

RZ 94-P-064

PROFFER STATEMENT

March 31, 1995
June 9, 1995
June 13, 1995
June 29, 1995
June 30, 1995
July 7, 1995
July 10, 1995
July 12, 1995
July 19, 1995
July 19, 1995 (Final)
July 27, 1995

Pursuant to Section 15.1-491(a) of the Code of Virginia, as amended, and subject to Board of Supervisors' approval of rezoning application RZ 94-P-064, as proposed, for rezoning from the I-4 and H-C Districts to the PDH-30 and H-C Districts, 1994 Fund III L.C. (the "Applicant") proffers that development of Tax Map Parcel 29-4 ((1)) 3A (the "Property") shall be in accordance with the following proffered conditions:

1. Development Plan. Subject to provisions of Section 16-403 of the Zoning Ordinance, the Property shall be developed in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP), Sheets 1 through 6, prepared by Dewberry and Davis and dated March 30, 1995 and revised through June 29, 1995 (the "Development Plan"), as further modified by these proffered conditions.
2. Final Development Plan Amendments. Notwithstanding the CDP/FDP is combined onto six sheets and said CDP/FDP is the subject of proffer #1 above, it shall be understood that (i)

the CDP shall consist of the entire plan shown on sheets #1 and #2 relative to the points of access, the maximum number of dwelling units, general location of buildings, streets and open space areas, and (ii) the Applicant has the option to request a Final Development Plan Amendment from the Planning Commission in accordance with Section 16-402 of the Zoning Ordinance with respect to the remaining elements.

3. Minor Deviations. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the approved FDP may be permitted as determined by Fairfax County. The Applicant shall have the flexibility to modify the layout shown on the plan without requiring approval of an amendment to the FDP, provided such changes are in substantial conformance with the FDP, as determined by the Office of Comprehensive Planning, and do not increase the total number of units, decrease the minimum amount of open space, or decrease the amount of landscaping along the property boundaries or in common open space areas. Such changes may include, without limitation, adjusting the building footprints, shifting the number of units from one building to another, and converting parking spaces between surface and structured spaces.

4. Maximum Density. A maximum of 624 units shall be permitted on the Property.

5. Roadway Contribution. The Applicant shall contribute \$669.00 per dwelling unit to the Fairfax County Board of Supervisors for the "Tysons Corner Transportation Fund." Such contribution shall be paid in accordance with the following terms:
- a. If at the time of final site plan approval the Board of Supervisors has adopted a formal policy governing payment of funds to the Tysons Corner Transportation Fund, payments shall be made at the times called for in that policy and shall be escalated in accordance with that policy.
 - b. If at the time of final site plan approval the Board of Supervisors has not adopted a final policy governing payment of funds to the Tysons Corner Transportation Fund, ten percent of the aggregate payment shall be paid at the time of final site plan approval/bonding and the remaining 90 percent for each unit shall be paid for all units within a building, pro rata, at the time of issuance of the initial building permit for the respective building. The amount shall be adjusted at the time of payment, using the date of rezoning approval as the base date, in accordance with the Virginia Highway Construction Bid Index as published in the Engineering News Record.

6. Old Springhouse Road Extended Alternatives.

- a. Applicant shall, for a period not to exceed 60 days following the date of subject rezoning, continue its efforts to finalize an agreement with the adjacent property owner, WEST*GATE Limited Partnership ("WEST*GATE"), pursuant to which Applicant shall construct Old Springhouse Road Extended generally as proffered and shown on Sheet 4 of 9 of the Generalized Development Plan dated April 21, 1992 as revised through May 6, 1992 ("WEST*GATE GDP"), and as more specifically shown on the road plan entitled "Old Springhouse Road," last dated February 14, 1991 (as revised to include a sidewalk on the north side and as may be further revised), and prepared by Huntley, Nyce & Associates P.C., (hereinafter "Old Springhouse Road Extended"), subject to a reimbursement agreement between the Applicant and WEST*GATE, its successors and assigns, which agreement would include provision for a pro rata contribution (68%) of the total cost of said construction. That total cost shall include, without limitation, all engineering, design, permit, bonding, labor, material and any other cost related to such improvement (hereinafter "Total Cost"). The WEST*GATE GDP and proffers were approved by the Board of Supervisors of Fairfax County at the time of the Board's June 22, 1992 approval of WEST*GATE'S rezoning

