



APPLICATION ACCEPTED: September 13, 2012
PLANNING COMMISSION: January 17, 2013
BOARD OF SUPERVISORS: tbd

County of Fairfax, Virginia

January 3, 2013

STAFF REPORT

WHITEHALL STATEWIDE AGRICULTURAL AND FORESTAL DISTRICT

APPLICATION AA 83-S-004-2

SPRINGFIELD DISTRICT

APPLICANT: Nadine Vazquez, Jeff Waters,
Jeremy Vazquez, Lee J. Vazquez
Irrevocable Trust

ZONING: R-C, WS

PARCEL(S): 66-4 ((1)) 21Z, 75-2 ((1)) 5Z, 19Z

ACREAGE: 205.14 acres

PLAN MAP: Residential, 0.1-0.2 du/ac and public/private
parkland

PROPOSAL: Establishment of a Statewide Agricultural
and Forestal District

STAFF RECOMMENDATIONS:

Staff recommends that the request to amend Appendix E of the Fairfax County Code to establish the Whitehall Statewide Agricultural and Forestal District be approved subject to the Ordinance Provisions listed 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. 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 9.

Brent Krasner, AICP

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/



It should be noted that it is not the intent of the 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 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, Office of Comprehensive Planning, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035-5505, (703) 324-1290 or TTY 711 (Virginia Relay Center).

O:\bkrasner\ZED\Ag & Forest\Districts\2012-2 Whitehall (Vasquez)\Final Materials\Vazquez - Amendment to State - Cover.doc



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).

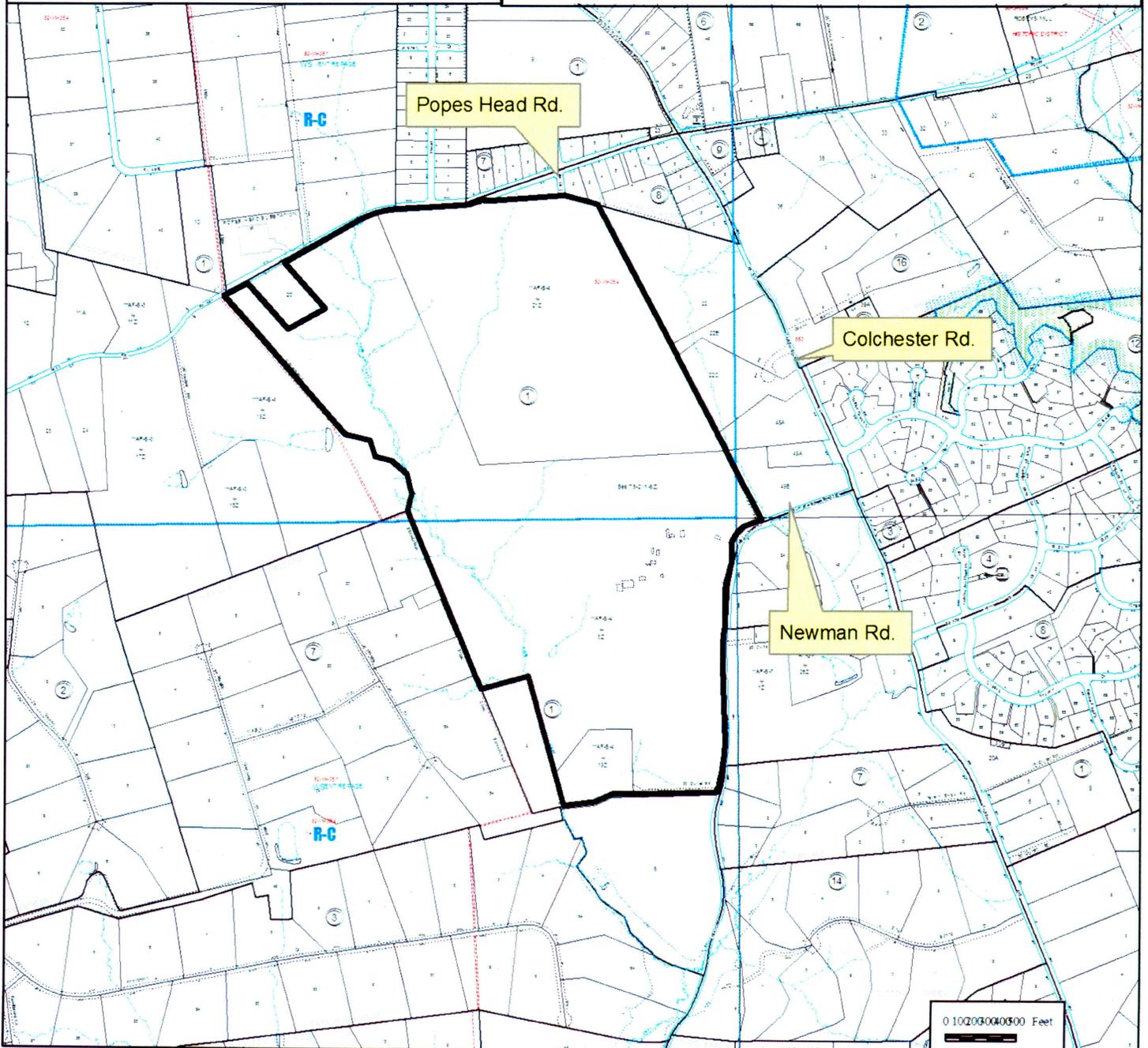
A&F District Amendment

AA 83-S-004-02



Applicant: NADINE C. VAZQUEZ
Accepted: 09/13/2012
Proposed: AMEND AF 83-S-004 TO PERMIT
CHANGE IN OWNERSHIP
Area: 205.14 AC OF LAND; DISTRICT - SPRINGFIELD

Located: 6200 & 6390 NEWMAN ROAD,
FAIRFAX, VA 22030
Zoning: R- C
Overlay Dist: WS
Map Ref Num: 066-4- /01/ /0021Z, 075-2- /01/
/0005Z /01/ /0019Z



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

DESCRIPTION OF APPLICATION

Proposal: AA 83-S-004-2 is a request to convert the existing Whitehall Local Agricultural and Forestal District into the Whitehall Statewide Agricultural and Forestal District under the provisions of Chapter 114 of the Fairfax County Code for a ten year term. In addition, the applicants wish to amend the District to reflect changes in ownership, as acreage has been transferred to their son as well as to an irrevocable family trust. The subject property is a 205.14 acre tract located south of Popes Head Road and west of Newman Road in the Springfield District.

Copies of the applicant's Statement of Justification and related application materials are contained in Appendix 2. Staff's Proposed Ordinance Provisions are contained in Appendix 1.

Applicant: Nadine Vazquez, Jeff Waters, Jeremy Vazquez, and Lee J. Vazquez Irrevocable Trust,

Acreage: 205.14 acres

Use: Agriculture: 90 acres
 Forested/Open Space: 109.14 acres
 Residential: 6 acres

LOCATION AND CHARACTER

Surrounding Area Description:

The subject property and surrounding area are zoned R-C and WS, and are planned for residential uses at 0.1 to 0.2 dwelling units per acre and public or private park land. The subject property is surrounded primarily by large tracts of land zoned R-C and developed with large-lot residential uses, some horse pastures, and a significant amount of land which is vacant or maintained in a natural state. Directly to the west of the subject property are the JLB Associates A&F District and the Reed A&F District. The grouping of these districts extends the impact each would have individually by creating an even larger expanse of preserved lands.

