



FAIRFAX COUNTY

APPLICATION FILED: June 29, 2005
PLANNING COMMISSION: September 14, 2005
BOARD OF SUPERVISORS: October 17, 2005 @ 4:30 p.m.

V I R G I N I A

August 31, 2005

STAFF REPORT

APPLICATION PCA 1999-PR-035

PROVIDENCE DISTRICT

APPLICANT: Batal Corbin, LLC

PRESENT ZONING: R-2 Cluster

PARCEL(S): 39-4 ((58)) A, B, Parcels 1 through 14

ACREAGE: 6.50 Acres

DENSITY: 1.82 du/acre

OPEN SPACE: 24.1%

PLAN MAP: Residential, 1-2 du/acre

PROPOSAL: Amend RZ 1999-PR-035 previously approved for a cluster subdivision to permit changes to the landscape plan, tree preservation plan, and stormwater management facility.

STAFF RECOMMENDATIONS:

Staff recommends approval of PCA 1999-PR-035, subject to the execution of proffers consistent with those contained in Appendix 1.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions proffered by the owner, relieve the applicant/owner from compliance with the provisions of any 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.

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.



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

**A GLOSSARY OF TERMS FREQUENTLY
USED IN STAFF REPORTS WILL BE
FOUND AT THE BACK OF THIS REPORT**

DESCRIPTION OF THE APPLICATION

Proposal:

Approval of a proffered condition amendment to amend the proffers adopted with the Board's approval of RZ 1999-PR-035 to modify tree preservation commitments as a result of construction activities and to increase the amount of proffered tree cover; utilize a larger caliper/height of trees, primarily along the site frontages; increase the size and number of trees around a re-designed stormwater management facility; provide for maintenance and/or replacement of the on-site landscaping for a period of two years after final bond release; and, plant trees along the W&OD Trail in cooperation with the Northern Virginia Regional Park Authority.

No changes in density, lot configuration or size, open space, access, or the previously approved modification of the Public Facilities Manual (PFM) to permit more than 20% pipestem lots are proposed.

LOCATION AND CHARACTER

Site Description:

The subject property is located in the southwest quadrant of the intersection of Gallows Road and Idylwood Road. The site has been cleared and graded for the development of fourteen (14) single-family detached dwellings that were approved pursuant to RZ 1999-PR-035. Infrastructure improvements are ongoing. The fence that is required for noise mitigation has been constructed along the Gallows Road frontage. The chart below details the surrounding properties.

SURROUNDING AREA DESCRIPTION			
Direction	Use	Zoning	Plan
North	Fairfax County School Board (Dunn Loring School Admin. Center)	R-1	Public Facilities, Governmental, and Institutional Use
South	W & OD Trail Single-family Detached	R-1 R-3	Public Park Use Res. 3-4 du/ac
East	Single-family detached Across Gallows Road	R-3	Res. 3-4 du/ac
West	Single-family detached (Dunn Loring Gardens)	R-1	Res. 1-2 du/ac

BACKGROUND

On October 20, 2003, the Board of Supervisors approved RZ 1999-PR-035 which rezoned 7.70 acres from the R-1 (Residential-One Dwelling Unit per Acre) District to the R-2 (Residential-Two Dwelling Units per Acre) District to permit the development of a cluster subdivision developed with fourteen (14) dwellings at a density of 1.82 du/acre. The average lot size was 13,749 square feet. Twenty-four percent (24%) open space was provided. According to tabulations on the Generalized Development Plan (GDP), 88,400 square feet, or 26%, tree cover was provided which included 55,200 square feet of tree save and 33,200 square feet of new plantings.

Also depicted was the preservation of existing, mature trees in two general areas of the site, as recommended by the Urban Forester. The limits of clearing and grading depicted on the proffered GDP were located to protect existing mature trees in the northeastern and southwestern corners of the site and in a fifty (50) foot wide area along the south-central periphery of the property. In addition, limits of clearing and grading were shown which protected a twenty-four (24) foot wide buffer north of the public road along the western side of the site. This area was also designated as an area of transplantation where suitable plant materials from other parts of the site were to be transplanted to supplement the existing young trees to ultimately enhance their buffering effect.

A reduction of the currently approved GDP is provided as Sheet 12 of the applicant's GDP at the front of the report.