application RZ 92-P-001 ("WEST*GATE Rezoning"). At Applicant's sole option, Applicant may pursue execution of such agreement beyond the aforesaid 60-day period, or shall proceed to design, obtain site plan approval for, and construct the interim improvement identified in Paragraph 6b herein. If Applicant is successful in executing such an agreement with WEST*GATE, and the right-of-way and necessary easements for construction of Old Springhouse Road Extended are made available, at no cost to Applicant, by WEST*GATE or by the Board pursuant to the proffers in the WEST*GATE Rezoning, Applicant shall obtain site plan approval of, shall post bond, letter of credit, or other surety for the construction of, and shall construct Old Springhouse Road Extended. Such improvement shall be available for use by the public prior to final bond release for the subject multi-family site plan. With payment to the Applicant of the aforesaid reimbursement, this improvement is intended to be provided by the Applicant in lieu of WEST*GATE'S obligation to construct said road improvement pursuant to the WEST*GATE Rezoning, which relief may be the subject of a proffer interpretation or other clarification within the WEST*GATE Rezoning.

- b. In the alternative, should Applicant not be successful in reaching the aforesaid agreement with WEST*GATE,

Applicant shall be required, provided sufficient right-of-way is made available at no cost to Applicant, to proceed forthwith to design, obtain appropriate government approvals for, and construct the interim improvement of an additional third lane on the west side of the intersection of existing Old Springhouse Road and Route 123, which interim improvement shall facilitate the provision of a dedicated left turn lane onto northbound Route 123, a combined left turn and through lane, and a dedicated right turn lane onto southbound Route 123, all such movements flowing from eastbound existing Old Springhouse Road at said intersection. Said interim improvement shall be generally consistent with the vertical and horizontal geometry of this intersection as proffered in the WEST*GATE Rezoning, subject to approval by VDOT. Said interim improvement shall be available for use by the public at the time of issuance of the building permits for construction of the 9th of the 10 multi-family residential structures shown on the CDP/FDP. Applicant shall be entitled to credit, in the amount of all costs associated with said improvement to include, but not limited to, all engineering, design, permit, bonding, labor, material, and other construction costs, against, and to subtract such total costs from, its contribution

towards Old Springhouse Road Extended as defined in Paragraph 6c herein.

- c. If the alternative cited in 6.a above is not fulfilled, the Applicant shall contribute 32 percent, as its pro rata share, of the Total Cost of constructing the future realignment of Old Springhouse Road by others. Said Total Cost of construction shall be determined by an estimate prepared by a mutually agreeable independent estimator, selected by the Applicant and WEST*GATE. The estimate shall be subject to the review and approval of DEM. Said pro rata share shall be payable to the Fairfax County Board of Supervisors upon issuance of the first building permit or upon approval of a site plan for the road improvement by others, whichever occurs first. Payment of this sum shall fulfill this proffer, and all financial obligations of this Applicant and its successors for realignment of Old Springhouse Road shall be satisfied.

7. Right-Turn Lane. At the time of final site plan approval, if required by VDOT, the Applicant shall dedicate and convey to the Board of Supervisors in fee simple right of-way from its property for a right-turn deceleration lane on existing Old Springhouse Road into the subject Property's southern (main) entrance. The Applicant shall construct said right turn lane so that its maximum length is 150 feet with a 50-

foot long taper at the time of construction of the main site entrance. No right-turn deceleration lane shall be required for the northern entrance into the site.

