((1)) 6. Prior to the garage construction, commuters will need to be relocated to a new location.

RECOMMENDATION:

The County Executive recommends that the Board:

1. Approve in substantial form the attached lease agreement (Attachment I) to add 308 commuter parking spaces and one slug line at Springfield Town Center.
2. Authorize the Director of Fairfax County Department of Transportation to execute this agreement on behalf of the County.

TIMING:

Board approval is requested on July 30, 2019, so that the new Lease Agreement with PR Springfield Town Center LLC can be executed in a timely manner to provide temporary commuter parking during construction of the new Springfield CBC Commuter Parking Garage.

BACKGROUND:

The Springfield CBC Commuter Parking Garage project will construct a six-story, approximately 1,000-space parking garage and transit center on the 2.71-acre Old Keene Mill Park-and-Ride site that is owned by Fairfax County and currently used as a surface commuter parking lot. The future transit center will include bus bays, bicycle storage, and slug lines. A pedestrian bridge will connect the garage to the Springfield Plaza parking lot on the north side of Old Keene Mill Road opposite the project site.

The existing Old Keene Mill Commuter Lot contains 278 parking spaces. Weekday occupancy of these parking spaces is typically at or near 100 percent capacity and two slug lines currently operate from the site. In light of the fact that the 278 spaces at the Old Keene Mill lot will be unavailable during construction of the new Springfield CBC Garage, Fairfax County Department of Transportation (FCDOT) has determined that the lease of 308 commuter parking spaces and the relocation of one slug line to the Springfield Town Center is necessary to supply adequate

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commuting alternatives instead of single-occupancy vehicle trips. This new agreement is in addition to the spaces currently leased from Springfield Town Center.

The county's use of land located at the Springfield Town Center for commuter services dates back to 1990. Between 1990 and 2001, the Board approved lease agreements with several entities to provide commuter parking spaces in support of the Springfield I-95/395/495 interchange construction project, including one with the then owner of Springfield Mall. On June 7, 1999, the Board approved the lease of 1,000 spaces from Springfield Mall. The agreement was later amended to 500 spaces on April 26, 2004, after the opening of additional parking at the Franconia-Springfield Metrorail Station. The amended agreement between the Springfield Mall and the county also allowed Fairfax Connector buses to operate on the property of Springfield Mall. The agreement was amended again on December 6, 2016, after the Springfield Mall was sold to PR Springfield Town Center LLC.

FISCAL IMPACT:

Sufficient funds are available to cover the anticipated FY 2020 lease cost of \$22,176. The total anticipated lease cost for FY 2020 - 2023 is \$91,168 and funding is available in the Springfield CBC Commuter Parking Garage Project (ST-000033) in Fund 40010, County and Regional Transportation Projects. If authorized, the lease agreement will continue during construction of the Springfield CBC Commuter Parking Garage, which is estimated to be completed in fall 2022. Use of these funds will not impact implementation of the parking garage project. Insurance coverage will be maintained by the county with PR Springfield Town Center LLC listed as an additional insured under the county's Commercial General Liability policy. No General Fund dollars are included in this action.

ENCLOSED DOCUMENTS:

Attachment I - Lease Agreement Between Fairfax County and PR Springfield Town Center LLC for Commuter Parking and Slug Line

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Dwayne Pelfrey, Division Chief, Transit Services Division, FCDOT
Randy Jouben, Risk Manager, Risk Management Division, Department of Finance
Ray Johnson, Chief, Funding Oversight, FCDOT
Michael J. Guarino, Chief, Capital Projects Section, FCDOT
Kris Miller, Sr. Transportation Planner, FCDOT
Nathan Wilkinson, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Robert M. Falconi, Assistant County Attorney

LEASE AGREEMENT BETWEEN FAIRFAX COUNTY AND PR SPRINGFIELD TOWN CENTER LLC FOR COMMUTER PARKING AND SLUG LINE

THIS LEASE AGREEMENT (this "Agreement") is made as of the ____ day of _____, 201__ (the "Effective Date") by and between **PR SPRINGFIELD TOWN CENTER LLC**, a Delaware limited liability company (hereafter referred to as "PR SPRINGFIELD"), having an address c/o PREIT Services, LLC, 200 S. Broad Street, Third Floor, Philadelphia, Pennsylvania 19102, and the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY** (hereinafter referred to as the "COUNTY"), a body public of Virginia, having an address at 12000 Government Center Parkway, Fairfax, Virginia 22035.

WHEREAS, the COUNTY continues to support public transportation services, facilities, and commuter park-and-ride lots as effective traffic mitigation facilities;

WHEREAS, PR SPRINGFIELD is the owner of Springfield Town Center, located at 6500 Springfield Mall, Springfield, Virginia, 22150;

WHEREAS, a "slug line" is defined as unofficial meeting place where commuters wait in a queue to receive free rides from drivers who need additional passengers in order to use high occupancy vehicle (HOV) lanes;

WHEREAS, the COUNTY desires to lease the use of certain parking spaces at Springfield Town Center to provide additional commuter parking in the area;

WHEREAS, Parking Deck "A" (also known as the Macy's Parking Deck or the Frontier Garage), located at Springfield Town Center, has available (i) on its 2nd, 4th, and 6th level parking areas at least 300 spaces, for commuter parking on weekdays (i.e., Monday through Friday) between 5:00 am and 8:00 pm, and (ii) on its 1st level parking area at least 8 spaces, to accommodate one (1) slug line on weekdays (i.e., Monday through Friday) between 5:00 am and 8:00 pm;

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth below, PR SPRINGFIELD and the COUNTY agree as follows:

1. Three hundred (300) parking spaces on the 2nd, 4th and 6th levels of Parking Deck "A" and Eight (8) parking spaces on the 1st level of Parking Deck "A", which are shown on the plan attached hereto and incorporated herein as Exhibit A, will be reserved for use by commuters who carpool, vanpool, slug line, or ride public transportation.
2. PR SPRINGFIELD and the County cooperatively shall ensure that vehicles are prohibited from parking in the 8 parking spaces on the 1st level of Parking Deck "A" reserved to accommodate the slug line. The 8 spaces shall remain unoccupied in order to provide a waiting area for commuters to stand while queuing in the slug line.

3. a. A lease payment shall be paid to PR SPRINGFIELD by the COUNTY under this Agreement in an amount equal to \$2,464.00 per month, based on 308 spaces at \$8.00 per space per month. Quarterly payments shall be made in the amount of \$7,392.00 for each full calendar quarter in which all 308 spaces are made available. If the total number of parking spaces required by Paragraph 1 is not available for a full quarter, the lease payment shall be prorated accordingly for that quarter. The COUNTY shall make such quarterly lease payments to PR SPRINGFIELD within 30 business days after receipt of PR SPRINGFIELD's quarterly invoice. Quarters are designated as July 1-September 30; October 1-December 31; January 1-March 31; and April 1-June 30.
- b. PR SPRINGFIELD shall submit all invoices for this Agreement separately from the invoices submitted for that certain "Lease Agreement Between Fairfax County and PR Springfield Town Center LLC for Commuter Parking" dated as of April 1, 2015 by and between the COUNTY AND PR SPRINGFIELD.
- c. PR SPRINGFIELD shall submit all invoices for this Agreement to:

Park-and-Ride Manager
County of Fairfax Department of Transportation
4050 Legato Road, Suite
400 Fairfax, Virginia
22033-2895

- d. The lease payments for this Agreement with PR SPRINGFIELD shall be made payable to "PR SPRINGFIELD TOWN CENTER LLC" and shall be sent to:

PR Springfield Town Center
LLC P.O. Box 932831
Cleveland, OH 44193

4. PR SPRINGFIELD shall provide lighting, sweeping, and snow removal with respect to the parking spaces reserved on the 1st, 2nd, 4th and 6th levels of Parking Deck "A".
5. The COUNTY shall provide and maintain signage on the premises to direct commuters to Parking Deck "A", 1st, 2nd, 4th and 6th level parking areas.
6. The COUNTY shall obtain and keep in force throughout the duration of this Agreement a Commercial General Liability insurance policy with a limit of \$1,000,000 per occurrence/aggregate to protect against negligence of the COUNTY arising from the use of the reserved commuter parking spaces and the slug line, as described in this Agreement. Claims, suits or actions brought on account of any injury or damage sustained to any person, or to the property of any person, while utilizing the commuter parking area as a park-and-ride on the 2nd, 4th and 6th levels of Parking Deck "A" or the

parking spaces on the 1st level of Parking Deck “A” for the slug line, shall be directed to:

Risk Management Department
c/o PREIT Services, LLC
200 South Broad Street, Third Floor
Philadelphia, PA 19102

With notice, as soon as practicable, to:

Claims Manager, Risk Management
County of Fairfax
12000 Government Center Parkway,
Suite 215 Fairfax, Virginia 22035-5511

The County’s liability insurance policy shall name **PR SPRINGFIELD TOWN CENTER LLC, PREIT Associates, L.P.** and **PREIT Services, LLC** as additional insureds and shall provide that cancellation cannot occur without 30 days' prior written notice to the named additional insureds from the insurance company. The COUNTY shall provide to **PR SPRINGFIELD** a Certificate of Insurance evidencing the required coverage. It is expressly agreed and understood that the COUNTY does not agree to indemnify or hold harmless **PR SPRINGFIELD** for or against any claim brought by any party against **PR SPRINGFIELD** or any other party.

7. PR SPRINGFIELD shall monitor and enforce all parking regulations concerning where and when commuter parking is permitted. Parking by commuters shall be permitted only in specifically identified spaces on levels 2, 4 and 6 of Parking Deck "A", Monday through Friday, between the hours of 5:00 am and 8:00 pm. These spaces shall be available for use by visitors to Springfield Town Center at all other times.
8. The COUNTY shall be permitted to advertise the availability of commuter parking in Parking Deck "A" at Springfield Town Center in its promotional literature about commuter parking located in Fairfax County.
9. This Agreement shall become operative within five (5) business days after receipt of written notice by PR SPRINGFIELD from the County stating that use of the garage shall begin and shall continue in force until such time that the construction of the Springfield CBC Commuter Garage is complete and the garage is opened to the public. Thereafter, this Agreement may be terminated by the County, with or without cause, 30 calendar days after PR Springfield’s receipt of the County’s written termination notice or terminated by PR Springfield, with or without cause, 180 calendar days after the County’s receipt of PR Springfield’s written termination notice.

10. All requirements for funding by the County under this Agreement, including the COUNTY's covenants to provide insurance as set forth in **paragraph 6**, are subject to annual or other appropriations by the Fairfax County Board of Supervisors. In the event that such appropriations for the COUNTY to provide insurance as set forth in **paragraph 6** are not made, PR SPRINGFIELD may terminate this Agreement immediately upon five (5) calendar days' written notice to the COUNTY.
11. Nothing herein shall vest any rights in any third parties.
12. Nothing herein shall give rise to any personal liability on the part of any official, employee, or agent of Fairfax County relative to this Agreement.
13. Nothing herein shall be construed by the parties or any third party as a waiver of the sovereign immunity of the County of Fairfax.
14. All notices under this Agreement shall be sent to the following addresses:

To COUNTY:

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

To PR SPRINGFIELD:

PR Springfield Town Center LLC
c/o PREIT Services LLC
200 South Broad Street, 3rd Floor
Philadelphia, PA 19102
Attention: Director, Legal

With a copy to:

Springfield Town Center Management Office
Attn: General Manager
6500 Springfield Mall
Springfield, Virginia 22150

15. Nothing contained in this Agreement shall be construed or interpreted as creating anything other than a lease; that is, this Agreement shall not be construed or interpreted as creating any property rights in the Parking Deck "A" commuter parking areas at Springfield Town Center.

16. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.
17. If any provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
18. This Agreement shall be governed and construed in all respects in accordance with the laws of the Commonwealth of Virginia, without regard to conflict of laws principles. This Agreement is also subject to and conditioned upon compliance with all applicable state and local building codes and zoning requirements.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

COUNTY OF FAIRFAX, VIRGINIA

PR SPRINGFIELD TOWN CENTER LLC
By: PREIT Services, LLC, its authorized agent

By: _____
Tom Biesiadny, Director
Department of Transportation

By: _____
Lisa M. Most
Senior Vice President & General Counsel



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ACTION - 3

Approval of Agreement between the Commonwealth of Virginia, Department of Transportation and Fairfax County for the Utilization of Congestion Mitigation and Air Quality (CMAQ) Funds for Fiscal Year 2020 Transportation Demand Management (TDM) Programs

ISSUE:

Board approval for the Director of the Department of Transportation to sign agreement for use of CMAQ Funds in the amount of \$343,925 for the promotion of TDM programs in FY 2020. No Local Cash Match is required. The grant period runs from July 1, 2019, through June 30, 2020.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize the Director of the Department of Transportation to sign the attached agreement, in substantial form, for use of \$343,925 in CMAQ funds for the promotion of TDM programs in FY 2020 (Attachment I) and approval of the resolution (Attachment II).

TIMING:

Board action is requested on July 30, 2019, to continue implementation and promotion of TDM programs in Fairfax County for FY 2020.

BACKGROUND:

The Transportation Control Measure (TCM)-47c was adopted in the FY95-00 Transportation Improvement Program (TIP) by the Transportation Planning Board (TPB) of the National Capital Region. The TCM-47c does not mandate employer participation. This measure is designed to encourage private sector employers with more than 100 employees in the Metropolitan Washington region to voluntarily implement alternative commute (trip reduction) programs and is now classified as a Transportation Emission Reduction Measure (TERM).

FISCAL IMPACT:

Grant funding of \$343,925 is available from the Virginia Department of Transportation (VDOT) for the Employer Outreach Programs which will be used to decrease air pollution by promoting alternative commuting modes. No Local Cash Match is required. This grant is an ongoing award and was included in the FY2020 Adopted Budget Plan;

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therefore, this action does not increase the expenditure level of the Federal-State Grant Fund, as funds are held in reserve for grant awards in FY 2020. This grant does not allow for the recovery of indirect cost.

CREATION OF POSITIONS:

There are 3/3.0 FTE existing grant positions associated with this award. The County has no obligation to continue funding these positions when the grant funding ends.

ENCLOSED DOCUMENTS:

Attachment I: Agreement for the Utilization of Congestion Mitigation and Air Quality Improvement (CMAQ) Funds for Fiscal Year 2020

Attachment II: VDOT Resolution

STAFF:

Rachel Flynn, Deputy County Executive

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

Anna Nissinen, Chief, Communication, Marketing & TDM, FCDOT

Walter E. Daniel, Jr., FCDOT

ASSIGNED COUNSEL:

Robert M. Falconi, Assistant County Attorney

**AN AGREEMENT FOR
THE UTILIZATION OF CONGESTION MITIGATION AND AIR QUALITY
IMPROVEMENT (CMAQ) FUNDS
IN FAIRFAX COUNTY**

THIS AGREEMENT, made this ___ **day of** _____ in the year **two thousand and nineteen**, by and between the Commonwealth of Virginia, Department of Transportation, hereinafter called the DEPARTMENT, and **Fairfax County**, hereinafter called the LOCALITY.

WHEREAS, the LOCALITY has submitted a Scope of Work for undertaking certain activities related to the promotion of Travel Demand Management (TDM) programs in the Northern Virginia District; and

WHEREAS, the DEPARTMENT has concurred with this Scope;

NOW, THEREFORE, the DEPARTMENT and the LOCALITY do hereby agree as follows:

ARTICLE I - PURPOSE OF FUNDS

CMAQ funds made available under this AGREEMENT are to be used in cooperation with the DEPARTMENT for TDM activities. The purpose shall be to provide educational, promotional and / or other related TDM assistance within the Northern Virginia District. A scope of work is attached in accordance with ARTICLE III which promotes the reduction of single-occupant auto usage in order to achieve at least one of the following objectives:

- Reduction of traffic congestion
- Promotion of alternative transportation modes
- Improvement of air quality

ARTICLE II - SOURCE OF FUNDS

Under the provisions of the Title 23 of the United States Code, CMAQ funds are available to the COMMONWEALTH for use in CMAQ-eligible projects. The sum of **\$343,925** composed of **\$275,140** in federal CMAQ funds and **\$68,785** in state matching funds shall be provided and made available to the LOCALITY for expenditure in FY20. This amount is provided to carry out the work activities described in the approved project scope of work incorporated in Attachment A.

The total amount of CMAQ funds allocated to LOCALITY and reimbursable under this agreement is **\$343,925**. Federal funds cannot be used to match in-kind service.

ARTICLE III - SCOPE OF WORK

The transportation planning activities to be financed with CMAQ funds are described in a Scope of Work developed by the LOCALITY and attached to this AGREEMENT as Attachment A. Any change in the character or extent of the work to be performed with CMAQ funds shall require an amendment to the Scope of Work and approval by the DEPARTMENT. Such requests must be received and approved prior to the expenditure of CMAQ funds for these activities.

Unless authorized in writing by the DEPARTMENT, the LOCALITY shall not assign any portion of the work to be performed under this AGREEMENT, or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT without the prior written consent of the DEPARTMENT. The DEPARTMENT will review and approve Request for Proposals which use CMAQ funds prior to their issuance. All requests or invitations for bids, proposals, qualifications, or interest, or other official procurement processes, however referred to by the LOCALITY, must receive written consent by the DEPARTMENT prior to advertisement or issue.

Those activities and description of work documented in the approved Scope of Work and any subsequent amendments thereto as approved by the DEPARTMENT are hereby approved for CMAQ funding subject to the conditions of this AGREEMENT.

ARTICLE IV - BASIS OF PAYMENT

For services performed in accordance with the provisions of this AGREEMENT, the DEPARTMENT shall pay to the LOCALITY actual costs as defined herein.

Payments shall be made under the terms set forth in the Scope of Work.

All costs are subject to audit by the DEPARTMENT and/or the U.S. Department of Transportation. Any such audit shall be made in accordance with generally accepted auditing standards and procedures and be governed by 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments; OMB Circular A-87, Cost Principles for State and Local Governments. Additional auditing requirements are set forth in Attachment B.

Any expenditure made or work or grant proposal performed by the LOCALITY on activities contained in the attached scope of work prior to the execution of this agreement by the DEPARTMENT will not be eligible for reimbursement.

ARTICLE V - PROGRESS SCHEDULES AND REPORTS

The LOCALITY shall document expenditures and progress in executing the Scope of Work through the invoicing and reporting requirements established in Tasks 5 and 7 of the Scope.

ARTICLE VI - PERFORMANCE PERIOD

Work to be performed under this AGREEMENT shall be initiated no sooner than July 1, 2019, and completed within the period established in the Scope of Work.

ARTICLE VII - TERMINATION OF AGREEMENT

This AGREEMENT shall be terminated upon the occurrence of any of the following:

1. Withdrawal by the DEPARTMENT from this Planning Process in LOCALITY.
2. Withdrawal of the LOCALITY from this Planning Process.
3. By mutual agreement of the parties.

In the event of termination under provision 1 at least 30 days written notice shall be given prior to termination. Work completed within this notice period shall be eligible for compensation.

In the event of termination under provision 2 said termination shall be effective the date of notification. In the event of termination under provision 3 said termination shall be effective when both parties have signed an agreement to terminate. Work completed up to the date of notification or agreement to terminate shall be eligible for compensation.

The sum of any payments made under this Article shall be based on actual work completed through the date of termination, subject to final audit.

Upon termination, all data, tabulations, documents and other material prepared under this AGREEMENT by and for the LOCALITY shall become the property of the DEPARTMENT.

ARTICLE VIII - RETENTION OF COST RECORDS

The LOCALITY and its subcontractors shall maintain all books, documents, papers, accounting records, and any other evidence supporting the costs incurred. Such information shall be consistent with the provisions of 49 CFR Part 18 and shall be made available at their respective offices at all reasonable times during the contract period, and for a period of three (3) years from the date of final payment from the DEPARTMENT to the LOCALITY, for inspection and audit by any authorized representative of the DEPARTMENT or U.S. Department of Transportation. Copies of such information shall be furnished to the DEPARTMENT upon request.

ARTICLE IX - PUBLICATION PROVISIONS

The LOCALITY shall be free to copyright material developed under this AGREEMENT with the provisions that the DEPARTMENT reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.

Planning reports developed under this AGREEMENT shall be submitted to the DEPARTMENT for review and approval prior to publication and distribution.

All materials published by the LOCALITY or subrecipient shall:

1. contain an acknowledgment, "Prepared in cooperation with the Northern Virginia District of the Virginia Department of Transportation", and
2. comply with all appropriate state and federal laws.

ARTICLE X - SETTLEMENT OF DISPUTES

Any factual disputes in connection with the work performed in conjunction with this AGREEMENT, which are not disposed of by mutual agreement between the DEPARTMENT and the LOCALITY shall be transmitted in writing to the Commissioner of the DEPARTMENT and a 60-day period provided for his review and decision. The Commissioner, with assistance as needed from the Federal Highway Administration, will rule on the question and his decision shall be final.

Any legal disputes in connection with the work performed in conjunction with this AGREEMENT, which are not disposed of by mutual agreement between the DEPARTMENT and the LOCALITY shall be transmitted in writing to the Commissioner of the DEPARTMENT and a 60-day period provided for his review and decision. The Commissioner, with assistance as needed from the Federal Highway Administration, will rule on the question and their decision shall be final unless the legal dispute is adjudicated in court. Exhaustion of the administrative procedure outlined herein above is a prerequisite of and not a substitute for the right of judicial review of the legal dispute.

ARTICLE XI - COMPLIANCE WITH TITLE VI OF CIVIL RIGHTS ACT

The Locality will insure that all contracts, agreements made with any person, firm agency of whatever nature shall require compliance with the provisions of Title VI of the Civil Rights Act of 1964 as set out in Attachment C, attached hereto, and made a part of this AGREEMENT by reference.

ARTICLE XII - VIRGINIA FAIR EMPLOYMENT CONTRACTING ACT

The Locality will insure that all contracts, agreements made with any person, firm agency of whatever nature shall require compliance with the provisions of the Virginia Fair Employment Contracting Act (Sections 2.2-4200 through 2.2-4201 of the Code of Virginia (1950), as amended). Section 2.2-4201 is set out in Attachment D attached hereto and made part of this AGREEMENT.

ARTICLE XIII - DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES

In connection with the performance of this AGREEMENT, the LOCALITY will cooperate with the DEPARTMENT in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs-inclusive of women). The

LOCALITY shall follow the Virginia Department of Transportation's Disadvantaged Business Enterprise program, the Virginia Public Procurement Act requirements and use its best efforts to insure that DBEs shall have equal opportunity to compete for contracts under this AGREEMENT.

The Locality will insure that all contracts, agreements made with any person, firm agency of whatever nature shall require compliance with the provisions of 49 CFR Part 26, as amended, and set out in Attachment E attached hereto, and made part of this AGREEMENT by reference.

Further, the LOCALITY agrees to provide the DEPARTMENT with quarterly reports on the actual dollar amount of funds expended with each DBE contractor.

ARTICLE XIV - AMENDMENTS

Amendments to this AGREEMENT, as may be mutually agreed to, may be made by written agreement between the DEPARTMENT and the LOCALITY.

ARTICLE XV – CERTIFICATIONS

The LOCALITY and the DEPARTMENT acknowledge that neither the representative for the LOCALITY nor the DEPARTMENT has been required, directly or indirectly as an expressed or implied condition in connection with obtaining or carrying out this contract to:

- a) employ or retain, or agree to employ or retain, any firm or person, or
- b) pay, or agree to pay, to any firm, person or organization, any fee, contribution, donation, or consideration of any kind; except as here expressly stated (if any).

Prohibition Against the Use of Federal Funds for Lobbying

The prospective contractor and all subcontractors agree to comply with the provisions of 31 U.S.C. § 1352, which prohibit the use of federal funds for lobbying any official or employee of any federal agency, or member or employee of Congress; and requires the recipient to disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with federal assistance. In addition, no federal assistance funds shall be used for activities designed to influence Congress or State Legislature on legislation or appropriations, except through proper, official channels. The prospective contractor shall comply and assure the compliance of subcontractors at any tier with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20.

For contracts of \$100,000 or more, the prospective contractor shall submit to the LOCALITY a signed "Certification of Restrictions on Lobbying," and shall require all subcontractors with contracts of \$100,000 or more to submit to the prospective contractor and the LOCALITY such signed certifications.

ARTICLE XVI – LIABILITY WAIVER

The LOCALITY shall not seek redress for damages or injury caused in whole or in part by the COMMONWEALTH, the DEPARTMENT or their officers, agents or employees acting within the scope of their duties. The LOCALITY will reimburse the COMMONWEALTH, the DEPARTMENT and their officers, agents and employees for any damage or injury caused by the negligence of the LOCALITY, its officers, agents or employees which arise from their use of funds provided under this AGREEMENT.

ARTICLE XVII – ANNUAL APPROPRIATIONS

Nothing in this Agreement shall obligate the parties hereto to expend or provide any funds in excess of funds agreed upon in this Agreement or as shall have been included in an annual or other lawful appropriation. In the event the cost of a Project is anticipated to exceed the allocation shown for such respective Project on Appendix A, both parties agree to cooperate in providing additional funding for the Project or to terminate the Project before its costs exceed the allocated amount, however the DEPARTMENT and the LOCALITY shall not be obligated to provide additional funds beyond those appropriated pursuant to an annual or other lawful appropriation.

ARTICLE XVIII – SOVEREIGN IMMUNITY

Nothing in this Agreement shall be construed as a waiver of the LOCALITY's or the Commonwealth of Virginia's sovereign immunity.

ARTICLE XIX – THIRD PARTIES

The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than 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 LOCALITY or the DEPARTMENT shall not be bound by any agreements between the either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the LOCALITY or the DEPARTMENT has, in writing, receive a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.

ARTICLE XX – INDIVIDUAL LIABILITY

The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.

IN WITNESS WHEREOF, the DEPARTMENT and the LOCALITY have executed this AGREEMENT on the day and year first above written.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

BY: _____
Signature

Stephen C. Brich, P.E.
Printed Name

Commissioner of Highways
Title

DATE: _____

LOCALITY

BY: _____
Signature

Printed Name

Title

DATE: _____

- ATTACHMENT A - Scope of Work
- ATTACHMENT B - Contract Audit
- ATTACHMENT C - Title VI
- ATTACHMENT D - Virginia Fair Employment Contracting Act
- ATTACHMENT E - Disadvantaged and Women-Owned Business Enterprises

ATTACHMENT A

EMPLOYER OUTREACH SCOPE OF WORK

Fiscal Year 2020

Transportation Control Measure (TCM)-47c was adopted in the FY95-00 Transportation Improvement Program (TIP) by the Transportation Planning Board (TPB) of the National Capital Region. TCM-47c does not mandate employer participation. This measure will encourage private sector employers with more than 100 employees in the Metropolitan Washington region to voluntarily implement alternative commute (trip reduction) programs and is now classified as a Transportation Emission Reduction Measure (TERM) or TDM Measure.

Fairfax County Employer Outreach Program will provide outreach services directly to employers in Fairfax County, which will help promote commute alternatives, create new or expanded alternative commute programs, maintain existing programs, and provide a means to evaluate the impact of these employer efforts.

Activities to be performed include, but are not limited to, the following:

- TASK 1: Contact Employers and Promote Alternative Commute Programs -** Establish and maintain regular contact with employers. Encourage employers to establish an Employee Transportation Coordinator (ETC). Conduct sales calls and face-to-face meetings with employer ETCs and decision makers. Promote Alternative Commute Programs described in **Attachment A-1** as may be determined from the results of Task 2 or as may be developed through discussions with the employer.
- TASK 1A Maintain Contact with Employers with Existing Programs.** – No less frequently than quarterly, communicate with employers in the jurisdiction’s database (see Task 4 below) that have existing TDM programs to verify and update contact information and encourage the continuation and / or strengthening of existing programs.
- TASK 2: Conduct Employee Commute Surveys** – Conduct employee commute surveys for employers who voluntarily choose to survey their employees. Although surveys are voluntary, strongly encourage the employer to conduct a survey. Ideally, the survey will be conducted once prior to the implementation of commute incentives, benefit programs or promotions, and again six months to one year after the employer has instituted an incentive or benefit program. The survey will consist of the core questions (as agreed to by Northern Virginia Employer Outreach representatives and the Commuter Connections Employer Outreach Committee) designed to assist in developing and evaluating alternative commute programs. The survey may be customized, including the addition of questions, to fit the needs of the employer and to obtain

information to develop a comprehensive employee commute plan for the employer.

Survey data will be used (a) to provide the employer with commute mode preferences, (b) to provide the jurisdictional employer outreach staff with basic information to make recommendations, and develop or change strategies that will help the employer and employees, and (c) to provide a site specific mode split which could be compared to follow-up data to determine success of the TDM strategies that were implemented. It is also a good tool for employers to track and evaluate program success (if appropriate or desired), and to give employees an opportunity to request additional commuter information.

Surveys will be distributed in one or both of the following methods, depending on the needs of the employer: 1) hard copies, or 2) email with a link to the Commuter Connections and / or Virginia online survey maintained either by MWCOG or through another online survey site.

When using hard copies or the online survey maintained by MWCOG, the request, survey editing and survey processing procedures agreed to by the Employer Outreach Committee will be followed.

TASK 3: Develop TDM Program Recommendations - Develop and provide in a written document with recommendations for the employers for the implementation of alternative commute incentives, benefits and programs. The recommendations will be based on the results of the initial employee commute survey if possible, and interviews with employer representatives. Provide copies of documents prepared under this Task to VDOT.

TASK 4: Record Keeping and Database Maintenance - Maintain the elements of the regional ACT Employer Outreach database that pertain to employers in the LOCALITY to include the following elements at a minimum:

- Employer name, location, contact name, phone number, email address, number of total employees, number of participating employees, and existing TDM programs,
- TDM program implementation dates and participation rates,
- All contact, communications and work conducted with employers including sales calls, meetings, survey dates and results, and promotions.

Update information in the ACT Employer Outreach database no less frequently than every three months. Incorporate the results from surveys conducted in Task 2 as data is available.

The ACT database will be used for the purpose of:

- recording the status of each employer-based TDM program for which the jurisdiction has knowledge,
- tracking Employer Outreach activities conducted by each jurisdiction,
- identifying employers with additional office locations in other jurisdictions and for viewing past outreach activities for an employer that is relocating from another jurisdiction.

Close coordination with Employer Outreach representatives from other jurisdictions will be adhered to for outreach with employers with additional office locations in other jurisdictions and employers relocating from another jurisdiction.

TASK 5: Reports - Provide an Activity Report, in the format shown as Attachment A-2, summarizing employer outreach activities and results to VDOT no less than quarterly and with all reimbursement requests.

TASK 6: Meetings and Training - Attend Commuter Connections Employer Outreach Committee meetings as required and as may be made available by COG.

TASK 7: Reimbursement Requests - Provide an invoice to VDOT at least once every three months from the start of the fiscal year. The final invoice for the fiscal year should be submitted by August 31, 2020. Invoices shall be accompanied by sufficient documentation to substantiate costs incurred during the period, and include at a minimum:

- number of hours devoted to Employer Outreach and resulting labor costs;
- description of Direct Costs, accompanied by copies of invoices for individual Direct Costs exceeding \$1,500;
- invoices for any work performed by subcontractors for which reimbursement is requested;
- number of new employers contacted;
- brief summary of major activities conducted during invoice period if not reflected on Activity Report (Form A-2).

Invoices which do not include the above information may not be approved by VDOT for payment. The preferred format for invoices submitted to VDOT is shown as Attachment A-3.

FISCAL YEAR 2020 PROJECT GOALS

These Goals represent target values. Program funding is not dependent upon achievement of specific values. Progress towards achieving Goals will be monitored and will serve as guidance for potential program adjustments throughout the year.

- Conduct commute surveys at all employers that implement a new alternative commute program.
- Establish 49 new Level 3 or 4 employers.
- Maintain the existing number of Level 3 and 4 employers.
- Meet with 270 employers.
- Conduct 900 sales calls.
- Conduct 78 outreach activities such as transportation information fairs and other events designed to promote the use of alternative travel modes.

Potential Alternate Commute Programs to be Promoted in Employer Outreach Activities

Carpool and Vanpool Formation - Work with the employer and employees to encourage and establish carpools and vanpools. The Commuter Connections ridematching system as well as other on-site ridematching systems, promotion of carpool incentives, and van start/van save incentives through the state grants received by the local commuter assistance programs will be used to facilitate carpool and vanpool formation. Coordination with third party vanpool operators will also be used for vanpool formation.

Telework/Telecommuting - Encourage and assist employers with the development and/or expansion of formal telework programs. Request assistance, as needed, from the Telework!VA and coordinate on promotion and employer participation in the Telework!VA program.

Parking Management Strategies - Encourage and assist employers with development of strategies to reduce parking demand, including car sharing, parking cash-out, preferential carpool/vanpool parking and bicycle parking.

TDM Information - Provide transportation and employer benefit and incentive information to employer and employees through onsite promotions, displays, emails, and employer web site.

Transit/Vanpool/Bicycle Benefit Programs - Encourage and assist employers with the development of transportation benefit programs [in accordance with IRS Section 132(f)], pre-tax transit pass purchase programs, and / or other non-SOV commuter benefit programs. Work directly with WMATA SmartBenefits sales force to promote SmartBenefits and assist employers with planning and implementation of SmartBenefits transportation benefit programs for employees that commute via transit or a qualified vanpool. Provide information to employers on benefit administration programs through WMATA and other third party administrators who can assist in implementing a transit/vanpool benefit program at an employer worksite. Provide planning assistance to employers to establish onsite transit pass, token and ticket sales, and SmartBenefit exchange services.

New Hire Programs - Assist employers in providing commute alternative information to newly hired employees. This may consist of delivery of commute options and employer provided benefits and incentive information to new employees through the development of a packet of transportation information, oral presentations at new hire orientations, email, and the employer's web site.

Guaranteed Ride Home (GRH) Program - Assist employers with offering the Commuter Connections regional GRH service to employees who take alternative commute modes at least two days per week. Assist employers seeking to provide supplemental GRH trips for their employees.

Alternative Work Scheduling - Encourage and assist employers with the implementation of flexible work schedules, compressed work weeks and staggered work hour programs.

ATTACHMENT A-3

ATTACHMENT B CONTRACT AUDIT

The LOCALITY shall permit the Department to audit, examine, and copy all documents, computerized records, electronic mail, or other records of the LOCALITY relating to this Agreement, and the program(s) funded pursuant to this AGREEMENT, during the life of the contract and for a period of not less than three years after date of final payment, or date LOCALITY is declared in default of Contract, or date of termination of the Contract.

1. The documents and records shall include, but not be limited to those required to be retained pursuant to Section VIII (RETENTION OF COST RECORDS) as well as those that were used to prepare all schedules used on the project, record the progress of work on the project, accounting records, purchasing records, personnel payments or records necessary to determine employee credentials, vendor payments and written policies and procedures used to record, compute and analyze all costs incurred on the project, including those used in the preparation or presentation of claims to the Department.
2. Records pertaining to the project as the Department may deem necessary in order to permit adequate evaluation and verification of LOCALITY's compliance with contract requirements, compliance with the Department's business policies, and compliance with provisions for pricing work orders or claims submitted by the LOCALITY or the LOCALITY's subcontractors, insurance agents, surety bond agents and material suppliers shall be made available to the auditor(s) at the Department's request. The LOCALITY shall make its personnel available for interviews when requested by the Department.
3. Upon request, the LOCALITY shall provide the Department with data files on data disks, or other suitable alternative computer data exchange format.

The LOCALITY shall ensure that the requirements of this provision are made applicable to his subcontractors, insurance agents, surety bond agents and material suppliers. The LOCALITY shall cooperate and shall cause all related parties to furnish or make available in an expeditious manner all such information, materials, and data. The LOCALITY shall be forthcoming in disclosing all sources and locations of media.

It shall be the LOCALITY'S responsibility to notify the Department, in writing, of the completion of that subcontractor's portion of the services so that the records of the subcontractor can be audited within the three-year retention period. Failure to do so may result in the LOCALITY'S liability for any costs not supported by the proper documentation for the subcontractor's phase of the services.

The LOCALITY shall provide immediate access to records for the audit and provide immediate acceptable facilities for the audit.

ATTACHMENT C

NOTICE TO CONTRACTORS COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

- (1) Compliance with Regulations: The contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (49 CFR, Part 21 and Part 26, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, religion, color, sex, national origin, age or handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the regulations.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor shall comply with the contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, religion, color, sex, national origin, age or handicap.
- (4) Information and Reports: The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the DEPARTMENT or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions.

Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the DEPARTMENT, or the Federal Highway

Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the DEPARTMENT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to,
- (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract or procurement as the DEPARTMENT or the Federal Highway Administration may direct as a means of enforcing such provisions in the event a contractor becomes involved in or is threatened with litigation with a subcontractor. The contractor may request the State and/or the United States to enter into such litigation in order to protect their respective interests.

ATTACHMENT D

VIRGINIA FAIR EMPLOYMENT CONTRACTING ACT

Section 2.2-4201 Code of Virginia (1950) as amended

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over ten thousand dollars.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such contractor is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this chapter.

The contractor will include the provisions of the foregoing paragraphs 1 and 2 in every subcontract or purchase order of over ten thousand dollars, so that such provisions will be binding upon each subcontractor or vendor. Nothing contained in this chapter shall be deemed to empower any agency to require any contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by such contractor in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the State. (1975, c.626.)

ATTACHMENT E

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION PROGRAMS 49 CFR Part 26, as amended

It is the policy of the Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26, as amended, shall have equal opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, 49 CFR Part 26, as amended, applies to this agreement.

The LOCALITY agrees to ensure that DBEs as defined in 49 CFR Part 26, as amended, shall have equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard the LOCALITY shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that DBEs have equal opportunity to compete for and perform contracts. The LOCALITY shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts.

The LOCALITY agrees that failure to carry out the requirements set forth herein shall constitute a breach of contract and after the notification of the Department of Transportation, may result in termination of this agreement by the DEPARTMENT or such remedy as the DEPARTMENT deems appropriate.

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia, on Tuesday, July 30, 2019, at which meeting a quorum was present and voting, the following resolution was adopted.

AGREEMENT EXECUTION RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of Fairfax County's Department of Transportation to execute, on behalf of the County of Fairfax, an agreement between the Commonwealth of Virginia, Department of Transportation and Fairfax County for the utilization of Congestion Mitigation and Air Quality funds for Fiscal Year 2020 Transportation Demand Management programs (County-wide).

Adopted this 30th day of July 2019, Fairfax, Virginia

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

Board Action Item
July 30, 2019

ACTION - 4

Approval of and Authorization to Execute an Amended and Restated Agreement with Capital One Tysons Block C Owner, LLC for Use of Capital One Hall

ISSUE:

Board approval of and authorization to sign an Amended and Restated Agreement with Capital One Tysons Block C Owner, LLC (Capital One), for use of Capital One Hall.

RECOMMENDATION:

The County Executive recommends that the Board approve the Amended and Restated Agreement (Restated Agreement) with Capital One and authorize his execution of the Restated Agreement substantially in the form presented at the meeting at which the Restated Agreement is approved, with such changes, insertions and omissions as may be approved by the County Executive in consultation with the County Attorney, the execution of the Restated Agreement with Capital One by the County Executive to be conclusive evidence of the Board's approval of any such changes, insertions, and omissions therein. In addition, in order to enable the expeditious processing of appropriate adjustments to the Seasonal List and scheduling processes that may be identified after operations begin, the County Executive further recommends that the Board grant him authority to approve and execute future amendments to the Restated Agreement that he may deem necessary, appropriate, and consistent with the approved public facility commitment.

TIMING:

Board of Supervisors' action is requested on July 30, 2019.

BACKGROUND:

On July 11, 2017, the Board approved PCA/CDPA/FDPA 2010-PR-021-002 (Zoning Cases) filed by Capital One Bank (USA), NA. These applications proposed the construction of a new Capital One events center (Capital One Hall), containing approximately 125,000 square feet, including a 1,500-seat auditorium, a 250-seat black box theater, and classrooms. Capital One Bank (USA), NA, proposed to satisfy its public facility commitments by allocating certain use of the Capital One Hall to the County and charitable, arts, nonprofit, and other civic organizations identified by Fairfax County (Public Facility Users), under the terms and conditions included in the initial Public Use Agreement approved by the Board on July 11, 2017 (2017 Agreement). In

Board Action Item
July 30, 2019

connection with the agreement update process set forth in the 2017 Agreement, and in preparation for the opening of the facility, the County and Capital One propose minor changes to the original agreement to facilitate Public Facility Users. The Restated Agreement: (1) permits Public Facility Users to simultaneously schedule the Classrooms at the time an event is booked in the Main Hall or Black Box, (2) clarifies that future updates and modifications to the Scheduling Guidelines shall only apply to events scheduled after the date of implementation of such updates and modifications, (3) provides that the Reimbursable Expense for items such as food and beverage catering shall be at the base rates and that no service, convenience, or other fees shall be charged to Public Facility Users, and (4) changes terminology for referring to the owner of Capital One Hall. Additionally, the Restated Agreement includes updates to certain exhibits.

The County, in conjunction with **ARTSFAIRFAX**, is currently working to identify Public Facility Users for the initial season commencing on or about September 1, 2021.

FISCAL IMPACT:
None

ENCLOSED:
Attachment 1 - Amended and Restated Agreement

STAFF:
Joseph M. Mondoro, Chief Financial Officer
Michael S. Liberman, Director, Department of Cable and Consumer Services

ASSIGNED COUNSEL:
Emily H. Smith, Assistant County Attorney

AMENDED AND RESTATED AGREEMENT

This Amended and Restated Agreement is made as of this ___ day of _____, ~~2017~~2019 (“**Agreement**”) by and between Capital One Tysons Block C Owner, LLC (“**Owner**”), as successor in interest to Capital One Bank (USA), National Association (“**Capital One**”), and Fairfax County (“**Fairfax County**”).

R E C I T A L S

- A. In connection with PCA/CDPA/FDPA 2010-PR-021-02 (the “**Zoning Cases**”), ~~Capital One~~Owner intends to develop the Capital One ~~Center~~Hall (“**Center**”) in the approximate location shown on the site plan attached hereto as Exhibit A on its real property located in Tysons, Virginia, and described on Exhibit B (the “**Property**” or “**Campus**”), ~~and to engage~~). Owner has engaged a professional third-party services firm to manage and operate the Center (the “**Operator**”).
- B. The Center shall be developed in substantial conformance with the plans described on Exhibit C and shall be designed and maintained to include the following venues: (i) approximately 1500-seat professionally designed and equipped state of the art theatrical auditorium with an orchestra pit, a fly system, dressing rooms and lighting/sound/rigging systems (the “**Main Hall**”); (ii) approximately 250-seat black box/multi-purpose room with flexible seating configurations, basic theatrical lighting, audio/visual equipment, and a large blackout window overlooking the street below (the “**Black Box**”); and (iii) 2 classrooms (which can be combined to form a single classroom) (the “**Classrooms**”). The Center will also include front of the house and back of the house facilities to support use of the venues in the Center.
- C. Pursuant to Proffer 13 (“**Proffer 13**”) of the Capital One Proffers dated _____, June 29, 2017, and approved with the Zoning Cases (the “**Proffers**”), Capital One committed to enter into an agreement with Fairfax County regarding the specific terms and conditions upon which Capital One would make the Center available for use by Fairfax County and eligible charitable, arts, nonprofit, and other community organizations identified by Fairfax County in the manner described below (collectively with Fairfax County, the “**Public Facility Users**”).
- D. ~~Accordingly, this Agreement sets~~On July 11, 2017, the Board of Supervisors of Fairfax County approved, and Capital One and Fairfax County subsequently executed an agreement, dated as of August 10, 2017, setting forth the terms and conditions Capital One and Fairfax County have agreed upon regarding the use of the Center by Public Facility Users- (“the 2017 Agreement”).
- E. On or about November 1, 2018, Capital One (i) transferred its ownership interest in and to the Property to Owner, (ii) assigned the 2017 Agreement to Owner, and (iii) Owner assumed all of Capital One’s rights and obligations under the 2017 Agreement.

F. Owner and Fairfax County mutually desire to amend and restate the 2017 Agreement in its entirety for the purposes of clarifying certain procedures relating to scheduling Public Facility User Events in the Classrooms and generally updating certain terms and Exhibits.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, ~~the parties~~ Owner and Fairfax County agree as follows:

I. TERM.

- a. Term; Commencement Date; Expiration Date. The term of this Agreement shall commence on the date of this Agreement (the “**Commencement Date**”) and shall expire on the August 31st (the “**Expiration Date**”) immediately following the last day of the thirtieth (30th) consecutive Season (as hereinafter defined), unless sooner terminated or extended in accordance with the terms and conditions of this Agreement (the “**Term**”).
- b. Definition of Season. For purposes of this Agreement, a “**Season**” shall commence on September 1st of each year and run through June 30th of the following year. The first (1st) Season shall commence on the September 1st immediately following the first day the Center is open for public or private (*i.e.*, Capital One) events (the “**Opening Date**”), unless the Opening Date occurs after September 1 but prior to December 31 of a particular year, in which event the first (1st) Season shall commence on the actual Opening Date rather than September 1st. For illustrative purposes, if the Opening Date occurs on May 15, 2021, the first Season shall commence on September 1, 2021, and if the Opening Date occurs on October 1, 2021, the first Season shall commence on October 1, 2021. The actual Opening Date will not affect the number of Allocated Dates in the first Season to which Public Facility Users are entitled under Section II of this Agreement. ~~Capital One Owner~~ Capital One Owner currently intends that the first Season of the Center shall commence on or about September 1, 2021. ~~On or before January 1, 2019 (the “Agreement Update Date”), Capital One shall notify Fairfax County of any then intended changes to the Opening Date. Thereafter, Capital One Owner shall keep Fairfax County reasonably apprised of any changes to the Opening Date. Notwithstanding anything in this Agreement or any amendment or update to this Agreement, Capital One Owner shall have no liability to Fairfax County or any Public Facility User if the Opening Date does not occur prior to the anticipated date set forth in any such document.~~
- c. Optional Extension Term. During the twenty-fifth (25th) Season, ~~Capital One Owner~~ Capital One Owner and Fairfax County shall in good faith negotiate the terms and conditions upon which they would agree to an extension of the Term for a period of up to five (5) additional years to begin on the September 1st immediately following the original Expiration Date. The negotiation for the first possible extension will include consideration of an actual use analysis based on Operator Reports (as defined

below) required by this Agreement, as well as the actual value of Public Facility User's use over the initial Term.

Three years before the end of any extended Term, ~~Capital One~~ Owner and Fairfax County may in good faith negotiate additional extensions of the Term, each for a period of up to five additional years, upon such terms and conditions as may be mutually agreeable.

In the discretion of the Fairfax County Board of Supervisors and subject to its approval of the necessary appropriations, any optional extension term may allow Fairfax County to contribute funds to retain its Second Priority status or obtain a greater allocation of public use, subject to the agreement of ~~Capital One~~ Owner.

II. USE.

- a. Priority Use Policy. Presenters using the Center (“**Users**”) shall be classified within the following priorities:

- First Priority: ~~Capital One is the owner and its affiliates are the primary users~~ Capital One and its affiliates will be classified as the First Priority User of the Center.
- Second Priority: Fairfax County is classified as the Second Priority User.
- Third Priority: Users who contract to present at least five performances of two (2) single events in a subscription series or Users who contract to present at least eight single performances in any of the Center's venues in one given year are classified as Third Priority Users.
- Fourth Priority: Users who contract to present at least three performances of two (2) single events in a subscription series or Users who contract to present at least five single performances in a single event in any of the Center's venues in one given year are classified as Fourth Priority Users.
- Fifth Priority: All other Users shall be Fifth Priority Users.

The descriptions of the Third, Fourth, and Fifth Priority Users are preliminary and will be updated from time-to-time by ~~Capital One~~ Owner and the Operator, ~~including on or before this Agreement Update Date and on an annual basis thereafter.~~

- b. Public Facility Use – Main Hall and Black Box. Notwithstanding Capital One's classification as the First Priority User, beginning with the first Season (the Opening Date of which will not affect the number of Allocated Dates to which Public Facility Users are entitled to use in the first Season under this Section II.b), and for each subsequent Season occurring during the Term, the parties have agreed that the following use of the Main Hall and Black Box, together with the use of the Classrooms under Section II.c, satisfies the requirements of Proffer 13.

Accordingly, Fairfax County shall be entitled to the following number of calendar days for use of the following Center venues by Public Facility Users:

- Main Hall – One weekend (*i.e.*, consecutive Friday, Saturday, and Sunday) per month per Season for a total of thirty (30) days of use each Season [*i.e.*, 3 days per month per 10 months in each Season] (the “**Main Hall Allocated Dates**”); and
 - Black Box – 7 days per month for a total of 70 days of use per Season [*i.e.*, 7 days per month 10 months in each Season]; provided that Public Facility Users shall only be entitled to one Friday, one Saturday and one Sunday per month, which may, ~~in~~ at Fairfax County’s discretion, but subject to availability, be used consecutively during some months (the “**Black Box Allocated Dates**”). ~~Capital One~~ Owner shall direct the Operator to use commercially reasonable efforts to book more than one (1) event in the Black Box on Black Box Allocated Dates to the extent that (i) the events are complementary, (ii) it is feasible, and (iii) the impacted Public Facility Users agree to any reasonable additional conditions that may be imposed by the Operator (such as expedited set-up and breakdown). In the event that more than one event is booked in the Black Box on a Black Box Allocated Date, the applicable Expense Fee shall be split equally between the impacted Public Facility Users. For illustrative purposes only, it may be feasible to have two (2) piano recitals by two (2) separate music groups in the Black Box on the same Black Box Allocated Date – one in the afternoon and one in the evening.
- c. Public Facility Use – Classrooms. Beginning on the Opening Date, during each calendar year of the Term, Fairfax County shall be entitled to 220 days of use of the Classrooms by Public Facility Users per calendar year (*i.e.*, 110 days of use per Classroom per year; if the classrooms are combined into a single classroom, the day shall be counted as two days of use, one day per Classroom) (the “**Classroom Allocated Dates**”); together with the Main Hall Allocated Dates and the Black Box Allocated Dates, the “**Allocated Dates**”). If a Public Facility User desires to book a Classroom for less than six (6) hours on a given day of use, such use shall count as a half (1/2) Classroom Allocated Date, and a half (1/2) Classroom Allocated Date (*i.e.*, use of 6 hours or less) shall remain available to other Public Facility Users. The Classroom Allocated Dates shall be prorated for any partial calendar year occurring at the beginning or end of the Term, unless that partial calendar year results in an extension of the Term under Section 1.b above. The parties acknowledge that Fairfax County’s use of the Classrooms as a polling place for four (4) days per calendar year under Proffer 13(G) shall not count as use of any Classroom Allocated Dates; provided, however, in the event that Fairfax County elects to use less than four (4) days of Classroom use under Proffer 13(G) in any given calendar year, the unused dates (up to 4 days) shall be added to the Classroom Allocated Dates available for such year under this Section II.c. The regularly available hours for Classroom use are currently intended to be 7:00 a.m. to 11:00

p.m. ~~Capital One~~ Owner or the Operator shall promptly notify Fairfax County of any changes to the regularly available hours for Classroom use.

- d. Types of Use. The Allocated Dates can be used for events, rehearsals, event set-up and break-down, meetings, social functions, or any other purposes consistent with the Center's events restrictions policy, as the same may be adopted, amended, modified, replaced, or updated from time-to-time with reasonable prior notice to Fairfax County (the "**Events Restrictions Policy**"). Such Events Restrictions Policy shall not preclude any of the contemplated uses identified in the Statement of Justification for this public facility, as submitted by Capital One in the Zoning Cases (i.e., school graduation ceremonies; local artist exhibitions; a base for a local performing arts troupes; Fairfax County Symphony Orchestra; County-sponsored dance classes; County-sponsored acting classes; gubernatorial debates; senatorial debates; local town hall meetings; civic awards ceremonies; and Fairfax County developmental events) or other similar uses, nor shall it preclude use of the Classrooms as meeting space for Tysons-area property owners' associations. ~~The initial Events Restrictions Policy shall be delivered to Fairfax County at least two (2) months prior to the Agreement Update Date.~~ Fairfax County shall have no obligation to enforce the Events Restrictions Policy or police organizations placed on their Seasonal List (as hereinafter defined) for compliance with the Events Restrictions Policy. ~~Capital One agrees to discuss~~ A copy of the initial Events Restrictions Policy with Fairfax County before it is finalized attached hereto as Exhibit D.
- e. Seasonal List of Eligible Public Facility Users. Beginning with the first Season, at least twenty-four (24) months prior to the start of each Season, Fairfax County will provide to ~~Capital One~~ Owner and Operator: (i) a list of eligible Public Facility Users (the "**Seasonal List**") broken down by venue desired (i.e., separate lists of potential Main Hall Users, potential Black Box Users and, if there are specific potential Classroom Users (as defined below) to be identified, including but not limited to use expressly being requested in conjunction with, and on the same days as, use of the Main Hall or Black Box by a Public Facility User, potential Classroom Users); (ii) the identity of and contact information for a Fairfax County representative who will interact with the Operator in connection with any questions or concerns in connection with scheduling Allocated Dates (the "**Fairfax County Representative**"), except that interactions for the purpose of booking Allocated Dates shall occur as provided in Section II.f. below; and (iii) a list of criteria to be applied to identify charitable, arts, nonprofit, and other community organizations eligible to book Classrooms (the "**Classroom Criteria**") using Allocated Dates ("**Classroom Users**"); each prospective Classroom User must represent or demonstrate to the satisfaction of the Operator that they meet the Classroom Criteria. As and when Fairfax County deems it necessary to add or eliminate eligible Public Facility Users, Fairfax County may provide updated Seasonal Lists or updated Classroom Criteria to the Operator. Each Seasonal List shall include contact information for a designated representative of each organization on the Seasonal List. Whenever possible the Seasonal List will also include the Allocated Dates requested by each User on the list (e.g., Main Hall Allocation for December;

a sequential Wednesday, Thursday and Friday in the Black Box in November; recurring use of Classroom(s) on the second Wednesday of every month) and shall state whether the eligible Public Facility User's needs are flexible. Further, in the event that Fairfax County desires to control the number of Allocated Dates used by a particular Public Facility User on a Seasonal List, Fairfax County will include such information with the applicable Seasonal List. Fairfax County will require Public Facility User applicants to keep contact information current; notices of any changes in contact information for Public Facility Users on the then current Seasonal List shall be sent to both Fairfax County and Operator. In the event that Allocated Dates have already been booked by a Public Facility User previously identified on a Seasonal List who is subsequently removed from the applicable Seasonal List or a Classroom User who no longer meets the then applicable Classroom Criteria, as applicable (a "**Former Public Facility User**"), more than six (6) months prior to date of such User's first Allocated Date, such event shall be cancelled pursuant to the terms and conditions of the Rider (as hereinafter defined). In the event that a Former Public Facility User is removed from the applicable Seasonal List or no longer meets the then applicable Classroom Criteria, as applicable, six (6) months or less from such User's first Allocated Date, such Former Public Facility User shall have the option under the Rider to elect to (i) keep such date(s) but pay the Center's then published commercial rates (including rent, ticketing fees, expense fees and reimbursable expenses) for the applicable venue, or (ii) cancel its event(s). In the event that a Former Public Facility User's event(s) is cancelled pursuant to this Section II.e, the exact date(s) of the cancelled event(s) shall thereafter be available to other Public Facility Users on the then applicable Seasonal List or meeting the then applicable Classroom Criteria, as applicable, subject to the Center's Events Restrictions Policy and any Scheduling Guidelines (as hereinafter defined). In the event that Former Public Facility User elects option (i) above, Capital One shall use good faith efforts to identify other possible dates as Allocated Dates (which in this case could be any day of the week regardless of the venue) for the applicable venue in the applicable Season (if any), subject to the Center's Events Restrictions Policy and any Scheduling Guidelines, but in no event shall ~~Capital One~~ Owner or Operator be obligated to cancel or change any booked events regardless of User priority. Any changes to the Fairfax County Representative shall be promptly communicated to the Operator in writing.

- f. Procedure to Book Allocated Dates in Main Hall and Black Box. After receiving a Seasonal List from Fairfax County, ~~Capital One~~ Owner shall cause Operator to interact directly with an eligible Public Facility User's designated representative for purposes of booking that organization's Allocated Date event(s) in the Main Hall and Black Box, if any, for the applicable Season. Operator will notify the Fairfax County Representative if it is unable after three (3) attempts (each attempt to be on a different day) to reach an organization on the Seasonal List in connection with scheduling of Main Hall or Black Box Allocated Dates. Beginning twenty-four (24) months prior to the applicable Season, Public Facility Users on the then applicable Seasonal List may contact ~~the~~ Operator regarding their interest in the Main Hall and Black Box for the Season then being scheduled. ~~Capital One~~ Owner

shall cause Operator to consider the Public Facility User requests and any Fairfax County allocations set forth in the applicable Seasonal List, as well as scheduling constraints imposed by the First Priority User, the Events Restrictions Policy and any other scheduling guidelines adopted by the Center from time-to-time (the “**Scheduling Guidelines**”) to determine the schedule for the applicable Season. A copy of the initial Scheduling Guidelines is attached hereto as Exhibit E. No later than eighteen (18) months prior to the start of each Season during the Term, Operator shall notify Fairfax County and each designated representative identified on the Seasonal List for the Main Hall and Black Box of the final schedule of Public Facility User events in the Main Hall and Black Box on the Main Hall and Black Box Allocated Dates. ~~Capital One (including Classroom use expressly being scheduled in conjunction with, and on the same days as, Main Hall or Black Box usage).~~ Owner shall cause the Operator to reasonably cooperate with the Fairfax County Representative and each Public Facility User representative identified on the applicable Seasonal List, and Fairfax County shall cause Public Facility Users and the Public Facility User Representative to reasonably cooperate with the Operator and ~~Capital One~~ Owner, in connection with Operator’s determination of the Public Facility User schedule for each Season of the Term, including, without limitation, an equitable balance of the types of use over a Season and from Season to Season and efficient use of the Capital One Center in connection with set-up, rehearsals, performances, and breakdown. The determination of the final schedule for Main Hall and Black Box Allocated Dates for any Season during the Term shall be solely vested in the Operator, subject to the Center’s priority use policy (as set forth in Section II.a above), the Events Restrictions Policy, and any Scheduling Guidelines in effect when the Seasonal List for that Season is provided.

~~Capital One shall deliver the initial Scheduling Guidelines to Fairfax County at least two (2) months prior to the Agreement Update Date.~~ All updates or modifications to the ~~then applicable~~ Scheduling Guidelines shall be delivered to Fairfax County at least six (6) months prior to implementation; and the updates shall only apply to Events scheduled after the date of implementation. Any Scheduling Guidelines will reflect that ~~Capital One~~ Owner and its Operator will exercise good faith efforts to schedule a diverse array of uses at the Center, excluding use of the Center as a corporate center.

- g. Procedure to Book Allocated Dates in the Classrooms. There shall be a rolling one (1)-month period on a semi-annual basis (the “**Exclusive Booking Period**”), as described in the Scheduling Guidelines, for the Operator to exclusively book an organization identified as an eligible Classroom Public Facility User on the then applicable Seasonal List or meeting the then applicable Classroom Criteria, as applicable, for Classroom usage for the period six (6) months in the future, with such six-month period to commence at the end of the Exclusive Booking Period.) The Operator may book events in the Classrooms for ~~the First Priority User anytime~~ (i) the First Priority User, or (ii) Second Priority Users in conjunction with and on the same day as an event scheduled on a Main Hall Allocated Date or Black Box Allocated Date, or (iii) Third, Fourth or Fifth Priority Users in conjunction

with and on the same day as an event scheduled in the Main Hall or Black Box for such user (up to a maximum of ten (10) days per year per Classroom), at any time, including prior to the commencement of any Exclusive Booking Period (i.e., more than six (6) months in advance of the event) but, except as expressly set forth in clause (iii) above, the Operator may not book events in the Classrooms for Third, Fourth or Fifth Priority Users until the applicable Exclusive Booking Period has expired. However, Capital One, as the First Priority User, shall not advance-book events in the Classrooms in such a way that would preclude the Operator from having a reasonably sufficient number of dates available for Public Facility Use of the Classrooms on the Classroom Allocated Dates in a given year. After each Exclusive Booking Period ends, the Classrooms shall be booked on a “first request, first serve” basis, but no requests for Public Facility Use of the Classrooms may be made more than six (6) months prior to the commencement of the applicable Exclusive Booking Period. ~~Capital One~~ unless such use is requested in conjunction with use of a Main Hall Allocated Date or Black Box Allocated Date. Owner shall cause the Operator to use good faith efforts to fulfill requests for Public Facility Use of the Classrooms made after the expiration of each Exclusive Booking Period, subject to remaining Classroom Allocated Dates for the applicable calendar year and the then current availability of the Classrooms. The Seasonal Lists delivered by Fairfax County may serve as an official request for Classroom usage if specific requests for Classroom usage are clearly set forth in the applicable Seasonal List (e.g., recurring use of Classroom(s) on the second Wednesday of every month). Beginning six (6) months prior to the applicable Exclusive Booking Period, Public Facility Users on the then applicable Seasonal List or meeting the then applicable Classroom Criteria, as applicable, may contact the Operator regarding their interest in the Classrooms. ~~Capital One~~ Owner shall cause Operator to consider the Public Facility User requests and Fairfax County allocations for Classrooms set forth in the applicable Seasonal List, as well as scheduling constraints imposed by the First Priority User’s Classroom usage, use by a Public Facility User in conjunction with a Main Hall or Black Box event, use by a Third, Fourth or Fifth Priority User in accordance with clause (iii) above, the Events Restrictions Policy, and any Scheduling Guidelines in booking the Classrooms. In the event of any conflict between Public Facility Users seeking to book the Classrooms during an Exclusive Booking Period, priority in Classroom booking shall be given to Fairfax County first, then to Tysons-based Classroom Users, then to all other Classroom Users after that. Beginning with the end of the first calendar year that the Operator accepts bookings for Classroom usage by Public Facility Users, within twenty (20) days after the end of each six (6)-month period during the Term (i.e., January to June and July to December), the Operator shall deliver to the Fairfax County Representative a written report of the Classroom dates requested and booked by Public Facility Users for such 6-month period. Once all the Classroom Allocated Dates for a particular calendar year have been booked, the Operator shall have no obligation to book additional Public Facility Users for Classroom usage during such calendar year. The determination of the final schedule for Classroom Allocated Dates for any calendar year during the Term shall be solely vested in the Operator,

subject to the Center's priority use policy (as set forth in Section II.a above), the Events Restrictions Policy and any applicable Scheduling Guidelines.

- h. Use License Agreements. Each User, including, without limitation, the Public Facility Users, shall execute a use license agreement in a form and substance acceptable to ~~Capital One~~ Owner and the Operator (the "**Use License**"). Each Use License executed by Operator with a Public Facility User for an Allocated Date event, including Fairfax County, shall be on the form most recently approved by Fairfax County and include the rider attached hereto as ~~Exhibit DF~~, with the blanks completed and other appropriate modifications to account for the circumstances of a particular Public Facility User or event (the "**Rider**"). The parties acknowledge and agree that the form of the Use License Agreement and the Rider may only be amended, modified, replaced or updated with the prior written consent of Fairfax County, which shall not be unreasonably withheld, conditioned or delayed. ~~Capital One or the Operator shall deliver the Center's initial Use License to Fairfax County on or prior to the Agreement Update Date.~~ Upon execution of a Use License by any Public Facility User, including Fairfax County, neither the Use License nor the Rider may be amended, modified, replaced, or updated, except by written amendment executed by the parties. The form of the initial approved Use License is attached hereto as Exhibit G.
- i. Use Reporting. Within sixty (60) days after the end of each Season during the Term with respect to the Main Hall and the Black Box, and within sixty (60) days after the end of each calendar year with respect to the Classrooms, ~~Capital One~~ Owner shall cause Operator to deliver a written report to the Fairfax County Representative detailing the number of Allocated Dates used in the Main Hall, the Black Box, or the Classrooms, as applicable; the identity of the Public Facility Users using each venue and their respective type of use; the identity of every User that cancelled an event booked on any Allocated Date(s); and any other reasonably requested information regarding use of the Center under this Agreement (each an "**Operator Report**"). After delivery of each annual Operator Report, representatives of Owner and Operator shall meet with the Fairfax County Representative to review the applicable Operator Report and discuss any other issues with respect to a successful ongoing working relationship under this Agreement.
- j. No Carry Forward. The parties acknowledge and agree that it is not feasible nor practicable for any unused Allocated Dates to be automatically or otherwise carried forward into future Seasons. Accordingly, regardless of the reason that Allocated Dates are not used, but subject to the terms and conditions of Section V below, any and all Allocated Dates not used during the applicable Season or calendar year will not be automatically or otherwise carried forward to use in subsequent Seasons or calendar years (as applicable). In no event shall ~~Capital One~~ Owner be required to pay or otherwise reimburse Fairfax County for unused Allocated Dates, provided, however, that actual use of Allocated Dates shall be considered as part of the good faith discussion for the first possible extension of the Term under Section I.c above.

- k. Other Public Use. If any Public Facility User desires to use the Center for events on dates other than the Allocated Dates for a particular Season or calendar year (as applicable), the parties acknowledge and agree that such use is outside the scope of this Agreement and that the applicable Public Facility User shall be required to contract directly with the Operator pursuant to separate use license agreement(s), without the Rider, as a Third Priority, Fourth Priority, or Fifth Priority User, as applicable, for such events at the prevailing rental rates, including base rent, facility fees, expense fees and reimbursable expenses, subject to availability and the Center's scheduling and use policies. ~~Capital One~~Owner shall, or shall cause its Operator, to reasonably coordinate with Fairfax County Park Authority to schedule events at any outdoor amphitheater located at the Property, subject to any applicable Events Restrictions Policy or Scheduling Guidelines; payment of applicable rent, fees and expenses; and scheduling constraints.

III. ADDITIONAL SERVICES TO BE PROVIDED TO FAIRFAX COUNTY

For Public Facility User events on the Allocated Dates, the Center will supply the following staff support for all events (collectively, the “**Included Services**”):

- Technical Director for the Main Hall /Production Manager for the Black Box - An experienced technical director for the Main Hall and an experienced production manager for the Black Box will be offered to advance and assist in producing events in the respective venues.
- Sales and Marketing Support - The Center will support Public Facility User's events at the Center with marketing, publicity and promotion support associated with their respective events.
- Set up Operations Staff - One or more operations support staff will be offered to assist in classroom activities, Black Box implementation and in Main Hall events.
- Box Office Support - A box office manager will be able to assist on a daily basis to fulfill box office needs, including series performance builds, daily series subscriber customer service, group sales assistance and support, email blasts, etc.
- Use of in-house equipment for each of the venues that is made available to all Users of such venue (collectively, the “**In-House Equipment**”). A list, including a technical description, of the In-House Equipment ~~then planned available for each the booked venue shall will be delivered attached to Fairfax County on or before the Agreement Update Date~~ the Rider as Exhibit B. The In-House Equipment will be consistent with a professionally designed and equipped state-of-the-art auditorium as determined by Capital One from time-to-time. Thereafter, ~~Capital One~~Owner shall cause the Operator to keep Fairfax County reasonably apprised of material changes to the In-House Equipment.

IV. RENT AND REIMBURSABLE EXPENSES

- a. Rent. Public Facility Users will have no obligation to pay rent for Public Facility User events on the Allocated Dates set forth in Sections II.b and II.c above.
- b. Expense Fee. Public Facility Users shall pay ~~the Center Operator~~ a flat fee for costs and expenses incurred in connection with Public Facility User events held at the Center, which flat fee shall include: police/EMT services; event security; usage of the In-House Equipment applicable to such venue; front-of-the-house, security, general production operations and housekeeping /clean-up labor; labor for operating In-House Equipment for sound and lighting in the Main Hall and Black Box; and housekeeping fee, all as more fully described in Section 1 of Exhibit EH (collectively, the “**Expense Fee**”). As of the Commencement Date, the Expense Fee for each venue is as follows:

- Main Hall - \$1,950 per day
- Black Box - \$500 per day
- Classrooms - \$100 per Classroom per day (or \$50 per Classroom per half day of use)

The Expense Fee may be increased by ~~Capital One Owner~~ from time-to-time provided that at least one (1) year’s prior notice of the increase has been given to Fairfax County. The Expense Fee shall not be increased prior to the date that is eighteen (18) months after the first day of the first Season. Thereafter, the Expense Fee may not be increased more frequently than three (3) years from the last increase. During the initial Term, no increase in the Expense Fee may exceed the CPI-U, All Items, U.S. City Average, unadjusted percent change over the year in which the Expense Fee was last adjusted. In no event may any increase in the Expense Fee apply to any event for which a Use License Agreement has already been fully executed.

Fairfax County shall be responsible for Expense Fees only when it executes a Use License Agreement with Operator as the Public Facility User for an event. Identification of any potential User as an “eligible” Public Facility User does not constitute a representation or warranty by Fairfax County with respect to the creditworthiness of any such User.

- c. Reimbursable Expenses. Public Facility Users shall reimburse ~~the Center Operator~~ for all direct costs incurred in connection with Public Facility User events held at the Center that are not already provided as Additional Services under Section III above or are not otherwise included in the Expense Fee, including, but not limited to, artist/talent related costs; stagehand labor; rental of equipment other than the In-House Equipment for the applicable venue; front-of-the-house, security, general production operations and housekeeping /clean-up labor not included in ~~addition to~~ the labor described in Section 1 of Exhibit EH at the rates set forth in Section 2 of Exhibit EH; labor costs for the installation, operation and removal of equipment other than In-House Equipment; food and beverage ~~costs~~; and catering (collectively, the “**Reimbursable Expenses**”). There will be no mark-up on the

Reimbursable Expenses by ~~Capital One~~Owner or Operator but the charges for Reimbursable Expenses may escalate from time-to-time; provided that changes to the hourly charges for labor may only be increased with at least one (1) year's prior written notice to Fairfax County. ~~In order to accurately allocate expenses between items to be included in the Expense Fee and items for which Reimbursable Expenses are to be paid, on or before the Agreement Update Date, Capital One shall deliver a list of the In House Equipment pursuant to Section III above and the labor associated with operating In House Equipment which will be included in each of the venues and for which no Reimbursable Expenses shall be due in connection with the use thereof. The parties acknowledge that the Reimbursable Expense for services and items provided in-house by Operator, such as food, beverage and catering, shall be the base rates for the applicable service or item published by Operator from time-to-time for such services but that no service, convenience or other fees shall be charged to Public Facility Users for such services or items.~~

- d. Waiver of Center Ticketing Fees and Facility Fee. As more fully described in the Use License, the Center typically charges a ticketing fee (in addition to the ticketing fee charged by the ticketing company engaged by the Operator) and a facility fee on all tickets for events at the Center. The Center shall waive its ticketing fee (but not the ticketing company's fee) and the facility fee for Allocated Dates events.

V. CASUALTY, CONDEMNATION AND CLOSURE

- a. Substantial Damage; Force Majeure. In the event that a substantial portion of the Center or access to the Center is destroyed, or damaged, or taken in a condemnation or action in lieu of condemnation, or that ~~Capital One~~Owner is otherwise precluded from operating the Center in a manner that would allow ~~Capital One~~Owner to make the Center available for Public Facility User events by Force Majeure Events (as hereinafter defined), such that ~~Capital One~~Owner, in its reasonable discretion, determines to not continue to operate the Center in a substantially similar manner as operated prior to the event of casualty, taking or other Force Majeure Event for the First Priority and Second Priority Users, ~~Capital One~~Owner shall not be in default of its obligations under this Agreement and shall have the right to terminate this Agreement upon written notice to Fairfax County. In such event, ~~Capital One~~Owner shall construct the Integrated Community Center in accordance with Proffer 14 of the Capital One Proffers unless (x) building permits for construction on all buildings designated as office buildings on the CDPA approved by the Board on {July 11, 2017} have already been issued as of such termination date, in which case, ~~Capital One~~Owner shall have the option to pay Fairfax County a termination fee, calculated in accordance with the schedule attached hereto as Exhibit FI, or (y) the twelfth (12th) Season has concluded, in which case, ~~Capital One~~Owner shall have the option to (i) pay Fairfax County a termination fee, calculated in accordance with the schedule attached hereto as Exhibit FI or (ii) build the Integrated Public Facility provided that Fairfax County elects in writing to contribute the difference between the termination fee then due under this Agreement and the actual Total

Construction Costs (as defined in the Proffers) of the Integrated Public Facility in accordance with the terms of Option 2 under Proffer 14.E. The parties agree that the termination fee set forth on Exhibit FI shall be adjusted on an annual basis by the Marshall & Swift Building Cost Index during the period between the date hereof and the Opening Date, with the first adjustment to be made on January 1, ~~2018~~2020 and each subsequent adjustment made on each January 1st occurring thereafter but prior to the Opening Date. Promptly after the Opening Date, the parties shall update Exhibit FI to reflect such adjustment.

- b. Term Extension. In the event of a casualty, condemnation, action in lieu of condemnation, repair, renovation, regulatory compliance and/or other Force Majeure Event that results in the closure of the Center for a period in excess of ninety (90) days unless this Agreement is terminated under Section V.a above, the term of this Agreement shall be extended on a day-for-day basis for the length of the closure.
- c. Impact on Allocated Dates. In the event of a closure for casualty, condemnation, repair, renovation, regulatory compliance and/or other Force Majeure Event that results in the closure of the Center for a period of less than ninety (90) days and previously scheduled Allocated Dates not being rescheduled under the applicable Use License, to the extent feasible, such Allocated Dates shall be put back into the pool of possible Allocated Dates (which for purposes of this provision could be any day of the week regardless of venue) for the applicable Season for events in the Main Hall or the Black Box or calendar year for the Classrooms, subject to availability, the Use Restrictions Policy and any Scheduling Guidelines.

VI. DEFAULT AND REMEDIES

- a. Default, Notice and Cure. In the event that either party fails to timely perform its obligations under this Agreement, prior to the non-defaulting party exercising any remedy hereunder, the non-defaulting party shall deliver written notice to the defaulting party and the defaulting party shall have a reasonable opportunity to cure the default. The length of the cure opportunity shall be reasonable in light of the circumstances and type of default, but in no event shall the length of a cure opportunity be less than thirty (30) days, except in the event of an emergency involving imminent harm to any person or imminent substantial damage to property.
- b. Injunctive Relief. In addition to any other remedy available at law, in equity, or otherwise, after the giving of notice and a reasonable opportunity to cure under Section VI.a, either party shall have the right to seek to enjoin any breach hereunder and/or obtain specific performance of this Agreement by the defaulting party upon meeting its burden of proof of such breach as required by applicable statute or rule of law.
- c. Unique Qualities. Because this Agreement is a unique agreement, the rights and benefits that will accrue to each party by reason of this Agreement are unique, and a non-defaulting party may not be adequately compensated in monetary damages for a defaulting party's failure to comply with its obligations under this Agreement; therefore, each party shall have the right to seek equitable relief (whether it be injunctive relief, specific performance or otherwise) in the event that the other party violates its obligations under this Agreement (after notice and opportunity to cure).
- d. Limitation of Liability. In no event shall either party be entitled to consequential or special damages.

VII. CONSTRUCTION; MISCELLANEOUS

- a. Construction of this Agreement.
 - (i) Choice of Law. This Agreement shall be deemed to be made, governed by, and construed in accordance with the laws of the Commonwealth of Virginia, without giving effect to the conflict of law principles thereof. The parties agree that any litigation arising out of this Agreement or the attempted termination hereof shall be filed exclusively in federal district court located in Virginia or in state court located in Fairfax County, Virginia, and the parties expressly consent to the exercise of personal jurisdiction over them by such courts.
 - (ii) Paragraph Headings. The paragraph headings are inserted herein only as a matter of convenience and for reference; in no way are they intended to be a part of this Agreement or to define, limit, or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

- (iii) Entire Agreement; Amendments. This Agreement (including all Exhibits and other documents and matters annexed hereto or made a part hereof by reference) contains all of the covenants, agreements, terms, provisions, and conditions relating to the rights and obligations of ~~Capital One Owner~~ and Fairfax County with respect to the subject matter hereof, except that the terms of the Proffers, particularly Proffers 13 and 14, still apply to the Property. No alterations, amendments, or modifications to this Agreement shall be valid unless memorialized in an instrument signed by each of the parties hereto. The parties acknowledge and agree that an alteration, amendment or modification of this Agreement does not necessitate a Proffered Condition Amendment (a “PCA”) unless the Fairfax County Zoning Administrator determines that any such alteration, amendment or modification would not be in substantial conformance with the then existing Zoning Cases, including all proffers (subject to all applicable appeals), in which case a PCA would be required.
- (iv) Severability. If any provision or a portion of any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions shall not be affected thereby.
- (v) Time. Time is of the essence hereof, and every term, covenant, and condition shall be deemed to be of the essence hereof.
- (vi) Successors. This Agreement shall run with the land, and the Agreement or a memorandum of the Agreement will be recorded in accordance with Section VII.b(iv) below, and be binding upon, and shall inure to the benefit of, the successors and assigns of ~~Capital One Owner~~ and any future owner of the Property and, if later owned separately, the Center, and to such successors and assigns of Fairfax County as are permitted to succeed to Fairfax County’s rights, upon and subject to the terms of Section VII.b(iii) below. ~~Capital One Owner~~ will notify Fairfax County promptly after any transfer, including any sale or long-term ground lease, of the Property. ~~Capital One Owner~~ will cause any such successor or assign to assume all obligations under this Agreement.
- (vii) Independent Contractor; No Partnership. ~~Capital One Owner~~ and Fairfax County shall each be and remain an independent contractor with respect to all rights and obligations arising under this Agreement. Nothing herein contained shall make, or be construed to make, ~~Capital One Owner~~ or Fairfax County a partner of one another, nor shall this Agreement be construed to create a partnership or joint venture between any of the parties hereto or referred to herein.
- (viii) Singular and Plural. Whenever the context so requires, the singular shall include the plural, and the plural shall include the singular.

- (ix) Conflict. In the event of a conflict between the terms of this Agreement and any Use License, including a Rider attached thereto, with respect to the use of the Center, the terms of this Agreement between ~~Capital One Owner~~ and Fairfax County shall govern and control as between the two of them.

b. Miscellaneous.

- (i) Waiver. The failure of any party to enforce any of the provisions of this Agreement or any rights with respect hereto, or the failure to exercise any election provided for herein, will in no way be considered a waiver of such provisions, rights or elections, or in any way affect the validity of this Agreement. The failure of any party to enforce any of such provisions, rights or elections will not prejudice such party from later enforcing or exercising the same or any other provisions, rights, or elections which it may have under this Agreement.
- (ii) Rights Reserved by ~~Capital One Owner~~. Subject to this Agreement, ~~Capital One Owner~~ shall have the right, without the prior consent of Fairfax County, to (i) sell, convey, transfer, lease, mortgage, or encumber the Center; (ii) engage Center operators and managers; or (iii) file and pursue PCAs, CDPAs, FDPAs, site plans, or other amendments to the Zoning Cases for any reason (subject to the terms of Section VII.a(iii) with respect to amendment of this Agreement).
- (iii) Assignment by Fairfax County. Neither this Agreement nor any of the rights or obligations hereunder may be assigned or transferred in any manner whatsoever by Fairfax County without the prior written consent of ~~Capital One Owner~~, which consent ~~Capital One Owner~~ may withhold in its sole discretion.
- (iv) Memorandum of Agreement. ~~Capital One Owner~~ and Fairfax County agree that this Agreement or a mutually acceptable memorandum or short form of this Agreement shall be recorded among the Land Records of Fairfax County, Virginia.
- (v) Force Majeure Events. For purposes of this Agreement, the following shall be considered "**Force Majeure Events**": casualty or unforeseeable cause beyond the control of ~~Capital One Owner~~ or Fairfax County, as applicable, including, without limitation, acts of nature; acts of terrorism; national emergency resulting from war; an order of the United States government or the Commonwealth of Virginia or any of their respective official agencies applicable to the Property, the Center, ~~Capital One Owner~~ or its successor(s), if applicable; bank regulatory rules, regulations, guidelines and interpretations applicable to ~~Capital One Owner~~ or to the then owner of the Center; fires; floods; epidemics; quarantine restrictions;

strikes; labor disputes; failure of public utilities; or unusually severe weather.

- (vi) Representation. As of the Commencement Date, ~~Capital One~~Owner is the fee owner of the Property, and the property upon which the Center is to be constructed is not encumbered by any mortgage, deed of trust or ground lease.
- (vii) Notices. Any notice, consent, or other communication given pursuant to this Agreement shall be in writing and shall be effective either (i) when delivered personally to the party for whom intended, (ii) upon delivery by an overnight courier service that is generally recognized as reliable, and the written records maintained by the courier shall be prima facie evidence of delivery, or (iii) on delivery (or attempted delivery) by certified or registered mail, return receipt requested, postage prepaid, as of the date shown by the return receipt, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

If to Owner: _____ ~~Capital One~~: _____ ~~Capital One Bank (USA), National Association~~ Tysons Block C Owner, LLC
1680 Capital One Drive
McLean, VA 22102
Vice President, Work Place Solutions

With a copy to: ~~Capital One Bank (USA), National Association~~ Tysons Block C Owner, LLC
1680 Capital One Drive
McLean, VA 22102
Chief Counsel – Transactions

If to Fairfax County: Fairfax County
County Executive
12000 Government Center Parkway, Suite 552
Fairfax, Virginia 22035

With a copy to: Fairfax County Attorney
Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Agreement as of the date set forth above.

CAPITAL ONE BANK (USA), NATIONAL ASSOCIATION TYSONS BLOCK C OWNER, LLC:

By: _____ Date

Print Name: _____

Title: _____

FAIRFAX COUNTY:

By: _____ Date

Print Name: _____ Bryan J. Hill

Title: _____ County Executive

-- End of Signature Pages --

Exhibits A, B, C, D, E, F, G, H and FI Follow:

EXHIBIT A

Site Plan of the Campus with the Center Identified

See Sheet 3 of the FDPA from the Zoning Case

EXHIBIT B

Legal Description

~~Description of Blocks A, B, C, D, E-1, E-2 and F, Parcel A1 Westgate A1-A, Westgate Industrial Park being, as duly created by that certain Deed of Subdivision recorded among the property land records of Capital One Bank Providence District-Fairfax County, Virginia:~~

~~Beginning in Deed Book 25544 at a point on the northerly right of way line of Dolley Madison Boulevard (Route 123) marking the most westerly corner of Outlot C, Westgate Industrial Park;~~

~~thence with said northerly right of way line of Dolley Madison Boulevard~~

~~S 81° 08' 29" W, 245.98 feet~~

~~to a point marking the point of curvature of a non-tangent 216.54 foot radius return to the right at the northeasterly intersection of said Dolley Madison Boulevard with the Capital Beltway (Route 495);~~

~~thence departing from said northerly right of way line of Dolley Madison Boulevard and~~

~~303.26 feet along the arc of said return having a chord bearing and chord of N 26° 10' 04" W, 279.08 feet respectively;~~

~~to a point on the southeasterly right of way line of said Capital Beltway marking the point of compound curvature of a curve to the right;~~

~~thence with said southeasterly right of way line of the Capital Beltway and continuing with the easterly line of a portion of former Old Springhouse Road (Vacant) the following three (3) courses:~~

~~1,001.45 feet along the arc of said curve having a radius of 3,503.94 feet and chord bearing and chord of N 22° 08' 29" E, 998.04 feet respectively, to a point;~~

~~N 30° 19' 45" E, 239.44 feet to a point and~~

~~N Page 27° 25' 55" E, 53.17 feet.~~

~~to a point marking the intersection of the said southeasterly right of way line of former Old Springhouse Road with the southwesterly right of way line of Scotts Crossing Road (Route 8102);~~

~~thence departing from former Old Springhouse Road and with said southwesterly right of way line of Scotts Crossing Road the following fourteen (14) courses:~~

~~S 52° 17' 46" E, 31.83 feet to a point;~~

~~S 47° 38' 00" E, 69.30 feet to a point;~~

~~S 41° 37' 53" E, 96.39 feet to a point;~~

~~S 52° 08' 56" E, 160.93 feet to a point;~~

~~S 57° 49' 33" E, 64.23 feet to a point;~~

~~S 58° 17' 28" E, 85.00 feet to a point;~~

~~S 62° 04' 21" E, 324.43 feet to a point;~~

~~S 54° 27' 21" E, 68.91 feet to a point;~~

~~S 34° 43' 02" E, 52.07 feet to a point;~~

~~S 41° 22' 07" E, 23.98 feet to a point;~~

~~S 39° 37' 14" E, 64.44 feet to a point;~~

~~S 12° 20' 37" E, 60.48 feet to a point;~~

~~S 21° 21' 08" W, 46.77 feet to a point and~~

~~S 68° 38' 52" E, 92.23 feet~~

~~to point on the northwesterly line of Outlot B, Westgate Industrial Park;~~

~~thence departing from said southwesterly right of way line of Scotts Crossing Road with the northwesterly line of said Outlot B, Westgate Industrial Park and continuing with the northeasterly terminus of Old Springhouse Road (Route 3543), the northwesterly line of Outlot A, Westgate Industrial Park, the southwesterly terminus of said Old Springhouse Road and the northwesterly line of aforementioned Outlot C, Westgate Industrial Park~~

~~— S 59° 02' 17" W, 1,237.00 feet~~

~~to the point of beginning.~~

~~Containing 1,070,014 square feet or 24.56459 acres of land.~~

EXHIBIT C

Plans of the Center

See Sheets 8E, 8F, 16C, 16D AND 25I of FDPA from the Zoning Case

EXHIBIT D

Form of Initial Events Restriction Policy

[See Attached]



Capital One Hall

<p>Events Restriction Policy</p>

Publish Date: February 26, 2019
Revision Date: February 26, 2019

The Capital One Hall is a private-owned facility and intended primarily as a corporate resource for Capital One.

The Hall also serves a secondary purpose as a facility for community uses pursuant to an agreement between Capital One and Fairfax County. These community uses could include school graduation ceremonies; local artist exhibitions; Fairfax County Symphony Orchestra; performances or classes for Fairfax County-based performing arts groups; gubernatorial and senate debates; local town hall meetings; civic awards ceremonies; Fairfax County developmental events; meeting space for Tysons-area property owners' associations and similar public facility uses.

The Hall is made available to non-Capital One users for purposes that are consistent with, or enhance, Capital One's values and are in the interest of providing diverse and creative programming to the community. The Hall reserves the right to impose conditions upon the use of its venues and to deny access to any user, artist, speaker, presenter, promoter or organizer.

Permission to use the Hall does not imply endorsement, sponsorship or support by Capital One of the views, opinions, programs or activities of the users, artists, speakers, presenters, promoters or organizers of any event. All events are subject to terms and conditions of the facilities use license agreement to be executed by the organizer of the event.