Approval of a rezoning to a cluster development must satisfy the Cluster Guidelines contained in Par. 2 of Sect. 9-615 of the Ordinance. Par. 2 of Sect. 9-615 requires that the applicant demonstrate that the location, topography and other physical characteristics of the property are such that a cluster development will comply with both of the following requirements:

- "A. Preserve the environmental integrity of the site by protecting and/or promoting the preservation of features such as steep slopes, stream valleys, desirable vegetation or farmland, and either (1) Produce a more efficient and practicable development, or (2) Provide land necessary for public or community facilities.
- B. Be in accordance with the adopted comprehensive plan and the established character of the area. To accomplish this end, the cluster subdivision shall be designed to maintain the character of the area by preserving, where applicable, rural views along major roads and from surrounding properties through the use of open space buffers, minimum yard requirements, varied lot sizes, landscaping or other measures."

As stated in the staff report for the rezoning, the applicant addressed Par. A above through proffered tree preservation in designated areas of the site and by a proffered commitment to preserve saplings and pioneer growth and to transplant suitable vegetation from elsewhere on the site to the tree save/ buffer area located along the western side of the site. The staff report noted that, although the total amount of tree save was not large, preservation of mature existing vegetation at the intersection of two busy roadways, Gallows Road and Idylwood Road, would be an important benefit.

Par. B above was addressed by the applicant's proffered commitments to preserve existing vegetation and to provide landscaping along Idylwood Road and Gallows Road which would help maintain the character of the area.

The Board of Supervisors approval of RZ 1999-PR-035 was subject to proffers dated October 14, 2003, a copy of which is contained as Exhibit A in Appendix 1. Of particular significance are Proffers 4, 9, and 10 that address Limits of Clearing and Grading, Tree Preservation, and Tree Transplanting, respectively, as described below.

The following is a brief chronology of relevant events that have occurred subsequent to the Board of Supervisors approval of RZ 1999-PR-035.

March, 2004:

The applicant submitted the first subdivision plan to the Department of Public Works and Environmental Services (DPWES) for review.

September 27, 2004:

The subdivision plan, including the tree preservation and tree transplantation plan, was approved by DPWES.

October, 2004:

A pre-construction meeting and a meeting to walk the limits of clearing and grading took place on the site, pursuant to Proffer #9, on October 18, 2004, and October 29, respectively. During this time, Urban Forest Management (UFM) and the developer's Project Arborist agreed to adjustments to the limits of clearing and grading and that a 46 inch tulip poplar (tree #321) that had been shown on the tree preservation plan to be removed could be saved. The applicant's contractor requested permission from UFM to use a track loader with a mechanical arm to reach over the limits of clearing and grading in the southern portion of the site to remove brush and debris. UFM granted permission, based on the verbally stated condition that the mechanical arm would be used carefully and only for the stated purpose of removing limbs, brush, and debris that resulted from UFM approved tree removal.

Early January, 2005:

A complaint was received by the Providence District Supervisor that work on the subject site was in violation of the proffers regarding tree preservation. The complaint was made by residents of the adjacent Dunn Loring Gardens subdivision.

January 7, 2005: Site Visit to Investigate Complaint

This meeting included representatives of UFM, Environmental and Facilities Inspection Division (EFID) DPWES, residents of Dunn Loring Gardens, the applicant, the applicant's Project Arborist, and Mike Wing of Supervisor Smyth's office. The site was walked and inspected to locate areas of alleged disturbance and the following was discovered:

- Limits of clearing and grading were violated by the use of heavy equipment which resulted in damage to various tree save areas, including those in the northeast and northwest corners of the site and in the southern portion of the site.
- Clearing and grading was done in the northeast corner of the site without properly installed tree protection fencing. The resulting damage included soil compaction, root loss and root damage.
- Tree #321 (the 46-inch tulip poplar), which was determined to be preserved at the October 29, 2004, site visit was, nevertheless, removed.
- In addition, when tree #321 was pushed over, it hit tree #320 (a 39-inch diameter white oak) which had been designated to be saved. Damage to the white oak included branch damage, branch loss, root damage, and soil compaction.
- Although the Tree Preservation Plan was approved with a notation that permitted use of a skidsteer Bobcat to transplant hollies, the manner in which such equipment was used in the northern and central portion of the western buffer area, resulted in possible root damage to off-site trees located at 8111 Idylwood Road, soil compaction, and the loss of pioneer growth that was to have been preserved.