8. Signal Modifications. At the time of final site plan approval, the Applicant shall escrow with DEM 32 percent, as its pro rata share, of the total cost of future signal modifications at the intersection of Dolley Madison Boulevard and Old Springhouse Road Extended (Colshire Drive), as determined by DEM. Said pro rata share shall be payable to the Fairfax County Board of Supervisors at the time of first final site plan approval and bonding and shall be released for use by Applicant if (i) construction of the alternative under proffer #6.a is subsequently begun by Applicant and (ii) said construction project shall include the aforesaid signalization modifications.

9. Temporary Easements. The Applicant shall provide temporary grading and construction easements as may be required by VDOT for future reconstruction by others of Old Springhouse Road Extended.

10. Cul-de-Sac. The Applicant shall reserve right-of-way for possible future construction by others of a cul-de-sac at the terminus of Old Springhouse Road Extended, provided that reservation of said right-of-way does not reduce the number

of dwelling units, modify any building location, or modify site entrance design. Said right-of-way shall be dedicated at no cost by the Applicant upon demand by Fairfax County or VDOT at such time as the existing loop road to the west is determined by Fairfax County or VDOT to be removed from the public street system.

11. Limits of Clearing and Grading. The Applicant shall conform to the limits of clearing and grading shown on the Development Plan, subject to installation of roads, trails, utility lines and stormwater management as determined by DEM. The trails and utility lines shall be located and installed in the least disruptive manner possible considering cost and engineering. A replanting plan shall be developed and implemented, as approved by the County Urban Forester, for any areas outside the limits of clearing and grading that must be disturbed.

12. Environmental Quality Corridor. At the time of final site plan approval, the Applicant shall record an open space/conservation easement running to the Board of Supervisors specifying that: (i) the Scott's Run EQC as represented on the Development Plan shall remain undisturbed except for the location of walking paths, trails and the par course as shown on the Development Plan, utility lines and pond maintenance if necessary as determined by DEM, and

passive recreation facilities such as picnic tables, which shall be located and installed in the least disruptive manner possible as determined by DEM considering cost and engineering; (ii) there shall be no clearing of vegetation within the easement, other than dead or dying vegetation, except as needed for installation of above-cited facilities or as approved by the Urban Forestry Branch of the Department of Environmental Management (DEM); and (iii) supplemental vegetation may be planted within the EQC as described in proffer #20.

13. Landscaping. Subject to approval by the County Urban Forester, landscaping shall be provided generally as shown on the Development Plan, including plantings along the site's frontage on existing Old Springhouse Road, within each courtyard area, at the main site entrance, at individual building entrances, and around the foundation of the clubhouse and of each of the residential buildings. Exact locations, layouts, types and amount of vegetation shall be determined pursuant to a more detailed landscape plan submitted for review and approval by the County Urban Forester at the time of site plan review.

14. Recreation Facilities. The Applicant shall comply with Paragraph 2 of Section 6-110 of the Zoning Ordinance regarding developed recreational facilities. At a minimum,

the following recreation facilities shall be provided to serve the Property residents:

- a. A swimming pool;
- b. A clubhouse facility;
- c. An indoor exercise area;
- d. Exercise stations shall be provided generally as shown on the CDP/FDP;
- e. One tot lot; and
- f. A sand volleyball court.

15. Trails. The Applicant shall provide an eight-foot wide asphalt trail (TX-1) within a 12-foot public access easement, as determined by DEM. Final determination of trail location and design shall be made at the time of site plan approval. In addition, a four-foot wide walkway shall be provided on site generally as shown on the Development Plan connecting to the trail referenced above.

16. Swimming Pool Waters. The Applicant shall ensure that swimming pool waters are properly neutralized prior to being discharged during annual or semi-annual draining or cleaning operations by adding sufficient amounts of lime or soda ash to the acid cleaning solution, prior to discharge, to achieve a ph approximately equal to that of the receiving stream; all such discharged pool waters shall have a minimum dissolved oxygen concentration of 4.0 milligrams per liter;

if such discharged pool water is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

17. Noise Mitigation.

a. Applicant shall utilize building materials with characteristics pursuant to commonly accepted industry standards to achieve a maximum interior noise level of 45 dBA Ldn.

i. All units located between 70-75 dBA Ldn highway noise impact contours and not otherwise shielded by structures or topography shall have the following acoustical attributes;

(1) Exterior walls shall have a laboratory Sound Transmission Class (STC) rating of at least 40.