EXHIBIT E

Form of Initial Scheduling Guidelines

[See Attached]



Capital One Hall

Scheduling Guidelines

Publish Date: May 1, 2019
Revision Date: May 1, 2019

Table of Contents

<u>Section</u>	<u>Description</u>
1.	Definitions and Terms
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	2.6 General Terms
3.	Catering
	3.1 Food, Beverage and Alcohol
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	3.3 Catering Guarantees
	3.4 Alcohol

Section 1: DEFINITIONS

- 1.1 “Banquet Event Order” or “BEO” shall have the meaning set forth in Section 3.1 below.
- 1.2 “Black Box” means the Center’s approximately 250-seat black box/multi-purpose room with flexible seating configurations, basic theatrical lighting, audio/visual equipment, and a large blackout window overlooking the street below.
- 1.3 “Capital One” shall have the meaning set forth in Section 2.2 below.
- 1.4 “Caterer” shall have the meaning set forth in Section 3.1 below.
- 1.5 “Center” shall mean the Capital One Hall located in McLean, Virginia.
- 1.6 “Classrooms” means the two (2) classrooms (which can be combined to form a single classroom) located in the Center.
- 1.7 “Classroom Criteria” means the then current list of criteria delivered to Owner and SMG by the County under the Public Use Agreement from time-to-time. The Classroom Criteria is attached hereto as Exhibit A.
- 1.8 “Classroom Public Facility User” means a Public Facility User who is eligible to use the Classrooms.
- 1.9 “Confirmed” shall have the meaning set forth in Section 2.3.4 for Public Facility Users and Section 2.4.4 for Other Users.
- 1.10 “Contracted Hold” shall have the meaning set forth in Section 2.3.3 for Public Facility Users and Section 2.4.3 for Other Users.
- 1.11 “County” means Fairfax County.
- 1.12 “Courtesy Hold” shall have the meaning set forth Section 2.3.2 with respect to Public Facility Users and Section 2.4.2 with respect to Other Users.
- 1.13 “Events Restriction Policy” means the Events Restriction Policy adopted by Capital One from time-to-time. A copy of the current Events Restriction Policy is attached hereto as Exhibit B.
- 1.14 “Exclusive Booking Period” means a rolling one (1)-month period on a semi-annual basis during which SMG exclusively books eligible Classroom Public Facility Users for Classroom usage for the six (6) month period immediately following the end of the Exclusive Booking Period. The first Exclusive Booking Period for Classroom Public Facility Users shall commence on the first day of the calendar month one (1) month prior to the date that the Center is anticipated to be first open to the public (*i.e.*, if the Center is anticipated to be first open to the public on July 1, 2021, the first Exclusive Booking Period shall commence on June 1, 2021 and expire on June 30, 2021, during which period Classroom Public Facility Users shall have the exclusive right to book Classroom usage for the period between July 1, 2021 and December 31, 2021; the second Exclusive Booking Period shall commence on December 1, 2021 and expire on December 31, 2021, during which period Classroom Public Facility Users shall have the exclusive right to book Classroom usage for the period between January 1, 2022 and June 31, 2022, and so on).
- 1.15 “Facility License Agreement” means SMG’s form of facility license agreement. SMG may have a different form for Classroom use if SMG determines appropriate. The Public Use Rider shall be attached to Facility License Agreements for all Public Facility Users (with appropriate modifications for circumstances of particular users or events).
- 1.16 “Fairfax County Representative” shall mean the representative of the County designated from time-to-time pursuant to the Public Use Agreement.
- 1.17 “Main Hall” means the Center’s approximately 1500-seat professionally designed and equipped state of the art theatrical auditorium with an orchestra pit, a fly system, dressing rooms and lighting/sound/rigging systems.

1.18 “Other Users” means all users of the Center, except Capital One and Public Facility Users.

1.19 “Public Facility User” means an organization that is either included on the current Seasonal List with respect to a particular venue (*i.e.*, Main Hall, Black Box and Classrooms) or, with respect to use of the Classrooms, meets the current Classroom Criteria.

1.20 “Public Use Agreement” means that certain Agreement dated August 10, 2017 by and between Owner, as successor to Capital One Bank (USA), N.A., and the County, as the same has been or may be amended or updated from time-to-time.

1.21 “Public Use Rider” means the rider agreed upon by Owner and the County from time-to-time to be attached to all Facility License Agreements for Public Facility Users (with appropriate modifications for circumstances of particular users or events).

1.22 “Owner” means the owner of the Center from time-to-time. The current Owner of the Center is Capital One Tysons Block C Owner, LLC, a Delaware limited liability company.

1.23 “Rental Deposit Guidelines” shall have the meaning in [Section 2.3.5](#) for Public Facility Users and [Section 2.4.5](#) for Other Users.

1.24 “Request for Date” shall have the meaning set forth in [Section 2.4.1](#).

1.25 “Seasonal List” means the current list of eligible users of the Main Hall, Black Box and Classrooms delivered to Owner and SMG by the County under the Public Use Agreement from time-to-time. The Seasonal List shall include the following information: (1) the venue (*i.e.*, Main Hall, Black Box and/or Classroom) desired by each organization included on the list; (2) contact information for a designated representative of each organization on the list; (3) the dates desired by each organization on the list (*e.g.*, Main Hall for a December date; a sequential Wednesday, Thursday and Friday in the Black Box in November; recurring use of Classroom(s) on the second Wednesday of every month) and if the organization’s needs are flexible; and (4) any other information that the County desires to communicate with Owner and SMG with respect to a particular organization’s use of the Center. The County is solely responsible for developing the Seasonal List (including the organizations included or not included thereon); neither Owner or SMG shall have the authority to include or remove an organization from a Seasonal List and shall direct inquiries about inclusion to the County.

1.26 “SMG” means SMG, a Pennsylvania general partnership, the venue manager of the Center.

Section 2: SCHEDULING GUIDELINES

2.1 FACILITY BOOKINGS:

- 2.1.1 Sections 2.2, 2.3 and 2.4 shall only apply to the user group specified therein (Capital One, Public Facility Users and Other Users, respectively) with respect to all venues in the Center except the Classrooms (other than Classrooms booked in conjunction with an event being held in other Center venues on the same dates, which shall be governed by Sections 2.3 and 2.4). Section 2.5 shall apply to all users with respect to the Classrooms (other than Classroom usage being booked in conjunction with, and on the same days as, events in other Center venues).
- 2.1.2 Operator will exercise good faith efforts to schedule a diverse array of uses at the Center, excluding use of the Center as a corporate center.

2.2 CAPITAL ONE USERS:

Owner and its affiliates (collectively, “Capital One”), as the owner and primary user of the Center, shall follow a process to book events agreed upon by Owner and SMG from time-to-time, provided, however that such process shall not negate any of the specific rights given the County and other Public Facility Users under the Public Use Agreement (such as the Exclusive Booking Period that Classroom Public Facility Users have with respect to booking Classrooms and the number of dates allocated to Public Facility Users under the Public Facility Agreement).

2.3 PUBLIC FACILITY USERS:

2.3.1 SEASONAL LIST/REQUESTED DATES: Pursuant to the Public Use Agreement, the County shall deliver a Seasonal List of eligible Public Facility Users to Owner and SMG at least twenty (24) months prior to the start of each Season. Upon receipt of the Seasonal List, SMG shall have the right to contact and communicate directly with the designated representatives of the Public Facility Users on the Seasonal List for purposes of gathering necessary information to book dates in the Main Hall and Black Box (and for Classroom use being expressly scheduled in conjunction with, and on the same days as, Main Hall or Black Box usage) for the Season then being scheduled. In furtherance of booking a particular Season:

2.3.1.1 SMG will attempt to contact the designated representative of each Public Facility User at least three (3) times on different days to confirm the requested event date. After the third attempt, SMG shall notify the County of its attempted communication with such Public Facility User. After the 3 contact attempts, neither SMG or the Owner shall be responsible to attempt further communication with such Public Facility User for the applicable Season.

2.3.1.2 In order to be considered for booking a date at the Center, Public Facility Users must provide information to SMG about their proposed event, including, but not limited to, the dates and hours of the event, the name of the artist, the genre of event/music/dance and any other information reasonably requested by SMG.

NOTE: Dates requested on a Seasonal List are not held, confirmed or booked and may be altered or cancelled at any time, at the discretion of SMG, prior to the full execution of a Facility License Agreement, with a Public Use Rider, by the applicable Public Facility User. Public Facility Users on a Seasonal List will not be confirmed until first, Capital One dates are on the calendar and confirmed.

2.3.2 COURTESY / TENTATIVE HOLD: After SMG confirms availability in the Center for a Public Facility User event on a requested date(s), upon notice to the applicable Public Facility User, a “Courtesy Hold” will be placed on the requested date(s) and the Public Facility User will thereafter be considered a “presenter” for purposes of these scheduling guidelines.

The SMG General Manager and/or Assistant General Manager will work with the presenter to prepare and submit a “Facility License Agreement” on SMG’s form, including the Public Use Rider, within fourteen (14) days of the date the Courtesy Hold was put in place. Written notification of the presenter’s deadline to either confirm or release said Courtesy Hold will be stated in correspondence form and forwarded either by email or by U.S. mail to presenter and will specify the deadline date for SMG to receive the signed Facility Use Agreement.

Extension of Courtesy Holds may be granted only with written approval by SMG management in form of a letter or an email message. An authorized SMG staff member will make every effort to contact the presenter whose Courtesy Hold is about to expire; however, it will be the primary responsibility of the presenter to contact its SMG primary contact if an extension to the Courtesy Hold is necessary.

- 2.3.3 **CONTRACTED HOLD:** Prior to the expiration of the Courtesy Hold, a Facility License Agreement, including the Public Use Rider, will be prepared by SMG on its form and issued for presenter's review and signature. A receipt deadline will be indicated on the cover letter accompanying such Facility License Agreement. During the period between delivery of the Facility License Agreement and execution of the Facility License Agreement by the presenter, the reservation status will change to "Contracted Hold". The executed Facility License Agreement and Public Use Rider must be received by SMG prior to the stated deadline; if not received by such deadline, the Contracted Hold will be null and void and the event date(s) may be released to other potential Public Facility Users at the discretion of SMG management. Prior to releasing a Contracted Hold, SMG will attempt to contact presenter a reasonable number of times by reasonable means (*i.e.*, email/telephone) prior to releasing the Contracted Hold.

All reservations are considered tentative until there is a fully executed Facility License Agreement, including the Public Use Rider, accompanied by the full deposit amount outlined in the Facility License Agreement. Until such time, the presenter is expressly prohibited from (i) accessing the proposed venue(s) without a set appointment, (ii) advertising the event, (iii) beginning box office process, (iv) selling tickets, or (v) sub-contracting equipment for said event. SMG will neither accept nor bear any responsibility for the presenter's failure to comply with the above-stated restrictions. The presenter will bear full responsibility for presenter or presenter's agents violating the restrictions. Additionally, presenter may be subject to fees and/or damages as a result of presenter or anyone associated with presenter's event who fails to comply with restrictions stated in this paragraph.

Under no circumstances will SMG accept any blind booking dates on its event calendar. A date hold must include the name of any act/tour to be presented at the venue and once hold is in place, the status of the booking will be elevated to a Contracted Hold and a Facility License Agreement will be issued. At this point, with or without a technical rider, a preliminary expense sheet will be provided for presenter's review.

***NOTE:** Subject to the terms and conditions of the Public Use Agreement, SMG reserves the right to issue, modify or terminate Contracted Holds to operate the facilities in a sound business manner.*

- 2.3.4 **CONFIRMED:** Once the Facility License Agreement, including the Public Use Rider, is fully executed and the full deposit amount outlined in the Facility License Agreement is received by SMG, the date(s) are then considered "Confirmed." At this point, the booking process is considered complete and the presenter will be referred to the Technical Director or Catering Manager, depending upon type of event, who will provide further guidance leading up to and through the completion of the event. In addition, at this point, if applicable, presenter's event may be put on-sale through the Center's exclusive ticketing provider and once an on-sale date is determined and set, the advertising/marketing/ promotions process can begin and fulfillment of the provided rider will begin and equipment can be sub-contracted. Access to the Center prior to the reserved dates must be coordinated with SMG.

Should the event be booked within a thirty (30) day window, the entire Expense Fee and Reimbursable Expenses set forth in the applicable Public Use Rider will be due seven (7) days prior to event day. A preliminary event settlement will be issued from SMG's Finance Director to the presenter three (3) days prior to event day which will include all

estimated expenses associated with said event and outline the box office audit report / receipt information at that time. Final event settlement will be conducted on the event day immediately following box office closure.

2.3.5 **CONTRACT DEPOSITS:** The following is the “Rental Deposit Guidelines” for the Public Facility User’s use of the Main Hall and Black Box:

2.3.5.1 A rolling deposit is required by all presenters unless otherwise waived by SMG’s General Manager and/or Director of Finance and documented in the Facility License Agreement.

2.3.5.2 New presenters are required to pay a contract deposit of full rent at SMG management’s discretion and payment of expenses in full 48 hours prior to event date, depending on whether there are enough box office receipts to cover the entire Expense Fee and Reimbursable Expenses set forth in the applicable Public Use Rider.

2.3.5.3 Presenters with a series will be allowed to deposit the base Expense Fee for one performance, which will be credited to the final performance of the series.

2.3.5.4 Deposits are non-refundable. Any presenter who believes that its event was cancelled due to exigent circumstances may request a partial or full return of deposit, which is subject to approval of SMG.

NOTE: Failure to comply with fees submission or stated settlement procedures may result in cancellation of the contract, release of the event dates and/or forfeiture of any fees already collected by SMG.

2.3.6 **PUBLIC FACILITY USER GENERAL PROVISIONS:**

2.3.6.1 SMG will keep the County reasonably apprised of the status of booking Public Facility User Events. By being included on a Seasonal List, potential Public Facility Users acknowledge that information regarding the status of their booking will be communicated to the County.

2.3.6.2 The determination of the final schedule for Main Hall and Black Box use (and for Classroom use being expressly scheduled in conjunction with, and on the same days as, Main Hall or Black Box usage) for any Season shall be solely vested in SMG, subject to the Center’s priority use policy (as set forth in Section II.a of the Public Use Agreement), the Events Restrictions Policy, and these scheduling guidelines.

2.3.6.3 No later than eighteen (18) months prior to the start of each Season, SMG shall notify the County and each designated representative identified on the Seasonal List for the Main Hall and Black Box of the final schedule of Public Facility User events in the Main Hall and Black Box for the applicable Season (including Classroom use expressly being scheduled in conjunction with, and on the same days as, Main Hall or Black Box usage). To be included on the final schedule for a particular Season, a Public Facility Users must have executed a Facility License Agreement, including the Public Use Rider, no later than eighteen (18) months prior to the start of the Season. SMG will use good faith reasonable efforts to facilitate execution of a Facility License Agreement, including the Public Use Rider, by each potential Public Facility User who has been issued a Courtesy Hold, including timely delivery of the Facility License Agreement under Section 2.3.4.

- 2.3.6.4 In no event shall Public Facility Users have the right to book dates in the Main Hall, Black Box or Classrooms in excess of the dates allocated to Public Facility Users under the Public Use Agreement.
- 2.3.6.5 All inquiries made to SMG or Owner about becoming a Public Facility User shall be directed to the Fairfax County Representative.

2.4 OTHER USERS:

- 2.4.1 HOLDING A DATE: Prior to holding a date at the Center, a prospective presenter must complete a promoter application provided by SMG in its entirety and return the application to SMG for review and approval by SMG's Director of Finance. The approval process typically takes between 3 to 5 business days and once approved or denied, the prospective presenter will be notified by telephone and by written correspondence of their status. If the application is denied, a clear explanation will be divulged to the prospective presenter regarding the reason for denial. No date(s) will be reserved until the promoter application is submitted and approved by SMG. Once a promoter application has been approved for a presenter, the presenter shall retain its "approved" status for successive one (1) year periods unless SMG revokes its approved status by notice to the presenter. Each presenter shall reaffirm its promoter application at least once per year and provide updated information as necessary.

Calendar dates may be requested by an approved presenter at any time prior to an event pursuant to a "Request for Date." Such Requests for Dates are not binding and may be altered or cancelled at any time, at the discretion of SMG, prior to the full execution of a Facility License Agreement. Presenters who have requested dates more than eighteen (18) months prior to an event do not have date protection and must follow the procedures outlined in this policy to complete the booking process.

Approved presenters may submit Requests for Events at any time but will not be confirmed until first, Capital One dates and then, Public Facility User dates are on the calendar and confirmed. While SMG will make every effort to work with a prospective presenter whenever facilities are available for use, applications thirty (30) days or less prior to event dates are not encouraged and may be denied.

- 2.4.2 COURTESY/TENTATIVE HOLD: Once the Request for Date is approved, the presenter must provide the purpose of the hold including, but not limited to, the name of the artist and the genre of event/music/dance, and any other information reasonably requested by SMG. Once that information is provided, a "Courtesy Hold" will be placed on the requested date(s) for the applicable venues (including Classrooms expressly being scheduled as ancillary to an event in another Center venue). The SMG General Manager and/or Assistant General Manager will work with the presenter to prepare and submit a Facility License Agreement on SMG's form within fourteen (14) days of the date the Courtesy Hold was put in place. Written notification of the presenter's deadline to either confirm or release said Courtesy Hold will be stated in correspondence form and forwarded either by email or by U.S. mail to presenter and will specify the deadline date for SMG to receive the signed Facility Use Agreement.

Extension of Courtesy Holds may be granted only with written approval by SMG management in form of a letter or an email message. An authorized SMG staff member will make every effort to contact the presenter whose Courtesy Hold is about to expire; however, it will be the primary responsibility of the presenter to contact its SMG primary contact if an extension to the Courtesy Hold is necessary.

***NOTE:** SMG reserves the right to use its sole discretion to issue, modify or terminate Courtesy Holds in order to operate the Center in a sound business manner.*

- 2.4.3 **CONTRACTED HOLD:** Prior to the expiration of the Courtesy Hold, a Facility License Agreement will be prepared by SMG on its form and issued for presenter's review and signature. A receipt deadline will be indicated on the cover letter accompanying such Facility License Agreement. During the period between delivery of the Facility License Agreement and execution of the Facility License Agreement by the presenter, the reservation status will change to "Contracted Hold". The executed Facility License Agreement must be received by SMG prior to the stated deadline; if not received by such deadline, the Contracted Hold will be null and void and the event date(s) may be released to other potential presenters at the discretion of SMG management. Prior to releasing a Contracted Hold, SMG will attempt to contact presenter a reasonable number of times by reasonable means (*i.e.*, email/telephone) prior to releasing the Contracted Hold.

All reservations are considered tentative until there is a fully executed Facility License Agreement accompanied by the full deposit amount outlined in the Facility License Agreement. Until such time, the presenter is expressly prohibited from (i) accessing the proposed venue(s) without a set appointment, (ii) advertising the event, (iii) beginning box office process, (iv) selling tickets, or (v) sub-contracting equipment for said event. SMG will neither accept nor bear any responsibility for the presenter's failure to comply with the above-stated restrictions. The presenter will bear full responsibility for presenter or presenter's agents violating the restrictions. Additionally, presenter may be subject to fees and/or damages as a result of presenter or anyone associated with presenter's event who fails to comply with restrictions stated in this paragraph.

Under no circumstances will SMG accept any blind booking dates on its event calendar. A date hold must include the name of any act/tour to be presented at the venue and once hold is in place, the status of the booking will be elevated to a Contracted Hold and a Facility License Agreement will be issued. At this point, with or without a technical rider, a preliminary expense sheet will be provided for presenter's review.

***NOTE:** SMG reserves the right to issue, modify or terminate Contracted Holds to operate the facilities in a sound business manner.*

- 2.4.4 **CONFIRMED:** Once the Facility License Agreement is fully executed and the full deposit amount outlined in the Facility License Agreement is received by SMG, the date(s) are then considered "Confirmed." At this point, the booking process is considered complete and the presenter will be referred to the Technical Director or Catering Manager, depending upon type of event, who will provide further guidance leading up to and through the completion of the event. In addition, at this point, if applicable, presenter's event may be put on-sale through the Center's exclusive ticketing provider, and once an on-sale date is determined and set, the advertising/marketing/promotions process can begin and fulfillment of the provided rider will begin and equipment can be sub-contracted. Access to the Center prior to the reserved dates must be coordinated with SMG.

Should the event be booked within a thirty (30) day window, the entire "Facility Rental Fee" and estimated expenses will be due seven (7) days prior to event day.

A preliminary event settlement will be issued from SMG's Finance Director to the presenter three (3) days prior to event day which will include all estimated expenses associated with said event and outline the box office audit report/receipt information at that time. Final event settlement will be conducted on the event day immediately following box office closure.

- 2.4.5 **CONTRACT DEPOSITS:** The following is the "Rental Deposit Guidelines" for the Center venues:
- 2.4.5.1 A rolling deposit is required by all presenters unless otherwise waived by SMG's General Manager and/or Director of Finance and documented in the Facility License Agreement.
 - 2.4.5.2 New presenters are required to pay a contract deposit of full rent at SMG management's discretion and payment of expenses in full 48 hours prior to event date, depending on whether there are enough box office receipts to cover all expenses, including, but limited to, front of house, back of house and marketing/advertising expenses.
 - 2.4.5.3 Presenters with a series will be allowed to deposit the base rent for one performance, which will be credited to the final performance of the series.
 - 2.4.5.4 Deposits are non-refundable. Any presenter who believes that its event was cancelled due to exigent circumstances may request a partial or full return of deposit, which is subject to approval of SMG.

Failure to comply with fees submission or stated settlement procedures may result in cancellation of the contract, release of the event dates and/or forfeiture of any fees already collected by SMG.

- 2.4.6 **PRIORITY OF OTHER USERS:** SMG may from time-to-time establish priority classifications for Other Users.
- 2.4.6.1 As of the date hereof, the following priority classifications have been established for Other Users:
 - **Third Priority:** Other Users who contract to present at least five performances of two (2) single events in a subscription series or Other Users who contract to present at least eight single performances in any of the Center's venues in one given year are classified as Third Priority Users.
 - **Fourth Priority:** Other Users who contract to present at least three performances of two (2) single events in a subscription series or Other Users who contract to present at least five single performances in a single event in any of the Center's venues in one given year are classified as Fourth Priority Users.
 - **Fifth Priority:** All other Other Users shall be Fifth Priority Users.
 - 2.4.6.2 The foregoing descriptions of the Third, Fourth, and Fifth Priority Users may be updated from time-to-time by Owner and the Operator on an annual basis.
 - 2.4.6.3 SMG reserves the right to establish different scheduling policies for Other Users who are (i) Third Priority Users, (ii) Fourth Priority Users and (iii) Fifth Priority Users from time-to-time. Such policies shall be communicated directly to the impacted Other Users.

2.5 CLASSROOMS:

- 2.5.1 **BOOKING PERIODS:** All Classrooms are booked on a first-come, first-serve basis, subject to the terms of Sections 2.5.1., 2.5.2 and 2.5.3 below. To confirm a booking of a Classroom, the user must sign a Facility License Agreement (including the Public Use Rider for Classroom Public Facility Users) for the Classroom and deliver the deposit required thereunder to SMG.
- 2.5.1.1 **CAPITAL ONE:** Subject to the terms and conditions of the Public Use Agreement, Capital One, as the owner and first priority user of the Center, shall have the right to book Classrooms at any time.
- 2.5.1.2 **CLASSROOM PUBLIC FACILITY USER:** During each Exclusive Booking Period, Classroom Public Facility Users shall have the exclusive right to book events for the six (6)-month period between the expiration of the Exclusive Booking Period and end of the calendar month six (6) months thereafter (*i.e.*, in June 2021, Classroom Public Facility Users shall have exclusive right to book events in the Classrooms for the period between July 1, 2021 and December 31, 2021). After each Exclusive Booking Period expires, Classroom Public Facility Users shall continue to have the right to book events in the Classrooms in common with all other users for the period between the day after expiration of the applicable Exclusive Booking Period and the last day of the calendar month six (6) months thereafter (*i.e.*, from and after July 1, 2021, Classroom Public Facility Users may book Classrooms in common with all other users for the period between July 1, 2021 and December 31, 2021). Notwithstanding the foregoing, Classroom Public Facility Users shall have the right to request dates for Classroom usage during the six (6) month-period prior to the next occurring Exclusive Booking Period, in which event the date will be held (*i.e.*, the date requested will be held for the requesting Classroom Public Facility User unless it is already subject to a temporary hold in favor of another Classroom Public Facility User or is booked prior to the commencement of the applicable Exclusive Booking Period by Capital One or in conjunction with a booking of another Center venue) but no dates will be booked until the commencement of the applicable Exclusive Booking Period (*i.e.*, Classroom Public Facility User may hold a date for December 2022 in January 2022 but may only book it during the June 2022 Exclusive Booking Period if it hasn't been booked by Capital One prior to such date).
- 2.5.1.3 **OTHER USERS:** In no event shall any Other User have the right to book events in the Classrooms for event after the expiration of the next occurring Exclusive Booking Period (*i.e.*, Other Users may first book events in the Classrooms for the period between July 1, 2021 and December 31, 2021 on July 1, 2021). Notwithstanding the foregoing, Other Users shall have the right to request dates for Classroom usage during the six (6) month-period prior to the next occurring Exclusive Booking Period, in which event the date will be held (*i.e.*, the date requested will be held for the requesting Other User unless it is already subject to a temporary hold in favor of another Other User or Classroom Public Facility User or is booked prior to the commencement of the applicable Exclusive Booking Period by Capital One or a Classroom Public Facility User or in conjunction with a booking of another Center venue) but no dates will be booked until the expiration of the applicable Exclusive Booking Period (*i.e.*, Other User may hold a date for December 2022 in January 2022 but may only book it on July 1, 2022 if it hasn't been booked by Capital One or a Public Facility User prior to such date).

2.5.2 HOLDING A DATE: Subject to the terms and conditions of Section 2.5.1, dates can be held by finalizing a “Request for Date” with SMG. With respect to Classroom Public Facility Users, a Seasonal List may serve as a “Request for Date”. Such Requests for Dates are not binding and may be altered or cancelled at any time, at the discretion of SMG, prior to the full execution of a Facility License Agreement (including a Public Use Rider for Classroom Public Facility Users) and payment of the deposit required thereunder.

2.5.3 CONFIRMED: Once the Facility License Agreement (including the Public Use Rider, if applicable) is fully executed and the full deposit amount outlined in the Facility License Agreement is received by SMG, the date(s) are then considered “Confirmed.” At this point, the booking process is considered complete and the presenter will be referred to the Technical Director, who will provide further guidance leading up to and through the completion of the event. In addition, at this point, if applicable, presenter’s event may be put on-sale through the Center’s exclusive ticketing provider, the advertising/marketing/ promotions process can begin and equipment can be sub-contracted.

Access to the Center prior to the reserved dates must be coordinated with SMG. Should the event be booked within a thirty (30) day window, the entire amount due under the applicable Facility License Agreement (including Public Use Rider, if applicable) will be due seven (7) days prior to event day.

A preliminary event settlement will be issued from SMG’s Finance Director to the presenter three (3) days prior to event day which will include all estimated expenses associated with said event and outline the box office receipt information at that time (if any). Final event settlement will be conducted on the event day.

2.5.4 CONTRACT DEPOSITS: The following is the “Rental Deposit Guidelines” for the Classrooms:

2.5.4.1 A rolling deposit is required by all presenters unless otherwise waived by SMG’s General Manager and/or Director of Finance and documented in the Facility License Agreement.

2.5.4.2 New presenters are required to pay a contract deposit of full rent at SMG management’s discretion and payment of expenses in full 48 hours prior to event date.

Deposits are non-refundable. Any presenter who believes that its event was cancelled due to exigent circumstances may request a partial or full return of deposit, which is subject to approval of SMG.

NOTE: Failure to comply with fees submission or stated settlement procedures may result in cancellation of the contract, release of the event dates and/or forfeiture of any fees already collected by SMG.

2.5.5 CLASSROOM PUBLIC FACILITY USERS:

2.5.5.1 In the event of any conflict between Classroom Public Facility Users seeking to book the Classrooms, priority shall be given to the County first, then to

Tysons-based Classroom Public Facility Users, then to all other Classroom Public Facility Users.

- 2.5.5.2 The County is solely responsible for developing the Classroom Criteria; but SMG shall have the authority to determine which organizations met the Classroom Criteria and are therefore eligible to book Classrooms as Classroom Public Facility Users. To that end, at the time a Classroom Public Facility User requests a date, they shall deliver evidence to demonstrate to SMG's reasonable satisfaction that they meet the Classroom Criteria.
 - 2.5.5.3 SMG will keep the County reasonably apprised of the status of booking Classroom Public Facility User events. By being included on a Seasonal List or submitting a request to book a date accompanied by evidence of compliance with the Classroom Criteria, potential Classroom Public Facility Users acknowledge that information regarding the status of their booking will be communicated to the County.
 - 2.5.5.4 The determination of the final schedule for Classrooms shall be solely vested in SMG, subject to the Center's priority use policy (as set forth in Section II.a of the Public Use Agreement), the Events Restrictions Policy, and these scheduling guidelines.
 - 2.5.5.5 In no event shall Classroom Public Facility Users have the right to book dates in the Classrooms in excess of the dates allocated to Classroom Public Facility Users under the Public Use Agreement. SMG shall keep track of the number of dates booked by Public Facility Users and make periodic reports of the same to the County.
 - 2.5.5.6 All inquiries made to SMG or Owner about becoming a Classroom Public Facility User shall be directed to the Fairfax County Representative.
- 2.5.6 EVENTS RESTRICTION POLICY: The Events Restriction Policy shall apply to all events held in the Classrooms.

***NOTE:** SMG reserves the right to use its sole discretion to determine the final schedule for Classroom usage.*

2.6 GENERAL TERMS:

- 2.6.1 RIGHT TO DECLINE: SMG reserves the right to decline to approve any application for any prospective presenter on the basis of the Events Restriction Policy, credit references, financial ability and/or prior experience, failure to perform any obligations under a prior Facility Use Agreement with SMG or a similar facility, cancellation or failure to proceed with a confirmed reservation, or whose conduct is, in the sole opinion of SMG management, detrimental to the best interest of Capital One or the Center.
- 2.6.2 REHEARSALS: All event dates and times (including rehearsals) must be included in the Facility License Agreement. Only the musicians, cast and production crew, plus authorized representatives of SMG and a maximum of six (6) authorized representatives of the presenter will be in the facility during a rehearsal, unless otherwise arranged. An open rehearsal for invited patrons will constitute a performance with normal performance rates applying and an appropriate number of house staff must be on duty.
- 2.6.3 NON-COMPETE POLICY: To protect both the presenter and the Center's interests, the following are the "common sense" guidelines regarding non-competitive event protection at the Center:
- 2.6.3.1 When placing a Courtesy Hold, the presenter must disclose the full artist name and genre. This practice assures maximum protection in the market against over saturation of a specific genre within a 30-day window as well as protects competitive advertising on specific stations. An unnamed event cannot be confirmed. Any date or radius protection must be approved by General Manager and included in Facility License Agreement.
- 2.6.3.2 The standard 30-day protection period on the front end of your date will typically be granted but it is at the discretion of the General Manager, who can lift the protection period but only if discussed and approved by both parties.
- 2.6.4 ARTIST CONTRACT: SMG may require and ask for a copy of the artist's contract at the time the final agreement is executed to ensure that production requirements are not contrary to SMG policies or the Center's capacities. The presenter may excise all financial information from the contract. It is imperative that copies of technical riders be forwarded at the same time as the executed Facility License Agreement but, in all events, the technical riders must be delivered to SMG's Technical Director a minimum of fourteen (14) days prior to event date. SMG will bear responsibility only for terms specified and agreed upon in the Facility License Agreement. Should the terms of the artist contract change after the execution of the Facility License Agreement or should the terms of the artist contract not be clearly reflected in the Facility License Agreement, the presenter is solely responsible for the fulfillment of the artist contract.

Section 3: CATERING

- 3.1 FOOD, BEVERAGE AND ALCOHOL: [BLANK] is the exclusive caterer of the Center (the “Caterer”). The Center offers complete in-house catering services including for your backstage artist needs. All catering and concessions must be coordinated through the Caterer. Alcohol sales and service at the Center will be performed exclusively by SMG (or an affiliate of SMG) per Commonwealth of Virginia ABC laws. No outside food or beverage may be brought into the facility by the presenter or presenter’s guests, for any reason, including hospitality or backstage areas, except when the presenter has received written catering approval from SMG’s General Manager for a specific event. Insurance regulations dictate that no leftover food or beverages shall be taken from the Center premises.

A completed “Banquet Event Order” (the “BEO”) signed by the presenter must be completed and delivered to the Caterer no later than five (5) business days prior to the event date, in order for appropriate food and beverage orders to be placed. If the presenter fails to submit the signed BEO in a timely manner, originally ordered items cannot be guaranteed.

- 3.2 MENU SELECTION: Presenter will be requested to provide menu selections to the Caterer a minimum of ten (10) business days prior to the scheduled event. Published menus are suggestions but the Caterer will gladly create specialty menus to meet your budgetary and food/beverage needs.

The Center recognizes the need for special dietary requests. Our team is glad to assist the presenter to make food selections that will best satisfy their individual needs.

- 3.3 CATERING GUARANTEES: The Caterer must be notified of the exact number of guests at least 72 business hours prior to the event. This number is the “Guarantee” for which the presenter is charged. Presenters will be expected to provide a Guarantee at least 5 business days prior to an event where 200 or more are expected. When a Guarantee is not provided in the specified time frame, the expected attendance listed on the original BEO will be used as the Guarantee.

- 3.4 ALCOHOL: SMG (or an affiliate of SMG) exclusively holds the ABC liquor license and must control all alcohol distribution for the Center. All alcohol sales and distribution for the Center must be in accordance with Commonwealth of Virginia ABC laws.

When ordering or consuming alcoholic beverages, all guests must be prepared to show proper picture identification and proof of birth date upon request.

Presenters, guests and agents are required to abide by Commonwealth of Virginia ABC laws. Failure to do so will immediately release SMG and Capital One from any resultant liability and will result in expulsion from the Center as well as possible further action.

EXHIBIT A

Classroom Criteria

[To be provided by the County]

EXHIBIT B

Events Restriction Policy

[See attached]

EXHIBIT F

Form of Initial Rider to Use License Agreement

RIDER TO USE LICENSE AGREEMENT

This Rider (this "Rider") is hereby annexed to that certain Use License Agreement dated as of the date hereof (the "Use License") from _____ ("~~Operator~~") SMG, a Pennsylvania general partnership ("SMG"), to _____ ("Licensee").

R E C I T A L S:

- A. Capital One Tysons Block C Owner, LLC , as successor to Capital One Bank (USA), National Association ("Owner")", and Fairfax County entered into that certain Agreement dated _____, August 10, 2017 ("as the same may be amended from time-to-time, the "Agreement""), pursuant to which Owner agreed to make the venues at the Capital One Center Hall (the "Facility") available on certain days to Fairfax County and eligible charitable, arts, nonprofit, and other community organizations identified by Fairfax County in the manner described therein (collectively with Fairfax County, the "Public Facility Users").
- B. ~~Operator~~ SMG entered into a Management Agreement with Owner, pursuant to which ~~Operator~~ SMG was retained by Owner to provide management services for the Facility.
- C. Fairfax County identified Licensee as an eligible Public Facility User under the Agreement and, as a result thereof, Licensee and ~~Operator~~ SMG have entered into the Use License for use of the _____ venue (the "Venue") on _____, 20__ (the "Event").
- D. Pursuant to the terms of the Agreement, ~~Operator~~ SMG and Licensee are entering into this Rider to supplement the terms of the Use License.

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, ~~Operator~~ SMG and Licensee hereby agree as follows:

- 1. Incorporation; Conflict; Definitions. This Rider is incorporated into the Use License as if fully set forth therein and shall be considered part of the Use License for all purposes. In the event of a conflict between the terms of this Rider and the Use License, the terms of this Rider shall govern and control. All initially capitalized terms used in this Rider but not defined herein shall have the meanings given to such terms in the Use License.
- 2. No License Fee. Notwithstanding anything in the Use License to the contrary, in no event shall Licensee have any obligation to pay a License Fee for the Event—, except if Licensee is no longer a Public Facility User in accordance with the terms and conditions of Section 7 below. Further, except (i) as may otherwise be set forth on Exhibit A to the Use License or (ii) if Licensee is no longer a Public Facility User in accordance with the

terms and conditions of Section 7 below, Licensee shall not be required to pay SMG the credit card expenses under Section 6(f) of the Use License, the percentage of merchandise sales under Section 6(h) of the Use License, the group sales commission under Section 6(k) of the Use License or the Broadcast Fee under Section 6(l) of the Use License. Notwithstanding the foregoing, if the Event is broadcast in any format or media, the terms of Section 12 of the Use License shall apply.

3. Expense Fee. In lieu of a License Fee, Licensee shall pay to ~~Operator~~SMG a flat fee for the Event in the amount of \$ _____ (the "Expense Fee"). The Expense Fee shall be paid at the time, and in the manner, that the License Fee is to be paid under ~~Section [] of the Use License.~~ the Use License, including the deposit due under Section 6(l) of the Use License and Final Settlement pursuant to Section 9 of the Use License, unless otherwise indicated on Exhibit B to the Use License. Payment of the Expense Fee shall reserve Licensee's use of the Venue for the Event. The Expense Fee includes the following services, which are more fully described in Section 1 of ~~Exhibit~~Appendix A attached hereto:
 - a. Police/EMT services (for Main Hall and Black Box Events only to the extent deemed appropriate for a particular Event by SMG in its reasonable judgment taking into account public safety considerations);
 - b. Event security (for Main Hall and Black Box Events only);
 - c. Usage of the In-House Equipment applicable to the Venue. A list of "In-House Equipment" is attached hereto as ExhibitAppendix B;
 - d. Front-of-the-house, security, general production operations and housekeeping /clean-up labor as more fully described in Section 1 of ExhibitAppendix A attached hereto;
 - e. Labor for operating In-House Equipment for sound and lighting in the Venue (if any); ~~and~~
 - f. Utility costs; and
 - ~~f.g.~~ A housekeeping fee as more fully described in Section 1 of ExhibitAppendix A attached hereto.

4. Reimbursable Expenses. Notwithstanding anything in Section ~~[]~~6 of the Use License to the contrary, Licensee shall only be obligated to pay ~~the~~for the following Reimbursable Services Expenses:
 - a. Direct costs incurred by Licensee in connection with the Event that are not included in the Expense Fee;
 - b. Artist / talent related costs;
 - c. Stagehand labor;
 - d. Rental of equipment other than the In-House Equipment for the Venue;
 - e. Front-of-the-house, security, general production operations and housekeeping /clean-up labor in addition to the labor described in Section 1 of ExhibitAppendix A, at the rates set forth in Section 2 of ExhibitAppendix A;
 - f. Labor costs for the installation, operation and removal of equipment other than In-House Equipment;

- g. Food and beverage costs; and
- h. Catering costs.

~~OperatorSMG~~ agrees with Licensee that there will be no mark-up on the Reimbursable ~~Expenses~~Services Expense to be paid by Licensee under the Use License. Licensee shall be responsible for all taxes due under Sections 6(g) and 11 of the Use License and any advertising, public relations or marketing costs it elects to incur under Section 6(i) of the Use License.

5. Facility and Ticketing Fee Provisions. The Facility Fee ~~described in Section [] of the Use License and the Center Ticketing Fee charged by the Operator and~~ and other charges described in Section ~~[]~~6(e) of the Use License are hereby waived by Owner and ~~OperatorSMG~~ for the Event. Licensee acknowledges and agrees that the ~~Ticket Company Fees~~ fees and charges from the Ticketing Agency described in Section ~~[]~~8 of the Use License will not be waived and Licensee shall be required to pay such ~~Ticket Company Fees~~ fees and charges to the Ticketing Agency in accordance with the terms and conditions of Section ~~[]~~8 of the Use License, if applicable. Section 8(j) of the Use License shall not be applicable for the Event.

6. Strict Cancellation Policy. Licensee has been fully informed that only a limited number of dates are made available to Public Facility Users at significantly reduced rates. Licensee acknowledges that (i) being granted a use license for an event is a privilege; (ii) the grant to Licensee may have precluded other eligible Public Facility Users from being granted a use license for an event; (iii) Licensee is paying a significantly reduced rate for use of the Venue; and (iv) Owner and ~~OperatorSMG~~ may have foregone events generating significant revenue in favor of granting Licensee the Use License for the Event. As such, cancellation of the Event by Licensee is strongly discouraged and Fairfax County has requested that a strict cancellation policy be enforced against Licensee. Accordingly, if Licensee cancels the Event for any reason (except for cancellation under Section 7 below), ~~OperatorSMG~~, with the consent and approval of Fairfax County, will strictly enforce the terms and conditions of this Section 6 against Licensee. Specifically, Licensee shall (x) forfeit the Expense Fee as follows: [For Main Hall events, 100% of the Expense Fee shall be forfeited if a cancellation notice is received by ~~OperatorSMG~~ ninety (90) days or less before the Event; and 50% of the Expense Fee shall be forfeited if the cancellation notice is received by ~~OperatorSMG~~ more than ninety (90) days before the Event.] [For Black Box or Classroom events, 100% of the Expense Fee shall be forfeited]; (y) pay a cancellation fee calculated in accordance with this Section 6 at the time of written notice of cancellation is delivered to ~~OperatorSMG~~; and (z) reimburse ~~OperatorSMG~~ for all Reimbursable ~~Expenses~~Services Expense incurred prior to the effective date of cancellation within ten (10) business days after receipt of an invoice for such expenses. No cancellation of an Event shall be effective until ~~OperatorSMG~~ has received the written cancellation notice. The cancellation fee shall equal ten percent (10%) of the revenue that ~~OperatorSMG~~ would have received if the Venue had been booked at the full commercial rate on date(s) of the Event. The parties hereby agree that the cancellation fee for the Event is

\$ _____ \$ _____.] [TO BE COMPLETED AT THE TIME OF EXECUTION].
This Section 6 replaces Section 6(m) of the Use License.

7. Licensee No Longer a Public Facility User. In the event that (i) Licensee is removed by Fairfax County from the then current list of eligible Public Facility Users delivered to Owner and ~~Operator~~SMG under the Agreement, or (ii) ~~Operator~~SMG becomes aware that Licensee no longer meets the criteria established by Fairfax County for use of the Classrooms, as applicable, then ~~Operator~~SMG will promptly deliver a written notice to Licensee notifying Licensee of the change in their status as an eligible Public Facility User (“Status Change Notice”). If the Status Change Notice is delivered to Licensee more than six (6) months prior to first date of the Event, the Event will be cancelled as of the date of the Status Change Notice and Licensee shall not be obligated to pay the Expense Fee for the cancelled Event but shall promptly reimburse ~~Operator~~SMG for any Reimbursable Services Expenses incurred prior to the effective date of the cancellation. If the Status Change Notice is delivered to Licensee six (6) months or less from the first date of the Event, Licensee shall have the option to elect to (x) keep the date(s) specified in the Use License for the Event but pay to SMG the then published commercial rates (including, without limitation, the License Fee (in lieu of the Expense Fee), Ticketing Agency fees, Facility Fees ~~and~~, all applicable Reimbursable Services Expenses ~~Expense~~ and other fees and expenses, all as more fully set forth below) for the Venue, or (y) cancel the Event in accordance with this paragraph. Licensee shall make such election in writing within ten (10) days of receipt of the Status Change Notice.
- a. License Fee: \$ _____ shall be due (see Section ~~{—}~~6(a) of the Use License).
 - b. Ticketing Fees: ~~Both Ticket Company Ticketing Agency fees and Center Ticket Fees shall be due (see charges under Section {—}8 of the Use License).~~ shall be due.
 - c. Facility Fee: The Facility Fee and other charges under Section 6(e) of the Use License shall be due (see Section ~~{—}~~6(e) of the Use License).
 - d. Reimbursable ~~Expenses~~Services Expense: Section ~~{—}~~6(c) of the Use License shall apply rather than Section 4 of this Rider.
 - e. Credit Card Expenses: Credit card expenses in an amount equal to _____ % shall be due (see Section 6(f) of the Use License).
 - f. Merchandise Sales: _____ % of Event merchandise sales calculated under Section 6(h) of the Use License shall be due (see Section 6(h) of the Use License).
 - g. Group Sale Commission: A commission in the amount of _____ % on all group tickets sold shall be due for group ticket sales (see Section 6(j) of the Use License).
 - h. Broadcast Fee: A Broadcast Fee in the amount of \$ _____ shall be due (see Section 6(k) of the Use License).
8. Event Sponsorship. Licensee shall have the right to have one or more sponsors for the Event, subject to the terms and conditions of this Section. The identity of all Event sponsors shall be communicated to SMG in writing promptly upon Licensee securing the

Event sponsorship. Licensee shall comply, and shall cause its sponsors to comply with the terms and conditions of the Use License, including, without limitation, the posting of signage at the Facility. Nothing in this Section shall diminish or impact the rights of SMG and Owner under Section 7 of the Use License.

8-9. Insurance Requirements. In lieu of the insurance coverages set forth in Section ~~16~~16(a) of the Use License, Licensee shall be obligated to provide the following insurance:

IF A PARTICULAR PUBLIC FACILITY USER IS UNABLE TO PROVIDE THE INSURANCE SET FORTH IN THE USE LICENSE AGREEMENT, IT WILL BE MODIFIED IN THE RIDER. IF FAIRFAX COUNTY IS THE PUBLIC FACILITY USER, THEY WILL PROVIDE THE INSURANCE IDENTIFIED IN SECTION 9(G) BELOW (THE FOLLOWING IS SUBJECT TO THE REVIEW AND COMMENT OF ~~THE OPERATOR SMG AND CAPITAL ONE OWNER~~ PRIOR TO THE EXECUTION OF A USE LICENSE AGREEMENT WITH FAIRFAX COUNTY); AND OTHER PUBLIC FACILITY USERS). THE FOLLOWING IS A SAMPLE OF THE MINIMUM INSURANCE REQUIRED.

a. [Statutory workers' compensation covering all state and local requirements, including employer's liability with a limit of \$250,000 for one or more claims arising from each accident. SMG acknowledges that Licensee may not be required by statute to carry worker's compensation insurance. In such instance, however, Licensee agrees that neither SMG nor Owner shall have any liability for any claim of illness or injury incurred by Licensee or any Licensee employee or agent, and Licensee agrees to defend and hold harmless SMG and Owner for any such claims; and

b. Commercial general liability, written on an occurrence basis, including coverage for personal injury/advertising injury, completed operations, products liability and contractual obligations, with a minimum per occurrence combined single limit of \$1,000,000 and a minimum aggregate combined single limit of \$2,000,000.]

At least forty-eight (48) business hours prior to the first day of the Event, Licensee shall deliver to ~~Operator~~SMG all insurance certificates required under Section ~~16~~16 of the Use License, as modified by this Section 8. If Licensee fails to provide the insurance certificates by such time, ~~Operator~~SMG shall provide insurance for the Event and charge Licensee for such insurance at the rate of \$ _____ per person in attendance at the Event.

~~[Specific Provisions for Fairfax County as Licensee Specific Provisions- The requirements set forth in Section 16(b)-(d) of the Use License, including, without limitation, the obligation to name SMG and Owner as additional insureds, shall continue to apply except to the extent expressly modified by this Section 8.~~

10. Limitation of Liability. In Section 19(i) of the Use License, the words "Use License paid by Licensee for such Event" shall be replaced with the following words "Expense

Fee paid by Licensee for such Event and the portion of the Reimbursable Service Expenses paid by Licensee for such Event not previously paid to third parties on behalf of Licensee”.

11. Auxiliary Aids. Notwithstanding anything in Section 22 of the Use License to the contrary, SMG shall make auxiliary hearing aids and booster seats for available for customer use in the Venue. Such aids will be made available upon customer request. SMG shall have no obligation to make more than a reasonable customary number of such aids available, taking into account the size of the Venue.
12. Industry Information. Notwithstanding anything in Section 23 of the Use License to the contrary, SMG can identify the Event and Licensee to industry groups but will not provide any of the other information listed in Section 23 of the Use License without the prior consent of the Licensee.
13. No New User Requirement. Section 26 of the Use License (“New User”) is deleted in its entirety without replacement.
14. Authorized Representatives. Notwithstanding anything to the contrary in Section 2.6.2 of the Scheduling Guidelines, Licensee shall have the right to have _____ authorized representatives present at dress rehearsals, if any.
- 9-15. _____ [Fairfax County as Licensee Specific Provisions. ONLY INCLUDE IF FAIRFAX COUNTY IS LICENSEE]
 - a. Notwithstanding anything in the Use License to the contrary, the parties acknowledge and agree that Section ~~{_____}17 (Indemnification by Licensee)~~ of the Use License is deleted in its entirety without replacement.
 - b. Nothing in the Use License shall be deemed a waiver of sovereign immunity. Fairfax County will not be obligated under this Use License Agreement to indemnify or hold ~~Capital One Owner or Operator~~SMG harmless and any such provision to that effect shall be unenforceable and not have any effect as to Fairfax County.
 - c. Notwithstanding anything in the Use License to the contrary, the parties acknowledge and agree that Fairfax County will not pay any attorney’s fees, incurred by ~~Operator~~SMG or Licensor in connection with any dispute that may arise in connection with ~~the~~Fairfax County’s use of the Center.
 - d. Notwithstanding anything in the Use License to the contrary, the parties acknowledge and agree that Fairfax County will not pay finance or interest charges on unpaid invoices.
 - e. Notwithstanding anything in Section 25(e) the Use License to the contrary, SMG and Owner understand and agree that Fairfax County shall not be deemed to have

waived any claim for compensation or damages unless waiver of such claim is specifically authorized by action of the Fairfax County Board of Supervisors.

e.f. LIMITATION OF LIABILITY. Notwithstanding anything in the Use License to the Contrary, THE PARTIES ACKNOWLEDGE AND AGREE THAT ~~THE FAIRFAX COUNTY SHALL NOT BE LIABLE TO THE OPERATOR SMG~~ FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THE USE LICENSE. ~~THE FAIRFAX COUNTY'S AGGREGATE LIABILITY DIRECTLY OR INDIRECTLY ARISING FROM, IN CONNECTION WITH, OR UNDER, THE USE LICENSE, SHALL NOT EXCEED THE APPLICABLE EXPENSE FEE (INCLUDING, ANY AGREED UPON REIMBURSABLE EXPENSES)~~ SERVICES EXPENSE AND, IF APPLICABLE, THE CANCELLATION FEE UNDER SECTION 6 OF THIS RIDER.

f.g. In the event that ~~the Fairfax County~~ elects to receive services from ~~the Operator SMG~~ that are not included in the Expense Fee, ~~the Fairfax County~~ shall be permitted to add to this paragraph any mandatory contract provisions required by the Fairfax County Purchasing Resolution applicable at the time (*e.g.*, drug-free workplace, compliance with Immigration Reform and Control Act, compliance with the Americans with Disabilities Act, etc.)

g.h. Fairfax County represents that it is self-insured for the following risk:

- i. Workers' Compensation
- ii. Commercial Automobile Liability
- iii. Commercial General Liability
- iv. Public Officials' Liability
- v. Law Enforcement Liability

The property risks are commercially insured with self-insured retention. Fairfax County will insure its own losses to the extent such losses are not required to be covered by ~~Capital One Owner~~ or ~~the Operator SMG~~ under other sections of this Use License Agreement, and provided that such losses do not result from the negligence or willful misconduct of ~~Capital One Owner~~ or ~~the Operator SMG~~, their employees and/or agents. [SUBJECT TO REVIEW AND APPROVAL OF THE OPERATOR SMG]

h.i. Appropriations. To the extent that there are any financial obligations incurred by ~~the Fairfax County~~ under the terms of the Use License Agreement, such financial obligations shall be subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations.

~~10.16.~~ Proffered Conditions. Nothing in ~~this~~ the Use License Agreement ~~may~~ this Rider will change the obligations of Capital One under the Proffered Conditions for the Property: (PCA 2010-PR-021-02).

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

~~[OPERATOR]~~
SMG

By: _____
Name: _____
Its: _____

[LICENSEE]

Exhibit

By: _____

Name: _____

Its: _____

APPENDIX A

Expense Fee and Reimbursable Expense

~~[TO BE SAME AS FINAL EXHIBIT E TO AGREEMENT]~~

Exhibit B

List of In House Equipment

~~[TO BE COMPLETED AFTER AGREEMENT UPDATE DATE]~~

EXHIBIT E

Expense Fee Information; Standard Labor and Rates

1. The following is a list of items included in the Expense Fee, including, the hours of standard production, security, front of the house and housekeeping labor included in the Expense Fee, per Allocated Date ~~per venue~~ for the Venue [TO BE REVISED TO ONLY INCLUDE INFORMATION FOR THE VENUE SUBJECT TO THE USE LICENSE AGREEMENT].

Main Hall:

- Police / EMT services
- Event security
- Usage of In-House Equipment (including rental and labor for operation of sound and lighting In-House Equipment)
- Ushers/ Ticket Takers: 6 people for 4 hours each
- Box Office: 2 people for 4 hours each
- Security/Bag Checkers: 4 people for 4 each
- General Production Operations: 1 person for 6 hours
- Housekeeping / Clean Up Labor: 1 person for 6 hours
- Housekeeping fee (unless it exceeds \$_____(\$750.00) [(as escalated by CPI in accordance with Section IV.b of the Agreement), in which event the excess over \$_____ \$750.00 (as so escalated) shall be included in the Reimbursable ~~Expenses~~*Services Expense]

Black Box:

- Police / EMT services
- Event security
- Usage of In-House Equipment (including rental and labor for operation of sound and lighting In-House Equipment)
- Ushers/Ticket Takers: 4 people for 3 hours each
- Box Office: 1 person for 5 hours
- General Production Operations/Housekeeping/Clean Up: 1 person for 5 hours
- Housekeeping fee (unless it exceeds \$_____(\$350.00) [(as escalated by CPI in accordance with Section IV.b of the Agreement), in which event the excess over \$_____ \$350.00 (as so escalated) shall be included in the Reimbursable ~~Expenses~~*Services Expense]

Classrooms:

- General Production Operations/Housekeeping/Clean Up: 1 person for 4 hours
- Housekeeping fee (unless it exceeds \$_____(\$100.00) [(as escalated by CPI in accordance with Section IV.b of the Agreement), in which event the excess over \$100.00 (as so escalated) shall be included in the Reimbursable Services Expense]

2. Any time for production, security, front-of-the house and housekeeping/cleaning labor in excesses of the times set forth below shall be considered non-standard and shall be charged at the following rates: [subject to escalation in accordance with Section IV.b of the Agreement]

- Ushers/Ticket Takers: \$18/hour/person
- Box Office: \$15/hour/person
- Security/Bag Checkers: \$28/hour/person
- General Production Operations (Main Hall): \$20/hour/person
- Housekeeping/Clean Up (Main Hall): \$15/hour/person
- General Production Operations/Housekeeping/Clean-Up (Black Box and Classrooms): \$15/hour/person

APPENDIX B

List of In-House Equipment

[TO BE INSERTED AT TIME OF RIDER EXECUTION]

EXHIBIT G

Form of Initial Approved Use License

[See Attached]



Capital One Hall

Form of Use License Agreement

Publish Date: May 1, 2019
Revision Date: May 1, 2019

USE LICENSE AGREEMENT

BY AND BETWEEN

SMG AND _____

DATED _____, _____

USE LICENSE AGREEMENT

THIS USE LICENSE AGREEMENT (together with the Exhibits and riders attached hereto, the “**Agreement**”) is dated as of this ____ day of _____, 20 __ by and between SMG, a Pennsylvania general partnership, acting on behalf of Capital One Tysons Block C Owner, LLC, with an office at _____ (“**SMG**”), and [NAME OF LICENSEE], [STATE/COUNTRY AND TYPE OF ENTITY], whose current address is [ADDRESS OF LICENSEE] (the “**Licensee**”).

BACKGROUND

SMG is a party to a certain management agreement (the “**Management Agreement**”) dated as of September 1, 2018, with Capital One Tysons Block C Owner, LLC, a Delaware limited liability company (“**Owner**”), whereby SMG has been retained to act on Owner’s behalf in respect of a facility commonly known as Capital One Hall, located at 7750 Capital One Tower Drive, Tysons, VA 22102 (the “**Facility**”). Licensee desires to use all or a portion of the Facility, as set forth below, for the purposes stated herein. Pursuant to the Management Agreement, SMG has the express authority to execute agreements on Owner’s behalf relating to the use of the Facility. Accordingly, SMG, on behalf of Owner, desires to grant to Licensee, and Licensee hereby accepts from SMG, a license to use certain areas of the Facility in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants, and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Grant of License.**

(a) SMG hereby grants Licensee, upon the terms and conditions hereinafter expressed, a license (the “**License**”) to use those areas of the Facility described on Exhibit A attached hereto (the “**Authorized Areas**”), including all improvements, furniture, fixtures, rights of ingress and egress, and appurtenances thereto, during the dates and times set forth on Exhibit A (each such date and time, an “**Event**”). It is expressly understood by the parties hereto that the Facility shall be vacated by Licensee and all persons participating in or attending an Event hereunder on or prior to the end-time of the last Event listed on Exhibit A hereto (the “**Expiration Time**”) and, as such, Licensee shall arrange to have all Events and activities related thereto cease within a reasonable time prior to the Expiration Time to allow ample time for the Facility to be completely vacated on or prior to the Expiration Time.

(b) Licensee shall not use the Facility other than during the Event without the SMG’s prior written consent. Any request by Licensee to use the Facility at any time other than the time specified for the Event shall be in writing and shall specifically state the additional times and dates requested. If SMG grants Licensee’s request to use the Facility at the additional times and dates requested, each such date and time shall be considered an Event hereunder and, except as otherwise provided herein, Licensee shall pay SMG a separate fee for each additional Event in accordance with the terms and conditions of this Agreement. SMG shall have no obligation to grant Licensee’s request for additional times and dates outside of the scheduled Events.

(c) Licensee shall not use any portion of the Facility other than the Authorized Areas, as stated on Exhibit A, without SMG's prior written consent. Licensee shall make a request to use additional areas of the Facility in writing and shall specifically state the additional areas of the Facility that it desires to use. If such permission is granted by SMG, Licensee shall pay an additional fee hereunder in an amount determined by SMG to represent a fair value for use of such additional areas of the Facility during such Event. SMG shall have no obligation to grant Licensee's request to use additional areas of the Facility.

(d) The Facility is to be used solely for _____, as more fully described on Exhibit A (the "**Authorized Use**"), and for no other purpose whatsoever.

2. Use of the Facility.

(a) Licensee shall be solely liable for any and all losses, liabilities, claims, damages and expenses, including, without limitation, reasonable costs of investigation and attorneys' fees (collectively, the "**Losses**") occurring at the Facility (whether within or without an Authorized Area) caused to SMG, Owner and/or persons and/or property in, on, or near the Facility before, during, or after an Event, by (i) Licensee's failure to comply with any and all federal, state, commonwealth, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions, and common laws (collectively, the "**Laws**") applicable to Licensee's performance of this Agreement and/or activities at the Facility, (ii) any unlawful acts on the part of Licensee or its officers, directors, agents, employees, contractors, subcontractors, representatives, licensees, artists, guests or invitees, (iii) the negligent acts, errors and/or omissions or the willful misconduct of Licensee or its officers, directors, agents, employees, contractors, subcontractors, representatives, licensees, artists, guests or invitees, (iv) the breach or default by Licensee or its officers, directors, agents, employees, contractors, subcontractors, representatives, licensees or artists of any provisions of this Agreement, including, without limitation, the provisions of Section 20(1) hereof (relating to intellectual property matters), Section 21 hereof (relating to the Civil Rights Act), and Section 22 hereof (relating to the Americans with Disabilities Act), and (v) any and all rigging from or to the physical structure of the Facility or any fixture thereto, set-up, alterations, and/or improvements at or to the Facility necessitated by and/or performed with respect to the Event.

(b) Licensee shall conduct business in the Facility in a dignified and orderly manner with full regard for public safety and in conformity with SMG's general rules and regulations, including, without limitation, fire and safety rules as required by SMG and/or local fire regulations, as such may exist from time-to-time. Licensee shall not use the Facility or permit the Facility to be used by any of its officers, directors, agents, employees, contractors, subcontractors, representatives, licensees, artists, guests or invitees, for any unlawful or immoral purpose or in any manner to injure persons or property in, on or near the Facility. If SMG, in consultation with Owner and/or local law enforcement, believes, in its sole discretion, that such acts are reasonably likely to occur, or that the Event could pose imminent safety risks to artists, patrons, or venue staff, SMG may, in its sole discretion, take any legal means necessary to prevent such occurrences, including, without limitation, immediate termination of this Agreement. Licensee agrees to indemnify and hold harmless Licensee Indemnified Parties (as defined below) from any claims relating to actions or omissions by SMG in conformity with this Section 2(b).

(c) Licensee shall obtain prior written approval from SMG, which consent may be withheld or conditioned by SMG in its sole discretion, for any pyrotechnic displays which Licensee anticipates may be performed at the Facility during the term of this Agreement.

(d) In granting the License to Licensee, SMG does not relinquish the right to control the management of the Facility, and to enforce all the necessary and proper rules for the management and operation of the same. In that regard, SMG, its agents, representatives and employees, including the General Manager of said Facility, may enter the same, including the Authorized Areas, at any time and on any occasion without prior notice. Licensee agrees that it will not allow, at, in or about the Facility, any officer, director, agent, employee, contractor, subcontractor, representative, licensee, artist, guest or invitee, whose presence, upon reasonable grounds, shall be objected to by SMG, and such person's license to use or enter the Facility may be revoked immediately by SMG.

(e) Licensee acknowledges that, in connection with SMG's management and operation of the Facility, SMG utilizes the services of certain third-party independent contractors (the "**Third-Party Contractors**"). Licensee hereby agrees that neither SMG nor Owner shall be responsible in any way for the acts and/or omissions of any one or all of the Third-Party Contractors, except as may be set forth in Section 17(b) below.

3. Condition of Facility.

(a) Licensee acknowledges that Licensee has inspected the Facility and that it is satisfied with and has accepted the Facility in its present condition. Upon request, Licensee shall have the right to conduct a pre-Event walk-thru of the Authorized Areas with a representative of SMG.

(b) SMG shall maintain and keep the Facility in good order and repair, normal wear and tear excepted; provided, however, that the failure by SMG to accomplish the foregoing, said failure resulting from circumstances beyond the control of SMG, shall not be considered a breach of this Agreement by SMG.

(c) Licensee shall not injure nor mar, nor in any manner deface, the Facility, and shall not cause or permit anything to be done whereby the Facility shall be in any manner injured or marred or defaced, nor shall Licensee drive or permit to be driven, any nails, hooks, tacks or screws in any part of the Facility. Licensee hereby assumes full responsibility for the character, acts, and conduct of all persons admitted to any portion of the Facility and grounds by or with the consent of Licensee, or by or with the consent of Licensee's employees or any person acting for or on behalf of the Licensee. Licensee agrees to have on hand at all times sufficient security (including, but not limited to, Facility event staff and door guards, contracted security and/or Fairfax County Police Department officers) to maintain order and protect persons and property. If SMG deems it to be necessary, in its sole discretion, a refundable damage deposit will be withheld during Final Settlement (as defined below) and will be refunded upon a walk-through of the Facility only if SMG deems no damage has been incurred. Any damages to the Facility and its appurtenances or grounds caused by Licensee or its officers, directors, agents, employees, contractors, subcontractors, representatives, licensees, artists, guests or invitees shall be paid for by Licensee at the actual or estimated cost of repair, as elected by SMG, upon demand. If the Facility, or any portion of the Facility or grounds, during the term of this Agreement, shall be damaged by the act, default or negligence of Licensee or by the Licensee's officers, directors, agents, employees,

contractors, subcontractors, representatives, licensees, artists, guests, invitees or any person or persons admitted to the Facility by the Licensee, the Licensee will pay to SMG upon demand, such sum as shall be necessary to restore said Facility to its original condition.

(d) Licensee shall not make any alterations or improvements to the Facility without the prior written consent of SMG. Any alterations or improvements of whatsoever nature made or placed by Licensee to or on the Facility shall, at the option of SMG, (i) be removed by Licensee, at Licensee's expense, immediately upon the conclusion of the Event, or (ii) become the property of SMG. Licensee shall restore the Facility to its condition immediately prior to the installation of the alterations or improvements; however, at SMG's option, SMG may restore the Facility following removal of Licensee's alterations or improvements and Licensee shall reimburse SMG for the cost of such upon demand. Licensee shall be responsible for the cost of any damage to the Facility caused by the installation and/or removal of Licensee's alterations or improvements (whether the same are removed by SMG or Licensee).

(e) Notwithstanding anything to the contrary set forth herein, Licensee shall be solely responsible and liable for all Losses arising out of (i) all rigging from or to the physical structure of the Facility or any fixture thereto, (ii) set-up or tear-down, or (iii) alterations and/or improvements at or to the Facility, necessitated by and/or performed with respect to the Event.

(f) Licensee's obligations under this Section 3 shall survive the expiration or earlier termination of this Agreement.

4. **Responsibility for Property in the Facility.**

(a) SMG assumes no responsibility whatsoever for any property placed in Facility by Licensee, and SMG is hereby expressly relieved and discharged from all liability for any loss, injury or damage to such property that may be sustained because of the occupancy by Licensee of Facility or any part thereof under this Agreement. All watchmen or other protective services, with respect to the property of the Licensee in the Facility, desired by Licensee, must be arranged by special agreement with SMG.

(b) SMG may, at its election, accept delivery of property addressed to Licensee only as a service to Licensee, and Licensee will indemnify, defend, and hold harmless Licensee Indemnified Parties for any loss or damage to such property in the receipt, handling, care, and custody of such property at any time.

(c) SMG shall have the sole right to collect and have the custody of articles left in the Facility by persons attending any Event, and neither the Licensee nor any person in Licensee's employ or control shall collect nor interfere with the collection or custody of such articles.

(d) In the event that the Authorized Areas of the Facility are not vacated by Licensee on or before the Expiration Time, SMG shall be and is hereby authorized to move from Facility, at the expense of the Licensee, goods, wares, merchandise, trade fixtures, equipment and other property of any and all kinds and description, which may then be occupying any portion of Facility beyond the Expiration Time, and SMG shall not be liable for any damages to or loss of such property which may be sustained, either by reason of such removal or by the place to which it may be removed, and SMG is hereby expressly released from any and all claims for damages of whatever kind or nature. For any such additional period beyond the Expiration Time, with respect to any such property that remain in the Facility, SMG shall be entitled to charge a fee per day established in SMG's sole discretion or as specified in Exhibit B to this Agreement.

(e) Neither Licensee, nor its employees, agents, representatives, licensees, contractors, subcontractors or artists, shall load-in and load-out any materials or other property except at times and in a manner approved by SMG.

5. **Term of License.** The License granted in Section 1 above will be effective as of the date and time set forth on Exhibit A and will continue in effect, unless earlier terminated as set forth in Sections 18 or 25(e), until the date and time set forth on Exhibit A.

6. **License Fee, Reimbursable Services Expense, Facility Fee, Merchandising Fees, Broadcast Fees and Other Expenses.**

In consideration of the grant of the License in Section 1 above, Licensee shall pay to SMG the fees and other amounts set forth in this Agreement, and shall reimburse SMG for certain service expenditures, all as calculated and payable in accordance with the provisions of this Section 6 and Exhibit B:

(a) **License Fee.** Licensee shall pay to SMG a flat, “all in” License Fee in the amount of [amount in words] [amount in numbers] (“**License Fee**”) which shall include the following: [Example follows: This description should provide for the inclusions in the “all in” license fee; if included these descriptions can be deleted from the list in Section 6(b) below] front-of-house labor, box office labor, production assistant, event custodial services, EMT (one crew), house-owned equipment, house-owned furniture, police (up to [number] officers), t-shirt crowd management staff (up to [number]), spotlights (up to [number] super troopers or their equivalent), front-of-house staffing, and staffing for setup/changeover/teardown.

The License Fee **does not include**, among other exclusions, the following: Event marketing, public relations, and advertising costs and expenses (advertising, marketing, and public relations services to be negotiated pursuant to Section 6(i) below), ASCAP/BMI/SESAC or other similar licensing fees, box office credit card fees and expenses at the Facility box office, backstage catering, phones and service, long distance charges, high speed internet service, police (above [number] officers), EMT (2nd or more crews), runners, towels, crowd management staff (above [number]), uniformed security including overnight security, stagehands (including loaders, electricians, property and wardrobe), Ticketing Agency (as defined below) printing or inside charges, armored car delivery fees, floor carpeting, other rented furniture or equipment, business license fees, any governmental body’s admission taxes, ticket surcharges, and any governmental body’s sales tax on equipment.

(b) **Reimbursable Services Expense.** SMG shall provide, as required for each Event, the following services and equipment, the expenditure for, and costs of which, are reimbursable by Licensee to SMG (“**Reimbursable Services Expense**”) unless otherwise specified herein. This Reimbursable Services Expense includes, but is not limited to, the following expenses, costs and charges: Event services staff; stagehands; forklift operators; truck loaders; stage electricians; ticket takers; door guards; supervisors; Event receptionists; production assistants; runners; box office services; ticket sellers; general laborers; ushers; usher supervisors; medical services for Event attendees, which services shall include ambulances, doctors, nurses, medical operations personnel and supervisors, and paramedics; Event backstage catering and food and beverage services; security personnel; utilities, including electricity, gas, lighting, water, heating, ventilating, air conditioning, hot and cold water facilities, and waste removal services; electricians and mechanical

plant staff; Event custodial services; equipment, materials, or extra services furnished by SMG at the request of Licensee and any other SMG employee necessary for the preparation and presentation of the Event; contract labor and products and services provided by SMG, including police officer(s), fire marshal(s), and EMT(s); towels (at \$[*amount in numbers*] per towel); security personnel including overnight security and crowd management personnel; communications expenses including internet access, telephone lines, long distance (including, intrastate and interlata) services; scoreboard operations; audio and video production services; armored car delivery fees; rented equipment; any other special, Facility-owned equipment, materials, staff or necessary item(s) for the presentation of the Event; Ticketing Agency printing/inside charges; and any marketing or group sales fees, costs and commissions (if applicable). All equipment and services will be billed at prevailing rates and all staff furnished by SMG will be billed at prevailing wage rate for positions held and tasks performed for the time period worked, either at the request of Licensee or required by SMG to properly prepare for and present the Event. If it is necessary for SMG to assist in the handling of props, scenery, supplies or equipment of Licensee, Licensee shall pay to SMG the cost of such, and if it is necessary for SMG to employ extra personnel such as wardrobe personnel, stagehands, Event staff, janitors, etc., then Licensee shall pay the cost for said extra help. Payment of the Reimbursable Services Expense, by Licensee to SMG, is due in full at Final Settlement. An estimate of the Reimbursable Services Expense is attached hereto and made a part of this Agreement as Exhibit B. **Said estimate states the rates and charges for labor, services and equipment to be made but is not intended to be an actual cost for Reimbursable Services Expense. Actual cost will be determined at Final Settlement, which Final Settlement shall take place as soon as possible but in no event more than one week after completion of the Event.**

(c) Staffing Levels. Notwithstanding anything contained herein to the contrary, SMG shall determine the level of staffing necessary for the Event in its sole discretion, after consultation with, and input from, Licensee. Licensee acknowledges and understands that many of the services are contracted services, the costs of which are subject to change. Licensee shall inform SMG at least two weeks in advance of the Event, in writing, of its requirements for services and equipment in support of the Event. In the event Licensee fails to so inform SMG, then the decisions of SMG as to necessary services and support shall control.

(d) Food and Beverage. Unless otherwise set forth on Exhibit A or agreed in writing, it is understood and agreed that there will be food and beverage and alcoholic beverage sales during the Event, and SMG, or its designated concessionaire, shall retain exclusively all revenues from the sale thereof, and Licensee shall have no rights to or claims thereon. It is further understood and agreed that SMG or SMG's designated concessionaire has the exclusive rights to all catering, including backstage catering, done in the Facility.

(e) Facility Fee. A "**Facility Fee**" of \$__.00 per ticket will be added to the ticket prices. For Events with tickets priced less than \$____.00 per ticket, the Facility Fee will be reduced to \$ _____ per ticket. All tickets sold or printed at Facility's box offices will be charged a \$_____ per ticket printing fee. These fees will be retained by SMG at settlement.

(f) Credit Card Expense. Additionally, SMG shall be paid an amount equal to [*percentage in words*] percent ([*percentage number*] %) of the total revenues from credit card ticket purchases at the Facility box office

(g) Taxes. If applicable, Licensee shall pay sales, ticket, or amusement taxes of [*amount in words*] percent ([*number*]%) of gross box office receipts for the Event ("GBOR"), which tax shall

be collected and retained by SMG at Final Settlement and remitted by SMG to the appropriate taxing authority.

(h) Merchandise Fees. All Event merchandise, including apparel, novelties, programs, on-site recorded CDs or DVDs, recorded media, and the like, shall be sold by SMG, or by SMG's designated representative, on consignment. Merchandise sales proceeds, after the deduction of all applicable taxes, security expenses (including bootleg security staff), and credit card expenses, will be split [amount in words] percent ([number] %) to Licensee, [amount in words] percent ([number] %) to SMG. [Alternate merchandise arrangements can be spelled out here.]

(i) Marketing Expenses. If Licensee desires the use of SMG's marketing department for marketing, public relations, or advertising services for the Event, then Licensee shall pay to SMG a commission of [amount in words] percent ([number]%) on all media of any sort placed by SMG. Whenever possible, SMG shall utilize its contracted or favorable rates for such advertising if such rates provide an economic benefit to Licensee. Such commission and all out-of-pocket costs incurred by SMG in providing the aforesaid services shall be included as a Reimbursable Services Expense and paid by Licensee at Final Settlement.

(j) Group Sales. If Licensee utilizes SMG's group sales department for the Event, then Licensee shall pay to SMG a commission of [amount in words] percent ([number] %) on all group tickets sold. Such commission and all out-of-pocket costs incurred by SMG in providing the aforesaid services shall be included as a Reimbursable Services Expense and paid by Licensee at Final Settlement.

(k) Broadcast Fee. SMG shall retain all television, film, radio and/or recording rights of any kind to any Events which take place in or at the Facility. Licensee may purchase such rights from SMG for a broadcast fee (the "**Broadcast Fee**") equal to the greater of (i) [amount in words] Dollars (\$[amount in numbers]), or (ii) in the event that Licensee desires to sell such rights to a third party after purchasing them from SMG pursuant to this Section 6(k) [amount in words] percent ([number]%) of all amounts received by Licensee from such third party under the applicable written contract between Licensee and such third party. Said contract shall be delivered to SMG not less than twenty-four (24) hours prior to the commencement of any such television, broadcast, film or recording activity of any Event in or at the Facility, and shall be accompanied by a written and signed statement by Licensee that no other agreement, express or implied, written or oral, has, to its knowledge, been reached or is in the process of being reached wherein Licensee shall receive any additional monies for such rights. The purchase of such rights from SMG shall in no manner waive or cancel any provisions concerning such rights which may be contained in labor agreements or the like.

[Alternate language] SMG shall retain all television, film, radio and/or recording rights of any kind to any Events which take place in or at the Facility. Licensee may purchase such rights from SMG for a broadcast fee (the "**Broadcast Fee**") equal to [amount in words] Dollars (\$[amount in numbers]). In addition to the Broadcast Fee, Licensee shall reimburse SMG for all additional costs and expenses, including but not limited to, additional costs for stage hand labor for the Event, incurred or caused as a result or consequence of any such filming, taping, recording, broadcasting, streaming, simulcasting, or the like.

(l) Deposit. Licensee shall pay to SMG a non-refundable deposit in the amount of [amount in words] Dollars (\$[amount in numbers]) in the form of a cashier's check, wire transfer, cash, or other immediately negotiable form, which deposit is due, along with both copies of this

Agreement, executed by Licensee, on or before ____ (date) _____. Upon receipt and execution by SMG, a fully executed copy of this Agreement will then be forwarded to Licensee. Any remaining amounts due to SMG hereunder for License Fee, Reimbursable Services Expense, or other amounts as specified herein, will be due upon Final Settlement, unless otherwise set forth on Exhibit B.

(m) Cancellation. If Licensee cancels the Event, the Licensee shall reimburse SMG for its actual costs and expenses incurred in connection with scheduling personnel and services, and advertising and marketing expenses, if applicable, and SMG shall retain the deposit as described above. Further, if cancellation of an Event by the Licensee occurs less than [90] days prior to the date of a scheduled Event, SMG reserves the right to charge a daily performance rental rate for each Event date canceled.

7. **Advertising.**

Licensee, having been so informed by SMG, understands that each of SMG and Owner may have entered into and/or may hereafter (prior to the Event) enter into agreements with parties other than Licensee providing for, among other things, exclusive naming rights, exclusive category sponsorship and advertising rights, exclusive signage and display rights and/or exclusive product brand, pouring and/or service rights in and relating to the Facility and that SMG or Owner, as applicable, may be required, pursuant to one or more of such other agreements, to give notice of all booked events in the Facility to the holders of such rights for the purpose of initiating consideration and communications, at the option of such holders, regarding sponsorship of events, including Licensee's Event. With such understanding, Licensee acknowledges and agrees (i) that Licensee and its officers, employees, agents, contractors and subcontractors, including, but not limited to, all persons producing, promoting, advertising, staging, directing, performing, presenting, conducting and/or otherwise participating in the Event, shall cooperate fully with SMG and Owner in their respective adherence to and performance of such other agreements and comply with all requirements imposed by SMG arising from or relating to such other agreements in connection with Licensee's use of the Facility, including, but not limited to, due observance of all Facility branding and naming rights and proper use of the Facility Name and Facility Logo (as such terms are defined below), Owner name and logo, and the SMG name and logo, in all advertising and other communications concerning or relating to the Event; (ii) that Licensee shall not for any reason or purpose cover or otherwise alter or interfere with any displays, advertising, graphics, signage and/or other electronic or printed media in or about the Facility; and (iii) that all rights to place advertising on ticket backs, ticket stubs and all other parts of Licensee's tickets are reserved in favor of SMG. All communications and media pertaining to the Event shall be submitted to the Facility marketing department for approval prior to production, printing, or distribution.

8. **Box Office and Tickets.**

(a) All admission tickets sold and/or issued for access to the Facility relating to the Event shall be exclusively controlled by the Facility's box office. Only employees under the direct control and supervision of SMG shall be permitted access to, and use of, the box office facilities. Licensee shall deliver to the Facility box office all information required for the sale of such tickets no later than three (3) weeks prior to the anticipated on-sale date.

- (b) All admission tickets will be made available for sale at the Facility box office during normal operation box office hours; through the charge-by-phone, internet and retail outlet ticketing locations (if any) pursuant to the ticketing service provided by the Facility's Ticketing Agency; and by any other method determined by SMG.
- (c) SMG will provide regular sales reports as requested by Licensee.
- (d) If a large crowd is anticipated for the initial on-sale date of the Event, there may be an additional charge to the Licensee for event services staff, set up or supplies related to the on-sale activities. SMG may, at its discretion, utilize a lottery system using numbered wristbands to deter illicit ticket scalping and to deter ticket buyers from forming lines overnight. In addition, Licensee shall reimburse SMG as a Reimbursable Services Expense, all special expenses incurred in connection with ticket sales through the Facility's box office or ticket system, including, but not limited to, the cost of special telephone sales, special services or any special materials requested by Licensee.
- (e) Licensee shall be solely responsible for the refund of the price of any tickets and applicable service charges and/or convenience charges, to any Event that is canceled. All refunds are made at the place of purchase.
- (f) Unless otherwise agreed upon in writing, SMG does not issue or distribute tickets on consignment, and all tickets must be paid for prior to printing and distribution. It is understood and agreed that the Facility has an exclusive agreement for ticketing with [TBD] (the "**Ticketing Agency**"). In the event that Licensee desires that blocks of tickets be sold by means other than through the Ticketing Agency, then the Licensee shall i) provide a written waiver from the Ticketing Agency of its rights to sell such block of tickets, and ii) pay to SMG the sum of [*amount in words*] Dollars (\$ [*amount in numbers*]) per ticket as additional Licensee Fee, for any such tickets, in excess of [*number*] tickets, not sold through the Ticketing Agency's system. SMG shall, in its sole discretion, have the right to designate a secondary box office (serviced by the Ticketing Agency) for the sale of tickets to the Event.
- (g) Customers purchasing tickets at locations other than the Facility box office may be required to pay a service or convenience charge, or other charges or fees, which are added to the price of the ticket and collected by the Facility's Ticketing Agency. Such prevailing fees and charges are subject to change at any time without notice.
- (h) No cash advances based on box office receipts will be made prior to headlining performers taking the stage.
- (i) In no event shall tickets to the Event by Licensee, be sold or disposed of in excess of seating capacity of the house. Unless otherwise agreed to in writing, no patrons will be admitted to the Facility without an admission ticket.
- (j) SMG shall receive up to [*number in words*] ([*number*]) complimentary (at no charge), top-priced tickets per performance of the Event for the exclusive use of SMG or its designees. Any unused tickets will be returned to open status for sale to the general public.
- (k) Licensee shall be limited to [*number in words*] ([*number*]) tickets at no charge (complimentary tickets) unless otherwise agreed upon by SMG in writing.

9. **Event Financial Settlement.**

(a) As soon as reasonably possible after the closing of the Facility box office for the Event, SMG shall furnish Licensee with a financial settlement statement and box office statement and settle with Licensee in accordance with this Agreement (the “**Final Settlement**”). Licensee agrees to pay SMG, at the time of Final Settlement, any amounts shown to be due SMG which were not paid to SMG by the application of box office receipts and deposits.

(b) All deposits and box office receipts, after applicable sales or amusement taxes are deducted, shall be held by SMG and applied in accordance with the provisions of this Agreement. SMG will remit to the appropriate taxing authority, any sales, amusement or similar tax due. Remaining deposits and box office receipts shall be applied as follows: (i) SMG shall retain any amounts as may be necessary to satisfy any obligation or liability of Licensee to SMG under this Agreement or otherwise, including, without limitation, any damages, whether stipulated herein or not, to which SMG may be entitled because of any breach of this Agreement by Licensee, (ii) any remaining deposits and box office receipts shall be paid to Licensee. Notwithstanding the foregoing, if the Facility was damaged because of the presentation of the Event therein, SMG, in its sole discretion, shall be entitled to withhold from the amount otherwise due Licensee a reasonable amount to pay for any such damage.

10. **Advance Deposits.**

(a) On the date that is fourteen (14) days prior to the Event, if, in the sole discretion of SMG, the anticipated GBOR for such Event will be inadequate to cover the estimated Event-related Facility expenses, including, but not limited to, License Fee, Facility Fee, Broadcast Fee and Reimbursable Services Expense, Licensee shall pay, in escrow, in immediately negotiable funds, to SMG, an amount equal to the SMG’s estimate of such shortage. In addition, Licensee shall, in the sole discretion of SMG, provide evidence of Licensee’s financial capacity to pay other Event-related expenses, including, but not limited to, production costs and talent fees.

(b) Additionally, at SMG’s sole discretion, SMG may require, not later than seven (7) business days prior to the Event, that Licensee place additional funds, in the form of a deposit in cash, in escrow with SMG, to cover the total estimated Event-related Facility expenses, including, but not limited to, License Fee, Facility Fee, Broadcast Fee and Reimbursable Services Expense, regardless of the GBOR.

(c) If Licensee fails promptly to comply with any of the above deposit requirements, such failure shall constitute an act of default hereunder, and SMG may, upon written notice to Licensee, immediately terminate this Agreement without liability or obligation to Licensee.

11. **Taxes.** SMG shall not be liable for the payment of taxes, late charges, or penalties of any nature relating to the Event or otherwise, or any revenue received by or payments made to Licensee in respect of the Event, except as provided by Law or as otherwise specified herein. Licensee shall pay and discharge, as they become due, promptly and before delinquency, all taxes, assessments, rates, damages, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Agreement or any other improvements now or hereafter owned by Licensee.

12. **Facility Name and Logo.** When referring to the Facility during the term of this Agreement, Licensee shall use the Capital One Hall, or such replacement name designated by SMG upon the direction of the Owner (the “**Facility Name**”), and no other name, and shall use reasonable best efforts to require third parties that it contracts with in connection with the Facility to do the same. The use and designation of the Facility Name shall include, but not be limited to, printed materials, advertising, admission tickets and public relations or promotional press releases. Additionally, Licensee shall use the Facility Name and the Facility’s logo (the “**Facility Logo**”) in all advertising controlled by or done on behalf of Licensee relating to an Event, including, but not limited to, broadcast, television, internet, newspaper, magazine, and outdoor advertising. Licensee’s right to use the Facility Name and Facility Logo shall be limited to the specific, express purpose set forth in the foregoing sentence and/or as otherwise authorized by SMG in writing prior to the use thereof. In connection with Licensee’s use of the Facility Logo as permitted in this Section 12, Licensee shall use only the form of the Facility Logo as provided by SMG to Licensee.

13. **Revenues and Costs.** Licensee shall have no right or claim to any revenues generated in connection with parking area fees or charges at the Facility, whether collected at the parking area, pursuant to a purchase along with an event ticket or included in the price of the ticket. In addition to payment of the Reimbursable Services Expense above, Licensee shall bear all expenses incurred by Licensee in connection with the holding of an Event at the Facility, including, but not limited to, all costs arising from the use of patented, trademarked or copyrighted materials, equipment, devices, processes or dramatic rights used on or incorporated in the conduct of an Event.

14. **Records, Reports, and Audits.**

(a) **Records.** Licensee shall maintain accurate books and records with respect to its activities at the Facility, including, but not limited to, the costs and revenues of each Event. Licensee shall keep and preserve such books and records at all times during the term of this Agreement and for at least three (3) years following the expiration or termination hereof.

(b) **Audits.** Licensee shall give SMG and its representatives access to the books and records Licensee maintains pursuant to Section 14(a) at any time when so requested by SMG. Licensee shall also provide, at Licensee’s own expense, a copy of any such book or record upon request.

15. **Reservation of Rights.** SMG reserves, on behalf of the Owner, all rights not specifically granted to Licensee under the terms hereof, including, but not limited to, the sole right to sell or give away food and beverage (including, without limitation, beer, wine, liquors or alcoholic beverages of any kind) items and souvenir merchandise, to conduct check rooms, to take photographs and other privileges. Licensee shall not engage in, permit to occur or undertake the sale or distribution (either purchased or complimentary) of any of the aforesaid or similar articles or privileges, without the prior written consent of the SMG. SMG is responsible for providing all personnel and/or subcontracted personnel (at SMG’s sole discretion) to operate all food and beverage concessions (including the preparation, selling or distribution of any kind), and merchandise sales, and to retain all proceeds from same, unless otherwise agreed upon herein. SMG will have the sole right to determine whether alcoholic beverages (beer, wine, assorted mixed drinks and other alcoholic beverages) will be sold during the Event.

16. **Insurance.**

(a) Licensee shall, at its own expense, secure and deliver to SMG not less than thirty (30) days prior to the first Event set forth on Exhibit A, and shall keep in force at all times during the term of this Agreement:

- (i) a comprehensive general liability insurance policy in a form acceptable to SMG, including liability for bodily injury and death and property damage, covering its activities hereunder, in an amount not less than One Million Dollars (\$1,000,000) for bodily injury and One Million Dollars (\$1,000,000) for property damage, including blanket contractual liability, independent contractors, and products and completed operations. The foregoing general liability insurance policy shall not contain exclusions from coverage relating to the following: participants' activities or issues related to the Event hereunder, sporting events, high risk events (including, without limitation, rap concerts and electronic dance music events), performers, volunteers, animals, off-premise activities, and fireworks or other pyrotechnical devices;
- (ii) comprehensive automotive bodily injury and property damage insurance in a form acceptable to SMG for business use covering all vehicles operated by Licensee, its officers, directors, agents and employees in connection with its activities hereunder, whether owned by Licensee, SMG, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000) (including of hired and non-owned coverage); and
- (iii) applicable workers' compensation insurance for Licensee's employees, as required by applicable Law, including employer's liability coverage of at least One Million Dollars (\$1,000,000).

(b) The following shall apply to the insurance policies described in Sections 16(a)(i) and (ii) above:

- (i) SMG and Owner shall be included as additional insureds thereunder. Not less than thirty (30) days prior to the first Event set forth on Exhibit A, Licensee shall deliver to SMG certificates of insurance evidencing the existence thereof, all in such form as SMG may reasonably require. Each such policy or certificate shall contain a valid provision or endorsement stating, **“This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to each of (i) SMG, Risk Management Director, 300 Conshohocken State Road, Suite 450, West Conshohocken, PA 19428; and (ii) Capital One Tysons Block C Owner, LLC, [Address for Capital One insurance notice], and (iii) [SMG Name At Facility], Attention: General Manager, 7750 Capital One Tower Road, McLean, VA 22102.”** If any of the insurance policies covered by the foregoing certificates of insurance will expire prior to or during the time of an Event, Licensee shall deliver to SMG at least fourteen (14) days prior to such expiration a certificate of insurance evidencing the renewal of such policy or policies.
- (ii) The coverage and limits provided under such policies shall be occurrence-based, not claims made.

- (iii) Licensee hereby acknowledges that the coverage limits contained in any policy, whether such limits are per occurrence or in the aggregate, shall in no way limit the liabilities or obligations of Licensee under this Agreement, including, without limitation, Licensee's indemnification obligations under Section 17 below.
 - (iv) Licensee is responsible to ensure that any contractors utilized by Licensee and present at the Facility comply with the insurance provisions of this Section 16.
- (c) The terms of all insurance policies referred to in this Section 16 shall preclude subrogation claims against SMG and Owner and their respective officers, directors, employees, and agents.
- (d) The failure of the Licensee to provide insurance in accordance with this Section 16 shall be a material breach of this Agreement and shall, notwithstanding the terms and conditions set forth in Section 18 below, preclude the Event from taking place.