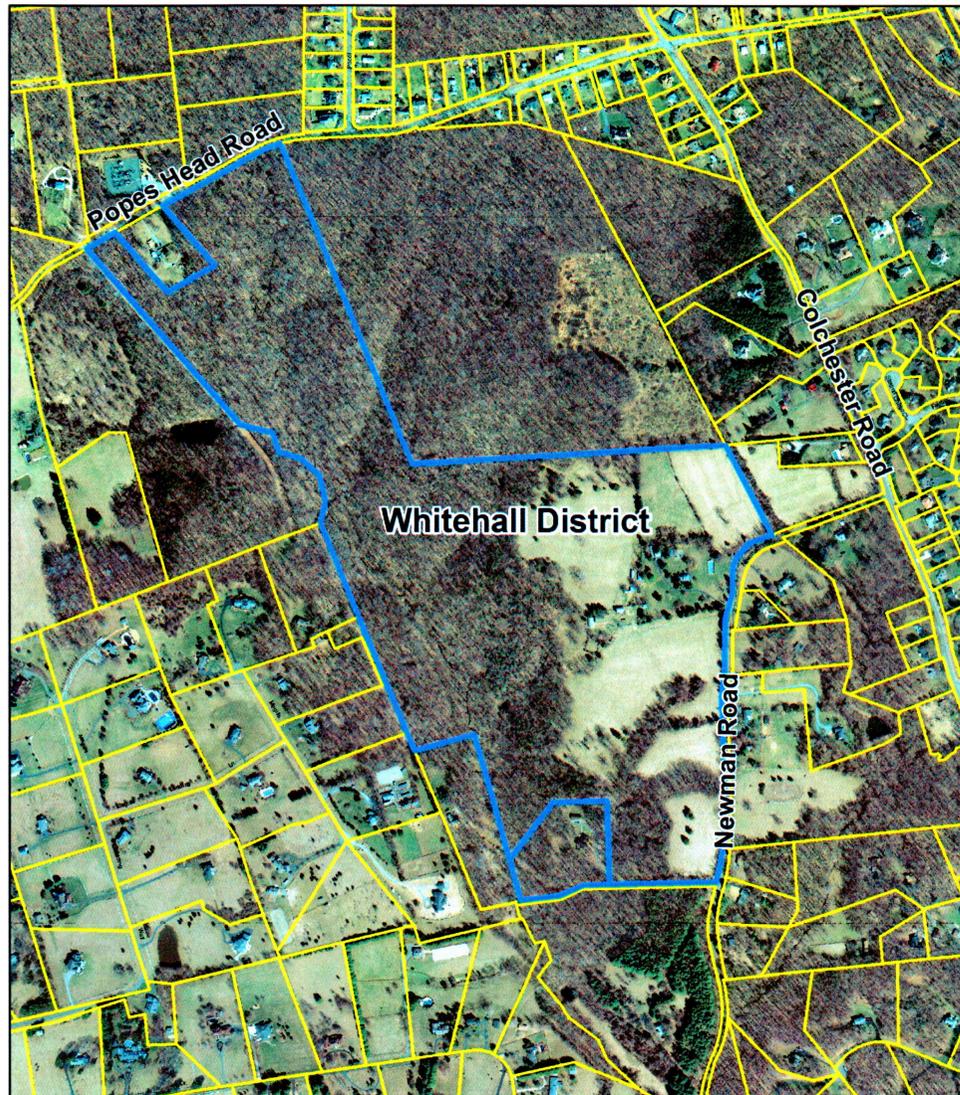


Figure 1. – Aerial View of District

Location and Character of the District:

The 205.14 acre tract is located in the Pohick Planning District, Johnny Moore Community Planning Sector (P3), of Area III in the Comprehensive Plan. The property is zoned R-C and WS. Over 100 acres of the subject property are forested and maintained as an undisturbed, wooded conservation area (see Figure 1). The wooded and open lands of the subject property help maintain the rural character of the Clifton area. The land provides scenic vistas from both Popes Head Road and Newman Road. The mature hardwood forest exhibits a complete lack of underbrush, characteristic of areas with high deer populations. Approximately 90 acres of the property is used as a working farm, and consists of open fields and pasture. Historically, the primary product has been beef cattle, plus hay and corn as feed; however, eggs are now the main cultivated product. Approximately six acres are devoted to residential uses. The farm now produces approximately 300 dozen eggs annually, along with the select

harvesting of timber. Several cows continue to graze on the property, but are no longer actively being raised for meat.

BACKGROUND:

The subject property has been owned by the applicants and/or members of their family since 1961 and has been farmed since that time. The Whitehall Local Agricultural and Forestal District was originally established for an eight year period on October 31, 1983 and was renewed for additional eight year periods on October 14, 1991, October 11, 1999, and October 15, 2007. Upon the passing of the applicant's mother (Lee Vazquez) in 2011, ownership of the acreage has been transferred among the current applicants, their son, and an irrevocable family trust. During the life of this district, the property has not been substantially altered.

The current application includes the same parcels as the most recent renewal for a local district in 2007 when a 5.3 acre parcel on the southern end of the property was added. The addition of those 5.3 acres (which brings the total acreage to 205.14) has made the district eligible for re-designation as an A&F district of statewide significance. The applicants have stated they wish to convert to a statewide district in order to take advantage of the more lenient penalty and roll back provisions; however, they have also verbally indicated that their ultimate desire is to maintain the acreage in its current condition as they investigate options to utilize the land in a manner that could help ensure its continued viability as an agricultural and forestal district.

COMPREHENSIVE PLAN PROVISIONS

Plan Area:	Area III
Planning District:	Pohick
Planning Sector:	Johnny Moore (P3)
Plan Map:	Residential use at a density of 0.1 to 0.2 dwelling units per acre.

ANALYSIS

Land Use/Environmental Analysis (Appendix 3)

The establishment of an agricultural and forestal district is in conformance with the Plan goals of preserving the rural and scenic character of the surrounding area. The subject property is located in the Popes Head Creek watershed tributary of the Occoquan River. The northernmost headwaters of Castle Creek and four of its tributaries are located on the site. Castle Creek, which extends

the length of the property along the western edge, is considered to be both Environmental Quality Corridor (EQC) and Resource Protection Area (RPA). The creeks on the site appear to be in good condition. Ordinance Provisions are proposed which require the applicant to consider the boundary of these areas as the limits of clearing and grading for the life of the district.

Transportation Analysis (Appendix 4)

The current application does not represent any conflict with the Countywide Plan or transportation recommendations, and would not have an adverse traffic impact.

Park Authority Analysis (Appendix 5)

The Park Authority generally supports the establishment of A & F Districts as they further FCPA objectives to protect and preserve the natural heritage of the County. Staff notes that the property is home to one documented architectural site, the Whitehall-Newman House. The property has a high probability of containing significant Civil War and Native American archeological sites. If the property is ever subject to land disturbing activities, the FCPA requests that CRMP staff be granted access to conduct a Phase I study. An ordinance provision has been proposed to this effect.

Urban Forestry Analysis (Appendix 6)

There are no urban forestry issues associated with the application. Management of the wooded areas of the district are evaluated and discussed in the Forest Management Plan prepared by the Virginia Department of Forestry, contained in Appendix 7.

Soil and Water Conservation District Analysis/ Virginia Department of Forestry Analysis (Appendix 7 & 8)

The Soil and Water Quality Conservation Plan previously prepared for the 2007 renewal was updated for 2012 and is included as Appendix 8. Recommendations continue to include adhering to best management practices for pesticide application and soil control. The previously prepared Forest Management Plan prepared by the State Forester in 2007 is included as Appendix 7. The State Forester has indicated no updates are necessary. The following is a summary of the Forester's assessment of the property:

The site contains a mix of three different cover types. Approximately one-third of the site is maintained as grassy pasturage for the applicant's beef cattle and horses. The area has scattered trees and offers good edge habitat for wildlife. A total of approximately 25 acres in scattered clumps throughout the site exhibit a

pine/hardwood mix which will continue to progress towards hardwoods as the pines mature and die. The majority of the site is covered with upland hardwood forest including oaks, beech, maples, and other species. The wildlife benefit of this forest land is magnified by the adjacent properties, which are also in Agriculture and Forestal Districts and are also protected as woodlands. Even considered alone, the site is large enough to be utilized by wildlife species which depend on undisturbed forest interiors. Because of the variety of cover types on the site, the property works as a link between different habitat types. The multi-functional value of this site increases its ecological value.