(2) Doors and windows shall have a laboratory STC rating of at least 31. If windows constitute more than twenty percent (20%) of any facade, they should have the same laboratory STC as walls.

(3) Measures to seal and caulk between exterior wall surfaces shall follow methods approved

by the American Society for Testing and Materials to minimize sound transmission.

- ii. All units located between the 65-70 dBA Ldn highway noise impact contours shall have the following acoustical attributes:
 - (1) Exterior walls shall have a laboratory STC rating of at least 39.
 - (2) Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than twenty percent (20%) of any facade, they should have the same laboratory STC as walls.
 - (3) Measures to seal and caulk between exterior wall surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.
- b. When necessary to achieve a maximum exterior noise level of 65 dBA Ldn, noise attenuation structures such as acoustical fencing, walls, earthen berms or combinations thereof, shall be provided for those outdoor recreation areas including rear yards, that are unshielded by topography or structures. If acoustical fencing or walls are used, they should be architecturally solid from ground up with no gaps or openings.

- c. The noise contours referenced above shall be as generally depicted on Exhibits A-1 and A-2 or as may be depicted on a refined noise study referenced in paragraph d below.
 - d. Alternative noise attenuation measures may be provided subject to the implementation of a refined noise study as reviewed and approved by DEM after consultation with the Office of Comprehensive Planning.
18. Stormwater Management. The Applicant shall provide stormwater detention facilities for any increase in impervious area over that associated with the prior industrial use of the Property in accordance with the PFM, unless waived or modified by DEM. BMPs shall be provided in accordance with County Ordinances, unless waived or modified pursuant to County Ordinances.
19. Environmental Monitoring. Applicant shall provide to DEM, the Health Department, and the Fire and Rescue Department copies of all required Virginia Department of Environmental Quality (VDEQ) reports on the removal of the underground storage tanks to include: tank closure reports and the site characterization report. Applicant has already drilled three (3) groundwater monitoring wells in accordance with the VDEQ site characterization assessment process and shall include the findings from the wells in the required report

to VDEQ and shall abide by any VDEQ requirements for additional investigation or remediation. Closure of this case by VDEQ shall not be a condition of site plan approval. The developer and on-site contractors and consultants shall remain observant for potential sources and evidence of soil contamination, petroleum, buried debris, other hazardous substances, and groundwater contamination throughout all phases of site development. Should such observations reveal the presence of suspicious materials, all earthwork and construction activities within the immediate affected areas shall cease immediately and shall not resume until the developer notifies the Fire and Rescue Department and the Chemical Hazards Branch of the Health Department. Written information on this matter shall be provided to all construction crews and field workers by providing a copy of this condition or similar notification with all site work (clearing, grading and/or excavation) contracts.

20. Sidewalk. If plans for construction of Old Springhouse Road Extended which include a sidewalk are not bonded prior to site plan approval of the Gates of McLean project, Applicant shall provide a 4-foot wide asphalt trail along Old Springhouse Road from the Gates of McLean southern entrance to its eastern boundary along Old Springhouse Road Extended. It is contemplated that said trail may be replaced by a permanent sidewalk to be built as part of the Old

Springhouse Road Extended project (by others) from Route 123 to I-495.

21. Afforestation. Applicant shall: (i) afforest the areas depicted on the CDP/FDP within the EQC with seedlings consisting of a mix of native species as approved by the County Urban Forester; and (ii) achieve survivability of approximately 75 percent of the plants by time of bond release.

22. Design Details. Design amenities shall be provided generally in character, quality and quantity with the illustrations and details presented on Sheets #3 and #4 of the Development Plan. Specific features, such as exact locations and types of plantings, fencing, street furniture, sidewalks to individual units, etc., may be modified pursuant to final engineering and design.