17. **Indemnification.**

(a) Licensee shall indemnify, defend and hold SMG, the Owner and their respective affiliates, directors, officers, employees, agents, representatives, successors and permitted assigns and their employees (the "**Licensee Indemnified Parties**") harmless from and against any and all Losses arising from or in connection with (a) any work or thing whatsoever done, or any condition created in or about the Facility during an Event; (b) any act, omission or negligence of Licensee or any of its partners, directors, officers, agents, employees or contractors; (c) any accident, injury or damage whatever occurring in, at or upon the Facility during an Event arising out of Licensee's negligence; and (d) any breach or default by Licensee in the full and prompt payment and performance of Licensee's obligations hereunder; including, without limitation, all reasonable attorneys' fees and expenses of the Licensee Indemnified Parties. In case any action or proceeding is brought against any of the Indemnified Parties because of any such claim, the Licensee Indemnified Parties may either (y) defend against such claim at Licensee's expense with counsel selected by the Licensee Indemnified Parties or (z) notify Licensee of the claim in which event Licensee, at its sole cost and expense, shall resist and defend such action or proceeding using counsel selected or approved by the Licensee Indemnified Parties.

(b) SMG shall indemnify, defend and hold Licensee and its agents, employees and representatives (the "**SMG Indemnified Parties**") harmless from and against any and all Losses arising from or in connection with (a) any work or thing whatsoever done, or any condition created in or about the Authorized Area during an Event: (b) any act, omission or negligence of SMG or any of its partners, directors, officers, agents, employees or contractors; (c) any accident, injury or damage whatever occurring in, at or upon the Authorized Area during an Event arising out of SMG's negligence; and (d) any breach or default by SMG in the full and prompt payment and performance of SMG's obligations hereunder; including, without limitation, all reasonable attorneys' fees and expenses of the SMG Indemnified Parties. In case any action or proceeding is brought against any of the Indemnified Parties because of any such claim, the SMG Indemnified Parties may either (y) defend against such claim at SMG's expense with counsel selected by the SMG Indemnified Parties (z) notify SMG of the claim in which event SMG, at its sole cost and expense, shall resist and defend such action or proceeding using counsel selected or approved by the SMG Indemnified Parties.

(c) The provisions set forth in this Section 17 above shall survive termination or expiration of this Agreement.

18. **Default, Termination and Other Remedies.**

(a) Licensee Default. Licensee shall be in default under this Agreement if any of the following occur:

- (i) Licensee fails (a) to pay any amount due hereunder (including, without limitation, the Licensee Fee, Facility Fee, Broadcast Fee, or the Reimbursable Services Expense) when the same are required to be paid hereunder, or (b) to provide the security in the form of the deposits required under Sections 6 and 10 hereof by the date when due; or
- (ii) Licensee or any of its officers, directors, employees or agents fails to perform or fulfill any other term, covenant, or condition contained in this Agreement and Licensee fails to commence a cure thereof within five (5) business days after Licensee has been served with written notice of such default; or
- (iii) Licensee fails to maintain the insurance policies required by this Agreement or to provide evidence of such insurance coverage as required herein; or
- (iv) Licensee makes a general assignment for the benefit of creditors or files a bankruptcy petition (or is the subject of an involuntary bankruptcy filing).

(b) SMG Default. SMG shall be in default under this Agreement if SMG fails to perform or fulfill any term, covenant, or condition contained in this Agreement and SMG fails to commence a cure thereof within five (5) business days after SMG has been served with written notice of such default.

(c) Cure Rights and Limitations. Nothing herein shall be construed as excusing either party from diligently commencing and pursuing a cure within a lesser time if reasonably possible. Notwithstanding Section 18(a)(ii) above, if the breach by Licensee or any of its officers, directors, employees, or agents of such other term, covenant, or condition is such that it threatens the health, welfare, or safety of any person or property, then SMG may, in its discretion, require that such breach be cured in less than five (5) business days or immediately.

(e) Termination by Reason of Default. Upon a default pursuant to Section 18(a) or (b) hereof, the non-breaching party may, at its option, upon written notice or demand upon the other party, cancel and terminate the License and the obligations of the parties with respect thereto. In addition to the foregoing, if Licensee fails to comply with any of the provisions of this Agreement, SMG may, in its sole discretion, delay and/or withhold payment and/or settlement of all accounts and funds related to monies collected or received by SMG for the benefit of Licensee hereunder until the completion of an investigation relating to such violation.

(f) Termination by Reason of Labor Dispute. In addition to the remedies provided elsewhere in this Agreement, SMG shall have the right to terminate this Agreement if a dispute occurs between Licensee and its employees or between Licensee and any union or group of employees because of the union affiliation or lack of union affiliation of persons employed by Licensee or any one with whom Licensee contracts.

(g) **Injunctive Relief.** In addition to any other remedy available at law, in equity, or otherwise, SMG shall have the right to seek to enjoin any breach or threatened breach and/or obtain specific performance of this Agreement by Licensee upon meeting its burden of proof of such breach or threatened breach as required by applicable Law.

(h) **Unique Qualities.** The parties agree and acknowledge that the Licensee is a unique entity and, therefore, the rights and benefits that will accrue to SMG by reason of this Agreement are unique and that SMG may not be adequately compensated in money damages for Licensee's failure to comply with the material obligations of Licensee under this Agreement and that therefore SMG, at its option, shall have the right to pursue any remedy available at law, equity, or otherwise, including the recovery of money damages and/or the right to seek equitable relief (whether it be injunctive relief, specific performance or otherwise) in the event that Licensee violates its obligation to hold an Event at the Facility, or to provide evidence of fulfillment of its obligations under **Section 20(l)** of this Agreement.

(i) **Limitation of Liability.** If this Agreement is terminated because of a default by SMG, or if the Event cannot be held or is cancelled or cannot be completed after the beginning thereof due to a breach by SMG of its obligations under this Agreement, Licensee's sole remedy shall be the return of the License Fee paid by Licensee for such Event. Neither SMG nor the Owner shall be liable, under any theory whatsoever, whether related to the termination of this Agreement, any breach by SMG of its obligations hereunder or any reason, for any harm or damage, whether direct, indirect, consequential or special (including but not limited to loss of business or profits, lost value of the business or any other economic loss), suffered by Licensee.

19. **Representations and Warranties.** Each party hereby represents and warrants to the other party, and agrees as follows:

(a) It has the full power and authority to enter into this Agreement and perform each of its obligations hereunder;

(b) It is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement; and

(c) No litigation or pending or threatened claims of litigation exist which do or might adversely affect its ability to fully perform its obligations hereunder or the rights granted by it to the other party under this Agreement.

20. **Covenants.** Licensee hereby covenants as follows:

(a) Licensee shall use the Facility strictly for the Authorized Use and such ancillary uses in connection with the Authorized Use. In no event shall Licensee violate the Facility's events restriction policy attached hereto as **Exhibit C**, as the same may be amended or updated from time-to-time. Licensee shall comply with the Facility's rules and regulations, which shall be provided to Licensee upon execution of this Agreement. All updates or amendments to the events restriction policy or the rules and regulations shall be communicated to Licensee in writing.

(b) Licensee shall comply with all legal requirements which arise in respect of the Facility and the use and occupation thereof, including obtaining all necessary permits and approvals.

(c) Licensee shall not cause or permit any Hazardous Material to be used, stored, or generated on, or transported to or from the Facility. “**Hazardous Material**” shall mean, without limitation, those substances included within the definitions of “hazardous substances”, “hazardous materials”, “toxic substances”, or “solid waste” in any applicable Law.

(d) The following items are prohibited within any areas of the Facility without written permission by SMG:

1. Propane and propane powered vehicles, equipment and displays.
2. Fireworks or other incendiary devices.
3. Guns, knives, electronic shock devices, chains, clubs or other weapons that could be used to harm another individual or property.
4. Sticks or poles.
5. Projectiles (including beach balls and Frisbees)
6. Lit cigars, cigarettes, e-cigarettes, or the like.
7. Controlled substances of any kind unless pursuant to a doctor’s prescription.
8. Oversized bags (maximum 12”x16’x12”), backpacks, or boxes (except through the load docks in accordance with the load-in/load-out procedures).
9. Cans, bottles, coolers or other similar containers.
10. Helium or other lighter than air filled balloons.
11. Recording devices (video, audio or photographic) for the intent to distribute or to re-sell.
12. Laser pens or other laser light-type pointing devices.
13. Skateboards. Skates (roller or in-line) or scooters.
14. Noisemaking devices (horns, whistles, etc.)
15. Umbrellas (non-retractable).
16. Strollers (except in designated areas).
17. Any other items designated by SMG from time-to-time.

(e) Licensee shall not advertise, paint, post, distribute or exhibit, nor allow to be advertised, painted, posted, distributed or exhibited, signs, advertisements, show bills, lithographs, posters, banners, stickers or cards of any description inside or outside or on any part of the Facility except upon written permission of SMG, and for such time and in such location as designated by SMG. Licensee shall take down and remove forthwith all signs, advertisements, show bills, lithographs, posters or cards of any description objected to by SMG.

(f) Licensee shall not cause or permit food or beer, wine, or liquors of any kind to be sold, given away, or used upon the Facility except upon prior written permission of SMG.

(g) Licensee shall not operate any equipment or materials belonging to SMG without the prior written approval of SMG.

(h) Licensee, its officers, employees, agents, members or other representatives shall not re-sell admission tickets to the general public except as otherwise provided for herein, nor shall they re-sell the tickets for an amount greater than the face value (otherwise known as “scalping”), to the extent prohibited by applicable Law. Licensee and its representatives shall aid SMG in its efforts to control and prevent such ticket “scalping”.

(i) No portion of any passageway or exit shall be blocked or obstructed in any manner whatsoever, and no exit door or any exit shall be locked, blocked, or bolted while the Facility is in use. Moreover, all designated exit ways shall be maintained in such manner as to be visible at all times. Licensee shall defend, indemnify and hold the Licensee Indemnified Parties harmless from any loss or damage suffered by such parties resulting from Licensee's failure to comply with the terms of this Section 20(i).

(j) No collections, whether for charity or otherwise, shall be made, attempted, or announced at the Facility, without first having made a written request and received the prior written consent of SMG. In the event donations or collections are granted by SMG in lieu of an admission ticket, then all such monies received from such collections or donations will be considered as ticket revenues for the purpose of determining the License Fee due to SMG unless an alternative or flat license fee has been agreed upon.

(k) The Facility is a smoke-free facility. Smoking is not allowed in any area of the Facility, including, without limitation, dressing rooms, production offices and backstage areas.

(l) With respect to any Event at the Facility, Licensee shall comply fully with all Laws and the rights of others applicable to the reproduction, display, or performance of proprietary or copyrighted materials and works of third parties (the “**Works**”), and to the protection of the intellectual property rights associated with such Works. The fees payable by Licensee under this Agreement do not include royalty, copyright or other payments which may be payable on behalf of third party owners of such Works, and Licensee agrees hereby to make all such payments to third parties and/or clearinghouse agencies as may be necessary to lawfully perform, publish, display or reproduce any such Works. Licensee specifically agrees, undertakes, and assumes the responsibility to make all reports to such agencies and/or parties, including specifically by way of example only (and not by way of limitation) ASCAP, BMI, SAG, SESAC, Copyright Clearance Center, and other similar agencies. Licensee agrees hereby to obtain and maintain evidence of such reports and any necessary payments, including evidence of compliance with the requirements of this paragraph. Licensee further agrees hereby to provide to SMG any such compliance evidence as may be requested by SMG in advance of or after any such Event. Licensee agrees that the obtaining and maintaining of such evidence by Licensee is a material condition of this Agreement. Notwithstanding anything herein to the contrary, in the event Licensee fails to provide satisfactory evidence of the aforesaid compliance to SMG, SMG may, but is under no obligation to, in its absolute discretion, undertake the aforesaid compliance on behalf of the Licensee and to deduct all costs of such compliance from the Final Settlement with Licensee. Licensee agrees to indemnify, defend, protect and hold harmless SMG and all other Licensee Indemnified Parties of and from any and all manner of Losses arising in any way from the use by Licensee of proprietary intellectual property of third parties (whether such claims are actual or threatened) under the copyright or other Laws. The foregoing indemnity shall apply regardless of the means of publication, display, or performance by Licensee, and shall include specifically and without limitation the use of recordings, audio broadcasts, video broadcasts, Works on other magnetic media, sounds or images transmitted via the worldwide web, chat rooms, webcasts, or on-line

service providers, satellite or cable, and all other publication, display or performance means whatsoever, whether now known or developed after the date of this Agreement.

(m) Motor vehicles being parked or stored in any area of the Facility during the Event cannot be running during any portion of the Event. All vehicles stored overnight must be approved by SMG in advance and SMG must obtain keys to these vehicles.

21. **Civil Rights Act.** During the performance of this Agreement, Licensee shall comply fully with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all other regulations promulgated thereunder, in addition to all applicable state and local ordinances concerning civil rights.

22. **Americans With Disabilities Act.** SMG shall be responsible for ensuring that access into the Facility complies with the Americans with Disabilities Act, as amended. SMG shall also be responsible for ensuring, to the extent possible, that the common areas inside the Facility (i.e., elevator access, ramp access and restrooms) are accessible to, and usable by, individuals with disabilities. With respect to any Event at the Facility, Licensee recognizes that it is subject to the provisions of Title III of the Americans With Disabilities Act, as amended, and all similar applicable state, commonwealth and local Laws (collectively, the “ADA”). Licensee represents that it has viewed or otherwise appraised itself of the access into the Facility, together with the common areas inside, and accepts such access, common areas, and other conditions of the Facility as adequate for Licensee’s responsibilities under the ADA. Licensee shall be responsible for ensuring that the Facility complies and continues to comply in all respects with the ADA, including accessibility, usability, and configuration insofar as Licensee modifies, rearranges or sets up in the Facility to accommodate Licensee’s usage. Licensee shall be responsible for any violations of the ADA, including, without limitation, those that arise from Licensee’s reconfiguration of the seating areas or modification of other portions of the Facility to accommodate Licensee’s usage. Licensee shall be responsible for providing auxiliary aids and services that are ancillary to its usage and for ensuring that the policies, practices, and procedures it applies in connection with an Event comply with the requirements of the ADA.

23. **Use of Information.** Licensee hereby acknowledges and agrees that SMG shall have the right to disclose to recognized industry sources that track event activity information relating to any Event, including, without limitation, the identity of performers or other participants of the Event, attendance figures, and gross ticket revenue for the Event.

24. **Construction of this Agreement.**

(a) **Choice of Law.** This Agreement shall be deemed to be made, governed by, and construed in accordance with all applicable Laws, without giving effect to the conflict of law principles thereof. Additionally, Licensee is subject to the rules and regulations of SMG for the governance and management of the Facility, together with all rules and regulations of the Fairfax County Police and Fire Departments, and if the attention of said Licensee is called to a violation of such rules and regulations on the part of Licensee, then said Licensee will immediately desist from and correct such violation.

(b) Paragraph Headings. The paragraph headings are inserted only as a matter of convenience and reference and are not intended to be a part of this Agreement or to define, limit, or describe the scope or intent of this Agreement or the paragraphs to which they refer.

(c) Entire Agreement; Amendments. This Agreement (including all Exhibits, riders and other documents and matters annexed hereto or made a part hereof by reference) contains all the representations, warranties, covenants, agreements, terms, provisions, and conditions relating to the rights and obligations of SMG and Licensee with respect to the Facility and the Event. No alterations, amendments, or modifications hereof shall be valid unless executed by an instrument in writing by the parties hereto. **WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES HERETO THAT NO OFFICER, DIRECTOR, EMPLOYEE, AGENT, REPRESENTATIVE OR SALES PERSON OF EITHER PARTY HERETO, OR OF THE OWNER OR ANY THIRD PARTY HAS THE AUTHORITY TO MAKE, HAS MADE, OR WILL BE DEEMED TO HAVE MADE, ANY REPRESENTATION, WARRANTY, COVENANT, AGREEMENT, GUARANTEE, OR PROMISE WITH RESPECT TO THE FINANCIAL SUCCESS OR PERFORMANCE, AND/OR OTHER SUCCESS, OF THE EVENT. THE LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT ANY ASSESSMENT OF THE FINANCIAL SUCCESS OR PERFORMANCE, AND/OR OTHER SUCCESS, OF THE EVENT IS SOLELY THAT OF THE LICENSEE'S OWN DETERMINATION AND JUDGMENT.**

(d) Severability. If any provision or a portion of any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions shall not be affected thereby.

(e) Time. Time is of the essence hereof, and every term, covenant, and condition shall be deemed to be of the essence hereof.

(f) Successors. This Agreement shall be binding upon, and shall inure to, the benefit of the successors and assigns of SMG, and to such successors and assigns of Licensee as are permitted to succeed to the Licensee's right upon and subject to the terms hereof.

(g) Independent Contractor; No Partnership. SMG and Licensee shall each be and remain an independent contractor with respect to all rights and obligations arising under this Agreement. Nothing herein contained shall make, or be construed to make, SMG or Licensee a partner of one another, nor shall this Agreement be construed to create a partnership or joint venture between and of the parties hereto or referred to herein.

(h) Singular and Plural. Whenever the context shall so require, the singular shall include the plural, and the plural shall include the singular.

(i) Conflict. In the event of a conflict between the terms of this Agreement and any agreement between Licensee and Owner with respect to the use of the Facility, the terms of the agreement between Licensee and Owner shall govern and control.

25. Miscellaneous.

(a) Waiver. The failure of any party to enforce any of the provisions of this Agreement, or any rights with respect hereto, or the failure to exercise any election provided for herein, will in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the validity of this Agreement. The failure of any party to enforce any of such provisions, rights, or elections will not prejudice such party from later enforcing or exercising the same or any other provisions, rights, or elections which it may have under this Agreement.

(b) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned, transferred, encumbered, hypothecated, or used as security in any manner whatsoever by Licensee without the prior written consent of SMG, which SMG may withhold in its sole discretion.

(c) Notices. Any notice, consent, or other communication given pursuant to this Agreement shall be in writing and shall be effective either (i) when delivered personally to the party for whom intended, (ii) upon delivery by an overnight courier services that is generally recognized as reliable, and the written records maintained by the courier shall be prima facie evidence of delivery, or (iii) on delivery (or attempted delivery) by certified or registered mail, return receipt requested, postage prepaid, as of the date shown by the return receipt; in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

If to SMG: SMG
7750 Capital One Tower Road
McLean, VA 22102
Attention: General Manager

with a copy to: SMG
300 Conshohocken State Rd., Suite 770
West Conshohocken, PA 19428
Attention: Director of Risk Management

If to Licensee: _____

Attention: _____

(d) Non-Exclusive Use. SMG shall have the right during the Event, in its sole discretion, to use on its own behalf, or permit the use by any person, firm or other entity, of any portion of the Facility, other than the Authorized Areas, regardless of the nature of the use of such other space. Unless otherwise specified on Exhibit A or another writing signed by the parties, SMG shall have the right to schedule other similar events both before and after the Event specified in this Agreement without notice to Licensee and without limitation.

(e) Force Majeure. If the Facility is damaged from any cause whatsoever or if any other casualty or unforeseeable cause beyond the control of SMG, including, without limitation, acts of nature; acts of terrorism; national emergency resulting from war; an order of the United States or the Commonwealth of Virginia ; bank regulatory compliance of Owner, fires; floods; epidemics; quarantine restrictions; strikes; labor disputes; failure of public utilities or unusually severe weather, prevents occupancy or use of the Facility as granted in this Agreement and the SMG and

Licensee cannot reasonably agree upon a date to reschedule the Event or Events, this Agreement shall be terminated, and both parties shall be released from any damage so caused thereby, and Licensee hereby waives any claim for compensation or damages of any kind against SMG or the Owner in connection therewith. In the event of a termination of this Agreement under this Section 25(e), the terms of any agreement between the Licensee and Owner shall govern and control, to the extent applicable.

(f) Acts and Omissions of Third Parties. Subject to Section 17(b), SMG shall not be liable in any way for any acts and/or omissions of any third party to this Agreement, including, without limitation, any Ticketing Agency and Third-Party Contractors.

(g) Late Charge. If Licensee fails to pay any amounts when due under this Agreement, including, without limitation, under Sections 3 or 6, Licensee shall pay to SMG a late charge of 18% per annum on the unpaid balance from the date such costs were incurred.

(h) Parking. Public parking will be located on the Campus for the Licensee and its patrons, subject to availability and payment of posted rates. SMG shall attempt to resolve any Event parking issues in good faith to minimize disruption of the Event.

26. New User. If Licensee has not successfully completed the promotion of two prior Events at the Facility, then Licensee shall complete a Licensee Information Form, to be submitted with and made part of this Agreement. It is understood and agreed that this Agreement and the execution hereof by SMG evidencing SMG's agreement hereto, are contingent upon SMG's acceptance of such Licensee Information Form, in its sole discretion.

[Signatures on following page]

IN WITNESS WHEREOF, this Use License Agreement has been duly executed by the parties hereto as of the day and year first written above.

SMG, a Pennsylvania general partnership

(“SMG”)

By: _____

Printed Name: _____

Title: _____

[NAME OF LICENSEE]

(“Licensee”)

By: _____

Printed Name: _____

Title: _____

EXHIBIT A TO USE LICENSE AGREEMENT

Event Information

<u>Authorized Area</u>	<u>Day</u>	<u>Date</u>	<u>Time of Use</u>	<u>Purpose</u>
[AREA, OFFICE SPACE, STORAGE ROOM, LOCKER ROOM, ETC.]	[MONDAY, TUESDAY, ETC.]	[MONTH/DAY/YEAR]		[MOVE IN, MOVE OUT, PRACTICE SESSION, EVENT, ETC.]

EXHIBIT B TO USE LICENSE AGREEMENT

Reimbursable Service Expenses and Schedule for Payment of All Fees and Expenses

1. Estimate of Reimbursable Service Expenses. At the request of Licensee, the following special facilities, equipment, materials, and extra services will be furnished by SMG for the Event: _____

2. Schedule for Payments.

EXHIBIT C TO USE LICENSE AGREEMENT

Events Restriction Policy

[See Attached]

EXHIBIT H

Expense Fee Information; Standard Labor and Rates

3. The following is a list of items included in the Expense Fee, including, the hours of standard production, security, front of the house and housekeeping labor included in the Expense Fee, per Allocated Date for the Venue [TO BE REVISED TO ONLY INCLUDE INFORMATION FOR THE VENUE SUBJECT TO THE USE LICENSE AGREEMENT].

Main Hall:

- Police / EMT services
- Event security
- Usage of In-House Equipment (including rental and labor for operation of sound and lighting In-House Equipment)
- Ushers/ Ticket Takers: 6 people for 4 hours each
- Box Office: 2 people for 4 hours each
- Security/Bag Checkers: 4 people for 4 each
- General Production Operations: 1 person for 6 hours
- Housekeeping / Clean Up Labor: 1 person for 6 hours
- Housekeeping fee (unless it exceeds \$750.00) [(as escalated by CPI in accordance with Section IV.b of the Agreement), in which event the excess over \$750.00 (as so escalated) shall be included in the Reimbursable Services Expense]

Black Box:

- Police / EMT services
- Event security
- Usage of In-House Equipment (including rental and labor for operation of sound and lighting In-House Equipment)
- Ushers/Ticket Takers: 4 people for 3 hours each
- Box Office: 1 person for 5 hours
- General Production Operations/Housekeeping/Clean Up: 1 person for 5 hours
- Housekeeping fee (unless it exceeds \$350.00) [(as escalated by CPI in accordance with Section IV.b of the Agreement), in which event the excess over \$350.00 (as so escalated) shall be included in the Reimbursable Services Expense)]

Classrooms:

- General Production Operations/Housekeeping/Clean Up: 1 person for 4 hours
- Housekeeping fee (unless it exceeds \$100.00) [(as escalated by CPI in accordance with Section IV.b of the Agreement), in which event the excess over \$_____ \$100.00 (as so escalated) shall be included in the Reimbursable Expenses)*Services Expense]

***The blanks in these items will be completed by mutual agreement on the Agreement Update Date.**

~~2.4.~~ Any time for production, security, front-of-the house and housekeeping/cleaning labor in excesses of the times set forth below shall be considered non-standard and shall be charged at the following rates, ~~subject to escalation as set forth in~~ accordance with Section IV.b of the Agreement.

- Ushers/Ticket Takers: \$18/hour/person
- Box Office: \$15/hour/person
- Security/Bag Checkers: \$28/hour/person
- General Production Operations (Main Hall): \$20/hour/person
- Housekeeping/Clean Up (Main Hall): \$15/hour/person
- General Production Operations/Housekeeping/Clean-Up (Black Box and Classrooms): \$15/hour/person

EXHIBIT F

EXHIBIT I

Termination Fee Schedule¹

[See Attached]

¹ To be adjusted pursuant to Section V.a of the Agreement.

EXHIBIT I

Termination Fee Schedule

Month	Payout	42	\$ 10,465,687
1	\$ 11,810,807	43	\$ 10,432,880
2	\$ 11,777,999	44	\$ 10,400,072
3	\$ 11,745,191	45	\$ 10,367,264
4	\$ 11,712,384	46	\$ 10,334,456
5	\$ 11,679,576	47	\$ 10,301,648
6	\$ 11,646,768	48	\$ 10,268,841
7	\$ 11,613,960	49	\$ 10,236,033
8	\$ 11,581,152	50	\$ 10,203,225
9	\$ 11,548,345	51	\$ 10,170,417
10	\$ 11,515,537	52	\$ 10,137,609
11	\$ 11,482,729	53	\$ 10,104,802
12	\$ 11,449,921	54	\$ 10,071,994
13	\$ 11,417,113	55	\$ 10,039,186
14	\$ 11,384,306	56	\$ 10,006,378
15	\$ 11,351,498	57	\$ 9,973,570
16	\$ 11,318,690	58	\$ 9,940,763
17	\$ 11,285,882	59	\$ 9,907,955
18	\$ 11,253,074	60	\$ 9,875,147
19	\$ 11,220,267	61	\$ 9,842,339
20	\$ 11,187,459	62	\$ 9,809,531
21	\$ 11,154,651	63	\$ 9,776,724
22	\$ 11,121,843	64	\$ 9,743,916
23	\$ 11,089,035	65	\$ 9,711,108
24	\$ 11,056,228	66	\$ 9,678,300
25	\$ 11,023,420	67	\$ 9,645,492
26	\$ 10,990,612	68	\$ 9,612,685
27	\$ 10,957,804	69	\$ 9,579,877
28	\$ 10,924,996	70	\$ 9,547,069
29	\$ 10,892,189	71	\$ 9,514,261
30	\$ 10,859,381	72	\$ 9,481,453
31	\$ 10,826,573	73	\$ 9,448,646
32	\$ 10,793,765	74	\$ 9,415,838
33	\$ 10,760,957	75	\$ 9,383,030
34	\$ 10,728,150	76	\$ 9,350,222
35	\$ 10,695,342	77	\$ 9,317,414
36	\$ 10,662,534	78	\$ 9,284,607
37	\$ 10,629,726	79	\$ 9,251,799
38	\$ 10,596,919	80	\$ 9,218,991
39	\$ 10,564,111	81	\$ 9,186,183
40	\$ 10,531,303	82	\$ 9,153,375
41	\$ 10,498,495	83	\$ 9,120,568

EXHIBIT I

Termination Fee Schedule

84	\$ 9,087,760	126	\$ 7,709,832
85	\$ 9,054,952	127	\$ 7,677,025
86	\$ 9,022,144	128	\$ 7,644,217
87	\$ 8,989,336	129	\$ 7,611,409
88	\$ 8,956,529	130	\$ 7,578,601
89	\$ 8,923,721	131	\$ 7,545,793
90	\$ 8,890,913	132	\$ 7,512,986
91	\$ 8,858,105	133	\$ 7,480,178
92	\$ 8,825,297	134	\$ 7,447,370
93	\$ 8,792,490	135	\$ 7,414,562
94	\$ 8,759,682	136	\$ 7,381,754
95	\$ 8,726,874	137	\$ 7,348,947
96	\$ 8,694,066	138	\$ 7,316,139
97	\$ 8,661,258	139	\$ 7,283,331
98	\$ 8,628,451	140	\$ 7,250,523
99	\$ 8,595,643	141	\$ 7,217,715
100	\$ 8,562,835	142	\$ 7,184,908
101	\$ 8,530,027	143	\$ 7,152,100
102	\$ 8,497,219	144	\$ 7,119,292
103	\$ 8,464,412	145	\$ 7,086,484
104	\$ 8,431,604	146	\$ 7,053,676
105	\$ 8,398,796	147	\$ 7,020,869
106	\$ 8,365,988	148	\$ 6,988,061
107	\$ 8,333,180	149	\$ 6,955,253
108	\$ 8,300,373	150	\$ 6,922,445
109	\$ 8,267,565	151	\$ 6,889,637
110	\$ 8,234,757	152	\$ 6,856,830
111	\$ 8,201,949	153	\$ 6,824,022
112	\$ 8,169,142	154	\$ 6,791,214
113	\$ 8,136,334	155	\$ 6,758,406
114	\$ 8,103,526	156	\$ 6,725,598
115	\$ 8,070,718	157	\$ 6,692,791
116	\$ 8,037,910	158	\$ 6,659,983
117	\$ 8,005,103	159	\$ 6,627,175
118	\$ 7,972,295	160	\$ 6,594,367
119	\$ 7,939,487	161	\$ 6,561,559
120	\$ 7,906,679	162	\$ 6,528,752
121	\$ 7,873,871	163	\$ 6,495,944
122	\$ 7,841,064	164	\$ 6,463,136
123	\$ 7,808,256	165	\$ 6,430,328
124	\$ 7,775,448	166	\$ 6,397,520
125	\$ 7,742,640	167	\$ 6,364,713

EXHIBIT I

Termination Fee Schedule

168	\$ 6,331,905	210	\$ 4,953,977
169	\$ 6,299,097	211	\$ 4,921,170
170	\$ 6,266,289	212	\$ 4,888,362
171	\$ 6,233,481	213	\$ 4,855,554
172	\$ 6,200,674	214	\$ 4,822,746
173	\$ 6,167,866	215	\$ 4,789,938
174	\$ 6,135,058	216	\$ 4,757,131
175	\$ 6,102,250	217	\$ 4,724,323
176	\$ 6,069,442	218	\$ 4,691,515
177	\$ 6,036,635	219	\$ 4,658,707
178	\$ 6,003,827	220	\$ 4,625,899
179	\$ 5,971,019	221	\$ 4,593,092
180	\$ 5,938,211	222	\$ 4,560,284
181	\$ 5,905,404	223	\$ 4,527,476
182	\$ 5,872,596	224	\$ 4,494,668
183	\$ 5,839,788	225	\$ 4,461,860
184	\$ 5,806,980	226	\$ 4,429,053
185	\$ 5,774,172	227	\$ 4,396,245
186	\$ 5,741,365	228	\$ 4,363,437
187	\$ 5,708,557	229	\$ 4,330,629
188	\$ 5,675,749	230	\$ 4,297,821
189	\$ 5,642,941	231	\$ 4,265,014
190	\$ 5,610,133	232	\$ 4,232,206
191	\$ 5,577,326	233	\$ 4,199,398
192	\$ 5,544,518	234	\$ 4,166,590
193	\$ 5,511,710	235	\$ 4,133,782
194	\$ 5,478,902	236	\$ 4,100,975
195	\$ 5,446,094	237	\$ 4,068,167
196	\$ 5,413,287	238	\$ 4,035,359
197	\$ 5,380,479	239	\$ 4,002,551
198	\$ 5,347,671	240	\$ 3,969,743
199	\$ 5,314,863	241	\$ 3,936,936
200	\$ 5,282,055	242	\$ 3,904,128
201	\$ 5,249,248	243	\$ 3,871,320
202	\$ 5,216,440	244	\$ 3,838,512
203	\$ 5,183,632	245	\$ 3,805,704
204	\$ 5,150,824	246	\$ 3,772,897
205	\$ 5,118,016	247	\$ 3,740,089
206	\$ 5,085,209	248	\$ 3,707,281
207	\$ 5,052,401	249	\$ 3,674,473
208	\$ 5,019,593	250	\$ 3,641,665
209	\$ 4,986,785	251	\$ 3,608,858

EXHIBIT I

Termination Fee Schedule

252	\$ 3,576,050	294	\$ 2,198,122
253	\$ 3,543,242	295	\$ 2,165,315
254	\$ 3,510,434	296	\$ 2,132,507
255	\$ 3,477,627	297	\$ 2,099,699
256	\$ 3,444,819	298	\$ 2,066,891
257	\$ 3,412,011	299	\$ 2,034,083
258	\$ 3,379,203	300	\$ 2,001,276
259	\$ 3,346,395	301	\$ 1,968,468
260	\$ 3,313,588	302	\$ 1,935,660
261	\$ 3,280,780	303	\$ 1,902,852
262	\$ 3,247,972	304	\$ 1,870,044
263	\$ 3,215,164	305	\$ 1,837,237
264	\$ 3,182,356	306	\$ 1,804,429
265	\$ 3,149,549	307	\$ 1,771,621
266	\$ 3,116,741	308	\$ 1,738,813
267	\$ 3,083,933	309	\$ 1,706,005
268	\$ 3,051,125	310	\$ 1,673,198
269	\$ 3,018,317	311	\$ 1,640,390
270	\$ 2,985,510	312	\$ 1,607,582
271	\$ 2,952,702	313	\$ 1,574,774
272	\$ 2,919,894	314	\$ 1,541,966
273	\$ 2,887,086	315	\$ 1,509,159
274	\$ 2,854,278	316	\$ 1,476,351
275	\$ 2,821,471	317	\$ 1,443,543
276	\$ 2,788,663	318	\$ 1,410,735
277	\$ 2,755,855	319	\$ 1,377,927
278	\$ 2,723,047	320	\$ 1,345,120
279	\$ 2,690,239	321	\$ 1,312,312
280	\$ 2,657,432	322	\$ 1,279,504
281	\$ 2,624,624	323	\$ 1,246,696
282	\$ 2,591,816	324	\$ 1,213,888
283	\$ 2,559,008	325	\$ 1,181,081
284	\$ 2,526,200	326	\$ 1,148,273
285	\$ 2,493,393	327	\$ 1,115,465
286	\$ 2,460,585	328	\$ 1,082,657
287	\$ 2,427,777	329	\$ 1,049,850
288	\$ 2,394,969	330	\$ 1,017,042
289	\$ 2,362,161	331	\$ 984,234
290	\$ 2,329,354	332	\$ 951,426
291	\$ 2,296,546	333	\$ 918,618
292	\$ 2,263,738	334	\$ 885,811
293	\$ 2,230,930	335	\$ 853,003

EXHIBIT I

Termination Fee Schedule

336	\$	820,195
337	\$	787,387
338	\$	754,579
339	\$	721,772
340	\$	688,964
341	\$	656,156
342	\$	623,348
343	\$	590,540
344	\$	557,733
345	\$	524,925
346	\$	492,117
347	\$	459,309
348	\$	426,501
349	\$	393,694
350	\$	360,886
351	\$	328,078
352	\$	295,270
353	\$	262,462
354	\$	229,655
355	\$	196,847
356	\$	164,039
357	\$	131,231
358	\$	98,423
359	\$	65,616
360	\$	32,808

Board Agenda Item
July 30, 2019

ACTION - 5

Approval of a Plain Language Explanation for the 2019 Bond Referendum for Improvements to Public Schools

ISSUE:

Board approval of an explanatory statement for the school bond referendum planned to be held in conjunction with the November general election.

RECOMMENDATION:

The County Executive recommends that the Board approve the plain language explanation and authorize staff to translate it, post it online, and print sufficient copies to make it available at County absentee voting sites and polling places.

TIMING:

Board action is recommended on July 30, 2019, so that staff can translate the explanation, post it on the County's website as soon as possible, and have it printed and available when absentee voting begins on September 20, 2019.

BACKGROUND:

At its meeting on June 25, 2019, the Board adopted a resolution asking the Fairfax County Circuit Court to order a referendum on November 5, 2019, on the question whether the County should be authorized to issue general obligation bonds for public school improvements. The County Attorney filed the resolution with a Petition asking the Circuit Court to order the election, and the Court is expected to enter the order promptly.

State law requires localities to provide for the preparation and printing of an explanation for each referendum question that involves the issuance of bonds by the locality. The statement must include the ballot question and a neutral explanation of not more than 500 words prepared by the locality's attorney. The Board approved the wording of the ballot question when it adopted the Resolution, and the County Attorney's Petition asked the Circuit Court to order that the ballot question be stated as approved by the Board. This Action Item presents only the explanation portion of the proposed statement for the Board's approval.

These plain language explanatory statements are frequently referred to as "plain English" statements, because State law requires them to be written in "plain English."

Board Agenda Item
July 30, 2019

The law defines “plain English” to mean “written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession.” Besides English, the County translates these statements into Spanish, Vietnamese, and Korean. Section 203 of the federal Voting Rights Act requires political subdivisions designated by the Director of the U.S. Bureau of the Census to make all voting materials available in the language of the designated minority group. The Director of the Census designated Fairfax County in 2011 and in 2016 as a jurisdiction required to provide all voting and information materials in Spanish and Vietnamese, respectively. The Electoral Board has also provided ballots and other election-related materials in Korean since 2017, because the 2015 American Community Service Survey results showed that the number of Korean speakers almost met the federal threshold for designation by the Director of the Census.

FISCAL IMPACT:

Expenses associated with printing and translating the explanation will be paid out of existing appropriations in Fund 20000, Consolidated County and Schools Debt Service Fund.

ENCLOSED DOCUMENTS:

Attachment 1 – Virginia Code § 24.2-687

Attachment 2 – Draft Explanation for 2019 School Bond Referendum

ASSIGNED COUNSEL:

Elizabeth D. Teare, County Attorney

Erin C. Ward, Deputy County Attorney

STAFF:

Joseph M. Mondoro, Chief Financial Officer

Joseph LaHait, Debt Coordinator, Department of Management and Budget

§ 24.2-687. Authorization for distribution of information on referendum elections

A. The governing body of any county, city or town may provide for the preparation and printing of an explanation for each referendum question to be submitted to the voters of the county, city or town to be distributed at the polling places on the day of the referendum election. The governing body may have the explanation published by paid advertisement in a newspaper with general circulation in the county, city or town one or more times preceding the referendum.

The explanation shall contain the ballot question and a statement of not more than 500 words on the proposed question. The explanation shall be presented in plain English, shall be limited to a neutral explanation, and shall not present arguments by either proponents or opponents of the proposal. The attorney for the county, city or town or, if there is no county, city or town attorney, the attorney for the Commonwealth shall prepare the explanation. "Plain English" means written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession.

If the referendum question involves the issuance of bonds by a locality, the locality shall provide for such printed explanation. The explanation shall (i) state the estimated maximum amount of the bonds proposed to be issued, and (ii) state the proposed use of the bond proceeds, and if there is more than one use, state the proposed uses for which more than 10 percent of the total bond proceeds is expected to be used.

B. Nothing in this section shall be construed to limit a county, city or town from disseminating other neutral materials or advertisements concerning issues of public concern that are the subject of a referendum; however, the materials or advertisements shall not advocate the passage or defeat of the referendum question.

C. This section shall not be applicable to statewide referenda.

D. Any failure to comply with the provisions of this section shall not affect the validity of the referendum.

1996, c. 297;2004, cc. 21, 399;2006, c. 302;2011, c. 590.

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

PUBLIC SCHOOL BONDS EXPLANATION

Ballot Question

PUBLIC SCHOOL BONDS

Shall Fairfax County, Virginia, contract a debt, borrow money, and issue capital improvement bonds in the maximum aggregate principal amount of \$360,000,000 for the purposes of providing funds, in addition to funds from school bonds previously authorized, to finance, including reimbursement to the County for temporary financing for, the costs of school improvements, including acquiring, building, expanding and renovating properties, including new sites, new buildings or additions, renovations and improvements to existing buildings, and furnishings and equipment, for the Fairfax County public school system?

Explanation

This referendum asks Fairfax County voters whether the County government should be authorized to contract a debt and issue bonds in the maximum principal amount of \$360,000,000 for a range of planned improvements to the County's public schools. If a majority of voters approves this referendum, then the County would be allowed to issue bonds to fund school facilities as described in the ballot question. Current plans for the use of the proceeds of bonds that may be authorized by this referendum are set forth below. These specific plans may be altered, but in any case the bonds can only be issued for purposes described in the ballot question.

Virginia law permits the County government to borrow money to buy land and construct projects by issuing general obligation bonds, which are sold to investors and repaid over time with County revenues. Money received from the sale of bonds is used as a source of funding for many County facilities. Bond financing permits the costs of those County facilities to be repaid over a period of years. However, before the County may incur a general obligation debt, the County voters must authorize the County to borrow those funds.

The County currently plans to use the proceeds of bonds authorized by this bond referendum to fund the construction of new schools, planning and designing of projects, supervision of construction, adding onto and renovating existing school facilities, and making other physical repairs and improvements. More specifically, current plans for the proceeds of bonds that may be authorized by this referendum are to:

- Plan and/or construct two new elementary schools at locations to be determined,
- Relocate one modular building,
- Construct capacity additions at three existing high schools, and
- Plan and/or construct renovations of ten elementary schools and two middle schools.

These projects are intended to address needs created by increases in student enrollment, as well as to improve the learning environment within those schools that have become outdated, both technologically and instructionally. The School Board is committed to reducing the school renovation cycle County-wide from an average of 37 years to 25 years or less.

These projects will increase the capacity of school buildings County-wide by more than 4,400 students in the aggregate and are expected to reduce the number of temporary or portable classrooms by approximately one hundred. The renovation projects will upgrade the life safety, environmental, electrical, security, and telecommunications systems of each building. The improvements will bring aging school facilities into full compliance with the Americans with Disabilities Act and recently updated federal and state storm water quality and quantity requirements. The improvements will provide updated site features including, where practicable, additional parking, sport field upgrades, additional site lighting and improved traffic patterns. These upgrades also will increase energy efficiency and improve the overall environmental sustainability of school facilities. The School Board is committed to protecting and enhancing the community's investment in its schools, which have an enrollment of more than 185,000 students.

**This explanation was prepared, printed, and made available at
election polling places in accordance with Virginia Code § 24.2-687**

ACTION - 6

Authorization for the Fairfax County Redevelopment and Housing Authority (FCRHA) to Make a Housing Blueprint Loan in the Amount up to \$3,000,000 to The Residences at North Hill Bond 94, LLC to Finance the Development of The Residences at North Hill (Mount Vernon District)

ISSUE:

The Board of Supervisors is requested to authorize the Fairfax County Redevelopment and Housing Authority (FCRHA) to make a Housing Blueprint Loan in the amount of up to \$3,000,000 for The Residences at North Hill Bond 94, LLC to finance the development of 94 units of affordable multifamily housing in The Residences at North Hill in Alexandria, Virginia (Mount Vernon District).

RECOMMENDATION:

The County Executive recommends that the Board authorize the FCRHA to make the proposed loan in the amount up to \$3,000,000 to The Residences at North Hill Bond 94, LLC for the development of The Residences at North Hill.

TIMING:

Immediate. In 2018, CHPPENN I, LLC (CHPPENN) – the parent entity of The Residences at North Hill Bond 94, LLC (Borrower) – received two awards for competitive “nine percent” low-income housing tax credits (LIHTC) from the Virginia Housing Development Authority (VHDA). LIHTC guidelines require that CHPPENN and Borrower place at least two of the new buildings in service by December 31, 2021. To meet that deadline, CHPPENN and Borrower need to close on the transaction and start construction by on or about November 30, 2019.

BACKGROUND:

Blueprint Procurement:

In July 2017, The Department of Housing and Community Development (HCD) issued a Notice of Funding Availability (NOFA) for the Housing Blueprint Funds of \$12,945,923. In response to the NOFA, HCD received three proposals with financing requests totaling \$15,355,674. In February 2018, the FCRHA and the Board of Supervisors (BOS) approved \$7,400,000 for the Arden project by Wesley Development Housing Corporation (WDHC) and \$2,545,923 for the Parkwood Apartments by MRK Partners.

The remaining \$3,000,000 was reserved for The Residences at North Hill (Project) to be developed by CHPPENN.

Ownership:

The ownership structure is comprised of single purpose entities formed and controlled by CHPPENN. Refer to Attachment 3.

Applicant:

CHPPENN is a joint venture between Community Housing Partners, Inc. and the Pennrose Company. CHPPENN's application for Housing Blueprint Funds was selected by the HCD Selection Advisory Committee.

Community Housing Partners, Inc. (CHP) is a 501(c)(3) community development corporation serving housing needs in the Mid-Atlantic and Southeastern United States since 1984, with a mission to create affordable and sustainable homes and communities. CHP's portfolio consists of 110 rental communities totaling 6,000 multifamily units serving families, seniors, persons with special needs and approximately 225 rehabilitated and newly constructed single-family homes. According to the audited financials for 2018, CHP's total assets are over \$487 million, with a cash balance of \$16 million and a net worth of \$216 million.

Pennrose is a multifamily development company with expertise in multifamily mixed income communities with more than 40 years of experience. Pennrose has developed over 14,000 rental housing units, with 4,500 rental housing units in the past six years. Pennrose's portfolio includes more than 220 distinct developments in 12 states and the District of Columbia. Pennrose has also developed a niche for large scale multi-phase urban revitalization projects with 25 HOPE VI endeavors totaling 4,400 units and more than 20 mixed-finance non-HOPE VI public housing developments. As a for-profit entity, Pennrose is not obligated to obtain audited financials. HCD has reviewed the financial statements and Pennrose has a considerable asset and cash position with a substantial net worth.

Site:

The North Hill property (Property) consists of approximately 35 unimproved acres and is part of a larger 49-acre parcel that the FCRHA acquired in 1981 through condemnation using Community Development Block Grant (CDBG) funds. In 1991, approximately 14 of the 49 acres were redeveloped into the present-day manufactured home community of Woodley Hills Estates, which consists of 115 mobile home pad sites. The remaining 35 acres are currently unimproved woodlands. The topography of the site is challenging, as there is a significant change in grade throughout the Property. The Property is located directly adjacent to Richmond Highway (a/k/a Route 1) in a mixed-use neighborhood that consists of single-family homes, multifamily properties,

commercial uses, and institutional uses. The site is also within close proximity to amenities, including retailers, grocery stores, schools, and public transportation, all within a mile from the site. Please see Attachment 4.

Project - General:

In 2015, the FCRHA entered into an Interim Agreement with CHPPENN for redevelopment of the North Hill site under the auspices of The Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA).

The 279 multifamily units will be a mix of one-, two-, and three-bedroom units and will be spread across five four-story buildings, each with elevator service. One building, containing 63 of the 279 units and operating as a standalone project, will be reserved specifically for senior households.

Project - Scope:

- **All Buildings**
 - Garage parking with 198 spaces and partially underground
 - Indoor Bicycle Storage
 - Exercise Room/Fitness Center
 - Energy Efficiency with EPA Energy Star appliances and windows
 - Wired for high-speed internet
 - Secured entries
 - Cooking surfaces with fire prevention or fire suppression features
 - Public recreational plaza with playground (one that serves apartments, townhomes and general public) located on site
 - Community Rooms/kitchens
 - In-Unit washer and dryer hook-ups

- Construction will meet EarthCraft standards and will also include off-site improvements of existing roadways, bike lanes, sidewalks, roads widening and extensions, and landscaping.

- CHPPENN will arrange for the provision of a variety of support services for the residents, including on-site job training opportunities and Innovation Incubator space for assisting residents with starting their own companies and matching residents with other employers.

Project – Ground Lease Structure:

CHPPENN's subsidiaries will operate the five buildings through four separate ground leases from the FCRHA. One ground lease will include two buildings; the others will contain one building each.

Each ground lease will be held by a separate CHPPENN subsidiary and will have its own equity and debt, which allows the financing structure to be compliant with the FCRHA's Funding Guidelines, which do not allow cross-collateralization and cross-default. The Housing Blueprint Loan will be made to one of these ground lease tenants and secured by a deed of trust against that tenant's portion of the overall project.

Potential Benefits:

- a. The addition of 279 units of affordable multifamily housing to the Fairfax County affordable housing stock. The construction will meet EarthCraft and efficiency standards.
- b. The multifamily units will remain affordable for the duration of the 99-year ground lease.
- c. The project provides 31 units at 30 percent Area Median Income, 74 units at 50 percent AMI and 174 units at 60 percent AMI.
- d. The project will have 30 Americans with Disabilities Act (ADA) compliant units in the overall development, with 10 (ADA) compliant units in The Residences at North Hill – Bond 94 transaction.
- e. The project provides 53 three-bedroom units to assist larger families with affordable housing options.
- f. The FCRHA will have the Right of First Refusal.

Project – Assessed and Appraised Value:

The assessed value of the entire site, including the Woodley Hills Estates mobile home park, is \$32,762,620. The land is valued at \$29,126,290, and the improvements are valued at \$3,654,310.

HCD engaged an independent appraiser from Robert Paul Jones Company, LLC to ensure that the value of the completed affordable development fully collateralizes the FCRHA Housing Blueprint Loan. According to the appraisal dated June 12, 2019, the prospective value based on restricted rents is \$20,650,000 and the 'forced liquidation decontrol value' is \$27,000,000.

~~The Department of Tax Administration is in the process of reviewing the appraisal for approved values as well as the methodology used to determine those values.~~ **The Fairfax County Department of Tax Administration has reviewed the appraisal and found it to be thoroughly conducted and the four valuation conclusions to be**

reasonable. Project – Affordability see Attachment 1. Project – Financing Plan and Terms of Housing Blueprint Loan see Attachment 2.

FISCAL IMPACT:

Funding of up to \$3,000,000 will be allocated from funds identified as part of the Fiscal Year 2018 Housing Blueprint Project in Fund 300-C30300, Penny for Affordable Housing Fund, project 2H38-180-000 with a project balance of \$8,000,000 as of June 30, 2019.

The FCRHA will receive an ongoing monitoring fee of \$5,000, escalating at three percent annually. All of the fees will go into Fund 810-C81000, FCRHA General Operating Fund at the time of closing in late 2019.

ENCLOSED DOCUMENTS:

Attachment 1 – Project – Affordability

Attachment 2 – Project – Financing Plan and Terms of Housing Blueprint Loan

Attachment 3 – Owner Structure

Attachment 4 – Vicinity Map

STAFF:

Tisha M. Deeghan, Deputy County Executive

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

Hossein Malayeri, Deputy Director, Real Estate, Finance and Development, HCD

Aseem K. Nigam, Director, Real Estate Finance and Grants Management, (REFGM), HCD

Jyotsna Sharma, Associate Director, REFGM, HCD

ASSIGNED COUNSEL:

Cynthia A. Bailey, Deputy County Attorney

Ryan A. Wolf, Assistant County Attorney

Project – Affordability:

The following tables represent the proposed rents for The Residences at North Hill for nine percent, The Residences at North Hill for four percent LIHTC and the Senior Residences at North Hill:

The Residences at North Hill – Elderly (Nine Percent LIHTC)

Unit Type	Number of Units	Net Rents	Utility Allowance	Gross Rent	Area Median Income (AMI) Levels (%)
1BR (PBV)	10	\$1,528	\$67	\$1,595	30
1BR	7	\$1,020	\$67	\$1,087	50
1BR (PBV)	7	\$1,528	\$67	\$1,595	50
1BR	30	\$1,235	\$67	\$1,302	60
2BR (PBV)	8	\$1,749	\$83	\$1,832	30
2BR	1	\$1,475	\$83	\$1,558	60
Total	63	\$85,633	\$4,365	\$89,998	

The Residences at North Hill – Family (Nine Percent LIHTC)

Unit Type	Number of Units	Net Rents	Utility Allowance	Gross Rent	Area Median Income (AMI) Levels (%)
1BR (PBV)	2	\$1,532	\$67	\$1,599	30
1BR	2	\$1,020	\$67	\$1,087	50
1BR	11	\$1,235	\$67	\$1,302	60
2BR (PBV)	4	\$1,749	\$83	\$1,832	30
2BR	18	\$1,215	\$83	\$1,298	50
2BR	17	\$1,475	\$83	\$1,558	60
3BR (PBV)	2	\$2,293	\$101	\$2,394	30
3BR	10	\$1,400	\$101	\$1,501	50
3BR	9	\$1,700	\$101	\$1,801	60
Total	75	\$106,516	\$6,363	\$112,879	

The Residences at North Hill – Bond 47 (Four Percent LIHTC)

Unit Type	Number of Units	Net Rents	Utility Allowance	Gross Rent	Area Median Income (AMI) Levels (%)
2BR (PBV)	3	\$1,749	\$83	\$1,832	50
2BR	29	\$1,475	\$83	\$1,558	60
3BR (PBV)	3	\$2,293	\$101	\$2,394	30
3BR (PBV)	7	\$2,293	\$101	\$2,394	50
3BR	5	\$1,700	\$101	\$1,801	60
Total	47	\$79,452	\$4,171	\$83,623	

The Residences at North Hill – Bond 94 (Four Percent LIHTC)- BLUEPRINT LOAN

Unit Type	Number of Units	Net Rents	Utility Allowance	Gross Rent	Area Median Income (AMI) Levels (%)
1BR	23	\$1,235	\$67	\$1,302	60
2BR (PBV)	1	\$1,749	\$83	\$1,832	30
2BR (PBV)	4	\$1,749	\$83	\$1,832	50
2BR	49	\$1,475	\$83	\$1,558	60
3BR (PBV)	1	\$2,293	\$101	\$2,394	30
3BR (PBV)	16	\$2,293	\$101	\$2,394	50
Total	94	\$148,406	\$7,740	\$156,146	

Of the 279 total units across the entire project, 31 units will be set-aside for households with annual incomes at 30 percent of the Area Median Income (AMI) or less, 74 units will be set-aside for households with an income of 50 percent AMI or less, and the remaining 174 units will be set-aside for households below 60 percent AMI. Utilities will be individually metered, and the tenant will be responsible for electricity. The utility allowance will include water, sewer, and trash removal.

All of the 31 units at 30 percent of AMI and 37 units at 50 percent of AMI will receive project-based vouchers (PBV) from the FCRHA. Tenants with PBVs pay 30 percent of their income as rents, with the PBV program paying the remainder. As a part of the overall 68 PBVs, 25 of the units in the senior project will have project-based subsidy.

Project - Financing Plan**The Residences at North Hill – Elderly (Nine Percent LIHTC)**

Sources of Funds	Principal
VHDA - Mortgage	\$8,100,000
Fairfax County CDBG Program Income	3,031,857
Donated Land	3,224,879
9% LIHTC Equity	9,301,545
GP Capital Contribution	100
GP Deferred Developer Fee	1,168,911
Total Sources	\$24,827,292
Summarized Uses	Amount
Acquisition Costs	\$3,366,891
Construction Costs	14,111,285
Construction Costs Contingency	853,954
Architecture and Engineering	2,045,784
Financing and Legal Costs	
Financing Cost	1,788,671
Tax Credit and Syndication Costs	132,307
FF&E	68,871
Real Estate Taxes, Utilities, Insurance	206,749
Reserves	557,207
Developer's Fee	1,695,573
Total Uses	\$ 24,827,292

The Residences at North Hill – Family (Nine Percent LIHTC)

Sources of Funds	Principal
VHDA - Mortgage	\$10,100,000
Federal Home Loan Bank AHP	500,000
Fairfax County CDBG Program Income	1,692,774
Donated Land	3,839,142
9% LIHTC Equity	17,050,945
GP Capital Contribution	100
GP Deferred Developer Fee	941,318
Total Sources	\$34,124,279
Summarized Uses	Amount
Acquisition Costs	\$4,008,203
Construction Costs	20,012,711
Construction Costs Contingency	1,289,963
Architecture and Engineering	3,277,094
Financing and Legal Costs	
Financing Cost	1,875,348
Tax Credit and Syndication Costs	201,031
FF&E	86,989
Real Estate Taxes, Utilities, Insurance	247,894
Reserves	749,763
Developer's Fee	2,375,283
Total Uses	\$34,124,279

The Residences at North Hill – Bond 47 (Four Percent LIHTC)

Sources of Funds	Principal
VHDA - Mortgage	\$8,050,000
State DHCD HOME & Trust Fund	1,700,000
Fairfax County CDBG Program Income	3,402,630
Donated Land	2,405,862
4% LIHTC Equity	5,324,510
GP Capital Contribution	100
GP Deferred Developer Fee	1,069,804
Total Sources	\$21,952,906
Summarized Uses	Amount
Acquisition Costs	\$2,511,807
Construction Costs	12,500,289
Construction Costs Contingency	769,623
Architecture and Engineering	1,686,029
Financing and Legal Costs	
Financing Cost	1,563,574
Tax Credit and Syndication Costs	96,519
FF&E	80,714
Real Estate Taxes, Utilities, Insurance	165,782
Reserves	549,797
Developer's Fee	2,028,772
Total Uses	\$21,952,906

The Residences at North Hill – Bond 94 (Four Percent LIHTC)- BLUEPRINT LOAN

Sources of Funds	Principal
VHDA – Tax Exempt Bonds	\$14,400,000
State DHCD HOME Fund	1,300,000
State & National Housing Trust Fund (DHCD)	700,000
Fairfax County Blueprint Funds	3,000,000
Fairfax County CDBG	600,000
Fairfax County CDBG Program Income	3,822,739
Donated Land	4,811,724
4% LIHTC Equity	9,854,127
GP Capital Contribution	100
GP Deferred Developer Fee	2,079,145
Total Sources	\$40,567,835
Summarized Uses	Amount
Acquisition Costs	\$5,023,614
Construction Costs	23,353,154
Construction Costs Contingency	1,400,190
Architecture and Engineering	3,152,806
Financing and Legal Costs	
Financing Cost	2,451,413
Tax Credit and Syndication Costs	176,215
FF&E	161,426
Real Estate Taxes, Utilities, Insurance	309,782
Reserves	929,114
Developer's Fee	3,610,121
Total Uses	\$40,567,835

For The Residences at North Hill – Bond 94, four percent LIHTC transaction, CHPPENN will apply for tax exempt bonds from VHDA at an estimated interest rate of 3.63 percent, 35-year term, debt coverage ratio of 1.15, and a 35-year amortization. The Housing Blueprint Loan of up to \$3,000,000 will take the second-lien position and will be disbursed after the construction is complete. The State HOME and Trust Fund will provide \$2,000,000 in total. Both of these funds may take the third-lien position, or may take separate lien positions subordinate to the Housing Blueprint Loan's second-lien position. The three percent must-pay interest only payment on the State HOME and Trust fund will be paid before any cashflow payments are made on the Housing Blueprint Loan.

The developer fee of \$3,610,121 is within the range allowed by VHDA. The deferred developer fee may be increased in order to balance the sources and uses, depending on final interest rates on the first mortgage and tax-exempt bonds, and tax credit price from the equity investor.

The FCRHA also intends to provide (subject to approval by separate action) funding of \$4,122,739 from a combination of proceeds of the townhome land buy and other already-appropriated CDBG funds. This funding will support infrastructure work such as earth work, erosion and sediment control, utility installation, road improvements, stormwater management, site improvements, removal of marine clay soils, and building of retaining walls, as well as certain predevelopment work. These funds will be disbursed to the developer on a reimbursement basis as the developer incurs the costs.

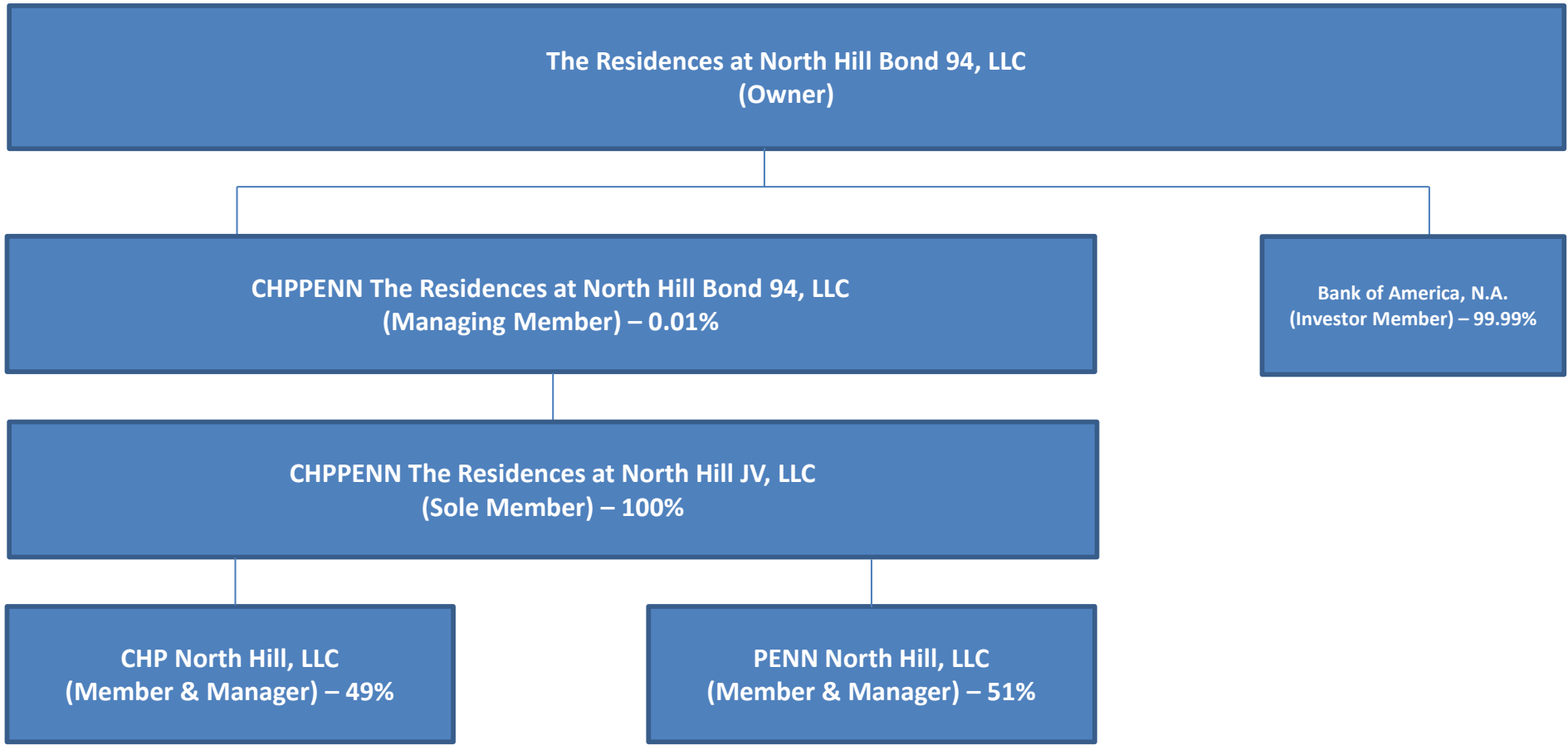
Terms of Housing Blueprint Loans

CHPPENN has requested up to \$3 million for the Project and would like to specifically allocate the Blueprint funds to one of the "four percent LIHTC" ground leases. The loan will be secured by a subordinate, second-lien-position lien on this leasehold. The interest rate would be two percent simple interest per year, and the funds would be disbursed (and interest would start accruing) at completion of construction.

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

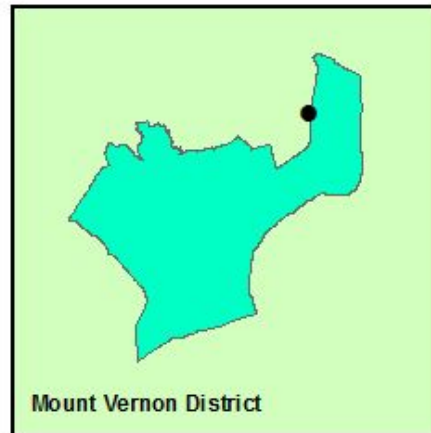
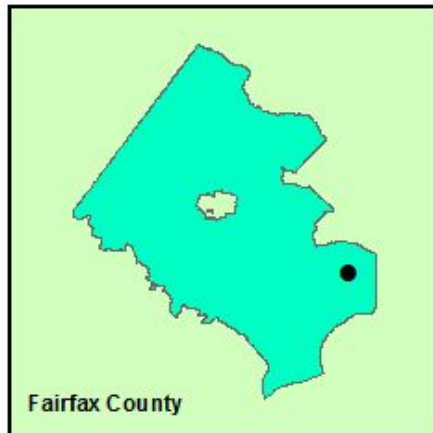
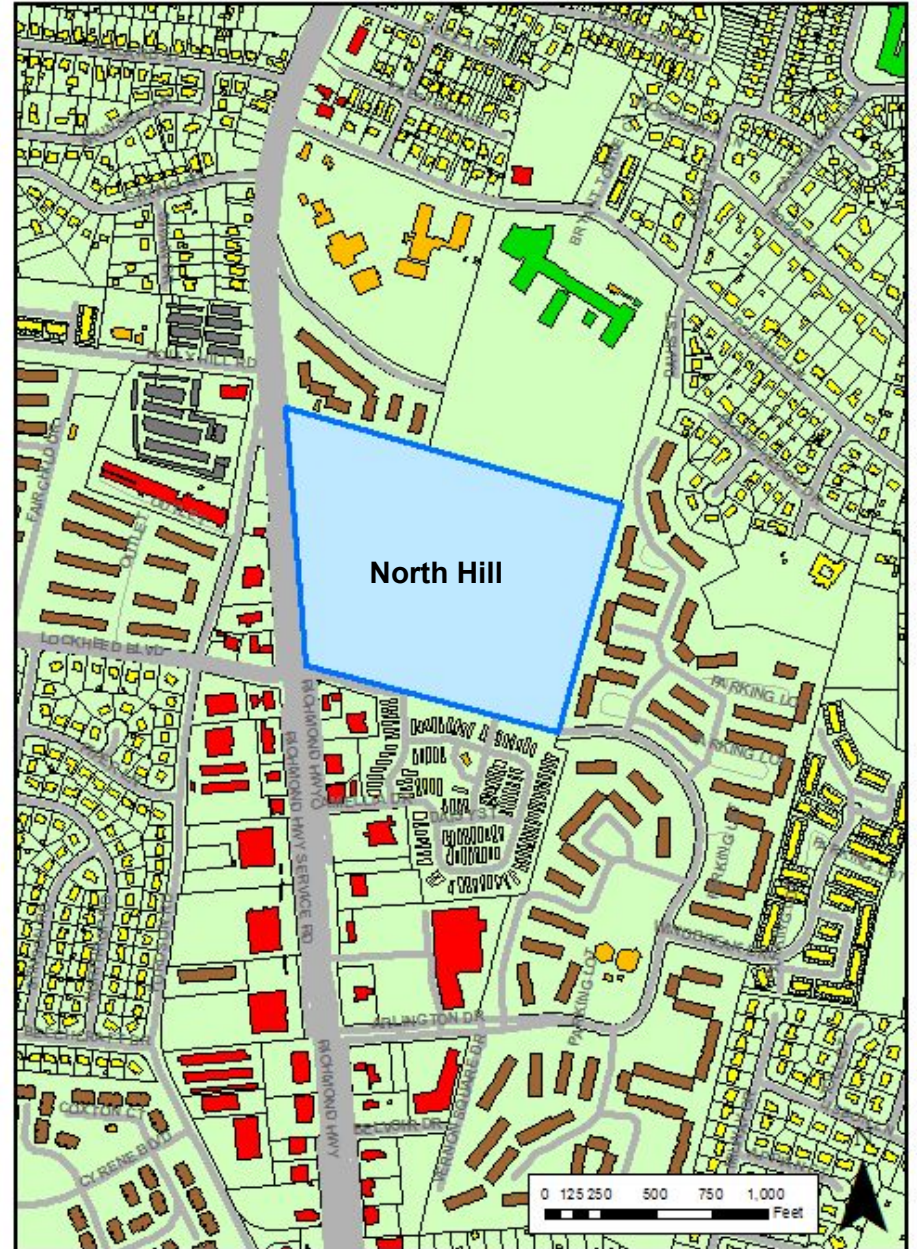
The payment of all principal and interest will be deferred and simple interest will accrue for 30 years or such other term as is coterminous with the first mortgages. The entire indebtedness will become due and payable upon (i) the transfer of the Property, unless approved in advance by the FCRHA, (ii) refinancing, unless approved in advance by the FCRHA, or (iii) failure to comply with the requirement of Housing Blueprint Loans and/or

first mortgages. The Housing Blueprint Loans will be “cash flow” loans, which means that principal and interest payments are deferred unless there is sufficient cash flow, in which case cash flow is applied first to the accrued interest and then to the principal. At the end of the term of 30 years or such other term as is coterminous with the first mortgage loans, the outstanding principal balance along with any accrued interest shall become due and payable. The annual loan payments shall be payable only from 50 percent of the cash flow remaining after payment of the deferred developer fee in full. Refinancing may occur at the discretion of the FCRHA and as allowed by FCRHA policies. In the event that the Housing Blueprint Loans are paid off before maturity of the loans, the project owner shall maintain the affordability period according to the Housing Blueprint goals, for a minimum term of 30 years or for a term coterminous with the first mortgages, whichever is longer.



North Hill

7201 Richmond Highway, Alexandria, VA 22306



Board Agenda Item
July 30, 2019

ACTION - 7

Authorization to Execute a Project Agreement between the Department of Rail and Public Transportation (DRPT) and Fairfax County to Provide Funding for the Operating Costs of Bus Service to Mitigate Impacts Resulting from the Washington Metropolitan Area Transit Authority (WMATA) Shutdown Along the Metrorail System's Blue and Yellow Lines South of the Ronald Reagan National Airport Metrorail Station (Lee, Mason, Mount Vernon and Springfield Districts)

ISSUE:

Board approval is requested for:

1. A Project Agreement between DRPT and the County; and
2. Authorization for the Director of the Department of Transportation to execute the Project Agreement.

The Project Agreement will reimburse a portion of the County's operating costs incurred as a result of providing supplemental bus service to help mitigate the impacts from WMATA's shutdown of stations and service along the Metrorail system's Blue and Yellow lines south of the Ronald Reagan National Airport Station between May 25, 2019, and September 8, 2019.

RECOMMENDATION:

The County Executive recommends that the Board approve the attached Project Agreement with DRPT in substantially the form of Attachment 1 and authorize the Director of the Department of Transportation to execute the Agreement on behalf of Fairfax County.

TIMING:

Board action is requested on July 30, 2019, so DRPT can reimburse the County for expenses associated with this project before the Project Expiration Date of December 31, 2019.

BACKGROUND:

On May 7, 2018, WMATA announced the temporary closure of all Blue and Yellow line Metrorail stations south of Reagan National Airport during the Summer 2019. This temporary closure is part of a large construction project to rebuild 20 outdoor station platforms over the next three years. The Summer 2019 shutdown affects six stations: Braddock Road, King Street, Eisenhower Avenue, Huntington, Van Dorn Street and Franconia-Springfield. The total project to rebuild all 20 stations is estimated to cost

Board Agenda Item
July 30, 2019

between \$300 million and \$400 million and is expected to significantly improve Blue and Yellow lines in these areas.

To mitigate the impact of the shutdown on Fairfax County residents, the Fairfax Connector is providing more frequent bus service to existing park-and-ride facilities in the Springfield area. Specifically, the Fairfax Connector is:

- Adding morning and afternoon trips on Fairfax Connector express Routes 393 and 394, which will enhance accessibility from the Springfield area to the Pentagon Metrorail Station to provide ten-minute headways during peak periods from Saratoga Park-and-Ride Lot, rather than the usual 20 minute headway. This is reducing the passenger wait time and increasing bus capacity.
- Providing one strategic bus that will be stationed at Huntington during peak hours. The strategic bus allows Fairfax Connector operations to address variables, like traffic delays, by replacing a delayed bus with the strategic bus.

FISCAL IMPACT:

Funding for the WMATA shutdown related service was included in Fund 40000 – County Transit Systems. The estimated cost of these services is \$289,000. By signing this agreement, the County will be reimbursed \$231,200 for operating additional service during WMATA shutdown. The net cost to Fairfax County is \$57,800.

ENCLOSED DOCUMENTS:

Attachment 1 – Project Agreement for Grant # 71319-09: Operating Costs of Bus Service to Mitigate the Impact Resulting from the Washington Metropolitan Area Transit Authority (“WMATA”) Shutdown Along the Metrorail System’s Blue and Yellow Lines South of the Ronald Reagan National Airport Metrorail Station between May 25, 2019, to September 8, 2019.

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Dwayne Pelfrey, Chief, Transit Services Division, FCDOT
Michael Felschow, Planning Section Chief, Transit Services Division, FCDOT
Noelle Dominguez, FCDOT, Chief Coordination Section, FCDOT
Malcolm Watson, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Robert M. Falconi, Assistant County Attorney

**Project Agreement for Use of
Commonwealth Transportation Funds
Fiscal Year 2019
Six Year Improvement Program Approved Project
Grant Number 71319-09**

This Project Agreement (“Agreement”), effective March 21, 2019, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding to provide operating costs of bus service to supplement the Grantee’s normal service level and community outreach to mitigate any impacts resulting from the Washington Metropolitan Area Transit Authority (“WMATA”) shutdown of stations and service along the Metrorail system’s Blue and Yellow Lines south of the Ronald Reagan National Airport Metrorail Station starting May 25, 2019 (“Project”).

WHEREAS, WMATA plans to reconstruct certain Metrorail station platforms along the Blue and Yellow Lines south of the Ronald Reagan National Airport Station (the “Platform Improvement Program”); and

WHEREAS, the Platform Improvement Program necessitates the full closure of all six Metrorail stations south of the Ronald Reagan National Airport Station on the Blue and Yellow Lines, and related suspension of service from May 25 to September 8, 2019 (the “Metrorail Shutdown”); and

WHEREAS, on March 21, 2019, the Commonwealth Transportation Board (“CTB”) approved a series of transportation mitigation strategies to be implemented in response to the Metrorail Shutdown, including the Project which is intended to provide additional bus service and community outreach about alternative transit options during the Metrorail Shutdown; and

WHEREAS, on March 21, 2019, the CTB allocated funding for the Project and added the Project to the Fiscal Year 2019 Six Year Improvement Program; and

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

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

ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET

1. Under the terms of this Agreement, the Grantee shall:
 - a. Provide supplemental bus service through the Fairfax Connector starting May 25, 2019. Such supplemental service shall be above and beyond the Grantee’s normal service level in order to mitigate any impacts resulting from the Platform Improvement Program and resulting Metrorail Shutdown. The Grantee shall provide supplemental bus service as follows:
 - i. Additional trips on existing Fairfax Connector routes.

- ii. Temporary changes/additions to Fairfax Connector services and/or temporary shuttle services at Huntington Metrorail Station as may be needed to mitigate effects of construction.
 - b. Provide outreach to inform the community of alternative transportation options using the following strategies:
 - i. Vanpool and carpool promotion and incentives.
 - ii. Promotion of underutilized commuter parking lots with available transit service.
 - iii. Promotion of Express Lanes and Smart Benefits.
 - iv. Employer outreach activities.
 - v. Public outreach and education activities.
 - vi. Marketing, advertising and promotion of alternative local mitigation strategies and Fairfax Connector services.
- 2. The Department agrees to provide funding as detailed below:
 - a. State grant funding in the amount of \$231,200 for the Project approved for the Fiscal Year 2019 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
- 3. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

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

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

This space intentionally left blank

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

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Director

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

Appendix 1

Grantee: Fairfax County

Project: Bus Service to Supplement the Grantee's Normal Service Level and Community Outreach to Mitigate Any Impacts Resulting from the WMATA Shutdown of Stations and Service Along the Metrorail System's Blue and Yellow Lines South of the Ronald Reagan National Airport Metrorail Station Starting May 25, 2019

State Assistance Project Agreement

Project Number: 71319-09

Project Start Date: March 21, 2019

Project Expiration Date: December 31, 2019

Fund Code		Item Amount
477	Grant Amount (State share of Project cost - 80%)	\$231,200
1400	Local expense (share of Project cost - 20%)	\$ 57,800
	Total Project Expense	\$289,000

In no event shall this grant exceed \$231,200.

Board Agenda Item
July 30, 2019

ACTION - 8

Endorsement of Design Plans for the Richmond Highway Corridor Improvements Project from Jeff Todd Way to Sherwood Hall Lane (Lee and Mount Vernon Districts)

ISSUE:

Board endorsement of the Virginia Department of Transportation (VDOT) Design Public Hearing plans for the 3.1-mile Richmond Highway Corridor Improvements Project between Jeff Todd Way/Mount Vernon Memorial Highway and Sherwood Hall Lane. The purpose of the project is to increase capacity, safety, and mobility for all users. Improvements include widening Richmond Highway from four to six lanes; reserving the median for the future Bus Rapid Transit (BRT) system; replacing structures over Dogue Creek, Little Hunting Creek, and the North Fork of Dogue Creek; intersection improvements; sidewalks; and two-way cycle tracks on both sides of the road.

RECOMMENDATION:

The County Executive recommends that the Board endorse the design plans for the Richmond Highway Corridor Improvements project administered by VDOT as generally presented at the March 26, 2019, Design Public Hearing and authorize the Director of FCDOT to transmit the Board's endorsement to VDOT (Attachment I).

TIMING:

The Board should take action on this matter on July 30, 2019, to allow VDOT to proceed with final design plans and enter the Right-of-Way (ROW) phase in late 2019 to keep the project on schedule.

BACKGROUND:

In 1994, the Virginia General Assembly directed VDOT to perform a centerline design study of the 27-mile Route 1 corridor between the Stafford County line and the Capital Beltway. There was a continuation of the Centerline Study in 1996 and 1998. The study divided the corridor into three segments: Project A-Stafford County Line to Route 123; Project B-Route 123 to Armistead Road; and Project C-Belvoir Woods Parkway to the Capital Beltway. Project C encompasses the limits of the Richmond Highway Corridor Improvements project between Jeff Todd Way and Sherwood Hall Lane. While the Commonwealth Transportation Board selected centerline locations for Project A in 2004 and Project B in 2006, the centerline location for Project C remained unresolved. By 2009, the Fairfax County Comprehensive Plan was amended to recommend six lanes on the northern portion of Project C along Richmond Highway between Mount Vernon Memorial Highway/Jeff Todd Way and the Capital Beltway without specifying the

centerline location.

In 2013 and 2014, the Department of Rail and Public Transportation (DRPT) conducted a multimodal study of the 16-mile Richmond Highway corridor in Fairfax County. Several alternatives were studied included curb-running BRT, median-running BRT, light rail transit, and a hybrid median-running BRT with a Metrorail extension between Huntington Metrorail Station to Hybla Valley. The DRPT published the *Route 1 Multimodal Alternatives* study in 2015 and recommended pursuing median-running BRT in the near term with a Metrorail extension from Huntington to Hybla Valley in the long term. The Board endorsed this recommendation in May 2015.

Subsequently, multiple County departments implemented the recommendations of the *Route 1 Multimodal Alternatives* study. Fairfax County commenced the Embark Comprehensive Plan Amendment (PA 2015-IV-MV1) to assess and refine the recommendations in the DRPT study between Huntington Metrorail Station and Fort Belvoir, which included a consistent six lane section of Richmond Highway. The Embark Comprehensive Plan covers the land use densities and mix for the areas within one-half mile of radius of the proposed BRT stations, corridor wide transportation systems, urban design, public facilities, and other elements supportive of BRT.

The widening of this section of Richmond Highway from four to six lanes is included in Fairfax County's Comprehensive Plan 2018 Edition (as amended) for Transportation. The Board of Supervisors included funding for the project as part of the County's Four-Year Transportation Program, and Transportation Priorities Plan (collectively FY2013-FY2020). This project has long been a part of the Metropolitan Washington Council of Governments (the Region's Metropolitan Planning Organization) Constrained Long Range Plan and the Transportation Improvement Plan. In addition to being included in this regional plan, the Northern Virginia Transportation Authority's regional transportation plan (TransAction) also includes the project. In addition, this project is included in VDOT's VTrans2040 Vision Plan and Needs Assessment adopted by the Commonwealth Transportation Board in late 2015.

PUBLIC HEARING COMMENTS:

In accordance with the Code of the Commonwealth of Virginia and policies of the Commonwealth Transportation Board, a Design Public Hearing was held on Tuesday, March 26, 2019.

Approximately 230 members of the public attended the Design Public Hearing. A total of 324 individuals or organizations provided written, emailed, or oral comments during the open comment period which was extended 30 days after the hearing. Of the 324 who provided comments, 289 members of the public provided technical comments seeking to improve the project. There were also 26 comments which were direct statements of support for the project and nine comments in opposition. A copy of the

public hearing brochure is attached (Attachment 2).

Through the public hearing process and County staff review of the project design plans, and recommends that VDOT incorporate the following major design features into the design of the project:

1. Two-Way Cycle Tracks: Within the proposed 178-foot right-of-way width for Richmond Highway, this project should construct two-way cycle tracks on both sides of Richmond Highway. Each cycle track should be eight feet in width to accommodate two-way cyclist traffic.
2. BRT Transitway Bridges:
 - a. Little Hunting Creek: The VDOT project should design and construct the BRT transitway bridge over Little Hunting Creek. There are multiple benefits of having the VDOT project accomplish this task instead of FCDOT, including reducing difficulties relating to constructability (e.g., narrow lateral width) and temporary traffic control (e.g., fewer disruptions to normal traffic patterns). The BRT project will compensate the VDOT project for the cost of BRT transitway bridge.
 - b. North Fork of Dogue Creek: Whether VDOT pursues a continuous culvert design or a bridge design, the VDOT project should design and build the transitway structure at this location.
3. Proposed Traffic Signal – U.S. Post Office Entrance/ Wyngate Manor Court: The County supports the construction of a new traffic signal along Richmond Highway at the U.S. Post Office entrance. A traffic signal at this location will help accommodate safe passage of pedestrians across Richmond Highway, improve accessibility for motorists between the half-mile section of Richmond Highway between Lukens Lane and Frye Road, assist emergency vehicle access, and improve access to the U.S. Post Office.
4. Pedestrian Underpasses:
 - a. Little Hunting Creek: The project should design and construct a pedestrian underpass underneath Richmond Highway at the Little Hunting Creek bridge between north Buckman Road and Ladson Lane. The pedestrian underpass will offer another option to cross Richmond Highway without waiting for a traffic signal and without conflicts with motorists or buses. VDOT created an online survey to assess public reaction to a pedestrian underpass concept at this location which gathered 381 responses. Approximately 58% of those surveyed indicated they would use a pedestrian underpass at Little Hunting Creek. On June 11, 2019, FCDOT and VDOT staff met with the New Gum Springs Civic Association regarding the pedestrian underpass at Little Hunting Creek.

Board Agenda Item
July 30, 2019

The New Gum Springs Civic Association does not support this underpass.

- b. Dogue Creek: The project should design and construct a pedestrian underpass underneath Richmond Highway at the Dogue Creek bridge between Jeff Todd Way and Sacramento Drive. There is no traffic signal for the half-mile section of Richmond Highway between Jeff Todd Way and Sacramento Drive. The pedestrian underpass will offer the option of crossing Richmond Highway between these two traffic signals without conflicts with motorists or buses. The VDOT online survey also gathered 381 responses for this location. Approximately 59% of those surveyed indicated they would use a pedestrian underpass at Dogue Creek.

PROJECT SCHEDULE:

The current schedule is as follows:

- Design Public Hearing – March 26, 2019
- Begin Right-of-Way Acquisition – Winter 2019/2020
- Utility Relocation – Winter 2020/2021
- Begin Construction – Summer 2023
- Complete Construction – 2026

FISCAL IMPACT:

None. Of the \$372 million estimated project cost, the County has allocated over \$177.8 million in funding for the project from regional, state, federal, and local sources.

ENCLOSED DOCUMENTS:

Attachment 1: Letter for transmitting Board Endorsement of Richmond Highway Corridor Improvements Project

Attachment 2: March 26, 2019, Design Public Hearing Brochure

STAFF:

Rachel Flynn, Deputy County Executive

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

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

Michael J. Guarino, Chief, Capital Projects Section (CPS), FCDOT

Vanessa Aguayo, CPS, FCDOT

Ajmal 'AJ' Hamidi, CPS, FCDOT

Andrew G. Beacher, Preliminary Engineering Manager, Virginia Department of Transportation (VDOT)

Dan Reinhard, Project Manager, VDOT



County of Fairfax, Virginia Attachment 1

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

July 31, 2019

Ms. Helen L. Cuervo, P.E.
District Administrator
Northern Virginia District
Virginia Department of Transportation
4975 Alliance Drive
Fairfax, Virginia 22030

Subject: Board Endorsement of the Richmond Highway (Route 1) Corridor Improvements Project with Comments, UPC 107187

Dear Ms. Cuervo:

On July 30, 2019, the Fairfax County Board of Supervisors endorsed the design plans to widen 3.1 miles of Richmond Highway between Jeff Todd Way and Sherwood Hall Lane from four to six lanes, as generally presented at the March 26, 2019, Design Public Hearing. The following design modifications should be included in the Virginia Department of Transportation (VDOT) project design:

1. Two-Way Cycle Tracks: The project should construct two-way cycle tracks on both sides of Richmond Highway. Each two-way cycle track should be eight feet in width within the 178-foot right-of-way designated for this project.
2. Bus Rapid Transit (BRT) Transitway Bridges:
 - a. Little Hunting Creek: The VDOT project should design and construct the BRT transitway bridge over Little Hunting Creek for constructability reasons. The cost of this bridge will be reimbursed by the County's BRT project.
 - b. North Fork of Dogue Creek: Whether VDOT pursues a continuous culvert design or a bridge design, the VDOT project should design and build the transitway structure at this location to save cost.
3. Proposed Traffic Signal at U.S. Post Office Entrance/Wyngate Manor Court: The Board supports the new proposed traffic signal along Richmond Highway at the U.S. Post Office entrance for pedestrian safety, mobility, and emergency vehicle access.
4. Pedestrian Underpasses:
 - a. Little Hunting Creek: The VDOT project should the design and construct a pedestrian underpass underneath the Little Hunting Creek bridge.

Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 22033-2895
Phone: (703) 877-5600 TTY: 711
Fax: (703) 877-5723
www.fairfaxcounty.gov/fcdot



Ms. Helen L. Cuervo, P.E.
July 31, 2019
Page 2 of 2

- b. Dogue Creek: The VDOT project should design and construct a pedestrian underpass underneath the Dogue Creek bridge.

Please call Ajmal 'AJ' Hamidi at (703) 877-5828 or me at (703) 877-5663, if you have any questions or need additional information. Thank you for your assistance with this important project.

Sincerely,

Tom Biesiadny
Director

cc: Board of Supervisors
Bryan J. Hill, County Executive
Rachel Flynn, Deputy County Executive
Andrew G. Beacher, Preliminary Engineering Manager, Virginia Department of Transportation (VDOT)
Dan Reinhard, Project Manager, VDOT
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Ajmal 'AJ' Hamidi, Transportation Planner, Capital Projects Section, FCDOT

Get Involved

VDOT representatives will review and evaluate information received as a result of this meeting. Please fill out the comment sheet provided in this brochure if you have any comments or questions. You may leave the sheet or any other written comments in the comment box, or mail/email your comments.

Comments must be postmarked, emailed or delivered to VDOT by **April 26, 2019**. Mail comments to Mr. Dan Reinhard, P.E. at the address below or email richmondhighway@vdot.virginia.gov.

Project information shared at this meeting will be available at www.virginiadot.org/richmondhighway and at VDOT's Northern Virginia District Office.

The project team continues to meet with homeowner associations and community groups throughout the corridor. If you're interested in having the project team give a briefing to your group, let someone from the project team know tonight or email richmondhighway@vdot.virginia.gov.