Establishment of Agricultural and Forestal Districts of Statewide Significance

Sect. 114-1-3 of the Fairfax County Code permits the Board to establish agricultural and forestal districts of statewide significance which shall be a minimum of two-hundred (200) acres in size. The proposed district contains a total of 205.14 contiguous acres and, thus, satisfies the minimum area required to be eligible for a statewide district.

Statewide Agricultural and Forestal District Criteria Analysis (Appendix 10)

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 Statewide Agricultural and Forestal Districts. It is important to note that these criteria are a guide to be applied when determining whether to establish, renew, or amend 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, related to the agricultural or forestal use and generally not more than five acres per district, may be included.*

The subject property is 205.14 acres in size and is entirely in forest conservation and agricultural uses. This criterion has been 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-C. This criterion is satisfied.

- C. *In general, the district should be consistent with the Comprehensive Plan. The following land uses identified in the Plan are appropriate for a district: 0.1-0.2 dwelling units per acre; 0.2-0.5 dwelling units per acre; 0.5-1.0*

dwelling units per acre; Private Recreation; Private Open Space; Public Park; Agriculture; Environmental Quality Corridor. Lands not planned as such may be considered for a district if they meet at least 3 of Criteria Group B.

The property is planned for residential use at a density of 0.1 to 0.2 dwelling units 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.*

The Comprehensive Plan designates a majority of the surrounding land within one-quarter mile of the district for low density residential use at 0.1 to 0.2 du/ac. 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, forestal, outdoor recreational, conservation, or low density residential (0.5 du/ac or less).*

A majority of the land within one-quarter mile of the district is agricultural, low density residential, or forestal land. Therefore, staff believes this criterion has been satisfied.

- F. *Approximately 2/3 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 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.*

Fifty-eight percent of the site consists of soils of Capability Classes I, II, III and IV. The eastern portion of the site is the only portion used for active agriculture. Two-thirds of that area consists of soils of Capability Classes I, II, III and IV. Therefore, the intent of this criterion is 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' family has owned this property since 1961 and since that time has made various investments in the previous beef cattle operation

and other farm activities. In the past 10 years, these investments have included a new chicken coop, the addition of two metal barns for animals and equipment storage, extensive fencing repairs and additions, and work in several fields to combat erosion. The applicant is committed to maintaining the forestal and open space uses on this property for the life of the district, and to following the suggestions of the Urban Forester and the Soil and Water Conservation District. Staff believes that this criterion has been satisfied.

- 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 should 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 no outlots in the proposed district; therefore, this criterion is satisfied.

- J. *All non-contiguous parcels in the district should contain at least five acres of agricultural use or 20 acres in forestal use.*

All parcels of land within the Whitehall District are contiguous; therefore, this criterion does not apply.

As previously noted, these criteria serve as a guide in determining whether or not an agricultural district should be established; they are not a prerequisite for establishing a district. Based upon staff analysis, the application for the establishment of the Whitehall Statewide Agricultural and Forestal District meets all of the applicable criteria established in Chapter 114 of the Fairfax County Code.

AFDAC RECOMMENDATION (Appendix 11)

On December 4, 2012 the Agricultural and Forestal Districts Advisory Committee unanimously recommended approval of the application subject to Ordinance Provisions consistent with those contained in Appendix 1.

CONCLUSIONS AND RECOMMENDATIONS

Staff Conclusions

Staff believes that the application for the establishment of the Whitehall Statewide Agricultural and Forestal District satisfies the criteria contained in Sect. 114-1-4 of the County Code, and that commitments made by the applicant for continued agricultural and forestal activities on the property are consistent with the intent of the program. In addition, the property exceeds the minimum acreage requirement and is in conformance with the Comprehensive Plan.

Staff Recommendations

Staff recommends application AA 83-S-004-2, to amend Appendix E of the Fairfax County Code to establish the Whitehall Statewide Agricultural and Forestal District and amend the ownership information, be approved subject to the proposed Ordinance Provisions contained in Appendix 1.

It should be 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. Statement of Justification and Application Material
3. Land Use and Environmental Analysis
4. Transportation Analysis
5. Park Authority Analysis
6. Urban Forestry Analysis
7. Forest Management Plan
8. Soil and Water Conservation Plan
9. Virginia State Tax Code Provisions
10. County Code Provisions
11. AFDAC Recommendation
12. Glossary

PROPOSED ORDINANCE PROVISIONS**January 3, 2013****AA 83-S-004-2**

If it is the intent of the Board of Supervisors to establish the Whitehall Statewide Agricultural and Forestal District as proposed in Application AA 83-S-004-2 pursuant to Chapter 43 of Title 15.2 of the Code of Virginia and Chapter 114 of the Fairfax County Code on Tax Map Parcel 66-4 ((1)) 21Z, 75-2 ((1)) 5Z, 19Z, the staff recommends that the approval be subject to the following Ordinance Provisions:

1. The Whitehall Statewide Agricultural and Forestal District shall be reviewed after a period of ten (10) years from the date of establishment by the Board of Supervisors. The Board 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.
2. No parcel included within the district shall be developed to a more intensive use than its existing use at the time of the adoption of the ordinance for ten years from the date of adoption of the district. This provision shall not be construed to restrict expansion of, or improvements to, the agricultural or forestal use of this land, or prevent the construction of additional houses within the district, where otherwise permitted by applicable law, for either land owner, a member of the owner's family or for a tenant who farms the land.
3. 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.
4. 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.
5. The applicants shall implement and abide by the recommendations of the Soil and Water Conservation Plan dated October 31, 2012, for the life of the Whitehall Statewide Agricultural and Forestal District. The Soil and Water Conservation Plan may be updated from time to time as determined necessary by the Soil and Water Conservation District.
6. The applicants shall implement and abide by the recommendations of the Forest Management Plan dated September 25, 2007, for the life of the Whitehall Statewide Agricultural and Forestal District. The Forest Management Plan may be updated from time to time as determined

necessary by the State Forester. If the applicants choose to harvest the timber on the lands within this Agricultural and Forestal District, such harvesting shall be in coordination with the State Forester so that special techniques designed to protect water quality may be utilized.

7. Those areas delineated as Environmental Quality Corridors (EQCs) shall be left undisturbed, with the exception of selective thinning operations performed to enhance existing vegetation and the removal of dead, dying and diseased vegetation in accordance with the Forest Management Plan and as approved by the Urban Forester. The boundaries of the EQC shall be the permanent limits of clearing and grading for the life of the Whitehall Statewide Agricultural and Forestal District.
8. The Cultural Resource Management Division of the Fairfax County Park Authority shall be permitted to survey the property and to recover artifacts from the property. Surveys and other similar activities of the Resource Management Division shall be conducted only with prior permission of the property owner and at terms mutually acceptable to both parties and establishment before each occurrence.
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 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.