Proffer Interpretation/Notice of Violation

On January 24, 2005, a proffer interpretation letter was issued by Barbara A. Byron, Director of the Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ) in her capacity as Duly Authorized Agent of the Zoning Administrator, in response to a request from Linda Smyth, Supervisor, Providence District, concerning the aforementioned site development activities that were alleged to have violated the proffered commitments in RZ 1999-PR-035 regarding strict adherence to the limits of clearing and grading and tree preservation. The interpretation determined that certain of the development activities that occurred on the site were not in substantial conformance with the proffers accepted pursuant to RZ 1999-PR-035.

The interpretation concluded that, because the cluster zoning approved in RZ 1999-PR-035 had been based on the preservation of existing trees pursuant to Sect. 9-615 of the Zoning Ordinance and, because the consequences of the site development activities resulted in tree loss, tree damage, and root compaction that could cause future damage to trees, legislative action by the Board of Supervisors would be required to rectify the situation.

On February 10, 2005, a Notice of Violation was issued to the applicant. The Notice of Violation was based on the January 24, 2005, Proffer Interpretation Letter, an investigation by UFM and EFID, and a site inspection of the subject property on January 27, 2005. The Notice of Violation directed the applicant to immediately cease all development on the subject site and to take certain measures to stabilize the site to the satisfaction of EFID. The applicant was also directed to ensure that there would be no further onsite development activities unless and until such time as legislative action had been secured from the Board of Supervisors and the subject property was brought into full compliance with the Zoning Ordinance.

Appeal

On February 23, 2005, Batal Corbin, LLC, filed an appeal of Ms. Byron's determination that these development activities were not in substantial conformance with the approved proffers and that legislative action by the Board of Supervisors must be secured by the applicant to rectify the situation. The Appellant (applicant) argued that the development is in substantial conformance with the proffers, and rejected the determination in the January 24, 2005, proffer interpretation letter that the only corrective action available was legislative action by the Board. The Board of Supervisors action on the appeal has been deferred to allow time for the applicant to resolve the issue through a Proffered Condition Amendment (PCA).

On February 16, 2005, the applicant also filed an appeal of the Notice of Violation to the Board of Zoning Appeals; this appeal pertains to whether the Zoning Administrator has the authority to require that construction activity cease on the site, as was done in the Notice of Violation. On March 15, 2005, the BZA accepted the appeal. At the request of the applicant, the appeal of the Notice of Violation to the BZA was administratively re-scheduled to November 8, 2005, to allow time for the applicant to resolve the violation through a Proffered Condition Amendment (PCA).

On June 29, 2005, the applicant filed the Proffer Condition Amendment (PCA 1999-PR-035) which is the subject of this report.

Complete files on the rezoning and subsequent actions can be viewed in the Department of Planning and Zoning (DPZ). Subdivision plans may be viewed in the Department of Public Works and Environmental Services (DPWES).

ANALYSIS**Amended Generalized Development Plan (GDP)**

Title of GDP: Corbin Property Proffered Condition
Amendment/Generalized Development Plan

Prepared By: BC Consultants

Original and Revision Dates: June 15, 2005
Revised to August 23, 2005

The CDPA/FDPA consists of twelve (12) sheets as follows:

Sheet 1	Cover Sheet
Sheet 2	Proffered Condition Amendment (PCA)/Generalized Development Plan (GDP), Site Tabulations & Landscape Legend
Sheet 3	Illustrative Landscape
Sheet 4	Landscape Details Plan
Sheet 5	Notes, Comments, Typicals
Sheet 6	Pond Detail, Street Light, Entry Sign, & Fence Details. Tree Cover Calculations
Sheet 7	Typical House Elevations (No Change to Content)
Sheet 8	Detailed Plan View, Lots 10, 11, 12
Sheet 9	Stormwater Management & BMP Calculations
Sheet 10	Stormwater Management & BMP Calculations
Sheet 11	Existing Vegetation Map (No Change to Content)
Sheet 12	Previously Approved GDP

All of the revisions proposed in this application concern either stormwater management (SWM)/BMPs or tree preservation/landscaping and related proposed proffered commitments. No changes in density, lot size or configuration, open space, setbacks, or access are proposed by the applicant. Therefore, this report will only discuss the proposed revisions.