Contact Information

Primary Contact: Dan Reinhard, P.E. dan.reinhard@vdot.virginia.gov	Location & Design	4975 Alliance Drive Fairfax, VA 22030	703-259-2599
Anissa Brown anissa.brown@vdot.virginia.gov	Environmental	4975 Alliance Drive Fairfax, VA 22030	703-259-3358
Brian Costello brian.costello@vdot.virginia.gov	Right of Way & Utilities	4975 Alliance Drive Fairfax, VA 22030	703-259-2986
Jennifer McCord jennifer.mccord@vdot.virginia.gov	Communications	4975 Alliance Drive Fairfax, VA 22030	703-259-1779

TTY/TDD Dial 711



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Design Public Hearing

Richmond Highway Corridor Improvements

From Jeff Todd Way to Sherwood Hall Lane

Tuesday, March 26, 2019
6:30 to 8:30 p.m.
Presentation starts at 7 p.m.

Mount Vernon High School
8515 Old Mount Vernon Road
Alexandria, VA 22309

Public Hearing

The Virginia Department of Transportation (VDOT) welcomes you to the design public hearing for the Richmond Highway (Route 1) Corridor Improvements project from Jeff Todd Way to Sherwood Hall Lane in Fairfax County. We look forward to your active participation.

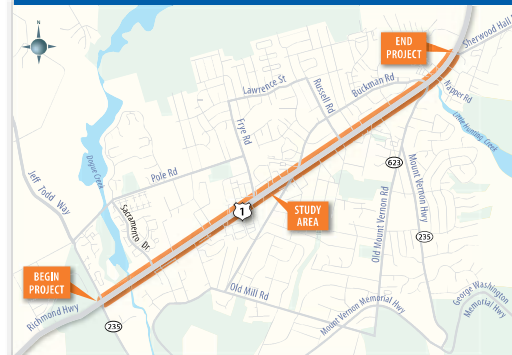
This design public hearing is being held to provide an opportunity for citizens and organizations to comment or give suggestions on the proposed project. VDOT strives to ensure that all members of the community have the opportunity to participate in public discussions on transportation projects and programs affecting them. VDOT and Fairfax County

continue to coordinate on the design of road improvements, the county's Embark initiative and the future Bus Rapid Transit system.

A comment sheet is included in this brochure and your input is encouraged. All comments received will be reviewed by VDOT and the design team. You can email comments to richmondhighway@vdot.virginia.gov.

Two court reporters are present at tonight's meeting to take your comments and the project team is available to discuss your concerns.

Project Overview



Richmond Highway Corridor Improvements project area

- Purpose:** To increase capacity, safety and mobility for all users
- Project Limits:** Richmond Highway from Jeff Todd Way to Sherwood Hall Lane
- Improvements:** Widen about three miles of the road from four to six lanes, including sidewalks and bike paths on both sides of the street

State: 0001-029-205, P101, R201, C501, B618, B618, D603
UPC: 107187, Federal: STP-5A01 (686)

Project Description

This project will improve about three miles of Richmond Highway between Jeff Todd Way and Sherwood Hall Lane. Proposed project improvements include:

- Widening the road from four lanes to six lanes
- Making intersection improvements
- Building separate sidewalks and bike paths on both sides of the road
- Reserving the median width necessary to accommodate Fairfax County's future planned Bus Rapid Transit for dedicated bus-only lanes
- Building three bridges and new stormwater management facilities

These improvements focus on improving safety, decreasing congestion, increasing capacity, and expanding mobility for all users, all in conformance with Fairfax County's Comprehensive Plan. The preferred design includes road widening and several major intersection improvements, including:

- Adding left, through and right turns at each signalized intersection
- Accommodating multiple signal phases to improve traffic flow
- Adding bicycle and pedestrian crossing signals to improve safety

Sacramento Drive and Cooper Road

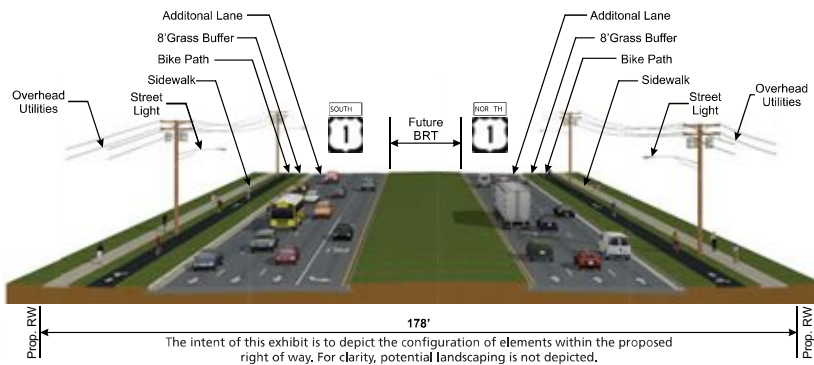
- Realigning Sacramento Drive to meet the existing Cooper Road intersection, consistent with the Fairfax County Comprehensive Plan
- Adding second left-turn lane along both Sacramento Drive and Cooper Road
- Adding pedestrian crosswalks and signals on all sides of the intersection

Buckman Road and Mount Vernon Highway

- Realigning the Buckman Road and Mount Vernon Highway intersection to provide dual left-turn lanes and a right-turn lane along southbound Richmond Highway
- Adding a third lane along Buckman Road to create two left-turn lanes and a separate through right-turn lane
- Adding a second right-turn lane along Mount Vernon Highway
- Adding pedestrian crosswalks and signals across the east, south and west legs of the intersection

The meeting tonight will provide additional information on the preferred design. Representatives from Fairfax County are also present to discuss other planned improvements and projects along the corridor.

Typical Section



Estimated Project Cost

Preliminary Engineering:	\$16 million
Right of Way:	\$160 million
Construction:	\$196 million
Total Cost:	\$372 million

This project is currently funded through the right of way phase and includes Regional Surface Transportation Program, Revenue Sharing and Northern Virginia Transportation Authority funds. All project costs are estimates and subject to change as the project design is finalized.

Civil Rights

VDOT ensures nondiscrimination and equal employment in all programs and activities in accordance with Title VI and Title VII of the Civil Rights Act of 1964. If you need more information or special assistance for persons with disabilities or limited English proficiency, contact Dan Reinhard, P.E. at 703-259-2599 or TTY/TDD 711.

Right of Way

As design of this project is finalized, additional easements may be required beyond the proposed right of way shown on the public hearing plans. The property owners will be informed of the exact location of the easements during the right of way acquisition process and prior to construction. Information about right of way purchase is discussed in VDOT's brochure, "A Guide for Property Owners and Tenants." Copies of this brochure are available here from VDOT personnel. After this meeting, information regarding right of way may be obtained from the right of way contact listed on the back of this brochure.

Anticipated Schedule

Design Public Hearing
March 26, 2019
 Approve Design
Spring 2019
 Begin Right of Way Acquisition
Winter 2019/20
 Begin Utility Relocation
Winter 2020/21
 Begin Construction
Summer 2023

Environmental Review

The Environmental Assessment (EA) was publicly available at National Environmental Policy Act (NEPA) public hearing held on October 29, 2018 and the public comment period closed on December 6, 2018. The public involvement requirements under 23 CFR 771(h) have now been satisfied. The EA document can still be viewed at the project's design public hearing and online at www.virginiadot.org/richmondhighway. Representatives from VDOT's Environmental Section are available to discuss the environmental review process and to answer any questions.

ACTION - 9

Authorization to Amend a Project Administration Agreement with the Virginia Department of Transportation for the Implementation of Rolling Road Widening from Old Keene Mill Road to Hunter Village Drive (Springfield District)

ISSUE:

Board of Supervisors' authorization for the Director of the Fairfax County Department of Transportation (FCDOT) to execute an amendment to the Project Administration Agreement (PAA) with the Virginia Department of Transportation (VDOT), substantially in the form of Attachment 2 for the Implementation of Rolling Road Widening (Project).

RECOMMENDATION:

The County Executive recommends that the Board:

1. Approve an additional \$27.7 million in funding for the Project, and
2. Adopt a resolution, substantially in the form of Attachment 1, authorizing the Director of the FCDOT to execute an amendment to the PAA with VDOT, substantially in the form of Attachment 2, for the implementation of the Project.

TIMING:

The Board of Supervisors should act on this item on July 30, 2019, so that FCDOT can continue implementation of the Project.

BACKGROUND:

The Project will widen Rolling Road from a two-lane to a four-lane roadway with curb and gutter (Phases I and II). The Project includes an asphalt shared-use path on the west side, a concrete sidewalk on the east side, turn lanes at intersecting streets, and preservation of existing on-street parking where possible. If determined to be cost-effective according to federal criteria, noise barriers may be constructed after investigation of potential locations. This Project is intended to relieve the congested conditions that regularly occur during hours of peak usage, accommodate future increases in traffic, and improve safety along the corridor. In addition to the new lanes and pedestrian facilities, improvements will be made to both vertical and horizontal curves. This Project was first identified as a priority for the County's Secondary Road System approved by the Board of Supervisors in 1986. It has been designed and funded multiple times only to have the funding removed due to budget cuts.

As VDOT is the administering agency for the Project, the Board authorized the Director of FCDOT to execute a PAA with VDOT on September 22, 2015. The PAA was executed on November 2, 2015 (Attachment 3). At that time, the Project was fully funded through several sources of revenue, and the total Project estimate was \$35.2 million. The estimate

subsequently increased to \$51.3 million and funding was identified to address the difference. Table 1 below shows the funding summary for the Project with the revised cost estimate.

Table 1

Revised Total Project Estimate	\$78,965,766
Secured Funding to Date	\$51,300,000
Balance Needed	\$27,665,766

Although the PAA amendment includes the full balance needed of \$27.7 million, FCDOT will pursue funding from all eligible and available sources to address the funding gap.

FISCAL IMPACT:

The total project cost for the Rolling Road Widening project is currently estimated to be \$78.965 million. The current cost estimate is \$27.7 million higher than what was presented at the February 27, 2018, public hearing. The increase was due to market conditions, a revised design and traffic signal modifications. A total of \$51.3 million has been identified from several sources to date. An additional \$27.7 million is required to fully fund the Project. Staff is proposing the \$27.7 million be allocated from local sources, with the intent to pursue other sources of revenue when available to offset local contribution. The \$27.7 million is required over three years (FY 2022 – FY2024), and could be funded through Fund 40010 (County and Regional Transportation Projects), should other sources of funding not become available. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1: Resolution to Execute a Revised Agreement between Fairfax County and the Virginia Department of Transportation
Attachment 2: Revised Appendix A for UPC 5559 and Appendix A for UPC 109814
Attachment 3: November 2, 2015 Project Administration Agreement between Fairfax County and the Virginia Department of Transportation.

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Michael Guarino, Section Chief, FCDOT
Tad Borkowski, Senior Transportation Planner, FCDOT
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Ray Johnson, Chief, Funding Section, FCDOT

ASSIGNED COUNSEL:

Joanna Faust, Assistant County Attorney

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia, on Tuesday, July 30, 2019, at which meeting a quorum was present and voting, the following resolution was adopted.

AGREEMENT AMENDMENT EXECUTION RESOLUTION

A RESOLUTION FOR THE BOARD OF SUPERVISORS OF THE COUNTY OF FAIRFAX, VIRGINIA FOR THE AMENDMENT OF AN AGREEMENT OF

Rolling Road Widening PROJECT

WHEREAS, in accordance with the Commonwealth Transportation Board construction allocation procedures, it is necessary that a resolution be received from the sponsoring local jurisdiction or agency requesting the Virginia Department of Transportation (VDOT) to establish a project, if not already established, in the County of Fairfax.

NOW, THEREFORE, BE IT RESOLVED, that the County of Fairfax requests the Commonwealth Transportation Board to establish a project, if not already established, for the implementation of the Rolling Road Widening project.

BE IT FURTHER RESOLVED THAT, the County of Fairfax hereby agrees to provide its share of the local contributions, in accordance with the Project Administration Agreement (“PAA”, attached) and revised associated financial documents (Appendix As), executed pursuant to this Resolution.

BE IT FURTHER RESOLVED THAT, the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of Fairfax County’s Department of Transportation to execute, on behalf of the County of Fairfax, an amendment to the Project Administration Agreement with the Virginia Department of Transportation for the implementation of the Rolling Road Widening project.

Adopted this 30th day of July 2019, Fairfax, Virginia

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

VDOT Administered, Locally Funded Appendix A - Revision 2

Date: 6/24/2019

Project Number: 0638-029-156 UPC: 5559 CFDA# 20.205 Locality: Fairfax County

Project Location ZIP+4: 22152-2811	Locality DUNS # 074837626	Locality Address (incl ZIP+4): 4050 Legato Rd, Suite 400, Fairfax, VA 22033
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Project Narrative

Scope: Rolling Road Wide to 4 Lanes - Phase II
From: 0.369 Mi. N of Rte 286 (Fairfax County Parkway)
To: Kenwood Avenue
Locality Project Manager Contact info: Smitha Chellappa 703-877-5761 smitha.chellappa@fairfaxcounty.gov
Department Project Coordinator Contact Info: Chris Barksdale 703-259-2768 chris.barksdale@vdot.virginia.gov

Project Estimates

Phase	Estimated Project Costs
Preliminary Engineering	\$7,248,767
Right of Way & Utilities	\$21,637,877
Construction	\$44,333,395
Total Estimated Cost	\$73,220,039
Estimate for Current Billing	\$73,220,039

Project Cost

Phase	Project Allocations	Funds type (Choose from drop down box)	Local % Participation for Funds Type	Local Share Amount
Preliminary Engineering	\$2,417,950	RSTP	0%	\$0
	\$39,550	CMAQ	0%	\$0
	\$4,791,267	Revenue Sharing	50%	\$2,395,634
Total PE	\$7,248,767			\$2,395,634
Right of Way & Utilities	\$9,463,007	Revenue Sharing	50%	\$4,731,504
	\$11,111,000	NVTA	100%	\$11,111,000
	\$327,539	Secondary	0%	\$0
	\$736,331	RSTP	0%	\$0
Total RW	\$21,637,877			\$15,842,504
Construction	\$16,444,867	RSTP	0%	\$0
	\$27,888,528	Local Funds	100%	\$27,888,528
	\$44,333,395			\$27,888,528
Total CN	\$44,333,395			\$27,888,528
Total Estimated Cost	\$73,220,039			\$46,126,665
Total Maximum Reimbursement / Payment by Locality to VDOT				\$46,126,665

Project Financing

RSTP	State Match	CMAQ	State Match	Secondary Funds	NVTA 70% Funds
\$15,679,318	\$3,919,830	\$31,640	\$7,910	\$327,539	\$11,111,000
Revenue Sharing State Match	Revenue Sharing Local Match NVTA	Revenue Sharing Local Match	Local Funds	Aggregate Allocations	
\$7,127,137	\$5,000,000	\$2,127,137	\$27,888,528	\$73,220,039	

Payment Schedule

FY 2020 RS MATCH	FY 2020 NVTA	FY 2021 NVTA	FY 2022	FY 2023	FY 2024
\$625,000	\$6,751,000	\$4,360,000	\$6,972,132	\$6,972,132	\$6,972,132
FY 2025	\$6,972,132				

Program and Project Specific Funding Requirements

- This is a limited funds project. The locality shall be responsible for any additional funding in excess of \$45,891,960.
- VDOT has billed the LOCALITY \$9,375,000 for this project as of 5/20/2019.
- VDOT has received \$9,375,000 from the LOCALITY for this project as of 5/20/2019. \$2,872,864 of this amount has been transferred to UPC 109814.
- The LOCALITY shall make payments to VDOT as follows upon the execution of this agreement:
 - FY2020 (\$7,376,000): One payment of \$625,000 for Revenue Sharing match and Quarterly payments of \$1,687,750 for NVTA funds
 - FY2021 (\$4,360,000): Quarterly payments of \$1,090,000 for NVTA funds
 - FY2022 (\$6,972,132): Quarterly payments of \$1,743,033
 - FY2023 (\$6,972,132): Quarterly payments of \$1,743,033
 - FY2024 (\$6,972,132): Quarterly payments of \$1,743,033
 - FY2025 (\$6,972,132): Quarterly payments of \$1,743,033
- All local funds included on this appendix have been formally committed by the local government's board or council resolution. This project is funded with federal-aid Regional Surface Transportation Program (RSTP) funds. These funds must be obligated within 12 months of allocation and expended within 36 months of the obligation.
- This project is funded with federal-aid Congestion Mitigation and Air Quality Program (CMAQ) funds. These funds must be obligated within 12 months of allocation and expended within 36 months of the obligation.
- Revenue Sharing Program funds, as indicated in the Project Financing section, were approved in the following fiscal years:
 - FY2016 - \$14,254,274 (\$7,127,137 locality match and \$7,127,137 VDOT match) The County will use \$5,000,000 in NVTA funds as part of the local match.
- This project has Revenue Sharing Program allocations. Per §33.2-357 the project must progress in order to prevent these funds from being de-allocated.
- This Appendix A supersedes any previously listed funding schedule.

This attachment is certified and made an official attachment to this document by the parties to this agreement

Authorized Locality Official and Date

Typed or printed name of person signing

Authorized VDOT Official and Date

Typed or printed name of person signing

VDOT Administered, Locally Funded Appendix A

Date: 6/25/2019

Project Number: 0638-029-337 UPC: 109814 CFDA# 20.205 Locality: Fairfax County

Project Location ZIP+4: <u>22152-2811</u>	Locality DUNS # <u>074837626</u>	Locality Address (incl ZIP+4): <u>4050 Legato Rd,Suite 400, Fairfax, VA 22033</u>
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Project Narrative

Scope: Rolling Road Route 638 - Phase I, Addition of Northbound Left Turn Lane.

From: Rte. 6723 Kenwood Avenue

To: 0.02 Mi. N. of Route 644 (Old Keene Mill Road)

Locality Project Manager Contact info: Smitha Chellappa 703-877-5761 smitha.chellappa@fairfaxcounty.gov

Department Project Coordinator Contact Info: Chris Barksdale 703-259-2768 chris.barksdale@vdot.virginia.gov

Project Estimates

Phase	Estimated Project Costs
Preliminary Engineering	\$0
Right of Way & Utilities	\$1,647,533
Construction	\$4,098,194
Total Estimated Cost	\$5,745,727
Estimate for Current Billing	\$5,745,727

Project Cost

Phase	Project Allocations	Funds type (Choose from drop down box)	Local % Participation for Funds Type	Local Share Amount
Right of Way & Utilities	\$1,647,533	Revenue Sharing	50%	\$823,767
				\$0
				\$0
Total RW	\$1,647,533			\$823,767
Construction	\$4,098,194	Revenue Sharing	50%	\$2,049,097
				\$0
Total CN	\$4,098,194			\$2,049,097
Total Estimated Cost	\$5,745,727			\$2,872,864
Total Maximum Reimbursement / Payment by Locality to VDOT				\$2,872,864

Project Financing

Revenue Sharing State Match	Revenue Sharing Local Match				Aggregate Allocations
\$2,872,864	\$2,872,864	\$0	\$0	\$0	\$5,745,727

Program and Project Specific Funding Requirements

- This is a limited funds project. The locality shall be responsible for any additional funding in excess of \$5,745,727.
- This project is a breakout from UPC 5559. Preliminary Engineering for this project has been performed under UPC 5559.
- All local funds included on this appendix have been formally committed by the local government's board or council resolution.
- Revenue Sharing Program funds, as indicated in the Project Financing section, were approved in the following fiscal years:
 - FY2016 - \$5,745,727 (\$2,872,864 locality match and \$2,872,863 VDOT match)
 These funds were transferred from UPC 5559, including the paid local match, which was billed under UPC 5559.
- This project has Revenue Sharing Program allocations. Per §33.2-357 the project must progress in order to prevent these funds from being de-allocated.
- This project is a breakout of UPC 5559. This Appendix A is hereby amended to the agreement for UPC 5559.

This attachment is certified and made an official attachment to this document by the parties to this agreement

Authorized Locality Official and Date

Authorized VDOT Official and Date

Typed or printed name of person signing

Typed or printed name of person signing

**VDOT ADMINISTERED – LOCALLY FUNDED
PROJECT ADMINISTRATION AGREEMENT**

FAIRFAX COUNTY
PROJECT NUMBER 0638-029-156 UPC 5559

THIS AGREEMENT, made and executed in triplicate on this the 2nd day of November, 2015, between the COMMONWEALTH OF VIRGINIA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT" and the COUNTY OF FAIRFAX, hereinafter referred to as the "COUNTY."

WITNESSETH

WHEREAS, the COUNTY has expressed its desire to have the DEPARTMENT administer the work as described in Appendix B, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds as shown in Appendix A have all been allocated by the COUNTY to finance the project; and

WHEREAS, the COUNTY has requested that the DEPARTMENT design and construct this project in accordance with the scope of work described in Appendix B, and the DEPARTMENT has agreed to perform such work; and

WHEREAS, both parties have concurred in the DEPARTMENT's administration of the project identified in this Agreement and its associated Appendices A and B in accordance with applicable federal, state, and local law and regulations; and

WHEREAS, the County's governing body has, by resolution, which is attached hereto, authorized its designee to execute this Agreement; and

WHEREAS, Section 33.2-338 of the Code of Virginia authorizes both the DEPARTMENT and the COUNTY to enter into this Agreement;

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the parties hereto agree as follows:

- A. The DEPARTMENT shall:
 - 1. Complete said work as identified in Appendix B, advancing such diligently, and all work shall be completed in accordance with the schedule established by both parties.
 - 2. Perform or have performed, and remit all payments for, all preliminary engineering, right-of-way acquisition, construction, contract administration, and inspection services activities for the project(s) as required.

3. Provide a summary of project expenditures to the COUNTY for charges of actual DEPARTMENT cost upon request and at the end of the project
 4. Notify the COUNTY of additional project expenses resulting from unanticipated circumstances and provide detailed estimates of additional costs associated with those circumstances. The DEPARTMENT will make all efforts to contact the COUNTY prior to performing those activities.
 5. Return any unexpended funds to the COUNTY no later than 90 days after the project(s) have been completed and final expenses have been paid in full.
 6. Make the Project available for review during its design, right of way, and/or construction phases by the COUNTY personnel upon request.
 7. Maintain accurate documentation and records of all project costs incurred and paid for all phases of the Project and make said documentation and records available for review by the COUNTY upon request.
- B. The COUNTY shall:
1. Provide funds to the Department for Preliminary Engineering (PE), Right of Way (ROW) and/or Construction (CN) in accordance with the payment schedule outlined in Appendix A.
 2. Accept responsibility for any additional project costs resulting from unforeseeable circumstances, but only after concurrence of the COUNTY and modification of this Agreement.
 3. In the event that the project involves construction or modification of a facility that is or will be in the State Highway System, upon completion of the Project, provide a final accounting of all capitalizable Project costs, irrespective of funding source, by the first day of August following the end of the fiscal year in which the Project was completed. As the Project asset is owned by the Commonwealth, in accord with Government Accounting Standards Board Statement 34, the Project will be included in the Commonwealth's Comprehensive Annual Financial Report.
- C. Funding by the COUNTY shall be subject to annual appropriation or other lawful appropriation by the Board of Supervisors.
- D. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or

personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.

- E. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the County or the Department shall not be bound by any agreements between either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the County or the Department has, in writing, received a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.
- F. Nothing in this Agreement shall be construed as a waiver of the LOCALITY's or the Commonwealth of Virginia's sovereign immunity.
- G. Should funding be insufficient and county funds be unavailable, both parties will review all available options for moving the project forward, including but not limited to, halting work until additional funds are allocated, revising the project scope to conform to available funds, or cancelling the project.
- H. Should the project be cancelled as a result of the lack of funding by the COUNTY, the COUNTY shall be responsible for any costs, claims and liabilities associated with the early termination of any construction contract(s) issued pursuant to this agreement.
- I. This Agreement may be terminated by either party upon 60 days advance written notice. Eligible expenses incurred through the date of termination shall be reimbursed to the DEPARTMENT subject to the limitations established in this Agreement.
- J. The Parties mutually agree that should any Northern Virginia Transportation Authority (NVTA) funding be utilized to pay for all or any portion of the Project being administered by the DEPARTMENT, the provisions/terms in Appendix C shall apply and are incorporated herein by reference as if set forth in full in this Agreement.



THE COUNTY and DEPARTMENT acknowledge and agree that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors and assigns.

THIS AGREEMENT may be modified in writing upon mutual agreement of both parties.

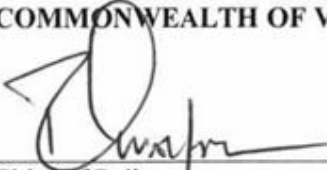
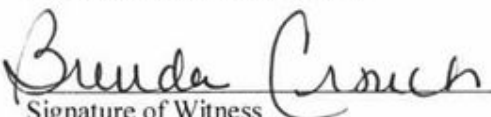
IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

COUNTY OF FAIRFAX, VIRGINIA:

_____	_____
	Date
Tom Biesiadny	9/29/15
_____	_____
	Date
Signature of Witness	9-29-15

NOTE: The official signing for the LOCALITY must attach a certified copy of his or her authority to execute this Agreement.

COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION:

	_____
Chief of Policy	Date
Commonwealth of Virginia	11/2/15
Department of Transportation	_____
	_____
Signature of Witness	Date
	11/2/2015

VDOT Administered Locally Funded Appendix A - Revision 1

Date: 8/17/2015

Project Number: 0638-029-156 UPC: 5559 CFDA# 20.205 Locality: Fairfax County

Project Location ZIP+4: 22152 DUNS NO. 074873626 Locality Address (incl ZIP+4): 4050 Legato Road, Suite 400, Fairfax, VA 22033-2867

Project Narrative

Scope: Rolling Road Widening - Route 638 - Widen to 4 lanes - PE only
 From: Fairfax County Parkway
 To: Old Keene Mill Road - Route 644
 Locality Project Manager Contact info: Smitha Chellappa 703 877-5761 Email: Smitha.Chellappa@fairfaxcounty.gov
 Department Project Coordinator Contact Info: Hamid Misaghian 703 259-1795 Email: H.Misaghian@vdot.virginia.gov

Project Estimates

Phase	Estimated Project Costs
Preliminary Engineering	\$5,902,043
Right of Way & Utilities	\$9,711,500
Construction	\$19,585,746
Total Estimated Cost	\$35,199,289
Estimate for Current Billing	

Project Cost

Phase	Project Allocations	Funds type	Local % Participation for Funds Type	Local Share Amount
Preliminary Engineering	\$2,417,950	RSTP	0.00%	\$0
	\$600,000	CMAQ	0.00%	\$0
	\$2,884,093	Revenue Sharing	50.00%	\$1,442,047
Total PE	\$5,902,043			\$1,442,047
Right of Way & Utilities	\$9,711,500	Revenue Sharing	50.00%	\$4,855,750
	Total RW	\$9,711,500		\$4,855,750
Construction	\$9,598,663	RSTP	0.00%	\$0
	\$7,404,407	Revenue Sharing	50.00%	\$3,702,204
	\$2,582,676	Local Funds	100.00%	\$2,582,676
Total CN	\$19,585,746			\$6,284,880
Total Estimated Cost	\$35,199,289			\$12,582,676

Total Maximum Reimbursement / Payment by Locality to VDOT

\$12,582,676

Project Financing

RSTP	RSTP State Match	CMAQ	CMAQ State Match	Accounts Receivable Local Funds	Revenue Sharing State Match	Revenue Sharing Local Match	Aggregate Allocations (A+B+C+D+E)
\$9,613,290	\$2,403,323	\$480,000	\$120,000	\$2,582,676	\$10,000,000	\$10,000,000	\$35,199,289

Payment Schedule - NVTA Funds

FY 2016	FY 2017	FY 2018
\$1,875,000	\$2,500,000	\$625,000

Program and Project Specific Funding Requirements

- This is a limited funds project. The locality shall be responsible for any additional funding in excess of \$35,199,289 (if applicable)
- The locality will be billed the locality share above beginning at the project scoping phase for the estimated PE and RW costs. The billing will be adjusted to include the Construction estimate beginning at the award date. (if applicable)
- This project is funded with federal-aid Regional Surface Transportation Program (RSTP) funds. These funds must be obligated within 12 months of allocation and expended within 36 months of the obligation.
 - Previous allocations of \$1,900,950 by the CTB
 - FY15 \$517,000 Allocation by the CTB, Expenditure deadline June 30, 2018
 - FY18 \$3,500,000 Allocation by the CTB, Obligation deadline June 30, 2018, Expenditure deadline June 30, 2021
 - FY19 \$1,500,000 Allocation by the CTB, Obligation deadline June 30, 2019, Expenditure deadline June 30, 2022
 - FY20 \$1,457,000 Allocation by the CTB, Obligation deadline June 30, 2020, Expenditure deadline June 30, 2023
 - FY21 \$3,141,663 Allocation by the CTB, Obligation deadline June 30, 2021, Expenditure deadline June 30, 2024
- This project is funded with federal-aid Congestion Mitigation and Air Quality Program (CMAQ) funds. These funds must be obligated within 12 months of allocation and expended within 36 months of the obligation.
 - Previous allocations of \$600,000 by the CTB
- This project is a Revenue Sharing project and must follow the procedures set forth in the Guide to the Revenue Sharing Program.
- Revenue Sharing Funds above consist of the following Fiscal Years:
 - FY 16 - \$20,000,000 (\$10,000,000 locality and \$10,000,000 VDOT) Partial local match provided by NVTA funds in FY 16, FY17 and FY18.
 - Partial local match provided by NVTA funds as follows: FY 16 - \$1,875,000; FY 17 - \$2,500,000; and FY 18 \$625,000
- Funds are not available until July 1 of the fiscal year in which they are allocated.
- This Appendix A is being revised to reflect an increase in allocations.
- VDOT has billed zero (\$0.00) (dollar amount) the locality for this project as of 8/5/2015 (date)
- VDOT has received zero (\$0.00) (dollar amount) from the locality for this project as of 8/5/2015 (date)
- NVTA to distribute to VDOT 8 quarterly payments of \$625,000 per quarter over 24 months. Payments are due on the first day of each quarter beginning on 11/1/2015 (date)
- This Appendix A supersedes any previously listed funding schedule.

Tom Blasiedny 9/29/15
 Authorized Locality Official and date

Terry Yates 10/7/15
 Authorized VDOT Official Recommendation and Date

Tom Blasiedny
 Typed or printed name of person signing

Terry Yates
 Typed or printed name of person signing

Appendix B

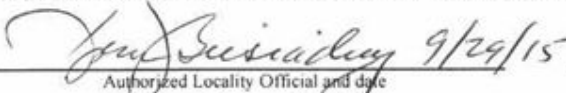

Project Number: 0638-029-156 (UPC 5559) **Locality:** Fairfax County

Project Scope	
Work Description:	Rolling Road Widening from 2 to 4 lanes
From:	Old Keene Mill Road (0.369 Miles north of Rt. 286)
To:	Fairfax County Parkway

Locality Project Manager Contact Info: Smitha Chellappa; Email: Smitha.Chellappa@fairfaxcounty.gov; Phone 703 877-5761
Department Project Coordinator Contact Info: Hamid Misaghian; Email: H.Misaghian@VDOT.virginia.gov; Phone: 703 259-1795

Detailed Scope of Services
<p>VDOT to administer the Rolling Road project, widening approximately 1.4 miles of Rolling Road from two to four lanes, including left and right turn lanes, stormwater management facilities, and bicycle and pedestrian accommodations.</p>

This attachment is certified and made an official attachment to this document by the parties of this agreement

 Authorized Locality Official and date	 Residency Administrator/PE Manager/District Construction Engineer
<u>Tom Biesiadny</u> Typed or printed name of person signing	<u>Terry L. Yates</u> Typed or printed name of person signing

Appendix C

- All Northern Virginia Transportation Authority (“NVTA”) revenues shall be used solely for the transportation purposes referenced in the Memorandum of Agreement (MOA) between VDOT, VDRPT and NVTA, and in accordance with Virginia Code Section 33.2-2509-2510, and for the PROJECT as approved by NVTA.
- On a quarterly basis, the DEPARTMENT will provide a summary of PROJECT expenditures to the COUNTY for charges of actual DEPARTMENT costs consistent with Appendix A and the most recently approved NVTA cash flow estimates, containing detailed summaries of actual PROJECT costs incurred with supporting documentation as mutually agreed upon between VDOT and the COUNTY and containing certifications that all such costs were incurred in the performance of work for the PROJECT as authorized by this Agreement.
- Should the DEPARTMENT be requested and agree to provide additional funds in order to proceed or complete the funding necessary for the PROJECT, the DEPARTMENT shall certify to the COUNTY that such additional funds have been either authorized and/or appropriated by the Commonwealth Transportation Board (CTB) or the Virginia General Assembly as may be applicable or have been obtained through another independent source. Nothing in this provision shall be interpreted or construed to require VDOT to provide additional funding for the PROJECT and any agreement by VDOT to provide additional funding shall be contained in a modified Appendix or an addendum to this Agreement, executed by both VDOT and LOCALITY.
- Should the NVTA funding be discontinued or insufficient to cover the costs of the PROJECT or portions thereof to be funded with NVTA funds, the provisions of sections B(2) , G and H of this Agreement shall apply.
- The DEPARTMENT shall reimburse the COUNTY for all NVTA Project Funding that the DEPARTMENT misapplies or uses in violation of the NVTA Act, Chapter 766 of the 2013 Virginia Acts of Assembly (“Chapter 766”), or any term or condition of this Agreement, plus, to the extent permitted by law, interest at the rate earned by NVTA (the “NVTA Rate”).
- The DEPARTMENT shall name the COUNTY, NVTA, and to the extent applicable NVTA’s Bond Trustee and/or require that all DEPARTMENT’s contractors name the COUNTY, NVTA and NVTA’s Bond Trustee as additional insureds on any liability insurance policy issued for the work to be performed by or on behalf of the DEPARTMENT for the PROJECT and present to NVTA and the COUNTY satisfactory evidence thereof before any NVTA Project Funding is used by the DEPARTMENT for the PROJECT.
- The DEPARTMENT shall give notice to the COUNTY that the DEPARTMENT may use NVTA funds to pay legal counsel (as opposed to utilizing the services of its own in-house counsel or NVTA’s in-house legal counsel) in connection with the work performed under this Agreement so as to ensure that no conflict of interest may arise from any such representation.
- Under no circumstances will the COUNTY or NVTA be considered responsible or obligated to operate and/or maintain the PROJECT after its completion.

- The DEPARTMENT is solely responsible for obtaining all permits and permissions necessary to construct and/or operate the PROJECT, including but not limited to, obtaining all required VDOT and local land use permits, applications for zoning approvals, and regulatory approvals.
- The COUNTY shall provide coordination as between NVTA and the DEPARTMENT for the PROJECT, as may be necessary and/or as may be agreed to by the PARTIES.
- Funding by NVTA shall be subject to annual appropriation or other lawful appropriation by the NVTA, and Virginia General Assembly, respectively. Should the DEPARTMENT agree to provide any funding for the PROJECT or any portion thereof, said funding shall be subject to appropriation by the General Assembly and allocation by the CTB.
- In the event of disputes arising under this Agreement, the PARTIES agree to attempt to first resolve any such dispute by engaging in an informal dispute resolution process. Each party shall designate an authorized representative to conduct informal dispute resolution discussions on its behalf. Any resolutions and/or settlements of pending disputes reached via the informal dispute resolution method shall be presented to the County's Board of Supervisors and the Commissioner of Highways for ratification in order to be considered in full force and effect; and this Agreement shall be amended to reflect the substance of any such resolution. Nothing herein, however, shall limit or abrogate the right of either party to pursue whatever legal remedies that may be available to it in a court of competent jurisdiction.
- The DEPARTMENT shall maintain complete and accurate financial records relative to the PROJECT and all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the PROJECT for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws and provide copies of any such financial records to the COUNTY, free of charge, upon request.
- The DEPARTMENT shall provide a certification to the COUNTY and NVTA no later than 90 days after final payment to the contractors that VDOT adhered to all applicable laws and regulations and all requirements of this Agreement.

FAIRFAX COUNTY BOARD OF SUPERVISORS RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia, on Tuesday, September 22, 2015, at which meeting a quorum was present and voting, the following resolution was adopted.

AGREEMENT EXECUTION RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of Fairfax County's Department of Transportation to execute, on behalf of the County of Fairfax, Project Funding Agreements with the Northern Virginia Transportation Authority and the Virginia Department of Transportation (VDOT) for the implementation of the Rolling Road Widening project to be administered by VDOT.

Adopted this 22nd day of September 2015, Fairfax, Virginia

ATTEST:



Catherine A. Chianese
Clerk to the Board of Supervisors

Board Agenda Item
July 30, 2019

ACTION - 10

Approval of a Draft Board of Supervisors' Meeting Schedule for Calendar Year 2020

ISSUE:

Board approval of a draft meeting schedule for January through December, 2020.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the draft meeting schedule for January through December, 2020.

TIMING:

The Board should take action on July 30, 2019, in order that accommodations to implement this calendar can proceed in advance of January.

BACKGROUND:

The *Code of Virginia*, Section 15.2-1416, requires the governing body to establish the days, times and places of its regular meetings at the annual meeting, which is the first meeting of the year. Therefore, the schedule for the entire 2020 calendar is presented for Board approval. The section further states that "meetings shall be held on such days as may be prescribed by resolution of the governing body but in no event shall less than six meetings be held in each fiscal year."

Scheduled meetings may be adjourned and reconvened as the Board may deem necessary, and the Board may schedule additional meetings or adjust the schedule of meetings approved at the annual meeting, after notice required by Virginia law, as the need arises.

At the first meeting of the Board of Supervisors in January, staff will bring the 2020 meeting calendar to the Board for formal adoption.

ENCLOSED DOCUMENTS:

Attachment 1: January-December, 2020 Draft Schedule for Board of Supervisors' Meetings and Potential 2020 Tuesday dates for Board Committee Meeting

STAFF:

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

DRAFT

2020 Board of Supervisors Meeting Schedule

January 14, 2020	May 19, 2020
January 28, 2020	June 9, 2020
February 11, 2020	June 23, 2020
February 25, 2020	July 14, 2020
March 10, 2020	July 28, 2020
March 24, 2020	September 15, 2020
April 14, 2020	September 29, 2020
• 9:30 to 4:00 p.m. Board Meeting	October 6, 2020
• 4:00 p.m. Budget Public Hearing	October 20, 2020
April 15 – April 16, 2020	November 17, 2020
• 3:00 p.m. – Budget Public Hearings	December 1, 2020
April 28, 2020 (Budget Mark-up)	
May 5, 2020	

Potential 2020 Tuesday Dates for Board Committee Meetings

(Listed below are Tuesday dates that would be available for scheduling
of Board Committee meetings in 2020)

February 4	June 30
March 17	July 7
March 31	July 21
May 12	September 22
June 2	October 27
June 16	November 24 (tentative)
	December 8

The Legislative Committee of the Board meets on Fridays at 4 p.m. during the General Assembly session. Those dates for 2020 are: January 17, January 24, January 31, February 7, February 14, February 21, February 28, and March 13. The Budget pre mark-up meeting is scheduled on Friday, April 24.

Board Agenda Item
July 30, 2019

ACTION - 11

Approval of FY 2019 Year-End Processing

ISSUE:

Board approval to allow staff to process payment vouchers for items previously approved and appropriated in FY 2019. In addition, this item is to inform the Board that no General Fund agencies, County other funds, or School Board funds require an additional appropriation for FY 2019.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize staff to process payment vouchers for items previously approved and appropriated in FY 2019 for the interim period from July 1 until the Board approves the *FY 2019 Carryover Review*, which is scheduled for action on September 24, 2019.

TIMING:

Board approval is required on July 30, 2019, since the *FY 2019 Carryover Review* is not scheduled for Board action until September 24, 2019.

BACKGROUND:

The *FY 2019 Carryover Review* is scheduled for final action on September 24, 2019, following a public hearing. In the interim, Board approval is requested to allow staff to process payment vouchers for items previously approved and appropriated in FY 2019 such as capital construction projects and grant-funded programs for the period of July 1 to September 24, 2019, or until final action is taken on the *FY 2019 Carryover Review*. Similar action has been taken in prior years as part of the year-end closeout.

It should be emphasized that no County agency or fund or School Board fund exceeded its appropriation authority in FY 2019. This is directly attributable to the outstanding efforts of all department heads in managing their approved allocation.

FISCAL IMPACT:

This item relates to funding for previously appropriated items approved in FY 2019 and carried forward to FY 2020 for payment.

Board Agenda Item
July 30, 2019

ENCLOSED DOCUMENTS:

None.

STAFF:

Joe Mondoro, Chief Financial Officer

Christina Jackson, Director, Department of Management and Budget

Philip Hagen, Budget Services Coordinator, Department of Management and Budget

WITHDRAWN

Board Agenda Item
July 30, 2019

CONSIDERATION - 1

Appeal of a Notice of Violation of the Chesapeake Bay Preservation Ordinance for 10622 Belmont Boulevard (Mount Vernon District)

ISSUE:

Board Consideration of an appeal of a Notice of Violation (NOV) for vegetation removal and placement of fill in a Resource Protection Area (RPA) without an approved Water Quality Impact Assessment in violation of Chesapeake Bay Preservation Ordinance (CBPO) §§ 118-3-2(a) and 118-4-2.

TIMING:

Board action is requested on July 30, 2019.

BACKGROUND:

On August 29, 2018, Land Development Services (LDS) issued a Notice of Violation of the CBPO (NOV) to Charles Hooff (Owner), owner of 10622 Belmont Boulevard, the Belmont Bay Farm (Property) for conducting land-disturbing activities of approximately 11.7 acres in the RPA. The NOV stems from an investigation by County and Northern Virginia Soil and Water Conservation District (NVSWCD) staff in response to complaints dating back to October 2017 of tree removal and construction. The NOV was issued after the Owner and operator of the farm took no corrective action in response to numerous emails and in-person meetings detailing the measures necessary to comply with the CBPO. On September 13, 2018, the Owner appealed the NOV. Attachment 1 contains the NOV, including a map showing the RPA and the approximate area of land disturbance.

The Chesapeake Bay Preservation Act requires the County to designate and protect the RPA. The Property contains RPA located along Belmont Bay, the Occoquan River, and Massey Creek. The RPA includes wetlands and floodplain, which filter pollutants and sediment before they are discharged by stormwater into these water bodies. When planned properly in accordance with the CBPO performance criteria, vegetation removal and placement of fill in the RPA should cause minimal impact to adjacent water bodies. If such activity is unplanned and uncontrolled, environmental harm and damage to ecosystems will result, from which recovery is uncertain and indefinite.

The NOV requires, among other things, the Owner to submit and implement a Water Quality Impact Assessment (WQIA) to mitigate the impacts of the land disturbance,

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which will demonstrate how the uses will comply with the performance criteria of the CBPO.

JUSTIFICATION FOR NOTICE OF VIOLATION:

The land-disturbing activities on the Property are not exempt from regulation under the CBPO, despite the fact that the Property is a Statewide Agricultural and Forestal District on which agriculture and silviculture occurs. The activity was unrelated to silviculture, and best management practices for water quality established by the Virginia Department of Forestry (DOF) were not followed. Encroachments into the RPA for agriculture are permissible, subject to management practices approved by the NVSWCD. The Owner did not follow the Soil and Water Quality Conservation Plan (SWQCP) prepared by the NVSWCD or implement approved best management practices.

PROPERTY DESCRIPTION AND SITE HISTORY:

The Property is zoned R-E, is 287.65 acres in size, and contains three parcels, Tax Map Nos. 117-2 ((1)) Parcels 2Z, 4Z, and 15Z (Attachment 2 – Vicinity Map). Together they compose the Belmont Bay Farms Statewide Agricultural and Forestal District (AR 92-V-001-02), which was renewed by the Board on April 7, 2015 (Attachment 3). Parcel 15Z is not subject to the NOV, because it was not disturbed. The principal uses of the Property are agriculture and silviculture, with a few acres set aside for the owner's residence.

As part of the agricultural and forestal district application, a SWQCP and Forestry Plan were prepared for the Property by the NVSWCD and the DOF, respectively. Attachment 3 contains a copy of the plans. These plans were formulated based on the Owner's intended silvicultural and agricultural use of the Property. The Forestry Plan divides the Property into several parcels, each with a distinct management plan. The land-disturbing activity occurred primarily in the parcels identified as Field 1 (10.8 acres), Parcel E (8.2 acres), Parcel F (3.3 acres), and Parcel G (7.1 acres). Field 1 is where the most significant filling activities occurred. For this area, the Forestry Plan advises the Owner to follow the SWQCP. For Parcel E, the plan recommends that the Owner allow "regeneration [of tree volunteers] . . . to a mature stand." Finally, DOF advises the Owner to do nothing with Parcel G, and if any management is to be undertaken, it must be conducted in accordance with "Forestry Best Management Practices for Water Quality in Virginia Technical Guide." There is no recommendation to add fill or grade the land, as these are not practices associated with silvicultural activities.

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The land-disturbing activities in the RPA were not covered by the SWQCP. In fact, it states that RPAs are “required to be kept vegetated.” By letter dated May 9, 2017 (Attachment 4), the NVSWCD notified the farm operator to “refrain from further clearing of permanent vegetation within the RPAs.” Since their approval, the Owner has not requested a revision to the plans. Also, the mandatory best management practices for water quality protection prescribed by the DOF were not followed.

Investigation of Land-Disturbing Activities and Issuance of Notice of Violation:

In October 2017, LDS, NVSWCD, and Supervisor Storck’s office, received numerous complaints regarding land-disturbing activity on the Property. On October 27, 2017, County and NVSWCD staff, escorted by the farm operator, assessed the land-disturbing activities on the Property. Mature trees and other vegetation had been completely removed from areas, and dozens of truckloads of fill material appeared to have been brought in from offsite. The fill material was being placed in natural drainage features, wetlands, and other environmentally sensitive areas, including the RPA, to create a level area. Attachment 5 contains aerial photography from 2015 to 2018 showing the placement of fill in the RPA and confirming that over half of the parcel has been clear-cut with associated land disturbance. The photograph in Attachment 6 shows the disturbance and fill in Field 1.

Silvicultural activities are exempt from CBPO requirements *if* “operations adhere to water quality protection procedures prescribed by the DOF”. 9 Virginia Admin. Code § 25-830-130(9) and CBPO § 118-5-3(c). DOF does not consider grading of land and adding of fill to be a silvicultural activity. Therefore, the exemption is inapplicable to the activity observed on the Property. Even if the activity were related to silviculture, following the DOF guidance for best management practices to avert water quality impacts from the land-disturbing activities is a necessary condition of the exemption for silviculture. The Forestry Best Management Practices for Water Quality in Virginia Technical Guide states that the Streamside Management Zone (SMZ) must be left intact, subject to limited timber harvesting. Failure to do so is a violation of the Chesapeake Bay Preservation Act. Forestry Best Management Practices for Water Quality in Virginia Technical Guide, p. 35 (2011). The SMZ is defined to include, at a minimum, the 50 seaward-feet. *Id.* The Owner’s activities appear to have been conducted within the SMZ. Therefore, the land-disturbing activities would not qualify for the exemption even if they were related to silviculture.

Agricultural activity is subject to regulation under the CBPO. CBPO § 118-3-2(h) requires a SWQCP to be prepared for agricultural activities, and encroachments into the RPA must be conducted in accordance with CBPO § 118-3-3(e). That section requires owners to implement NVSWCD-approved best management practices for encroachments into the RPA. The observed activities (i.e., vegetation removal and

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filling) are not included in the current SWQCP, and no best management practices were implemented during land-disturbing activities.

For these reasons, no use of the RPA is permitted without an approved WQIA. CBPO § 118-3-3. The owner has not submitted a WQIA.

EFFORTS BY STAFF TO OBTAIN VOLUNTARY COMPLIANCE:

For years, County Staff and representatives of NCSWCD cautioned the Owner and the farm operator against clearing in the RPA on Field 1 and Parcels E, F, and G. Attachment 7 compiles correspondence from 2017 to present, not including the May 2017 letter from NVSWCD in Attachment 4, showing staffs' efforts to achieve voluntary compliance. Also, County staff and NVSWCD representatives met with the Owner and farm operator several times to discuss how to bring the Property into compliance. The Owner can resolve the NOV and come into compliance with Chapter 118 by completing the following:

- Submitting a survey showing the extent of the fill.
- Submitting a WQIA including a planting plan.
- Establishing vegetative cover in the areas cleared.
- Working within and amending the 2015 Soil and Water Quality Conservation Plan.
- Scheduling a follow-up site visit to confirm the activities are complete.

APPEAL:

Issue 1. The Owner states that under AR 92-V-001-02 land disturbance is permitted in the Environmental Quality Corridor, which overlaps and extends beyond the area designated as RPA, if the work is related to agricultural and silvicultural uses.

The NOV was issued for failure to comply with provisions of the Chesapeake Bay Preservation Ordinance. The agricultural and forestal district designation does not relieve the Owner from compliance with the provisions of any other applicable ordinance. Whatever may or may not be permissible under AR-V-001-02 is not relevant to the NOV.

Issue 2. The Owner states that the land disturbance in the RPA was related to a silvicultural activity which is exempt under 9 Virginia Admin. Code § 25-830-130(9) of the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations) and the parallel County Code provisions in § 118-5-3(c). 9 Virginia Admin. Code § 25-830-130(9) states that:

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Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the Fifth Edition (March 2011) of "Virginia's Forestry Best Management Practices for Water Quality Technical Manual." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

When County and NVSWCD staff inspected the Property, mature trees and other vegetation had been completely removed from areas, and dozens of truckloads of fill material appeared to have been brought in from offsite. The fill material was being placed in natural drainage features, wetlands, and other environmentally sensitive areas, including the RPA, to create a level area. These activities are not considered silviculture by DOF, because timber is not harvested nor is land prepared for planting in this manner. Also, the activity was not performed according to the Forestry Best Management Practices for Water Quality Technical Manual, because the SMZ appeared to have been disturbed. Because the Owner's land disturbance and filling of areas of the Property was not silviculture and did not adhere to the requisite water quality protection procedures, the exemption does not apply, and the Owner is in violation of the state regulation and the CBPO.

Staffs' conclusion that the activities were not related to silviculture or agriculture is consistent with their and the DOF's representative's interactions with the Owner and farm operator. The Owner never notified DOF that he intended to use Field 1 for silviculture, even though he has for other sections of the Property, as documented in Attachment 8. In fact, in a meeting on May 4, 2018, with County and NVSWC staff and a DOF representative, the Owner and farm operator claimed that the activities were being conducted to convert the area for use as a pasture.

Also, during meetings on October 27 and December 18, 2017, and on March 7, 2018, the Owner and operator never claimed that the land-disturbing activities were done in preparation for silviculture (see Attachment 7 for meeting documentation). Rather, the Owner stated his intent to provide a WQIA and comply with the requirements of the CBPO. Therefore, this appeal stands as the first time silviculture has been cited as a justification for the activities on the Property.

Issue 3. The Owner states that the agricultural and silvicultural uses are long-standing and vested under § 118-1-12 of the County Code, which states that:

The provisions of this chapter shall not affect vested rights of any landowner under existing law.

WITHDRAWN

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No vested right of the Owner is at stake. The NOV requires the Owner to submit a WQIA to demonstrate how the Owner will comply with the performance criteria of the CBPO, which does not preclude the Owner from engaging in agricultural or silvicultural activities.

SUMMARY AND CONCLUSION:

The appeal should be denied and the NOV should be upheld because the land-disturbing activities are not exempt silviculture and, to the extent they are agriculture, no best management practices were implemented.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – NOV

Attachment 2 – Vicinity Map

Attachment 3 – A&F Renewal 2015, including the 2014 Forestry Management Plan and the 2015 Soil and Water Quality Conservation Plan

Attachment 4 – Letter from NVSWCD informing farm operator not to clear in RPA

Attachment 5 – Aerial Photography from 2013 – 2018

Attachment 6 – Photographs showing areas of clearing and apparent fill

Attachment 7 – Additional Correspondence

Attachment 8 – Notes from the 2016 meeting with NVSWCD and DOF where Owner and farm operator inform of areas where logging to occur

STAFF:

Rachel Flynn, Deputy County Executive

William D. Hicks, P.E., Director, LDS

ASSIGNED COUNSEL:

Marc Gori, Assistant County Attorney



County of Fairfax, Virginia

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

NOTICE OF VIOLATION OF THE CHESAPEAKE BAY PRESERVATION ORDINANCE

VIOLATION ISSUED TO: Charles R. Hooff, III
1707 Duke Street
Alexandria, Virginia 22314

LOCATION OF VIOLATION: 10622 Belmont Boulevard
Lorton, Virginia 22079

COMPLAINT NUMBER: 201707192 and 201803367

MAP REFERENCE: 117 2 ((1)) 0002Z, 0004Z

I inspected the above sites on October 27, 2017, and observed the following violation in a **Chesapeake Bay Preservation Area**: Conducting land disturbance in the Resource Protection Area (RPA) without an approved Water Quality Impact Assessment in violation of Fairfax County Code, Sections 118-3-2(a) and 118-4-2. The land disturbance in the RPA consists of approximately 11.7 acres.

Under Fairfax County Code Section 118-1-6(m), land disturbing activity is defined as any land change which may result in soil erosion from water or wind and movement of sediments into state waters or onto lands in the Commonwealth, including but not limited to, clearing grading, excavating, permanent flooding associated with impoundment of water, and filling of land.

Furthermore, Fairfax County Code, Section 118-9-1, provides as follows:

Any building erected or improvements constructed contrary to any provisions of this Chapter and *any land disturbing activity regardless of area contrary to any of the provisions of this Chapter and any removal of vegetation in Chesapeake Bay Preservation Areas* contrary to any provisions of this Chapter shall be and the same is hereby declared to be unlawful (*emphasis added*).

You are directed to correct this violation within the time frame outlined below.

Corrective Work Required:

1. The required elements are as follows:

Department of Land Development Services
12055 Government Center Parkway, Suite 659
Fairfax, Virginia 22035-5503
Phone 703-324-1780 • TTY 711 • FAX 703-653-6678
www.fairfaxcounty.gov



Charles R. Hooff, III
 Notice of Violation - 10622 Belmont Blvd. Lorton, Virginia 22079
 Page 2 of 3

Compliance Measure	Due Date
Cease all clearing and placement of fill in the RPA	Immediately
Provide a survey showing the extent of fill. Include the current RPA and floodplain delineation on the survey.	September 29, 2018. Attachment 1 shows the area requiring survey.
Submit to the County for approval a (WQIA) Water Quality Impact Assessment.	September 29, 2018
As part of the WQIA, provide a planting schedule to reestablish permanent native vegetation in areas of the RPA that have been cleared per 118-3. The planting plan must provide the level of detail specified in the email from Ricky Cook, Fairfax County, to Mr. Kobus, dated June 8, 2018, included as Attachment 2.	September 29, 2018. Confirmation inspection is needed to confirm permanent native vegetation.
Place topsoil, re-seed, straw, and water as needed in Fall 2018 at the start of the growing season. Continue placing straw and watering the areas until Spring 2019 or until native vegetation has established 80% cover of the cleared area.	Beginning of fall growing season 2018 and continue through Spring 2019.
Perform the above-listed compliance measures in accordance with the approved Soil and Water Quality Conservation Plan dated March 2015.	Throughout and work with the Northern Virginia Soil and Water Conservation District (NVSWCD) to update the March 2015 Soil and Water Quality plan as needed.
Schedule a site visit with county and NVSWCD staff	September 29, 2018

Section 118-9-2, Criminal Violations and Penalties, states:

- (a) Violators of this Chapter shall be guilty of a Class 1 misdemeanor.
- (b) Each day any violation of this Chapter shall continue shall constitute a separate offense.
- (c) In addition to any criminal penalties provided under this Article, any person who violates any provision of this Chapter may be liable to the County in a civil action for damages, or for injunctive relief. (32-03-118.)

Section 118-9-3, Civil Penalties, reads as follows:

- (a) Any person who violates any provision of this Chapter or who violates or fails, neglects, or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or variance or permit condition authorized under this Chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation.

Section 118-8-1, Procedures, states in relevant part as follows:

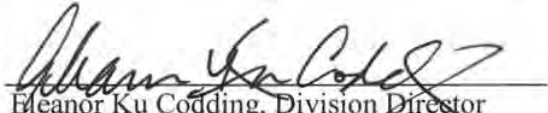
- (a) An applicant aggrieved by any decision of the Director of Land Development Services ... in the administration of this Chapter may, within 15 days of such decision, appeal the decision to the Board of Supervisors.
and ...

Charles R. Hooff, III
Notice of Violation - 10622 Belmont Blvd. Lorton, Virginia 22079
Page 3 of 3

- (c) Such appeal shall be filed with the Clerk to the Board of Supervisors and shall state with specificity the provisions of this Chapter which the applicant alleges to have been violated by the decision and the reasons therefore. A copy of the appeal shall also be delivered to the Director of the Department of Land Development Services within such 30-day period.

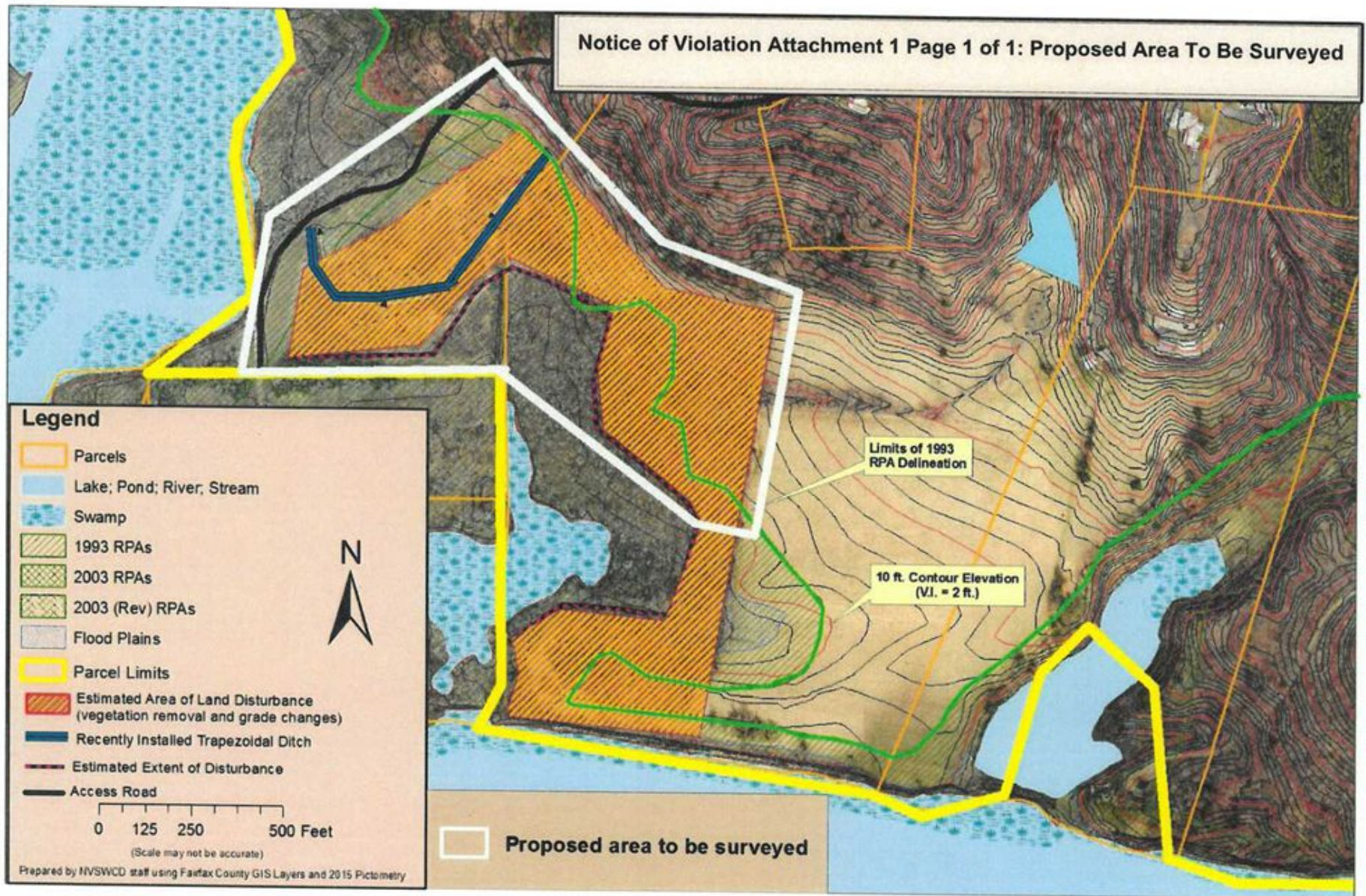
Failure to correct this violation may result in legal action under applicable state and county codes.

ISSUED BY:


Eleanor Ku Coddling, Division Director
Code Development and Compliance Division
Land Development Services
12055 Government Center Parkway
Fairfax, Virginia 22035-5503
Phone: 703-324-1695
Email: Eleanor.Coddling@fairfaxcounty.gov
Authorized agent of the Director of LDS

DATE ISSUED: 8-29-2018

Attachments: 1. Map showing area requiring survey
2. Email dated 8 June 2018 from Mr. Cook detailing planting plan requirements



Codding, Ellie

From: Cook, Ricky
Sent: Friday, June 8, 2018 3:19 PM
To: Charles Hooff; louk@fox-run.net; Codding, Ellie; Grape, Laura T.; Woode, Willie; Morin, Christine A
Cc: Smarr, Melissa; Cook, Ricky
Subject: Belmont Bay Farm Compliance Schedule update
Attachments: Bel pic.jpg

Good morning Mr. Hooff and Mr. Kobus,

Thank you for the email with planting information. Unfortunately this is not enough information for the required planting plan. You need to at least provide the following details for a planting plan:

- Location, identification, and respective sizes (in acres) of sections to be replanted (or a map to scale would show this),
- Plant categories (e.g. understory trees, over story trees, shrubs and grasses). This should also list -specific plant species within each category that are naturally adapted to prevailing conditions within the sections identified for replanting,
- Numbers and sizes (nursery plants or bare rooted plants) of each species. These should be based on the county's recommendation (i.e., minimum number of plants per acre) for Reforestation of the Resource Protection Areas.

To assist you with the planting plan, I've provided the attached Map. You can mark required elements above on this map and return it to me. To assist you with the number and sizes of plants, please see the following sections of Chapter 118 as well as the publication available at this link:

https://www.fairfaxcounty.gov/publicworks/sites/publicworks/files/assets/documents/rpa_tree_and_shrub_list_9-24-07.pdf:

118-3-3 (f) Buffer area establishment: Where buffer areas are to be established, they shall consist of a mixture of over story trees, understory trees, shrubs and groundcovers. The density of over story trees shall be a minimum of 100 trees per acre. The density of understory trees shall be a minimum of 200 trees per acre. The density of shrubs shall be a minimum of 1089 plants per acre. If seedlings are used instead of container plants, the density of trees shall be doubled. Large caliper trees shall not be planted on slopes steeper than 2:1. Plant materials shall be randomly placed to achieve a relatively even spacing throughout the buffer. The Director may approve the use of a seed mixture as a supplement to or in lieu of individual plants for shrubs and groundcovers. Plants shall be native to the degree practical and adaptable to site conditions. Wetland plantings (including herbaceous plantings) and/or wetland seed mix shall be used where site conditions warrant. Plant materials and planting techniques shall be as specified in the Public Facilities Manual.

118-9-1 (d) Restoration of Chesapeake Bay Preservation Areas shall be performed as necessary to meet the intent of this Chapter, the requirements herein, and the requirements of the Public Facilities Manual. In addition to the plantings required by Section 118-3-3(f) and the Public Facilities Manual, the Director may

require that trees illegally removed from Chesapeake Bay Preservation Areas be replaced by other trees of the same or comparable species of equal value and/or be replaced 2 for 1 with 2 inch caliper trees. The value of the replacement trees shall not exceed the value of those illegally removed as determined by the formula in the latest revision of the "Guide for Plant Appraisal" prepared by the Council of Tree and Landscape Appraisers and published by the International Society of Arboriculture.

Also, I still need to hear from you about when the survey will be completed. If I do not hear from you by 6/15/18 with a date for survey submittal, I will re-issue a new compliance schedule with the dates we have discussed as well as a survey due date that we will assign.

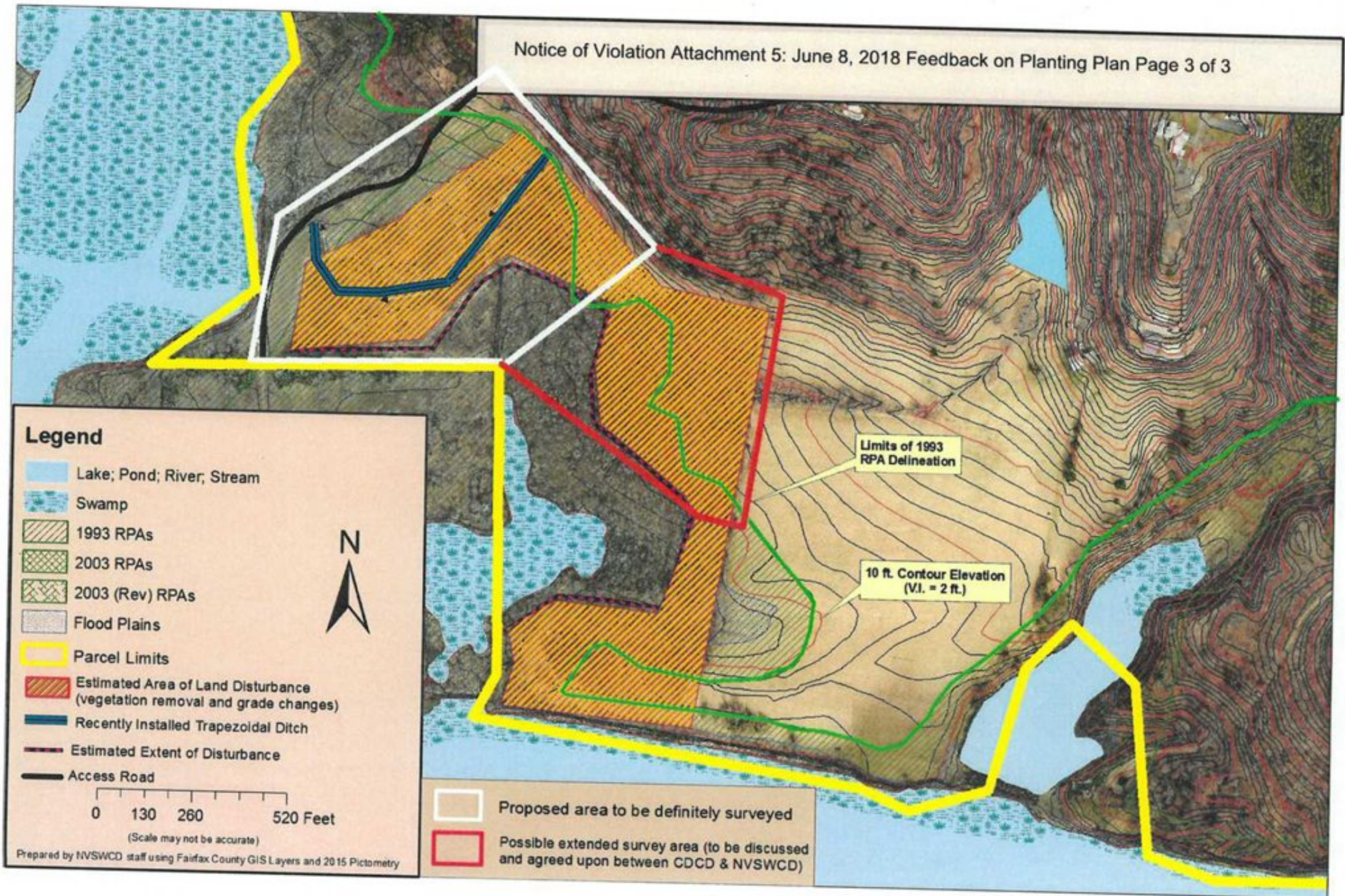
Addition to the items above please provide and update on the WQIA submittal that was due on 5-30-18 as well .

If you have any questions feel free to give me a call.

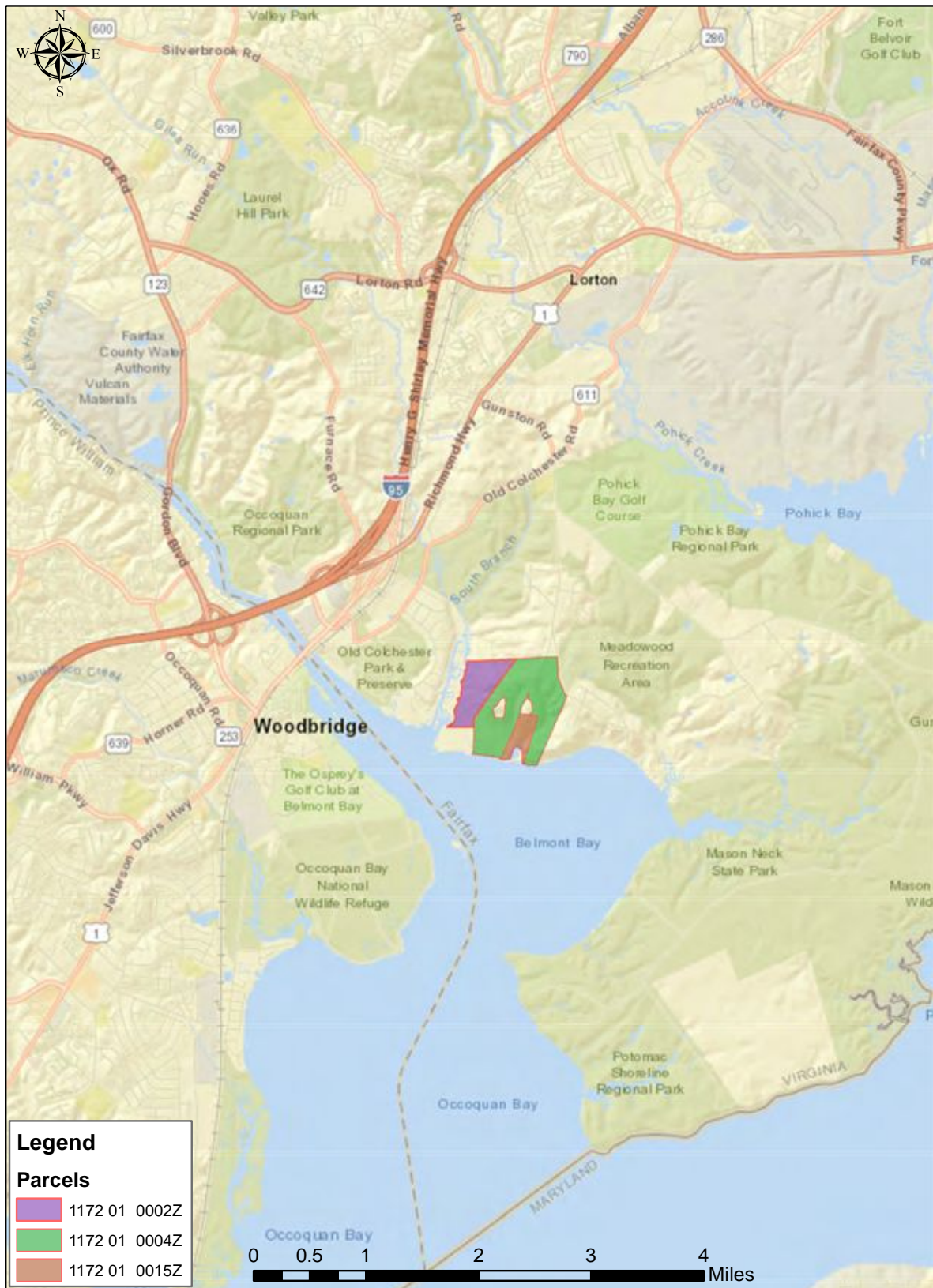
Thank you,
Ricky Cook

Ricky Cook
Senior Engineer Inspector
Code Development & Compliance Division
E-mail – Ricky.Cook@FairfaxCounty.gov
Main # 703-324-1300
Direct # 703-324-2714

Notice of Violation Attachment 5: June 8, 2018 Feedback on Planting Plan Page 3 of 3



Attachment 2: Vicinity Map



Fairfax County
Land Development Services





ATTACHMENT 3: A&F Renewal 2015

APPLICATION ACCEPTED: October 10, 2014

PLANNING COMMISSION: February 18, 2015

BOARD OF SUPERVISORS: March 24, 2015 @ 4:00 pm

County of Fairfax, Virginia

February 4, 2015

STAFF REPORT



**BELMONT BAY FARMS STATEWIDE AGRICULTURAL
AND FORESTAL DISTRICT RENEWAL
APPLICATION AR 92-V-001-02
MOUNT VERNON DISTRICT**

APPLICANT: Belmont Bay Farms, Ltd.
ZONING: R-E
PARCEL: 117-2 ((1)) 2Z, 4Z and 5Z
LOCATION: 10622 Belmont Boulevard, Lorton, VA
SITE AREA: 287.65 acres
PLAN MAP: 0.1 to 0.2 du/ac
PROPOSAL: Renewal of Statewide Agricultural and Forestal District

STAFF RECOMMENDATIONS:

Staff recommends that Appendix E of the Fairfax County Code be amended to renew the Belmont Bay Statewide Agricultural and Forestal District subject to the proposed Ordinance Provisions contained in Appendix 1.

Michael H. Lynskey, ASLA

Excellence * Innovation * Stewardship
Integrity * Teamwork * Public Service

Department of Planning and Zoning
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509
Phone 703-324-1290 FAX 703-324-3924

www.fairfaxcounty.gov/dpz/



ATTACHMENT 3: A&F Renewal 2015

It should be noted that approval of an agricultural and forestal district application does not automatically qualify a property for land use value assessment. Upon application to the Department of Tax Administration (DTA) for taxation on the basis of land use assessment, DTA must independently determine if the subject property meets the definition of either agricultural and/or forestal use, as well as the appropriate guidelines, including minimum acreage, for either use, as required by Title 58.1 of the Code of Virginia, which is found in Appendix 10.

It should be noted that it is not the intent of the staff to recommend that the Board, in adopting any Ordinance provisions, relieve the applicant/owner from compliance with the provisions of any other applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendation of staff; it does not reflect the position of the Board of Supervisors.

The approval of this application does not interfere with, abrogate or annul any easements, covenants, or other agreements between parties, as they may apply to the property subject to this application.

For information, contact the Zoning Evaluation Division, Department of Planning and Zoning, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035-5505, (703) 324-1290.

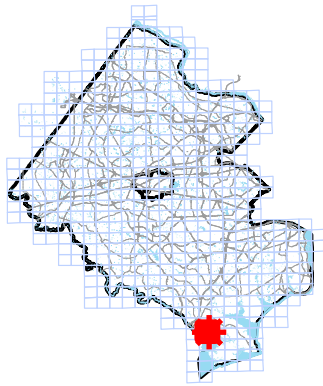
<http://ldsnet.fairfaxcounty.gov/ldsnet/ZAPSMain.aspx?cde=AR&seq=4191270>



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

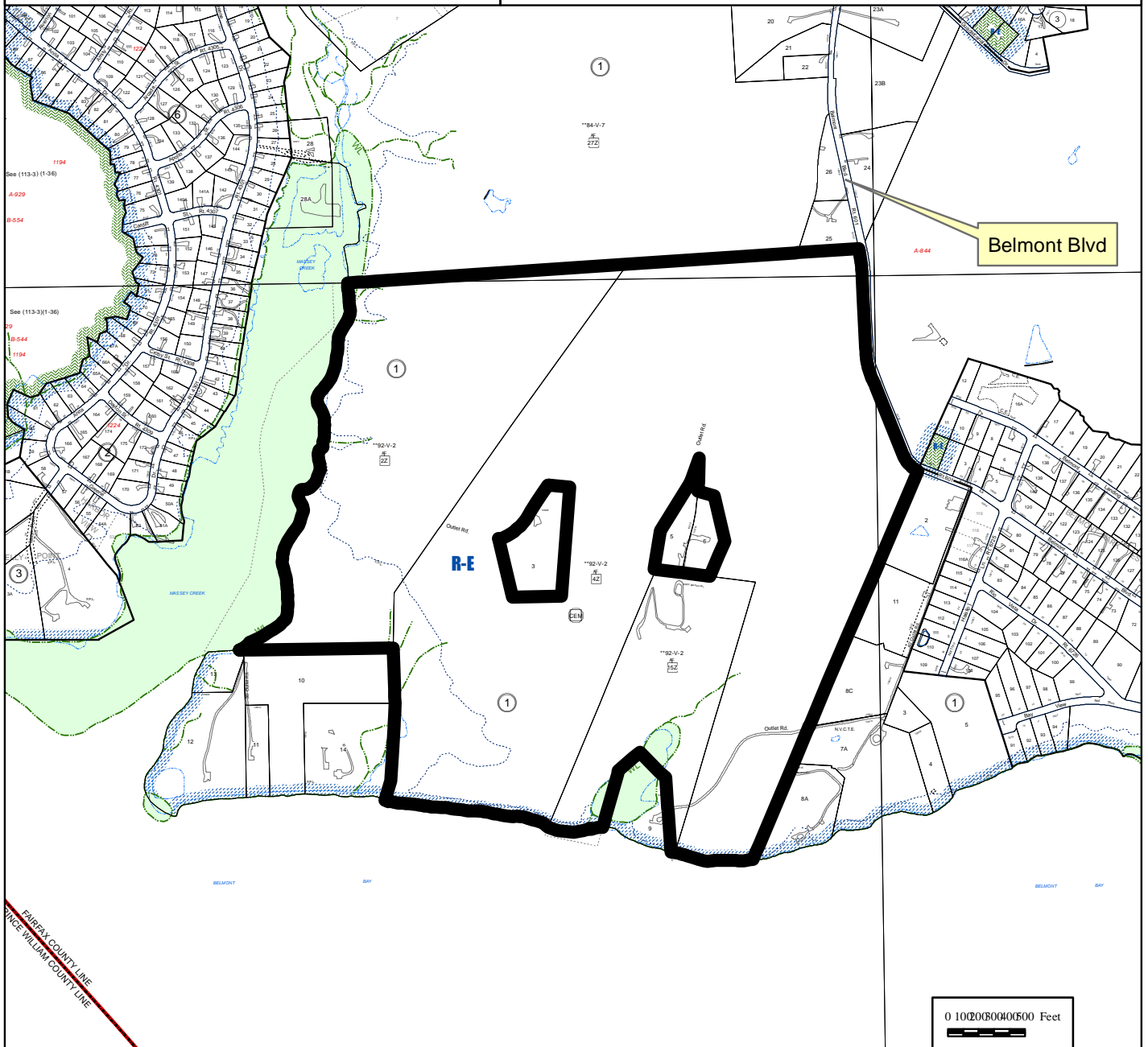
A&F District Renewal

AR 92-V -001-02



ATTACHMENT 3: A&F Renewal 2015

BELEMONT BAY FARMS, LTD.
Accepted: 10/10/2014
Proposed: RENEWAL OF AGRICULTURAL AND FORESTAL DISTRICT AF 92-V-001
Area: 287.65 AC OF LAND; DISTRICT - MOUNT VERNON
Zoning Dist Sect:
Located: 10622 BELMONT BOULEVARD, LORTON, VA 22079
Zoning: R- E
Overlay Dist:
Map Ref Num: 117-2- /01/ /0002Z /01/ /0004Z /01/ /0015Z



ATTACHMENT 3: A&F Renewal 2015

A GLOSSARY OF TERMS FREQUENTLY USED IN STAFF REPORTS WILL BE FOUND AT THE BACK OF THIS REPORT

DESCRIPTION OF APPLICATION

A2 92-V-001-02 is a request to renew the Belmont Bay Statewide Agricultural and Forestal (A & F) District for an additional 10-year term (under the provisions of Chapter 114 of the Fairfax County Code). A & F Districts encourage the preservation of significant tracts of agricultural and forested land throughout the County by providing a reduced real estate tax assessment in exchange for a commitment to preserve the land for the length of the term. While certain exceptions are permitted, the land is expected to remain at its present use and development intensity for the extent of the 10-year term. Removal of the district before the conclusion of the term is subject to payment of roll back taxes, per Section 58.1-3237 of the Code of Virginia.



Figure 1: District location map.

A copy of the applicant's application is contained in Appendix 2; Staff's Proposed Ordinance Provisions are contained in Appendix 1.

ZONING BACKGROUND

The 287.65-acre Belmont Bay Farms Local Agricultural and Forestal District was established by the Board of Supervisors for an eight-year period on October 29, 1984, as AF 84-V-002. When the district was first renewed, on February 22, 1993, it was converted to a statewide district (AF 92-V-001), for an additional 10-year period. The statewide district was again renewed (AR 92-V-001) on February 23, 2004, for a ten-year period. The acreage of the district has remained unchanged and there has been no change to the uses within the district during the previous ten-year term. Agricultural production (lambs, wool) and logging have been practiced on this site for most of the past 100 years. Logging actions occurred in 1984 and 1991, with a forestry management plan in place since 1984.

LOCATION AND CHARACTER

The subject property is located on Mason Neck, and is bounded by Belmont Bay to the south, Massey Creek to the west, and Belmont Boulevard to the east.

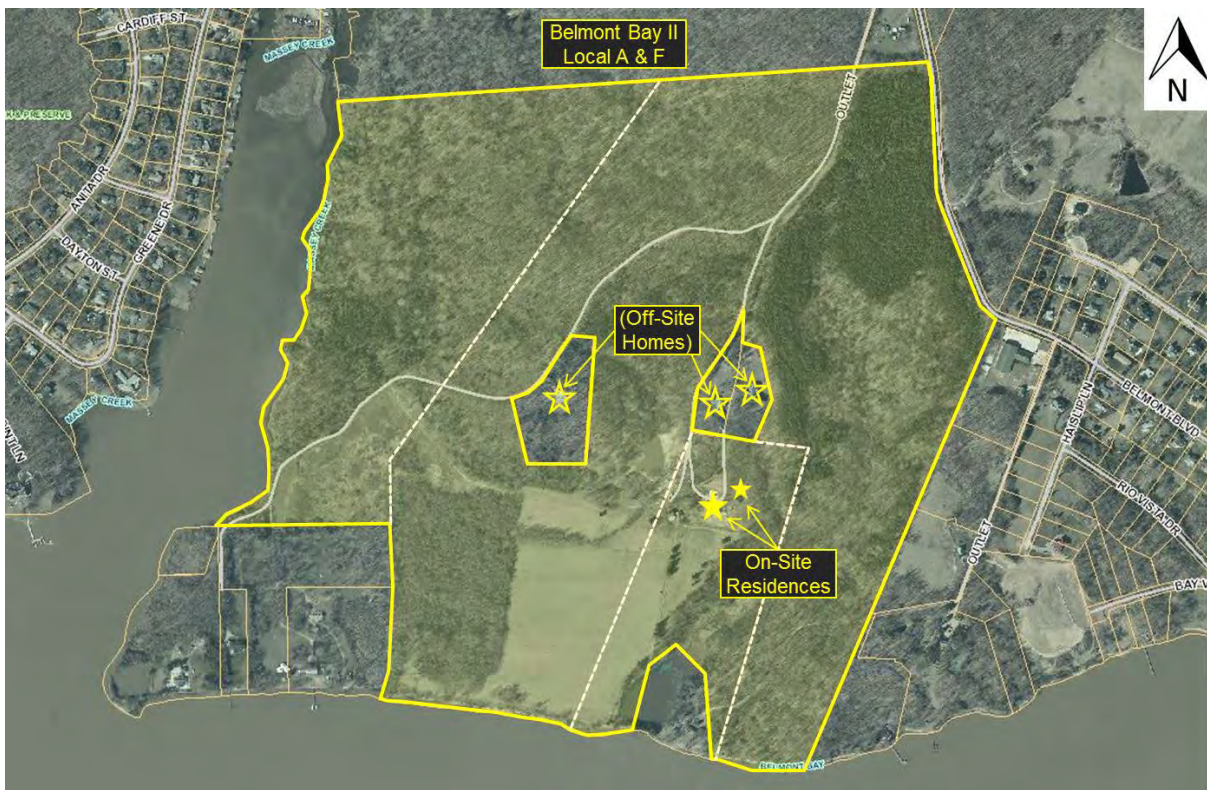


Figure 2: Aerial view of District.

Surrounding Area Description:

The property and surrounding areas consist of forested land and agricultural uses, zoned R-E (Residential Estate) and planned for low-density residential use. The Belmont Bay II Local A & F District (also owned by the applicant) is located directly adjacent to the north, and large-lot residential lots exist to the east and west. The subject district is contiguous, though several residential properties not owned by the applicant are surrounded by the district, and are not included in the application.

Property Description:

Applicant: Belmont Bay Farms, Ltd.
Acreage: 287.65 acres
Uses: Active agricultural uses – 49 acres
 Forested or undeveloped – 233 acres
 Residential – 5 acres

The 287.65-acre property is primarily forested, with approximately 49 acres used for agricultural use (primarily the raising of sheep for wool and the sale of lambs); approximately 5 acres are in use for two residences. Three ponds exist on the site, as well as several unnamed tributary streams which drain to Belmont Bay. Approximately 57 acres of the site have been identified as Chesapeake Bay Resource Protection Areas (RPAs).

Figure 3: Structures on the Property		
Structure	Year Built	Use
House and Garage	1907	Residential
House	1907	Residential – tenant
Barn	1907	Agricultural
Miscellaneous agricultural and storage buildings	1990	Storage, shelter for livestock.



Figure 4: Existing structures on the property.



Figure 5: View of Belmont Bay from main residence.



Figure 6: The upper pond on the property.



Figure 7: The low-lying pasture area, used for sheep grazing.

COMPREHENSIVE PLAN PROVISIONS

Plan Area:	Area IV
Planning District:	Lower Potomac
Planning Sector:	LP3 – Mason Neck
Plan Map:	Residential use at a density of 0.1 to 0.2 dwelling unit per acre (du/ac).

STAFF ANALYSIS**Land Use Analysis** (Appendix 6)

The Mason Neck area is planned for very low-density single-family residential use and public lands. The Comprehensive Plan encourages the retention of existing forest cover, and the protection of sensitive natural areas and water resources. The renewal of this Agricultural and Forestal District would continue to be compatible with the existing and planned low density residential character for the site and the surrounding area, and is in conformance with Plan goals of preserving the rural and scenic character of the area.

Environmental Analysis (Appendix 6)

The subject property is located in the Mill Branch and Kane Creek Run watersheds of the Occoquan River and contains several tributary creeks. Approximately 57 acres of the site have been identified as Resource Protection Areas (RPAs), according to the County's Chesapeake Bay Preservation Ordinance, and an Environmental Quality Corridor (EQC), as defined by the County Policy Plan, is also located on the subject property. Identified RPA/EQC areas are delineated on a map included in Appendix 6.

The applicant is encouraged to protect and enhance the RPA/EQC areas, and an ordinance provision is proposed that would require designated EQC areas to remain undisturbed, with the exception of routine forest maintenance activities. Renewal of this district would be consistent with Comprehensive Plan goals to preserve and protect this environmentally sensitive area of the County.

Transportation Analysis (Appendix 7)

This application does not represent any conflict with the Countywide Plan transportation recommendations and would have no traffic impact. No projects that would affect the site are included in current construction programs. There are no transportation-related concerns with the application.

Parks Analysis

The Park Authority supports the establishment of A&F districts as they further goals of the FCPA policy manual.

Forestry Analysis (Appendix 5)

The Area Forester inspected the property and found conditions largely the same as during the previous renewal, although the previous Stewardship Management Plan (dated July 8, 2003) was updated with a revised Forestry Management Plan (now dated December 10, 2014). The plan includes a detailed description of the forest conditions on the property and reflects the landowner's objectives of managing the timber on the site, as well as protecting wildlife habitat and unique natural areas. Detailed forest-management recommendations for each portion of the property are included in the report, as guidance to the landowner to achieve the desired objectives while protecting the overall environmental resources of the district.

An Ordinance Provision is proposed that requires the applicant to conform with the recommendations of the Forest Management Plan for the life of the district.

Soil and Water Conservation Analysis (Appendix 4)

A Soil and Water Conservation Plan was prepared by the Northern Virginia Soil and Water Conservation District for the subject property on January 8, 2015, finding the property mostly forested with the exception of the pasture fields (which were in good condition) providing the only agricultural use on the site (grazing of sheep). Two of the ponds on the site were found to contain excessive siltation and were recommended for maintenance measures, which would require permits from the appropriate authorities due to their location in RPA areas. Typical recommendations for nutrient management, pest management, and RPA/floodplain management are also included in the report.