23. Architecture. The multi-family building elevations depicted on Development Plan Sheet #6 dated June 29, 1995 are provided for illustrative purposes only to demonstrate the character and quality of the proposed buildings and may be modified pursuant to final engineering and architectural design provided that such modified plans are consistent with the character shown on Sheet #6.

24. Lighting. In order to provide a unified and coordinated appearance, a comprehensive lighting plan shall be provided for the residential development at the time of building permit submission. Exterior lighting shall be designed to enhance night safety and circulation, as well as highlight special features.
25. Tree Preservation. Tree preservation, in addition to that shown on the Development Plan, shall be provided as determined by the Urban Forestry Branch of DEM where such preservation would be feasible and desirable, consistent with the approved Development Plan, and not cause any relocation of buildings or loss of parking spaces.
26. Adjacent Use Notification. Applicant shall identify on its marketing display, both Plan view and, if utilized, architectural mock-up of the project, that the current zoning of the adjacent Westgate parcels within the area bounded by Route 123 on the south, 495 on the west, and the Dulles Toll Road and ramp systems on the north and east, is C-3 (Commercial/Office), that all or any portion of the adjacent Westgate parcels could be redeveloped pursuant to the uses authorized in the most recent rezoning identified on the current Fairfax County Zoning Tax Map available within the marketing center and/or pursuant to the recommendations in the Fairfax County Comprehensive Plan,

and that the details of both current zoning and current Comprehensive Plan recommended uses are available at Fairfax County's Office of Comprehensive Planning, the address and telephone for which shall also be provided as part of this notification text.

27. Density Credit. All density of use attributable to land areas dedicated and conveyed in fee simple to the Board of Supervisors pursuant to these proffers shall be subject to the provisions of Paragraph 5 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the residue of the subject Property.

28. Successors and Assigns. Each reference to "Applicant" in this Proffer Statement shall include within its meaning, and shall be binding upon, Applicant's successor(s) in interest and/or the developer(s) of the site or any portion of the site.

29. Counterparts. To facilitate execution, this Proffer Statement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of all the parties to this Proffer Statement appear on each counterpart of this Proffer Statement. All counterparts of this Proffer Statement shall collectively constitute a single instrument.

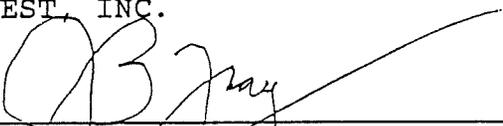
APPLICANT:

1994 FUND III L.C.

By: 
James W. Todd
Its: Manager

CONTRACT PURCHASER:

LINCOLN PROPERTY COMPANY
SOUTHWEST, INC.

By: 
Jeff B. Franzen
Its: Vice President

cfr:FF T:\low\lincoln\proffe10

PROPOSED DEVELOPMENT CONDITIONS

Revised July 13, 1995

RZ 94-P-064

If it is the intent of the Board of Supervisors to approve rezoning application RZ 94-P-064 from the I-4 to the PDH-30 Zoning District and the Conceptual Development Plan for residential development on property located at Tax Map Parcels 29-4 ((1)) 3A, staff recommends that the Board condition the approval by requiring conformance with the following development conditions:

1. The applicant shall conduct sampling to determine the extent of soil and/or groundwater contamination associated with perchlorethylene (PCE) that has been detected in soil samples on the property. Sampling shall be conducted in a manner mutually agreeable to the County Health Department and the applicant, following EPA protocols for sample recovery and analysis, to determine if significant concentrations of PCE and/or its breakdown products are present within groundwater and to determine the potential (if any) for migration of contaminants from the property onto one or more nearby properties. All sampling results shall be provided to the Health Department and to the Northern Virginia Water Regional Office of the Virginia Department of Environmental Quality (DEQ). The applicant shall, prior to site plan approval, provide documentation to DEM demonstrating that the sampling data has been transmitted to the Health Department and DEQ.
2. If on-site stormwater management is required by DEM, the applicant shall provide for the location of a stormwater management facility on-site outside of the EQC. If the location of such facility is not in substantial conformance with the CDP/FDP, a proffered condition amendment application or final development plan amendment may be required.

EXHIBIT A1 NEAR-GROUND NOISE CONTOURS

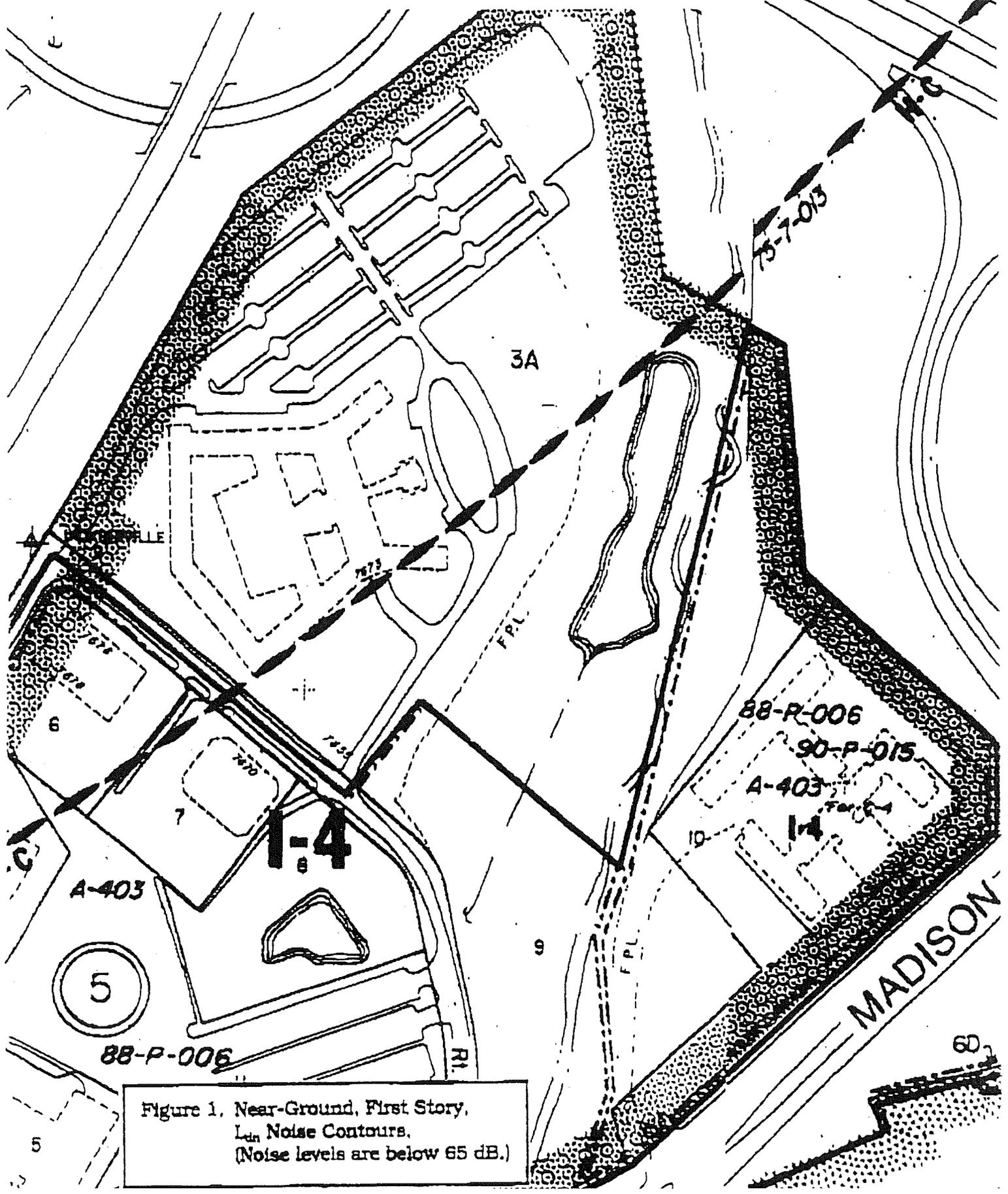


Figure 1. Near-Ground, First Story, L_{dn} Noise Contours. (Noise levels are below 65 dB.)

EXHIBIT A2 ABOVE-GROUND NOISE CONTOURS

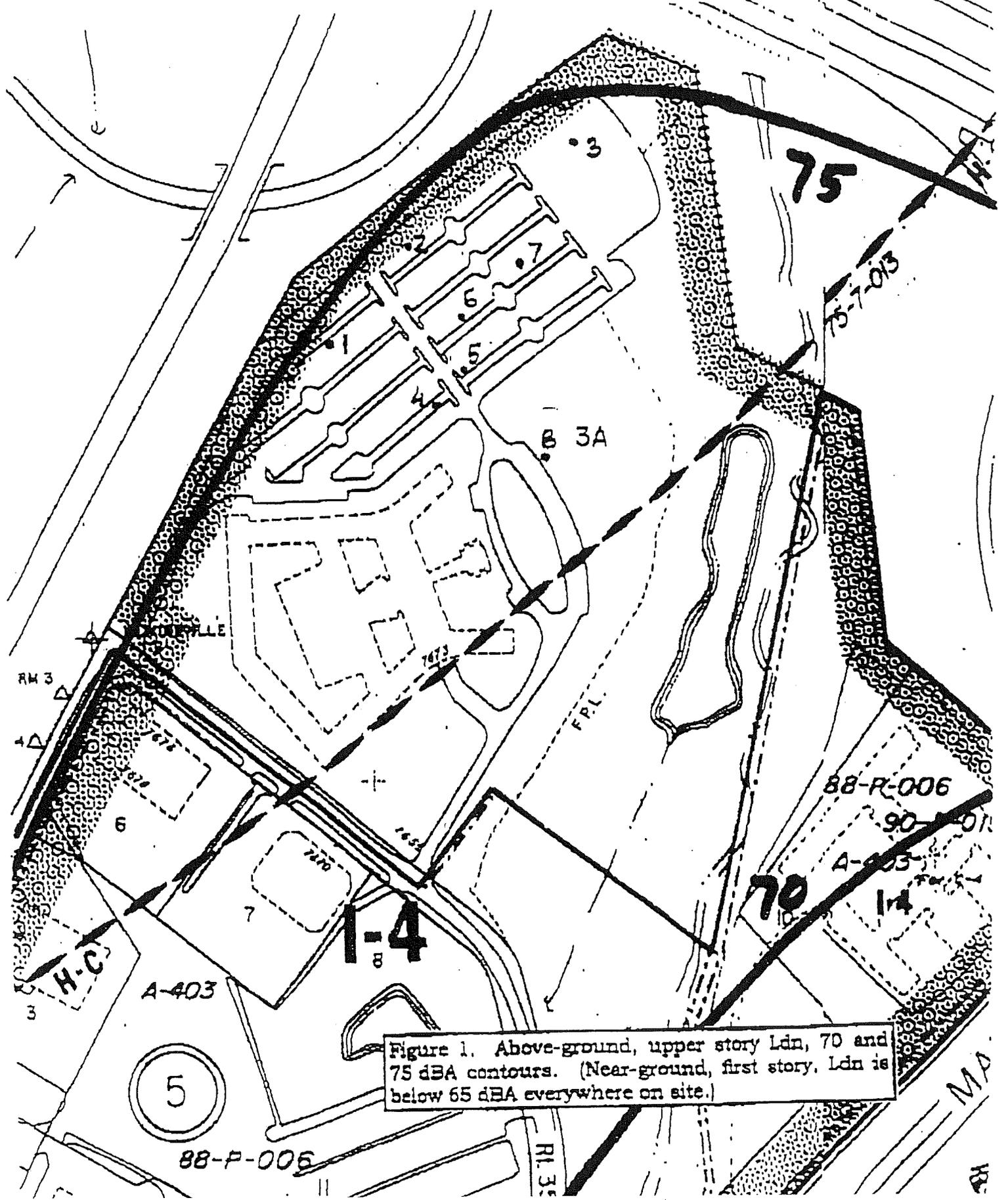


Figure 1. Above-ground, upper story Ldn, 70 and 75 dBA contours. (Near-ground, first story, Ldn is below 65 dBA everywhere on site.)

F A I R F A X C O U N T Y

BOARD OF SUPERVISORS ACTION
ZONING MAP AMENDMENT
DATE OF ACTION 07/31/95

APPLICATION NUMBER: RZ 94-P-064

PROVIDENCE DISTRICT

APPLICANT: 1994 FUND III L.C.

STAFF: GUINAW

GRANTED THE REQUESTED ZONING DISTRICT(S) SHOWN BELOW
APPROVED THE CONCEPTUAL DEVELOPMENT PLAN
AND ACCEPTED PROFFERS.

APPLICATION DATA

EXISTING ZONING AND ACREAGE

ZONING: I-4

ACRES: 21.05

PROPOSED:

PDH-30
21.05

ACTION:

PDH-30
21.05

TOTAL ACRES

21.05

TOTAL ACRES

21.05

MAP NUMBERS

029-4- /01/ /0003-A

REMARKS:

THE PLANNING COMMISSION APPROVED THE FDP ON 7/19/95

ZONING MAP AMENDMENT

RZ 94-P-064

ZONING DISTRICT DATA

ZONING DISTRICT: PDH-30

PROFFERED/CONDITIONED DWELLING UNIT DATA

TYPES	UNITS	ACRES	DENSITY	RANGE	LOMOD INCL	LOMOD ADD
SFD						
SFA						
LOR	624	21.05	29.65			
MID						
HI						

TOT	624	21.05	29.65			

PROFFERED/CONDITIONED NON-RESIDENTIAL GROSS FLOOR AREAS

USE	GFA	FAR	USE	GFA	FAR
COMMERICAL-GEN			PUBLIC/QUASI PUB		
HOTEL/MOTEL			OFFICE		
INDUSTRIAL-GEN			TRAN-UTIL-COMM		
CULT/EDU/RELG/ENT			RETAIL-EATING EST		
INDUST-WAREHOUSE			*****TOTAL*****		

REMARKS:

ZONING MAP AMENDMENT

RZ 94-P-064

CONDITION/CONTRIBUTION DATA

COND CODE DESCRIPTION	COND CODE DESCRIPTION
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1B CONCEPTUAL DEVEL PLAN	1C FINAL DEVELOPMENT PLAN
1E CONDITIONS, PROFFERED	1F CONDITIONS, P DISTRICT
2A DENSITY	2I ARCHITECTURE
2J BUILDING HEIGHT	2K SETBACK
2Z OTHER - LAND USE	3A CONTRIBUTION-TRANSP *SEE BELOW
3B RIGHT-OF-WAY: DEDICATION/RESERV	3C FACIL: CONSTR/REALGN/WIDEN/EXPND
3D ACCESS CONTROL	3F PEDESTRIAN FACILITY/TRAIL
3Z OTHER - TRANSPORTATION	4B TREES/COUNTY ARBORIST
4D BUFFER	4E NOISE ATTENUATION
4F STREAM VALLEY/EQC/FLOODPLAIN	4H LANDSCAPING

CONTRIB DATA:	CND CODE	AMOUNT	CONDITIONED	EXPIRES	CONTRIB CODE
	3A	\$417,456	Y	00/00/00	
		\$0		00/00/00	
		\$0		00/00/00	
		\$0		00/00/00	

REMARKS:

3Z - RIGHT TURN LANE AT ENTRANCE OLD SPRINGHOUSE RD. AND RT. 123;
 4Z - MONITORING GROUNDWATER; AND 2Z - NOTIFY RES. OF FUTURE RZ'

[Faint, illegible text or stamp]

RECEIVED
OFFICE OF COMPREHENSIVE PLANNING

AUG 30 1995

ZONING EVALUATION DIVISION