The applicant has submitted a revised GDP and proffers which propose to compensate for the damage to vegetation that occurred during development of the site. The revised development plan depicts a re-designed SWM/BMP facility with additional trees planted on a diversion berm within the pond and on the embankment; a biofiltration swale along the western site periphery to provide alternative BMPs which exceed BMP requirements for the site; an enhanced landscaping plan which provides increased tree cover through planting more, and larger, trees on the site; a proffer to maintain and/or replace all on-site vegetation for a period of two years following final bond release; and, a commitment to plant trees off-site along the W & OD Trail. The applicant's proposal is summarized briefly below. The Urban Forestry Analysis and a discussion of stormwater management will follow this summary.

Sheet 2 of the GDP provides a general view of the site with the additional trees

and re-designed SWM/BMP pond. Additional trees are concentrated along the north, east, and northwest sides of the site and around the SWM pond in the southeast corner of the site. The redesigned pond is shown constructed with a diversion berm which extends into the pond and is planted with trees. The pond embankment is planted with trees and shrubs. Sheet 3 is an illustrative landscape plan which delineates the canopy areas where existing trees are being preserved primarily in the northeast and southeast corners. The majority of the proposed additional deciduous trees are shown in the northwest, north, east, and southeastern areas of the site. Landscaping details are contained on Sheet 4.

Sheet 4 of the GDP is the detailed Landscape Plan; a plant list for the W&OD Trail; and, a plant list for trees, shrubs, perennials, and ground cover. To summarize briefly this sheet, according to the plant list, a total of fifteen (15) 6-inch caliper deciduous trees, twenty-nine (29) 4-4.5 inch caliper deciduous trees, and forty-one (41) 3-3.5 inch caliper deciduous trees are proposed to be planted. An additional six (6) 3-3.5 inch caliper red oaks have already been planted, pursuant to the landscape plan that was approved with the subdivision plan, and fifteen (15) River Birch trees 12-14 feet in height are proposed. A total of 27,375 square feet of large deciduous tree cover is provided in this plan. On the approved GDP the maximum size of proposed large deciduous trees was 3-3.5-inch caliper.

The Sheet 4 plant list shows a total of 101 8-10 foot tall evergreen trees and twenty-three (23) 6 foot tall evergreen trees to be planted with a resulting total of 15,925 square feet of tree cover. Eighty-four (84) ornamental trees, 12-14 feet in height, are proposed to provide 10,500 square feet of tree cover.

Based on the above, the total tree cover proposed to be planted on this site is 53,800 square feet which exceeds the planted tree cover on the approved GDP of 33,200 square feet; however, the original GDP provided a greater amount of tree cover through preservation. The total tree cover proposed on this site is now 109,814 square feet, which includes 56,014 square feet of preserved tree cover (subject to a 2.0 multiplier for the upland forest area), or 44,195 square feet (without multiplier), and 53,800 square feet of planted tree cover. The original rezoning provided a total of 88,400 square feet of tree cover which included 55,200 square feet of preserved tree cover (without multiplier) and 33,200 square feet of planted tree cover. The use of the 2.0 multiplier for upland forest area is discussed in the Urban Forestry Memo in Appendix 4. In addition, the applicant's landscape plan provides a significant number of shrubs, grasses, and ground covers that were not provided in the approved GDP. A detailed discussion of landscaping and tree preservation, including comparison charts, is contained in the Urban Forest Management Memorandum in Appendix 4. The applicant's tree cover calculations are provided on Sheet 6.

Sheet 5 contains notes, tabulations, comments, and lot typicals showing yards and on-lot landscaping. Of note is the fact that the landscaping typical contains a note which states that the large deciduous trees may be field located and verified by UFM to be within 35 feet of the house on the western side for energy conservation. The applicant's Energy Conservation proffer states that "Further, Applicant shall

locate trees on individual lots, generally as shown on sheets 4 and 5 of the GDP and as approved by Urban Forest Management, to achieve energy conservation credit pursuant to Public Facilities Manual ("PFM") standards."

Sheet 6 includes site details, such as a street light depiction, entry sign, fence details, details of planting trees on the 2:1 slope on the north embankment of the SWM/BMP facility, a 1:30 scale pond detail, and tree cover calculations. The entry feature/signage is shown for illustrative purposes only and the size, scale, and design may change. As noted earlier in this report, the fence, which is required for noise mitigation along Gallows Road, has been constructed.