A proposed Ordinance Provision is included requiring that the applicant follow the recommendations of the revised plan, which may be amended if deemed necessary by the Soil and Water Conservation District.

Agricultural and Forestal District Criteria Analysis

Article 1 of Chapter 114 of the Fairfax County Code contains a set of criteria which is designed to serve as a guide in the evaluation of proposed State Agricultural and Forestal Districts. It is important to note that these criteria are a guide to establishing a District; they are not prerequisites. The following is an evaluation of the proposed district's conformance with these criteria:

- (a) *All district acreage should be currently devoted to agricultural use or forestal use or should be undeveloped and suitable for such uses, except that a reasonable amount of residential or other use may be included.*

Of the subject parcels in this renewal application, approximately 49 acres are currently devoted to agricultural use; 233 acres to forestal use; and 5 acres to residential use. The residential uses consist of two historic homes, a barn and several outbuildings, which have all been renovated. Staff believes this is reasonable, given the large size of the proposed district, and therefore, believes that this criterion is satisfied.

- (b) *All lands in the district should be zoned to the R-P, R-C, R-A, or the R-E District.*

The property is zoned R-E; therefore, this criterion is satisfied.

- (c) *The district should be consistent with the Comprehensive Plan. The following land uses identified in the Plan are appropriate for a district: .1-.2 dwelling units per acre; .2 dwelling units per acre; .2-.5 dwelling units per acre; .5-1 dwelling units per acre; Private Recreation; Private Open Space; Public Park; Agriculture; Environmental Quality Corridor.*

The property is planned for residential use at a density of 0.1 to 0.2 dwelling unit per acre (du/ac). Therefore, this criterion has been satisfied.

- (d) *A majority of the surrounding land within one-quarter mile of the district should be planned according to the Comprehensive Plan for uses identified in (c) above.*

All of the land located within one-quarter mile of the proposed district is planned for either residential use, at 0.1 to 0.2 du/acre or private open space. Therefore, this criterion has been satisfied.

- (e) *A majority of the existing surrounding land uses within one-quarter mile of the district should be agricultural, forestall, outdoor recreational, conservation or low-density residential (.5 dwelling unit per acre or less).*

A majority of the land within one-quarter mile of the district is in agricultural or forestal uses, or low-density residential uses (R-E District). Directly to the north is the Belmont Bay II Local A & F District, consisting of approximately 115 acres. To the northeast is the former Meadowbrook Farm A & F District, now the property of the U.S. Bureau of Land Management. Large residential lots (5 to 7 acres) adjoin the property to the east and west. Therefore, staff believes this criterion has been satisfied.

- (f) *Approximately 2/3 of the land (66%) in agricultural use in the district should contain Class I, II, III, or IV soils as defined by the USDA Soil Conservation Service. Districts having more than 1/3 of the land in agricultural use containing Class V-VIII soils may be considered if such lands have been improved and are managed to reduce soil erosion, maintain soil nutrients, and reduce non-point pollution.*

Although the Conservation Plan does not contain a new soil capability analysis, a previous analysis stated that approximately 45 percent of the soils located within the district were within agricultural capability classes II-IV; all of the soils within that area used for agricultural production were within capability classes of II-IV. Staff believes that this analysis is still applicable. Staff believes that this criterion has been satisfied.

- (g) *There should be evidence of a history of investment in farm or forest improvements or other commitments to continuing agricultural or forestal use(s) in the district. In particular, districts with no history of investments in farm or forest improvements must evidence a firm commitment to agricultural or forestal uses for at least the life of the district.*

The applicants acquired this property, which has a long history of agricultural and forestal uses, in the 1940s. The site has been logged for most of the past 100 years, including a selective timber cut in 1984 and a partial clear-cut logging operation in 1991. The areas which were clear-cut have been reforested, and trees in those areas are regenerating. The property has been in the Agricultural and Forestal District program since 1984, and has had a forest management plan and a soil and water conservation plan since that time. Cattle have been raised on the property since the 1950s; prior to cattle the site was used to raise agricultural products, including corn and wheat. Currently, the forestal portions of the property are regenerating and are not yet mature enough for harvest, while the agricultural portions of the property are being used to raise sheep - producing wool (approximately 200 lbs per year) and market sheep/lambs (averaging 15 per year). Property investments in recent years include fencing and extensive repair of the barn and agricultural buildings. Staff believes this criterion has been met.

- (h) *The district should not unreasonably hinder acquisition and construction of public roads, utilities, and facilities needed to serve other areas of planned growth.*

This application does not represent any conflict with planned improvements to public roads, utilities, or facilities in the area.

- (i) *The district's core acreage should be reasonably compact in shape and should not contain within its perimeter a large number of parcels not included in the district.*

There are four residentially-developed parcels of five acres or less located within the district that are not owned by the applicants and are not included in the district. The core of the district, however, is compact in shape. Staff believes this criterion is satisfied.

- (j) *All noncontiguous parcels in the district should contain at least five (5) acres of land in agricultural use or twenty (20) acres in forestall use.*

There are no non-contiguous parcels in the proposed district; therefore, this criterion does not apply.

Based upon staff analysis, this renewal application for the Belmont Bay Farms Statewide Agricultural and Forestal District meets all applicable criteria established in Chapter 114 of the Fairfax County Code as a guide for the review of the renewal of the district.

AFDAC RECOMMENDATION (Appendix 8)

On January 27, 2015, The Agriculture and Forestal District Advisory Committee (AFDAC) voted unanimously to recommend that the Board of Supervisors approve this renewal application, subject to the Ordinance Provisions included as Appendix 1 of this report.

CONCLUSIONS AND RECOMMENDATIONS

Staff Conclusions

Staff believes that the renewal application of the Belmont Bay Statewide Agricultural and Forestal District meets the applicable criteria contained in Chapter 114 of the County Code; exceeds the minimum acreage requirement; and is in conformance with the Comprehensive Plan.

Staff Recommendations

Staff recommends that Appendix E of the Fairfax County Code be amended to renew the Belmont Bay Farms Statewide Agricultural and Forestal District subject to the proposed Ordinance Provisions contained in Appendix 1.

It should be noted that approval of an agricultural and forestal district application does not automatically qualify a property for land use value assessment. Following Board action on an application, the Department of Tax Administration must independently determine if the subject property meets the definition of either agricultural and/or forestal use, as well as the appropriate guidelines for either use, as required by Title 58.1, Chapter 32 of the Code of Virginia, which is found in Appendix 10.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any Ordinance Provisions associated with this case, relieve the applicant/owner from compliance with the provisions of any other applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Supervisors.

APPENDICES

1. Proposed Ordinance Provisions
2. Application Form / Statement of Justification
3. AR 89-S-004-02 Approved Ordinance (previous renewal)
4. Soil and Water Quality Conservation Plan
5. VA Department of Forestry Memo (2014) and Plan (2006)
6. Land-Use/Environmental Analysis
7. FCDOT Transportation Memo
8. Agricultural and Forestal District Advisory Committee Recommendation
9. Fairfax County Code, Chapter 114 *“Agricultural and Forestal Districts of Statewide Significance”*
10. State of Virginia Code, Title 58.1, Chapter 32
11. Glossary of Terms

ORDINANCE PROVISIONS

February 4, 2015

AR 92-V-001-02

If it is the intent of the Board of Supervisors to renew the Belmont Bay Farms Statewide Agricultural and Forestal District, as proposed in Application AR 92-V-001-02, pursuant to Chapter 43 of Title 15.2 of the Code of Virginia and Chapter 114 of the Fairfax County Code, on Tax Map Parcels 117-2 ((1)) 2Z, 4Z and 5Z, the staff recommends that the approval be subject to the following Ordinance Provisions:

Standard Provisions (From Chapter 114)

- (1) That no parcel included within the district shall be developed to a more intensive use than its existing use at the time of adoption of the ordinance establishing such district for ten years from the date of adoption of such ordinance. This provision shall not be construed to restrict expansion of or improvements to the agricultural or forestal use of the land.
- (2) That no parcel added to an already established district shall be developed to a more intensive use than its existing use at the time of addition to the district for ten years from the date of adoption of the original ordinance.
- (3) That land used in agricultural and forestal production within the agricultural and forestal district of statewide significance shall automatically qualify for an agricultural and forestal value assessment on such land pursuant to Chapter 4, Article 19 of the Fairfax County Code and to Title 58.1, Section 32 of the Code of Virginia, if the requirements for such assessment contained therein are satisfied.
- (4) That the district shall be reviewed by the Board of Supervisors at the end of the ten-year period and that it may by ordinance renew the district or a modification thereof for another ten-year period. No owner(s) of land shall be included in any agricultural and forestal district of statewide significance without such owner's written approval.

Additional Provisions

- (5) The boundaries of those areas delineated as Environmental Quality Corridors (EQCs) shall be the permanent limits of clearing and grading for the life of the Belmont Bay Farms Statewide Agricultural and Forestal District (see attached map). EQC areas shall be left undisturbed, with the exception of:
 - a) Existing residential and agricultural uses, including all pasture land, farm-related buildings, residential structures, and surrounding yards. Additional

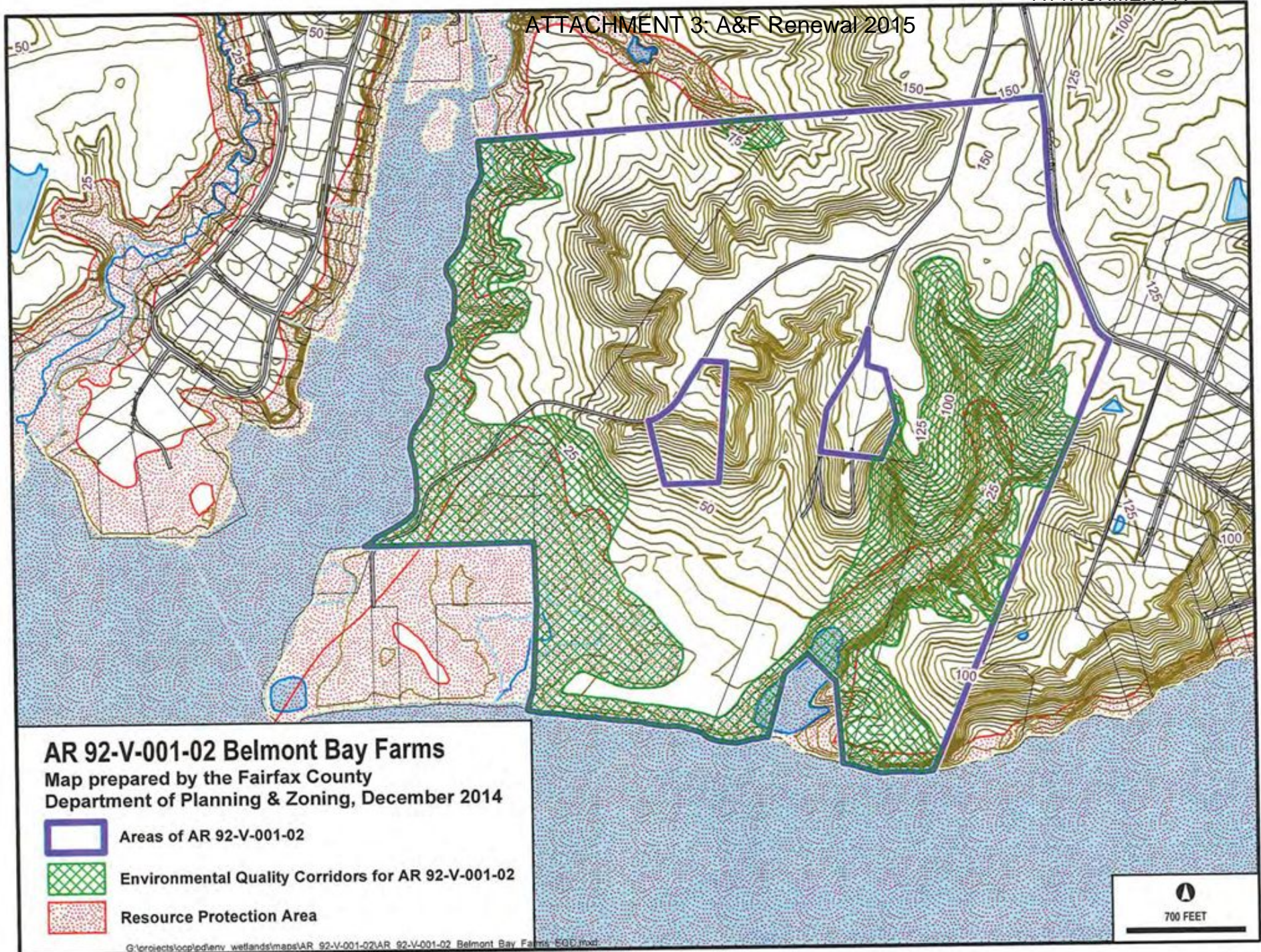
residential and agricultural activities may be added, provided that no clearing of the EQC is associated with such expansion;

- b) Forest management activities, including selective thinning operations and removal of noxious weeds and invasive species performed to enhance existing vegetation, and the removal of dead, dying, or diseased vegetation, in accordance with the Forest Management Plan, the Virginia Department of Forestry (DOF) guidelines for best management practices (BMPs) for water quality, and as reviewed and approved by DOF and the County's Urban Forestry Division.
- (6) The applicants shall implement and abide by the recommendations of the Forest Management Plan, dated December 10, 2014, for the life of the Belmont Bay Farms Statewide Agricultural and Forestal District. The Forest Management Plan may be updated from time to time as determined necessary by the Area Forester.
 - (7) The applicants shall implement and abide by the recommendations of the Soil and Water Conservation Plan, which was prepared by the Northern Virginia Soil and Water Conservation District on January 8, 2015, for the life of the Belmont Bay Farms Statewide Agricultural and Forestal District. The Soil and Water Conservation Plan may be updated from time to time as determined necessary by the Northern Virginia Soil and Water Conservation District.
 - (8) The Cultural Resource Management and Protection (CRMP) Section of the Fairfax County Park Authority shall be permitted to survey the property and recover artifacts from the property for the life of the Belmont Bay Farms Statewide Agricultural and Forestal District. CRMP shall be notified prior to any land disturbance that requires a permit or prior to any forest-management activities requiring DOF approval. Surveys and other similar activities of CRMP shall be conducted only with the prior permission of the owners of the property and at terms mutually acceptable to both parties established before each occurrence. All surveys and other archaeological activities shall be conducted in a manner which protects the privacy of the sites and the property within the District. All prehistoric and historic artifacts which are found on the property may be loaned to the County for cataloging and study for a period of up to five years, and shall be returned to the property owner at the end of the five year period. The applicant shall adhere to all applicable Federal and State Regulations (including the 1973 Endangered Species Act, as amended) regarding the protection of any endangered species which may be present on-site, as determined by the United States Fish and Wildlife Service and/or the Virginia Department of Game and Inland Fisheries. Should these agencies differ, the U.S. Fish and Wildlife Service shall take

precedence.

- (9) The establishment and continuation of this district depends upon the continuing legality and enforceability of each of the terms and conditions stated in this ordinance. This district may, at the discretion of the Board of Supervisors, be subject to reconsideration and may be terminated if warranted in the discretion of the Board of Supervisors upon determination by a court or any declaration or enactment by the General Assembly that renders any provisions illegal or unenforceable. The reconsideration/termination shall be in accordance with the procedures for the establishment, renewal, or amendment of an A & F District as outlined in Section 114 of the County Code and shall include an opportunity for the property owner(s) to demonstrate that the determination by a court or the declaration or enactment by the General Assembly does not apply to the conditions of this district.

ATTACHMENT 3: A&F Renewal 2015



ATTACHMENT 3: A&F Renewal 2015 APPENDIX 2

Application No. AR 92-V-001-02

**APPLICATION FOR THE ESTABLISHMENT OF A
AGRICULTURAL AND FORESTAL DISTRICT**

FAIRFAX COUNTY

1. Type of application: Local Statewide
 Initial Amendment Renewal
2. Please list the Tax Map number, the name and address of each owner and other information for each parcel proposed for this district:

Owner's Name & Address	Tax Map Number	Year Acquired	Zoning District	Acres	
Belmont Bay Farm, Ltd.	117.2-01-0002V&Z	1982	RE	79.4450	(1)
Belmont Bay Farm, Ltd.	117.2-01-0004V&Z	1982	RE	181.7000	(1)
Charles R. Hooff III &					(2)
Gudrun K. Hooff	117.2-01-015V&Z	1986	RE	26.5060	

(1) Transferred to Belmont Bay Farm, Ltd. from Charles R. Hooff, Jr. & Elizabeth D. Hooff in 1982

(2) Transferred to Charles R. & Gudrun K. Hooff III from Charles R. Hooff, Jr. & Elizabeth D Hooff in 1986

3. Total acreage in the proposed district: 287.6510 acres.

4. Using the definitions on the instruction sheet, indicate the number of properties included in this application: farm 1, forest 2.

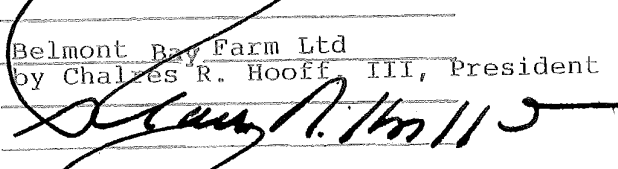
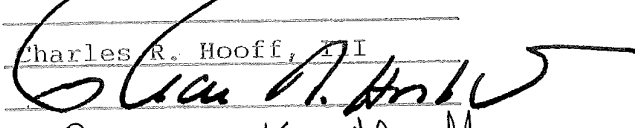
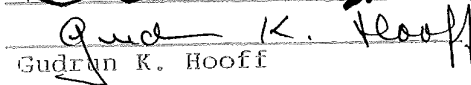
AR 2014-0349

ATTACHMENT 3: A&F Renewal 2015 APPENDIX 2

5. Name, address and telephone number of the property owner or representative who will act as a contact person for this application:

Name: William M. Baskin, Jr.
Address: Baskin, Jackson & Duffett, PC
301 Park Ave., Falls Church, VA 22046
baskinjack@aol.com
Telephone: (703) 534-3610

6. Signature of all property owners:

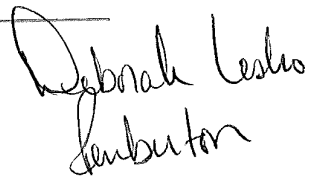
Belmont Bay Farm Ltd
by Charles R. Hooff III, President

Charles R. Hooff, III

Gudrun K. Hooff


TO BE COMPLETED BY THE COUNTY

Date application accepted: October 10, 2014

Date of action by Board of Supervisors: _____

- Approved as submitted Denied
 Approved with modifications


Deborah Lester
Semberton

ALL APPLICANTS

- List all structures on the property, the year the structure was built and the present use of the structure:

Structure	Year built	Use
House & garage (rehabbed 1986 & 2013)	1907	residential dwelling for Charles Hooff III
House	1907	residential tenant building
Barn	1907	storage and stock shelter
other buildings	1990	stock buildings & storage

use additional page(s) if necessary

- List any historic sites, as listed on the Fairfax County Inventory of Historic Sites, located on the subject property:

An historic site/sites may located on the property. The County Archeologist will need to opine on this. Both historic and pre historic areas have been explored under the supervision of the County Archeologist.

- List any improvements made to the property in the past 10 years, including buildings, fencing, equipment, drainage projects, and conservation measures:

Fencing, extensive repair of barn and appurtenant agriculture buildings. This is an ongoing process.

ATTACHMENT 3: A&F Renewal 2015 APPENDIX 2

4. is a Soil and Water Conservation Plan on file with the Northern Virginia Soil and Water Conservation District (NVSWCD): yes no

If yes, date prepared: 1983 _____

If no, has an application been filed with NVSWCD: yes no

If yes, date submitted: _____

5. List the products and yields from this farm or forest property:

Product	Past year's yield	Average yield for previous 4 years
Forest products	none timber immature	10 cords (1)
Wool	<input checked="" type="checkbox"/> none in past year	200 lbs
Live lambs	none in past year	
live rams	15	15/year

1. Forest products are in an immature stage currently, so there is no activity.
2. Sheep are being sold to a vendor who has a religious market for the animals.

FARM PROPERTY

1. Please check the appropriate description of the farm:

- Owner-operated, full-time.
 - Owner-operated, part-time.
 - Farm manager operated.
 - Rented to another farmer
- Portion of farm rented: ___all___ acres.
 Other. Please describe:

2. List the acreage of the property which is in the following uses:

Active agricultural uses	<u>49.0000</u>	acres.
Forested or undeveloped	<u>233.0000</u>	acres.
Residential uses	<u>5.0000</u>	acres.
Total acreage	<u>287.6517</u>	acres.

3. Does the farm operation require that tractors or other slow moving vehicles use public roads: yes no

If yes, which roads will be used:

Belmont Blvd

4. Please estimate the number of vehicles entering or leaving your farm each day:
 ___ cars, vans and pickup trucks ___ heavy trucks.

FOREST PROPERTY

1. List the acreage of the property which is in the following uses:

Future timber or pulpwood harvesting	<u>233.0000</u>	acres
Christmas tree production and harvesting	<u>0.0000</u>	acres
Firewood production and harvesting	<u>0.0000</u>	acres
Conservation	<u>0.0000</u>	acres
Residential uses	<u>0.0000</u>	acres
Other: _____	_____	acres
Total acreage	<u>233</u>	acres

2. If tree harvesting is planned, what roads or rights-of-way will be used for access:

Belmont Blvd.

**Statewide Agricultural and Forestal District Criteria
Justificatio**

Criteria (a): All of the district acreage is devoted to forestall and agricultural uses except for land immediately surrounding the residence and appurtenant buildings.

Criteria (b): All of the land in the district is zoned R-E.

Criteria (c): The land in the district is shown on the Comprehensive Plan for residential development @ .2 to .5 dwelling units to the acres.

Criteria (d): A majority of the surrounding land located within a quarter of a mile of the district is also shown on the Comprehensive Plan for residential development @ .2 to .5 dwelling units per acre. The area located to the west of the district across Massy Creek is planned or developed 2 .5 to 1 dwelling units per acre. The shore of Massey Creek opposite the district is designated on the Comprehensive Plan as Private Open Space. The parcel to the north and east of the district has been in prior years a Statewide A&F district. The site has been procured by the U.S. Government, and is currently undergoing a zoning change to open space.

Criteria (f): all of the land in the district devoted to agricultural use is either Class II, Class III or Class IV as defined by USDA.

Criteria (g): there has been a long and continuous history of agricultural and forest applications on the site. The site has been logged for most of the 20th century. A selective timber harvest was carried out in 1984, and a clear cut was carried out in 1991. The site has been reforested on a 50-acre tract, which now has timber in the 4" to 8" caliber trees. There is a Forest Management Plan in effect since 1984. The district has had been used as a cattle farm since 1950's. Prior the site had commodity crops. There has been substantial investment in new fencing, barn repairs, and reforestation during the past 10 years. The district is currently a sheep farm. Products are wool, and market lambs.

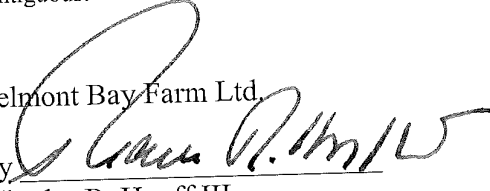
Criteria (h): The applicants have no knowledge of any impending need for roads, utilities, or

facilities needed to serve other areas of planned growth.

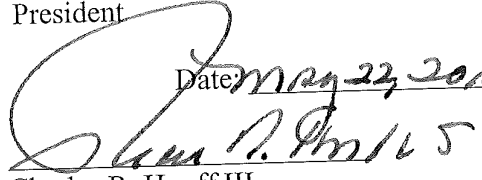
Criteria (i): The district is contiguous. There are seven small developed residential parcels imbedded within the perimeter that are not owned by the applicant nor part of the application. The core of the district is substantial and compact in shape.

Criteria (j): All of the parcels in the district are contiguous.

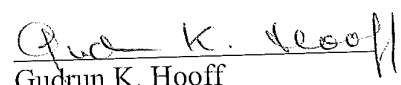
Belmont Bay Farm Ltd.

By 
Charles R. Hooff III
President

Date: May 22, 2014


Charles R. Hooff III

Date: May 22, 2014


Gudrun K. Hooff

Date: _____

10-04-F

ADOPTION OF AN AMENDMENT TO
APPENDIX F (LOCAL AGRICULTURAL AND FORESTAL DISTRICTS)
OF THE 1976 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on Monday, February 23, 2004, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment regarding Appendix F (Local Agricultural and Forestal Districts) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words and figures following, to-wit:

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA:

Amend Appendix F (Local Agricultural and Forestal Districts), as follows:

E-4. Belmont Bay Farms Statewide Agricultural and Forestal District
(AR 92-V-001)

(a) The following parcel of land situated in the Mt. Vernon District, and more particularly described herein, is hereby included in the Belmont Bay Farms Statewide Agricultural and Forestal District:

Owner	Fairfax County Tax Map Parcel Number	Acreage
Belmont Bay Farms Ltd.	117-2 ((1)) 2	79.44 acres
Belmont Bay Farms Ltd.	117-2 ((1)) 4	181.70 acres
Charles R. Hooff, III & Gudrun K. Hooff	117-2 ((1)) 15	26.51 acres
Total		287.65 acres

(b) The Belmont Bay Farms Local Agricultural and Forestal District is established effective February 23, 2004, pursuant to Chapter 44, Title 15.2 of the Code of Virginia and Chapter 114 of the Fairfax County Code and is therefore subject to the provisions of those Chapters and the following provisions:

(1) No parcel included within the district shall be developed to a more intensive use than its existing use at the time of adoption of the ordinance establishing such district for ten (10) years from the date of adoption of such ordinance. This provision shall not be construed to restrict expansion of or improvements to the agricultural and forestal use of the land, or to prevent the construction of one (1) additional house within the district, where otherwise permitted by applicable law, for either an owner, a member of the owner's family, or for a tenant who farms the land;

(2) No parcel added to an already established district shall be developed to a more intensive use than its existing use at the time of addition to the district for ten (10) years from the date of adoption of the original ordinance;

(3) Land used in agricultural and forestal production within the agricultural and forestal district of statewide significance shall qualify for an agricultural or forestal value assessment on such land pursuant to Chapter 4, Article 19 of the Fairfax County Code and to Section 58.1-3230 et seq. of the Code of Virginia, if the requirement for such assessment contained therein are satisfied;

(4) The district shall be reviewed by the Board of Supervisors at the end of the ten-year period and it may, by ordinance renew the district or a modification thereof for another ten-year period. No owner(s) of land shall be included in any agricultural and forestal district of local significance without such owner's written approval;

(5) As determined by the Virginia Department of Forestry (DOF) after consultation with the County's Urban Forestry Division of the Department of Public Works and Environmental Services, the boundaries of the Environmental Quality Corridor (EQC) shall be the permanent limits of clearing and grading for the life of the District. (map on file with Department of Planning and Zoning) No activities may be permitted in the EQC except for the following as determined by the DOF after consultation with the County's Urban Forestry Division:

- (a) Existing residential and agricultural uses including all pasture land, farm related buildings, residential structures, and surrounding yards as delineated on the 2003 Conservation Plan. Additional residential and agricultural activities may be added provided that no clearing of the EQC is associated with such expansion;
- (b) The removal of dead, dying, or diseased vegetation; and
- (c) Mixed age forest management in accordance with the DOF guidelines for best management practices (BMPs) to provide water quality benefits and to minimize erosion may be performed provided that: (1) no disturbance or removal of any trees shall be permitted within the required area of undisturbed open space surrounding any bald eagle's nest as required by State and Federal regulation; (2) Any tree removal on steep slopes (15% or greater) shall be limited to the removal of dead and dying vegetation.

This provision does not relieve the applicant from compliance with the Chesapeake Bay Preservation regulations. Prior to any removal of any vegetation within the EQC, the applicant shall submit to the DOF and the County's Urban Forestry Division for review and approval of the following information: (1) a plot sample timber cruise (inventory) for the area of tree removal which depicts the species and diameter distribution of existing marketable trees and identifying the portion thereof which is proposed to be removed; (2) the proposed access to the area of tree removal; and (3) forestry BMPs which provide water quality benefits and include erosion and sedimentation controls. The owner shall submit to inspections by the Virginia DOF and the County's Urban Forestry Division to ensure compliance with this provision;

(6) The applicant shall implement and abide by the recommendations of the Forest Management Plan which was prepared by the State Forester in August 1992 and amended on December 8, 1992, for the life of the Belmont Bay Farms Statewide Agricultural and Forestal District. The Forest Management Plan may be updated from time to time as determined necessary by the State Forester.;

(7) The Heritage Resources Branch of the Fairfax County Park Authority shall be permitted to survey the property and recover artifacts from the property for the life of the Belmont Bay Farms Statewide Agricultural and Forestal District. Surveys and other similar activities of the Heritage Resources Branch shall be conducted only with the prior permission of the owners of the property and at terms mutually acceptable to both parties established before each occurrence. All surveys and other archaeological activities shall be conducted in a manner

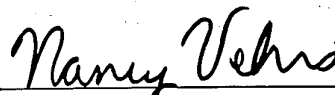
which protects the privacy of the sites and the property within the District. All prehistoric and historic artifacts which are found on the property may be loaned to the County for cataloging and study for a period of up to five years, and shall be returned to the property owner at the end of the five year period;

(8) The applicant shall adhere to all applicable Federal and State Regulations (including the 1973 Endangered Species Act, as amended) regarding the protection of the known bald eagle nest on-site, and any other endangered species which may be present on-site as determined by the United States Fish and Wildlife Service and/or the Virginia Department of Game and Inland Fisheries. Should these agencies differ, the U.S. Fish and Wildlife Service shall take precedence;

(9) The establishment and continuation of this district depends upon the continuing legality and enforceability of each of the terms and conditions stated in this ordinance. This district may, at the discretion of the Board of Supervisors, be subject to reconsideration and may be terminated if warranted at the discretion of the Board of Supervisors upon determination by a court or any declaration or enactment by the General Assembly that renders any provisions illegal or unenforceable. The reconsideration shall be in accordance with procedures established by the Board of Supervisors and communicated to the property owner(s) to demonstrate that the determination by a court or the declaration or enactment by the General Assembly does not apply to the conditions of this district.

This amendment shall become effective upon adoption.

GIVEN under my hand this 23rd day of February, 2004.



NANCY VEHRS

Clerk to the Board of Supervisors



Northern Virginia Soil and Water Conservation District

12055 Government Center Parkway, Suite #905

Fairfax, VA 22035

<http://www.fairfaxcounty.gov/nvswcd/>

Tel: 703-324-1460

Fax: 703-423-1421

---Soil and Water Quality Conservation Plan ---

Property Owner/Operator:

Belmont Bay Farm, LTD.
(Charles R. Hooff III)
Agricultural & Forestal District – AF 92-V-001-02
10622 Belmont Boulevard
Lorton, VA 22079
Contact: William M. Baskin, Jr.
Baskin, Jackson & Duffett, PC
703-534-3610; Baskinjack@aol.com

Plan Prepared by:

Willie Woode, Senior Conservation Specialist, NVSWCD

Date:

January 8, 2015

Summary of operation:

This property is pending renewal of its agricultural and forestal district status. It is approximately, 288 acres in size, located at 10622 Belmont Boulevard in Lorton. The tract is kept mainly forested for purposes of timber harvesting, as wildlife preserve, and has sectional fields for grazing sheep. Only a few sheep were grazing the fields at the time of my visit. A few chickens and guinea hens are also kept onsite.

The property is located in the Lower Occoquan River Watershed (P-48). A total of 12,870 linear feet of Chesapeake Bay Resource Protection Area (RPA) is delineated within the property limits, bordering Massey Creek and other unnamed tributaries that drain into Belmont Bay. Additionally, three ponds (1, 2 & 3) exist on site.

ATTACHMENT 3: A&F Renewal 2015

The pasture fields are the only active form of agricultural land use on site. Approximately two acres of the six-acre portion of field #1 is being planned to be seeded for Millet and/or Sunflower, for purposes of attracting birds for hunting.

Assessment: The stand of grass in the pasture fields does not show signs of over-grazing or active erosion. However, farm owner is concerned about a unique invasive grass that grows tall, with its stems in a ring formation. At the time of my visit, the grass had gone into its winter hibernation state and could not be identified.

Pond # 1 was observed to be in good shape, although vegetation around the edges was scanty. Enhancing vegetative growth around the edges will minimize erosion, and also reduce pond siltation to some degrees.

Ponds 2 & 3 showed signs of needing some overhaul measures, mainly due to siltation. Considering the environmentally sensitive areas in which those two ponds 2 & 3 are located, permits must be obtained from the appropriate agencies before dredging commences.

Practices:

1) Nutrient Management (590):

Nutrients will be applied to pasture fields based on soil test results and recommended applications to provide balanced nutrition for healthy growth.

This plan was developed and signed by a Nutrient Management Planner, certified by the Commonwealth of Virginia's Nutrient Management Program.

Fields	Planned			Applied	
	Amount	Month	Year	Amount	Date
Field #1	6.0 acs.	8	2015		
Field #2	13.0 acs.	8	2015		
Field #3	3.5 acs.	8	2015		
Field #4	4.5 acs.	8	2015		
Total	27.0 acs.				

2) Pest Management (595)

Pest Management will be carried out to control agricultural pest infestation (weeds, insects, diseases) according to current recommendations from the Cooperative Extension Service. The Pest Management Guide is updated annually.

During the next growing season of the weed of concern, samples of the grass with its inflorescence should be sent to the Fairfax County Extension service for identification and management recommendations.

Fields	Planned			Applied	
	Amount	Month	Year	Amount	Date
Field #1	6.0 acs.	5	2014		
Field #2	13.0 acs.	5	2014		

Field #3	3.5 acs.	5	2014		
Field #4	4.5 acs.	5	2014		
Residential	7.0 acs.	5	2014		
Wooded, Wildlife Reserve	247.65acs.	5	2014		
Pond 1	0.5 ac.	5	2014		
Pond 2	1.5 acs.	5	2014		
Pond 3	4.0 acs.				
Total	287.65 acs.				

3) Chesapeake Bay Resource Protection Area (RPA) Management:

The green shaded area on the map is the county delineated Chesapeake Bay Resource Protection Area (RPA). The RPA is the final barrier through which pollutants contained in runoff from adjacent land areas are filtered. RPAs are required to be kept vegetated to enhance surface filtration and soil infiltration of pollutants. The use of pesticides and nutrient within this zone is not recommended. If any such chemicals must be utilized, it is recommended that the application must be done by a qualified and experienced applicator, under ideal weather conditions.

Fields	Planned Amount	Month	Year	Applied Amount	Date
Field #1	1330 Ln. ft.	1	2015		
Field #2	430 Ln. ft.	1	2015		
Wooded Wildlife Reserve	11,110 Ln. ft.	1	2015		
Total	12,870 Ln. ft.				

4) Upland and Flood Plain Riparian Forest Management

Natural resource preservation practices for trees, wildlife and their habitats within these zones must be implemented. The forest management plan provided by the Virginia Department of Forestry provides most of the basic practices to protect and enhance forested areas.

Regarding riparian zone management, stream corridors must be inspected at frequent intervals; especially after major storm events to be sure fallen trees or other drifted objects are not lodged such that they enhance erosive conditions within the channel. If such an occurrence is observed, the fallen tree or lodged object should be removed as soon as possible before the next major storm event. Prompt measures should be taken to address any actively eroding bank area. The NSWCD has training staff to provide basic bank stabilization techniques upon request.

Area	Planned Amount	Month	Year	Applied Amount	Date
Wooded Wildlife Reserve	247.65 acs.	1	2015		
Total	247.65 acs.				

5) Pond Maintenance:

Manage existing ponds and their adjacent vegetated buffer areas for water quality improvement and wildlife enhancement purposes. Maintain vegetation stand in buffer areas to improve filtration of pollutants before runoff enters the water body, and to reduce erosion. Additional pond maintenance information can be provided upon request.

Areas	Planned Amount	Month	Year	Applied Amount	Date
Pond 1	0.5 ac.	1	2015		
Pond 2	1.5 acs.	1	2015		
Pond 3	4.0 acs.	1	2015		
Total	6.0 acs.				

6) Record Keeping:

A system of records indicating the dates and applications of nutrients, or pesticides should be developed and maintained. A specimen record sheet is included.

Fields	Planned Amount	Month	Year	Applied Amount	Date
Field #1	6.0 acs.	5	2014		
Field #2	13.0 acs.	5	2014		
Field #3	3.5 acs.	5	2014		
Field #4	4.5 acs.	5	2014		
Residential	7.0 acs.	5	2014		
Wooded, Wildlife Reserve	247.65acs.	5	2014		
Pond 1	0.5 ac.	5	2014		
Pond 2	1.5 acs.	5	2014		
Pond 3	4.0 acs.				
Total	287.65 acs.				

**SIGNATURES OF PARTICIPANTS of the BELMONT BAY FARM, LTD
A&F District AR 92-V-001-02 (Charles R. Hooff)**

Landowner/Operator:

Charles R. Hooff

Date

Planner:

Wilfred D. Woode

Date

District Authority:

Chairman

Date

BELMONT BAY FARMS, LTD
10622 Belmont Boulevard
Lorton, VA 22079

Ag. & Forestal District
AF 92-V-001

287.65 acres

CONSERVATION AREA

Pond # 1

POND # 3

RESIDENTIAL

Field # 4
91C










Field # 3
71C

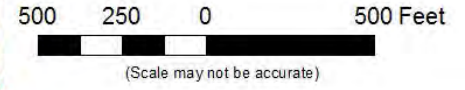
POND # 2

Field # 2
74B

Field # 1

Legend

-  1993 RPAs
 -  2003 RPAs
 -  2003 (Rev) RPAs
 -  Resource Management Areas (RMAs)
 -  Existing fence line
 -  Parcel limits
 -  Property Limits
 -  Change in vegetation type (planned)
 -  Soil types
- 74B - Lunt Marumsco Complex
 - 48A - Gunston Silt Loam
 - 91C - Sassafras Marumsco Complex
 - 71C - Kingstowne - Sassafras - Marumsco Complex



Bettina Ring
State Forester



COMMONWEALTH of VIRGINIA

DEPARTMENT OF FORESTRY
12055 Government Center Parkway
Suite 904
Fairfax VA 22035
703-324-1489

December 10, 2014

Charles Hooff III
1707 Duke St
Alexandria, VA 22314

Dear Mr. Hooff,

I am sorry our schedules did not permit us to meet and look at your property. As we discussed on the phone, there has not been much change since I last visited your property when I wrote your Stewardship Management Plan. The attached Belmont Bay Farms Forestry Plan is derived from the Stewardship Plan, but reflects some modifications based on the realities of conducting active management in 21st century Fairfax County.

For your convenience I have provided the County Department of Planning and Zoning and Mr. Baskin with a copy of this letter and the plan I have prepared.

If you have any questions, please do not hesitate to contact me.

Respectfully,

James McGlone
Urban Forest Conservationist

cc:DPZ; WMB, file

Belmont Bay Farms Forestry Plan

Owner:

Charles Hooff III
1707 Duke St
Alexandria, VA 22314
703-549-6103

Location:

10622 Belmont Blvd
Lorton VA 22079
South of Belmont Blvd and West of Belmont Blvd.

Landowner Objectives:

1. Managing Timber for Income/ Commercial Production
2. Protect Rare, Unique Natural Areas
3. Real Estate Involvement
4. Wildlife Habitat
 - a. Water Fowl
 - b. Bobwhite Quail
 - c. Rare, Threatened or Endangered Species
 - d. Deer/Turkey
 - e. Songbirds
5. Wildlife for Hunting

General Description: This property consists of rolling upland that falls steeply to a flood plain terrace above Belmont Bay, which is connected to the fresh water tidal portion of the Potomac River. The upland portion is hardwood forest and loblolly pine (planted in 1993). Variations in harvest practices have resulted in mixed hardwood stands; areas that were select cut maintain an oak component along with beech and poplar; areas that were clear cut are now largely poplar and sweet gum, with some beech and maple. Most of the flood plain terrace is an open field where sheep are pastured. There is one section of the terrace, which was clear cut in 1993 and has re-grown as an early successional forest of mostly sweet gum and locust. There is a house and several out buildings on the property.

There are three out parcels embedded in the property. These belong to other land owners and are labeled Bozarth, Cave and Edgar on the property map.

Much of this property consists of either steep slopes or areas that are still in recovery from select cut harvests in 1983 or 92 and/or gypsy moth damage. Unless otherwise noted in the parcel descriptions below, these stands should be allowed to continue to recover and be reevaluated in ten years under consideration of future market conditions and management options.

Areas of Special Concern: The entire western boundary of the property is designated a Resource Protection Area (RPA) under the Fairfax County Chesapeake Bay ordinance. There is also an RPA along a small stream in the eastern part of the tract (see attached RPA map). RPAs are lands designated by Fairfax County along perennial streams to protect water quality in the Chesapeake Bay. The purpose of the RPA designation is to protect forested riparian buffers and county code prohibits the removal of any vegetation within an RPA. However, section 9VAC10-20-120 of the Virginia Administrative Code specifically exempts silvicultural activities from restrictions in RPAs, provided they adhere to the January 1997 edition of "Forestry Best Management Practices for Water Quality in Virginia Technical Guide."

The area west of the pasture that is overgrown with sweet gum is also designated as an RPA and the county soil map lists the soils as wetland. This area is a freshwater tidal forested wetland and may be subject to regulation by the Army Corps of Engineers and/or the Virginia Department of Environmental Quality as jurisdictional wetlands. Section 404 of the Clean Water Act provides for nationwide permits for disturbance of wetlands and such a permit exists for silviculture, again provided forestry BMPs are adhered to during any silvicultural practice.

Deer Management. The most pressing problem of sound forest management in Fairfax County is managing deer herds. Due to deer browsing we are missing an entire age class of trees throughout the County and the youngest canopy trees in most forest parcels are about 30 years old. That equates to more damage than gypsy moths (and probably all other mortality sources combined) have been able to inflict. While the deer do not threaten our existing trees, they do make regeneration of the forest impossible and lead to the prospect that forests will disappear from Fairfax County over the next hundred years.

I note that you are hunting the property and are getting regeneration of beech and holly. I also noted no significant browse on the holly and mountain laurel. These are starvation foods for deer, and the absence of browse means either the deer are finding enough other food in the area or your efforts have succeeded in lowering the herd below the biological carrying capacity of the property. However there is still no regeneration of oak, which means the herd is still above the sustainable level for oak forest. The forest resource here would benefit from additional deer management effort focused on removing does.

Water Quality: The generally forested nature of the property provides excellent water quality protection to Belmont Bay, the Potomac River and the Chesapeake Bay. One area of concern, however, is the small stream in the eastern portion of the property. Channel incision and head cuts were observed in this stream. Both of these problems are associated with increased storm flow. If incising and head cutting are active, they are most likely the result of off-site land use. The channel incision and head cuts may also have been the result of the temporary increase in storm water flow associated with the 1993 harvest operation. In either event, extra care should be taken to reduce storm flows following harvest operations. This can best be accomplished by leaving slash in place during and after the harvest.



Virginia Department of Forestry
Protecting and Developing Healthy, Sustainable Forest Resources

Belmont Farms

Stewardship Map for Charles Hooff III



The Stewardship Property encloses 3 other properties labeled Cave, Edgar and Bozarth. Tract Name: Belmont Farms Tract #FAX93006

Map By:

Report Date: Thursday, May 24, 2007

Generated by the Integrated Forest Resource Information System - Copyright 2005 Virginia Department of Forestry

Parcels A-1 and A-2 (Loblolly Plantation)

Acres: 31.3 Total

Forest Type: Loblolly Pine plantation with poplar and sweet gum intrusion.

Species Present: Loblolly Pine, Sweet Gum, Tulip Poplar

Age: 15 years

Size: Pole to chip and saw (8 to 14 inches in diameter)

Quality: Good

Trees/acre: Over stocked (Basal area of 120 to 160 square feet per acre)

Growth Rate: Fair to good

Height: 40 to 50 feet

History: This area was clear cut and bulldozed in 1992, with slash piles burned. It was then planted at a prescribed 550 stems per acre. Based on field measurements the pines appear to have been planted on 9' by 6' centers yielding approximately 864 trees per acre. There is no record of release being performed on the parcel, though it was recommended.

RECOMMENDATIONS:

The parcel has the opportunity to produce good quality timber, but needs to be thinned to realize this potential. Although the Loblolly trees are in good condition with over one-third their height in canopy, they are overcrowded. By reducing basal area to 50 to 60 square feet per acre, or removing one half to two thirds of the trees, the remainder will have more room and resources to grow. Thinning will also maintain tree health and resistance to insects and disease and may improve wildlife habitat.

Thinning should be done from the bottom up, preferentially taking smaller trees by removing every third row of trees and selectively removing trees from the remaining rows. Hardwoods should also be removed at this time. If commercial thinning cannot be done, fuel management should be undertaken to reduce the risk of wildfire after thinning. Note, however, that small fuels decompose rapidly in Virginia and return nutrients to the soil. Some of the cut material, particularly the tree tops and branches can be left on the site to act as a time release fertilizer. Fuel reduction could also be accomplished with a prescribed burn.

Parcels B-1 and B-2

Acres: 29.3 Total

Forest Type: Mixed hardwood

Species Present: Poplar, Sweet Gum, Red Maple, Virginia Pine, Beech

Age: 15 years

Size: Pole (4 to 8 inches in diameter)

Quality: Fair

Trees/acre: Over stocked

Growth Rate: Fair to good

History: This area was clear cut and bulldozed in 1991-2, with slash piles burned. It was not planted and has grown up mostly in volunteer poplar and sweet gum with some red maple and Virginia pine mixed in. There is a bald eagle nest in or near the SW corner of parcel B-2.

RECOMMENDATIONS:

This stand is starting to sort itself out and shows promise as an eventual poplar-sweetgum stand. Allow this stand to continue to evolve on its own.

Parcel C

Acres: 5.5

Forest Type: Mixed hardwood

Species Present: Poplar, Sweet Gum, Red Maple, Locust

Age: 24 years

Size: Pole to small saw timber

Quality: Fair

Trees/acre: Over stocked

Growth Rate: Fair to good

History: This area was part of the 1983 select cut. The area was apparently cut harder or suffered more gypsy moth damage than other parts of the 1983 harvest. It consists of small to medium diameter trees generally under 15 inch DBH.

RECOMMENDATIONS:

This area shows some potential for producing poplar timber; however it will need to have a crop tree release performed on the parcel to realize that potential. As with the Loblolly Pine parcel, fuel management should be considered after crop tree release.

Unlike parcels B-1 and B-2, it has a relatively small poplar component and release at this time will leave it under stocked. There are some larger trees in the stand and it might be better to allow this stand to grow for five or more years and then perform a shelterwood or seed tree cut. Shelterwood cuts remove 40% to 60 % of the basal area of the stand and leave behind mature trees to act a seed source and provide protection for natural regeneration of the stand. Once regeneration is advanced the mature trees left at the time of the initial cut are removed. A seed tree cut is similar but more trees are removed in the initial harvest and only a few are left behind as a seed source. Both are good practices for regenerating hardwood stands.

One issue with managing this parcel is its small size. Its management should be coordinated with parcels G and H

Parcel D

Acres: 24.3

Forest Type: Oak

Species Present: Chestnut Oak

Age: 50+ years

Size: Saw timber (20+ DBH)

Quality: Good

Trees/acre: Slightly under stocked

Growth Rate: Fair

History: This area was select cut in 1983 and later suffered from heavy gypsy moth damage.

RECOMMENDATIONS:

On the north and the west the area is bounded by abrupt changes in topography, soils and vegetative community. The chestnut oak is in good shape and should be allowed to grow.

Parcel E

Acres: 8.2

Forest Type: Hardwood

Species Present: Poplar, Sweet Gum, a few oaks and red maple

Age: 15 years

Size: Pole size

Quality: Fair

Trees/acre: Over stocked

Growth Rate: Good

History: This area was clear cut in 1992. It was not planted and intended to be open field. The stumps were too high to maintain as field by mowing and it has grown up as mostly sweet gum with a major poplar component and a few red maple and oaks in the higher ground. This area is bordered on the south by a fresh water tidal forested wetland.

RECOMMENDATIONS:

This parcel borders a swamp and is designated as an RPA. The boundaries of this parcel, and the swamp and locust parcels to the south are based on topographical map data. Like stands B-1 and B-2, the volunteer regeneration here should be allowed to progress to a mature stand.

Parcel F

Acres: 3.3

Forest Type: Hardwood

Species Present: Locust

Age: 15 years

Size: Pole size

Quality: Fair

Trees/acre: well stocked

Growth Rate: Fair

History: This area was clear cut in 1992. It was not planted and intended to be open field. The stumps were too high to maintain as field by mowing and it has grown up as mostly locust. This area is bordered on the north by a fresh water tidal forested wetland.

RECOMMENDATIONS:

This area should be cleared of the locust. It has the potential to be marketed as firewood, but it should be a complete harvest of the entire area, rather than a truck load at a time. It could also be marketed for fence posts; cut locust is rot resistant and has long survivability in contact with the soil.

Parcel G**Acres:** 7.1**Forest Type:** Hardwood**Species Present:** Sweet Gum**Age:** 15 years**Size:** Pole size**Quality:** Fair**Trees/acre:** Over stocked**Growth Rate:** Fair

History: This area was clear cut in 1992. It was not planted and intended to be open field. The stumps were too high to maintain as field by mowing and it has grown up as mostly sweet gum. This area is a fresh water tidal forested wetland and is subject to regulation by the Army Corps of Engineers, the Virginia Department of Environmental Quality, and is designated as an RPA by the Fairfax County Government.

RECOMMENDATIONS:

The regulatory hurdles combined with the physical limitations, economic considerations and the wildlife value suggests that the best thing to do in this area is nothing. This area has considerable wildlife value. The deeper permanent pools can serve as a secure breeding habitat for amphibians. American sweet gum seeds are eaten by eastern goldfinches, purple finches, mourning doves, northern bobwhites, and wild turkeys. Small mammals such as chipmunks and gray squirrels also enjoy the fruits and seeds

Cypress and water oak are the only commercial species that might grow here and they would be in constant competition with the established sweet gum. Management here would require many years of herbicidal and/or mechanical control of sweet gum until the crop trees reached sufficient size to shade out the sweet gum. Additionally sweet gum does have some commercial value as furniture, veneer, and flooring wood.

This area is both a county RPA and a jurisdictional wetland. Although there is a Federal Clean Water Act Section 404 Nationwide Permit for on going silviculture, there is some question about whether this site will automatically qualify for the Section 404 permit, since it has not been actively managed for 15 years. Should you choose to engage in management here remember: both exemptions make the January 1997 edition of "Forestry Best Management Practices for Water Quality in Virginia Technical Guide" mandatory.

Parcel H

Acres: 63.2

Forest Type: Hardwood

Species Present: Beech, Tulip Poplar, Black Gum, and some Oak along southern boundary.

Age: 50+ years

Size: Mostly saw timber

Quality: Good

Trees/acre: Slightly under stocked

Growth Rate: Fair

History: This area was select cut in 1988. It was later infested by gypsy moth and lost most of its oak component.

RECOMMENDATIONS:

This area is still recovering from the harvest operations and gypsy moth infestation. This parcel has some potential to be managed for tulip poplar. However, at this time it is recommended that nothing be done and the parcel be reevaluated in 10 years for future management. The species present are not of high commercial value and 10 years more growth will increase the total value of the stand. Continued efforts to reduce the deer population will help foster regeneration of this stand and the rest of the forest resources on this property.

Parcel I

Acres: 48.5

Forest Type: Hardwood

Species Present: Beech, Tulip Poplar, Black Gum, White Oak

Age: 50 years

Size: Mostly saw timber

Quality: Good

Trees/acre: Slightly under stocked

Growth Rate: Fair

History: This area was lightly select cut in 1993. It was more lightly affected by gypsy moth than parcel H and retained more of its oak component, especially in the southern uplands.

RECOMMENDATIONS:

This area is still recovering from the harvest operations and gypsy moth infestation. This parcel has some potential to be managed for Oak. However, at this time it is recommended that nothing be done and the parcel be reevaluated in 10 years for future management. Continued efforts to reduce the deer population will help foster regeneration of this stand and the rest of the forest resources on this property.

Field 1

Acres: 10.8

Forest Type: Open Field

Species Present: Grasses, Sweet Gum, Phragmites

Age: 15 years

History: This area was clear cut in 1992. It has been maintained as an open field since then. The main grass is fescue. The field is being invaded by sweet gum, *Phragmites australis*, black berries, and is threatened by the bamboo planted by the neighbor.

RECOMMENDATIONS:

Follow the soil conservation plan prepared by the Northern Virginia Soil and Water Conservation district or continue to allow colonization by sweetgum. Note that cutting only encourages sweetgum by releasing stem buds in the roots system. If you wish to remove sweetgum from the field you must either burn repeatedly or apply herbicides.

Field 2

Acres: 25.7

Forest Type: Open Field

Species Present: Grasses

Age: Unknown

History: This area has been open field at least since 1983. The north portion is fenced from the southern portion and there is a drainage that runs along the fence line. The southern portion is or has been hayed or mowed.

RECOMMENDATIONS:

Follow the recommendations of the soil conservation plan prepared by the Northern Virginia Soil and Water Conservation District.



County of Fairfax, Virginia

MEMORANDUM

Date: January 5, 2015

TO: Barbara C. Berlin, Director
Zoning Evaluation Division, DPZ

FROM: Pamela G. Nee, Chief *PAN*
Environment and Development Review Branch, DPZ

SUBJECT: Land Use Analysis & Environmental Assessment for: AR 92-V-001-02
Belmont Bay Farms, Ltd. Agricultural & Forestal District

This memorandum, prepared by Brenda Cho, includes citations from the Comprehensive Plan that list and explain land use recommendations and environmental policies for this property. The extent to which the application conforms to the applicable guidance contained in the Comprehensive Plan is noted.

DESCRIPTION OF THE APPLICATION

The applicant seeks approval to renew an approximately 288-acre Statewide Agricultural and Forestal (A & F) District, which encompasses three parcels [Tax Map Parcels 117-2 ((1)) 2Z, 4Z and 15Z]. The application site is located in the LP3 – Mason Neck Community Planning Sector in the Lower Potomac Planning District within the Mount Vernon Magisterial District. The parcels are owned by the Hooff family, and there are residential structures and stock and storage related buildings on site. Agricultural activities include forest products, wool production and live lambs and rams.

LOCATION AND CHARACTER

The subject property is located in the southeast quadrant of the county in the Mill Branch and Kane Creek Run watersheds of the Occoquan River and zoned R-E (Residential Estate District). Generally, this Agricultural and Forestal District is surrounded by land which is also zoned R-E and planned for residential use at .1-.2 dwelling unit per acre (du/ac). There is another A & F District to the north. The site is bounded by Massey Creek to the west, Belmont Bay to the south, and Belmont Boulevard to the east. The subject property is mostly forested with slopes throughout the site. There are a couple of

Department of Planning and Zoning
Planning Division
12055 Government Center Parkway, Suite 730
Fairfax, Virginia 22035-5509
Phone 703-324-1380
Fax 703-653-9447
www.fairfaxcounty.gov/dpz/



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Barbara C. Berlin
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Page 2

streams on site, and the stream areas have been identified as Resource Protection Areas (RPA), which cover approximately 57 acres of the site.

COMPREHENSIVE PLAN MAP

Residential use at .1-.2 dwelling unit per acre (5-10 acre lots)

COMPREHENSIVE PLAN CITATIONS

The Comprehensive Plan is the basis for the evaluation of this application. The assessment of the proposal for conformity with the land use and environmental recommendations of the Comprehensive Plan is guided by the following citations from the Plan:

Land Use

In the Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Lower Potomac Planning District, Amended through June 3, 2014, LP3-Mason Neck Community Planning Sector, Pages 108 - 118:

Land Use

Figure 37 indicates the geographic location of land use recommendations for this sector. Where recommendations are not shown on the General Locator Map, it is so noted.

1. This sector is planned for very low-density single-family residential use at up to .1 dwelling unit per acre. As an option, a density of up to .2 dwelling unit per acre may be appropriate if it is clustered and results in the preservation of EQC and other sensitive lands, provides substantial land in privately protected open space or public ownership, and contributes to maintaining the rural character of Mason Neck. Development at the baseline and optional levels should only occur where suitable soils allow for septic systems.

Most new development on Mason Neck will occur on lots of two acres or larger. On lots of this size it is possible to preserve features of ecological value and to minimize the impacts of development on wildlife and water quality. These practices are known collectively as minimum impact development techniques. New large lot development on Mason Neck should:

- Limit site disturbance for individual lots;
- Site homes on the least sensitive portion of each lot;
- Maintain open space in an undisturbed state or actively manage it to enhance habitat value;

ATTACHMENT 3: A&F Renewal 2015

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- Link open space within lots to adjacent park land and EQCs;
- Minimize the amount of new impervious surface on individual lots;
- Discourage the building of fences and other barriers in identified wildlife corridors;
- Retain existing forest cover and encourage re-vegetation of cleared areas with native plant species that have a high value as a food source for desirable species of wildlife; and,
- Encourage the use of small on-lot bioretention facilities for stormwater management.

Any additional residential development above the planned density range may undermine the rural character of the sector and exacerbate septic system problems which are being experienced on some properties.”

Environment

In the Fairfax County Comprehensive Plan, 2013 Edition, Policy Plan Volume, Environment, as amended through July 1, 2014, on pages 7-9:

“Objective 2: Prevent and reduce pollution of surface and groundwater resources. Protect and restore the ecological integrity of streams in Fairfax County.

Policy a. Maintain a best management practices (BMP) program for Fairfax County and ensure that new development and redevelopment complies with the County’s best management practice (BMP) requirements.

Policy d. Preserve the integrity and the scenic and recreational value of stream valley EQCs. . . .

Policy l. In order to augment the EQC system, encourage protection of stream channels and associated vegetated riparian buffer areas along stream channels upstream of Resource Protection Areas (as designated pursuant to the Chesapeake Bay Preservation Ordinance) and Environmental Quality Corridors. To the extent feasible in consideration of overall site design, stormwater management needs and opportunities, and other Comprehensive Plan guidance, establish boundaries of these buffer areas consistent with the guidelines for designation of the stream valley component of the EQC system as set forth in Objective 9 of this section of the Policy Plan. Where applicable, pursue

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commitments to restoration of degraded stream channels and riparian buffer areas.

Development proposals should implement best management practices to reduce runoff pollution and other impacts. Preferred practices include: those which recharge groundwater when such recharge will not degrade groundwater quality; those which preserve as much undisturbed open space as possible; and, those which contribute to ecological diversity by the creation of wetlands or other habitat enhancing BMPs, consistent with State guidelines and regulations.”

In the Fairfax County Comprehensive Plan, 2013 Edition, Policy Plan Volume, Environment, as amended through July 1, 2014, on page 10:

“Objective 3: Protect the Potomac Estuary and the Chesapeake Bay from the avoidable impacts of land use activities in Fairfax County.

Policy a. Ensure that new development and redevelopment complies with the County's Chesapeake Bay Preservation Ordinance. . . .”

In the Fairfax County Comprehensive Plan, 2013 Edition, Policy Plan Volume, Environment, as amended through July 1, 2014, on pages 14 and 15:

“Objective 9: Identify, protect and enhance an integrated network of ecologically valuable land and surface waters for present and future residents of Fairfax County.

Policy a: Identify, protect and restore an Environmental Quality Corridor system (EQC). . . . Lands may be included within the EQC system if they can achieve any of the following purposes:

- Habitat Quality: The land has a desirable or scarce habitat type, or one could be readily restored, or the land hosts a species of special interest. This may include: habitat for species that have been identified by state or federal agencies as being rare, threatened or endangered; rare vegetative communities; unfragmented vegetated areas that are large enough to support interior forest dwelling species; and aquatic and wetland breeding habitats (i.e., seeps, vernal pools) that are connected to and in close proximity to other EQC areas.
- Connectivity: This segment of open space could become a part of a corridor to facilitate the movement of wildlife and/or conserve biodiversity. This may include natural corridors that are wide enough to

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facilitate wildlife movement and/or the transfer of genetic material between core habitat areas.

- Hydrology/Stream Buffering/Stream Protection: The land provides, or could provide, protection to one or more streams through: the provision of shade; vegetative stabilization of stream banks; moderation of sheet flow stormwater runoff velocities and volumes; trapping of pollutants from stormwater runoff and/or flood waters; flood control through temporary storage of flood waters and dissipation of stream energy; separation of potential pollution sources from streams; accommodation of stream channel evolution/migration; and protection of steeply sloping areas near streams from denudation.
- Pollution Reduction Capabilities: Preservation of this land would result in significant pollutant reductions. Water pollution, for example, may be reduced through: trapping of nutrients, sediment and/or other pollutants from runoff from adjacent areas; trapping of nutrients, sediment and/or other pollutants from flood waters; protection of highly erodible soils and/or steeply sloping areas from denudation; and/or separation of potential pollution sources from streams.

The core of the EQC system will be the County's stream valleys. Additions to the stream valleys should be selected to augment the habitats and buffers provided by the stream valleys, and to add representative elements of the landscapes that are not represented within stream valleys. The stream valley component of the EQC system shall include the following elements . . . :

- All 100 year flood plains as defined by the Zoning Ordinance;
- All areas of 15% or greater slopes adjacent to the flood plain, or if no flood plain is present, 15% or greater slopes that begin within 50 feet of the stream channel;
- All wetlands connected to the stream valleys; and
- All the land within a corridor defined by a boundary line which is 50 feet plus 4 additional feet for each % slope measured perpendicular to the stream bank. The % slope used in the calculation will be the average slope measured within 110 feet of a stream channel or, if a flood plain is present, between the flood plain boundary and a point fifty feet up slope from the flood plain. This measurement should be taken at fifty foot intervals beginning at the downstream boundary of any stream valley on or adjacent to a property under evaluation."

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In the Fairfax County Comprehensive Plan, 2013 Edition, Policy Plan Volume, Environment, as amended through July 1, 2014, on page 18:

“Objective 10: Conserve and restore tree cover on developed and developing sites. Provide tree cover on sites where it is absent prior to development.

Policy a: Protect or restore the maximum amount of tree cover on developed and developing sites consistent with planned land use and good silvicultural practices.”

LAND USE ANALYSIS

The proposed renewal of this Agricultural and Forestal District is compatible with the existing and planned very low density residential character of this site and the surrounding area.

ENVIRONMENTAL ANALYSIS

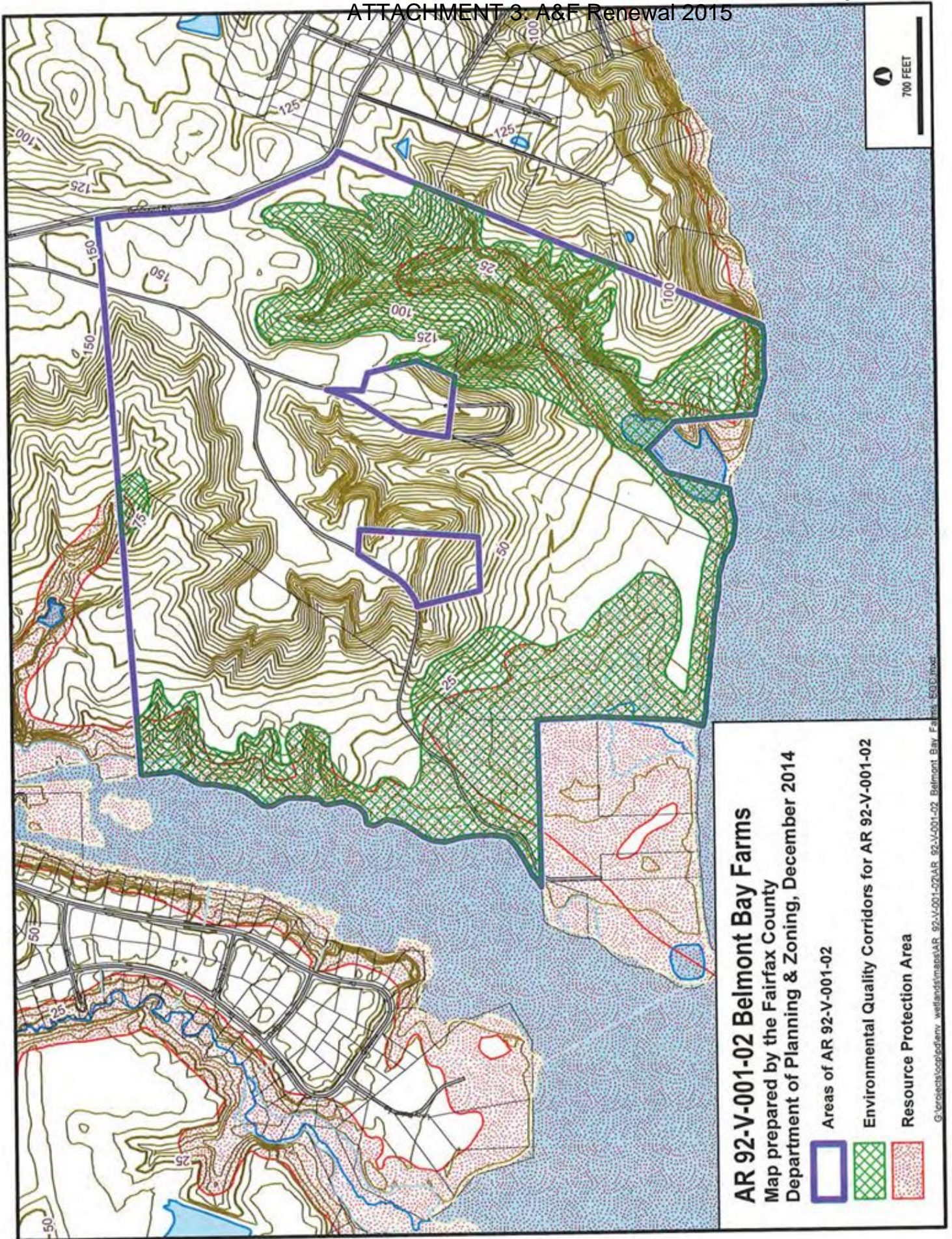
The property is subject to the County’s Chesapeake Bay Preservation Ordinance (CBPO), and a portion of the site contains a RPA as defined under the CBPO and is depicted on the attached map. An Environmental Quality Corridor (EQC) as defined under the Policy Plan is also located on the subject property and depicted on the attached map. The RPA/EQC is associated with tributaries on site. The EQC extends beyond the RPA and includes areas with steep slopes near the stream channels. The applicant should protect and enhance the EQC in order to be consistent with Comprehensive Plan guidance. Specifically, any agricultural and silvicultural activities should be conducted outside the limits of the EQC. If any prior disturbance has occurred in the EQC, the applicants are encouraged to restore this area in accordance with guidelines for restoration of the RPA established by the Northern Virginia Soil and Water Conservation District.

The application indicates that a Soil and Water Conservation Plan was filed with the Northern Virginia Soil and Water Conservation District in 1983. The applicant should provide a current Water Quality Management Plan for the renewal of this district.

While it does not appear that any significant changes are proposed with this application, staff would strongly encourage the applicant to implement recommendations in the Belmont Bay Farms Forestry Plan, as developed by Fairfax County’s Department of Forestry for the subject property, which is sensitive to the RPA areas designated on the property. EQC areas should also be incorporated into any implementation plan.

PGN: BJC

Attachment





County of Fairfax, Virginia

MEMORANDUM

DATE: December 16, 2014

TO: Barbara Berlin, Director
Zoning Evaluation Division
Department of Planning and Zoning

FROM: Angela Kadar Rodeheaver, Chief
Site Analysis Section
Department of Transportation *MAK for AKR*

FILE: 3-4 (AF 2014-MV-001)

SUBJECT: Transportation Impact

REFERENCE: AF 2014-MV-001; Jim Stokes
Land Identification Map: 113-3 ((1)) 12, 13, 14

This application would have no traffic impact. The Comprehensive Plan does recommend that Old Colchester Road be a two-lane road improved for sight distance and shoulders; however, no projects that would affect the site are included in current construction programs.

Therefore, this department has no objections to approval of this application.

AKR/lah

Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 220335-2895
Phone: (703) 877-5600 TTY: 711
Fax: (703) 877-5723
www.fairfaxcounty.gov/fcdot



FAIRFAX COUNTY, VIRGINIA

MEMORANDUM

DATE: January 27, 2015

TO: Members, Planning Commission
Members, Board of Supervisors

FROM: Agricultural and Forestal Districts Advisory Committee

SUBJECT: Recommendations on the Belmont Bay Farms Statewide Agricultural and Forestal District; Application AR 92-V-001-02

The Agricultural and Forestal Districts Advisory Committee met on January 27, 2015 to review the application to renew the Belmont Bay Farms Statewide Agricultural and Forestal District (Application AR 92-V-001-02). The Committee found the following:

- The Belmont Bay Farms Statewide Agricultural and Forestal District meets the minimum district size contained in Section 114-1-3;
- The Belmont Bay Farms Statewide Agricultural and Forestal District conforms with the Policy and Purpose of Chapter 114 of the Fairfax County Code;
- The Belmont Bay Farms Statewide Agricultural and Forestal District fulfills all of the applicable criteria found in Chapter 114 of the Fairfax County Code.

The Agricultural and Forestal Districts Advisory Committee unanimously recommends that Appendix E of the Fairfax County Code be amended to renew the Belmont Bay Farms Statewide Agricultural and Forestal District. The Advisory Committee further recommends that the establishment of this district be subject to the Ordinance Provisions which are contained in Appendix 1 of the staff report.

Fairfax County Code, Chapter 114, Statewide A & F District provisions. For the full County Code please visit the Fairfax County website or view a copy in person at the Fairfax County Office of the Clerk to the Board of Supervisors.

ARTICLE 1 - In General

Section 114-1-1. Short title.

This chapter may be referred to as the "Agricultural and Forestal Districts of Statewide Significance Ordinance" of the County of Fairfax and is to become effective June 30, 1983. (12-83-114.)

Section 114-1-2. Policy and purpose.

It is the policy of Fairfax County to conserve and protect and to encourage the development and improvement of its important agricultural and forestal lands for the production of food and other agricultural and forestal products. It is also Fairfax County policy to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes. It is the purpose of this chapter to provide a means by which agricultural and forestal lands of statewide significance may be protected and enhanced as a viable segment of the State and local economy as an economic and environmental resource of major importance.

Section 114-1-3. Establishment of districts.

The Fairfax County Board of Supervisors may establish, modify, renew, continue and terminate agricultural, forestal or agricultural and forestal districts of statewide significance, which shall be at a minimum two hundred (200) acres in size, in accordance with the provisions of Chapter 36 of Title 15.1 of the Code of Virginia. (12-83-114; 42-88-114.)

Section 114-1-4. Criteria for the Establishment, Modification, Renewal, Continuation or Termination of a District.

The following criteria shall be used as a guide in recommendations and decisions on whether to establish, modify, renew, continue or terminate agricultural and forestal districts.

- (a) All district acreage should be currently devoted to agricultural use or forestal use or should be undeveloped and suitable for such uses, except that a reasonable amount of residential or other use related to the agricultural or forestal use may be included.
- (b) All lands in the district should be zoned to the R-P, R-C, R-A, or R-E District.

(c) The district should be consistent with the Comprehensive Plan. The following land uses identified in the Plan are appropriate for a district: .1—.2 dwelling unit per acre, .2 dwelling unit per acre, .2—.5 dwelling unit per acre, Private Recreation, Private Open Space, Public Park, Agriculture, Environmental Quality Corridor.

(d) A majority of the surrounding land within one-quarter mile or the district should be planned according to the Comprehensive Plan for uses identified in (c) above.

(e) A majority of the existing surrounding land uses within one-quarter mile of the district should be agricultural, forestal, outdoor recreational, conservation or low density residential (.5 dwelling unit per acre or less).

(f) Approximately two-thirds of the land in agricultural use in the district should contain Class I, II, III or IV soils as defined by the USDA Soil Conservation Service. Districts having more than one-third of the land in agricultural use containing Class V—VIII soils may be considered if such lands have been improved and are managed to reduce soil erosion, maintain soil nutrients, and reduce nonpoint source pollution.

(g) There should be evidence of a history of investment in farm or forest improvements or other commitments to continuing agricultural or forestal use in the district. In particular, districts with no history of investments in farm or forest improvements must evidence a firm commitment to agricultural or forest use for at least the life of the district.

(h) The district should not unreasonably hinder acquisition and construction of public roads, utilities and facilities needed to serve other areas of planned growth.

(i) The district's core acreage should be reasonably compact in shape and should not contain within its perimeter a large number of parcels not included in the district.

(j) All noncontiguous parcels in the district should contain at least five (5) acres of land in agricultural use or twenty (20) acres in forestal use. (12-83-114.)

Section 114-1-5. Requirements for agricultural and forestal value assessment.

Land used in agricultural and forestal production within an agricultural and forestal district of statewide significance shall automatically qualify for an agricultural and forestal use value assessment on such land pursuant to Chapter 4, Article 19, of the Fairfax County Code and Section 58-769.4 et seq. of the Code of Virginia, if the requirements for such assessment contained therein are satisfied. (12-83-114.)

ARTICLE 2 – Districts Established Under this Chapter

Section 114-2-1. District ordinances.

Ordinances establishing specific agricultural and forestal districts of statewide significance are listed in Appendix E. (12-83-114.)

APPLICABLE SECTIONS OF THE CODE OF VIRGINIA,
TITLE 58.1, CHAPTER 32 – REAL PROPERTY TAX
 (current as of September 12, 2013 –
 refer to online version of the Code for up-to-date information)

§ 58.1-3230. Special classifications of real estate established and defined.

For the purposes of this article the following special classifications of real estate are established and defined:

"Real estate devoted to agricultural use" shall mean real estate devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.), or devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Prior, discontinued use of property shall not be considered in determining its current use. Real estate upon which recreational activities are conducted for a profit or otherwise shall be considered real estate devoted to agricultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner. Real property that has been designated as devoted to agricultural use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning, provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. The presence of utility lines on real property shall not be considered in determining whether the property, including the portion where the utility lines are located, is devoted to agricultural use. In determining whether real property is devoted to agricultural use, zoning designations and special use permits for the property shall not be the sole considerations.

"Real estate devoted to horticultural use" shall mean real estate devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; and nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.), or real estate devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Prior, discontinued use of property shall not be considered in determining its current use. Real estate upon which recreational activities are conducted for profit or otherwise shall be considered real estate devoted to horticultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner. Real property that has been designated as devoted to horticultural use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning, provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. The presence of utility lines on real property shall not be considered in determining whether the property, including the portion where the utility lines are located, is devoted to horticultural use. In determining whether real property is devoted to horticultural use, zoning designations and special use permits for the property shall not be the sole considerations.

"Real estate devoted to forest use" shall mean land, including the standing timber and trees thereon, devoted to tree growth in such quantity and so spaced and maintained as to constitute a forest area under standards prescribed by the State Forester pursuant to the authority set out in § [58.1-3240](#) and in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.). Prior, discontinued use of property shall not be considered in determining its current use. Real estate upon which recreational activities are conducted for profit, or otherwise, shall still be considered real estate devoted to forest use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it no longer constitutes a forest area under standards prescribed by the State Forester pursuant to the authority set out in § [58.1-3240](#). Real property that has been designated as devoted to forest use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or is otherwise allowed by zoning, provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. The presence of utility lines on real property shall not be considered in determining whether the property, including the portion where the utility lines are located, is devoted to forest use. In determining whether real property is devoted to forest use, zoning designations and special use permits for the property shall not be the sole considerations.

"Real estate devoted to open-space use" shall mean real estate used as, or preserved for, (i) park or recreational purposes, including public or private golf courses, (ii) conservation of land or other natural resources, (iii) floodways, (iv) wetlands as defined in § [58.1-3666](#), (v) riparian buffers as defined in § [58.1-3666](#), (vi) historic or scenic purposes, or (vii) assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land-use plan under uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § [58.1-3240](#) and in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) and the local ordinance. Prior, discontinued use of property shall not be considered in determining its current use. Real property that has been designated as devoted to open-space use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or is otherwise allowed by zoning, provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. The presence of utility lines on real property shall not be considered in determining whether the property, including the portion where the utility lines are located, is devoted to open-space use. In determining whether real property is devoted to open-space use, zoning designations and special use permits for the property shall not be the sole considerations.

§ 58.1-3233. Determinations to be made by local officers before assessment of real estate under ordinance.

Prior to the assessment of any parcel of real estate under any ordinance adopted pursuant to this article, the local assessing officer shall:

1. Determine that the real estate meets the criteria set forth in § [58.1-3230](#) and the standards prescribed thereunder to qualify for one of the classifications set forth therein, and he may request an opinion from the Director of the Department of Conservation and Recreation, the State Forester or the Commissioner of Agriculture and Consumer Services;
2. Determine further that real estate devoted solely to (i) agricultural or horticultural use consists of a minimum of five acres; except that for real estate used for purposes of engaging in aquaculture as defined in § [3.2-2600](#) or for the purposes of raising specialty crops as defined by local ordinance, the governing body may by ordinance prescribe that these uses consist of a minimum acreage of less than five acres, (ii) forest use consists of a minimum of 20 acres and (iii) open-space use consists of a minimum of five acres or such greater minimum acreage as may be prescribed by local ordinance; except that for real estate adjacent to a scenic river, a scenic highway, a Virginia Byway or public property in the Virginia Outdoors Plan or for any real estate in any city, county or town having a density of population greater than 5,000 per square mile, for any real estate in any county operating under the urban county executive form of government, or the unincorporated Town of Yorktown chartered in 1691, the governing body may by ordinance prescribe that land devoted to open-space uses consist of a minimum of one quarter of an acre.

The minimum acreage requirements for special classifications of real estate shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots recorded after July 1, 1983, titled in the same ownership. However, for purposes of adding together such total area of contiguous real estate, any noncontiguous parcel of real property included in an agricultural, forestal, or an agricultural and forestal district of local significance pursuant to subsection B of § [15.2-4405](#) shall be deemed to be contiguous to any other real property that is located in such district. For purposes of this section, properties separated only by a public right-of-way are considered contiguous; and

3. Determine further that real estate devoted to open-space use is (i) within an agricultural, a forestal, or an agricultural and forestal district entered into pursuant to Chapter 43 (§ [15.2-4300](#) et seq.) of Title 15.2, or (ii) subject to a recorded perpetual easement that is held by a public body, and promotes the open-space use classification, as defined in § [58.1-3230](#), or (iii) subject to a recorded commitment entered into by the landowners with the local governing body, or its authorized designee, not to change the use to a nonqualifying use for a time period stated in the commitment of not less than four years nor more than 10 years. Such commitment shall be subject to uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § [58.1-3240](#). Such commitment shall run with the land for the applicable period, and may be terminated in the manner provided in § [15.2-4314](#) for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.

§ 58.1-3232. Authority of city to provide for assessment and taxation of real estate in newly annexed area.

The council of any city may adopt an ordinance to provide for the assessment and taxation of only the real estate in an area newly annexed to such city in accord with the provisions of this article. All of the provisions of this article shall be applicable to such ordinance, except that if the county from which such area was annexed has in operation an ordinance

hereunder, the ordinance of such city may be adopted at any time prior to April 1 of the year for which such ordinance will be effective, and applications from landowners may be received at any time within thirty days of the adoption of the ordinance in such year. If such ordinance is adopted after the date specified in § 58.1-3231, the ranges of suggested values made by the State Land Evaluation Advisory Council for the county from which such area was annexed are to be considered the value recommendations for such city. An ordinance adopted under the authority of this section shall be effective only for the tax year immediately following annexation.

§ 58.1-3233. Determinations to be made by local officers before assessment of real estate under ordinance.

Prior to the assessment of any parcel of real estate under any ordinance adopted pursuant to this article, the local assessing officer shall:

1. Determine that the real estate meets the criteria set forth in § 58.1-3230 and the standards prescribed thereunder to qualify for one of the classifications set forth therein, and he may request an opinion from the Director of the Department of Conservation and Recreation, the State Forester or the Commissioner of Agriculture and Consumer Services;
2. Determine further that real estate devoted solely to (i) agricultural or horticultural use consists of a minimum of five acres; except that for real estate used for purposes of engaging in aquaculture as defined in § 3.2-2600 or for the purposes of raising specialty crops as defined by local ordinance, the governing body may by ordinance prescribe that these uses consist of a minimum acreage of less than five acres, (ii) forest use consists of a minimum of 20 acres and (iii) open-space use consists of a minimum of five acres or such greater minimum acreage as may be prescribed by local ordinance; except that for real estate adjacent to a scenic river, a scenic highway, a Virginia Byway or public property in the Virginia Outdoors Plan or for any real estate in any city, county or town having a density of population greater than 5,000 per square mile, for any real estate in any county operating under the urban county executive form of government, or the unincorporated Town of Yorktown chartered in 1691, the governing body may by ordinance prescribe that land devoted to open-space uses consist of a minimum of one quarter of an acre.

The minimum acreage requirements for special classifications of real estate shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots recorded after July 1, 1983, titled in the same ownership. *However, for purposes of adding together such total area of contiguous real estate, any noncontiguous parcel of real property included in an agricultural, forestal, or an agricultural and forestal district of local significance pursuant to subsection B of § 15.2-4405 shall be deemed to be contiguous to any other real property that is located in such district.* For purposes of this section, properties separated only by a public right-of-way are considered contiguous; and

3. Determine further that real estate devoted to open-space use is (i) within an agricultural, a forestal, or an agricultural and forestal district entered into pursuant to Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2, or (ii) subject to a recorded perpetual easement that is held by a public body, and promotes the open-space use classification, as defined in § 58.1-3230, or (iii) subject to a recorded commitment entered into by the landowners with the local governing body, or its authorized designee, not to change the use to a nonqualifying use for a time period stated in the commitment of not less than four years nor more than ten years. Such commitment shall be subject to uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § 58.1-3240. Such commitment shall run with the land for the applicable period, and may be terminated in the manner provided in § 15.1-1513 for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.

§ 58.1-3234. Application by property owners for assessment, etc., under ordinance; continuation of assessment, etc.

Property owners must submit an application for taxation on the basis of a use assessment to the local assessing officer:

1. At least sixty days preceding the tax year for which such taxation is sought; or
2. In any year in which a general reassessment is being made, the property owner may submit such application until thirty days have elapsed after his notice of increase in assessment is mailed in accordance with § 58.1-3330, or sixty days preceding the tax year, whichever is later; or
3. In any locality which has adopted a fiscal tax year under Chapter 30 (§ 58.1-3000 et seq.) of this Subtitle III, but continues to assess as of January 1, such application must be submitted for any year at least sixty days preceding the effective date of the assessment for such year.

The governing body, by ordinance, may permit applications to be filed within no more than sixty days after the filing deadline specified herein, upon the payment of a late filing fee to be established by the governing body. An individual who is owner of an undivided interest in a parcel may apply on behalf of himself and the other owners of such parcel upon submitting an affidavit that such other owners are minors or cannot be located. An application shall be submitted whenever the use or acreage of such land previously approved changes; however, no application fee may be required when a change in acreage occurs solely as a result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved for taxation on the basis of use assessment. The governing body of any county, city or town may, however, require any such property owner to revalidate annually with such locality, on or before the date on which the last installment of property tax prior to the effective date of the assessment is due, on forms prepared by the locality, any applications previously approved. Each locality which has adopted an ordinance hereunder may provide for the imposition of a revalidation fee every sixth year. Such revalidation fee shall not, however, exceed the application fee currently charged by the locality. The governing body may also provide for late filing of revalidation forms on or before the effective date of the assessment, on payment of a late filing fee. Forms shall be prepared by the State Tax Commissioner and supplied to the locality for use of the applicants and applications shall be submitted on such forms. An application fee may be required to accompany all such applications.

In the event of a material misstatement of facts in the application or a material change in such facts prior to the date of assessment, such application for taxation based on use assessment granted thereunder shall be void and the tax for such year extended on the basis of value determined under § [58.1-3236](#) D. Except as provided by local ordinance, no application for assessment based on use shall be accepted or approved if, at the time the application is filed, the tax on the land affected is delinquent. Upon the payment of all delinquent taxes, including penalties and interest, the application shall be treated in accordance with the provisions of this section.

Continuation of valuation, assessment and taxation under an ordinance adopted pursuant to this article shall depend on continuance of the real estate in a qualifying use, continued payment of taxes as referred to in § [58.1-3235](#), and compliance with the other requirements of this article and the ordinance and not upon continuance in the same owner of title to the land.

In the event that the locality provides for a sliding scale under an ordinance, the property owner and the locality shall execute a written agreement which sets forth the period of time that the property shall remain within the classes of real estate set forth in § [58.1-3230](#). The term of the written agreement shall be for a period not exceeding twenty years, and the instrument shall be recorded in the office of the clerk of the circuit court for the locality in which the subject property is located.

§ 58.1-3235. Removal of parcels from program if taxes delinquent.

If on April 1 of any year the taxes for any prior year on any parcel of real property which has a special assessment as provided for in this article are delinquent, the appropriate county, city or town treasurer shall forthwith send notice of that fact and the general provisions of this section to the property owner by first-class mail. If, after the notice has been sent, such delinquent taxes remain unpaid on June 1, the treasurer shall notify the appropriate commissioner of the revenue who shall remove such parcel from the land use program. Such removal shall become effective for the current tax year.

§ 58.1-3236. Valuation of real estate under ordinance.

A. In valuing real estate for purposes of taxation by any county, city or town which has adopted an ordinance pursuant to this article, the commissioner of the revenue or duly appointed assessor shall consider only those indicia of value which such real estate has for agricultural, horticultural, forest or open space use, and real estate taxes for such jurisdiction shall be extended upon the value so determined. In addition to use of his personal knowledge, judgment and experience as to the value of real estate in agricultural, horticultural, forest or open space use, he shall, in arriving at the value of such land, consider available evidence of agricultural, horticultural, forest or open space capability, and the recommendations of value of such real estate as made by the State Land Evaluation Advisory Council.

B. In determining the total area of real estate actively devoted to agricultural, horticultural, forest or open space use there shall be included the area of all real estate under barns, sheds, silos, cribs, greenhouses, public recreation facilities and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities; but real estate under, and such additional real estate as may be actually used in connection with, the farmhouse or home or any other structure not related to such special use, shall be excluded in determining such total area.

C. All structures which are located on real estate in agricultural, horticultural, forest or open space use and the farmhouse or home or any other structure not related to such special use and the real estate on which the farmhouse or home or such other

structure is located, together with the additional real estate used in connection therewith, shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable structures and other real estate in the locality.

D. In addition, such real estate in agricultural, horticultural, forest or open space use shall be evaluated on the basis of fair market value as applied to other real estate in the taxing jurisdiction, and land book records shall be maintained to show both the use value and the fair market value of such real estate.

§ 58.1-3237. Change in use or zoning of real estate assessed under ordinance; roll-back taxes.

A. When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes to a nonqualifying use, or the zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes. Such additional taxes shall only be assessed against that portion of such real estate which no longer qualifies for assessment and taxation on the basis of use or zoning. Liability for roll-back taxes shall attach and be paid to the treasurer only if the amount of tax due exceeds ten dollars.

B. In localities which have not adopted a sliding scale ordinance, the roll-back tax shall be equal to the sum of the deferred tax for each of the five most recent complete tax years including simple interest on such roll-back taxes at a rate set by the governing body, no greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916 for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value.

C. In localities which have adopted a sliding scale ordinance, the roll-back tax shall be equal to the sum of the deferred tax from the effective date of the written agreement including simple interest on such roll-back taxes at a rate set by the governing body, which shall not be greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916, for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year and based on the highest tax rate applicable to the real estate for that year, had it not been subject to special assessment. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value and based on the highest tax rate applicable to the real estate for that year.

D. Liability to the roll-back taxes shall attach when a change in use occurs, or a change in zoning of the real estate to a more intensive use at the request of the owner or his agent occurs. Liability to the roll-back taxes shall not attach when a change in ownership of the title takes place if the new owner does not rezone the real estate to a more intensive use and continues the real estate in the use for which it is classified under the conditions prescribed in this article and in the ordinance. The owner of any real estate which has been zoned to more intensive use at the request of the owner or his agent as provided in subsection E, or otherwise subject to or liable for roll-back taxes, shall, within sixty days following such change in use or zoning, report such change to the commissioner of the revenue or other assessing officer on such forms as may be prescribed. The commissioner shall forthwith determine and assess the roll-back tax, which shall be assessed against and paid by the owner of the property at the time the change in use which no longer qualifies occurs, or at the time of the zoning of the real estate to a more intensive use at the request of the owner or his agent occurs, and shall be paid to the treasurer within thirty days of the assessment. If the amount due is not paid by the due date, the treasurer shall impose a penalty and interest on the amount of the roll-back tax, including interest for prior years. Such penalty and interest shall be imposed in accordance with §§ 58.1-3915 and 58.1-3916.

E. Real property zoned to a more intensive use, at the request of the owner or his agent, shall be subject to and liable for the roll-back tax at the time such zoning is changed. The roll-back tax shall be levied and collected from the owner of the real estate in accordance with subsection D. Real property zoned to a more intensive use before July 1, 1988, at the request of the owner or his agent, shall be subject to and liable for the roll-back tax at the time the qualifying use is changed to a nonqualifying use. Real property zoned to a more intensive use at the request of the owner or his agent after July 1, 1988, shall be subject to and liable for the roll-back tax at the time of such zoning. Said roll-back tax, plus interest calculated in accordance with subsection B, shall be levied and collected at the time such property was rezoned. For property rezoned after July 1, 1988, but before July 1, 1992, no penalties or interest, except as provided in subsection B, shall be assessed, provided the said roll-back tax is paid on or before October 1, 1992. No real property rezoned to a more intensive use at the request of the owner or his agent shall be eligible for taxation and assessment under this article, provided that these provisions shall not be applicable to any rezoning which is required for the establishment, continuation, or expansion of a qualifying use. If the

property is subsequently rezoned to agricultural, horticultural, or open space, it shall be eligible for consideration for assessment and taxation under this article only after three years have passed since the rezoning was effective.

However, the owner of any real property that qualified for assessment and taxation on the basis of use, and whose real property was rezoned to a more intensive use at the owner's request prior to 1980, may be eligible for taxation and assessment under this article provided the owner applies for rezoning to agricultural, horticultural, open-space or forest use. The real property shall be eligible for assessment and taxation on the basis of the qualifying use for the tax year following the effective date of the rezoning. If any such real property is subsequently rezoned to a more intensive use at the owner's request, within five years from the date the property was initially rezoned to a qualifying use under this section, the owner shall be liable for roll-back taxes when the property is rezoned to a more intensive use. Additionally, the owner shall be subject to a penalty equal to fifty percent of the roll-back taxes due as determined under subsection B of this section.

The roll-back taxes and penalty that otherwise would be imposed under this subsection shall not become due at the time the zoning is changed if the locality has enacted an ordinance pursuant to subsection G.

F. If real estate annexed by a city and granted use value assessment and taxation becomes subject to roll-back taxes, and such real estate likewise has been granted use value assessment and taxation by the county prior to annexation, the city shall collect roll-back taxes and interest for the maximum period allowed under this section and shall return to the county a share of such taxes and interest proportionate to the amount of such period, if any, for which the real estate was situated in the county.

G. A locality may enact an ordinance providing that (i) when a change in zoning of real estate to a more intensive use at the request of the owner or his agent occurs, roll-back taxes shall not become due solely because the change in zoning is for specific more intensive uses set forth in the ordinance, (ii) such real estate may remain eligible for use value assessment and taxation, in accordance with the provisions of this article, as long as the use by which it qualified does not change to a nonqualifying use, and (iii) no roll-back tax shall become due with respect to the real estate until such time as the use by which it qualified changes to a nonqualifying use.

§ 58.1-3237.1. Authority of counties to enact additional provisions concerning zoning classifications.

A. Albemarle County, Arlington County, Augusta County, James City County, Loudoun County, and Rockingham County may include the following additional provisions in any ordinance enacted under the authority of this article:

1. The governing body may exclude land lying in planned development, industrial or commercial zoning districts from assessment under the provisions of this article. As applied to zoning districts, this provision applies only to zoning districts established prior to January 1, 1981.

2. The governing body may provide that when the zoning of the property taxed under the provisions of this article is changed to allow a more intensive nonagricultural use at the request of the owner or his agent, such property shall not be eligible for assessment and taxation under this article. This shall not apply, however, to property that is zoned agricultural and is subsequently rezoned to a more intensive use that is complementary to agricultural use, provided such property continues to be owned by the same owner who owned the property prior to rezoning and continues to operate the agricultural activity on the property. Notwithstanding any other provision of law, such property shall be subject to and liable for roll-back taxes at the time the zoning is changed to allow any use more intensive than the use for which it qualifies for special assessment. The roll-back tax, plus interest, shall be calculated, levied and collected from the owner of the real estate in accordance with § [58.1-3237](#) at the time the property is rezoned.

B. Goochland County may include additional provisions specified in subdivisions A 1 and 2 in any ordinance enacted under the authority of this article, but only in service districts created after July 1, 2013, pursuant to Article 1 (§ [15.2-2400](#) et seq.) of Chapter 24 of Title 15.2.

§ 58.1-3238. Failure to report change in use; misstatements in applications.

Any person failing to report properly any change in use of property for which an application for use value taxation had been filed shall be liable for all such taxes, in such amounts and at such times as if he had complied herewith and assessments had been properly made, and he shall be liable for such penalties and interest thereon as may be provided by ordinance. Any person making a material misstatement of fact in any such application shall be liable for all such taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction, together with interest and penalties thereon. If such material misstatement was made with the intent to defraud the locality, he shall be further assessed with an additional penalty of 100 percent of such unpaid taxes.

For purposes of this section and § [58.1-3234](#), incorrect information on the following subjects will be considered material misstatements of fact:

1. The number and identities of the known owners of the property at the time of application;
2. The actual use of the property.

The intentional misrepresentation of the number of acres in the parcel or the number of acres to be taxed according to use shall also be considered a material misstatement of fact for the purposes of this section and § 58.1-3234.

§ 58.1-3239. State Land Evaluation Advisory Committee continued as State Land Evaluation Advisory Council; membership; duties; ordinances to be filed with Council.

The State Land Evaluation Advisory Committee is continued and shall hereafter be known as the State Land Evaluation Advisory Council. The Advisory Council shall be composed of the Tax Commissioner, the dean of the College of Agriculture of Virginia Polytechnic Institute and State University, the State Forester, the Commissioner of Agriculture and Consumer Services and the Director of the Department of Conservation and Recreation.

The Advisory Council shall determine and publish a range of suggested values for each of the several soil conservation service land capability classifications for agricultural, horticultural, forest and open space uses in the various areas of the Commonwealth as needed to carry out the provisions of this article.

On or before October 1 of each year the Advisory Council shall submit recommended ranges of suggested values to be effective the following January 1 or July 1 in the case of localities with fiscal year assessment under the authority of Chapter 30 of this subtitle, within each locality which has adopted an ordinance pursuant to the provisions of this article based on the productive earning power of real estate devoted to agricultural, horticultural, forest and open space uses and make such recommended ranges available to the commissioner of the revenue or duly appointed assessor in each such locality.

The Advisory Council, in determining such ranges of values, shall base the determination on productive earning power to be determined by capitalization of warranted cash rents or by the capitalization of incomes of like real estate in the locality or a reasonable area of the locality.

Any locality adopting an ordinance pursuant to this article shall forthwith file a copy thereof with the Advisory Council.

§ 58.1-3240. Duties of Director of the Department of Conservation and Recreation, the State Forester and the Commissioner of Agriculture and Consumer Services; remedy of person aggrieved by action or nonaction of Director, State Forester or Commissioner.

The Director of the Department of Conservation and Recreation, the State Forester, and the Commissioner of Agriculture and Consumer Services shall provide, after holding public hearings, to the commissioner of the revenue or duly appointed assessor of each locality adopting an ordinance pursuant to this article, a statement of the standards referred to in § [58.1-3230](#) and subdivision 1 of § [58.1-3233](#), which shall be applied uniformly throughout the Commonwealth in determining whether real estate is devoted to agricultural use, horticultural use, forest use or open-space use for the purposes of this article and the procedure to be followed by such official to obtain the opinion referenced in subdivision 1 of § [58.1-3233](#). Upon the refusal of the Commissioner of Agriculture and Consumer Services, the State Forester or the Director of the Department of Conservation and Recreation to issue an opinion or in the event of an unfavorable opinion which does not comport with standards set forth in the statements filed pursuant to this section, the party aggrieved may seek relief in the circuit court of the county or city wherein the real estate in question is located, and in the event that the court finds in his favor, it may issue an order which shall serve in lieu of an opinion for the purposes of this article.

§ 58.1-3241. Separation of part of real estate assessed under ordinance; contiguous real estate located in more than one taxing locality.

A. Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto, but shall not impair the right

of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other conditions of this article as may be applicable. Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for roll-back taxes, provided it meets the minimum acreage requirements and other applicable conditions of this article.

B. 1. No subdivision, separation, or split-off of property which results in parcels that meet the minimum acreage requirements of this article, and that are used for one or more of the purposes set forth in § [58.1-3230](#), shall be subject to the provisions of subsection A.

2. The application of roll-back taxes pursuant to subsection A shall, at the option of the locality, also not apply to a subdivision, separation, or split-off of property made pursuant to a subdivision ordinance adopted under § [15.2-2244](#) that results in parcels that do not meet the minimum acreage requirements of this article, provided that title to the parcels subdivided, separated, or split-off is held in the name of an immediate family member for at least the first 60 months immediately following the subdivision, separation, or split-off.

For purposes of this subdivision, an "immediate family member" means any person defined as such in the locality's subdivision ordinance adopted pursuant to § [15.2-2244](#).

C. Where contiguous real estate in agricultural, horticultural, forest or open-space use in one ownership is located in more than one taxing locality, compliance with the minimum acreage shall be determined on the basis of the total area of such real estate and not the area which is located in the particular taxing locality.

§ 58.1-3242. Taking of real estate assessed under ordinance by right of eminent domain.

The taking of real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article by right of eminent domain shall not subject the real estate so taken to the roll-back taxes herein imposed.

§ 58.1-3243. Application of other provisions of Title 58.1.

The provisions of this title applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder mutatis mutandis including, without limitation, provisions relating to tax liens, boards of equalization and the correction of erroneous assessments and for such purposes the roll-back taxes shall be considered to be deferred real estate taxes.

§ 58.1-3244. Article not in conflict with requirements for preparation and use of true values.

Nothing in this article shall be construed to be in conflict with the requirements for preparation and use of true values where prescribed by the General Assembly for use in any fund distribution formula.

GLOSSARY

This Glossary is provided to assist the public in understanding the staff evaluation and analysis of development proposals. It should not be construed as representing legal definitions. Refer to the Fairfax County Zoning Ordinance, Comprehensive Plan or Public Facilities Manual for additional information.

ABANDONMENT: Refers to road or street abandonment, an action taken by the Board of Supervisors, usually through the public hearing process, to abolish the public's right-of-passage over a road or road right-of way. Upon abandonment, the right-of-way automatically reverts to the underlying fee owners. If the fee to the owner is unknown, Virginia law presumes that fee to the roadbed rests with the adjacent property owners if there is no evidence to the contrary.

ACCESSORY DWELLING UNIT (OR APARTMENT): A secondary dwelling unit established in conjunction with and clearly subordinate to a single family detached dwelling unit. An accessory dwelling unit may be allowed if a special permit is granted by the Board of Zoning Appeals (BZA). Refer to Sect. 8-918 of the Zoning Ordinance.

AFFORDABLE DWELLING UNIT (ADU) DEVELOPMENT: Residential development to assist in the provision of affordable housing for persons of low and moderate income in accordance with the affordable dwelling unit program and in accordance with Zoning Ordinance regulations. Residential development which provides affordable dwelling units may result in a density bonus (see below) permitting the construction of additional housing units. See Part 8 of Article 2 of the Zoning Ordinance.

AGRICULTURAL AND FORESTAL DISTRICTS: A land use classification created under Chapter 114 or 115 of the Fairfax County Code for the purpose of qualifying landowners who wish to retain their property for agricultural or forestal use for use/value taxation pursuant to Chapter 58 of the Fairfax County Code.

BARRIER: A wall, fence, earthen berm, or plant materials which may be used to provide a physical separation between land uses. Refer to Article 13 of the Zoning Ordinance for specific barrier requirements.

BEST MANAGEMENT PRACTICES (BMPs): Stormwater management techniques or land use practices that are determined to be the most effective, practicable means of preventing and/or reducing the amount of pollution generated by nonpoint sources in order to improve water quality.

BUFFER: Graduated mix of land uses, building heights or intensities designed to mitigate potential conflicts between different types or intensities of land uses; may also provide for a transition between uses. A landscaped buffer may be an area of open, undeveloped land and may include a combination of fences, walls, berms, open space and/or landscape plantings. A buffer is not necessarily coincident with transitional screening.

CHESAPEAKE BAY PRESERVATION ORDINANCE: Regulations which the State has mandated must be adopted to protect the Chesapeake Bay and its tributaries. These regulations must be incorporated into the comprehensive plans, zoning ordinances and subdivision ordinances of the affected localities. Refer to Chesapeake Bay Preservation Act, Va. Code Section 10.1-2100 et seq and VR 173-02-01, Chesapeake Bay Preservation Area Designation and Management Regulations.

CLUSTER DEVELOPMENT: Residential development in which the lots are clustered on a portion of a site so that significant environmental/historical/cultural resources may be preserved or recreational amenities provided. While smaller lot sizes are permitted in a cluster subdivision to preserve open space, the overall density cannot exceed that permitted by the applicable zoning district. See Sect. 2-421 and Sect. 9-615 of the Zoning Ordinance.

COUNTY 2232 REVIEW PROCESS: A public hearing process pursuant to Sect. 15.2-2232 (Formerly Sect. 15.1-456) of the Virginia Code which is used to determine if a proposed public facility not shown on the adopted Comprehensive Plan is in substantial accord with the plan. Specifically, this process is used to determine if the general or approximate location, character and extent of a proposed facility is in substantial accord with the Plan.

dBA: The momentary magnitude of sound weighted to approximate the sensitivity of the human ear to certain frequencies; the dBA value describes a sound at a given instant, a maximum sound level or a steady state value. See also Ldn.

DENSITY: Number of dwelling units (du) divided by the gross acreage (ac) of a site being developed in residential use; or, the number of dwelling units per acre (du/ac) except in the PRC District when density refers to the number of persons per acre.

DENSITY BONUS: An increase in the density otherwise allowed in a given zoning district which may be granted under specific provisions of the Zoning Ordinance when a developer provides excess open space, recreation facilities, or affordable dwelling units (ADUs), etc.

DEVELOPMENT CONDITIONS: Terms or conditions imposed on a development by the Board of Supervisors (BOS) or the Board of Zoning Appeals (BZA) in connection with approval of a special exception, special permit or variance application or rezoning application in a "P" district. Conditions may be imposed to mitigate adverse impacts associated with a development as well as secure compliance with the Zoning Ordinance and/or conformance with the Comprehensive Plan. For example, development conditions may regulate hours of operation, number of employees, height of buildings, and intensity of development.

DEVELOPMENT PLAN: A graphic representation which depicts the nature and character of the development proposed for a specific land area: information such as topography, location and size of proposed structures, location of streets trails, utilities, and storm drainage are generally included on a development plan. A development plan is a submission requirement for rezoning to the PRC District. A GENERALIZED DEVELOPMENT PLAN (GDP) is a submission requirement for a rezoning application for all conventional zoning districts other than a P District. A development plan submitted in connection with a special exception (SE) or special permit (SP) is generally referred to as an SE or SP plat. A CONCEPTUAL DEVELOPMENT PLAN (CDP) is a submission requirement when filing a rezoning application for a P District other than the PRC District; a CDP characterizes in a general way the planned development of the site. A FINAL DEVELOPMENT PLAN (FDP) is a submission requirement following the approval of a conceptual development plan and rezoning application for a P District other than the PRC District; an FDP further details the planned development of the site. See Article 16 of the Zoning Ordinance.

EASEMENT: A right to or interest in property owned by another for a specific and limited purpose. Examples: access easement, utility easement, construction easement, etc. Easements may be for public or private purposes.

ENVIRONMENTAL QUALITY CORRIDORS (EQCs): An open space system designed to link and preserve natural resource areas, provide passive recreation and protect wildlife habitat. The system includes stream valleys, steep slopes and wetlands. For a complete definition of EQCs, refer to the Environmental section of the Policy Plan for Fairfax County contained in Vol. 1 of the Comprehensive Plan.

ERODIBLE SOILS: Soils that wash away easily, especially under conditions where stormwater runoff is inadequately controlled. Silt and sediment are washed into nearby streams, thereby degrading water quality.

FLOODPLAIN: Those land areas in and adjacent to streams and watercourses subject to periodic flooding; usually associated with environmental quality corridors. The 100 year floodplain drains 70 acres or more of land and has a one percent chance of flood occurrence in any given year.

FLOOR AREA RATIO (FAR): An expression of the amount of development intensity (typically, non-residential uses) on a specific parcel of land. FAR is determined by dividing the total square footage of gross floor area of buildings on a site by the total square footage of the site itself.

FUNCTIONAL CLASSIFICATION: A system for classifying roads in terms of the character of service that individual facilities are providing or are intended to provide, ranging from travel mobility to land access. Roadway system functional classification elements include Freeways or Expressways which are limited access highways, Other Principal (or Major) Arterials, Minor Arterials, Collector Streets, and Local Streets. Principal arterials are designed to accommodate travel; access to adjacent properties is discouraged. Minor arterials are designed to serve both through traffic and local trips. Collector roads and streets link local streets and properties with the arterial network. Local streets provide access to adjacent properties.

GEOTECHNICAL REVIEW: An engineering study of the geology and soils of a site which is submitted to determine the suitability of a site for development and recommends construction techniques designed to overcome development on problem soils, e.g., marine clay soils.

HYDROCARBON RUNOFF: Petroleum products, such as motor oil, gasoline or transmission fluid deposited by motor vehicles which are carried into the local storm sewer system with the stormwater runoff, and ultimately, into receiving streams; a major source of non-point source pollution. An oil-grit separator is a common hydrocarbon runoff reduction method.

IMPERVIOUS SURFACE: Any land area covered by buildings or paved with a hard surface such that water cannot seep through the surface into the ground.

INFILL: Development on vacant or underutilized sites within an area which is already mostly developed in an established development pattern or neighborhood.

INTENSITY: The magnitude of development usually measured in such terms as density, floor area ratio, building height, percentage of impervious surface, traffic generation, etc. Intensity is also based on a comparison of the development proposal against environmental constraints or other conditions which determine the carrying capacity of a specific land area to accommodate development without adverse impacts.

Ldn: Day night average sound level. It is the twenty-four hour average sound level expressed in A-weighted decibels; the measurement assigns a "penalty" to night time noise to account for night time sensitivity. Ldn represents the total noise environment which varies over time and correlates with the effects of noise on the public health, safety and welfare.

LEVEL OF SERVICE (LOS): An estimate of the effectiveness of a roadway to carry traffic, usually under anticipated peak traffic conditions. Level of Service efficiency is generally characterized by the letters A through F, with LOS-A describing free flow traffic conditions and LOS-F describing jammed or grid-lock conditions.

MARINE CLAY SOILS: Soils that occur in widespread areas of the County generally east of Interstate 95. Because of the abundance of shrink-swell clays in these soils, they tend to be highly unstable. Many areas of slope failure are evident on natural slopes. Construction on these soils may initiate or accelerate slope movement or slope failure. The shrink-swell soils can cause movement in structures, even in areas of flat topography, from dry to wet seasons resulting in cracked foundations, etc. Also known as slippage soils.

OPEN SPACE: That portion of a site which generally is not covered by buildings, streets, or parking areas. Open space is intended to provide light and air; open space may function as a buffer between land uses or for scenic, environmental, or recreational purposes.

OPEN SPACE EASEMENT: An easement usually granted to the Board of Supervisors which preserves a tract of land in open space for some public benefit in perpetuity or for a specified period of time. Open space easements may be accepted by the Board of Supervisors, upon request of the land owner, after evaluation under criteria established by the Board. See Open Space Land Act, Code of Virginia, Sections 10.1-1700, et seq.

P DISTRICT: A "P" district refers to land that is planned and/or developed as a Planned Development Housing (PDH) District, a Planned Development Commercial (PDC) District or a Planned Residential Community (PRC) District. The PDH, PDC and PRC Zoning Districts are established to encourage innovative and creative design for land development; to provide ample and efficient use of open space; to promote a balance in the mix of land uses, housing types, and intensity of development; and to allow maximum flexibility in order to achieve excellence in physical, social and economic planning and development of a site. Refer to Articles 6 and 16 of the Zoning Ordinance.

PROFFER: A written condition, which, when offered voluntarily by a property owner and accepted by the Board of Supervisors in a rezoning action, becomes a legally binding condition which is in addition to the zoning district regulations applicable to a specific property. Proffers are submitted and signed by an owner prior to the Board of Supervisors public hearing on a rezoning application and run with the land. Once accepted by the Board, proffers may be modified only by a proffered condition amendment (PCA) application or other zoning action of the Board and the hearing process required for a rezoning application applies. See Sect. 15.2-2303 (formerly 15.1-491) of the Code of Virginia.

PUBLIC FACILITIES MANUAL (PFM): A technical text approved by the Board of Supervisors containing guidelines and standards which govern the design and construction of site improvements incorporating applicable Federal, State and County Codes, specific standards of the Virginia Department of Transportation and the County's Department of Public Works and Environmental Services.

RESOURCE MANAGEMENT AREA (RMA): That component of the Chesapeake Bay Preservation Area comprised of lands that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area. See Fairfax County Code, Ch. 118, Chesapeake Bay Preservation Ordinance.

RESOURCE PROTECTION AREA (RPA): That component of the Chesapeake Bay Preservation Area comprised of lands at or near the shoreline or water's edge that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation of the quality of state waters. In their natural condition, these lands provide for the removal, reduction or assimilation of sediments from runoff entering the Bay and its tributaries, and minimize the adverse effects of human activities on state waters and aquatic resources. New development is generally discouraged in an RPA. See Fairfax County Code, Ch. 118, Chesapeake Bay Preservation Ordinance.

SITE PLAN: A detailed engineering plan, to scale, depicting the development of a parcel of land and containing all information required by Article 17 of the Zoning Ordinance. Generally, submission of a site plan to DPWES for review and approval is required for all residential, commercial and industrial development except for development of single family detached dwellings. The site plan is required to assure that development complies with the Zoning Ordinance.

SPECIAL EXCEPTION (SE) / SPECIAL PERMIT (SP): Uses, which by their nature, can have an undue impact upon or can be incompatible with other land uses and therefore need a site specific review. After review, such uses may be allowed to locate within given designated zoning districts if appropriate and only under special controls, limitations, and regulations. A special exception is subject to public hearings by the Planning Commission and Board of Supervisors with approval by the Board of Supervisors; a special permit requires a public hearing and approval by the Board of Zoning Appeals. Unlike proffers which are voluntary, the Board of Supervisors or BZA may impose reasonable conditions to assure, for example, compatibility and safety. See Article 8, Special Permits and Article 9, Special Exceptions, of the Zoning Ordinance.

STORMWATER MANAGEMENT: Engineering practices that are incorporated into the design of a development in order to mitigate or abate adverse water quantity and water quality impacts resulting from development. Stormwater management systems are designed to slow down or retain runoff to re-create, as nearly as possible, the pre-development flow conditions.

SUBDIVISION PLAT: The engineering plan for a subdivision of land submitted to DPWES for review and approved pursuant to Chapter 101 of the County Code.

TRANSPORTATION DEMAND MANAGEMENT (TDM): Actions taken to reduce single occupant vehicle automobile trips or actions taken to manage or reduce overall transportation demand in a particular area.

TRANSPORTATION SYSTEM MANAGEMENT (TSM) PROGRAMS: This term is used to describe a full spectrum of actions that may be applied to improve the overall efficiency of the transportation network. TSM programs usually consist of low-cost alternatives to major capital expenditures, and may include parking management measures, ridesharing programs, flexible or staggered work hours, transit promotion or operational improvements to the existing roadway system. TSM includes Transportation Demand Management (TDM) measures as well as H.O.V. use and other strategies associated with the operation of the street and transit systems.

URBAN DESIGN: An aspect of urban or suburban planning that focuses on creating a desirable environment in which to live, work and play. A well-designed urban or suburban environment demonstrates the four generally accepted principles of design: clearly identifiable function for the area; easily understood order; distinctive identity; and visual appeal.

VACATION: Refers to vacation of street or road as an action taken by the Board of Supervisors in order to abolish the public's right-of-passage over a road or road right-of-way dedicated by a plat of subdivision. Upon vacation, title to the road right-of-way transfers by operation of law to the owner(s) of the adjacent properties within the subdivision from whence the road/road right-of-way originated.

VARIANCE: An application to the Board of Zoning Appeals which seeks relief from a specific zoning regulation such as lot width, building height, or minimum yard requirements, among others. A variance may only be granted by the Board of Zoning Appeals through the public hearing process and upon a finding by the BZA that the variance application meets the required Standards for a Variance set forth in Sect. 18-404 of the Zoning Ordinance.

WETLANDS: Land characterized by wetness for a portion of the growing season. Wetlands are generally delineated on the basis of physical characteristics such as soil properties indicative of wetness, the presence of vegetation with an affinity for water, and the presence or evidence of surface wetness or soil saturation. Wetland environments provide water quality improvement benefits and are ecologically valuable. Development activity in wetlands is subject to permitting processes administered by the U.S. Army Corps of Engineers

TIDAL WETLANDS: Vegetated and nonvegetated wetlands as defined in Chapter 116 Wetlands Ordinance of the Fairfax County Code: includes tidal shores and tidally influenced embayments, creeks, and tributaries to the Occoquan and Potomac Rivers. Development activity in tidal wetlands may require approval from the Fairfax County Wetlands Board.

Abbreviations Commonly Used in Staff Reports

A&F	Agricultural & Forestal District	PDH	Planned Development Housing
ADU	Affordable Dwelling Unit	PFM	Public Facilities Manual
ARB	Architectural Review Board	PRC	Planned Residential Community
BMP	Best Management Practices	RC	Residential-Conservation
BOS	Board of Supervisors	RE	Residential Estate
BZA	Board of Zoning Appeals	RMA	Resource Management Area
COG	Council of Governments	RPA	Resource Protection Area
CBC	Community Business Center	RUP	Residential Use Permit
CDP	Conceptual Development Plan	RZ	Rezoning
CRD	Commercial Revitalization District	SE	Special Exception
DOT	Department of Transportation	SEA	Special Exception Amendment
DP	Development Plan	SP	Special Permit
DPWES	Department of Public Works and Environmental Services	TDM	Transportation Demand Management
DPZ	Department of Planning and Zoning	TMA	Transportation Management Association
DU/AC	Dwelling Units Per Acre	TSA	Transit Station Area
EQC	Environmental Quality Corridor	TSM	Transportation System Management
FAR	Floor Area Ratio	UP & DD	Utilities Planning and Design Division, DPWES
FDP	Final Development Plan	VC	Variance
GDP	Generalized Development Plan	VDOT	Virginia Dept. of Transportation
GFA	Gross Floor Area	VPD	Vehicles Per Day
HC	Highway Corridor Overlay District	VPH	Vehicles per Hour
HCD	Housing and Community Development	WMATA	Washington Metropolitan Area Transit Authority
LOS	Level of Service	WS	Water Supply Protection Overlay District
Non-RUP	Non-Residential Use Permit	ZAD	Zoning Administration Division, DPZ
OSDS	Office of Site Development Services, DPWES	ZED	Zoning Evaluation Division, DPZ
PCA	Proffered Condition Amendment	ZPRB	Zoning Permit Review Branch
PD	Planning Division		
PDC	Planned Development Commercial		

Attachment 4: Letter from NVSWCD

Board of Directors

John W. Peterson, Chairman
George W. Lamb, Vice Chairman & Treasurer
Gerald O. Peters, Secretary
Elaine V. Tholen, Director
Adria C. Bordas, Director-Extension

Laura T. Grape, Executive Director



Contact

703-324-1460, TTY 711
Fax: 703-324-1421
ConservationDistrict@fairfaxcounty.gov

Working for Clean Streams and Protected Natural Resources in Fairfax County

May 9, 2017

Dear Mr. Kobus,

Thank you for your interest in participating in the Virginia Agricultural Cost-Share Best Management Practice (BMP) Program to construct a stream exclusion fencing practice at Belmont Bay Farm.

On March 20, 2017, Roger Flint (NRCS District Conservationist) and I visited with you, to start ground-proofing the path of the fencing. We took with us, a map of Belmont Bay Farm based on Fairfax County's 2015 Ortho-photography and Geographic Information System (GIS) layers, showing environmentally sensitive features, including the Chesapeake Bay Resource Protection Area (see map 1). That map was to be used as guide in determining the path of the proposed stream exclusion fencing. The ground-proofing phase of the project was not completed on the day of our visitation, because you expressed concerns that the map details were inaccurate.

The purpose of this letter is to share some background on the Chesapeake Bay Preservation Ordinance, and to provide information on your rights to reclassify the existing RPA delineation if you find it necessary. This letter also includes recommendations on ongoing tree removal activity within the existing Resource Protection Area west of field #2 (see map 1). This is outside the area of the recent Department of Forestry approved logging and tree planting project.

In 1993, the Fairfax County Board of Supervisors adopted the Chesapeake Bay Preservation Ordinance, establishing Resource Protection Areas around environmentally sensitive features, such as, perennial streams, wetlands (tidal and non-tidal), and major floodplains. The RPA limits within Belmont Bay Farm were established at this time. The Northern Virginia Soil and Water Conservation District (NVSWCD) agrees with the current RPA delineation. The Virginia Agricultural Cost-Share Program requires that Best Management Practices, including the stream exclusion fencing, respect the presence of the RPA to protect local water quality, as the program intends.

Since you do not agree with the existing delineation of the RPA, you reserve the right to pursue a reclassification of environmentally sensitive features on the property at your own expense. Conditions for reclassifying RPA limits are specified in Fairfax County's Chesapeake Bay Preservation Ordinance, Section 118-1-9, under **Chesapeake Bay Preservation Area Boundaries**. Until such reclassification is approved, NVSWCD will use the county mapped features as a guide to ground-proof the proposed BMPs.

Attachment 4: Letter from NVSWCD

As you know, NVSWCD is a non-regulatory and advisory body. We do not have enforcement authority. However, we want to make sure you are aware of a possible issue on the property so you can take appropriate steps to avoid complaints by neighbors or concerned individuals. During our farm visit it was evident that wooded areas (mainly on the western side of field #2 (see map 1)) were in the process of being cleared. You mentioned that you intend to create a road along the west side of field #2, and conduct further clearing to establish approximately 40 acres of additional pasture. The current clearing was observed to have encroached into portions of the existing RPA that had been preserved. Under certain conditions and with approval from the Director of Public Works and Environmental Services, roads/driveways may be constructed through an RPA (See Section 118-2-1 of Fairfax County's Chesapeake Bay Preservation Program). However, clearing vegetation within an RPA to establish farming operations may not be allowed. Specific agricultural land use practices that may have been in operation prior to 1993, and had been continuously maintained for that land-use purpose are grand-fathered, and may be allowed to continue with appropriate BMPs in place.

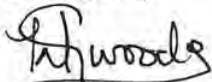
A 1953 aerial imagery (see map 2) suggests that a tree line which had been established along the west side of field #2 had been maintained until as recent as 2015 (see map 1). Additionally, vegetative stand within a section of the southern-western area adjacent to field #2 which had been cleared, by 1997 had been allowed to start growing back into an undisturbed vegetative stand (see map 3), and had remained that way until as recent as 2015 (see map 1). Therefore, such areas may not be allowed to revert back into agricultural land use.

Based on those findings, NVSWCD recommends that you refrain from further clearing of permanent vegetation within the RPAs as depicted on map 1 until an approved RPA reclassified document that may allow agricultural activities within those mapped sensitive areas are provided to us, either by you or the property owner.

Please know that Roger and I are eager to move forward with plans for the fencing project. However, we want to be certain that each step meets your approval, as well as, the guidelines of both the regulatory restrictions that govern Belmont Bay Farm and the conditions of the Virginia Agricultural Cost-Share BMP Program.

Do let us know if you would like us to proceed with the preliminary step of ground-proofing the path for the fence-line using the existing information. Alternatively, we can wait until you provide us with an approved reclassified RPA map. We are also willing to meet with you for a more in-depth discussion to help all parties determine the next step forward.

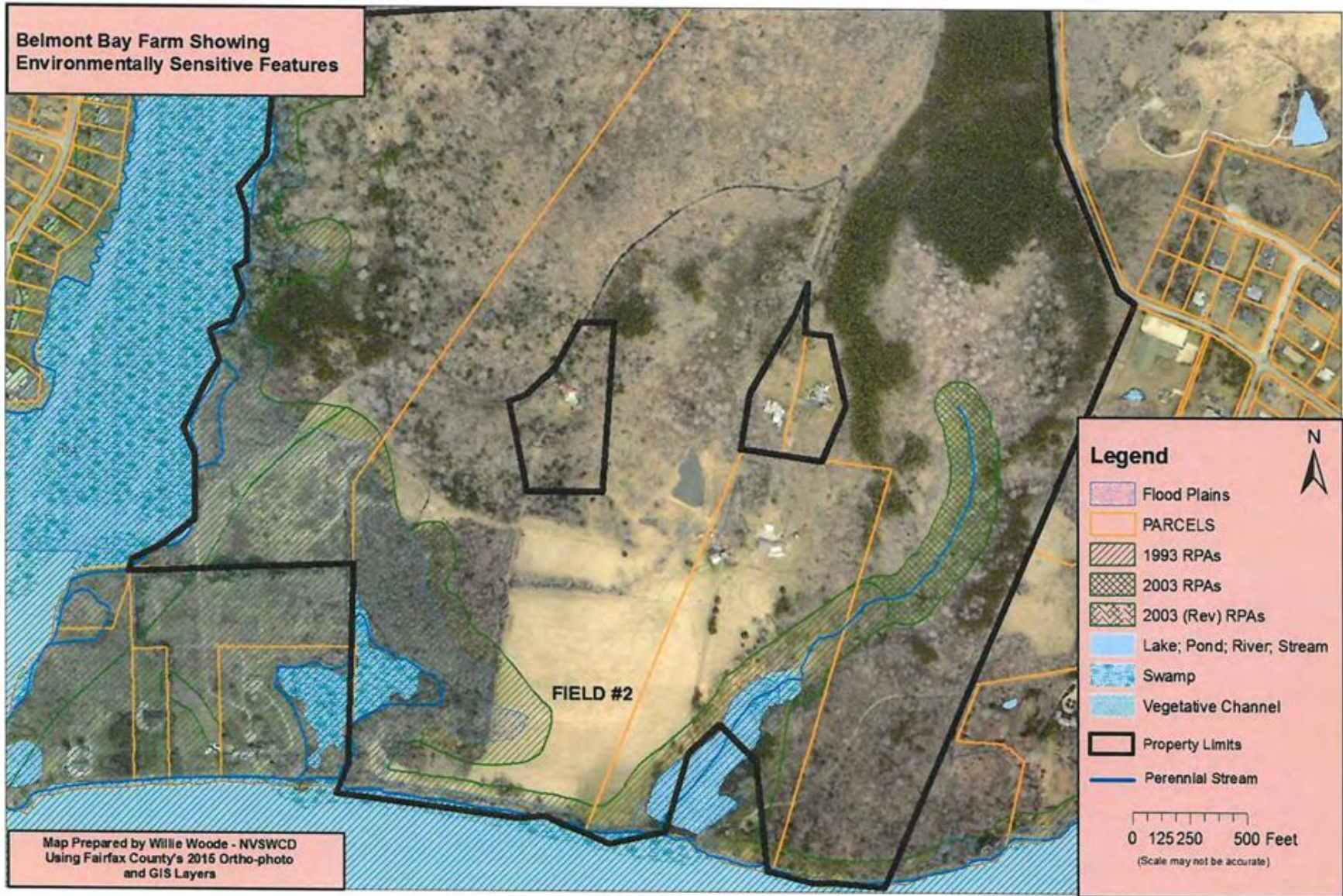
Best regards,



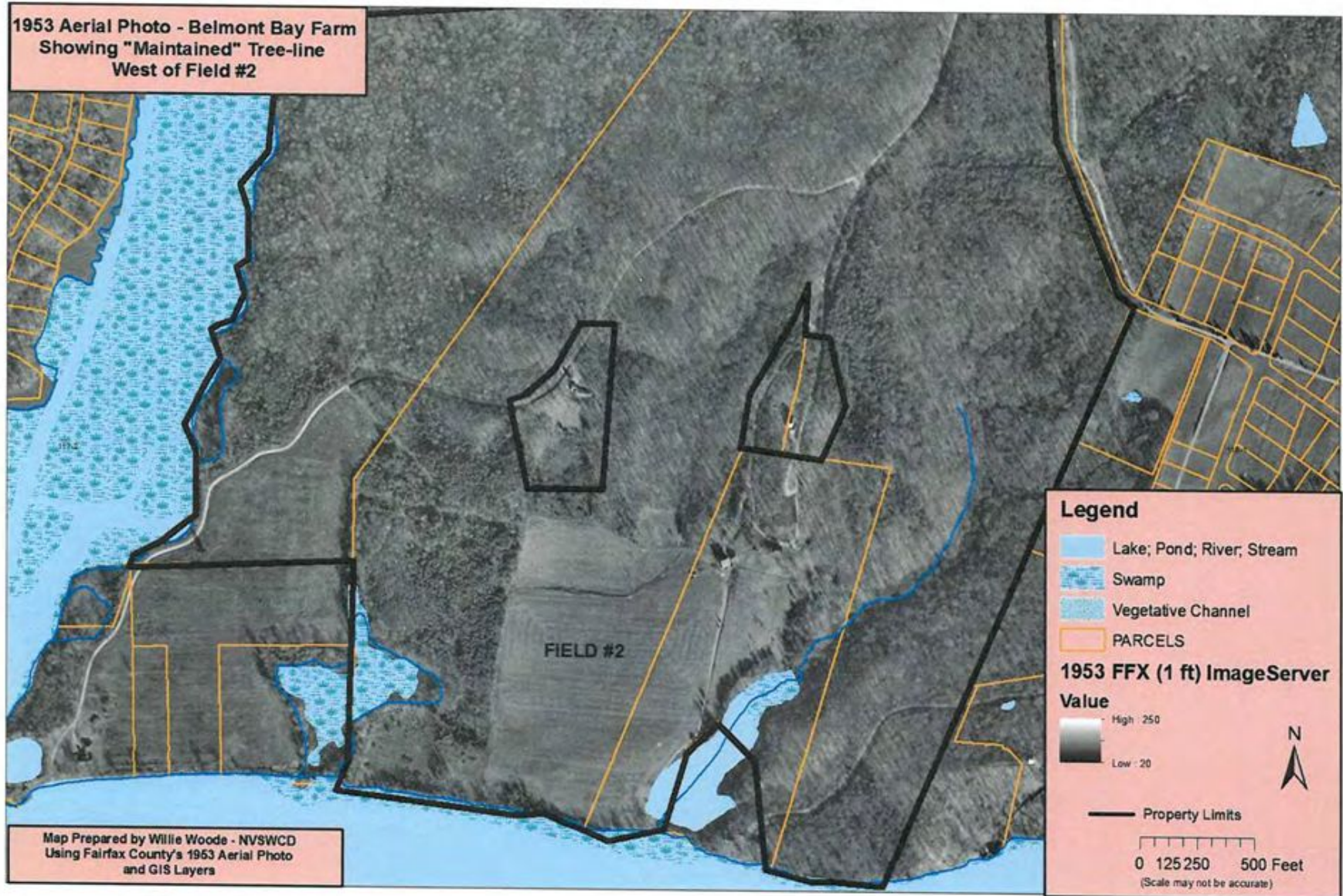
Willie Woode, Senior Conservation Specialist, 703-324-1430

Cc: Laura Grape, Executive Director, NVSWCD
Roger Flint, District Conservationist, USDA-NRCS

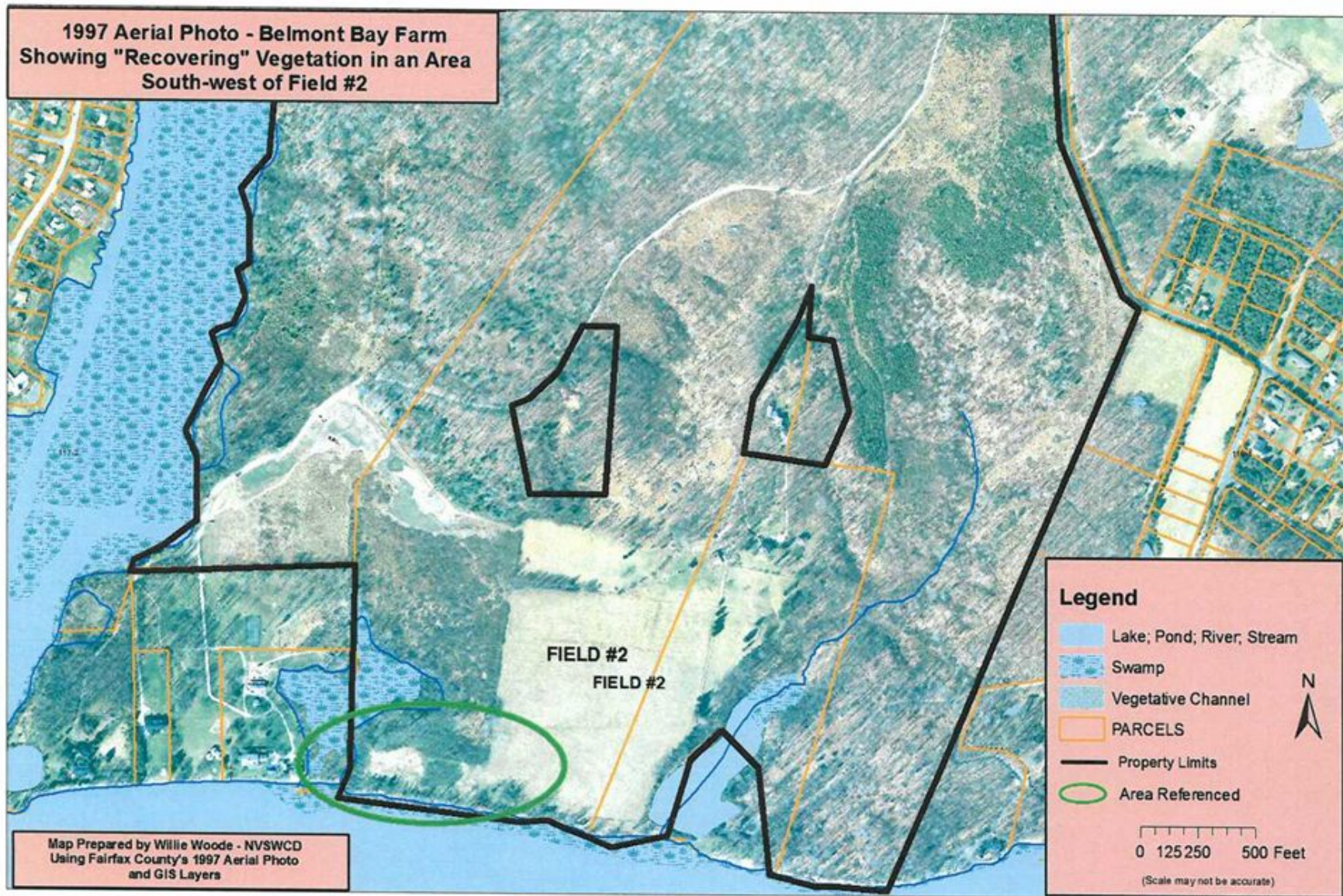
Attachment 4: Letter from NVSWCD



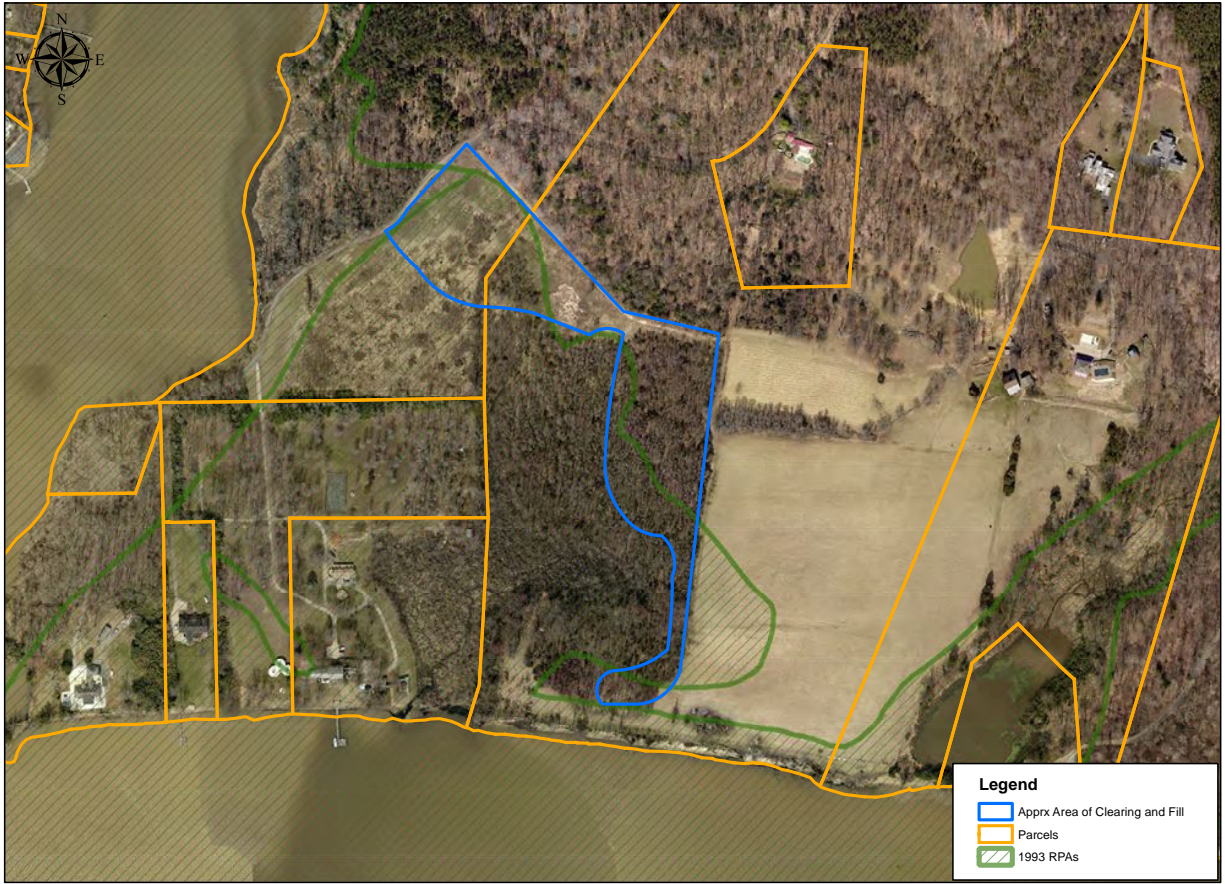
Attachment 4: Letter from NVSWCD



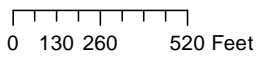
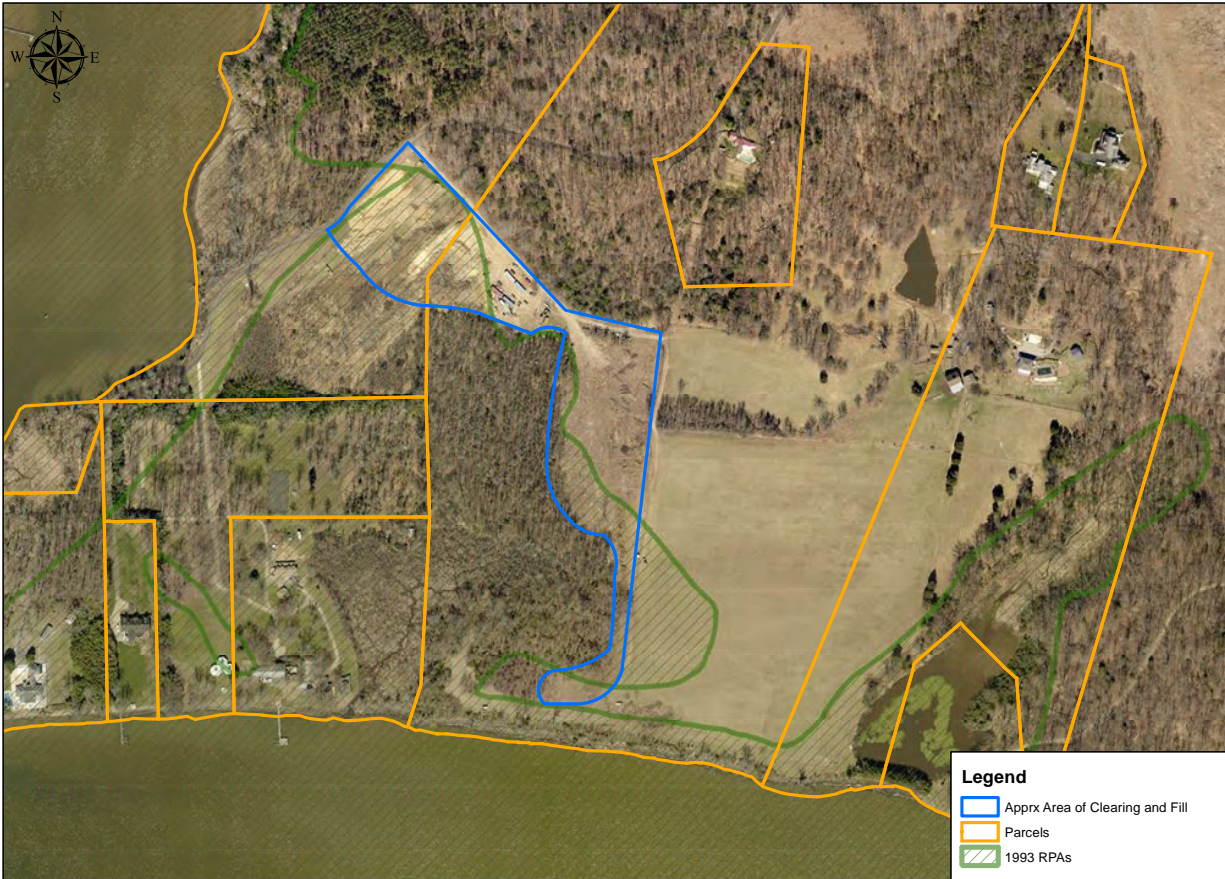
Attachment 4: Letter from NVSWCD



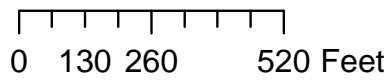
Belmont Bay Farm 2013 Aerial Imagery



Belmont Bay Farm 2017 Aerial Imagery



Attachment 5 Belmont Bay Farm 2018 Aerial Imagery with Forestry Plan

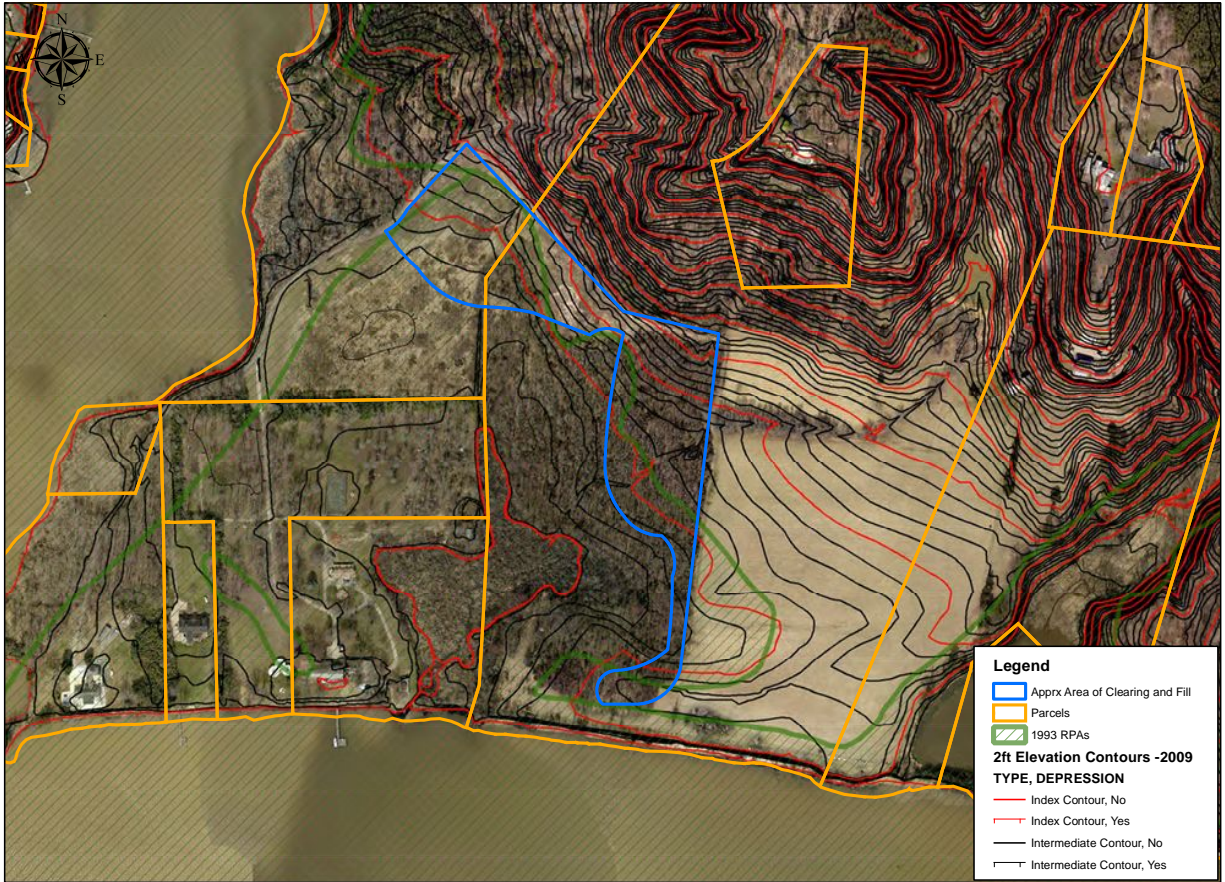


Fairfax County
Land Development Services

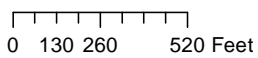
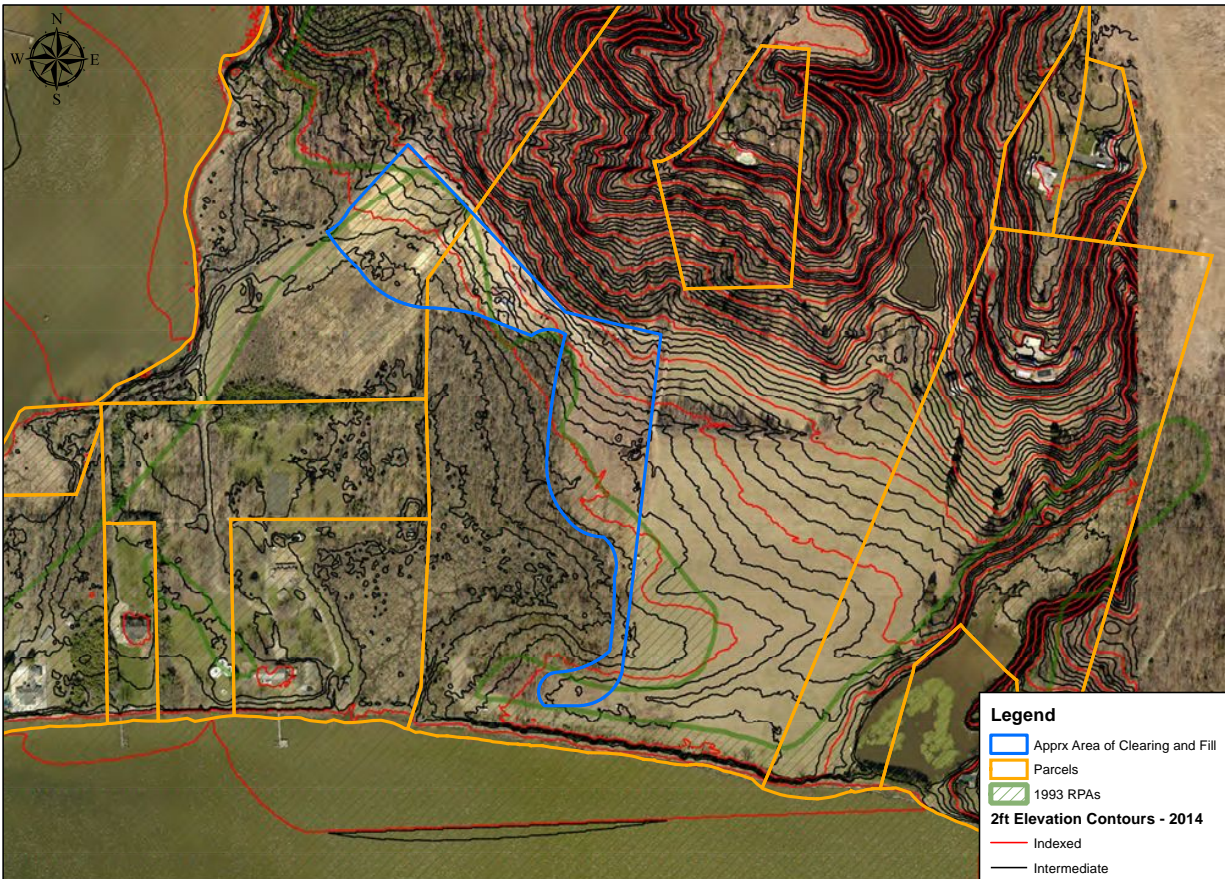
Source: <https://www.google.com/maps>



Attachment 5 Belmont Bay Farm 2013 Aerial Imagery and 2009 Contours



Belmont Bay Farm 2017 Aerial Imagery and 2014 Contours

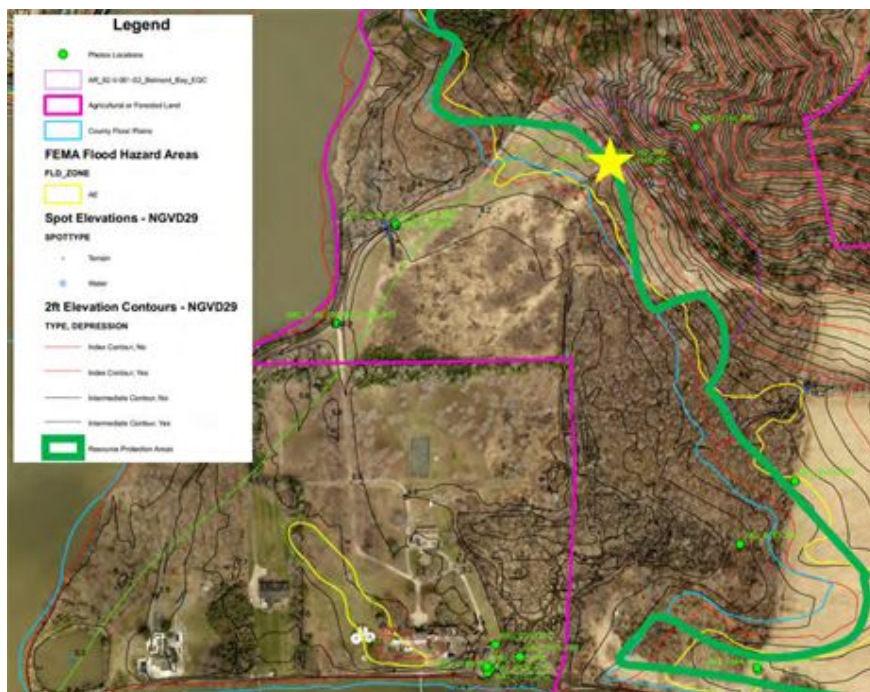


Fairfax County
Land Development Services



Attachment 6: Photograph Showing Clearing in RPA

Image 145 from file: 10/27/17 photograph taken from the edge of the RPA, looking into the RPA, with Massey Creek straight head. This image shows the clearing in the RPA, as well as the drainage channel that was recently constructed. The young grass shows the recent activity. Photograph location is denoted by the star in the image below.



ATTACHMENT 7: Additional Correspondence

Codding, Ellie

From: Codding, Ellie
Sent: Friday, May 4, 2018 8:19 PM
To: Cook, Ricky; Charles Hooff; Grape, Laura T.; Woode, Willie; Fox Run Nurseries
Cc: McGlone, Jim; Morin, Christine A
Subject: Compliance Schedule - notes from today
Attachments: 2018-05-04-Meeting-on-Compliance-Schedule.docx

Please see the attached Word document for my notes on the revised compliance dates and respond to acknowledge receipt.

Thank you, - Ellie Codding

Eleanor Ku Codding, P.E.
Director, Code Development and Compliance Division
Department of Land Development Services
12055 Government Center Pkwy, Suite #213
Fairfax, VA 22035
<http://www.fairfaxcounty.gov/land-development/>
703-324-1695

From: Cook, Ricky
Sent: Thursday, May 3, 2018 7:07 AM
To: Charles Hooff <crhooff@BelmontBayFarm.com>
Cc: Codding, Ellie <Eleanor.Codding@fairfaxcounty.gov>; Grape, Laura T. <Laura.Grape@fairfaxcounty.gov>; McGlone, Jim <jim.mcglone@dof.virginia.gov>; Woode, Willie <Willie.Woode@fairfaxcounty.gov>; Fox Run Nurseries <louk@fox-run.net>; Morin, Christine A <Christine.Morin@fairfaxcounty.gov>
Subject: RE: Final Email for verification of Meeting for Friday

Good morning Everyone,

This email is to confirm that the meeting for Belmont Bay Farm is scheduled for MAY 4th at 1530 Hours per Mr Hooff Request at the Board Of Supervisors Office the time has adjusted from his original email. If you have any questions prior to meeting please send me an email . If the meeting does not take place or the parties do not attend we will be sending out the 118 Violation for the RPA as previous emails have stated as the compliance schedule has not been met. The meeting agenda for Belmont Bay Farm will be about the following items listed below.

ATTACHMENT 7: Additional Correspondence

1. Compliance schedule timeline and reason for it.
2. How to come in compliance with the timeline and the requirements.
3. Requirements after compliance is met.
4. Questions ?

Thank you ,
Ricky Cook

Ricky Cook
Senior Engineer Inspector
Code Development & Compliance Division
E-mail – Ricky.Cook@FairfaxCounty.gov
Main # 703-324-1300
Direct # 703-324-2714

ATTACHMENT 7: Additional Correspondence

All – here are my notes on the schedule from today’s discussion. Let me know if there is any disagreement on the dates. Please also respond to confirm that you received this. For clarity please include everyone on this email when submitting items (the county will do the same).

Finally, as discussed during the meeting, I will consider this case to be in the compliance schedule phase as long as the dates are met below and the communication continues.

Recommended Compliance Measure	Agreed Upon Date of Submission
1. Cease all clearing and placement of fill in the RPA	Mr. Hooff and Mr. Kobus state that this item is complete. They will submit photos by 5/11/18 demonstrating compliance with this item.
2. Provide a topographic survey showing the extent of fill. Include the current RPA and floodplain delineation on the survey.	Mr. Hooff and Mr. Kobus state that there was no fill. Mr. Woode and Ms. Codding agreed that there was regrading in the RPA that appeared to be fill. Mr. Hooff and Mr. Kobus agreed to the following: 1) Ms. Codding will email them names of surveying companies to consider, 2) the county and Mr. Woode will email Mr. Hooff the extent of the area to be surveyed, and 3) Mr. Hooff and Mr. Kobus will contact the county by 5/14/18 to state when they will submit the survey. This will allow them to contact surveying companies to get a better estimate of when one can be completed.
3. Provide a (WQIA) Water Quality Impact Assessment for tree removal within the RPA.	Mr. Cook will provide Mr. Hooff and Mr. Kobus with the required elements of a WQIA on Monday, 5/7/18. Mr. Kobus will submit a WQIA by 5/30/18.
4. Place temporary mulching or other surface stabilization measures (such as seed and straw).	Mr. Hooff and Mr. Kobus state that this item is complete. They will submit photos by 5/11/18 demonstrating compliance with this item.
5. Provide a planting schedule to reestablish permanent native vegetation in areas of the RPA that have been cleared per 118-3, as denoted in Figure 2.	Mr. Hooff and Mr. Kobus will submit a planting plan by 5/30/18. As part of the planting plan, Mr. Kobus will include planting of shrubs to re-establish the RPA buffer, using the DCR-approved list of plants for RPA buffers.
6. Place topsoil, re-seed, straw, and water as needed in Spring 2018 at the start of the growing season. Continue placing straw and watering the areas until Fall 2018 or until native vegetation has established 80% cover of the cleared area.	This will be included along with Item 5 above.
7. Perform the above-listed compliance measures in accordance with the approved Soil and Water Quality Conservation Plan dated March 2015.	Mr. Hooff and Mr. Kobus will schedule a meeting with the Northern Virginia Soil and Water Conservation District this summer to discuss the update of the Soil and Water Quality Conservation Plan.

ATTACHMENT 7: Additional Correspondence

Codding, Ellie

From: Codding, Ellie
Sent: Monday, May 7, 2018 5:01 PM
To: Cook, Ricky; Charles Hooff; Grape, Laura T.; Woode, Willie; Fox Run Nurseries
Cc: McGlone, Jim; Morin, Christine A
Subject: Compliance Schedule - notes from today
Attachments: 2018-05-04-Meeting-on-Compliance-Schedule.docx

Hello, as outlined in the attached Word document, here are the requirements for a WQIA. If you have any questions or would like clarification on this, please contact Ricky Cook, who will coordinate with the reviewers that approve WQIAs. – Ellie Codding

Section 118-4-3. - Water Quality Impact Assessment Components.

The Water Quality Impact Assessment shall:

- (a) Display the boundaries of the RPA;
- (b) Display and describe the location and nature of the proposed encroachment into and/or impacts to the RPA, including any clearing, grading, impervious surfaces, structures, utilities, and sewage disposal systems;
- (c) Provide justification for the proposed encroachment into and/or impacts to the RPA;
- (d) Describe the extent and nature of any proposed disturbance or disruption of wetlands;
- (e) Display and discuss the type and location of proposed best management practices to mitigate the proposed RPA encroachment and/or adverse impacts;
- (f) Demonstrate the extent to which the proposed activity will comply with all applicable performance criteria of this Chapter; and
- (g) Provide any other information deemed by the Director to be necessary to evaluate potential water quality impacts of the proposed activity. (32-03-118.)

From: Codding, Ellie
Sent: Friday, May 4, 2018 8:19 PM
To: Cook, Ricky <Ricky.Cook@fairfaxcounty.gov>; Charles Hooff <crhooff@BelmontBayFarm.com>; Grape, Laura T. <Laura.Grape@fairfaxcounty.gov>; Woode, Willie <Willie.Woode@fairfaxcounty.gov>; Fox Run Nurseries <louk@fox-run.net>
Cc: McGlone, Jim <jim.mcglone@dof.virginia.gov>; Morin, Christine A <Christine.Morin@fairfaxcounty.gov>
Subject: Compliance Schedule - notes from today

Please see the attached Word document for my notes on the revised compliance dates and respond to acknowledge receipt.

Thank you, - Ellie Codding

Eleanor Ku Codding, P.E.
Director, Code Development and Compliance Division

ATTACHMENT 7: Additional Correspondence

Department of Land Development Services
12055 Government Center Pkwy, Suite #328
Fairfax, VA 22035
<http://www.fairfaxcounty.gov/land-development/>
703-324-1695

From: Cook, Ricky
Sent: Thursday, May 3, 2018 7:07 AM
To: Charles Hooff <crhooff@BelmontBayFarm.com>
Cc: Coddling, Ellie <Eleanor.Coddling@fairfaxcounty.gov>; Grape, Laura T. <Laura.Grape@fairfaxcounty.gov>; McGlone, Jim <jim.mcglone@dof.virginia.gov>;
Woode, Willie <Willie.Woode@fairfaxcounty.gov>; Fox Run Nurseries <louk@fox-run.net>; Morin, Christine A <Christine.Morin@fairfaxcounty.gov>
Subject: RE: Final Email for verification of Meeting for Friday

Good morning Everyone,

This email is to confirm that the meeting for Belmont Bay Farm is scheduled for MAY 4th at 1530 Hours per Mr Hooff Request at the Board Of Supervisors Office the time has adjusted from his original email. If you have any questions prior to meeting please send me an email . If the meeting does not take place or the parties do not attend we will be sending out the 118 Violation for the RPA as previous emails have stated as the compliance schedule has not been met. The meeting agenda for Belmont Bay Farm will be about the following items listed below.

1. Compliance schedule timeline and reason for it.
2. How to come in compliance with the timeline and the requirements.
3. Requirements after compliance is met.
4. Questions ?

Thank you ,
Ricky Cook

Ricky Cook
Senior Engineer Inspector
Code Development & Compliance Division
E-mail – Ricky.Cook@FairfaxCounty.gov
Main # 703-324-1300
Direct # 703-324-2714

ATTACHMENT 7: Additional Correspondence

Codding, Ellie

From: Cook, Ricky
Sent: Wednesday, May 9, 2018 6:39 AM
To: 'Charles Hooff'
Subject: RE: confirmation on email received

Ty Sir ,
Have a good day.
Ricky Cook

Ricky Cook
Senior Engineer Inspector
Code Development & Compliance Division
E-mail – Ricky.Cook@FairfaxCounty.gov
Main # 703-324-1300
Direct # 703-324-2714

From: Charles Hooff [mailto:crhooff@BelmontBayFarm.com]
Sent: Wednesday, May 9, 2018 6:38 AM
To: Cook, Ricky <Ricky.Cook@fairfaxcounty.gov>
Cc: Codding, Ellie <Eleanor.Codding@fairfaxcounty.gov>; louk@fox-run.net
Subject: Re: confirmation on email received

Received

Sent from my iPhone

On May 9, 2018, at 06:35, Cook, Ricky <Ricky.Cook@fairfaxcounty.gov> wrote:

Good morning Mr Hooff,
Could please confirm that you received the email regarding the new timeline for the compliance schedule .So I can mark this off as one of the items done so we can keep going with this new timeline . If you have any questions please give me a call . Have a good day.
Thank you,
Ricky Cook

ATTACHMENT 7: Additional Correspondence

Ricky Cook
Senior Engineer Inspector
Code Development & Compliance Division
E-mail – Ricky.Cook@FairfaxCounty.gov
Main # 703-324-1300
Direct # 703-324-2714

ATTACHMENT 7: Additional Correspondence

Codding, Ellie

From: Cook, Ricky
Sent: Wednesday, May 9, 2018 5:53 AM
To: 'louk@fox-run.net'
Subject: RE: Confirmation Needed

Good morning Lou,
The WQIA requirements I believe were attached to her notes please let me know again if you did not get them . I believe they were sent to you.
Thank you,
Ricky Cook

Ricky Cook
Senior Engineer Inspector
Code Development & Compliance Division
E-mail – Ricky.Cook@FairfaxCounty.gov
Main # 703-324-1300
Direct # 703-324-2714

From: louk@fox-run.net [mailto:louk@fox-run.net]
Sent: Tuesday, May 8, 2018 5:03 PM
To: Cook, Ricky <Ricky.Cook@fairfaxcounty.gov>
Cc: 'Charles Hooff' <crhooff@BelmontBayFarm.com>
Subject: RE: Confirmation Needed

Mr. Cook,

I have received a copy of Mrs. Codding's notes. Although I believe Mrs. Codding's noted time table is very aggressive, specially for farmers in Spring season planting, I will try to complete the noted items in a reasonable time frame. If I run into projected delays, I will inform you of the problem and expected new delivery dates. Mr. Cook I believe you are capable to come on site, but because of the Farm's operational spring tempo there is no one available to escort you around.

According to Mrs. Codding's notes you were to provide me the required elements of a WQIA as of the close of business yesterday, Monday 7 May 2018. I did not receive them. I understand, since Spring is a busy time of all concern.

Mr. Hooff, and all of the Belmont Bay Farm Family, are looking forward to answering the County's inquiries about our Farm operation.

Lou Kobus

ATTACHMENT 7: Additional Correspondence

From: Cook, Ricky <Ricky.Cook@fairfaxcounty.gov>

Sent: Tuesday, May 8, 2018 8:26 AM

To: Coddling, Ellie <Eleanor.Coddling@fairfaxcounty.gov>; Cook, Ricky <Ricky.Cook@fairfaxcounty.gov>

Cc: Fox Run Nurseries <louk@fox-run.net>; Charles Hooff <crhooff@BelmontBayFarm.com>

Subject: Confirmation Needed

Good morning Mr Hooff , Lou

Thank you again for meeting with us friday to go over the compliance schedule . Could you please confirm by email or call that you received the attached document that Ellie sent out friday and I am also sending as well . Please keep me updated on all of the timeline items and the changes since I am unable to come onsite to verify as previously discussed so we can keep the compliance schedule going and on track. If you have any questions please let me know.

Thank you,

Ricky Cook

Ricky Cook

Senior Engineer Inspector

Code Development & Complaine Division

E-mail – Ricky.Cook@FairfaxCounty.gov

Main # 703-324-1300

Direct # 703-324-2714

ATTACHMENT 7: Additional Correspondence

Codding, Ellie

From: Cook, Ricky
Sent: Wednesday, May 9, 2018 1:10 PM
To: 'louk@fox-run.net'
Cc: Codding, Ellie; Ricky Cook (Ricky.Cook@fairfaxcounty.gov)
Subject: Surveyors List that have Recently Supplied plats.

Good afternoon Lou,
Below you will find a list of Surveyors that have recently submitted plats to the Fairfax County.

1. Land Design Consultants
2. Charles P Johnson & Associates Inc.
3. Professional Design Group, Inc.
4. Walter L. Phillips Inc.
5. Urban, Ltd.
6. BC Consultants
7. Dewberry
8. Tri-Tek Engineering

If you have any questions please let me know.
Thank you,
Ricky Cook

Ricky Cook
Senior Engineer Inspector
Code Development & Compliance Division
E-mail – Ricky.Cook@FairfaxCounty.gov
Main # 703-324-1300
Direct # 703-324-2714

ATTACHMENT 7: Additional Correspondence

Codding, Ellie

From: Cook, Ricky
Sent: Friday, May 11, 2018 5:07 PM
To: Codding, Ellie
Subject: Fwd: pictures of field

Ty for the photos . I received 5 of them if that is all please let me know .
Thank you,
Ricky Cook

Ricky L. Cook
Senior Engineering Inspector
Code Development & Compliance Division
www.FairfaxCounty.gov

Ricky.Cook@fairfaxcounty.gov
Direct-703-324-2714

Begin forwarded message:

From: <louk@fox-run.net>
Date: May 11, 2018 at 2:16:22 PM EDT
To: "'Cook, Ricky'" <Ricky.Cook@fairfaxcounty.gov>
Cc: 'Charles Hooff' <crhooff@BelmontBayFarm.com>
Subject: pictures of field

Mr. Cook,

Attached are the photos requested. If there are any questions or concerns, please contact me at the info below or my cell phone.

Lou Kobus
Lou Kobus CLP
Fox Run Nurseries
P. O. Box 8010
Alexandria, Virginia 22306

Ph (703) 360 – 0199

Fx (703) 360 – 4499

A Service Disabled Veteran Owned Small Business

ATTACHMENT 7: Additional Correspondence











ATTACHMENT 7: Additional Correspondence

Codding, Ellie

From: Cook, Ricky
Sent: Wednesday, May 23, 2018 12:31 PM
To: Codding, Ellie; Grape, Laura T.; Morin, Christine A; Woode, Willie
Cc: Cook, Ricky; louk@fox-run.net; Charles Hooff
Subject: Belmont Bay Farm Updated Compliance Schedule
Attachments: Surveyors List that have Recently Supplied plats.

Good morning Lou,

Per the revised compliance schedule that you received via email on 5-4-2018, the following items still need to be addressed and one item is past due.

Past Due:

Per item #2 on the revised compliance schedule, by 5/15/2018, you were to notify the county of the date that you will provide the topographic survey showing the extent of grading, also to include the current RPA and floodplain delineation on the survey. Attached to this email is the list of surveyors that you requested.

Items due by 5/30/2018:

The WQIA and Planting Schedule described in Items 3, 5, and 6 of the revised compliance schedule are due on 5/30.

Please respond by the end of the week (5-25-2018) with when you will be submitting the topographic survey . If you have any questions please let me know.

Thank you,
Ricky Cook

Ricky Cook
Senior Engineer Inspector
Code Development & Compliance Division
E-mail – Ricky.Cook@FairfaxCounty.gov
Main # 703-324-1300
Direct # 703-324-2714

ATTACHMENT 7: Additional Correspondence

Codding, Ellie

From: Cook, Ricky
Sent: Thursday, July 26, 2018 9:15 AM
To: Codding, Ellie
Subject: FW: Belmont Bay Farm
Attachments: Map For Lou.jpg

Ricky Cook
Code Specialist II
Code Development & Compliance Division LDS
E-mail – Ricky.Cook@FairfaxCounty.gov
Main # 703-324-1300
Direct # 703-324-2714

From: Cook, Ricky
Sent: Friday, June 1, 2018 10:56 AM
To: Codding, Ellie <Eleanor.Codding@fairfaxcounty.gov>
Cc: Smarr, Melissa <Amy.Smarr@fairfaxcounty.gov>
Subject: Belmont Bay Farm

Good morning Mr. Hooff and Mr. Kobus,

Thank you for the email. Please provide a date when the survey will be completed. If I do not hear from you by 6/6/18 with a date for survey submittal, I will re-issue a new compliance schedule with the dates we have discussed as well as a survey due date that we will assign. Lou, also I believe this is what Ellie quoted you in the meeting: for a typical quarter acre lot, we were seeing surveys in the \$300 to \$700 range. If you have any questions please feel free to give me a call. Also Attached are the a Map and replies from Willie Woode about the planting that you had forwarded. Please follow Willie Woodes direction for the attached map areas. Below you will find his response.

For a [PLANTING PLAN](#), I would in the least, expect to see the following details:

- Location identification and respective sizes (in acres) of sections to be replanted,
- Plant categories (e.g. understory trees, over story trees, shrubs and grasses). This should also include list of specific plant species within each category that are naturally adapted to prevailing conditions within the sections identified for replanting,

ATTACHMENT 7: Additional Correspondence

- Numbers and sizes (nursery plants or bare rooted plants) of each species. These should be based on the county's recommendation (i.e., minimum number of plants per acre) for Reforestation of the Resource Protection Areas.
If you have any questions feel free to give me a call.

Thank you,

Ricky Cook

Ricky Cook
Senior Engineer Inspector
Code Development & Compliance Division
E-mail – Ricky.Cook@FairfaxCounty.gov
Main # 703-324-1300
Direct # 703-324-2714

ATTACHMENT 7: Additional Correspondence

Codding, Ellie

From: Cook, Ricky
Sent: Friday, June 8, 2018 3:19 PM
To: 'Charles Hooff'; 'louk@fox-run.net'; Codding, Ellie; Grape, Laura T.; Woode, Willie; Morin, Christine A
Cc: Smarr, Melissa; Ricky Cook (Ricky.Cook@fairfaxcounty.gov)
Subject: Belmont Bay Farm Compliance Schedule update
Attachments: Bel pic.jpg

Good morning Mr. Hooff and Mr. Kobus,

Thank you for the email with planting information. Unfortunately this is not enough information for the required planting plan. You need to at least provide the following details for a planting plan:

- Location, identification, and respective sizes (in acres) of sections to be replanted (or a map to scale would show this),
- Plant categories (e.g. understory trees, over story trees, shrubs and grasses). This should also list -specific plant species within each category that are naturally adapted to prevailing conditions within the sections identified for replanting,
- Numbers and sizes (nursery plants or bare rooted plants) of each species. These should be based on the county's recommendation (i.e., minimum number of plants per acre) for Reforestation of the Resource Protection Areas.

To assist you with the planting plan, I've provided the attached Map. You can mark required elements above on this map and return it to me. To assist you with the number and sizes of plants, please see the following sections of Chapter 118 as well as the publication available at this link: https://www.fairfaxcounty.gov/publicworks/sites/publicworks/files/assets/documents/rpa_tree_and_shrub_list_9-24-07.pdf:

118-3-3 (f) Buffer area establishment: Where buffer areas are to be established, they shall consist of a mixture of over story trees, understory trees, shrubs and groundcovers. The density of over story trees shall be a minimum of 100 trees per acre. The density of understory trees shall be a minimum of 200 trees per acre. The density of shrubs shall be a minimum of 1089 plants per acre. If seedlings are used instead of container plants, the density of trees shall be doubled. Large caliper trees shall not be planted on slopes steeper than 2:1. Plant materials shall be randomly placed to achieve a relatively even spacing throughout the buffer. The Director may approve the use of a seed mixture as a supplement to or in lieu of individual plants for shrubs and groundcovers. Plants shall be native to the degree practical and adaptable to site conditions. Wetland plantings (including herbaceous plantings) and/or wetland seed mix shall be used where site conditions warrant. Plant materials and planting techniques shall be as specified in the Public Facilities Manual.

ATTACHMENT 7: Additional Correspondence

118-9-1 (d) Restoration of Chesapeake Bay Preservation Areas shall be performed as necessary to meet the intent of this Chapter, the requirements herein, and the requirements of the Public Facilities Manual. In addition to the plantings required by Section 118-3-3(f) and the Public Facilities Manual, the Director may require that trees illegally removed from Chesapeake Bay Preservation Areas be replaced by other trees of the same or comparable species of equal value and/or be replaced 2 for 1 with 2 inch caliper trees. The value of the replacement trees shall not exceed the value of those illegally removed as determined by the formula in the latest revision of the "Guide for Plant Appraisal" prepared by the Council of Tree and Landscape Appraisers and published by the International Society of Arboriculture.

Also, I still need to hear from you about when the survey will be completed. If I do not hear from you by 6/15/18 with a date for survey submittal, I will re-issue a new compliance schedule with the dates we have discussed as well as a survey due date that we will assign.

Addition to the items above please provide and update on the WQIA submittal that was due on 5-30-18 as well .

If you have any questions feel free to give me a call.

Thank you,
Ricky Cook

Ricky Cook
Senior Engineer Inspector
Code Development & Compliance Division
E-mail – Ricky.Cook@FairfaxCounty.gov
Main # 703-324-1300
Direct # 703-324-2714

ATTACHMENT 7: Additional Correspondence

Codding, Ellie

From: Cook, Ricky
Sent: Friday, June 15, 2018 8:09 AM
To: Charles Hooff; louk@fox-run.net; Codding, Ellie; Grape, Laura T.
Cc: Woode, Willie; Smarr, Melissa; Cook, Ricky
Subject: Update Needed

Good morning Mr. Hooff, Mr. Kobus,

Could you please provide us with an update on when the following items will be completed per my last email that was sent out on June the 8th 2018 .

1. Planting schedule date .
2. Topographic Survey .
3. WQIA Submittal.

I just wanted to remind you that you only have 45days left remaining before the RPA violation will be sent out as the items have not been completed . If you have updated information that would be great so we can continue making progress to close out the compliance items . If you have any questions please feel free to give me a call.

Thank you,
Ricky Cook

Ricky Cook
Senior Engineer Inspector
Code Development & Complaine Division
E-mail – Ricky.Cook@FairfaxCounty.gov
Main # 703-324-1300
Direct # 703-324-2714

ATTACHMENT 7: Additional Correspondence

Codding, Ellie

From: Cook, Ricky
Sent: Tuesday, June 26, 2018 6:16 AM
To: Codding, Ellie
Subject: FW: E mail dated 15 June 2018

Good morning Ellie ,

Below is the email that I received from Lou , regarding the farm . I am unaware of any different form for farming. Is this something we should have April Kellum look into. Please let me know as I thing I will get ready to prepare the 118 violation. Also regarding the planting and revegetation comment do you think we should have Willie go out and do an inspection and go from there.

Thank you,
Ricky Cook

Ricky Cook
Code Specialist II
Code Development & Complaine Division LDS
E-mail – Ricky.Cook@FairfaxCounty.gov
Main # 703-324-1300
Direct # 703-324-2714

From: louk@fox-run.net [mailto:louk@fox-run.net]
Sent: Monday, June 25, 2018 3:04 PM
To: Cook, Ricky <Ricky.Cook@fairfaxcounty.gov>; 'Charles Hooff' <crhooff@BelmontBayFarm.com>
Subject: E mail dated 15 June 2018

Mr. Cook

I apologize for not returning your e mail earlier, but it has taken me a considerable amount of time to research the internet to find a Water Quality Impact Assessment (WQIA) template / outline for Farms. After searching the internet on multiple occasions, over a period of days, I only found WQIA templates from developers with no information concerning Farms. (i.e. Fairfax County w/ Van Meter (2014)). If you or the County Staff can locate a WQIA template for Farms that reflect the removal of invasive plant material and replant with native plant material along with environmentally enhancing plants which also provide wildlife food sources, please send it to me so that I can complete the form.

In reference to the Topographic Survey, the companies we contacted asked about the location of the “ Benchmark “. I have asked Mr. Hooff about this and he does not remember a benchmark ever being located. If the County has this information, I would appreciate you providing the location.

ATTACHMENT 7: Additional Correspondence

Concerning the planting schedule, I send you a copy of DEQ's suggested plant list for developing a RPA, since we are not developing an RPA and the actual location is still to be determined, I am not sure what you are expecting. We have already planted Egyptian Wheat and the area in discussion is now returning to native vegetation.

As Farmers, being stewards of the Land, we look forward to continue working with you and the County Staff to address all of the County's concerns. You can always contact me at the info below or my personal mobile (703) 501 – 0724.

Lou

Lou Kobus CLP
Fox Run Nurseries
P. O. Box 8010t
Alexandria, Virginia 22306
Ph (703) 360 – 0199
Fx (703) 360 – 4499
A Service Disabled Veteran Owned Small Business

Attachment 8: Prior Notice of Intended Silviculture

Date: August 24, 2016

Memo to self: Details of meeting requested by Lou Kobus, Farm Manager, Belmont Bay Farm regarding update on proposed logging activity.

Present were: Lou Kobus, Farm Manager, Belmont Bay Farm
Rachel Habig-Myers, Urban Forester II, Department of Urban Forestry
Jim McGlone, VDOF
Michael Lynskey, A&F District Staff Coordinator, DPZ
Willie Woode, NVSWCD

Background:

Lou informed the group that Belmont Bay Farm has the mandate to conduct "By-Right" logging activities. He said the last time logging was done at that farm was in the 1990's. With the help of DOF there are plans to conduct another logging operation in the near future. With logging comes new opportunities to implement improved forest management practices.

Overall, the property is well managed, and is home to a wide variety of wildlife such as Bald Eagles (whose nesting areas will remain undisturbed), Coy-wolf (a cross between coyote and wolf), foxes, deer, etc.

Deer is being actively hunted to manage the population. The farm has a hunting permit, and the head-hunter happens to be the head of Fairfax County's Animal Control Department. Due to hunting activities going on, it is highly recommended that if any agency employee needs to get on to the property, he/she should Lou know, so that he can make all arrangements to ensure safety.

Belmont Bay Farm works hand-in-hand with county, state and federal authorities in all of its activities.

Logging Details:

- Two weeks ago, Belmont Bay Farm offered an 18-month long contract to "Top Scott Brothers Logging Company" from Charlottesville. They have access to conduct logging operation on a defined 100-acre portion of the property.
- Logging can be conducted anytime during the 18-month period, depending on weather and market demands.
- The main species of interest will be the loblolly pine trees, and "Clear-cutting" will be the method of logging to be done.
- No RPA is within the proposed area of logging.
- Silt fences will be installed, as well as temporary vehicle channel-crossing (if necessary).
- Pre- and Post-emergent herbicide will be used to suppress re-growth until new trees are planted.
- An additional 15-ft wide swath of trees along the west side of the private access road will be cleared for easy truck ingress and egress.
- Lou will be out of town during the period of September 15 – October 15, 2016; so there will be no logging activity during that period. He believes that actual logging may not start until the winter months (may be January or February 2017), depending on market demands and weather.
- Before the logging activity starts, the contractor will inform and get the necessary road permits and traffic control assistance from VDOT. They will also inform Jim McGlone, who promises to inform staff present at this meeting.

Attachment 8: Prior Notice of Intended Silviculture

Other issues discussed:

- Although all arrangements seem to be in place for the logging operation, it was agreed that there will be many phone calls after the activity starts. Therefore, it was suggested that:
 - Supervisor Stork's office be informed of the permitted activity once a start date is set.
 - Signs be posted in the vicinity a few days before and during the logging period as a move towards good public relations.
- Mr. Kobus informed us that as part of its 10-year plan, Belmont Bay Farm will be:
 - Conducting two more sets of mixed hardwood logging operations in the northern portion of Belmont Bay Farm – Outside of any RPA. These will be in 50-acre portions. Following replanting, the staggered approach will provide opportunity for trees to mature in batches, so that future logging activities can be conducted in a more planned and scheduled manner.
 - As a result of the farm land being lost due to waves and tidal actions, Mr. Kobus will investigate the possibility of the county establishing a wetland that will reduced the rate of erosion.
- Asked about the activities going on at another area of the property, Lou informed the group that they plan to build two 30' x 100' "propagation houses" for vegetables. In addition to sheep rearing, the farm plans on getting into vegetable production - a lucrative farming operation. The structures should be ready by fall of this year.

He mentioned that in preparation for construction of those structures, Belmont Bay Farm had to "fill some holes" with soil. In doing so, neighbors called both county (Code Compliance) and federal (DEQ) agencies suspecting violation of some county/state laws. The project was delayed for six months while investigations were being conducted. At the end, both entities decided there was no violation.

Michael advised him that since the property is listed under Fairfax County's A&F District, and as a requirement of the Ches. Bay Preservation Program, he (Lou) would need to consult with NVSWCD to have his existing SWQCP updated to indicate the new/proposed farming practices.

I informed the group that while district staff can help with the plan preparation, we do not have to be the plan preparer. However, the district's Technical Advisory Committee (TAC) has to review the plan and based on its recommendation, our board usually approves it.

Lou was open to taking any steps necessary to do the right thing. He expressed interest in meeting with the district staff as well, but would rather embark on those issues when he returns in October.

Lou Kobus' MAP Showing Logging Area

Attachment 8: Prior Notice of Intended Silviculture



Attachment 8: Prior Notice of Intended Silviculture



... Rachel; Timm ...
last logged in 1990

Head Hunter is the head of animal control.

wildlife: coy-wolf (coyote wolf hybrid)

bald eagles etc. foxes.

work w/ county / state / Fed. agencies.

Papscott ^{Prog.} loggers out of Charlottesville

Contract is for 18 months. So any time
can be achieved. determination is

weather + market. contract started
2 weeks ago.

Working with VDOT for T/P assistance

By night logging option - clear cut logging.

Loblolly pine. Pre + post emergent herbicide
will be used after logging.

7/501 - 0724 (m)

9/5 - 10/15 (early town)

100 acres of activity (50 acres / time)
15' road side clearing metal hardware

Board Agenda Item
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INFORMATION - 1

Contract Award - Consulting Services for a Comprehensive Water and Sewer Rate Study

The Department of Procurement and Material Management (DPMM) intends to award a consulting contract for a Comprehensive Water and Sewer Rate Study to Management and Financial Services Group, LLC. This contract will be used by the Department of Public Works and Environmental Services, Wastewater Collection Division (DPWES-WCD). The scope of work includes rate consultant services to establish a comprehensive water and wastewater cost of services and management study. The contractor shall propose rate designs or identify required adjustments to the existing water and sewer rate and fee structure to equitable recovery costs, while considering equity among users. In addition, the contractor may provide technical assistance to the County for financial and rate related issues, as needed.

In accordance with the Fairfax County Purchasing Resolution, this contract will be awarded through the County's cooperative procurement authority to utilize agreements established by other public bodies and thereby reducing administrative expenses for the County. The contract was established through a competitive procurement process conducted by the City of Fredericksburg, VA who selected Management and Financial Services Group, LLC (a small business) from among three responsive offerors.

The Department of Tax Administration (DTA) verified that Financial Services Group, LLC is not required to have a Fairfax County BPOL.

Unless otherwise directed by the Board of Supervisors, the Purchasing Agent will proceed to award a contract to Management and Financial Services Group, LLC.

FISCAL IMPACT:

The Department of Public Works and Environmental Services has confirmed that adequate funding is available in FY 2020 for anticipated services. The total estimated expenditures under this contract is over \$100,000.00 during the multi-year term expiring on July 31, 2023.

ENCLOSED DOCUMENTS:

None.

STAFF:

Joseph Mondoro, Chief Financial Officer
Cathy A. Muse, Director, Department of Procurement and Material Management
Michael McGrath, Director, Department of Public Works and Environmental Services,
Wastewater Management Division, Wastewater Treatment Division

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10:30 a.m.

Matters Presented by Board Members

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11:20 a.m.

CLOSED SESSION:

- (a) Discussion or consideration of personnel matters pursuant to Virginia Code § 2.2-3711(A) (1).
- (b) Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Virginia Code § 2.2-3711(A) (3).
- (c) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Virginia Code § 2.2-3711(A) (7).
 - 1. *Barry McCabe v. Fairfax County, Fairfax County Animal Shelter, Fairfax County Board of Supervisors, David Rohrer, Ed Roessler, Anthony Matos, Barbara Hutcherson, Amanda Novotny, and John Doe(s)*, Case No. CL-2019-0008951 (Fx. Co. Cir. Ct.)
 - 2. *Willie A. McCallum v. Fairfax County Department of Public Works and Environmental Services*, Case No. 19-cv-724 (E.D. Va.)
 - 3. *Chiao-Yung A. Sher v. Christopher A. Leonard*, Case No.'s GV19-013944 (Fx. Co. Gen. Dist. Ct./Small Claims Division) and GV19-017043 (Fx. Co. Gen. Dist. Ct./Civil Division)
 - 4. *Dora Fatima Parada-Segovia v. Kenneth Barlowe and Fairfax County*, Case No. Not yet assigned (Va. Sup. Ct.)
 - 5. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Loetta Darlene George and Amin Musharab*, Case No. CL-2019-0002873 (Fx. Co. Cir. Ct.) (Braddock District)
 - 6. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Laurence Putnam Wheeler and Susie A. Wheeler*, Case No. CL-2019-0005794 (Fx. Co. Cir. Ct.) (Dranesville District)
 - 7. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Lecia A. Reeve*, Case No. GV19-017467 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
 - 8. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Alvaro A. Cestti and Gladys A. Caballero*, Case No. CL-2019-0006141 (Fx. Co. Cir. Ct.) (Lee District)

9. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Isidro Ramirez, Regina Estrada, and Zandra Makel Otero, Case No. CL-2018-0007087 (Fx. Co. Cir. Ct.) (Lee District)*
10. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Jeffrey D. Holt, Case Nos. GV19-016988 and GV19-016989 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)*
11. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia, v. Vivian A. Lingenfield, Case No. GV19-017073 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)*
12. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Bryan R. Bishop, Trustee, or Successor Trustee(s), as Trustee(s) of The Jean E. Riggs Trust 16SEP10, Case No. CL-2013-0006045 (Fx. Co. Cir. Ct.) (Providence District)*
13. *In re: May 1, 2019, Decision of the Board of Zoning Appeals of Fairfax County, Virginia; Nagla A. Abdelhalim v. Board of Supervisors of the County of Fairfax, Virginia, Case No. CL-2019-0007529 (Fx. Co. Cir. Ct.) (Providence District)*
14. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Vanessa E. Garcilazo and Wendy L. Ventura Espinozo, Case No. CL-2019-0002725 (Fx. Co. Cir. Ct.) (Springfield District)*
15. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Bao Q. Tran and Tina Q. Le, Case No. CL-2018-0016485 (Fx. Co. Cir. Ct.) (Springfield District)*
16. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Sun Mi Lee and Ok Chul Choe, Case No. CL-2019-0003911 (Fx. Co. Cir. Ct.) (Sully District)*

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July 30, 2019



3:00 p.m.

ACTION - 12

Board Approval of a Minor Variation Request for PCA 2003-MV-033, Fairfax County Board of Supervisors, to Add Craft Beverage Production Establishment and Small-Scale Production Establishment as Permitted Secondary Uses Under Proffer 6(a) at the Workhouse Arts Center (Mount Vernon District)

ISSUE:

Board consideration of a request for a minor variation to PCA 2003-MV-033, under Zoning Ordinance Section 18-204(5), to add Craft Beverage Production Establishment and Small-Scale Production Establishment as permitted secondary uses under Proffer 6(a).

RECOMMENDATION:

The County Executive recommends that the Board, in accordance with Zoning Ordinance Sect. 18-204(5) and Virginia Code Sect. 15.2-2302, waive the requirement of a public hearing and approve the request to add Craft Beverage Production Establishment and Small-Scale Production Establishment as permitted secondary uses under Proffer 6(a) of PCA 2003-MV-033.

TIMING:

Routine.

BACKGROUND:

Under Par. 5 of Sect. 18-204 of the Zoning Ordinance, the Board may approve certain requests for minor variations to proffered conditions and the associated conceptual development plan and final development plan without a public hearing when such requests do not materially affect proffered conditions of use, density, or intensity. Specifically, Par.(5)(A)(1) permits the addition or modification of a use, if the existing proffered conditions do not specifically preclude the use and the new use would have no materially greater land use impacts than the approved uses, based on factors such as parking, trip generation, vehicular circulation, or hours of operation.

The subject property is zoned PDC and is located at 9518 Workhouse Way, on the east side of Ox Road and south of its intersection with Workhouse Road, on approximately

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52.39 acres of land, Tax Map 106-4 ((1)) 58 (see Locator Map in Attachment 1) (“the Property”). The Property, known as Workhouse Arts Center, is owned by the Board and is governed by PCA/CDPA 2003-MV-033, which was approved, subject to proffers, by the Board of Supervisors on August 3, 2009. On January 28, 2010, the Planning Commission approved FDPA 2003-MV-033-02, to correct errors on the previously approved FDPA and clarify existing conditions. The approval of PCA 2003-MV-033 amended the proffers for RZ 2003-MV-033, which had originally permitted the establishment of a mixed-use development arts center, to include artists’ studios, cultural facilities, eating establishments, and multi-family dwellings in order to permit additional uses and offer flexibility in certain building layouts onsite.

The accepted proffers governing the subject property, PCA 2003-MV-033 are available through the Zoning Evaluation Division or at:
<http://ldsnet.fairfaxcounty.gov/ldsnet/ZAPSMMain.aspx?cde=PCA&seq=4114806>

On May 21, 2019, the Board concurred in the filing of a minor variation request to add craft beverage production establishment and small-scale production establishment to the list of permitted uses within the existing or proposed buildings on the Property.

The Department of Planning and Zoning (now, the Department of Planning and Development) received a letter from the Workhouse Arts Center, that was both dated and received on May 31, 2019, requesting a minor variation to add the Craft Beverage Production Establishment and Small-Scale Production Establishment uses as permitted secondary uses under Proffer 6(a) of PCA 2003-MV-033 (see Attachments 2 and 4). This property was approved to permit the adaptive reuse of a portion of the former Lorton Reformatory complex as an arts center. The Workhouse Arts Center currently houses artist studio spaces, gallery spaces, the Lucy Burns Museum, arts education programming, visual arts presentations, performing arts events, large-scale annual community events, and other activities in buildings onsite, and continues to seek to maximize the activation of the site. Therefore, this request for a minor variation to add craft beverage production establishment and small-scale production establishment uses as permitted secondary uses on the site is sought to support and advance the adaptive reuse of this site.

Proffer 6(a) states:

6. PERMITTED USES/HOURS OF OPERATION

(a) Permitted Uses. As described on the CDPA/FDPA, the Property may be developed with the following permitted principal and secondary uses.

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- *Museum/Cultural Center and Similar Facilities to include Gallery, Demonstration and Exhibit Areas (generally, W-2 - W- 11, W- 16 and W-29 if retained)**
- *Theater (W-12),*
- *Music Barn (W-22) with outdoor grassed seating area*
- *Performing Arts Center (W-17, W-18, W-18A)*
- *Events Center (W-01)*
- *Office uses in support of or affiliated with Workhouse functions or activities*
- *Residential-multifamily (N-1, N-2)*
- *Eating Establishments, (N-3, N-4, W-13)*
- *Commercial Recreational Use (Events Center, W-01) to consist of meetings, receptions, exhibitions and similar functions/uses*
- *Ballfields*
- *School of Special Education to include classes in the visual, performing, movement, and culinary arts and which may include select college level courses (to be restricted per Proffer 6g)*
- *Accessory retail and other accessory services uses limited to 20% of total gross square footage on site (Gross square footage of gallery space shall not be included in the 20% calculation.).*
- *Outdoor retail display in the horticultural area, limited to a total of 2,700 square feet*

This proffer shall not preclude establishment of accessory and accessory service uses. Such accessory uses may include, but shall not be limited to the incorporation of certain food service and eating establishments within otherwise permitted uses.

On February 28, 2017, the Board of Supervisors approved a Zoning Ordinance Amendment to permit craft beverage production establishments in selected planned development districts, including PDC, with proposed use limitations. On December 4, 2018, the Board of Supervisors approved a Zoning Ordinance Amendment to permit small-scale production establishments in selected planned development districts including PDC, with proposed use limitations. Therefore, while the craft beverage production establishment and the small-scale production establishment uses are permitted secondary uses in the PDC District by the Zoning Ordinance, neither existed as secondary uses at the time of approval of PCA 2003-MV-033.

As described above in Proffer 6(a), and in keeping with the overall character and historic nature of the facility, the proffers limited not only the uses permitted onsite, but also limited their specific locations onsite. Therefore, in evaluating these requests, staff

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analyzed the character and impacts of these added uses to determine where they might be appropriate given the limitations already imposed by the proffer. At this time, specific onsite locations (i.e. exact buildings) for the craft beverage production establishment and the small-scale production establishment uses have not been proposed.

With regard to the small-scale production establishment use, staff notes that this use is very similar to the art and cultural uses already permitted onsite in most buildings. Therefore, staff believe that this use could be located generally in the footprints of any of the approved yet not constructed buildings and existing buildings so as long as it is in conformance with the approved proffers.

Staff has also determined that since a craft beverage production establishment is most similar to a restaurant, a minor variation could be used to permit it only in buildings already approved for restaurant uses. Specifically, this use must be limited to buildings W-13, N-3, and N-4. Proffer 6(a) specifically references eating establishments; however, a Zoning Ordinance Amendment was approved on January 23, 2018, which deleted the terms “eating establishment” and “fast food restaurant” and staff therefore refers to this use by the new terminology, i.e. restaurant.

The addition of the craft beverage production establishment and the small-scale production establishment uses will not impact parking since there is adequate parking onsite. Furthermore, there will be no change to the existing vehicular circulation that serves the site and the hours of operation will remain the same. The minor variation request was reviewed by the Heritage Resources Division of the Department of Planning and Development as well as the Architectural Review Board (ARB) who oversees uses within the Historic Overlay District. The proposal to add these secondary uses was presented to the ARB on June 13, 2019, which was generally in support of the addition of these secondary uses and was told that any detailed plans would be presented to the ARB at a later date. The ARB will provide a formal recommendation on July 11, 2019. Since the site is located within the Memorandum of Agreement (MOA) National Register District, the applicant must follow the process laid out in the MOA to alter structures within the district and address concerns from the Virginia Department of Historic Resources and the Lorton Heritage Society as well as obtain approval from the ARB. As of this writing, the Lorton Heritage Society supports the additional secondary uses at this site.

Staff has reviewed PCA 2003-MV-033 and the request to add Craft Beverage Production Establishment and Small-Scale Production Establishment as permitted secondary uses under Proffer 6(a), noting that the craft beverage production establishment will be subject to the same proffer location limitations as restaurants

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(referred to as eating establishments in the proffers) and has determined that the proposal would have no materially greater land use impacts than the approved uses, based on factors such as parking, trip generation, vehicular circulation, and hours of operation. Given that conclusion, staff believes that approval of this minor variation request meets the requirements of the Zoning Ordinance and recommends its approval.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Excerpt of Approved Proffers for PCA 2003-MV-033

Attachment 3: Minor Variation Statement

Attachment 4: Letter dated May 31, 2019, to Zoning Evaluation Division

Attachment 5: Affidavit available online at:

<https://www.fairfaxcounty.gov/planning-development/zoning/minor-variations>

STAFF:

Rachel Flynn, Deputy County Executive

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

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

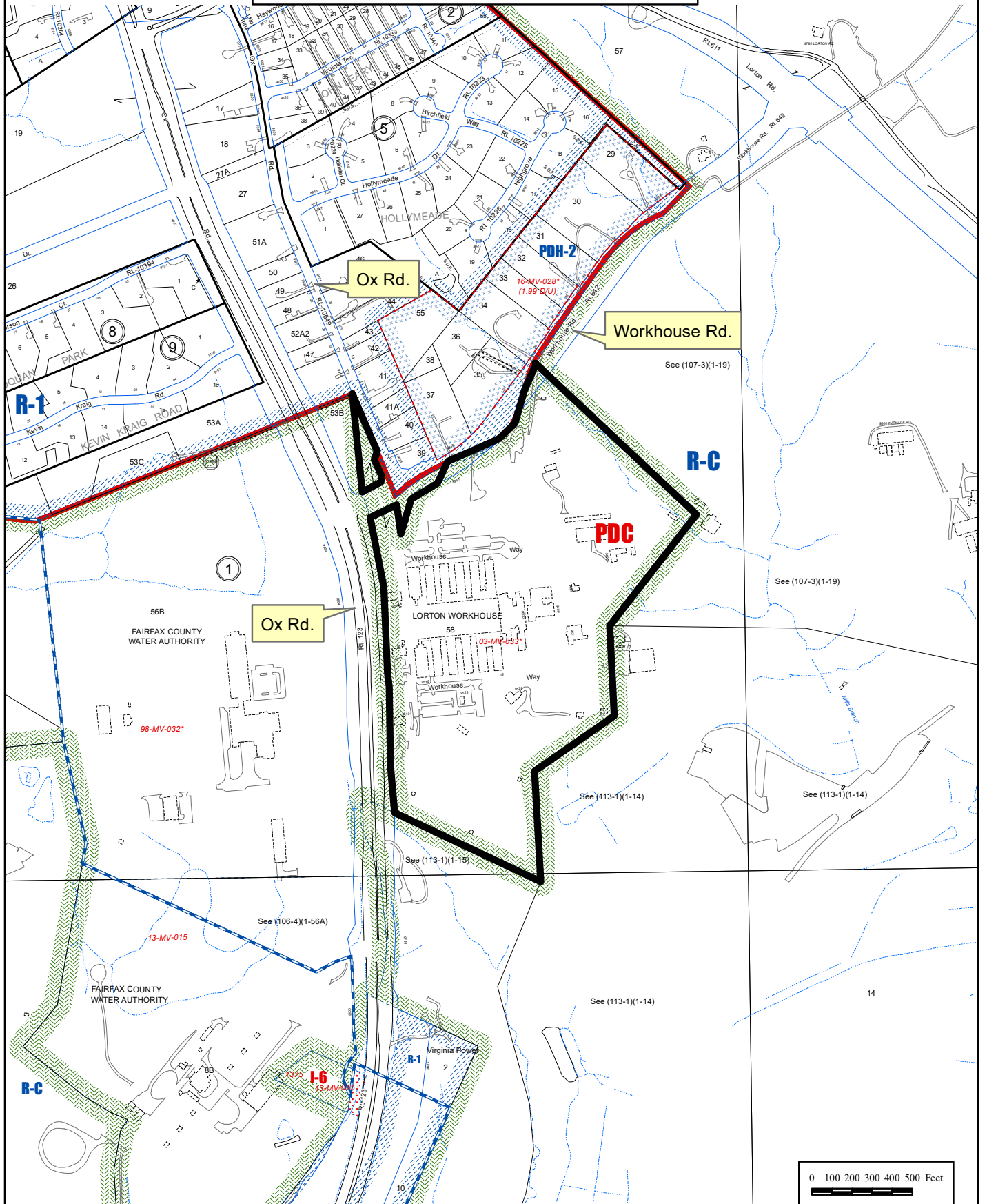
Suzanne Wright, Chief, Conformance Review and Acceptance Branch, ZED, DPD

Laura O'Leary, Staff Coordinator, ZED, DPD

ASSIGNED COUNSEL:

Laura Gori, Senior Assistant County Attorney

Request for Minor Variation



design of any Phase I, II or III archaeological study, the Applicant or consultant shall consult with the Manager of the Section as to the scope and schedule of the studies.

6. PERMITTED USES/HOURS OF OPERATION

(a) Permitted Uses. As described on the CDPA/FDPA, the Property may be developed with the following permitted principal and secondary uses.

- Museum/Cultural Center and Similar Facilities to include Gallery, Demonstration and Exhibit Areas (generally, W-2 – W-11, W-16 and W-29 if retained)*
- Theater (W-12),
- Music Barn (W-22) with outdoor grassed seating area
- Performing Arts Center (W-17, W-18, W-18A)
- Events Center (W-01)
- Office uses in support of or affiliated with Workhouse functions or activities
- Residential-multifamily (N-1, N-2)
- Eating Establishments, (N-3, N-4, W-13)
- Commercial Recreational Use (Events Center, W-01) to consist of meetings, receptions, exhibitions and similar functions/uses
- Ballfields
- School of Special Education to include classes in the visual, performing, movement, and culinary arts and which may include select college level courses (to be restricted per Proffer 6g)

- Accessory retail and other accessory services uses limited to 20% of total gross square footage on site (Gross square footage of gallery space shall not be included in the 20% calculation.).
- Outdoor retail display in the horticultural area, limited to a total of 2,700 square feet

This proffer shall not preclude establishment of accessory and accessory service uses. Such accessory uses may include, but shall not be limited to the incorporation of certain food service and eating establishments within otherwise permitted uses.

(b) Location of Certain Uses. The Artists Colony, Freestanding Eating Establishments, Music Barn, Theater, Events Center and Performing Arts Center shall be located in the buildings so designated on the CDPA/FDPA. Other permitted uses may be located within varying locations, subject to conformance with these proffered conditions.

(c) Occupancy of Artists Colony. Occupancy of those residential units identified as the “Artists Colony” (N-1, N-2) shall be limited to persons directly involved with an activity of the Workhouse, including, but not limited to, artists, producers, directors, interns, fellowship recipients, educators, apprentices, paid and volunteer staff of the Workhouse, enrollees in Workhouse classes and other members of the Lorton Arts Foundation. Preference in leasing shall be given to visual and performing artists. The units in N-1 and N-2 shall be designed as live/work apartments to include all the elements of a dwelling unit as defined by the Zoning Ordinance in addition to studio workspace. The first floor shall be designed to include gallery/exhibition space. Additionally, twice a year, the Artist Colony (N-1 and N-2) shall be open to the public as part of a program to educate the community about the live/work apartment concept.

MINOR VARIATION STATEMENT

Workhouse Arts Campus

July 10, 2019

Pursuant to Section 18-204 of the Zoning Ordinance, the Fairfax County Board of Supervisors, (the property owner), hereby requests approval of a Minor Variation to the proffers governing Tax Map Parcel 106-4 ((1)) 58 to permit craft beverage production and small-scale production establishments as permitted secondary uses in Proffer 6 (a) of PCA 2003-MV-033. These uses will be located within the approved building footprints shown on the CDPA/FDPA, will meet the use limitations contained in the Zoning Ordinance, and will be developed in substantial conformance with the governing proffers. In addition, the craft beverage production establishment use will be subject to the same proffer limitations regarding location as restaurants (referred to as eating establishments in the proffers).

TITLE OWNER OF TAX MAP 106-4 ((1)) 58:

Fairfax County Board of Supervisors

BY:  _____

Name: Bryan J. Hill

Title: Fairfax County Executive



RECEIVED
Department of Planning & Zoning

MAY 31 2019

Zoning Evaluation Division

May 31, 2019

Tracy Strunk, Director Zoning Evaluation Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

Re: Workhouse Arts Center – Minor Variation Request

Request for Minor Variation

PCA 2003-MV-033

Fairfax County Tax Map Parcel 106-4 ((1)) 58, located in the PDC zoning district known as the Workhouse Arts Center (the "Property")

Dear Ms. Strunk:

Pursuant to Paragraph 5 of Section 18-204 of the Zoning Ordinance, on behalf of the Workhouse Arts Foundation, Inc. (WAF), the licensee and the Fairfax County Board of Supervisors, the owner/licensor, this letter requests a minor variation of the approved proffers to add craft beverage production and small scale production uses to Proffer 6 (a) as permitted secondary uses within the existing and proposed building footprints shown on the previously approved CDP/FDP for the site.

The application property was rezoned to the PDC District in 2004 pursuant to the approval of RZ 2003-MV-033 and is subject to proffers dated August 9, 2009 pursuant to the approval of PCA 2003-MV-033. The site was approved to permit the adaptive reuse of this portion of the former Lorton Reformatory complex as an arts center. Eleven of the historic buildings on site are open to the public and operated as the Workhouse Arts Center by the Workhouse Arts Foundation pursuant to a license agreement and a lease agreement with Fairfax County. The Workhouse Arts Center currently supports more than 65 artist studio spaces; 12 gallery spaces; the Lucy Burns Museum (opening summer 2019); arts education programming; visual arts presentations; performing arts events; large-scale annual community events and other activities.

A total of approximately 95,000 square feet of approximately 275,000 total square feet approved for the site is occupied. Complementary uses previously approved such as eating establishments, multi-family artist residences, outdoor recreation and others have not yet been established at the site. The



Workhouse Arts Foundation, Inc.

9518 Workhouse Way, Lorton, VA 22079 | www.WorkhouseArts.org | 703-584-2900

Ms. Tracy Strunk
May 31, 2019
Page 2 of 3

Workhouse Arts Foundation is working in cooperation with Fairfax County to actively promote the continued adaptive reuse of the site. The goal is for the site to achieve its full potential as an economically viable arts destination offering a mix of complementary uses that attract people to the site and cause them to remain on site for an extended period of time. Establishing craft beverage production and small-scale production uses as permitted secondary uses on the site support these goals.

Par. 5 of Sect. 18-204 of the Zoning Ordinance permits the Board of Supervisors to approve a minor variation "to add or modify a use, provided that the proffered conditions do not preclude such use and that the applicant demonstrates that the new use would have no materially greater land use impacts than the approved uses would, based on factors such as parking, trip generation, vehicular circulation, or hours of operation." Craft beverage production and small-scale production uses are newly created uses that have been added to the Fairfax County Zoning Ordinance as permitted uses within the PDC District.

The proposed additional uses are defined as follows:

CRAFT BEVERAGE PRODUCTION ESTABLISHMENT: A facility, licensed in accordance with Title 4.1 of the Code of Virginia, as amended, in which beer, cider, mead, wine, distilled spirits, or other similar beverages are brewed, fermented, or distilled in quantities not to exceed 15,000 barrels of beer, 36,000 gallons of distilled spirits, or 5,000 gallons of wine, cider, or mead annually. Establishments exceeding the production quantities stated in this definition shall be deemed a food and beverage manufacturing, production and processing establishment.

SMALL-SCALE PRODUCTION ESTABLISHMENT: An establishment where shared or individual tools, equipment, or machinery are used to make or grow products on a small scale, including the design, production, processing, printing, assembly, treatment, testing, repair, and packaging, as well as any incidental storage, retail or wholesale sales and distribution of such products. Typical small-scale production establishments include, but are not limited to, vertical farming or the making of electronics, food products, non-alcoholic beverages, prints, household appliances, leather products, jewelry and clothing/apparel, metal work, furniture, glass, ceramic or paper, together with accessory uses such as training or educational programs. AGRICULTURE, CRAFT BEVERAGE PRODUCTION ESTABLISHMENT, RESTAURANT, RESTAURANT WITH DRIVE-THROUGH, or CARRYOUT RESTAURANT are not small-scale production establishments.

The approved proffers for the Workhouse Arts Center, specifically proffer 6, list a number of permitted uses including: eating establishments and artist studios which are similar in land use impact to the proposed craft beverage and small-scale production uses. The current proffers do not specifically preclude the additional uses proposed with this minor variation request. Craft beverage and small-scale

Ms. Tracy Strunk
May 31, 2019
Page 3 of 3

production uses are proposed as secondary uses on site to be located within the approved building footprints shown on the CDP/FDP. Further, the applicable use limitations within the Zoning Ordinance limit the size and scope of the proposed uses. No change to the approved hours of operation is proposed. Adequate parking is available on site. More than 800 parking spaces exist to serve approximately 95,000 active (indoor) square feet of the more than 275,000 square feet previously approved for the site. There is no change proposed to the existing vehicular circulation that serves the site. For these reasons, the proposed craft beverage and small-scale production uses will not have a materially greater land use impact than approved uses.

Enclosed, please find the following documents:

1. Minor Variation Statement;
2. Approved proffers dated July 29, 2009, PCA 2003-MV-033 (the "PCA Proffers");
3. Fairfax County Zoning Section Sheet and Property Sheet for Tax Map Parcel 106-4 ((1)) 58;
4. Affidavit;
5. Authorization of Agents (Board Matter from Fairfax County Board of Supervisors and Resolution from Workhouse Arts Foundation, Inc. Board of Directors); and
6. Application fee in the amount of \$520.00.

Additional documents for informational purposes are included:

1. Approved Final Development Plan Amendment associated with FDPA 2003-MV-033;
2. Approved development conditions associated with the FDPA (the "FDPA Conditions")

If you have any questions or need any additional information, please don't not hesitate to contact me at my direct line, 703-584-2903 or my email address avaspece@workhousearts.org. We would very much appreciate your favorable consideration of this important request.

Sincerely,


Ava Spece
President and CEO

enclosures

cc: Chairman Sharon Bulova, Fairfax County Board of Supervisors
Daniel Storck, Supervisor, Mount Vernon District
Walter Clarke, Planning Commissioner, Mount Vernon District
Jill Cooper, Executive Director, Planning Commission
Laura Arseneau, Senior Historic Preservation Planner/ARB Administrator, DPZ
Board of Directors, Workhouse Arts Foundation
Workhouse Campus Steering Committee Members
Katayoon Shaya, DPWES, Capital Facilities
Larry Clark, Lorton Heritage Society

Board Agenda Item
July 30, 2019

ACTION - 13

Adoption of a Resolution Terminating a Declaration of Local Emergency and Consenting to All Actions Taken by the Director of Emergency Management and County Staff

ISSUE:

The Board of Supervisors adopted a resolution consenting to the declaration of a local emergency by the Director of Emergency Management on July 16, 2019, retroactive to July 8, 2019. The attached resolution terminates the Declaration of Local Emergency and consents to actions taken by the Director of Emergency Management and County staff.

RECOMMENDATION:

The County Executive recommends that the Board adopt the attached resolution to:

- 1) Terminate the Declaration of Local Emergency; and
- 2) Approve and consent to all actions taken by the Director of Emergency Management and County staff pursuant to the Declaration of Local Emergency and the Fairfax County Emergency Operations Plan.

TIMING:

Board action is requested on July 30, 2019.

BACKGROUND:

Due to the severe weather event affecting the area, primarily consisting of torrential rainfall resulting in substantial damage to public and private property, the County Executive, in his capacity as the Director of Emergency Management, signed a Declaration of a Local Emergency on July 16, 2019, with the consent of the Board. The Declaration was retroactive to July 8, 2019. The Declaration officially activated the County's Emergency Operations Plan and authorized the furnishing of aid and assistance under the Plan in order to mitigate the results of the severe weather event.

The Commonwealth of Virginia Emergency Services and Disaster Law of 2000, codified at Virginia Code §§ 44-146.13 through 44-146.28.1, authorizes the Director of Emergency Management to declare the existence of a local emergency with the consent of the Board. The Board must also take appropriate action to end the declared

Board Agenda Item
July 30, 2019

emergency when, in its judgment, all emergency actions have been taken. Va. Code Ann. § 44-146.21(A) (2016).

As of July 30, 2019, all emergency actions have been taken pursuant to the Declaration of Local Emergency. The Board is requested to terminate the Declaration of Local Emergency and approve and consent to all actions taken by the Director of Emergency Management and County staff pursuant to the declaration and the Fairfax County Emergency Operations Plan. The County will continue to support disaster-impacted residents in the recovery process.

FISCAL IMPACT:

The Declaration of Local Emergency by the governing body is necessary for the County to seek funds for such actions as recovery, clean-up and evaluation should such funds become available.

ENCLOSED DOCUMENTS:

Attachment 1: Resolution Terminating the Declaration of a Local Emergency and consenting to all actions taken by the Director of Emergency Management and County staff.

Attachment 2: Declaration of Local Emergency retroactive to July 8, 2019.

STAFF:

Bryan J. Hill, County Executive
David M. Rohrer, Deputy County Executive
Seamus Mooney, Emergency Management Coordinator

ASSIGNED COUNSEL:

John W. Burton, Assistant County Attorney

Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia on Tuesday, July 30, 2019, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, on Monday, July 8, 2019, Fairfax County, Virginia experienced a severe weather event including torrential rainfall resulting in substantial damage to private and public property; and,

WHEREAS, this severe weather event created conditions of a magnitude requiring coordinated recovery efforts for public and private property; and,

WHEREAS, the Commonwealth of Virginia Emergency Services and Disaster Law of 2000, as amended, and set forth in Chapter 3.2 of Title 44 of the Code of Virginia, authorizes the Director of Emergency Management to declare the existence of a local emergency with the consent of the governing body; and,

WHEREAS, circumstances associated with this severe weather event necessitated a Declaration of Local Emergency by the Director of Emergency Management on July 16, 2019, retroactive to July 8, 2019; and,

WHEREAS, the Board of Supervisors consented to the Declaration of Local Emergency on July 16, 2019; and,

WHEREAS, the Board of Supervisors of Fairfax County seeks to terminate the Declaration of Local Emergency and to approve and consent to all actions taken by the Director of Emergency Management and County staff pursuant to the Declaration and the Fairfax County Emergency Operations Plan; now therefore be it

RESOLVED that the Board of Supervisors of Fairfax County

1. Terminates the Declaration of Local Emergency effective immediately; and
2. Approves and consents to all actions taken by the Director of Emergency Management and County staff pursuant to the Declaration of Local Emergency and the Fairfax County Emergency Operations Plan.

A Copy Teste:

Catherine Chianese
Clerk of the Board of Supervisors

**DECLARATION OF LOCAL EMERGENCY
FAIRFAX COUNTY, VIRGINIA**

WHEREAS, on July 8, 2019, Fairfax County Virginia experienced a severe weather event, including torrential rainfall resulting in substantial damage to private and public property; and,

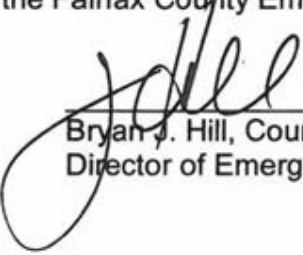
WHEREAS, a weather event of this magnitude presented dangerous conditions of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship, or suffering caused by the existence of this emergency; and,

WHEREAS, this severe weather event created conditions of a magnitude requiring coordinated recovery efforts for public and private property and necessitates the proclamation of the existence of an emergency; and,

WHEREAS, the Fairfax County Board of Supervisors consented to the declaration of a local emergency at a regular meeting on July 16, 2019; it is hereby,

DECLARED, that, retroactive to July 8, 2019, a local emergency exists throughout Fairfax County because this severe weather event has created an emergency of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship, or suffering threatened pursuant to Virginia Code §§ 44-146.16 and 44-146.21(A); and it is

FURTHER DECLARED that the Fairfax County Emergency Operations Plan is now in effect.



Bryan J. Hill, County Executive
Director of Emergency Management

Board Agenda Item
July 30, 2019

3:30 p.m.

Public Hearing on RZ 2019-SU-002 (JDA Custom Homes, Inc.) to Rezone from R-1 to PDH-2 to Permit Residential Development with an Overall Density of 1.89 Dwelling Units Per Acre and Approval of the Conceptual Development Plan, Located on Approximately 6.36 Acres of Land (Sully District)

This property is located on the W. side of West Ox Road, S. of Franklin Farm Road. Tax Map 35-2 ((1)) 47B and 53.

PLANNING COMMISSION RECOMMENDATION:

On July 18, 2019, the Planning Commission voted 7-0-3 (Commissioners Murphy, Clarke, and Niedzielski-Eichner abstained from the vote. Commissioners Cortina and Tanner were absent from the meeting.) to recommend to the Board of Supervisors approval of RZ 2019-SU-002, subject to the execution of proffered conditions consistent with those dated July 16, 2019.

In a related action, the Planning Commission voted 7-0-3 (Commissioners Murphy, Clarke, and Niedzielski-Eichner abstained from the vote. Commissioners Cortina and Tanner were absent from the meeting.) to approve FDP 2019-SU-002.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)
Kelly Posusney, Planner, DPD

Board Agenda Item
July 30, 2019

3:30 p.m.

Public Hearing on RZ 2018-PR-024 (Williams Meadow, L.C.) to Rezone from R-1 to PDH-3 to Permit Residential Development with an Overall Density of 2.55 Dwelling Units Per Acre and Approval of the Conceptual Development Plan, Located on Approximately 5.89 Acres of Land (Providence District)

This property is located on the E. side of Sutton Road, N. of its intersection with Oleander Ave. Tax Map 48-1 ((1)) 77 and 78.

PLANNING COMMISSION RECOMMENDATION:

On July 17, 2019, the Planning Commission voted 7-0-3 (Commissioners Murphy, Clarke, and Tanner abstained from the vote. Commissioners Cortina and Ulfelder were absent from the meeting.) to recommend to the Board of Supervisors approval of RZ 2018-PR-024, subject to the execution of proffered conditions consistent with those dated July 11, 2019.

In a related action, the Planning Commission voted 7-0-3 (Commissioners Murphy, Clarke, and Tanner abstained from the vote. Commissioners Cortina and Ulfelder were absent from the meeting.) to approve FDP 2018-PR-024 subject to the development conditions dated June 26, 2019.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)
Kelly Posusney, Planner, DPD

3:30 p.m.

Public Hearing on SEA 83-D-095-04 (Great Falls Village Green Day School) to Amend SE 83-D-095 Previously Approved for a Childcare Center and Nursery School to Permit Modification of Development Conditions, Located on Approximately 4.30 Acres of Land Zoned R-2 (Dranesville District)

This property is located at 790 Walker Rd., Great Falls, 22066. Tax Map 13-1 ((3)) A.

PLANNING COMMISSION RECOMMENDATION:

On July 24, 2019, the Planning Commission voted 11-0-1 (Commissioner Cortina abstained from the vote) to recommend the following actions to the Board of Supervisors:

- Approval of SEA 83-D-095-04, subject to the development conditions dated July 17, 2019; and
- Reaffirmation of a waiver of barrier requirements and modifications to transitional screening requirements along the eastern, western, and southern property lines to that shown on the SEA plat.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Katelyn Antonucci, Planner, DPD

3:30 p.m.

Public Hearing on SE 2019-SP-010 (Federal Realty Investment Trust) to Permit Waiver of Certain Sign Regulations, Located on Approximately 10.09 Acres of Land Zoned C-6 and HC (Springfield District)

This property is located at 8402 Old Keene Mill Road. Tax Map 79-3 ((5)) 1B.

PLANNING COMMISSION RECOMMENDATION:

On July 25, 2019, the Planning Commission voted 8-1-1 (Commissioner Strandlie voted in opposition. Commissioner Hurley abstained from the vote. Commissioners Tanner and Ulfelder were absent from the meeting.) to recommend to the Board of Supervisors approval of SE 2019-SP-010, subject to the development conditions dated July 11, 2019.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)
Jay Rodenbeck, Planner, DPD

Board Agenda Item
July 30, 2019

REVISED

3:30 p.m.

Public Hearing on SE 2018-SU-027 (Stonebridge Investments, LLC) to Permit Development of a New Limited Brewery in the R-C district and a Modification of Limitations on the Number of Events Defined in Article 20 of the Zoning Ordinance for Limited Brewery, Located on Approximately 40.62 Acres of Land Zoned R-C and WS (Sully District)

This property is located at 6780 Bull Run Post Office Rd., Centreville, 20120. Tax Map 53-3 ((7)) 32Z, 33Z (pt.); 64-1 ((7)) 31Z (pt.), 34Z, 35Z (pt.); 38Z (pt.), 39Z, 40Z, 41Z and 42Z.

PLANNING COMMISSION RECOMMENDATION:

On July 24, 2019, the Planning Commission voted 12-0 to defer decision only for SE 2018-SU-027 to a date certain of July 31, 2019. The Planning Commission recommended that the Board of Supervisors defer its public hearing for the application until a date after Planning Commission decision.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)
Emma Estes, Planner, DPD

Board Agenda Item
July 30, 2019

4:00 p.m.

Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Silverbrook Rd./Southrun Rd. EB Left Turn Lane (Mount Vernon District)

ISSUE:

Public Hearing on the acquisition of certain land rights necessary for the construction of Project 5G25-059-000, Spot Improvements – 2014, Silverbrook Rd./Southrun Rd. EB Left Turn Lane, Fund 30050, Transportation Improvements.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (Board) adopt the attached resolution authorizing the acquisition of the necessary land rights.

TIMING:

On June 25, 2019, the Board authorized advertisement of a public hearing to be held on July 30, 2019, at 4:00 p.m.

BACKGROUND:

The County is planning to construct an eastbound left turn lane on Silverbrook Road at Southrun Road and other intersection roadway improvements.

Land rights for these improvements are required on three properties, none of which have been acquired by the Land Acquisition Division (LAD). The construction of the project requires the acquisition of deeds of dedication, storm drainage easements, utility easements, and grading agreement and temporary construction easements.

Negotiations are in progress with all 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 schedule. These powers are conferred upon the Board by statute, namely, Va. Code Ann. Sections 15.2-1903 through 15.2-1905 (as amended). Pursuant to these provisions, a public hearing is required before property interests can be acquired in such an accelerated manner.

Board Agenda Item
July 30, 2019

FISCAL IMPACT:

Funding is available in Project 5G25-059-000, Spot Improvements – 2014, Fund 30050, Transportation Improvements. This project is included in the FY 2020 – FY 2024 Adopted Capital Improvements Program (with future fiscal years to FY 2029). No additional funding is being requested from the Board.

ENCLOSED DOCUMENTS:

Attachment A – Project Location Map

Attachment B – Resolution with Fact Sheets on the affected parcels with plats showing interests to be acquired (Attachments 1 through 3A).

STAFF:

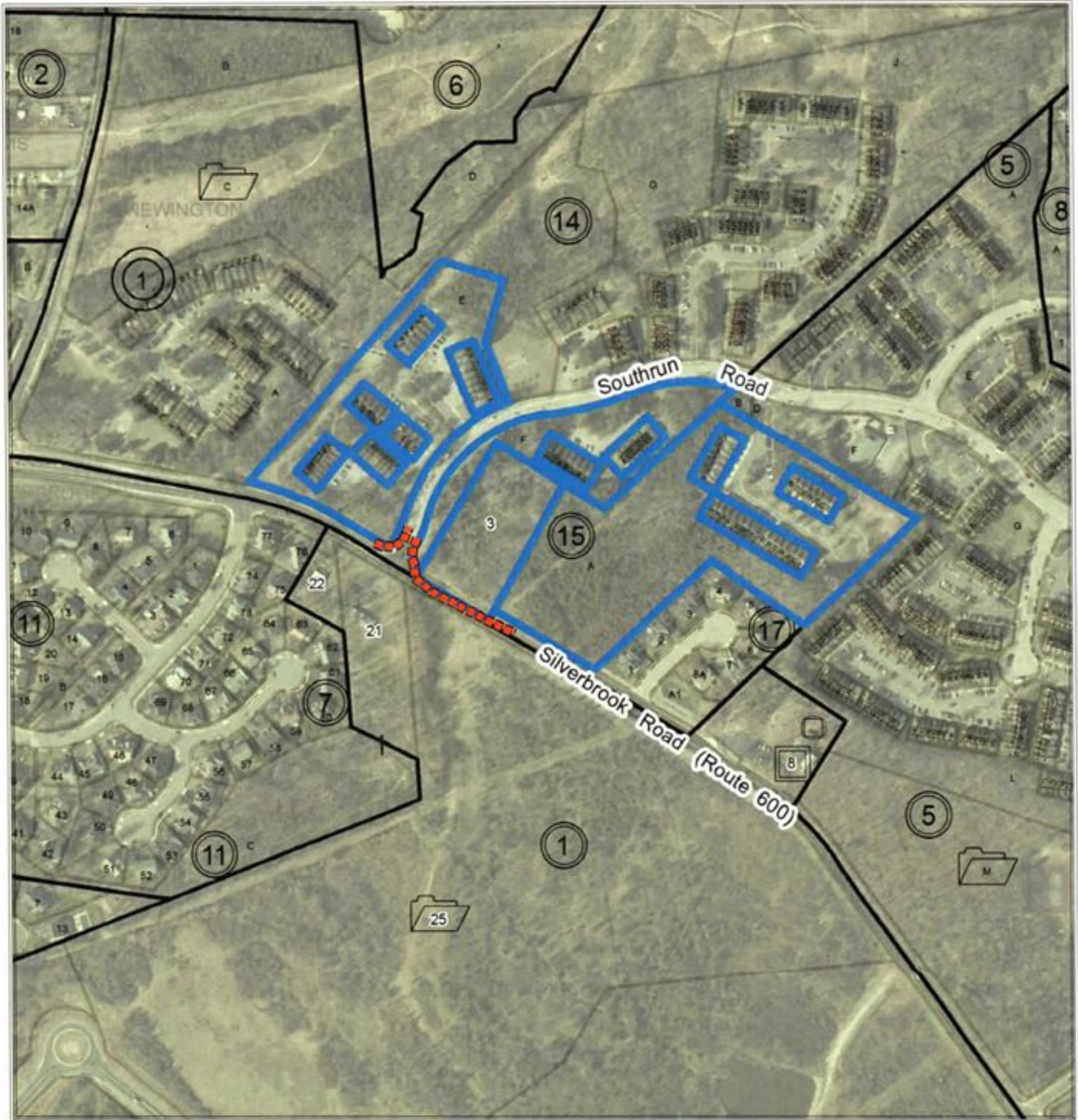
Rachel Flynn, Deputy County Executive

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

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

ASSIGNED COUNSEL:

Pamela K. Pelto, Assistant County Attorney



**SILVERBROOK RD. - SOUTHRUN RD.
EB LEFT TURN LANE**

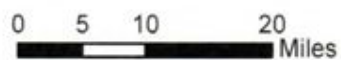
Project 5G25-059-005

Tax Map: 098-3

Mount Vernon District

Affected Properties: 

Proposed Improvements: 



ATTACHMENT B

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, July 30, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, certain Project 5G25-059-005, Silverbrook Rd./Southrun Rd. EB Left Turn Lane had been approved; and

WHEREAS, a public hearing pursuant to advertisement of notice was held on this matter, as required by law; and

WHEREAS, the property interests that are necessary have been identified; and

WHEREAS, in order to keep this project on schedule, it is necessary that the required property interests be acquired not later than September 6, 2019.

NOW THEREFORE BE IT RESOLVED, that the Director, Land Acquisition Division, in cooperation with the County Attorney, is directed to acquire the property interests listed in Attachments 1 through 3-A by gift, purchase, exchange, or eminent domain; and be it further

RESOLVED, that following the public hearing, this Board hereby declares it necessary to acquire the said property and property interests and that this Board intends to enter and take the said property interests for the purpose of constructing an eastbound left turn lane on Silverbrook Road at Southrun Road and other intersection roadway improvements as shown and described in the plans of Project 5G25-059-005, Silverbrook Rd./Southrun Rd. EB Left Turn Lane on file in the Land Acquisition Division

of the Department of Public Works and Environmental Services, 12000 Government Center Parkway, Suite 449, Fairfax, Virginia; and be it further

RESOLVED, that this Board does hereby exercise those powers granted to it by the Code of Virginia and does hereby authorize and direct the Director, Land Acquisition Division, on or after August 30, 2019, unless the required interests are sooner acquired, to execute and cause to be recorded and indexed among the land records of this County, on behalf of this Board, the appropriate certificates in accordance with the requirements of the Code of Virginia as to the property owners, the indicated estimate of fair market value of the property and property interests and/or damages, if any, to the residue of the affected parcels relating to the certificates; and be it further

RESOLVED, that the County Attorney is hereby directed to institute the necessary legal proceedings to acquire indefeasible title to the property and property interests identified in the said certificates by condemnation proceedings, if necessary.

LISTING OF AFFECTED PROPERTIES
Project 5G25-059-005 – Silverbrook Rd./Southrun Rd. EB Left Turn Lane
(Mount Vernon District)

<u>PROPERTY OWNER(S)</u>	<u>TAX MAP NUMBER</u>
1. Newington Commons Homeowners Association, Inc. Address: Situated on northwest corner of Southrun Road at Silverbrook Road, Lorton, VA 22079	098-3-14-0000-E
2. Newington Commons Homeowners Association, Inc. Address: Situated on northeast corner of Southrun Road at Silverbrook Road, Lorton, VA 22079	098-3-14-0000-F
3. Tae Hong Yi and Pil Nam Yi Address: 8708 Silverbrook Road, Lorton, VA 22079	098-3-01-0003

A Copy – Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors

AFFECTED PROPERTY

Tax Map Number: 098-3-14-0000-E

Street Address: Situated on northwest corner of Southrun Road at
Silverbrook Road, Lorton, VA 22079

OWNER(S): Newington Commons Homeowners Association, Inc.

INTEREST(S) REQUIRED (As shown on attached plat/plan)

Deed of Dedication – 482 sq. ft.

Grading Agreement and Temporary Construction Easement – 517 s.f.

Verizon Easement – 1,278 s.f.

VALUE

Estimated value of interests and damages:

FOUR THOUSAND TWO HUNDRED TWENTY-FOUR DOLLARS (\$4,224.00)

NOTES:

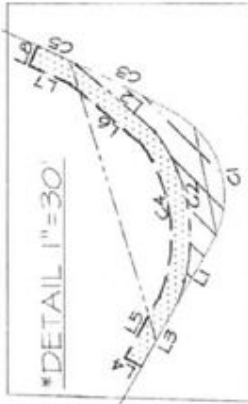
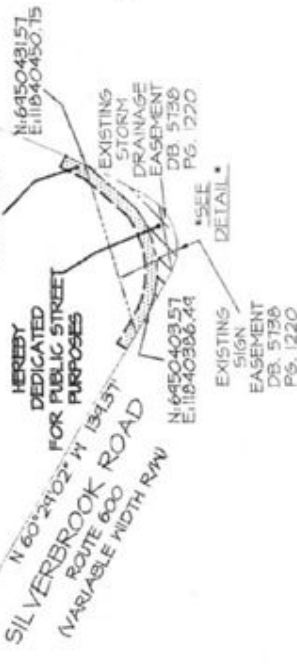
1. THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM EXISTING LAND RECORDS, AND DOES NOT REPRESENT THE RESULT OF AN ACTUAL FIELD RUN BOUNDARY SURVEY.
2. THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT, THEREFORE NOT ALL ENCUMBRANCES TO THE PROPERTY HAVE BEEN SHOWN.
3. ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.
4. THE LAND SHOWN ON THIS PLAT IS NOW HELD AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED AMONG THE LAND RECORDS OF FAIRFAX COUNTY; ALL EASEMENTS AND DEDICATIONS FOR PUBLIC STREET PURPOSES ARE WITHIN THE BOUNDS OF THE ORIGINAL TRACT, AS DESCRIBED AND RECORDED THEREIN.
5. THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON TAX MAP 09483-14-E.

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	40.23'	25.00'	42°12'01"	S 73°24'50" W	36.03'
C2	47.92'	47.94'	57°59'58"	N 82°36'57" E	45.90'
C3	30.11'	306.18'	4°28'01"	S 26°41'12" N	30.10'
C4	42.24'	42.24'	57°22'01"	N 82°54'55" E	40.55'
C5	9.78'	470.00'	1°11'51"	S 24°27'11" N	9.78'

NEWINGTON COMMONS
PARCEL E, SECTION 2
D.B. 5736 PG. 1220
NEWINGTON COMMONS
HOMEOWNERS ASSOCIATION, INC.
D.B. 5736 PG. 1246
TAX# 09483 14 E

GRADING
AGREEMENT &
TEMPORARY
CONSTRUCTION
EASEMENT

HEREBY
DEDICATED
FOR PUBLIC STREET
PURPOSES
SILVERBROOK ROAD
ROUTE 600
VARIABLE WIDTH R/W

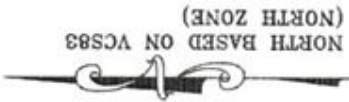


SILVERBROOK RD./SOUTHRUN RD.
EB LEFT TURN LANE
PROJECT #5625-054-005

FAIRFAX COUNTY, VIRGINIA
DEPT. OF PUBLIC WORKS & ENVIRONMENTAL SERVICES
CAPITAL FACILITIES, LAND SURVEY BRANCH
12000 GOVERNMENT CENTER PKWY, FAIRFAX, VIRGINIA

PLAT SHOWING
DEDICATION FOR PUBLIC STREET PURPOSES AND
GRADING AGREEMENT AND
TEMPORARY CONSTRUCTION EASEMENT
THROUGH PARCEL E, SECTION 2, NEWINGTON COMMONS
D.B. 5736 PG. 1220
PROPERTY BEING IN THE NAME OF
NEWINGTON COMMONS HOMEOWNERS ASSOCIATION, INC
D.B. 5736 PG. 1246
MOUNT VERNON DISTRICT, FAIRFAX COUNTY SHEET 1 OF 1

SCALE: 1"=50' DATE: 10/03/17 DRAWN BY: NCA



PLAT PREPARED BY: JMT
1201 ARBORETUM PARKWAY
SUITE 310
RICHMOND, VIRGINIA 23236
804-323-9900
jmtvo@jmt-engineering.com

REVISED: 10/12/18



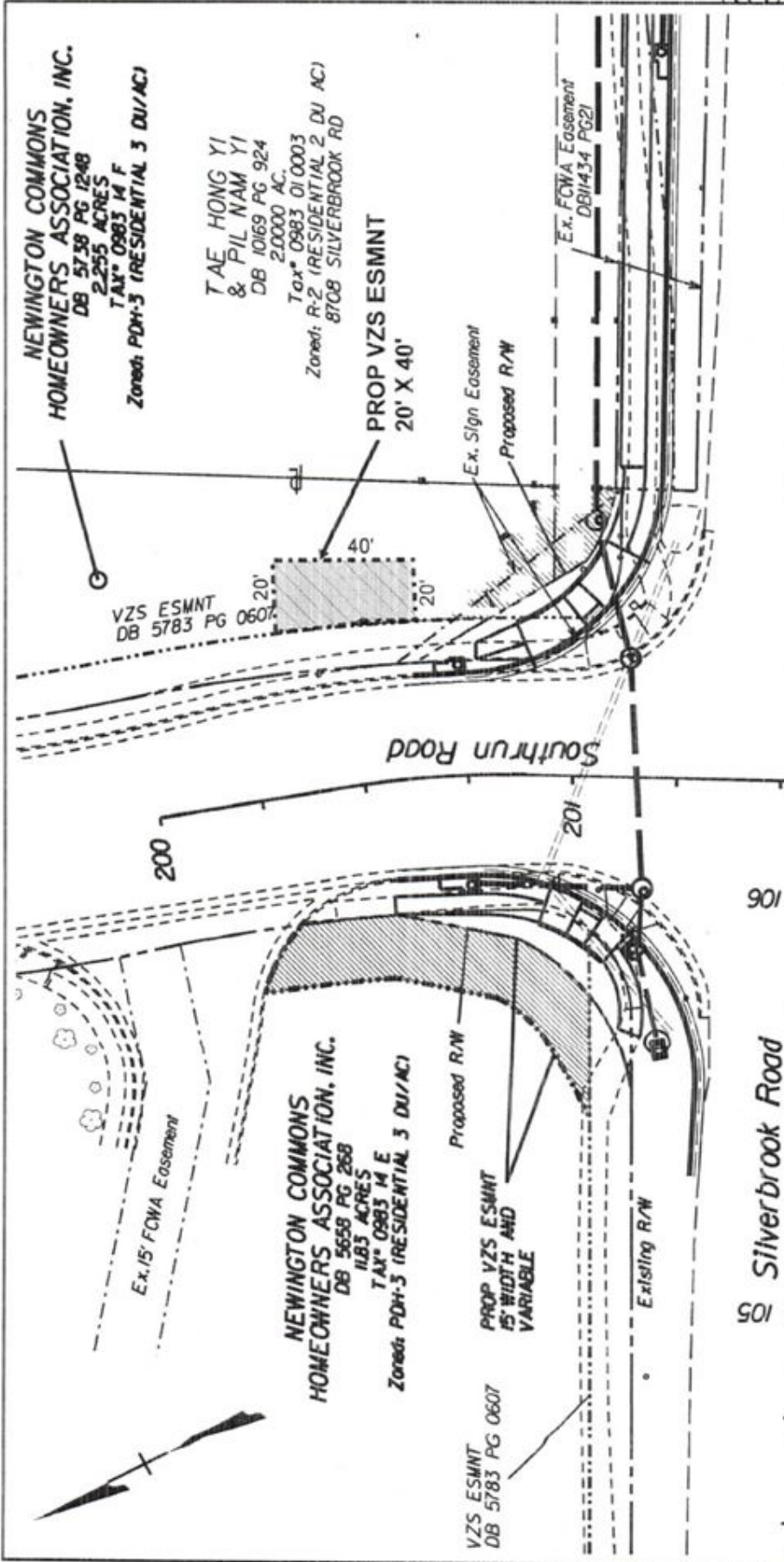
LINE	BEARING	DISTANCE
1	S 60°29'02" E	18.64'
2	N 40°18'44" E	28.98'
3	N 60°29'02" W	19.51'
4	N 29°50'58" E	4.95'
5	S 60°29'02" E	18.83'
6	N 40°18'44" E	24.74'
7	N 24°35'01" E	11.87'
8	S 66°08'31" E	5.78'

AREA TABULATION

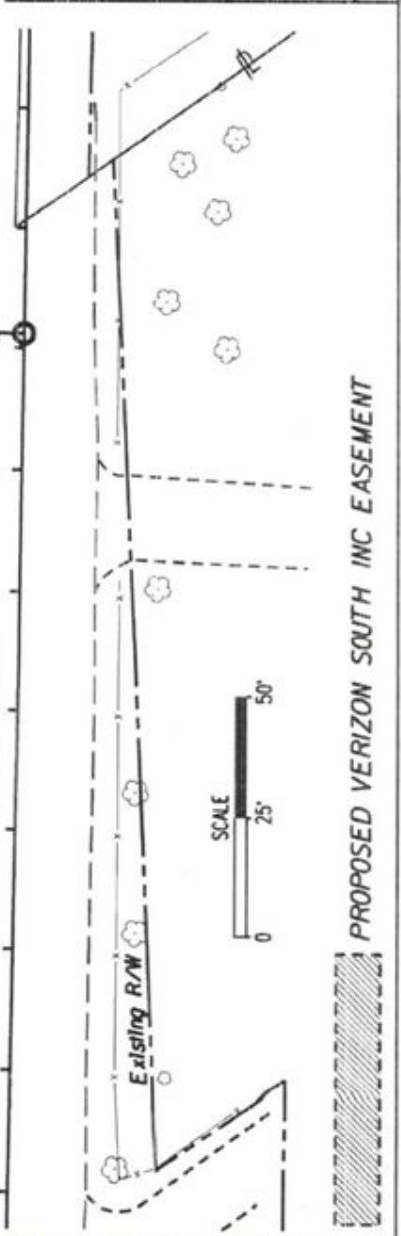
DEDICATION FOR PUBLIC STREET PURPOSES 482 SQ. FT.
GRADING AGREEMENT AND
TEMPORARY CONSTRUCTION EASEMENT 511 SQ. FT.

DEDICATION AREAS

GRADING AGREEMENT AND
TEMPORARY CONSTRUCTION EASEMENT



VERIZON SOUTH INC.	
JOB 8P0A9GM	EXCH 8768
EASEMENT EXHIBIT "A"	
NEWINGTON COMMONS HOMEOWNERS ASSOCIATION, INC. TAX* 0983 14 E & 0983 14 F	
MAPCOM 134-12-A3	ISSUE #1
FAIRFAX CO. - SILVERBROOK RD.	
ENGINEER - B.LACY	
DRAWING 1 OF 1	



AFFECTED PROPERTY

Tax Map Number: 098-3-14-0000-F

Street Address: Situated on northeast corner of Southrun Road at
Silverbrook Road, Lorton, VA 22079

OWNER(S): Newington Commons Homeowners Association, Inc.

INTEREST(S) REQUIRED (As shown on attached plat/plan)

Deed of Dedication – 611 sq. ft.

Storm Drainage Easement – 123 s.f.

Grading Agreement and Temporary Construction Easement – 55 s.f.

Verizon Easement – 800 s.f.

VALUE

Estimated value of interests and damages:

TWO THOUSAND FOUR HUNDRED THIRTY-EIGHT DOLLARS (\$2,438.00)

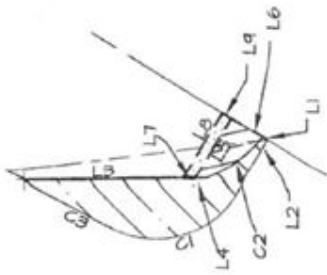
NOTES.

1. THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM EXISTING LAND RECORDS AND DOES NOT REPRESENT THE RESULT OF AN ACTUAL FIELD BOUNDARY SURVEY.
2. THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT; THEREFORE NOT ALL ENCUMBRANCES TO THE PROPERTY HAVE BEEN SHOWN.
3. ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.
4. THE LAND SHOWN ON THIS PLAT IS NOW HELD AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED AMONG THE LAND RECORDS OF FAIRFAX COUNTY; ALL EASEMENTS AND DEDICATIONS FOR PUBLIC STREET PURPOSES ARE WITHIN THE BOUNDS OF THE ORIGINAL TRACT, AS DESCRIBED AND RECORDED THEREIN.
5. THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON TAX MAP 0483-14-F.

CURVE/ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	39.52'	25.00°	08°16'08" N	34.82'
C2	18.51'	54.00°	21°11'52" S	18.34'
C3	25.32'	530.00°	2°44'15" N	25.32'

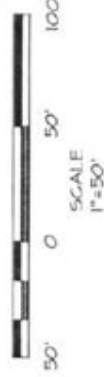
NEWINGTON COMMONS
PARCEL F, SECTION 2
D.B. 5738 P.G. 1220
NEWINGTON COMMONS
HOMEOWNERS
ASSOCIATION, INC.
D.B. 5738 P.G. 1246
TAX# 0483 14 F

(NORTH BASED ON VCS83)



*DETAIL 1" = 30'

LINE BEARING	DISTANCE
L1 S 91°13'24" W	1.36'
L2 N 54°31'07" W	15.42'
L3 S 01°00'33" E	48.45'
L4 N 01°00'33" W	3.18'
L5 S 60°12'28" E	18.81'
L6 S 91°13'24" W	1.77'
L7 N 01°00'33" W	3.23'
L8 S 60°14'44" E	20.53'
L9 S 91°13'24" W	2.74'



SILVERBROOK RD./SOUTHRUN RD.
EB LEFT TURN LANE
PROJECT #5625-054-005

FAIRFAX COUNTY, VIRGINIA
DEPT. OF PUBLIC WORKS & ENVIRONMENTAL SERVICES
CAPITAL FACILITIES, LAND SURVEY BRANCH
12000 GOVERNMENT CENTER PKWY, FAIRFAX, VIRGINIA

PLAT SHOWING
DEDICATION FOR PUBLIC STREET PURPOSES,
STORM DRAIN EASEMENT AND GRADING AGREEMENT
AND TEMPORARY CONSTRUCTION EASEMENT
THROUGH PARCEL F, SECTION 2, NEWINGTON COMMONS
D.B. 5738 P.G. 1220
PROPERTY BEING IN THE NAME OF
NEWINGTON COMMONS HOMEOWNERS ASSOCIATION, INC
D.B. 5738 P.G. 1246
MOUNT VERNON DISTRICT, FAIRFAX COUNTY SHEET 1 OF 1

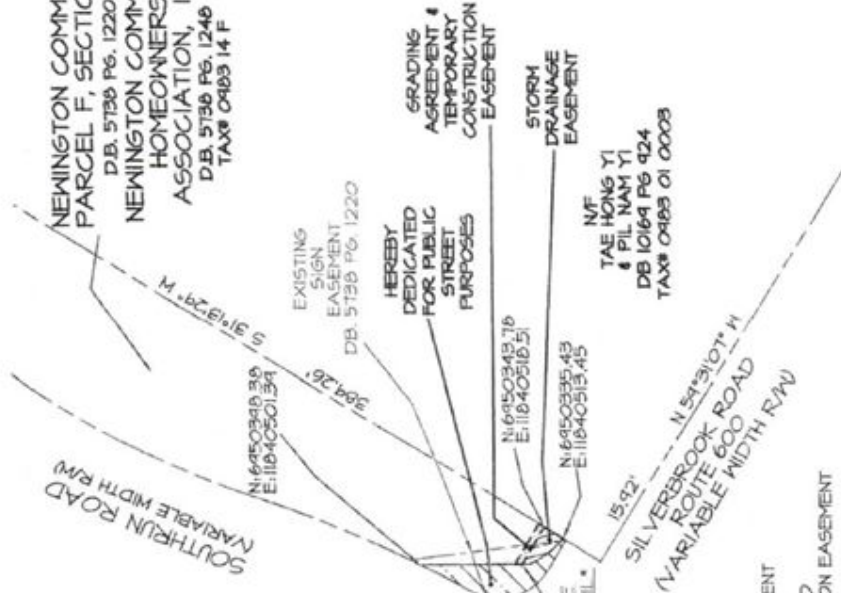
SCALE: 1"=50' DATE:10/03/17 DRAWN BY: PKA



PLAT PREPARED BY: JMT
4201 ARBORETUM PARKWAY
SUITE 310
RICHMOND, VIRGINIA 23236
804-323-8900
jmt@jmt-engineering.com



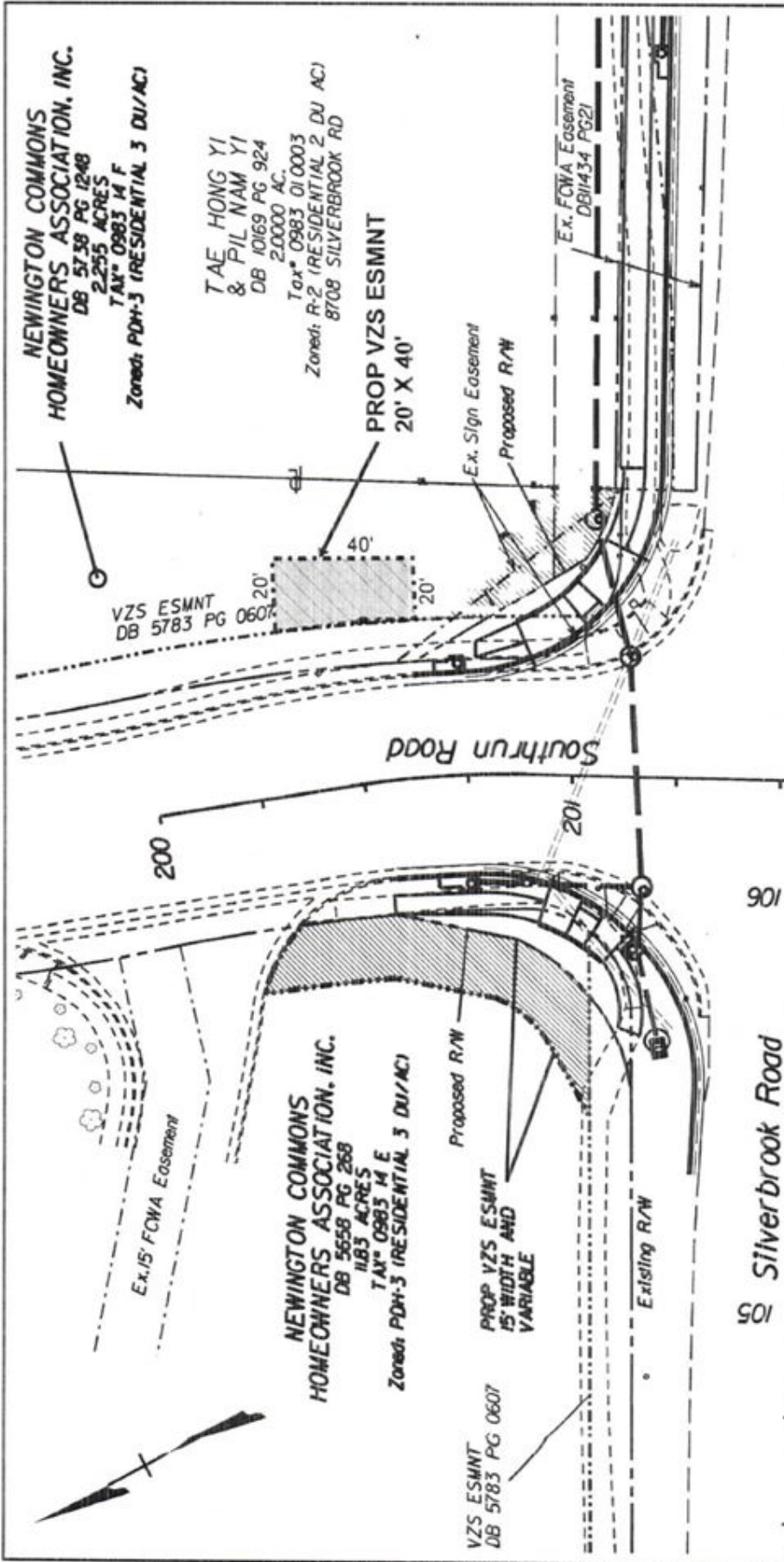
REVISED:10/12/18



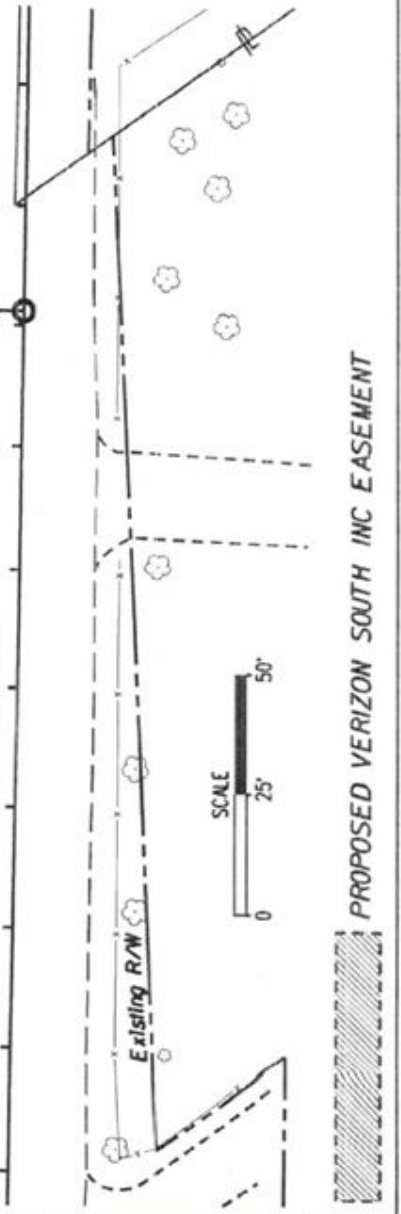
- DEDICATION AREAS
- STORM DRAINAGE EASEMENT
- GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT

AREA TABULATION

- DEDICATION FOR PUBLIC STREET PURPOSES 611 SQ. FT.
- STORM DRAINAGE EASEMENT 128 SQ. FT.
- GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT = 55 SQ. FT.



VERIZON SOUTH INC.	
JOB 8P0A9GM	EXCH 8768
EASEMENT EXHIBIT "A"	
NEWINGTON COMMONS HOMEOWNERS ASSOCIATION, INC.	
TAX# 0983 14 E & 0983 14 F	
MAPCOM 134-12-A3	ISSUE #1
FAIRFAX CO. - SILVERBROOK RD.	
ENGINEER - B.LACY	
DRAWING 1 OF 1	



AFFECTED PROPERTY

Tax Map Number: 098-3-01-0003

Street Address: 8708 Silverbrook Road, Lorton, VA 22079

OWNER(S): Tae Hong Yi and Pil Nam Yi

INTEREST(S) REQUIRED (As shown on attached plat/plan)

Deed of Dedication – 4,363 sq. ft.

Storm Drainage Easement – 2,503 s.f.

Grading Agreement and Temporary Construction Easement – 870 s.f.

VALUE

Estimated value of interests and damages:

FIFTY ONE THOUSAND EIGHTY NINE DOLLARS (\$51,089.00)

NOTES:

1. THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM EXISTING LAND RECORDS AND DOES NOT REPRESENT THE RESULT OF AN ACTUAL FIELD RUN BOUNDARY SURVEY.
2. THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT; THEREFORE NOT ALL ENCUMBRANCES TO THE PROPERTY HAVE BEEN SHOWN.
3. ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.
4. THE LAND SHOWN ON THIS PLAT IS NOW HELD AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED AMONG THE LAND RECORDS OF FAIRFAX COUNTY; ALL EASEMENTS AND DEDICATIONS FOR PUBLIC STREET PURPOSES ARE WITHIN THE BOUNDS OF THE ORIGINAL TRACT, AS DESCRIBED AND RECORDED THEREIN.
5. THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON TAX MAP 0483-01-0003.

LINE	BEARING	DISTANCE
L1	N 31°13'24" E	17.94'
L2	S 54°21'04" E	213.96'
L3	N 31°13'24" E	21.41'
L4	N 31°13'24" E	9.77'
L5	S 60°12'28" E	146.12'
L6	S 30°44'52" W	14.02'
L7	N 54°56'06" W	171.93'
L8	S 31°13'24" W	15.44'
L9	N 31°13'24" E	2.78'
L10	S 60°14'44" E	144.25'
L11	S 24°45'16" W	4.71'
L12	S 60°14'50" E	64.89'
L13	S 31°13'24" W	15.72'

TAE HONG YI
& PIL NAM YI
D.B. 10169 PG. 424
TAX# 0483 01 0003

PARCEL F SECTION 2
D.B. 5786 PG. 1220
NEWINGTON COMMONS INC.
D.B. 5786 PG. 1249
TAX# 0483 14 14



NF
PARCEL A, COZZO'S
ADDITION TO GREEN RIDGE
D.B. PG. 431
GREEN RIDGE
HOMEOWNERS ASSOCIATION, INC.
D.B. 6452 PG. 1144
TAX# 0483 15 A

SILVERBROOK RD./SOUTHRUN RD.
EB LEFT TURN LANE
PROJECT #5625-054-005

FAIRFAX COUNTY, VIRGINIA
DEPT. OF PUBLIC WORKS & ENVIRONMENTAL SERVICES
CAPITAL FACILITIES, LAND SURVEY BRANCH
12000 GOVERNMENT CENTER FRONT, FAIRFAX, VIRGINIA

PLAT SHOWING
DEDICATION FOR PUBLIC STREET PURPOSES,
STORM DRAINAGE EASEMENT AND
GRADING AGREEMENT AND
TEMPORARY CONSTRUCTION EASEMENT
THROUGH PROPERTY BEING IN THE NAME OF
TAE HONG YI & PIL NAM YI
D.B. 10169 PG. 424

MOUNT VERNON DISTRICT, FAIRFAX COUNTY SHEET 1 OF 1
SCALE: 1"=30' DATE: 10/03/17 DRAWN BY: JKA

NORTH BASED ON VTCS8 (NORTH ZONE)

EXISTING FCMA EASEMENT D.B. 11434 PG. 21
EXISTING 10' SIDEWALK EASEMENT D.B. 22448 PG. 2111
EXISTING 10' SIDEWALK EASEMENT D.B. 22448 PG. 2111

GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT
HEREBY DEDICATED FOR PUBLIC STREET PURPOSES
STORM DRAINAGE EASEMENT

SILVERBROOK ROAD
ROUTE 600 - VARIABLE WIDTH R/W
N 59°46'31" N

AREA TABULATION
DEDICATION FOR PUBLIC STREET PURPOSES 4363 SQ. FT.
STORM DRAINAGE EASEMENT 2503 SQ. FT.
GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT 870 SQ. FT.

- DEDICATION AREAS
- STORM DRAINAGE EASEMENT
- GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT



PLAT PREPARED BY: JMT
4201 ARBORETUM PARKWAY
SUITE 310
RICHMOND, VIRGINIA 23236
804-323-4900
jmt@jmt-engineering.com



REVISED: 10/2/18

Board Agenda Item
July 30, 2019

4:00 p.m.

Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Seminary Road Walkway – Magnolia Lane to Colfax Ave (Mason District)

ISSUE:

Public Hearing on the acquisition of certain land rights necessary for the construction of Project 5G25-060-038, Pedestrian Improvements – 2014, Seminary Road Walkway – Magnolia Lane to Colfax Ave, Fund 30050, Transportation Improvements.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (Board) adopt the attached resolution authorizing the acquisition of the necessary land rights.

TIMING:

On June 25, 2019, the Board authorized advertisement of a public hearing to be held on July 30, 2019, at 4:00 p.m.

BACKGROUND:

This project consists of the installation of 890 linear feet of sidewalk, including Americans with Disabilities Act (ADA) compliant crosswalks and curb ramps, along the western side of Seminary Road. The Project starts on the north side of Magnolia Lane and goes south to the City of Alexandria limits.

Land rights for these improvements are required on fifteen properties, nine of which have been acquired by the Land Acquisition Division (LAD). The construction of this project requires the acquisition of Dedication, Storm Drainage and Grading Agreement & Temporary Construction Easements.

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

Board Agenda Item
July 30, 2019

FISCAL IMPACT:

Funding is available in Project 5G25-060-048, Pedestrian Improvements – 2014, Seminary Road Walkway – Magnolia Lane to Colfax Ave, Fund 30050, Transportation Improvements. This project is included in the Adopted FY2020 - FY2024 Adopted Capital Improvements Program (with future Fiscal Years to FY2029).

ENCLOSED DOCUMENTS:

Attachment A – Project Location Map

Attachment B – Resolution with Fact Sheets on the affected parcels with plats showing interests to be acquired (Attachments 1 through 6A).

STAFF:

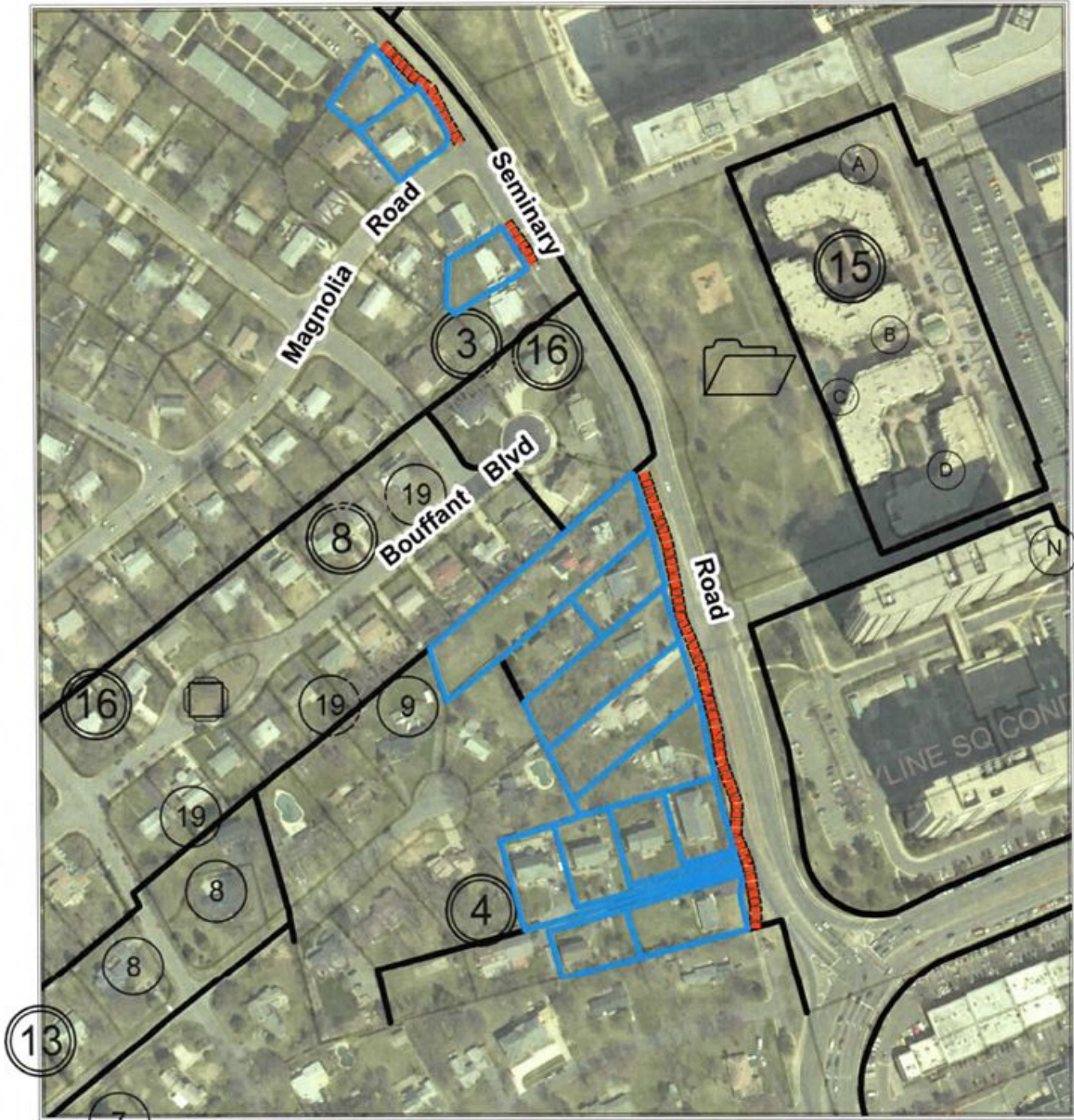
Rachel Flynn, Deputy County Executive

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

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

ASSIGNED COUNSEL:

Pamela K. Pelto, Assistant County Attorney

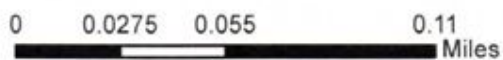


Seminary Road Walkway - Magnolia Ln-Colfax Ave

Tax Map: 62-3 Mason District Project: 5G25-060-038

Affected Properties:

Proposed Improvements:



ATTACHMENT B

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, July 30, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, certain Project 5G25-060-038, Seminary Road Walkway - Magnolia Lane to Colfax Ave, had been approved; and

WHEREAS, a public hearing pursuant to advertisement of notice was held on this matter, as required by law; and

WHEREAS, the property interests that are necessary have been identified; and

WHEREAS, in order to keep this project on schedule, it is necessary that the required property interests be acquired not later than August 31, 2019.

NOW THEREFORE BE IT RESOLVED, that the Director, Land Acquisition Division, in cooperation with the County Attorney, is directed to acquire the property interests listed in Attachments 1 through 6A by gift, purchase, exchange, or eminent domain; and be it further

RESOLVED, that following the public hearing, this Board hereby declares it necessary to acquire the said property and property interests and that this Board intends to enter and take the said property interests for the purpose of installation of 890 linear feet of sidewalk, including Americans with Disabilities Act (ADA) compliant crosswalks and curb ramps, along the western side of Seminary Road. The Project starts on the north side of Magnolia Lane and goes south to the City of Alexandria limits.

as shown and described in the plans of Project 5G25-060-038, Seminary Road Walkway - Magnolia Lane to Colfax Ave, on file in the Land Acquisition Division of the Department of Public Works and Environmental Services, 12000 Government Center Parkway, Suite 449, Fairfax, Virginia; and be it further

RESOLVED, that this Board does hereby exercise those powers granted to it by the Code of Virginia and does hereby authorize and direct the Director, Land Acquisition Division, on or subsequent to August 30, 2019, unless the required interests are sooner acquired, to execute and cause to be recorded and indexed among the land records of this County, on behalf of this Board, the appropriate certificates in accordance with the requirements of the Code of Virginia as to the property owners, the indicated estimate of fair market value of the property and property interests and/or damages, if any, to the residue of the affected parcels relating to the certificates; and be it further

RESOLVED, that the County Attorney is hereby directed to institute the necessary legal proceedings to acquire indefeasible title to the property and property interests identified in the said certificates by condemnation proceedings, if necessary.

LISTING OF AFFECTED PROPERTIES

Project 5G25-060-038 – Seminary Road Walkway - Magnolia Lane to Colfax Ave,
(Mason District)

PROPERTY OWNER(S)

TAX MAP NUMBER

1. Deutsche Bank National Trust Company

062-3-01-0001

Address:
5604 Seminary Rd
Alexandria, VA 22311

2. Okasna Elariny 062-3-01-0007B
Address:
5508 Seminary Rd
Alexandria, VA 22311
3. Jessica Griswold 062-3-03-0078
Steven Covell
Address:
5500 Magnolia Lane
Alexandria, VA 22311
4. Abey Kassa 062-3-03-0081
Menna Desta
Address:
5618 Seminary Rd
Alexandria, VA 22311
5. Arestotle Thapa 062-3-01-0007C
Geeta S. Thapa
Nirmal K. Thapa Magar
Address:
5506 Seminary Rd
Alexandria, VA 22311
6. Daniel A. Troutman 062-3-01-0002B
Address:
5600 Seminary Rd
Alexandria, VA 22311

A Copy – Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors

ATTACHMENT 1

AFFECTED PROPERTY

Tax Map Number: 062-3-01-0001

Street Address: 5604 Seminary Rd
Alexandria, VA 22311

OWNER(S): Deutsche Bank National Trust Company

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Dedication For Public Street Purposes – 473 sq. ft.
Storm Drainage Easement – 105
Grading Agreement and Temporary Construction Easement – 975 sq. ft.

VALUE

Estimated value of interests and damages:

FIVE THOUSAND TWO HUNDRED TWENTY DOLLARS (\$5,220.00)

ATTACHMENT 2

AFFECTED PROPERTY

Tax Map Number: 062-3-01-0007B

Street Address: 5508 Seminary Rd
Alexandria, VA 22311

OWNER(S): Okasna Elariny

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Grading Agreement and Temporary Construction Easement – 115 sq. ft.

VALUE

Estimated value of interests and damages:

FIVE HUNDRED FORTY DOLLARS (\$540.00)

ATTACHMENT 3

AFFECTED PROPERTY

Tax Map Number: 062-3-03-0078
Street Address: 5500 Magnolia Lane
Alexandria, VA 22311
OWNER(S): Jessica Griswold
Steven Covell

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Dedication For Public Street Purposes – 714 sq. ft.
Grading Agreement and Temporary Construction Easement – 1,478 sq. ft.

VALUE

Estimated value of interests and damages:

TWENTY TWO THOUSAND EIGHT HUNDRED DOLLARS (\$22,800.00)

ATTACHMENT 4

AFFECTED PROPERTY

Tax Map Number: 062-3-03-0081
Street Address: 5618 Seminary Rd
Alexandria, VA 22311
OWNER(S): Abey Kassa
Menna Desta

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Dedication For Public Street Purposes – 23 sq. ft.
Grading Agreement and Temporary Construction Easement – 124 sq. ft.

VALUE

Estimated value of interests and damages:

NINE HUNDRED TEN DOLLARS (\$910.00)

ATTACHMENT 5

AFFECTED PROPERTY

Tax Map Number: 062-3-01-0007C
Street Address: 5506 Seminary Rd
Alexandria, VA 22311

OWNER(S): Arestotle Thapa
Geeta S. Thapa
Nirmal K. Thapa Magar

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Grading Agreement and Temporary Construction Easement – 191 sq. ft.

VALUE

Estimated value of interests and damages:
THREE HUNDRED EIGHTY DOLLARS (\$380.00)

ATTACHMENT 6

AFFECTED PROPERTY

Tax Map Number: 062-3-01-0002B
Street Address: 5600 Seminary Rd
Alexandria, VA 22311

OWNER(S): Daniel A. Troutman

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Dedication For Public Street Purposes – 623 sq. ft.
Grading Agreement and Temporary Construction Easement – 1,108 sq. ft.

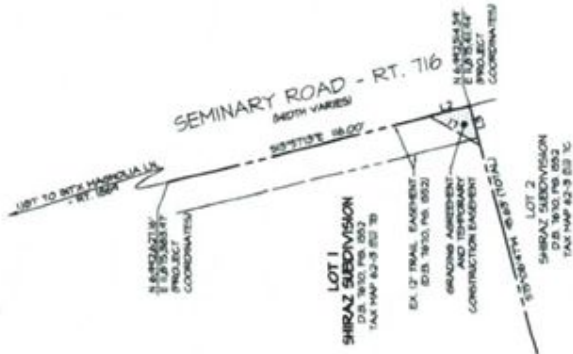
VALUE

Estimated value of interests and damages:
THIRTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$13,800.00)

16-002-11

Attachment 2A

VA STATE ZONING MAP
VCS AS NORTH 27° 45' 00" WEST



NOTES:
THIS PLAN WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT. THE GRANTEE SHALL BE RESPONSIBLE FOR OBTAINING NECESSARY ENCUMBRANCES TO THE PROPERTY AND THE LAND SHOWN ON THIS PLAN IS NOT HELD AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED ANYWHERE ELSE AND RECORDS OF THE LOCAL GOVERNMENT SHALL BE CONSULTED TO DETERMINE THE EXACT BOUNDARIES AND INTERESTS WITHIN THE BOUNDS OF THE ORIGINAL TRACT, AS DESCRIBED AND SHOWN ON THIS PLAN.
THE INFORMATION SHOWN ON THIS PLAN WAS COMPILED FROM EXISTING LAND RECORDS AND DOES NOT REPRESENT THE RESULTS OF AN ACTUAL FIELD SURVEY OR RECONSTRUCTION OF THE BOUNDARIES, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.
THE PROPERTY DELINEATED ON THIS PLAN IS LOCATED ON ASSESSMENT MAP 82-3 83 '9.

SEMINARY ROAD,
MAGNOLIA LAKE TO ALEXANDRIA CITY LINE
PROJECT NUMBER: 802-060-030

FAIRFAX COUNTY, VIRGINIA
DEPARTMENT OF PUBLIC WORKS
& ENVIRONMENTAL SERVICES
CAPITAL FACILITIES AND MARKET SERVICES
10000 GLEBE ROAD, SUITE 100
FAIRFAX, VIRGINIA

PLAT NUMBER:
GRADING AGREEMENT
AND
TEMPORARY CONSTRUCTION EASEMENT
TRIBUTION
LOT 1
SHIRAZ SUBDIVISION
D.B. 1810 PG. 002
PROPERTY BEING IN THE NAME OF
OKAGNA ELARINTY
D.B. 2006 PG. 150
FAIRFAX COUNTY, VIRGINIA
SHEET 1 OF 1



LINE	TYPE	SCALE	LENGTH
1	BOUNDARY	1" = 50'	2.627'
2	EASEMENT	1" = 50'	0.460'
3	PROPERTY	1" = 50'	14.899'

EASEMENT AREA
GRADING AGREEMENT AND
TEMPORARY CONSTRUCTION EASEMENT • 1/8" = 50' FT.



16-002-11

VA STATE BOARD OF PROFESSIONAL ENGINEERS
 HUNTER CREEK DRIVE
 1005 W. MAIN STREET
 RICHMOND, VA 23220

Engineering, Land Planning, Transportation, Environmental Services
 8282 University Boulevard, Suite 202, Mechanicsville, VA 23103
 Telephone: (703) 288-7733 Fax: (703) 287-4445

Rinker Design Associates, P.C.



NOTES:
 THIS PLAN WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT. THE ENGINEER MAKES NO WARRANTIES TO THE PROPERTY ARE.
 THE INFORMATION ON THIS PLAN IS NOT HELD AS NOTED IN THE TITLE BLOCK HEREON AND REQUIRED BY THE LAND RECORDS OF FAIRFAX COUNTY. ALL EASEMENTS AND DEDICATIONS FOR PUBLIC PURPOSES SHOWN ON THIS PLAN ARE THE PROPERTY OF THE ENGINEER, RINKER DESIGN ASSOCIATES, P.C., AND NOT THE PROPERTY OF THE COUNTY.
 THE INFORMATION SHOWN ON THIS PLAN WAS COMPILED FROM EXISTING LAND RECORDS AND DOES NOT REPRESENT THE RESULTS OF AN ACTUAL FIELD SURVEY.
 ALL PREVIOUSLY RECORDED EASEMENTS, EASEMENTS OR OTHER INTERESTS SHOWN ON THIS PLAN ARE NOTED IN THE TITLE BLOCK. THE PROPERTY DEDICATED ON THIS PLAN IS LOCATED ON ASSESSMENT MAP 82-3 203 'B'.



SEMART ROAD
 MAGNOLIA LANE TO ALEXANDRIA CITY LINE
 PROJECT NUMBER: 822-0502-00

FAIRFAX COUNTY, VIRGINIA
 DEPARTMENT OF PUBLIC WORKS
 ENGINEERING AND DESIGN DIVISION
 CAPTAIN, PAUL J. LIND AND CAROLYNN BRANCH
 COUNTY GOVERNMENT CENTER PARKWAY
 FALLS CHURCH, VA 22034

DEDICATION FOR PUBLIC STREET PURPOSES
 AND
 GRADING AGREEMENT
 AND
 TEMPORARY CONSTRUCTION EASEMENT
 THROUGH
 LOT 7B
 SECTION THREE
 SUNSET MANOR
 D.B. 3005 P.G. 441
 PROPERTY BEING IN THE CARE OF
 JESSICA GRISWOLD
 AND
 STEVEN COVELL
 D.B. 2406 P.G. 2043
 HANCOCK DISTRICT
 FAIRFAX COUNTY, VIRGINIA
 SHEET 1 OF 1

SCALE: 1"=50'
 DATE: 12/04/08
 DRAWN BY: J.L.G.



LINE TABLE

LINE	BEARING	DISTANCE
1	N89°53'17.4"	30.507
2	N89°53'17.4"	25.507
3	N89°53'17.4"	10.507
4	N89°53'17.4"	30.507
5	N89°53'17.4"	30.507
6	N89°53'17.4"	30.507
7	N89°53'17.4"	30.507
8	N89°53'17.4"	30.507
9	N89°53'17.4"	30.507
10	N89°53'17.4"	30.507
11	N89°53'17.4"	30.507
12	N89°53'17.4"	30.507
13	N89°53'17.4"	30.507
14	N89°53'17.4"	30.507
15	N89°53'17.4"	30.507
16	N89°53'17.4"	30.507
17	N89°53'17.4"	30.507
18	N89°53'17.4"	30.507
19	N89°53'17.4"	30.507
20	N89°53'17.4"	30.507
21	N89°53'17.4"	30.507
22	N89°53'17.4"	30.507
23	N89°53'17.4"	30.507
24	N89°53'17.4"	30.507
25	N89°53'17.4"	30.507
26	N89°53'17.4"	30.507
27	N89°53'17.4"	30.507
28	N89°53'17.4"	30.507
29	N89°53'17.4"	30.507
30	N89°53'17.4"	30.507

CURVE TABLE

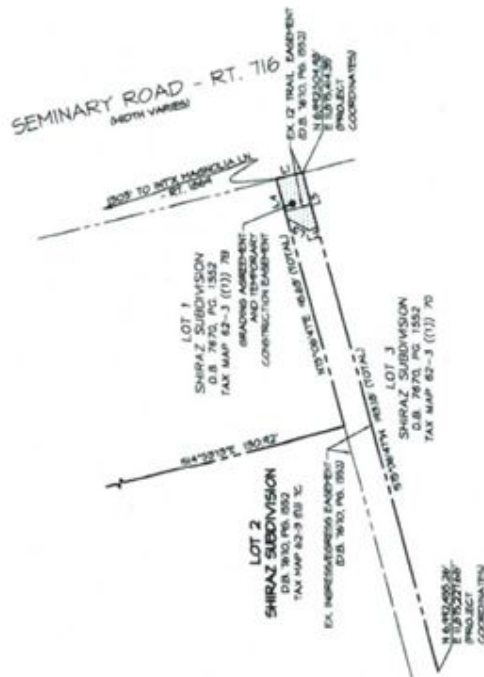
CURVE NUMBER	CHORD BEARING	TANGENT CORNER BEARING	DELTA
1	26.34°	29.27°	6.36°
2	26.34°	14.60°	4.16°
3	26.34°	14.60°	4.16°
4	26.34°	14.60°	4.16°
5	26.34°	14.60°	4.16°
6	26.34°	14.60°	4.16°
7	26.34°	14.60°	4.16°
8	26.34°	14.60°	4.16°
9	26.34°	14.60°	4.16°
10	26.34°	14.60°	4.16°
11	26.34°	14.60°	4.16°
12	26.34°	14.60°	4.16°
13	26.34°	14.60°	4.16°
14	26.34°	14.60°	4.16°
15	26.34°	14.60°	4.16°
16	26.34°	14.60°	4.16°
17	26.34°	14.60°	4.16°
18	26.34°	14.60°	4.16°
19	26.34°	14.60°	4.16°
20	26.34°	14.60°	4.16°
21	26.34°	14.60°	4.16°
22	26.34°	14.60°	4.16°
23	26.34°	14.60°	4.16°
24	26.34°	14.60°	4.16°
25	26.34°	14.60°	4.16°
26	26.34°	14.60°	4.16°
27	26.34°	14.60°	4.16°
28	26.34°	14.60°	4.16°
29	26.34°	14.60°	4.16°
30	26.34°	14.60°	4.16°

DEDICATION AREA
 DEDICATION FOR PUBLIC STREET PURPOSES = 74.50 FT.
 EASEMENT AREA
 GRADING AGREEMENT AND
 TEMPORARY CONSTRUCTION EASEMENT = 1,419.50 FT.



16-002-11

Attachment 5A



LINE	BEARING	DISTANCE
1	N79°00'00\"/>	

EASEMENT AREA
GRADING AGREEMENT AND
TEMPORARY CONSTRUCTION EASEMENT
= 1/4\"/>

GRAPHIC SCALE



NOTES:
THIS PLAN WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT. THEREFORE NOT ALL ENCUMBRANCES TO THE PROPERTY ARE NECESSARILY SHOWN HEREIN.
THE LAND SHOWN ON THIS PLAN IS NOW HELD AS NEEDED IN THE TITLE RECORDS OF THE FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS. ALL ENCUMBRANCES AND DECLARATIONS FOR PUBLIC UTILITIES SHOWN ON THIS PLAN ARE THE ORIGINAL RECORDS OF THE RECORDS OFFICE OF THIS PLAT. THIS PLAT HAS COMPLETED FROM EXISTING LAND RECORDS AND DOES NOT REPRESENT THE RESULTS OF AN ACTUAL FIELD SURVEY BOUNDARY SURVEY.
ALL INDIVIDUALLY RECORDED RIGHT-OF-WAY, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN UNCHANGED UNLESS OTHERWISE SPECIFIED BY THIS PLAT.
THIS PLAT IS LOCATED ON ASSESSMENT MAP 82-3 03 1C.

Rinker Design Associates, P.C.
Engineering, Surveying, Land Planning, Transportation, Environmental Services
2200 Dunning Business Center, Suite 200, Reston, VA 20190
Telephone: (703) 266-7373 Fax: (703) 267-6442

SEMINARY ROAD -
MAGNOLIA LANE TO ALEXANDRIA CITY LINE
PROJECT NUMBER 2602-060-026

FAIRFAX COUNTY, VIRGINIA
DEPARTMENT OF PUBLIC WORKS
CONSTRUCTION SERVICES DIVISION
2000 INDEPENDENT SQUARE PARKWAY
FAIRFAX, VIRGINIA

PLAT NUMBER
GRADING AND
TEMPORARY CONSTRUCTION EASEMENT
THROUGH

LOT 2

SHIRAZ SUBDIVISION
D.B. 7630, P.O. 092

PROPERTY BEING IN THE NAME OF
ARESTOLE THAPA,
GEETA S. THAPA,
AND

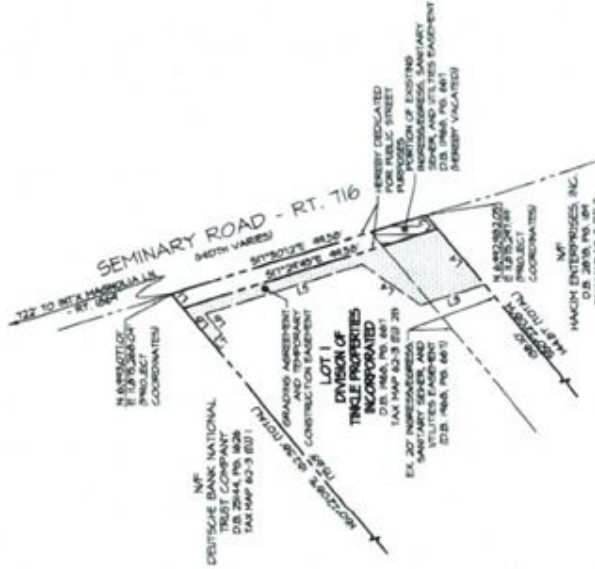
NIRMAL K. THAPA MAGAR
D.B. 7670, P.O. 1552
MAGNOLIA LANE
FAIRFAX COUNTY, VIRGINIA

SHEET 1 OF 1

SCALE: 1" = 20' DATE: 1/27/09 DRAWN BY: J.P.



16-002-11



LINE	BEARING	DISTANCE
L1	S80°22'24\"	8.79
L2	S80°22'24\"	8.79
L3	S17°50'00\"	26.77
L4	S89°09'25\"	26.29
L5	S17°24'48\"	8.48
L6	S89°09'25\"	26.29
L7	S80°22'24\"	8.79
L8	S80°22'24\"	8.79
L9	S80°22'24\"	8.79

DEDICATION AREA
 DEDICATION FOR PUBLIC STREET PURPOSES • 623 SQ. FT.

EASEMENT AREA
 GRADING AGREEMENT AND
 TEMPORARY CONSTRUCTION EASEMENT • 1006 SQ. FT.

VACATED AREA
 EXISTING INGRESS/EGRESS, SANITARY SEWER
 AND UTILITIES EASEMENT (HEREBY VACATED) • 195 SQ. FT.

GRAPHIC SCALE



NOTES:
 THIS PLAN WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT. THE CLIENT IS ADVISED TO OBTAIN A TITLE REPORT PRIOR TO ANY NECESSARILY SHOWN HEREON.
 THE LAND SHOWN ON THIS PLAN IS NOW HELD AND NOTED IN THE TITLE BLOCK HEREON AND RECORDED AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA. THE BOUNDARIES OF THE ORIGINAL TRACT, AS DESCRIBED AND SHOWN ON THIS PLAN, ARE THE BOUNDARIES OF THE ORIGINAL TRACT, AS DESCRIBED AND SHOWN ON THIS PLAN.
 THE INFORMATION SHOWN ON THIS PLAN WAS COMPILED FROM EXISTING RECORDS AND FIELD SURVEY. THE INFORMATION IS NOT GUARANTEED TO BE ACCURATE AND SHOULD BE VERIFIED BY THE CLIENT PRIOR TO ANY CONSTRUCTION.
 THE PROPERTY DELINEATED ON THIS PLAN IS LOCATED ON ASSIGNMENT MAP 82-3 (S) 2E.

SEMINARY ROAD,
 MAGNOLIA LANE TO ALEXANDRIA CITY LINE

PROJECT NUMBER: 16-002-II
 FAIRFAX COUNTY, VIRGINIA
 DEPARTMENT OF PUBLIC WORKS
 ENGINEERING AND SURVEYING
 CAPITAL FACILITIES AND STREET BRANCH
 3300 FARMHOUSE DRIVE, FERRYMAN
 FALLS, VIRGINIA 22031

DEDICATION FOR PUBLIC STREET PURPOSES,
 AND
 GRADING AGREEMENT
 AND
 TEMPORARY CONSTRUCTION EASEMENT
 AND VACATION OF A PORTION OF
 EXISTING INGRESS/EGRESS, SANITARY SEWER,
 AND UTILITIES EASEMENT

LOT 1
 DIVISION OF
TINKLE PROPERTIES INCORPORATED
 PROPERTY BEING IN THE NAME OF
DANIEL A. TROITMAN
 DB LOMA, INC.
 HANCO DISTRICT
 HARRISBURG, PENNSYLVANIA
 SHEET 1 OF 1

SCALE: 1"=20' DATE: 10/20/16 DRAWN BY: JLP

Board Agenda Item
July 30, 2019

4:00 p.m.

Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Quander Road Walkway (Mount Vernon District)

ISSUE:

Public Hearing on the acquisition of certain land rights necessary for the construction of Project 5G25-060-034, Pedestrian Improvements – 2014, Quander Road Sidewalk – West Potomac High School to Emmett Drive, Fund 30050, Transportation Improvements.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (Board) adopt the attached resolution authorizing the acquisition of the necessary land rights.

TIMING:

On June 25, 2019, the Board authorized advertisement of a public hearing to be held on July 30, 2019, at 4:00 p.m.

BACKGROUND:

This project consists of the installation of approximately 1,800 linear feet of sidewalk on the western side of Quander Road, including Americans with Disabilities Act (ADA) compliant crosswalks and curb ramps, upgrades to the storm drainage system and road widening of the southbound roadway.

Land rights for these improvements are required on eleven properties, seven of which have been acquired by the Land Acquisition Division (LAD). The construction of this project requires the acquisition of Dedication, Perpetual Street, Storm Drainage and Grading Agreement & Temporary Construction Easements.

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

Board Agenda Item
July 30, 2019

FISCAL IMPACT:

Funding is available in Project 5G25-060-000, Pedestrian Improvements – 2014, Quander Road Sidewalk, Fund 30050, Transportation Improvements. This project is included in the FY2020 - FY2024 Adopted Capital Improvements Program (with future Fiscal Years to FY2029).

ENCLOSED DOCUMENTS:

Attachment A – Project Location Map

Attachment B – Resolution with Fact Sheets on the affected parcels with plats showing interests to be acquired (Attachments 1 through 4A).

STAFF:

Rachel Flynn, Deputy County Executive

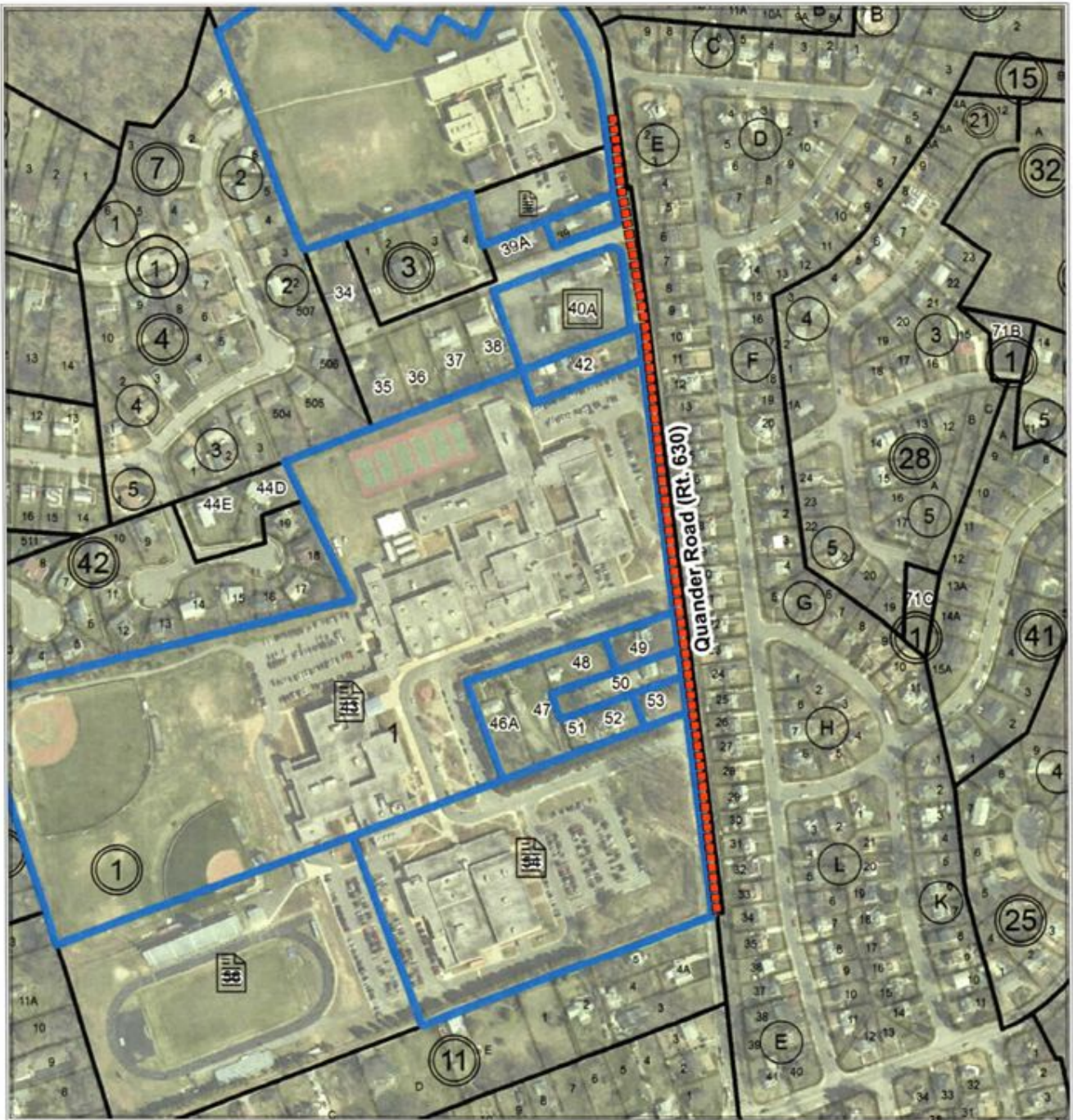
Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)

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

ASSIGNED COUNSEL:

Pamela K. Pelto, Assistant County Attorney

ATTACHMENT A



QUANDER ROAD WALKWAY

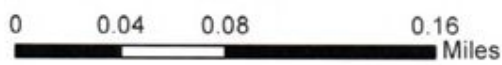
Tax Map: 093-1

Project 5G25-060-034

Mount Vernon District

Affected Properties:

Proposed Improvements:



ATTACHMENT B

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, July 30, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, certain Project 5G25-060-034, Quander Road Walkway had been approved; and

WHEREAS, a public hearing pursuant to advertisement of notice was held on this matter, as required by law; and

WHEREAS, the property interests that are necessary have been identified; and

WHEREAS, in order to keep this project on schedule, it is necessary that the required property interests be acquired not later than August 31, 2019.

NOW THEREFORE BE IT RESOLVED, that the Director, Land Acquisition Division, in cooperation with the County Attorney, is directed to acquire the property interests listed in Attachments 1 through 4A by gift, purchase, exchange, or eminent domain; and be it further

RESOLVED, that following the public hearing, this Board hereby declares it necessary to acquire the said property and property interests and that this Board intends to enter and take the said property interests for the purpose of installation of approximately 1,800 linear feet of sidewalk on the western side of Quander Road, including Americans with Disabilities Act (ADA) compliant crosswalks and curb ramps, upgrades to the storm drainage system and road widening of the southbound roadway

as shown and described in the plans of Project 5G25-060-034, Quander Road Walkway on file in the Land Acquisition Division of the Department of Public Works and Environmental Services, 12000 Government Center Parkway, Suite 449, Fairfax, Virginia; and be it further

RESOLVED, that this Board does hereby exercise those powers granted to it by the Code of Virginia and does hereby authorize and direct the Director, Land Acquisition Division, on or subsequent to August 30, 2019, unless the required interests are sooner acquired, to execute and cause to be recorded and indexed among the land records of this County, on behalf of this Board, the appropriate certificates in accordance with the requirements of the Code of Virginia as to the property owners, the indicated estimate of fair market value of the property and property interests and/or damages, if any, to the residue of the affected parcels relating to the certificates; and be it further

RESOLVED, that the County Attorney is hereby directed to institute the necessary legal proceedings to acquire indefeasible title to the property and property interests identified in the said certificates by condemnation proceedings, if necessary.

LISTING OF AFFECTED PROPERTIES
Project 5G25-060-034 – Quander Road Walkway
(Mount Vernon District)

PROPERTY OWNER(S)

TAX MAP NUMBER

1. Owners Unknown &/or Heirs and Assigns
Of Elizabeth Quander
(10' Outlet Road)

N/A
Liber S-8, PG 224

Address:
Quander Road
Alexandria, VA 22307

- | | |
|---|--------------------------|
| 2. Owners Unknown &/or Heirs and Assigns
Of Elizabeth Quander
(25' Outlet Road) | N/A
Liber S-8, PG 224 |
| Address:
Quander Road
Alexandria, VA 22307 | |
| 3. Rene Cerrato-Gutierrez
Angela Noemy Cerrato-Gutierrez | 093-1-01-0039 |
| Address:
6418 Quander Road
Alexandria, VA 22307 | |
| 4. Rudy A. Villalta | 093-1-01-0053 |
| Address:
6612 Quander Road
Alexandria, VA 22307 | |

A Copy – Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors

ATTACHMENT 1

AFFECTED PROPERTY

Tax Map Number: N/A - Liber S-8, PG 224

Street Address: Quander Road
Alexandria, VA

OWNER(S): Owners Unknown &/or Heirs and Assigns
Of Elizabeth Quander
(10' Outlet Road)

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Dedication For Public Street Purposes – 234 sq. ft.
Grading Agreement and Temporary Construction Easement – 187 sq. ft.

VALUE

Estimated value of interests and damages:

FIVE HUNDRED TEN DOLLARS (\$510.00)

ATTACHMENT 2

AFFECTED PROPERTY

Tax Map Number: N/A - Liber S-8, PG 224

Street Address: Quander Road
Alexandria, VA

OWNER(S): Owners Unknown &/or Heirs and Assigns
Of Elizabeth Quander
(10' Outlet Road)

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Dedication For Public Street Purposes – 152 sq. ft.
Grading Agreement and Temporary Construction Easement – 141 sq. ft.

VALUE

Estimated value of interests and damages:

THREE HUNDRED FORTY DOLLARS (\$340.00)

ATTACHMENT 3

AFFECTED PROPERTY

Tax Map Number: 093-1-01-0039

Street Address: 6418 Quander Road
Alexandria, VA 22307

OWNER(S): Rene Cerrato-Gutierrez
Angela Noemy Cerrato-Gutierrez

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Dedication For Public Street Purposes – 957 sq. ft.
Grading Agreement and Temporary Construction Easement – 483 sq. ft.
Storm Drainage Easement – 279 sq. ft.

VALUE

Estimated value of interests and damages:

TWELVE THOUSAND DOLLARS (\$12,000.00)

ATTACHMENT 4

AFFECTED PROPERTY

Tax Map Number: 093-1-01-0053

Street Address: 6612 Quander Road
Alexandria, VA 22307

OWNER(S): Rudy A. Villalta

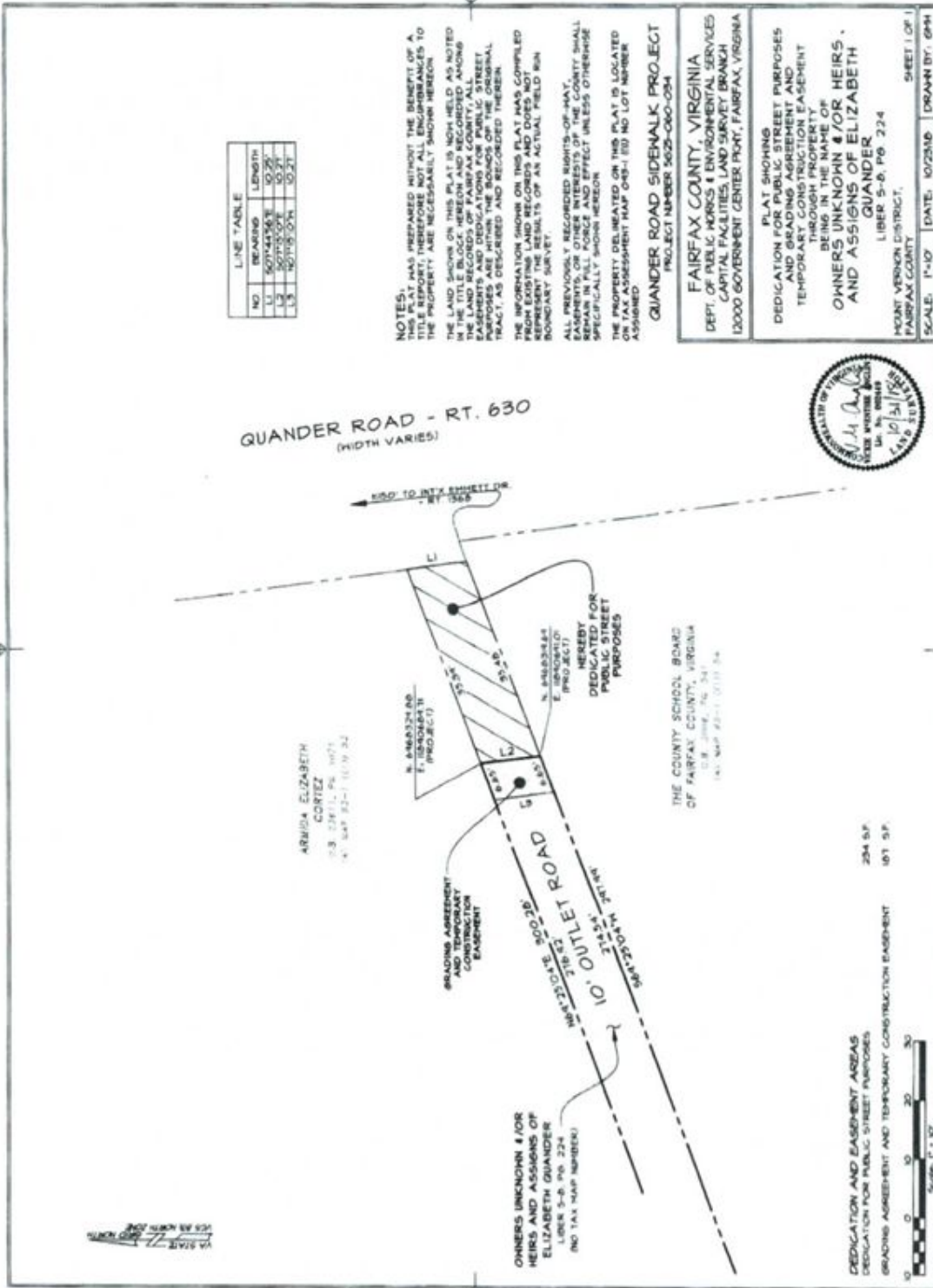
INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Dedication For Public Street Purposes – 702 sq. ft.
Grading Agreement and Temporary Construction Easement – 1,528 sq. ft.
Storm Drainage Easement – 316 sq. ft.

VALUE

Estimated value of interests and damages:

TWENTY THREE THOUSAND EIGHT HUNDRED DOLLARS (\$23,800.00)



LINE TABLE		
NO.	BEARING	LENGTH
1	SOUTH 45° 00' 00" W	0.27
2	SOUTH 45° 00' 00" W	0.27
3	SOUTH 45° 00' 00" W	0.27

NOTES.
 THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT, THEREFORE NOT ALL ENCUMBRANCES TO THE PROPERTY ARE NECESSARILY SHOWN HEREON.
 THE LAND SHOWN ON THIS PLAT IS NOW HELD AS NOTED HEREON AND IS SUBJECT TO ANY INTERESTS SHOWN ON THE LAND RECORDS OF FAIRFAX COUNTY, ALL RIGHTS, EASEMENTS AND DEDICATIONS FOR PUBLIC STREET PURPOSES ARE SHOWN AND THE SURVEYING INSTRUMENTS, AS DESCRIBED AND RECORDED THEREIN.
 THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM THE RECORDS OF FAIRFAX COUNTY AND DOES NOT REPRESENT THE RESULTS OF AN ACTUAL FIELD BOUNDARY SURVEY.
 ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.
 THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON AN ADJACENT MAP (PUB. ED) NO. LOT NUMBER ASSIGNED.

QUANDER ROAD SIDEWALK PROJECT
 PROJECT NUMBER 5025-080-024

FAIRFAX COUNTY, VIRGINIA
 DEPT. OF PUBLIC WORKS & ENVIRONMENTAL SERVICES
 CAPITAL FACILITIES, LAND SAFETY BRANCH
 12000 GOVERNMENT CENTER POINT, FAIRFAX, VIRGINIA

PLAT SHOWING
 DEDICATION FOR PUBLIC STREET PURPOSES
 AND GRADING AGREEMENT AND
 TEMPORARY CONSTRUCTION EASEMENT
 THROUGH PROPERTY
 BEING IN THE NAME OF
**OWNERS UNKNOWN & FOR HEIRS
 AND ASSIGNS OF ELIZABETH
 QUANDER**
 LIBER 5-B, PG. 224
 MOUNT VERNON DISTRICT,
 FAIRFAX COUNTY

SCALE: 1"=10' DATE: 10/23/10 DRAWN BY: 0941
 SHEET 1 OF 1



QUANDER ROAD - RT. 630
 (WIDTH VARIES)

**ARMIDA ELIZABETH
 CORTEZ**
 O.B. 2/24/11, P. 1071
 N. MAP #2-1 (11/11, 12)

**THE COUNTY SCHOOL BOARD
 OF FAIRFAX COUNTY, VIRGINIA**
 O.B. 2/28/10, PG. 247
 N. MAP #2-1 (11/11, 12)

DEDICATION AND EASEMENT AREAS
 DEDICATION FOR PUBLIC STREET PURPOSES
 GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT
 254 SF
 107 SF

**OWNERS UNKNOWN & FOR
 HEIRS AND ASSIGNS OF
 ELIZABETH QUANDER**
 LIBER 5-B, PG. 224
 (NO TAX MAP NUMBER)



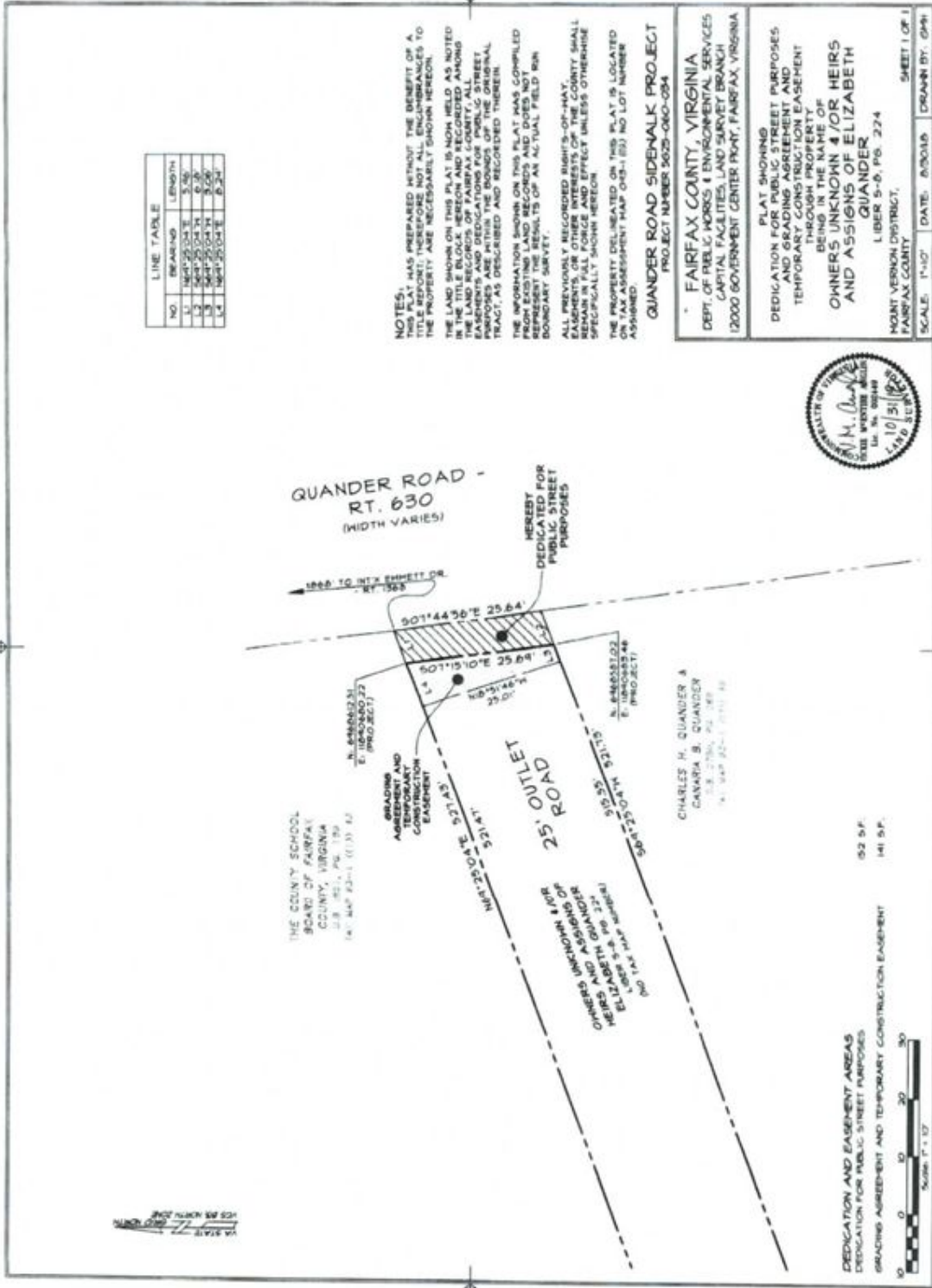
LINE TABLE		
NO.	BEARING	LENGTH
1	N 89° 25' 04" E	3.75'
2	S 89° 25' 04" W	3.75'
3	N 89° 25' 04" E	3.75'
4	S 89° 25' 04" W	3.75'

NOTES:
 THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A SURVEY OF THE PROPERTY AND THEREFORE IS TO BE CONSIDERED AS A PRELIMINARY PLAT. THE PROPERTY ARE NECESSARILY SHOWN HEREON.
 THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM EXISTING LAND RECORDS AND DOES NOT REPRESENT THE RESULTS OF AN ACTUAL FIELD RUN BOUNDARY SURVEY.
 ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS OR OTHER INTERESTS OF THE COUNTY SHALL BE CONSIDERED AS AFFECTED UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.
 THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON TAX ASSESSMENT MAP OCH-1 (E3) NO. 107 NUMBER ASSIGNED.

QUANDER ROAD SIDEWALK PROJECT
 PROJECT NUMBER 5625-040-094

FAIRFAX COUNTY, VIRGINIA
 DEPT. OF PUBLIC WORKS & ENVIRONMENTAL SERVICES
 CAPITAL FACILITIES AND SURVEY BRANCH
 12000 GOVERNMENT CENTER PKWY, FAIRFAX, VIRGINIA

PLAT SHOWING
 DEDICATION FOR PUBLIC STREET PURPOSES
 AND GRADING AGREEMENT AND
 TEMPORARY CONSTRUCTION EASEMENT
 THROUGH PROPERTY
 BEING IN THE NAME OF
 OWNERS UNKNOWN & /OR HEIRS
 AND ASSIGNS OF ELIZABETH
 QUANDER
 LIBER 5-6, PG. 274
 MOUNT VERNON DISTRICT,
 FAIRFAX COUNTY
 SCALE: 1"=10'
 DATE: 8/30/18
 DRAWN BY: GPH



THIS IS A PRELIMINARY PLAT
 AND SHOULD NOT BE USED FOR
 CONSTRUCTION PURPOSES

THE COUNTY SCHOOL
 BOARD OF FAIRFAX
 COUNTY, VIRGINIA
 23000 W. WOODBURN RD.
 FALLS CHURCH, VA 22034

GRADING
 AGREEMENT AND
 TEMPORARY
 CONSTRUCTION
 EASEMENT

25' OUTLET

OWNERS UNKNOWN & /OR
 HEIRS AND ASSIGNS OF
 ELIZABETH QUANDER
 LIBER 5-6, PG. 274
 MOUNT VERNON DISTRICT,
 FAIRFAX COUNTY

CHARLES H. QUANDER &
 CANARIA S. QUANDER
 23000 W. WOODBURN RD.
 FALLS CHURCH, VA 22034

DEDICATION AND EASEMENT AREAS
 DEDICATION FOR PUBLIC STREET PURPOSES
 GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT



Board Agenda Item
July 30, 2019

4:00 p.m.

Public Hearing to Lease County-Owned Property at 7584 Leesburg Pike to the Friends of Tysons-Pimmit Library (Dranesville District)

ISSUE:

Public hearing to lease County-owned property at 7584 Leesburg Pike to the Friends of Tysons-Pimmit Library.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to lease County-owned property at 7584 Leesburg Pike to the Friends of Tysons-Pimmit Library.

TIMING:

On June 25, 2019, the Board authorized the advertisement of a public hearing on July 30, 2019 to lease County-owned property at 7584 Leesburg Pike to the Friends of Tysons-Pimmit Library.

BACKGROUND:

The Board of Supervisors is the owner of Tysons-Pimmit Regional Library, located at 7584 Leesburg Pike, on a County-owned parcel identified as Tax Map Number 0401 01 0037 (the Library). The Library is an approximately 25,000 square foot building that was recently renovated by the Department of Public Works and Environmental Services (DPWES) with a new high-efficiency HVAC system, extensive windows and skylights and enhanced technological systems for use by the public.

The Friends of Tysons-Pimmit Library (Friends) is a non-profit organization that provides funding for materials and programming for the Library and for other Countywide initiatives. Examples of such programs sponsored by the Friends include community open house events, collegiate scholarships, children's literacy projects and native plant landscaping for the Library. One of the primary methods for the Friends to raise this funding is to hold ongoing book sales at the Library as well as much larger book marketplaces on a quarterly basis.

To assist in their preparations for the book sales, the Friends would like to pay for the construction of a 199-square foot brick-faced building to serve as a storage shed (Shed). The standalone Shed would only be serviced with electricity for the operation of

Board Agenda Item
July 30, 2019

indoor lighting; there would be no climate control or indoor plumbing provided to the structure. Access to the Shed to deposit and retrieve the books and other materials ancillary to the book sales would be limited to designated Friends volunteers and the Library's branch manager. Upon completion of the construction, the Board will own the Shed but the Friends will continue to occupy the space as a tenant.

Because the Friends is a nonprofit organization that supports the County's library and its citizens, the Board is authorized to permit the Friends to use the space without payment of consideration pursuant to Va. Code Ann. § 15.2-953. Staff recommends that the Board authorize staff to execute all necessary documents to lease County-owned land at Tysons-Pimmit Library to the Friends for the construction of the Shed.

FISCAL IMPACT:

There would be no impact to the General Fund other than the cost of supplying electricity for the interior lighting of the Shed.

ENCLOSED DOCUMENTS:

Attachment 1 – Location Map 0401 01 0037

Attachment 2 – Draft Lease Agreement

STAFF:

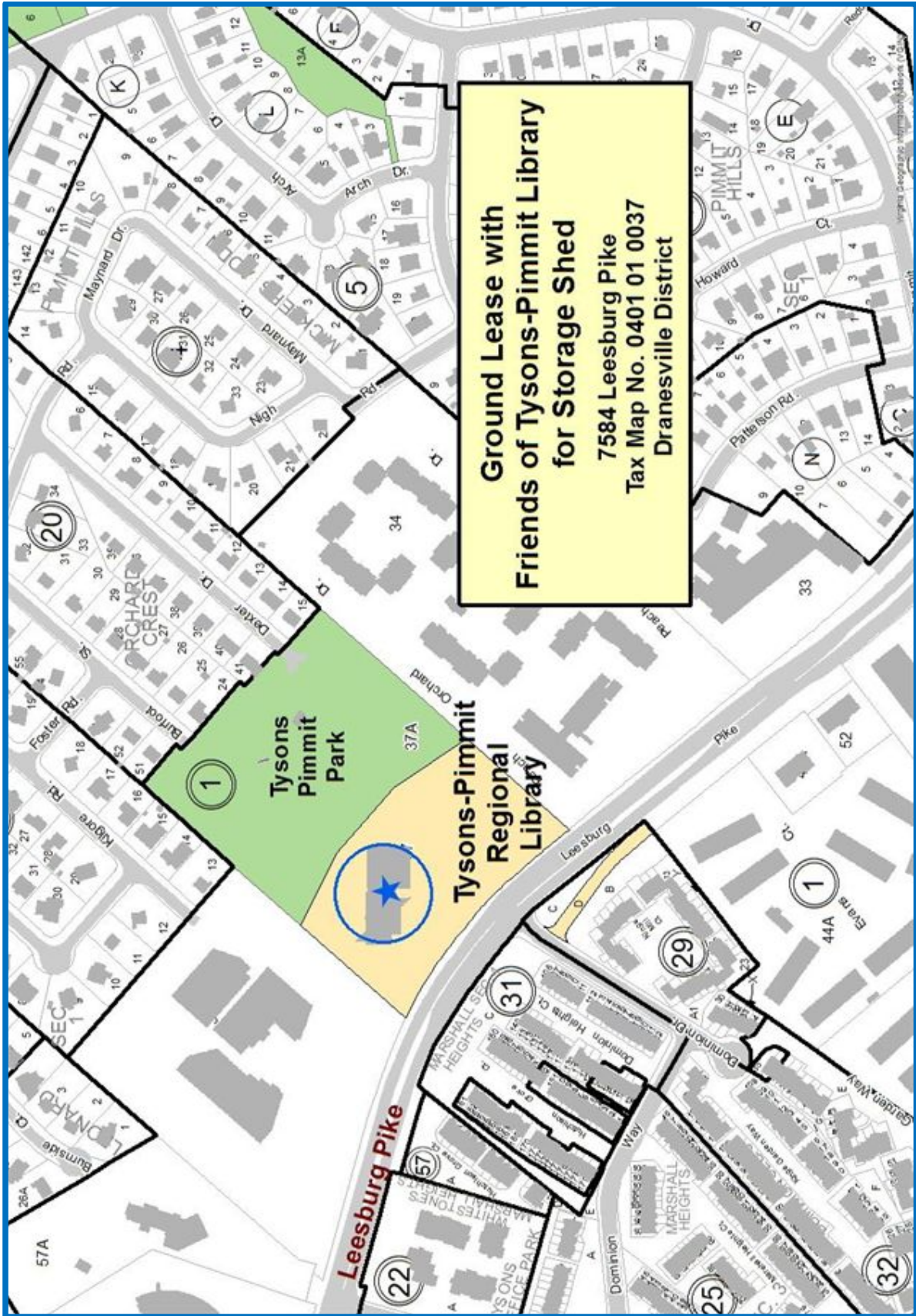
Joseph M. Mondoro, Chief Financial Officer

José A. Comayagua, Jr., Director, Facilities Management Department

Mike Lambert, Assistant Director, Facilities Management Department

ASSIGNED COUNSEL:

Daniel Robinson, Assistant County Attorney





COUNTY OF FAIRFAX

LEASE

COUNTY OF FAIRFAX

LEASE AGREEMENT

THIS LEASE, dated as of _____ 2018 is between the **BOARD OF SUPERVISORS FOR FAIRFAX COUNTY, VIRGINIA**, a body corporate and politic of the Commonwealth of Virginia (the "Landlord" or the "County"), with an address of 12000 Government Center Parkway, Fairfax, Virginia 22035, and **FRIENDS OF THE TYSONS-PIMMIT LIBRARY**, a Virginia non-profit corporation ("Tenant") with an address of 7584 Leesburg Pike, Falls Church, Virginia, and the parties mutually agree as follows:

RECITALS

R-1. Landlord is the owner of one (1) certain parcel of land being and situated in the County of Fairfax, Virginia consisting of approximately 5 acres, with an address of 7584 Leesburg Pike, Falls Church, and which is designated as Tax Parcel Number 0401 01 0037 (the "Library Property"). The Tysons Pimmit Regional Library ("Library") is located on the Library Property.

R-2 Tenant is a non-profit organization that supports the mission of the Library by supporting literacy and children's programs, and other initiatives to promote the use of the Library by County residents.

R-3. Tenant would like to construct at its own expense an approximately 199 square foot shed ("Building") on the Leased Property (defined below) for the storage of books and related materials (the "Use").

SECTION 1. GRANT

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, in consideration of the performance of the covenants and agreement herein mentioned, approximately 199 square feet of the Library Property in the area marked "Area of Work" on Exhibit A (the "Leased Property"), which Exhibit A is attached hereto and incorporated herein.

SECTION 2. TERM

(a) This Agreement shall commence as of the date of execution of this Agreement ("Commencement Date"). Subject to the terms and conditions set forth herein, the term of this Lease shall expire on the earlier to occur of (i) the day before the fiftieth (50th) anniversary of the Commencement Date or (ii) the date on which the Library Property is no

longer used for library purposes (the "Term"), unless terminated earlier according to the terms of this Agreement.

(b) At the expiration of the tenancy hereby created, Tenant shall surrender the Leased Property in the same condition as the Leased Property was upon the commencement of the original term of this Lease, normal wear and tear and casualty excepted and further except as provided in **Section 14** of this Lease.

SECTION 3. APPROVAL FOR ZONING AND PERMITS

It is understood and agreed by the parties that Tenant's ability to use the Leased Property is contingent upon its obtaining, after execution of this Lease, all of the certificates, permits, licenses and other approvals ("Approvals") that may be required by any governmental authorities which will permit Tenant to use the Leased Property as set forth in such Approvals. Tenant, at its own expense, shall promptly file and diligently pursue obtaining all required certificates, permits and approvals. Tenant shall be responsible for obtaining zoning approvals for the Leased Property and the Use stated in this Lease. This provision shall not affect Landlord in its regulatory or legislative functions.

Landlord (at no cost or expense to it) will cooperate with Tenant in its effort to obtain any such Approvals. In the event any such Approvals should be finally rejected or any certificate, permit, license or approval issued to Tenant is canceled, expires or lapses, or is otherwise withdrawn or terminated by and authorized governmental authority so that Tenant will be unable to use the Leased Property for the purposes set forth herein, Tenant shall have the right to terminate this Lease at any time by giving at least sixty (60) days written notice to Landlord, and the parties shall have no further obligations or liabilities with respect to this Lease; except, however, Tenant shall, prior to the date of termination, restore the Leased Property that has been damaged by Tenant's tests and investigations to the condition existing prior to any test, reasonable wear and tear excepted.

SECTION 4. FEASIBILITY

Upon execution of this Lease, Tenant and Tenant's agents will have access to the Leased Property for purposes of performing surveys, tests, investigations or inspections related to the Leased Property or Tenant's intended Use thereof.

Tenant will require any contractors that provide surveys, tests, investigations, or inspections related to the Leased Property to agree to indemnify and hold Landlord harmless for all claims for costs, losses and damages caused by such contractors in providing services while on the Library Property, the Leased Property or both. In addition, such contractors will agree (i) to give reasonable advance notice via email or telephone to the Library Facilities Coordinator (defined below) of the date(s) and time(s) of any on-site activities to Tenant and Library, (ii) to not interfere with the Library's operations, and (iii) to promptly, at their sole cost and expense, restore the property to the condition that existed immediately prior to commencing any work

and to promptly remove their equipment. The Library Facilities Coordinator is Kevin Brooks (contact information: Kevin.Brooks2@fairfaxcounty.gov or 703-324-8316).

SECTION 5. INTENTIONALLY DELETED

SECTION 6. UTILITIES

Landlord agrees to provide electricity to the Building for the Tenant's Use. Landlord shall not be required to provide any other utilities to the Building, including but not limited to heating and air conditioning, water, gas, telephone or internet connectivity. The Landlord shall not be liable for failure to furnish electricity when such failure is caused by conditions beyond the control of the Landlord. Tenant shall not connect any additional fixtures, appliances or equipment to the electrical system(s) of the Building or make any alterations of these system(s) without the Landlord's prior written approval.

SECTION 7. BUILDING

Tenant will construct at its sole expense the Building on the Leased Property. The design and construction of the Building will be referred to in this Lease as the "Project". During the course of the Project, Tenant shall comply with the project management provisions set forth in Exhibit B of this Lease, which is attached and incorporated herein by reference. Landlord shall have no liability or obligation to make any alterations or improvements of, on or about the Leased Property; provided, however, that before the beginning of construction of the Project, Landlord at its own expense shall reconfigure the walkway step to enable single-level access from the Library to the Building. Upon the issuance of a non-residential use or equivalent permit for the Building ("Non-RUP"), the Landlord shall become owner of the Building and all appurtenances thereto.

SECTION 8. MAINTENANCE OF THE LEASED PROPERTY

- (a) Tenant Maintenance. Tenant, at its sole cost and expense, shall maintain the interior of the Leased Property, and once constructed the interior of the Building, in a clean and orderly condition, free of debris, dirt, rubbish and trash, and free of any violation of any laws or ordinances. Tenant shall be responsible for replacing the interior lightbulbs of the Building.
- (b) Landlord Maintenance. Landlord will provide exterior maintenance to the Building, including repair and upkeep of the roof, walls and security hardware and the removal of all graffiti, unless the maintenance is required due to the negligence or willful misconduct of Tenant or Tenant's agents or volunteers. Landlord will be responsible for snow and ice removal in the parking lot and sidewalks.

SECTION 9. LANDLORD'S LIABILITY

The Landlord shall not be responsible for (1) any damage to, or loss of the personal property of Tenant, or Tenant's employees, agents, business invitees, licensees, customers, clients, family members, or guests, arising from any act of any persons, or for the interruption or loss of Tenant's business arising from any of the above described acts or causes; or (2) any personal injury to Tenant, its employees, agents, business invitees, licensees, customers, clients, family members, or guests, arising from any combination of the use, occupancy or condition of the Leased Property.

SECTION 10. USE

Landlord leases to Tenant the Leased Property, together with the right to use the Leased Property without obstructing access to the Library Property. Tenant shall use the Leased Property for the Use and for any such other uses as are incidental to the Use. Tenant may use the Leased Property for any other lawful purpose with the prior written consent of the Landlord, which consent may be withheld by Landlord in its absolute discretion.

SECTION 11. PARKING

In addition to the Use (pursuant to **Section 10**), Tenant shall be entitled to the nonexclusive use, at no charge, of the parking lot located at the Library Property for the purpose of parking vehicles necessary for the Tenant. One (1) parking space next to the Leased Property shall be reserved for Tenant's exclusive use.

SECTION 12. COMPLIANCE WITH LAWS

The Tenant will not use or occupy said Leased Property for any unlawful purpose and will obey all present and future laws, ordinances, regulations, and orders of the United States of America or the Commonwealth of Virginia, County of Fairfax, or any agency thereof, relating to the Leased Property.

SECTION 13. LIENS

Landlord shall have no liability for costs and charges for work done by Tenant or caused to be done by Tenant in or to the Leased Property, or for materials furnished for or in connection with the Building or such work. Tenant shall promptly pay for all work, labor, services or material supplied by or on behalf of Tenant at the Leased Property or in connection with the Building, the Project or both. Tenant shall not cause any mechanic's lien or liens to be filed against the Leased Property or the Building for work done or materials furnished to Tenant. Landlord shall have the right to post notices of "Non-Responsibility" or similar notices on the Leased Property to protect the Leased Property against any such liens. If any mechanics' or materialmen's liens shall be filed affecting the Library Property relating to the Building or the Project, Tenant shall cause the same to be released of record by payment, bond, court order or otherwise, within thirty (30) days after notice of filing thereof. Upon the completion of the construction of the Building, Tenant shall

obtain and provide to Landlord lien waivers from all contractors and subcontractors which provided services or materials in connection with the construction or modification of the Building.

SECTION 14. TITLE TO IMPROVEMENTS

At the issuance of the Non-RUP, all improvements erected upon the Leased Premises by Tenant, including the Building, shall remain the property of the Landlord at the termination of the Lease. All books shall remain the property of Tenant, and shall be removed from the Leased Premises within 30 days after termination of the Lease, unless other arrangements are agreed to in writing. On the 31st day after the termination of the Lease, or at such other time mutually agreed to by the parties hereto, a representative of each of the Landlord and Tenant shall conduct a walk-through of the Leased Premises to ensure that all materials have been removed from the Building and the Leased Premises, and that the Building has been left in good condition, except for normal wear and tear. In the event Tenant elects to leave its books and related materials on the Leased Property, such materials shall become the property of the Landlord (at no cost or expense to it) upon termination of this Lease.

SECTION 15. INSURANCE AND CONTRACTORS

Tenant will engage the services of qualified contractors licensed in the Commonwealth of Virginia to complete the Project. The contractors will be required to obtain all permits and approvals and carry Commercial Automobile and General Liability insurance in the amount of \$1,000,000 per occurrence.

Landlord shall have no obligation to insure the Building or any of its contents.

SECTION 16. ENVIRONMENTAL

Tenant agrees that, during the Term of this Lease, the Leased Property shall remain free of Hazardous Substances introduced by or on behalf of Tenant except in minor amounts as allowed in compliance with all applicable federal, state and local laws, regulations and ordinances ("**Environmental Laws**") as of the date hereof.

As used herein, "Hazardous Substance" means any substance which is toxic, ignitable, reactive, or corrosive and which is regulated by a local government, the Commonwealth of Virginia or the United States Government. "Hazardous Substance" includes, without limitation, any and all material or substances which are defined as "hazardous waste: "extremely hazardous waste" or a "hazardous substance", or "medical" or "biomedical" waste, pursuant to Environmental Laws. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls (PCB's) and petroleum.

SECTION 17. ASSIGNMENT

Neither Tenant, nor its successors or assigns, shall transfer, assign, mortgage or encumber this Lease, or sublet all or any portion of the Leased Property, or permit all or any portion of the

Leased Property to be used by others without the prior written consent of Landlord in each instance.

SECTION 18. DAMAGE BY FIRE OR OTHER CASUALTY

This Lease is made on condition that, if the Building on the Leased Property, or any part thereof, or the approaches thereto, be destroyed or damaged by fire or other unavoidable casualty, Tenant shall have the right, to cancel and terminate this Lease, by giving to the Landlord written notice of its desire so to cancel and terminate within thirty (30) days after such damage or destruction. If Tenant elects to rebuild the improvements at its sole expense, Tenant shall notify Landlord in writing, within thirty (30) days after such damage or destruction, the date of which the Leased Premises can be fully restored with reasonable diligence and shall diligently pursue re-construction of the improvements. The Lease shall remain in full force and effect during the period of re-construction and Tenant shall reoccupy the Lease Policy when fully restored. If Tenant is not diligently pursuing reconstruction of the improvements, as determined by Landlord in its reasonable discretion, then Landlord shall have the right to terminate the Lease with thirty (30) days' written notice to Tenant.

Landlord shall have no obligation to repair or restore the Building in the event of a casualty.

Despite the foregoing provisions, the parties hereto may make such other agreements as they wish in the event of the damages or destruction of the Leased Property.

SECTION 19. CONDEMNATION

Tenant agrees that if the Leased Property, or any part thereof, shall be taken or condemned for public or quasi-public use or purpose by any competent authority, Tenant shall have no right to any portion of the amount that may be awarded as damages or paid as a result of any such condemnation. The remaining rights of the Tenant to damages therefore, if any, are hereby assigned by the Tenant to the Landlord. And upon such condemnation or taking, at Tenant's option the term of this Lease shall cease and terminate from the date of such governmental taking or condemnation, provided it renders all or a portion of the Leased Property unsuitable by Tenant, and the Tenant shall have no claim against the Landlord for the value of any unexpired term of this Lease.

SECTION 20. DEFAULTS AND REMEDIES

Except as provided herein, if either party fails to perform or observe any covenants, terms or conditions in this Lease within thirty (30) days after written notice thereof from the non-defaulting party, then in addition to its remedies under this Lease, such non-defaulting party shall have all available rights and remedies at law and equity. The failure of one party to the action in case of a breach of the Lease or to enforce its rights hereunder shall not be deemed a waiver of any breach of this Lease. In the absence of written notice or consent, any such breach shall be a continuing one. This section however shall not be construed as a waiver of any defenses that one party may assert against the other under the Lease.

SECTION 21. AUTHORITY TO CONTRACT

Tenant covenants, as a corporation acting by resolve of its Board of Directors, that it has a right to make this Lease for the term aforesaid.

SECTION 22. NO PARTNERSHIP

Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Landlord and Tenant, or to create any other relationship between the parties hereto other than that of Landlord and Tenant.

SECTION 23. SUCCESSORS AND ASSIGNS

Subject to the provisions hereof, this Lease shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

SECTION 24. ACCESS BY LANDLORD

Landlord may upon prior notice to Tenant, enter upon the Leased Property, or any portion thereof, for the purpose of inspection of the same, or performing any repairs herein allowed to be performed by Landlord. Landlord's right to enter the Leased Property shall be immediate in the event of an emergency.

SECTION 25. APPLICABLE LAW

Landlord and Tenant agree to be bound by the Laws of the Commonwealth of Virginia in any proceeding, whether in law or in equity, with respect to any dispute arising under this Lease. The only proper jurisdiction and venue for any lawsuit arising out of or relating to this Agreement shall be the Circuit Court of Fairfax County or the United States District Court for the Eastern District of Virginia.

SECTION 26. PAYMENTS BY TENANT

There may be instances where the Tenant would need to provide payments to the Landlord related to damages to Library Property that originated at the Building. Any payments required to be made by Tenant to Landlord hereunder shall be paid to Landlord at the address for the Facilities Management Department set forth in **Section 36** or other such address as Landlord shall notify Tenant in writing.

SECTION 27. HOLDING OVER

If Tenant shall not immediately surrender the Leased Property on the date of expiration of the term hereof, Tenant shall, by virtue of the provisions hereof become a Tenant on a month to month basis. Tenant, as a monthly Tenant, shall be subject to all of the conditions and covenants of this Lease as though the same had originally been a monthly tenancy. Tenant shall give to

Landlord at least thirty (30) days' written notice of any intention to quit the Leased Property, and Tenant shall be entitled to thirty (30) days' written notice from the Landlord to quit the Leased Property.

SECTION 28. SIGNAGE

(a) Landlord grants the right to the Tenant to install a single sign on the grounds, as permitted by zoning, to designate the Tenant's use of the site. Control of the scope, size, location, color and other aspects of said sign shall be at the sole discretion of the Landlord. The design for the single sign shall first be submitted to the Landlord for approval.

(b) It is fully understood and agreed that Tenant's right to maintain said sign shall not be interfered with by the Landlord or anyone claiming by or through Landlord, its agents, employees, successors or assigns during the entire term of this Lease or any extensions or renewals thereof.

SECTION 29. BROKERAGE

Landlord and Tenant each represent to the other that they had no dealings with any real estate broker, finder or other party, with respect to this Lease

SECTION 30. TIME OF ESSENCE

Time is of the essence with respect to the performance of each of the covenants and agreements under this Lease.

SECTION 31. AGREEMENT AND COVENANT

Every term, condition, agreement or provision contained in this Lease that imposes any obligation on Tenant or Landlord shall be deemed to be also a covenant by Tenant or Landlord.

SECTION 32. APPROPRIATION CLAUSE

To the extent there are any financial obligations of Landlord under this Lease, all of Landlord's financial obligations under this Lease are subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. In the event funds are not appropriated at the beginning of any fiscal year for the leasing of the Leased Property, then this Lease shall terminate on the last day of the fiscal year for which appropriations were received. Landlord shall furnish Tenant with written notice that funds were not appropriated by the Board of Supervisors at least sixty (60) days prior to the beginning of the fiscal year involved. In the event funds for the leasing of the Leased Property are not appropriated, Tenant shall vacate the Leased Property prior to the beginning of the next County of Fairfax fiscal year.

It is agreed by both Landlord and Tenant that this clause shall supersede any and all financial obligations imposed by any other provision of this Lease. No subsequent amendment or

addendum of this Lease shall compromise the full legal implication of this section between the parties hereto or their respective successors or assigns.

SECTION 33. SEVERABILITY

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

SECTION 34. GENDER AND PLURALITY

Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural shall be substituted for the singular number, in any place or places herein in which the context may require such substitution or substitutions.

SECTION 35. QUIET ENJOYMENT

As long as Tenant observes and performs the terms, covenants, and conditions under the Lease, the Tenant will peacefully, quietly occupy, and enjoy the full possession of the Leased Property without molestation or hindrance by the Landlord or any other party claiming by, through, or under the Landlord.

SECTION 36. NOTICES

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

If to the Landlord: Facilities Management Department
 Attention: Leasing Manager
 12000 Government Center Parkway, Suite 424
 Fairfax, VA 22035-0011

With a copy to: Fairfax County Public Library
 Attention: Director
 12000 Government Center Parkway, Suite 324
 Fairfax, VA 22035-0011

If to Tenant: Friends of Tysons-Pimmit Library
 7548 Leesburg Pike
 Falls Church, VA 22043

Either party may, by like written notice, designate a new address to which such notices shall be directed.

SECTION 37. ENTIRE AGREEMENT

This Lease, together with the EXHIBIT(S) attached hereto and referenced herein, contains the entire and only agreement between the parties. No oral statements or representations or prior written matter not contained or referred to in this Lease shall have any force or effect. This Lease shall not be modified in any way except by a writing executed by both parties hereto. No waiver of any provisions of this Lease shall be deemed to have been made, unless in writing and signed by both parties hereto. All the terms, conditions, covenants and agreements contained in this Lease shall survive any termination or expiration of this Lease.

IN WITNESS WHEREOF the parties hereto have affixed their signatures as of the date first above written.

LANDLORD:

BOARD OF SUPERVISORS FOR FAIRFAX COUNTY, VIRGINIA

By: _____
Joseph M. Mondoro
Chief Financial Officer

TENANT:

FRIENDS OF TYSONS PIMMIT LIBRARY

By: _____

Name: _____

Its: _____

EXHIBIT A

VICINITY MAP



KEY PLAN

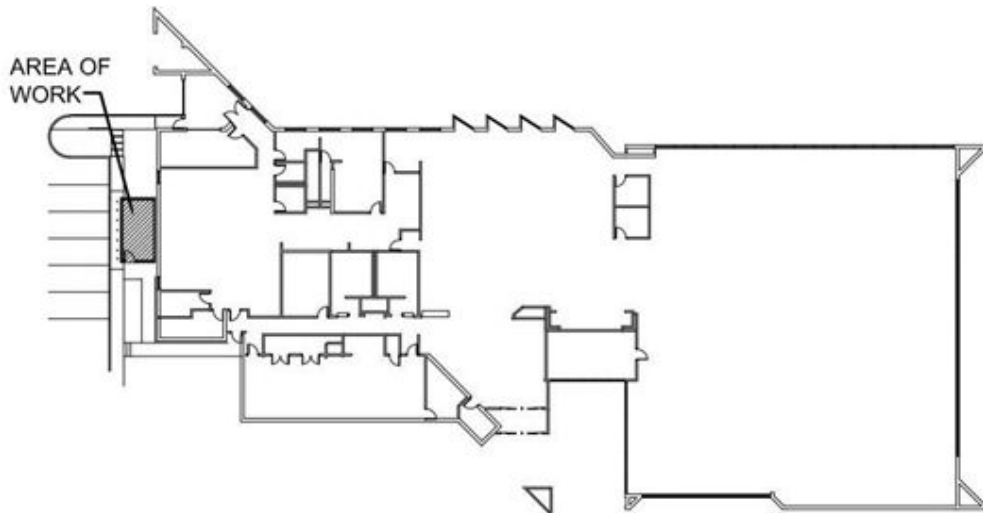


EXHIBIT B

Project Management

Section 1. Preconstruction.

- (A) Budget. Tenant shall deliver to the Landlord a detailed budget ("Budget") for the Project reflecting detailed line items for the projection of the total project cost, plus adequate contingencies and allowances. The Landlord shall have the right to make any modifications to the Budget that it deems reasonable for purposes of assuring that the Project will be completed timely and be consistent with the quality generally required by the Landlord on construction projects. Tenant will make all modifications to the Budget based on the reasonable recommendations of the Landlord.
- (B) Schedule. Tenant will provide the Landlord with an overall schedule for the Project, including the breakdown of individual Project components such as design, permitting, construction, and start of operations.
- (C) General Contractor. Landlord shall have the right to approve in writing, exercising its reasonable discretion, the general contractor selected by Tenant.
- (D) Construction Contract and other Contract Documents. Prior to commencement of the Work, Tenant must deliver to the Landlord a final construction contract with all construction documents attached that has been reviewed and approved by the Landlord, which construction contract will have a fixed lump sum price consistent with the Budget ("Construction Contract"). The Construction Contract will contain general conditions approved by the Landlord as well as other reasonable terms and conditions as may be requested by the Landlord, including a provision for adequate retainage which will not be released without the prior consent of the Landlord. Tenant shall not permit any modifications to the Construction Contract or Budget with respect thereto, without the prior written consent of Landlord, which consent may be granted or withheld in the Landlord's sole but reasonable discretion. The construction documents will clearly indicate the site utility coordination.
- (E) Design Documents. Following approval of the Budget by the Landlord, but prior to entering into the Construction Contract, Tenant shall demonstrate to the satisfaction of the Landlord that Tenant has in place all necessary funding to proceed with the Construction Contract and the completion of the Project, including sufficient sums to cover contingencies for possible change orders and delays in the work. All the funds must be in an insured account with a financial institution reasonably acceptable to the Landlord.

Section 2. Construction Phase.

- (A) Meetings. The Landlord will be given the opportunity to meet on a regular, at least biweekly, basis commencing upon issuance of the building permit and continuing until the Project is complete, providing the Landlord with the right to review all construction activity, the status of the Project, invoicing and other matters related thereto. The Landlord will have the right to participate in all meetings, including pre-construction meetings, special inspection meetings and shall receive copies of all construction correspondence, including, but not limited to, regulatory inspection reports, construction photographs, non-residential use permits, occupancy permits, testing and quality control reports.
- (B) Application for Payments. Tenant will not make any payments under the Construction Contract or other contract documents without the prior written approval of the Landlord. Tenant will give the Landlord at least five business day's advance notice of any payment request on a form that is acceptable to the Landlord with such certifications as the Landlord may reasonably require, which request will be accompanied by all appropriate backup documentation as may be reasonably required by the Landlord.
- (C) Design Modifications. Tenant will provide the Landlord with written notice of any proposed design revisions, proposed change orders, and any requests for information or submittals from the general contractor. The Landlord will have five business days following receipt of any of the foregoing to respond to Tenant, either approving, approving in part, or disapproving such design revision or other information or response. If the Landlord does not respond within the five-day period, the applicable revisions or response shall be deemed rejected. The Landlord will use reasonable efforts to respond promptly. Tenant will implement all approved design revisions or responses. In no event will Tenant agree to any change orders without the prior consent of the Landlord.
- (D) Fairfax County Regulatory Rights. The Landlord in its regulatory capacity is in no manner limited from carrying out its regulatory responsibilities, including, but not limited to, code enforcement, site and building inspections, or any other activities provided for in all codes observed and enforced by the County.

Section 3. Substantial Completion/Punch List.

Tenant will send a notice by email with at least a two-week advance notice to the Landlord to invite the Landlord to participate in the inspections for completion of the Project and to reasonably determine whether or not substantial completion has been achieved under the Construction Contract. Tenant will compile a punch list in collaboration with the Landlord that will be provided to the general contractor as a condition of reaching substantial completion of the Project. The Landlord will be regularly consulted to evaluate the progress of the general

contractor in completing the punch list items and ultimately Tenant will not agree with the general contractor that substantial completion has been achieved until Tenant receives written notice thereof from the Landlord. The retainage will not be released to the general contractor until all punch list items have been completed and the Landlord has given written approval for the release of retainage.

Board Agenda Item
July 30, 2019

4:30 p.m.

Public Hearing on SE 2019-HM-005 (Madhuri Peddi) to Permit a Home Childcare Facility, Located on Approximately 1,650 Square Feet of Land Zoned PDH-8 (Hunter Mill District)

This property is located at 2472 Silk Ct., Herndon, 20171. Tax Map 25-1 ((28)) 11.

PLANNING COMMISSION RECOMMENDATION:

On June 19, 2019, the Planning Commission voted 8-0 (Commissioners Clarke, Niedzielski-Eichner, Strandlie and Cortina were absent from the meeting) to recommend to the Board of Supervisors approval of SE 2019-HM-005, subject to the development conditions dated June 19, 2019, as amended.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)
Jay Rodenbeck, Planner, DPD

Board Agenda Item
July 30, 2019

4:30 p.m.

Public Hearing to Consider Adopting an Ordinance Expanding the Oakton Residential Permit Parking District, District 19 (Providence District)

ISSUE:

Public Hearing to consider a proposed amendment to Appendix G, of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to expand the Oakton Residential Permit Parking District (RPPD), District 19.

RECOMMENDATION:

The County Executive recommends that the Board adopt an amendment (Attachment I) to Appendix G, of the Fairfax County Code, to expand the Oakton RPPD, District 19.

TIMING:

On June 25, 2019, the Board authorized a Public Hearing to consider the proposed amendment to Appendix G, of the Fairfax County Code, to take place on July 30, 2019, at 4:30 p.m.

BACKGROUND:

Section 82-5A-4(a) of *The Code of the County of Fairfax, Virginia*, authorizes the Board to establish RPPD restrictions encompassing an area within 2,000 feet walking distance from the pedestrian entrances and/or 1,000 feet from the property boundaries of an existing or proposed high school, existing or proposed rail station, or existing Virginia college or university campus if: (1) the Board receives a petition requesting the establishment or expansion of such a District, (2) such petition contains signatures representing at least 60 percent of the eligible addresses of the proposed District and representing more than 50 percent of the eligible addresses on each block face of the proposed District, and (3) the Board determines that 75 percent of the land abutting each block within the proposed District is developed residential. In addition, an application fee of \$10 per address is required for the establishment or expansion of an RPPD.

Staff has verified that the petitioning blocks are within 2,000 feet walking distance from the pedestrian entrances and/or 1,000 feet from the property boundaries of Oakton High School, and all other requirements to expand the RPPD have been met.

Board Agenda Item
July 30, 2019

FISCAL IMPACT:

The cost of sign installation is estimated to be \$950. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

Attachment I: Proposed Amendment to the Fairfax County Code

Attachment II: Map Depicting Proposed Limits of RPPD Expansion

STAFF:

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

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

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Henri Stein McCartney, Sr. Transportation Planner, FCDOT

Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Cherie L. Halyard, Assistant County Attorney

Proposed Amendment

Amend *The Code of the County of Fairfax, Virginia*, by adding the following streets in Appendix G-19, Section (b), (2), Oakton Residential Permit Parking District, in accordance with Article 5A of Chapter 82:

Edgelea Road (Route 783):

From Oleander Avenue to Brightlea Drive, east side

From Courthouse Woods Court to the southern property boundary of
2840 Edgelea Road, west side

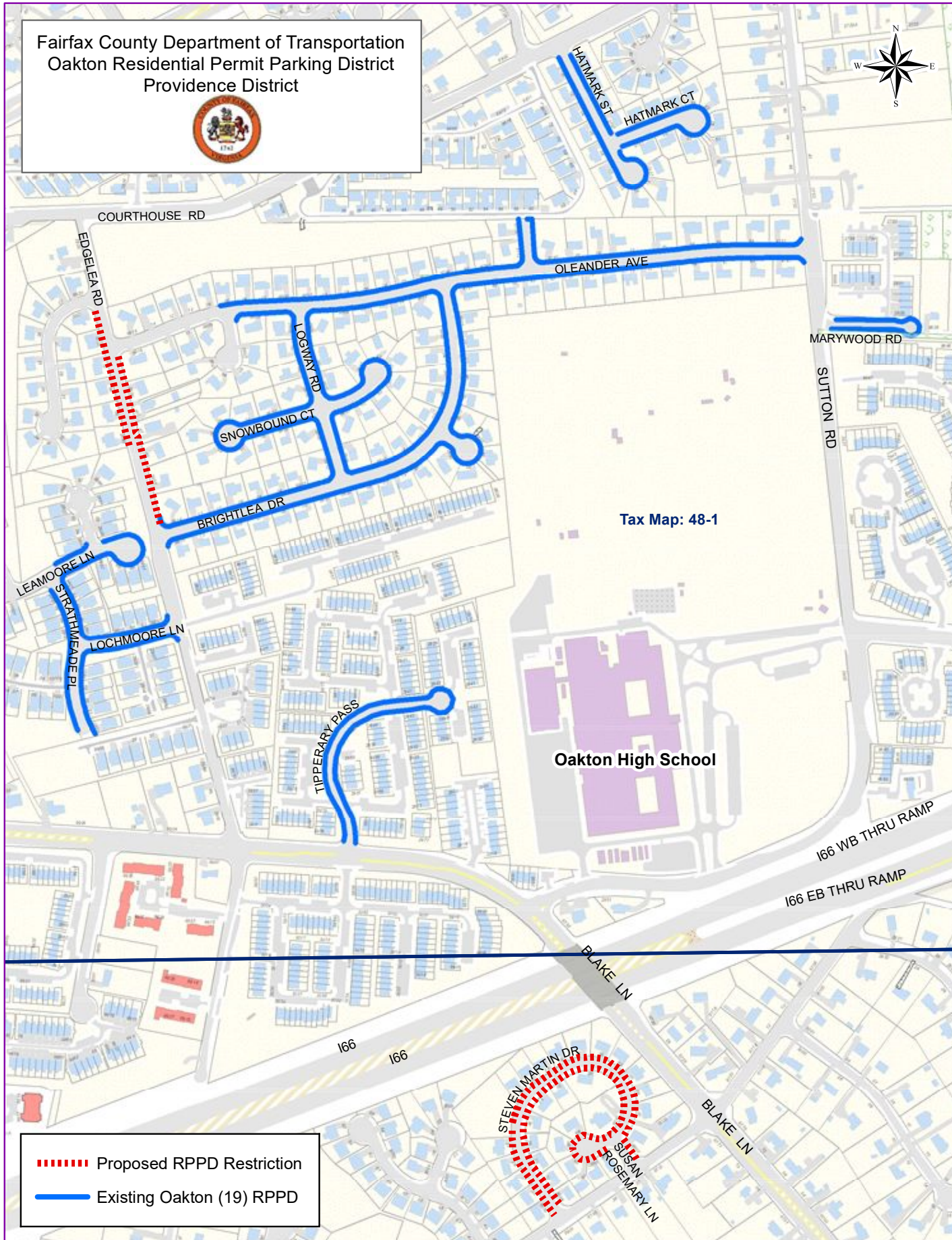
Steven Martin Drive (Route 7761):

From Five Oaks Road to the cul-de-sac inclusive

Susan Rosemary Lane (Route 7760):

From Five Oaks Road to Steven Martin Drive, east side

Fairfax County Department of Transportation
Oakton Residential Permit Parking District
Providence District



4:30 p.m.

Public Hearing on Proposed Changes to Chapter 61 (Building Provisions); Chapter 101 (Subdivision Provisions); Chapter 108.1 (Noise Ordinance); Chapter 109.1 (Solid Waste Management); Chapter 114 (Agricultural and Forestal Districts of Statewide Significance); and Chapter 115 (Local Agricultural and Forestal Districts) of *The Code of the County of Fairfax*

ISSUE:

The proposed amendment will change the department name from “Department of Planning and Zoning” or the “Office of Comprehensive Planning” to “Department of Planning and Development” in several chapters of *The Code of the County of Fairfax* (the Code). No other changes are proposed as part of this amendment.

PLANNING COMMISSION RECOMMENDATION:

Pursuant to the applicable provisions of the Code of Fairfax, the Planning Commission is required to review changes to Chapter 101, Subdivision Provisions, and Chapter 115, Local Agricultural and Forestal Districts. As such, the Planning Commission conducted a public hearing on July 25, 2019, at which time they voted 9-0 (Commissioners Tanner and Ulfelder were absent from the meeting and Commissioner Carter was not present for the vote) to recommended that the Board of Supervisors adopt the proposed changes as advertised and set forth in the Staff Report dated June 25, 2019.

RECOMMENDATION:

Staff continues to support the adoption of the proposed amendment except for the proposed changes to Sect. 61-2-2 as this section is a historical reference and does not need to be changed. The County Executive supports staff’s recommendation.

TIMING:

Board of Supervisors’ authorization to advertise - June 25, 2019; Planning Commission public hearing on July 25, 2019; Board of Supervisors’ public hearing on July 30, 2019 at 4:30 p.m.

BACKGROUND:

Effective July 1, 2019, the Department of Planning and Zoning (DPZ) will be merged with the Office of Community Revitalization (OCR) and the new department will be

named the Department of Planning and Development (DPD). A related Zoning Ordinance Amendment is scheduled to be adopted by the Board on the afternoon of June 25, 2019 to facilitate the agency name change throughout the Zoning Ordinance, also known as Chapter 112 of the Code. The changes proposed in this staff report will facilitate the agency name change in the other affected chapters of the Code.

REGULATORY IMPACT:

The proposed amendment will result in the name change from the “Department of Planning and Zoning” or the “Office of Comprehensive Planning” to the “Department of Planning and Development” (including the associated acronyms) throughout *The Code of the County of Fairfax*.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – The staff report is available online at:

<https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/zoning%20ordinance/proposed%20amendments/proposedchangestochapter61.pdf>

Attachment 2 – The Planning Commission verbatim excerpt, dated July 25, 2019, is available online at:

<https://www.fairfaxcounty.gov/planningcommission/sites/planningcommission/files/assets/documents/pdf/2019%20verbatim/verbatim072519codeamendments.pdf>

STAFF:

Rachel Flynn, Deputy County Executive
Barbara A. Byron, Director, Department of Planning and Development (DPD)
Leslie B. Johnson, Zoning Administrator, DPD
Donna Pesto, Deputy Zoning Administrator, DPD
Sara Morgan, Senior Planner, DPD

ASSIGNED COUNSEL:

Christopher Sigler, Assistant County Attorney

4:30 p.m.

Public Hearing on SE 2019-MA-003 (BENEVIS, LLC) to Permit an Increase of Office Gross Floor Area in the C-5 District, Parking in an R District, Waiver of Open Space, Modification of Minimum Yard Requirements for Certain Existing Structure and Uses and Certain Sign Regulations, Located on Approximately 1.47 Acres of Land Zoned C-5, R-3 and HC (Mason District)

This property is located at 6531 Arlington Blvd., Falls Church, 22042. Tax Map 50-4 ((1)) 20.

PLANNING COMMISSION RECOMMENDATION:

On July 25, 2019, the Planning Commission voted 10-0 (Commissioners Tanner and Ulfelder were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of SE 2019-MA-003, subject to the development conditions dated July 24, 2019;
- Waiver of Par. 1 of Sect. 13-202 of the Zoning Ordinance for the interior parking lot landscaping requirement in favor of the existing conditions, as shown on the SE Plat;
- Waiver of Sect. 13-203 of the Zoning Ordinance for the peripheral parking lot landscaping along the eastern, western and northern boundaries in favor of the existing conditions, as shown on the SE Plat;
- Waiver of Par. 4 of Sect. 17-201 of the Zoning Ordinance for the construction of frontage requirements along South Street in favor of the existing conditions;
- Modification of Par. 2 of Sect. 17-201 of the Zoning Ordinance for the installation of a major paved trail along Arlington Boulevard;
- Modification of Sect. 11-203 of the Zoning Ordinance for the number of loading spaces, as shown on the SE Plat; and
- Modification of Sect. 13-305 of the Zoning Ordinance for the transitional screening requirement along the southern boundary in favor of the existing conditions, as shown on the SE Plat.

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REVISED

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)
Zachary Fountain, Planner, DPD

4:30 p.m.

Public Hearing on RZ 2017-BR-030 (Roberts Road Investment LC) to Rezone from R-1 to PDH-5 to Permit Residential Development with an Overall Density of 4.27 Dwelling Units Per Acre and Approval of the Conceptual Development Plan, Located on Approximately 9.57 Acres of Land (Braddock District)

This property is located on the N. side of Braddock Road and E. side of Roberts Road. Tax Map 68-2 ((1)) 21, 22, 23, 24 and 25.

PLANNING COMMISSION RECOMMENDATION:

On July 25, 2019, the Planning Commission voted 8-0-2 (Commissioners Cortina and Niedzielski-Eichner abstained from the vote. Commissioners Tanner and Ulfelder were absent from the meeting.) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2017-BR-030 and the associated Conceptual Development Plan, subject to the execution of proffered conditions consistent with those dated July 23, 2019; and
- Modification of the private street limitations of Section 11-302 of the Zoning Ordinance in favor of the private streets shown on the CDP/FDP.

In a related action, the Planning Commission voted 8-0-2 (Commissioners Cortina and Niedzielski-Eichner abstained from the vote. Commissioners Tanner and Ulfelder were absent from the meeting.) to approve FDP 2017-BR-030, subject to the Board of Supervisors' approval of the concurrent rezoning application.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)
William O'Donnell, Planner, DPD

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5:00 p.m.

Public Hearing on RZ 2018-PR-011 (Crown Tysons Properties LLC) to Rezone from I-4 and HC to C-7 and HC to Permit a Vehicle Sale, Rental and Ancillary Service Establishment with an Overall Floor Area Ratio of 0.80, Located on Approximately 3.6 Acres of Land (Providence District) (Concurrent with SEA 78-D-075-03)

and

Public Hearing on SEA 78-D-075-03 (Crown Tysons Properties LLC) to Amend SE 78-D-075 Previously Approved for a Vehicle Sale, Rental and Ancillary Service Establishment to Add Land Area, Modify Development Conditions and Permit Site and Building Modifications, Located on Approximately 12.31 Acres of Land Zoned C-7 and HC (Providence District) (Concurrent with RZ 2018-PR-011)

This property is located on the N. side of Leesburg Pk., E of the interchange with the Dulles Airport Access and Toll Rd. Tax Map 29-1 ((1)) 17A.

This property is located at 8600 Leesburg Pike, McLean, 22101 and 8602 and 8610 Leesburg Pike, Vienna 22182. Tax Map 29-1 ((1)) 15, 16 and 17A.

PLANNING COMMISSION RECOMMENDATION:

On June 20, 2019, the Planning Commission voted 7-0 (Commissioners Clarke, Cortina, Niedzielski-Eichner, Sargeant, and Strandlie were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2018-PR-011, subject to the execution of proffered conditions consistent with those dated June 4, 2019;
- Approval of SEA 78-D-075-03, subject to the development conditions dated June 5, 2019;
- Modification to the Comprehensive Plan trail requirement along Leesburg Pike in favor of the existing 16-foot wide concrete trail;
- Modification of the peripheral parking lot landscaping requirements to that shown on the GDP/SEA Plat;

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- Modification of transitional screening requirements and a waiver of the barrier requirement along the northeastern property line to that shown on the GDP/SEA Plat;
- Waiver of the peripheral parking lot landscaping along the southern property line; and
- Modification of the total minimum loading requirement for both dealerships during Phase II from 7 spaces required to 6 spaces as shown on the GDP/SEA Plat.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)
Daniel Creed, Planner, DPD

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5:00 p.m.

Public Hearing on SE 2019-SP-006 (Clementine Twin Lakes, LLC) to Permit a Congregate Living Facility, Located on Approximately 5.0 Acres of Land Zoned R-C and WS (Springfield District)

This property is located at 13215 Twin Lakes Dr., Clifton, 20124. Tax Map 66-3 ((1)) 18.

PLANNING COMMISSION RECOMMENDATION:

On June 26, 2019, the Planning Commission voted 12-0 to recommend the following actions to the Board of Supervisors:

- Approval of SE 2019-SP-006, subject to the development conditions dated June 21, 2019;
- Waiver of the loading space requirements of Sect. 11-203 of the Zoning Ordinance; and
- Modification of Sect. 13-303 and Sect. 13-304 pursuant to Sect. 13-305 of the Zoning Ordinance to permit transitional screening and barriers as shown on the SE Plat along the eastern, southern and western boundaries.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Wanda Suder, Planner, DPD

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5:00 p.m.

Public Comment from Fairfax County Citizens and Businesses on Issues of Concern