Application No. AA 83-5-004-0

APPLICATION FOR THE ESTABLISHMENT OF A
AGRICULTURAL AND FORESTAL DISTRICT

FAIRFAX COUNTY

1. Type of application: Local () Statewide ()
Initial () Amendment () Renewal () *gww NCV 9/12/12*
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
<u>Nadine C. VAZQUEZ</u>	<u>75-2-(01)-192</u>	<u>1995</u>	<u>RC 0800</u> <u>WS</u>	<u>5.303</u>
<u>JEFF O. WATERS</u> <u>6390 NEWMAN Rd.</u> <u>FAIRFAX, VA 22030</u>				<u>130.397</u>
<u>LEE J. VAZQUEZ</u> <u>IRREVOCABLE TRUST</u>	<u>75-2-(01)-52</u> <u>0752010005Z</u>	<u>1961</u>	<u>RC 0800</u> <u>WS</u>	
<u>NADINE C. VAZQUEZ (TRUSTEE)</u> <u>P.O. Box 96</u> <u>Clifton, VA. 20124</u>				
<u>LEE J. VAZQUEZ</u> <u>IRREVOCABLE TRUST</u> <u>N.C.V (TRUSTEE)</u>	<u>66-4(01) 21Z</u> <u>0664010021Z</u>	<u>1969</u>	<u>RC 0800</u> <u>WS</u>	<u>69.44</u>

gww NCV 09-12-12

* Proposed FAMILY INHERITED MEMBER owner

Jeremy MARTIN VAZQUEZ address 6200 NEWMAN RD FAIRFAX, VA. 22030

3. Total acreage in the proposed district: 205.14 acres. Proposed Amt to Jeremy VAZQUEZ
30 ACRES
4. Using the definitions on the instruction sheet, indicate the number of properties included in this application: farm 90 forest 115.14

AA 2012-0200

5. Name, address and telephone number of the property owner or representative who will act as a contact person for this application:

Name:

Nadine C. VAZQUEZ

(TRUSTEE for L.J.V.
IRREVOCABLE TRUST)

Address:

6390 Newmans Rd
Fairfax, Va - 22030

Telephone:

703-963-6935

6. Signature of all property owners:

Nadine C. Vazquez
Jeff Waters
Greg Kopp

TO BE COMPLETED BY THE COUNTY

\$ 50.00 paid

Date application accepted:

9/13/12 *Virginia Puffer*

Date of action by Board of Supervisors: _____

Approved as submitted Denied

Approved with modifications

RECEIVED
Department of Planning & Zoning
SEP 05 2012
Zoning Evaluation Division

ALL APPLICANTS

1. List all structures on the property, the year the structure was built and the present use of the structure:

Structure	Year built	Use
Main House	1947	Home
Barn	1965	Cow Storage
Barn (metal)	1965	Hay Barn
Barn (metal)	1992	Equipment Storage
Shop	1993	Equipment repair area
Chicken House	1994 # 2011	housing for Laying chickens
Secondary House	1994	Home for daughter
GARAGE	1994	STORAGE

use additional page(s) if necessary

2. List any historic sites, as listed on the Fairfax County Inventory of Historic Sites, located on the subject property:

n/a

3. List any improvements made to the property in the past 10 years, including buildings, fencing, equipment, drainage projects, and conservation measures:

2011 Chicken House updated to increase area for Laying Hens with complete protection from predators (area is located in new proposed owner area)

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: 1991

If no, has an application been filed with NVSWCD: yes no

If yes, date submitted: 1991

5. List the products and yields from this farm or forest property:

Product	Past year's yield	Average yield for previous 4 years
Eggs ^{* proposed Area}	300 dozen	100-200 dozen

For 2012

~~Select Harvest (timber) to be harvested~~ ^{approx.} ~~AC.~~
~~Silvicultural Harvest system - Single tree selection~~
~~Saw timber 18+ "D.B.H. scattered pole pine~~ @ 4-6 stems per acre.

See enclosed letters
 from Lisa Jacobs (Supervising Appraiser)
 # Department of Forestry
 Jim McGlone

RECEIVED
 Department of Planning & Zoning
 SEP 05 2012
 Zoning Evaluation Division



County of Fairfax, Virginia

MEMORANDUM

DATE: November 27, 2012

TO: Barbara Berlin, Director
Zoning Evaluation Division, DPZ

FROM: Pamela G. Nee, Chief *PHN*
Environment and Development Review Branch, DPZ

SUBJECT: LAND USE and ENVIRONMENTAL ASSESSMENT for: AA 83-S-004-2
Vazquez, Vazquez and Waters

This addendum was prepared by Bernard Suchicital. The extent to which the application conforms to the applicable guidance contained in the Comprehensive Plan is noted.

DESCRIPTION OF THE APPLICATION:

The 205.14 acre Vazquez and Waters Agricultural and Forestal District is proposing to amend ownership of parcel 66-4((1))21Z to Mr. Jeremy M. Vazquez to reflect his family inheritance of the land, and to transfer the district to the statewide program. No other changes to the District are proposed.

LOCATION AND CHARACTER:

The subject properties are in the Popes Head Creek sub-watershed as well as within the Occoquan Reservoir Watershed in the southwestern portion of Fairfax County. This agricultural and forestal district is surrounded by land which is planned for residential use at .1-.2 dwelling unit per acre (du/ac) or 5- 10 acre lots.

COMPREHENSIVE PLAN MAP: Planned predominantly for residential use at .1-.2 du/ac with the remainder planned for private open space.

LAND USE ANALYSIS

No changes to the land parcels have been proposed. This Agricultural and Forestal District is consistent with the Comprehensive Plan's intent to maintain and preserve the low density, rural character of this portion of the County.

Department of Planning and Zoning

Planning Division
12055 Government Center Parkway, Suite 730
Fairfax, Virginia 22035-5509
Phone 703-324-1380
Fax 703-324-3056
www.fairfaxcounty.gov/dpz/

ENVIRONMENTAL ANALYSIS

The application proposes to continue to protect environmentally sensitive areas on site. No changes are proposed to this application. The current status does not raise any environmental concerns and conforms to environmental policies of the Comprehensive Plan.

COUNTYWIDE TRAILS MAP:

The Countywide Trails Plan depicts a natural surface or stone dust trail typically defined as 6' to 8' wide along the south side of Popes Head Road, as well as along the western boundary of the property along the pipeline easement. In addition, a major paved trail 8' in width is also depicted along the west side of Newman Road adjacent to the southeastern portion of the subject property.



County of Fairfax, Virginia

MEMORANDUM

DATE: October 4, 2012

TO: Barbara Berlin, Director
Zoning Evaluation Division
Department of Planning and Zoning

FROM: Angela Kadar Rodeheaver, Chief
Site Analysis Section
Department of Transportation

FILE: 3-4 (AF 83-S-004)

SUBJECT: Transportation Impact

REFERENCE: AR 83-S-004-02; Nadine C. Vasquez
Land Identification Map: 75-2((1))5z & 19z
66-4((1))21z

This application does not represent any conflict with the Countywide Plan transportation recommendations and would have no traffic impact. However, this department is concerned that approval of agricultural and forestall districts may inhibit the ability of the County and/or VDOT to obtain rights-of-way for needed transportation improvements. If this is the case, the land that would reasonably be needed for right-of-way during the eight-year life of the approval should be excluded from the district.

However, in the subject case no projects that would affect the site are included in the Adopted Plan or in current construction programs. Therefore, exclusion of land for right-of-way purposes should not be necessary at this time. It is emphasized that future conditions may warrant road improvements along the road frontage of this property and that appropriate areas should be excluded from this district to accommodate these improvements in the future.

AKR/mdg

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 PARK AUTHORITY



M E M O R A N D U M

TO: Barbara Berlin, AICP, Director
Zoning Evaluation Division
Department of Planning and Zoning

FROM: Sandy Stallman, AICP, Manager
Park Planning Branch, PDD *AS*

DATE: October 16, 2012

SUBJECT: AA 83-S-004-2, Nadine C. Vazquez, Jeff O. Waters, Lee J. Vazquez
Tax Map Number(s): 66-4((1))21Z, 75-2((1))5Z, & 19Z

Staff supports the above referenced application. The Fairfax County Park Authority generally supports Agricultural and Forestal Districts as they further objective 100 of the Park Authority's Policy Manual:

“To protect and preserve the physical, cultural and natural heritage of Fairfax County for the enjoyment and education of the citizenry.”

COMPREHENSIVE PLAN GUIDANCE

The County Comprehensive Plan includes both general and specific guidance regarding parks and resources. Resource protection is addressed in multiple objectives of the Policy Plan, focusing on protection, preservation, and sustainability of resources (Parks and Recreation Objectives 2 and 5, p.5-7). Therefore, staff provides the following comments.

ANALYSIS & RECOMMENDATIONS

Cultural Resources Impact:

The parcels were subjected to archival cultural resources review, which indicated that the parcel contains one architectural site, Fairfax County Architecture Site 075-2 A01, the Whitehall / Newman House. In addition, other parts of the property have high probability to contain significant Civil War, historical and Native American archaeological sites as the parcel is located adjacent to many known Civil War Sites. If the parcels are ever subject to rezoning or ground disturbing activities, the Park Authority requests that the Cultural Resource Management and Protection Staff be granted access, in concurrence with the owners, to conduct a Phase I archaeological survey.

FCPA Reviewer: Andy Galusha
DPZ Coordinator: Brent Krasner

Copy: Cindy Walsh, Director, Resource Management Division
Chron Binder
File Copy



County of Fairfax, Virginia

MEMORANDUM

DATE: October 12, 2012

TO: Brent Krasner, Senior Staff Coordinator
Department of Planning and Zoning, ZED

FROM: Nicholas J. Drunasky, Urban Forester II
Forest Conservation Branch, UFMD

SUBJECT: 6200 & 6390 Newman Road.AA-83-S-004-2

RE: Request for assistance

This review is based upon the Agricultural and Forestal District AA 83-S-004-2 stamped "Received, Department of Planning & Zoning September 5, 2012."

There are no Urban Forest Management Division comments or recommendations for this AA.

If you have any questions, please feel free to contact me at 703-324-1770.

NJD/

UFMDID #: 174781

cc: DPZ File

Department of Public Works and Environmental Services
Urban Forest Management Division

12055 Government Center Parkway, Suite 518
Fairfax, Virginia 22035-5503
Phone 703-324-1770, TTY: 703-324-1877, Fax: 703-803-7769
www.fairfaxcounty.gov/dpwes



September 25, 2007

AA - 83 - S - 004
DOF# FAX99006

Mrs. Lee Vazquez
6200 Newman Rd.
Fairfax, VA 22030

Dear Mrs. Vazquez,

Thank you for the opportunity to walk your property.

Enclosed is a forest management plan for your property, which has been prepared based on your objectives and sound forest management practices. Your property has many natural resource features making it a valuable addition to the Agriculture and Forestal program in Fairfax County.

The aerial photo map accompanying this plan is intended to support the recommendations made and clarify the areas of your property discussed in the plan. They are not intended for determining property boundaries.

As promised, I have included some information about Conservation Easements. If you have additional questions about easements, you may contact me or the Northern Virginia Conservation Trust at 703-354-5093

If you have any questions about this plan, please contact me.

Sincerely,

James McGlone
Urban Forest Conservationist



REPORT ON FORESTLANDS
OF
Lee Vazquez
6200 Newman Rd.
Fairfax, VA 22030

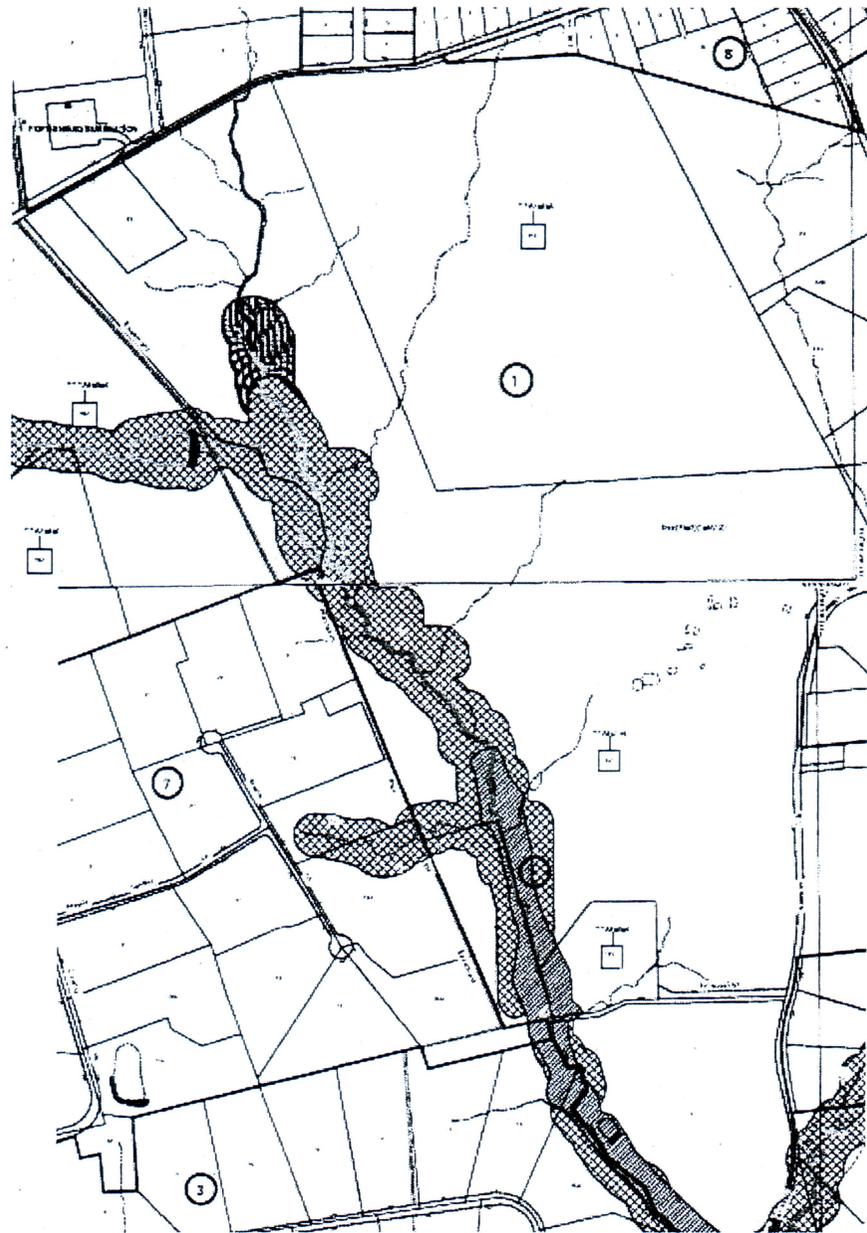
Location: The property is south of Pope Head Road, east of Newman Road and west of the Plantation Pipe Line. This property is A&F AA - 83 – S - 004.

Examined by: James McGlone, Urban Forest Conservationist

Landowner's Objectives: To maintain the property as an Agriculture and Forestal District; to enhance wildlife habitat; to maintain healthy trees for a quality forest.

General Description: This property consists of rolling upland that falls gently to a small stream in the western portion of the property. In addition to the forest there are about 43 acres of residence, pasture and hay field; and another 12 acres of abandoned corn field. The trees, both in the forest and in the landscape around the residence, are generally in good health; however the lack of regeneration means the forest is in decline. The lack of regeneration can be attributed to primarily to deer browse, which not only removes seeds and seedlings, but also creates favorable conditions for invasive species that out-compete native tree seedlings.

Areas of Special Concern: Most of the western boundary of the property is designated a Resource Protection Area (RPA) under the Fairfax County Chesapeake Bay ordinance. (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.



Wildlife: The woodland habitat is ideal for deer (observed) and turkey (reported) as well as coyote, fox, raccoon, skunk, and other small mammals and birds. The meadow in the abandoned corn field provides a rich source of berries and seeds that combine with the forest nuts to create a varied diet for birds and other animals. The flowering plants in the old corn field also provide a nectar source for bees, butterflies and other pollinators. In Virginia, this type of meadow habitat, and its dependent plant and animal species, is increasingly threatened by development and succession to forest. Several areas that might support vernal pools, an important habitat component for many woodland amphibians, were observed. The overall landscape mosaic of mature hardwoods, open field and water suggests tremendous possibilities for diverse wildlife on the property.

One drawback for wildlife is that lack of significant stratification. The general lack of understory, possibly related to deer browse, reduces the wildlife value of the property for many species of birds that rely on the understory.

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.

There are two solutions. First the property can be fenced and the deer removed. The second is to reduce the number of deer on the property through hunting. Relocation is not possible since all white tail deer habitat is full, so there is nowhere to send them. Managing fertility has proven effective only in captive deer herds. I am enclosing a brochure on deer management in Fairfax County.

Invasive species: A number of non-native plant species have become aggressive spreaders that displace native plants in the landscape. These plants are typically unpalatable to native herbivores and so escape predation and can focus on growth and reproduction. While many produce fruit that is eaten by native wildlife, the fruit is usually less nutritious than that of displaced native plants. The result is a landscape with less plant and animal diversity. Of particular concern to forestry are invasive vines, which can over-grow and kill mature trees and thus represent a threat to the current as well as the future forest.

The following known invasives were observed on the property: Oriental Bittersweet (*Celastrus orbiculata*); Porcelain-berry (*Ampelopsis brevipedunculata*); Japanese stilt grass (*Microstegium vimineum*); Autumn olive (*Elaeagnus umbellate*); Tree-of-heaven (*Ailanthus altissima*). I am enclosing fact sheets with information on identification and control on each of these species.

Water Quality: The generally forested nature of the property provides excellent water quality protection to Castle Creek, the Potomac River and the Chesapeake Bay.

Recreation: The wildlife potential of the property makes it an excellent site for hiking and wildlife viewing. Converting the existing pasture to native warm season grasses would provide additional wildlife viewing opportunities by attracting a variety of meadow vertebrate, invertebrate and wildflower species. With the addition of trails, the property would also be ideal for biking and horseback riding.

Forest Health:

Forest diseases prevalent in the Northern Virginia area: Gypsy moth (oak trees), Woolly adelgid (hemlock trees), Anthracnose (dogwood and sycamore trees) and Emerald Ash Borer (ash trees). The best way to combat outbreaks of these diseases is to know your forest. Walk it frequently and note trees that are looking sickly. Different diseases/infestations manifest themselves in different ways, some of the common characteristics to note are: severe defoliation, curling discolored leaves (look moldy), masses of insects present in larval forms (worms) or insect fecal matter (masses of black or white

droppings. Small holes in the trunk of a tree generally indicate borers and require immediate attention. If you suspect your trees are being attacked by disease or pests contact a certified arborist, the Fairfax County Urban Forest Management Branch at 703-324-1770, the county extension agent at 703-324-5369 or this office at 703-324-1489.

Wildfire: Protection of this property from wildfire is essential. Wildfire destroys valuable timber and property. Should wildfire occur on this or adjacent property call 911 immediately to report it to the Fairfax County Fire and Rescue Department.

Parcel 1

Acres: 147.2

Forest Type: Upland and riparian (stream side) mixed hardwood forest

Species Present: White oak (*Quercus alba*), Northern Red Oak (*Quercus rubra*), Souther Red Oak (*Quercus falcata*), Wild Cherry (*Prunus serotina*), Red Maple (*Acer rubrum*), Tulip Poplar (*Lireodendron tulipifera*), Hickory (*Carya* spp.) Black Gum (*Nyssa silvatica*), Beech (*Fagus grandifolia*), American Holly (*Ilex opaca*)

Age: 55 to 60 years

Size: Saw timber (20 + inches diameter at breast height)

Quality: Good

Trees/acre: Well stocked

Growth Rate: Fair to good

Description: This area was cut in the early 1950's and has been undisturbed since then. The upland forest is dominated oaks with a few hickory, beech, red maple, tulip poplar, and cherry in the canopy. The riparian forest sees an increase to dominance of the poplar and maple component, with walnut added to the mix. Through out much of the area beech dominates the sub-canopy and is poised to become the dominant canopy species. There are some sections that have a large component of American holly in the understory. Within 50 feet of Popes Head Road there is some advanced regeneration (taller than 4 feet) of oak and hickory; the only advanced regeneration on the rest of the parcel is beech.

There is a fence running east and west along the northern boundary of Parcel 5 and extending across the entire property. North of the fence the undergrowth consists mainly of lowbush blueberry and green briar. South of the fence the forest floor is covered with Japanese stiltgrass and interspersed with Japanese barberry. This difference may be due to the cattle, which eat the stilt grass and can spread the seed in their manure; deer do not eat stilt grass.

RECOMMENDATIONS:

The most critical management consideration for this parcel is to restore the understory in this parcel. Restoring the understory will improve the wildlife habitat and ensure continued diversity in the forest. Keeping the cattle out of the forest is one step that can help the understory managing the deer and invasive populations will also improve the understory.

The parcel has the opportunity to produce good quality timber, however once the timber is removed it is likely to succeed to a monoculture of beech. If timber harvest is considered in the future please contact the Virginia Department of Forestry at that time for recommendations

Parcel 2

Acres: 6.7

Forest Type Riparian (stream side) hardwood forest

Species Present: Tulip Poplar (*Lireodendron tulipifera*), Wild Cherry (*Prunus serotina*), Red Maple (*Acer rubrum*), Hickory (*Carya* spp.) Black Gum (*Nyssa silvatica*), Beech (*Fagus grandifolia*), Virginia Pine (*Pinus virginiana*) American, Holly (*Ilex opaca*), Flowering Dogwood (*Cornus florida*), Hornbeam (*Carpinus caroliniana*), Red Bud (*Cercis canadensis*)

Age: 55 to 60 years

Size: Saw timber (25 + inches diameter at breast height)

Quality: Good

Trees/acre: Well stocked

Growth Rate: Fair to good

Description: This area should be in mid succession. In 1983 and 1999 it was reported as pine forest. Most of the pines have died and dropped out of the canopy. Usually the decline of Virginia pine on a site is accompanied by vigorous growth of hardwoods; however on this site little or no replacement of the pine is occurring, leaving an under-stocked site of mature poplar a little beech in the sub-canopy. The lack of seedlings and saplings in natural openings adjacent to the drip line of mature tulip poplars point to deer browse as the cause of the absence of regeneration. This area is being invaded by oriental bittersweet from Parcel 4.

This Parcel differs from Parcel 1 because it has a northern aspect and is cooler and damper. The difference is reflected in the understory, which contains Jack –in-the-pulpit (*Arisaema triphyllum*) Partridgeberry (*Mitchella repens*) Sensitive Fern (*Onoclea sensibilis*) and Christmas Fern (*Polystichum acrostichoides*).

RECOMMENDATIONS:

As with Parcel 1, the most important management concern here is to restore the understory and regeneration by reducing deer browse

Parcel 3

Acres: 12

Forest Type: Old Field very early successional

Species Present: Wild Cherry (*Prunus serotina*), Red Maple (*Acer rubrum*), Black Jack Oak (*Quercus marilandica*) White Oak, Northern Red Oak, Sassafras (*Sassafras albidum*) Sweet Gum (*Liquidambar styraciflua*)

Age: 3 years

Size: Shrub

Quality: Good

Trees/acre: Well stocked around edge

Growth Rate: Fair to good

Description: This area is an abandoned corn field in early succession. In addition to the woody species noted around the edge, the center of the field is being colonized by autumn olive, suggesting the future forest will be arrested in the scrub-shrub stage. The field also contains a variety of grasses and flowering plants including Blackberry (*Rubus allegheniensis*) and Hemp Dogbane (*Apocynum cannabinum*). Blackberry, Dogbane and other flowers are valuable nectar sources for pollinators, and blackberries and other berries and nut produced in and around the field are important food sources for birds and other wildlife.

RECOMMENDATIONS:

This parcel is meeting the owner's objectives and providing valuable habitat diversity at both the site and landscape level. The only improvement that might be made here is it to remove the Autumn Olive.

Parcel 4

Acres: 2.3

Forest Type: Mixed riparian hardwood

Species Present: Wild Cherry, Red Maple, Tulip poplar, Oriental Bittersweet, Porcelain Berry, tree of heaven.

Age: 40 to 60 years

Size: Saw timber

Quality: Poor

Growth Rate: Poor

Description: This area is an intermittent stream with a narrow forested buffer. The trees in the buffer are being smothered and strangled by porcelain berry and oriental bittersweet.

RECOMMENDATIONS:

Forested riparian buffers are the best way to protect water from sediment and nutrients loading. In order to do this effectively, buffers must be a minimum of 35 feet wide. Widening this buffer to 35 or more feet on either side of the stream will improve the protection of water quality in Castle Creek, the Potomac River and the Chesapeake Bay. This site should qualify for the Conservation Reserve Enhancement Program (CREP). CREP will pay a share of the cost of site preparation, planting and fencing the area. Additionally CREP provides an annual per acre soil rental payment. I have included 2 information sheets on CREP. One is an older publication from June 2000 and the dollar figures may no longer be accurate, but it gives a good idea of how the program and payments are structured.

Parcels 5 and 5a

Acres: 43

Forest Type: Residence, outbuildings, pasture and hayfield.

Description: This area is either maintained landscape or agricultural field. The trees present here all appear to be in good shape.

RECOMMENDATIONS:

Follow the recommendation of the Northern Virginia Soil and Water Conservation District regarding nutrient and manure management in this area.



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:

Lee J. Vazquez Irrevocable Trust – Agricultural and Forest District
(AA 83-S-004-2)

Nadine C. Vazquez - Trustee

6390 Newman Road

Fairfax, VA 22030

Contact: 703-963-6935

Plan Prepared by:

Willie Woode, Senior Conservation Specialist, NVSWCD

Date:

October 31, 2012

Summary of operation:

This is a 205-acre property located at 6390 Newman Road in Fairfax, in the Popes Head Creek Watershed (PL 46). It consists of three parcels, which can be identified in the Fairfax County tax map system as 75-2 ((1)) -5Z & -19Z and 66-4 ((1)) -21Z. Forty-five acres is kept in hay production, pasture and residential use. The remaining 160 acres is in managed woodland where selective timber harvesting and wildlife preservation practices are conducted.

Thirty acres of the property was recently bequeathed to a family member Jeremy Vazquez. Multiple natural drainages flow through the property, including Castle Creek, a first order creek that eventually discharges Popes Head Creek. These channels have approximately 6,400 linear feet of Chesapeake Bay Resource Protection Area (RPA). Extended portions of the tributaries leading into Castle Creek, that have slopes 15% or greater have been delineated by the Department of Planning and Zoning as Environmental Quality Corridor (EQC).

Soil types on the northern one-fifth of the property consist of orange soils which are characteristically soils with the potential to overlay naturally occurring asbestos material. This area also has some soils containing clays with high shrink–swell potential. The remaining larger portion of the property consists of soil type (mainly Glenelg) with highly erodible potential.

Considering the overall sensitivity of this property (i.e. RPA, EQC, potential for rocks to contain asbestos, and highly erodible soils) the land owners must be aware that: i) Excavations in bedrock or earthmoving activities within the northern one-fifth of the property may expose

asbestos minerals to the atmosphere, allowing the fibers to be airborne; excavated rock materials from that area must not be used as aggregate; all such rock materials must be kept buried. ii) Disturbed soils in the lower four-fifth of the property consists of mainly highly erodible soils, therefore any soil disturbing activities must be accompanied by adequate erosion and sediment control measures.

Practices:

1) Buffer Management - Chesapeake Bay Resource Protection Area (RPA)

The cross-hatched (shaded) area on the site map is the Fairfax County delineated Chesapeake Bay Resource Protection Area (RPA) - it is a 100-ft. wide buffer (wider in some areas where it encounters other environmentally sensitive features such as major flood plains). This is the last area/barrier that provides opportunity for filtration of pollutants in runoff from adjacent lands before such polluted water enters state waters. These areas are required to be kept vegetated.

If at all there is need for Pesticide and fertilizer use within these sensitive areas, such applications should be done under highly discretionary conditions. Permitted modifications to the buffer area include those that will aid in maintaining its core functional value. For instance: i) creating access paths to provide general woodlot management as provided by the VA Department of Forestry, ii) Pruning or removal of **approved** potentially destructive or deceased trees, or invasive plants, on condition that where such plants are removed, they will be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.

Areas	Amount	Planned		Applied	
		Month	Year	Amount	Date
Woodland Management	6,400 ft.	10	2012		
TOTAL	6,400 ft.				

2) Nutrient Management:

No commercial fertilizer, pesticides or herbicides are in use.

In case the management decides incorporate the use of inorganic plant treatments (herbicides, etc.), such nutrients will be applied based on proper identification of the pest, and recommendation from an experienced professional. The Northern Virginia Soil and Water Conservation District should be contacted. Appropriate timing and quantity to be applied should be determined either by the district, a qualified individual or establishment before application.

Areas	Amount	Planned Month	Year	Applied	
				Amount	Date
Sycamore Field	10.0 acs.	10	2012		
Upper & Lower Horse Fields	7.0 acs.	10	2012		
Big Field	10.0 acs.	10	2012		
Pasture # 5	3.0 acs.	10	2012		
Pasture # 6	3.0 acs.	10	2012		
TOTAL	33.0 acs.				

3) Pest Management

An Integrated Pest Management (IPM) approach to pest control should be implemented. A pest tolerance threshold should be set and continuous scouting performed to keep pest infestation within the established threshold. An IPM practice 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.

Areas	Amount	Planned Month	Year	Applied	
				Amount	Date
Sycamore Field	10.0 acs.	10	2012		
Upper & Lower Horse Fields	7.0 acs.	10	2012		
Big Field	10.0 acs.	10	2012		
Pasture # 5	3.0 acs.	10	2012		
Pasture # 6	3.0 acs.	10	2012		
Residential Area 1	7.0 acs.	10	2012		
Residential Area 2	5.0 acs.	10	2012		
Woodland Management	160.0 acs.	10	2012		
TOTAL	205.0 acs.				

4) Upland and 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 VA Department of Forestry provides most of the basic practices to protect and enhance this natural open space.

Regarding the riparian zone, the stream corridor must be walk at frequent intervals; especially after a major storm event to be sure a toppled tree 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 especially if it has the potential to cause bank erosion. 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.

Areas	Amount	Planned		Applied	
		Month	Year	Amount	Date
Woodland Management	160 acs.	10	2012		
TOTAL	160 acs.				

5) Record Keeping

A system of records indicating the dates and applications of any applied treatment such as pesticides should be developed and maintained.

Areas	Amount	Planned		Applied	
		Month	Year	Amount	Date
Sycamore Field	10.0 acs.	10	2012		
Upper & Lower Horse Fields	7.0 acs.	10	2012		
Big Field	10.0 acs.	10	2012		
Pasture # 5	3.0 acs.	10	2012		
Pasture # 6	3.0 acs.	10	2012		
Residential Area 1	7.0 acs.	10	2012		
Residential Area 2	5.0 acs.	10	2012		
Woodland Management	160.0 acs.	10	2012		
TOTAL	205.0 acs.				

§ 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 (§ 9-6.14:1 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. 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 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; nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§ 9-6.14:1 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. 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 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 (§ 9-6.14:1 et seq.). 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 estate devoted to open-space use" shall mean real estate used as, or preserved for, (i) park or recreational purposes, (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 (§ 9-6.14:1 et seq.) and the local ordinance.

§ 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, (ii) forest use consists of a minimum of twenty 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 two acres.

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.

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.

§ 58.1-3237.1. Authority of counties to enact additional provisions concerning zoning classifications.

Any county not organized under the provisions of Chapter 5 (§ 15.2-500 et seq.), 6 (§ 15.2-600 et seq.), or 8 (§ 15.2-800 et seq.) of Title 15.2, which is contiguous to a county with the urban executive form of government and any county with a population of no less than 65,000 and no greater than 72,000 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. 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 which is zoned agricultural and is subsequently rezoned to a more intensive use which 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.

§ 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.

No subdivision of property which results in parcels which meet the minimum acreage requirements of this article, and which the owner attests is for one or more of the purposes set forth in § 58.1-3230, shall be subject to the provisions of this subsection.

B. 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.

§ 114-1-1

AGRICULTURAL AND FORESTAL DISTRICTS

§ 114-1-4

CHAPTER 114.

Agricultural and Forestal Districts of Statewide Significance¹

Article 1. In General

- § 114-1-1. Short title.
- § 114-1-2. Policy and purpose.
- § 114-1-3. Establishment of districts.
- § 114-1-4. Criteria for the establishment, modification, renewal, continuation or termination of a district.
- § 114-1-5. Requirements for agricultural and forestal value assessment.

Article 2. Districts Established Under This Chapter.

- § 114-2-1. District ordinances.

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.

¹Prior to its complete revision by Ord. No. 12-83-114, Chapter 114 consisted of §§ 114-1-1, 114-1-2 and was derived from Ord. No. 9-81-114 and Ord. No. 1-82-114.

(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 of 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.)

Statewide 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.

- (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.
 - (b) All lands in the district should be zoned to the R-P, R-C, R-A, or the 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 units per acre, .2 dwelling unit per acre, .2-.5 dwelling units per acre, .5-1 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 of 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 non-point 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 forestal 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.
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FAIRFAX COUNTY, VIRGINIA

MEMORANDUM

DATE: December 6, 2012

TO: Members, Planning Commission
Members, Board of Supervisors

FROM: Agricultural and Forestal Districts Advisory Committee

SUBJECT: Recommendations on the Whitehall Statewide Agricultural and Forestal District; Application AA 83-S-004-2

The Agricultural and Forestal Districts Advisory Committee met on December 4, 2012, to review the application to establish the Whitehall Statewide Agricultural and Forestal District (Application AA 83-S-004-2). The Committee found the following:

- The Whitehall Statewide Agricultural and Forestal District meets the minimum district size contained in Section 114-1-3;
- The Whitehall Statewide Agricultural and Forestal District conforms with the Policy and Purpose of Chapter 114 of the Fairfax County Code;
- The Whitehall Statewide Agricultural and Forestal District fulfills 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 revised to establish the Whitehall 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.

GLOSSARY

This Glossary is presented to assist the public in understanding the staff evaluation and analysis. It should not be construed as representing legal definitions.

AGRICULTURAL AND FORESTAL DISTRICT - 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.

AGRICULTURAL AND FORESTAL DISTRICT ADVISORY COMMITTEE (AFDAC) - A committee composed of four farmers, four freeholder residents of Fairfax County, the Supervisor of Assessments and one member of the Board of Supervisors. AFDAC is formed to advise the Planning Commission and the Board of Supervisors regarding the proposed establishment, modification, renewal and/or the termination of an Agricultural and Forestal District and to provide expert advice on the nature of farming and forestry in the proposed district and the relation of such activities to the County.

AGRICULTURAL PRODUCTS - Crops, livestock, and livestock products which shall include but not be limited to the following:

- 1) Field crops, including corn, wheat, oats, rye, barley, hay, tobacco, peanuts and dry beans.
- 2) Fruits, including apples, peaches, grapes, cherries, and berries.
- 3) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
- 4) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees and flowers.
- 5) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, fur-bearing animals, milk, eggs and furs.

AGRICULTURALLY SIGNIFICANT LAND - Land that has historically produced agricultural products, or land that AFDAC considers good agricultural land based on factors such as soil quality, topography, climate, agricultural product markets, farm improvements, agricultural economics and technology and other relevant factors.

AGRICULTURAL USE - Use for the production for sale of plants and animals; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery and floral products useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services of the State of Virginia, or when 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. Land or portions thereof used for processing of retail merchandise of crops, livestock products is not considered to be in agricultural use.

BEST MANAGEMENT PRACTICE (BMP) - 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 non-point sources in order to improve water quality.

CHESAPEAKE BAY PRESERVATION ORDINANCE - Regulations which the State has mandated to protect the Chesapeake Bay and its tributaries. See Fairfax County Code, Chapter 118, Chesapeake Bay Preservation Ordinance.

CLEARING - Any intentional or negligent act to cut down, remove all or a substantial part of or damage a tree or other vegetation which will cause the tree or other vegetation to decline and/or die.

COMMERCIAL FOREST - Land which is producing or is capable of producing forest products.

DEFERRED TAX - The difference between market tax value and use value tax is known as deferred tax. The deferred tax is still owed but is not due until the use of any part or the whole of the land in an A&F District is changed. The deferred tax plus the interest due on the deferred tax is known as rollback tax. Sixty days after the use of the land is changed, notice of the change must be filed with the County Department of Taxation.

DEVELOPED LAND - The total of all parcels containing permanent structures valued at \$2,500 or more, plus all parcels not generally available for development (e.g. tax exempt land, private rights-of-way, parcels owned in common by homeowner's associations, etc.).

EASEMENT - A right to or interest in property owned by another for a specific and limited purpose. Examples: access easement, scenic easement, utility easement, open space easement, etc. Easements may be for public or private purposes.

ENVIRONMENTAL QUALITY CORRIDOR (EQC) - An open space system designed to link and preserve natural resource areas, provide passive recreation and 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 Volume 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 EQCs. The 100 year floodplain drains 70 acres or more of land and has a 1% chance of flood occurrence in any given year.

FORESTAL PRODUCTS - Products for sale or for farm use, including but not limited to lumber, pulpwood, posts, firewood, Christmas trees and other wood products.

FORESTALLY SIGNIFICANT LAND - Land that has historically produced forestal products, or land that AFDAC considers good forest land based upon factors such as soil quality, topography, environmental quality and other relevant factors.

FORESTAL USE - Use for tree growth in such quantity and so spaced and maintained as to constitute a forest area under standards prescribed by the Director of the Department of Conservation and Economic Development of the Commonwealth of Virginia pursuant to Section 58-769.12 of the Code of Virginia, including the standing timber and trees thereon.

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 by the land owner, after evaluation under criteria established by the Board. See Open Space Land Act, Code of Virginia, Sections 10.1-1700.

QUALIFYING USE - A land use which is eligible for use value taxation under Section 4-19 of the Fairfax County Code.

RESOURCE MANAGEMENT AREA (RMA) -The 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, Chapter 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, Chapter 118, Chesapeake Bay Preservation Ordinance.

ROLLBACK TAX - Whenever an owner changes the acreage of an eligible tract by splitting off a parcel, or by changing the use of the land to a non-qualifying use, each applicable deferred tax plus annual simple interest at the rate annually applied to delinquent taxes becomes due and payable as a lump sum, known as the rollback tax. The rollback tax is applied to the year in which the use is changed and the previous five years the land was qualified for and assessed at use value rates.

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.

UNDEVELOPED LAND - Unimproved or under utilized land. Land containing no structures valued at \$2,500 or more.

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 Corp of Engineers.

WILDLIFE HABITAT - Areas which contain the proper food, water, and vegetative cover to support a diverse community of animals, birds and fish; some examples include floodplains, upland hardwoods, pinewoods, meadows and marshes.