The stormwater management proposed for this site requires approval of a modification of the PFM to permit a reduction in the required Free Board. The letter of approval of the modification from DPWES, including the applicant's letter of request, is contained in Appendix 5. According to the DPWES letter, the modification is justified because the dam width exceeds the minimum required width since it includes the width of the Gallows Road and W & OD Trail sides and because there are no dwellings located within the potential inundation zone in the event of a dam breach. Specifically, the SWM/BMP facility has been re-designed to incorporate a diversion berm which extends into the pond area and reduces the velocity of surface water flow into and out of the pond. The berm is planted with trees. The top elevation of the dam was lowered from that approved with the subdivision plan to decrease the extent of the embankment and in order to permit additional landscaping around the pond. A combination of trees and shrubs is planted on the pond embankment. In addition, a biofiltration swale to achieve enhanced water quality improvements above the BMP requirement is provided in an easement along the rears of Lots 12, 13, and 14. According to DPWES, the BMP requirement is being met within the pond itself and the biofiltration swale is not required, but will provide enhanced BMPs. In addition to its diversion function, the landscaped berm will provide screening of the pond from the area along Gallows Road which cannot be planted because of the pond access road.

The architectural elevations contained on Sheet 7 are not proposed to change.

Sheet 8 is a detailed plan view of Lots 10, 11, and 12 which shows two areas of landscape restoration in the northwest quadrant of the sheet. The restoration areas are primarily located in common open space area south of the existing house where the 46-inch tulip poplar was taken down and a 39-inch white oak tree was damaged, and where heavy equipment was allowed to intrude into the tree save area. Restoration consists of planting a cluster of large trees, including 6-inch caliper white oak trees, an 8-10 foot Austrian pine tree, among others, directly south of the house and a cluster of 8-10 foot American Holly trees, among other plantings, southeast of the house.

Sheets 9 and 10 contain stormwater management/BMP computations and details, the adequate outfall narrative, and associated maps. As noted earlier, the applicant has received approval of a PFM modification to permit a reduction in required Free Board for the pond.

Sheet 12 is the previously approved GDP.

Urban Forest Management Analysis (Appendix 4)

The complete Urban Forest Management (UFM) Memorandum is contained in Appendix 4. According to the Memo, the proposed tree preservation and landscaping provisions of this application successfully build upon and enhance those approved with RZ 1999-PR-035 and appropriately compensate for the violation. The Memo specifically states support for the following landscape proposals:

- The decision no longer to plant trees in the tree save area in the southern part of the site where installation would be problematic due to the existing trees
- The proposal to plant trees along the W & OD Trail where a significant number of trees have been lost due to recent electrical line clearance
- The decision to plant trees in a manner that will provide shade and reduce energy costs in the new homes
- The selection of appropriate plant species, sizes, and quantities for the areas needing restoration due to damage that occurred during clearing and grading activities.
- The proposal of an extended maintenance/replacement plan

The UFM Memo contains two tables of comparison which are discussed below. The Memo states that the tree cover calculations and tree cover schematic on Sheet 6 of the GDP are accurate and the methodology is consistent with the PFM.

Table 1 provides a comparison of tree cover between the approved GDP and the current application and concludes that the applicant is providing 3.3% less tree cover through preservation than in the original rezoning but is providing 6.1% more 10-year canopy through tree planting in the PCA than in RZ 1999-PR-035. It is important to note that the applicant has chosen to claim additional tree cover credit (2X) for the portion of the tree cover that consists of high quality, long term sub-climax upland forest that exists in the southwest corner of the site (see Column B of the table). This credit is allowed by the PFM to encourage the preservation of high quality upland forest. This credit was not applied in the original rezoning application and only the usual multiplier of 1.25 was applied (Column A). To simplify comparison between tree cover provided in the original rezoning and that currently proposed, Column C of the UFM table applies only the 1.25 multiplier to the current proposal and does not give the extra credit to the area comprised of higher quality upland forest. The approved GDP provided 26.4% tree cover. The current application, with only the 1.25 multiplier, provides 29.2% tree cover which represents a 2.8% increase.

Table 2 in the UFM Memorandum compares landscape features between the GDP, the approved Landscape Plan from the Subdivision Plan, and the GDP proposed with this application. According to the Memo, the proposed GDP provides a significantly higher number of plant materials and larger plant sizes than on the original GDP or the subdivision plan. The table also demonstrates that the proposed GDP provides higher quality trees than on the subdivision plan by increasing the use of native and desirable tree species, as defined in the PFM, from 63% to 79.6% of the total number of trees. The original GDP did not quantify or commit to native and adaptive tree species. The table also shows a significant increase in the number of shrubs, perennials, and groundcovers between the subdivision plan and the proposed GDP. Shrubs, perennials, and groundcovers were not quantified on the original GDP.

In summary, based on the UFM Memorandum, the landscaping proposed in this application will provide a significant increase in tree cover and quality of trees over that originally approved.

ZONING ORDINANCE PROVISIONS

The application was deemed to conform with all Zoning Ordinance requirements and standards when RZ 1999-PR-035 was approved. As noted in the Background section of the report, the applicant had satisfied the Cluster Guidelines contained in Par. 2 of Sect. 9-615 of the Ordinance through proffered tree preservation, a commitment to preserve saplings and pioneer growth, and to transplant suitable vegetation from elsewhere on the site to a buffer area along the western side of the site. As stated, a proffer interpretation determined that certain development activities that had occurred on the site were not in substantial conformance with the proffers accepted pursuant to RZ 1999-PR-035. This application proposes to rectify the above described situation through extensively landscaping the site beyond that originally approved, with an emphasis on planting larger trees, particularly in the areas that were damaged. The applicant has also received approval of a modification of the PFM for a reduced Free Board for the pond which will allow the pond to be heavily planted with trees and shrubs. The applicant has worked with UFM in developing the landscape plan which includes restoration of damaged areas and a higher percentage of native and valued species trees planted on the site. Based on the UFM Memorandum, staff is of the opinion that, although the Tulip Poplar that was removed cannot be replaced and that some tree damage may be permanent, the current proposal will yield a large number of high quality trees, many of them native species, that will ultimately approximate the forest that formerly existed on the site. In staff's view, the Cluster Guidelines have been met to the extent feasible. There are no other changes proposed that would affect Ordinance requirements or standards.

CONCLUSIONS AND RECOMMENDATIONS

Staff Conclusions

This is an application which seeks approval of a proffered condition amendment as a means of addressing a zoning violation that resulted from the applicant's clearing and grading activities on the site and associated loss of, and damage to, trees and pioneer growth that were proffered to be preserved. The applicant's proposal includes a re-designed landscaped SWM/BMP facility, the introduction of alternative stormwater management techniques through the installation of a biofiltration swale to achieve enhanced BMPs, and increased landscaping.

According to the UFM Memorandum, the applicant's proposed development plan and proffers have demonstrated that the landscaping and restoration provide a significant increase in tree cover and size of trees from the approved GDP. While the 46-inch Tulip Poplar tree that was removed cannot be replaced and the damage to the 39-inch White Oak tree is permanent, the proposed landscaping and proffered commitments, including an extended period of maintenance responsibility by the applicant, justify approval of this application.

Staff Recommendations

Staff recommends approval of PCA 1999-PR-035, subject to the execution of proffers consistent with those contained in Appendix 1.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions, relieve the applicant/owner from compliance with the provisions of any 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. Proffers
2. Affidavit
3. Statement of Justification
4. Urban Forest Management Memorandum
5. PFM Modification Approval Letter with Applicant's Request Attached
6. Glossary of Terms

PCA-1999-PR-035
BATAL CORBIN, LLC
PROFFER STATEMENT

June 20, 2005

July 14, 2005

July 29, 2005

August 16, 2005

August 22, 2005

August 24, 2005

Pursuant to Section 15.2-2303(A) of the Code of Virginia, as amended, and subject to the Board of Supervisors' approval of application PCA-1999-PR-035, as proposed, for amendment of Proffers in the R-2 Cluster District, the owners and Batal Corbin, LLC (the "Applicant"), for themselves and their successors and assigns, hereby proffer that development of Tax Map Parcels 39-4-((58))-A, B, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 (the "Property"), containing approximately 6.50312 acres, shall be in accordance with the proffered conditions dated October 14, 2003 and accepted by the Board of Supervisors, a copy of which is attached hereto as Exhibit A and which shall remain in full force and effect except to the extent specifically modified as to the respective paragraphs below:

1. **Substantial Conformity.** Subject to provisions of Section 18-204 of the Zoning Ordinance, the Property shall be developed in substantial conformance with the Generalized Development Plan prepared by BC Consultants, dated June 15, 2005, as revised through August ~~22~~23, 2005 (the "GDP"), as further modified by these proffered conditions.
2. **Minor Modifications to Design.** Pursuant to Paragraph 5 of Section 18-204 of the Zoning Ordinance, the Applicant may make minor adjustments which may be required as a result of final engineering to modify the layout, if such changes are in substantial conformance with the GDP and these proffers, and if the changes do not increase the total number of units or reduce open space, landscaping or setbacks or adversely impact tree save areas.
6. **Energy Conservation.** All homes constructed on the Property shall meet the thermal standards of the CABO Model Energy Program for energy efficient homes, or its equivalent, as determined by DPWES, for either electric or gas energy systems. Further, Applicant shall locate trees on individual lots, generally as shown on sheets 4 and 5 of the GDP and as approved by Urban Forest Management, to achieve energy conservation credit pursuant to Public Facilities Manual ("PFM") standards.
7. **Stormwater Management.** The Applicant shall implement stormwater management techniques to control the quantity and quality of stormwater runoff from the Property as determined by DPWES. The Applicant shall provide stormwater management facilities for the Property in accordance with PFM standards as may be modified by DPWES approval, as generally depicted on the GDP and, subject to DPWES approval, shall incorporate alternative stormwater management design techniques into its subdivision plan. The design techniques which Applicant shall incorporate are (i) the use of a diversion berm within the SWM pond to ~~further~~ reduce the velocity of surface water flow

into and out of the pond, and the landscaping of that berm with trees ~~such~~ as shown on the GDP, and (ii) to achieve enhanced water quality, the provision, within a private storm drainage easement in a form approved by the County Attorney and DPWES, of a biofiltration swale (consistent with the design approved by DPWES) along the rear of Lots 12, 13, and 14. The Applicant shall, if necessary, grant an easement to Fairfax County as approved by DPWES at the time of final record plat approval to provide access to the stormwater management pond for maintenance purposes. Such access shall be provided from Gallows Road, and shall be comprised of grasscrete or such other porous material as is approved by DPWES. Subject to approval by DPWES, a lowered freeboard and landscaping to include native plant materials, trees, shrubs, ornamental grasses, and/or wetlands habitat shall be provided in the area of the pond generally as shown on the GDP, to the extent permitted by Fairfax County planting policies for stormwater management facilities.

11. Landscape Plan. A Landscape Plan, consistent with the quantity, quality, and/or size of the landscaping shown on sheet 3 of the GDP, shall be submitted for review and approval by Urban Forest Management. Such approved Landscape Plan shall include, among other elements, provision for select areas of supplemental plantings (i) in the buffer area adjacent to Lots 11, 12, 13 and 14 as described in Paragraph 15, and (ii) within, and ~~consistent~~ **in accordance** with, **the planting limitations in** the Virginia Power easement along the southern perimeter of the Property, within the Northern Virginia Regional Park Authority ("NVRPA") W&OD Trail right-of-way in a manner (as to species, size and quantity) and location approved by the NVRPA; ~~prior~~, **Prior** to such plantings **in the NVRPA W&OD Trail right-of-way**, Applicant shall remove the herbacious invasive species from the locations to be planted, as directed by the NVRPA; such removal shall be accomplished **by hand or hand operated machinery** without use of herbicides unless otherwise authorized by the Urban Forest Management and NVRPA.

The typical "replacement" trees and landscaping shown on sheet 3 of the GDP shall be provided by the Applicant apart from and in addition to the aforesaid letter of credit or cash bond described in Proffer Paragraph 9.

Prior to planting, in the buffer areas on the periphery of the Property and in the SWM pond area, any of the large deciduous (4" caliper and greater) trees and evergreens (8' and greater) approved on the aforesaid Landscape Plan, Applicant shall stake out the locations of said trees for review by Urban Forest Management. Applicant shall remain responsible for maintenance **and replacement as required by Urban Forest Management** of the on-site landscaping, including specifically the trees **and shrubs** planted on the north embankment of the SWM pond, approved in the Landscape Plan for a period of two years after final bond release; this obligation shall not be passed on to the HOA but shall remain the responsibility of the Applicant/Developer. Said Landscape Plan shall provide for the use of appropriate guy wires **or armament, as determined by Urban Forest Management** on the trees planted on the north embankment of the SWM pond; Applicant's maintenance responsibility shall include the timely removal of said guy wires as directed by Urban Forest Management. Applicant shall also create, and provide to the HOA, a maintenance/replacement plan for the aforesaid onsite landscaping as approved by Urban Forest Management.

With respect to the white oak in the northeast corner of the Property adjacent to the

southeast corner of the existing residence, the Applicant shall (i) develop a contingency plan, to be approved by Urban Forest Management, for replacement of this tree in the event it should die or need to be removed due to damage incurred during development of the Property; (ii) provide a plan for the maintenance of this tree, to be approved by Urban Forest Management, for five years from the date of approval of this PCA, which plan shall include a schedule of periodic examination by the Project Arborist and a program of appropriate periodic nurturing (said maintenance obligation shall not be passed on to the HOA but shall remain the responsibility of the Applicant/Developer); and (iii) shall have the Project Arborist be present throughout the demolition and removal of the existing house and foundation, except that the foundation wall adjacent to this white oak shall be left in place unless otherwise determined by Urban Forest Management in the field at the time of demolition and removal.

Applicant shall obtain a license from Fairfax County to allow the planting and maintenance of such landscaping as is approved and planted within the newly dedicated Idylwood Road right-of-way.

12. Off-Site Trees. The owners of the two trees located off-site immediately adjacent to the Westchester Drive entrance of the project (Tax Map Parcels 39-4-((3))-43A and 44A) shall be reimbursed the appraised value of the tree(s), as defined in Paragraph 9(b), if said trees do not survive (due to construction of this project) through project construction and the additional tree preservation period, as defined in Proffer 9(b). Additional 4 inch caliper White Oak (or such other comparable species as agreed upon by the respective property owner and the Applicant) replacement tree(s) shall be planted on site, in the area where the canopy was lost as approved by Urban Forest Management. The aforesaid reimbursement and replacement costs shall remain the responsibility of the Applicant and shall not be passed on to the HOA.

Applicant shall also provide to the owner of adjacent TMP 39-4-((3))-1A a letter of credit that would be available for removal of, or an agreement to remove, either or both of the two large canopy trees along the common property line with the Property, should the respective tree not survive due specifically to the construction of this project for a period of five years from the approval of this PCA. This obligation shall remain the responsibility of the Applicant and shall not be passed on to the HOA.

20. HOA Documents. The HOA documents and the contract of sale to the initial purchaser of each unit shall expressly state that the HOA shall be responsible for, and HOA reserves shall be established for, the maintenance of (i) the private/pipestem street serving the development; (ii) the noise attenuation fence and berm adjacent to Gallows Road, including all portions of said fence and/or berm within Lot 10; (iii) the landscape plantings approved and planted pursuant to Paragraph 11, above, within the VDOT right-of-way adjacent to Gallows Road, within the northeast tree save area, and within the northern, western and southern limits of clearing/buffer areas; (iv) the grasscrete emergency turnaround on Lot 10 and the emergency ingress/egress and maintenance easement area of the driveway on Lot 11; and (v) the Northern Connector and Southern Connector Trails referenced in Paragraph 26. The contracts of sale to the initial purchaser of, and the deeds (i) for, respectively, Lots 10 and 11 shall reflect an ingress/egress and maintenance easement for emergency vehicles as to, and a prohibition against the parking of private vehicles on, the grasscrete emergency turnaround on Lot 10

and the emergency ingress/egress and maintenance easement area of the driveway on Lot 11 generally as shown on the GDP; and (ii) for Lot 10 shall reflect an easement to the benefit of the HOA to access and maintain all portions of the noise attenuation fence and associated berm located on Lot 10.

34. All land clearing, grading, infrastructure and house construction activity shall be limited to between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, and between 8:00 a.m. and 6:00 p.m. Saturday. This proffer shall only apply to the original house construction and not to future additions by homeowners. These hours of operation shall be posted on site in both English and Spanish.
35. House construction activity on Sundays shall be limited to interior work only and to the hours of 9:00 a.m. to 6:00 p.m. This proffer shall only apply to the original house construction and not to future additions by homeowners. These hours of operation shall be posted on site in both English and Spanish.

[Signatures on the Following Page]

BATAL CORBIN, LLC.

*Applicant and Title Owner of Fairfax County Tax
Map Parcels 39-4-((58)) - 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,
11, 12, 13 and 14*

By:

Name:

Title:

CORBIN HOMEOWNERS ASSOCIATION, INC.

*Title Owner of Fairfax County Tax Map Parcels 39-
4-((58))A, B*

By:

Name:

Title: