



APPLICATION ACCEPTED: February 13, 2013
PLANNING COMMISSION: June 27, 2013
BOARD OF SUPERVISORS: July 9, 0213 @ 3:30 p.m.

County of Fairfax, Virginia

June 13, 2013

WS

STAFF REPORT

KOSTERS AGRICULTURAL AND FORESTAL DISTRICT

APPLICATION AR 2004-SP-001

SPRINGFIELD DISTRICT

APPLICANT: Mark A. and Lisa K. Kosters, Marvin H. Kosters and Bonnie M. Kosters, Trustees

ZONING: RC, WS

PARCEL(S): 75-1 ((8)) 6Z; 75-1 ((10)) 7Z, 8Z, 9Z

ACREAGE: 20.30 acres

PLAN MAP: Residential, 0.1-0.2 du/ac

PROPOSAL: The renewal of a Local Agricultural and Forestal District

STAFF RECOMMENDATIONS:

Staff recommends that the request to amend Appendix F of the Fairfax County Code to renew the Kosters Local 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 10.

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 also be noted that it is not the intent of staff to recommend that the Board, in adopting any Ordinance Provisions, 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, Department of Planning and Zoning, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035-5505, (703) 324-1290 or TTY 711 (Virginia Relay Center).

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Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

A&F District Renewal

AR 2004-SP-001



Applicant: MARK A. AND LISA K. KOSTERS, MARVIN H. KOSTERS AND BONNIE M. KOSTERS

Accepted: 02/13/2013
Proposed: AGRICULTURAL AND FORESTAL DISTRICT RENEWAL

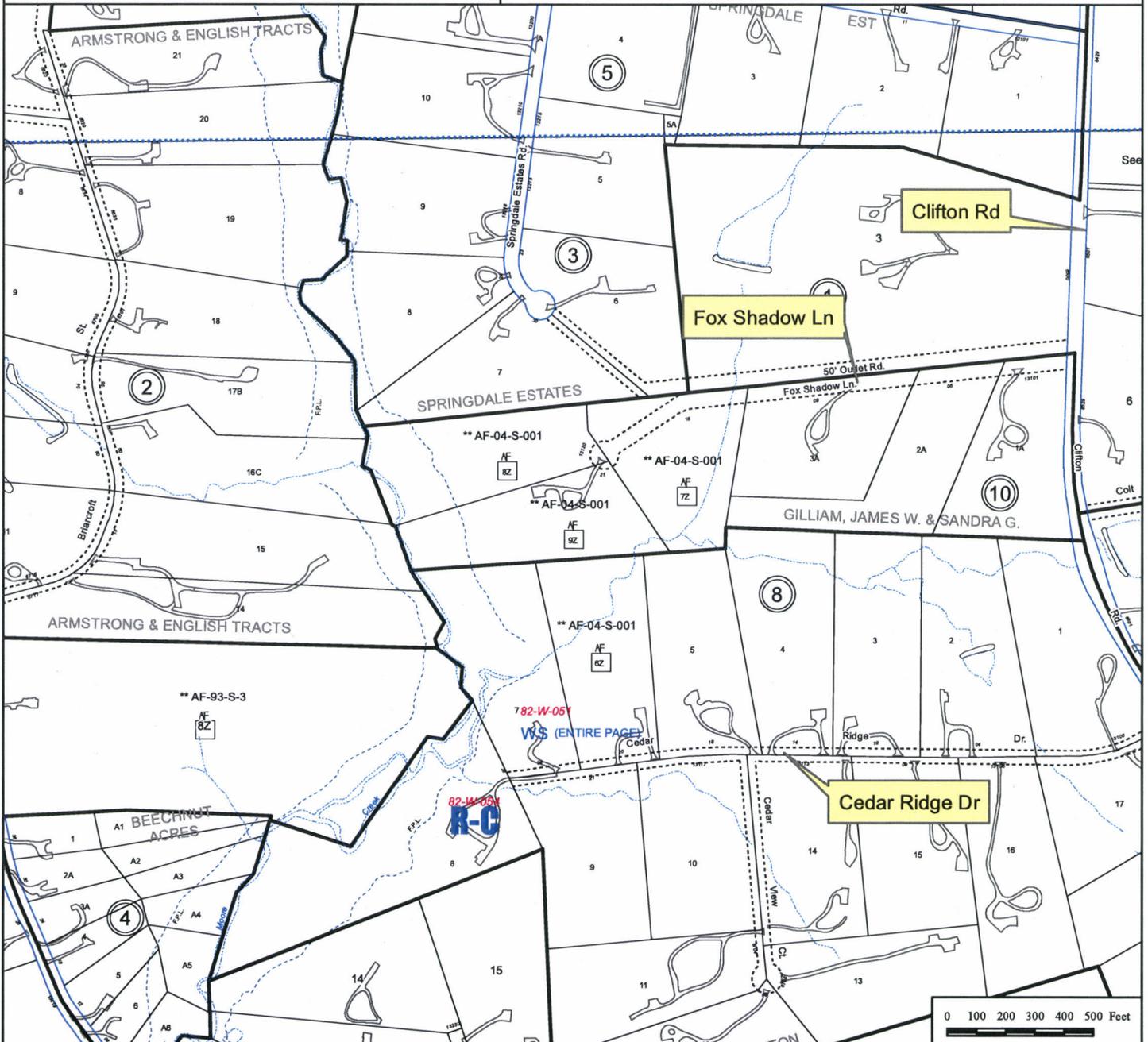
Area: 20.3 AC OF LAND; DISTRICT - SPRINGFIELD

Located: 13120 CEDAR RIDGE DRIVE & 13121 FOX SHADOW LANE, CLIFTON, VA 20124

Zoning: R- C

Overlay Dist: WS

Map Ref Num: 075-1- /08/ /0006Z /10/ /0007Z /10/ /0008Z /10/ /0009Z



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

DESCRIPTION OF APPLICATION

AR 2004-SP-001

The applicants seek to renew the Kusters Local Agricultural and Forestal (A&F) District for an eight year term under the provisions of Chapter 115 of the Fairfax County Code. A & F Districts encourage the preservation of significant tracts of agricultural and forested land throughout the County by providing a reduced real estate tax assessment in exchange for a commitment to preserve the land for the length of the term. While certain exceptions are permitted, the land is expected to remain at its present use and development intensity. Removal of the district before the conclusion of the eight year term is subject to a penalty and payment of roll back taxes, subject to the terms in Article 6 of Chapter 115. The subject property is located west of Clifton 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.

LOCATION AND CHARACTER

District Location:

The district consists of four lots measuring a total of 20.30 acres in area. The "T"-shaped property is located north of the Town of Clifton and south of Centreville, west of Clifton Road. Access is via Fox Shadow Lane and Cedar Ridge Drive, both private streets that connect to Clifton Road. Three parcels of are located at the terminus of Fox Shadow Lane; the fourth parcel is located adjacent to these to the south, near the end of Cedar Ridge Drive.

Existing Conditions:

The district contains two residences (on parcel 9Z and 6Z) as well as horse stables. Pastures and riding areas surround the homes and spread across the remainder of the district. The property is bounded by Johnny Moore Creek to the west and a tributary to that stream crosses the site. The areas around the creek are generally forested, with some areas previously cleared and fenced for pasture. The following permanent structures are located on the property:

Structure	Year Built	Use
House (Parcel 9Z)	1982	Residential
Stable (Parcel 9Z)	1985	Horses, storage
House (Parcel 6Z)	2001	Residential
Stable (Parcel 6Z)	2001	Horses, storage

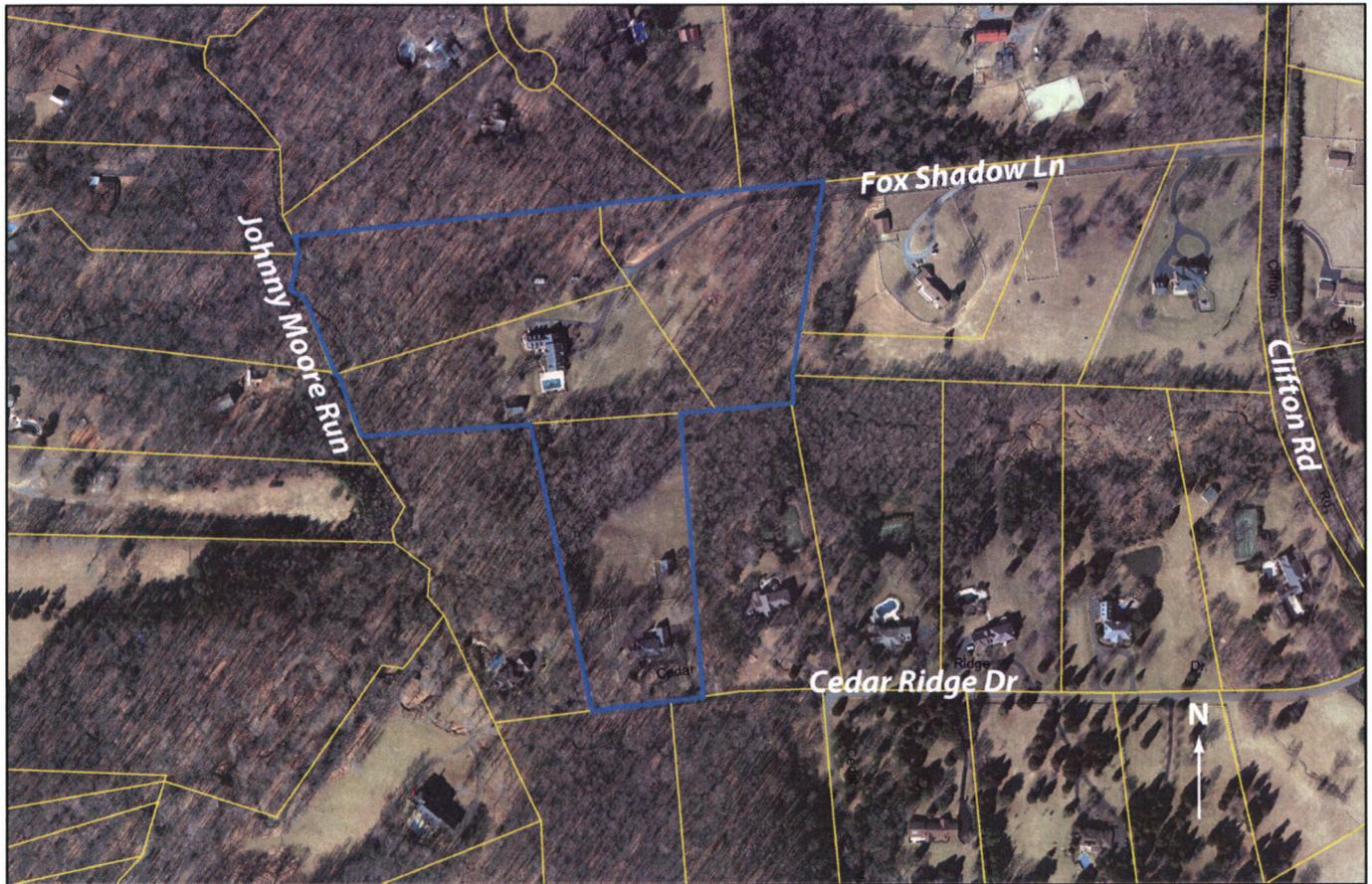


Figure 1. Aerial Image of Kosters District (2010)

Surrounding Area Description:

The subject property and surrounding area are zoned R-C and WS, and are planned for low-density residential uses at 0.1 to 0.2 dwelling units per acre and private open space. The subject property is surrounded by dwellings on large lots (5+ acres).

BACKGROUND:

Portions of the subject property have been owned by the applicants since the 1980s; the remainder was purchased around 2000. Three of the parcels were formerly part of the Gilliam Local A&F District (AF 91-S-003) which expired in 2000. At that time, these three lots were vacant.

COMPREHENSIVE PLAN PROVISIONS

Plan Area:	Area III
Planning District:	Pohick
Planning Sector:	P-3 Johnny Moore

Plan Map: Residential at a density of 0.1 to 0.2 du/ac and Private Open Space

The 20.30 acre site is located in the Johnny Moore Planning Sector (P-3) of the Pohick Planning District. The property is zoned R-C and WS.

ANALYSIS

Land Use/Environmental Analysis (Appendix 3)

The proposed Agricultural and Forestal District is consistent with the goal of the Comprehensive Plan which seeks to maintain the low density residential character of this portion of the County. Conformance with additional recommendations from the Northern Virginia Soil and Water Conservation District and the State Department of Forestry for this property will ensure consistency with the environmental goals of the Comprehensive Plan

Soil Conservation Analysis/Forest Management Analysis (Appendix 4-5)

Approximately 2.8 acres of the site are in upland hardwoods. In general, the forest is healthy with a well-developed canopy and a sparse understory. Slopes in this area, though steep, are stable. Staff from the VA Dept. of Forestry visited the property and determined that the existing forest management plan remains valid. The plan recommends maintenance of steep slope areas for both wildlife habitat and slope stabilization. Approximately 2.5 acres of the site are in bottomland hardwoods, located in the Resource Protection Area along Johnny Moore Creek and its tributary. These areas are in good condition, and the Forest Management Plan recommends these areas be protected.

Johnny Moore Creek runs along a portion of the western boundary of the site, while an unnamed tributary to Johnny Moore Creek crosses three of the four lots. Both of these streams and the adjacent land areas have been designated as Resource Protection Areas (RPA) under the Chesapeake Bay Preservation Ordinance. It should also be noted that since 2005 additional RPA was mapped on the property within 100 feet of the tributary. In addition to the RPAs which run along the banks of these two streams, staff has also determined that there is a substantial Environmental Quality Corridor (EQC) which extends onto the adjacent steep slopes. While the RPA and EQC along Johnny Moore Creek appear to be intact, much of the land along the unnamed tributary has been cleared. Grassy areas in RPAs and ECQs are not in keeping with the goal of maintaining vegetated buffers along waterways to provide water quality benefits to the County's streams. Maintenance of existing vegetative buffer is required through improved forest management practices that meet the Chesapeake Bay Buffer management standards

The horses are left out to pasture in the fields, which include some of the RPA areas. It should be noted that manure is not allowed to be stacked or piled within the RPA. The horses should be restricted from further damaging trees within the RPA. Tree protection devices such as tree boxes or wire mesh wrapped around the trunk of trees are highly recommended.

Pesticide and fertilizer applications within RPA are discouraged. If chemical application becomes absolutely necessary, it must be done with the advice of an experienced professional. Adherence to these recommendations from the Forest Management Plan and Soil and Water Conservation Plan is included in the proposed ordinance provisions.

Transportation Analysis (Appendix 6)

The subject site is not affected by the recommendations of the Transportation Plan Map.

Park Authority Analysis (Appendix 7)

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.

Urban Forestry Analysis (Appendix 8)

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.

Agricultural and Forestal District Criteria Analysis

Article 5 of Chapter 115 of the Fairfax County Code contains two sets of criteria which are designed to serve as a guide in the evaluation of proposed Local Agricultural and Forestal Districts. All of the criteria in Group A, and least two criteria from Group B should be satisfied by the proposed district. It is important to note that these criteria are a guide to be applied when establishing, renewing or amending a District; they are not prerequisites. The following is an evaluation of the proposed district's conformance with these criteria:

Criteria Group A:

1. *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 20.3 acres in size and consists of approximately 14 acres of horse pasture, 5 acres of forested land, and 1 acre of residential uses. Thus all district acreage is devoted to agricultural or forestal uses excepting the area used for residential purposes. Staff believes that this criterion has been satisfied.

2. *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 and WS. This criterion is satisfied.

3. *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) and private open space. Therefore, this criterion has been satisfied.

4. *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 A(3) above. Exceptions may be made for lands located at the edge of a planned growth area or which meet at least three of the criteria of Criteria Group B, if no conflicts with surrounding uses, existing and planned, are evident or likely.*

The Comprehensive Plan designates all of the surrounding land within one-quarter mile of the district for low density residential use at 0.1 to 0.2 du/ac and private open space. This criterion has been satisfied.

5. *All farms to be included in a district should be at least twenty (20) acres in size. A farm may include several parcels of land; however, all parcels must have the same owner or else owners must be members of the same immediate family or a family trust or family corporation. A farm must contain at least fifteen acres of land in agricultural use. A farm may include non-contiguous parcels within one mile of the core acreage (the largest parcel or group of contiguous parcels or the parcel where the farm buildings are located) as long as the non-contiguous parcels are predominately agricultural in use and as long as the total acreage of each individual farm (including contiguous and non-contiguous land) is at least twenty acres.*

The proposed district consists of four parcels totaling 20.03 acres owned by the Kusters family (Marvin Kusters and his wife Bonnie Kusters, and his son, Mark Kusters, and his wife Lisa Kusters). The district includes approximately 15 acres in agricultural use as horse pasture. This criterion is satisfied.

6. *All other properties not included in a farm as defined in (5), that is, forested and partially forested properties, and properties with less than 15 acres in agricultural use, should be at least twenty acres in size. These properties may contain several parcels, but all parcels must be contiguous, and all must have the same owners or else owners must be members of the same family or a family trust or family corporation.*

The proposed district qualifies as a farm, therefore this criterion is not applicable.

7. *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.*

Although only approximately half of the land proposed for agricultural use is in Class I IV soils, staff has proposed ordinance provisions which are designed to reduce soil erosion and reduce non-point source pollution. These include requiring the applicants to abide by a Forest Management Plan and a Soil and Water Conservation Plan, and for a riparian buffer to be installed along the banks of the tributary stream. With the imposition of these provisions, staff believes, this criterion is met.

8. *Agricultural land in the district should be used in a planned program of soil management, soil conservation, and pollution control practices which are intended to reduce or prevent soil erosion, maintain soil nutrients, control brush, woody growth and noxious weeds on crop land, hay land, and pasture land, and reduce non-point source pollution. Exceptions to this criterion may be made only for those agricultural lands which, upon initial application for the establishment of a district are not used in such a program, but for which a conservation plan is being prepared or has been requested from the Northern Virginia Soil and Water Conservation District.*

The Northern Virginia Soil and Water Conservation District has prepared a comprehensive Soil and Water Conservation Plan (Appendix 4) that addresses the best management practices discussed in Criterion A-8. The applicant has agreed to abide by the recommendations in the plan and an ordinance provision is included to this effect. This criterion is met.

9. *Forest land and undeveloped land in the district should be kept in an undisturbed state, or if periodically harvested or experiencing erosion problems, shall be used in a planned program of soil management, soil conservation, and pollution control practices which are intended to reduce or prevent soil erosion, maintain soil nutrients, and reduce non-point source pollution. Exceptions to this criterion may be made only for those lands which upon initial application for the establishment of a district are not used in such a program but for which a conservation plan is being prepared or has been requested from the Northern Virginia Soil and Water Conservation District or the Virginia Division of Forestry.*

This property has approximately 5 acres of forested land. The forested areas are preserved as woodlands, and are not harvested. An Ordinance Provision requires the applicants to abide by the recommendations of the Forest Management Plan for the life of the A&F District. Therefore, staff feels this criterion has been met.

10. *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 have shown a history of improvements, including installation of fences for horse pasture, construction of stables, reseeding, liming, and fertilizing the pasture areas, and clearing dead windfall trees in the forested areas which presented a fire hazard. A riparian buffer and filter strip has been installed along Fox Shadow Lane along with numerous shrubs to prevent erosion and stabilize the stream bank. The family has committed to maintaining the forested areas in a protected state. Staff believes that the applicants have a sincere commitment to continue the agricultural and forestal/open space uses on this property for the life of the A&F District, and therefore believe that this criterion has been satisfied.

Criteria Group B:

1. *Farm and/or forest products have been regularly produced and sold from the property during the last five years.*

Since the original establishment of the district in 2005, the family has initiated horse riding lessons and harvested firewood. Therefore, this criterion is satisfied.

2. *The land provides scenic vistas, improves the aesthetic quality of views from County roads or contributes to maintaining the existing rural character of an area.*

The property contributes to the maintenance of the rural character of the area by preserving a contiguous 19 acres in forest and open space. The preservation and restoration of the stream valley corridor (including the RPA and EQC) is also significant. Therefore, this criterion has been satisfied.

3. *The property contains a historically and/or archaeologically significant site which would be preserved in conjunction with the establishment of a district. A site that is listed on the Federal Registry of Historic Places, the State Registry of Historic Places and/or the County Inventory of Historic Places will be considered historically and/or archaeologically significant. A property which contains a site that is historically and/or archaeologically significant by the County Archaeologist, or is located in an area with a high potential for archaeological sites, provided that the property owner has agreed to permit the County Archaeologist access to the site, may also be considered historically and/or archaeologically significant.*

There are no known historically and/or archaeologically significant sites on this property; this criterion has not been satisfied.

4. *Farming or forestry operations practice unique or particularly effective water pollution control measures (BMPs).*

There is no unique or particularly effective water pollution control measure in place on this property, therefore, this criterion is not applicable.

5. *The land is zoned R-A, R-P, or R-C.*

The subject property is zoned R-C. This criterion is satisfied.

6. *The land is entirely in a permanent open space easement.*

The subject property is not located within a permanent open space easement; therefore, this criterion is not satisfied.

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. As previously stated, all of the criteria in Group A and at least two criteria in Group B should be satisfied. It is staff's opinion that this application satisfies all of the applicable criteria in Group A and three of the five applicable criteria in Group B.

AFDAC RECOMMENDATION (Appendix 9)

On May 7, 2013 the Agricultural and Forestal Districts Advisory Committee met and recommended approval of the application.

CONCLUSIONS AND RECOMMENDATIONS

Staff Conclusions

Staff believes that the renewal of the Kusters Local Agricultural and Forestal District satisfies the criteria contained in Sect. 115-5-1 of the County Code, and that commitments made by the applicant for maintenance of the property are consistent with the intent of the program. In addition, the property meets the minimum acreage requirement and is in conformance with the Comprehensive Plan.

Staff Recommendations

Staff recommends application AR 2004-SP-001, to amend Appendix F of the Fairfax County Code to renew the Kusters Local Agricultural and Forestal District, be approved subject to the proposed Ordinance Provisions contained in Appendix 1.

It should be noted that it is not the intent of staff to recommend that the Board in adopting any Ordinance Provisions, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Supervisors.

APPENDICES

1. Proposed Ordinance Provisions
2. Statement of Justification and Application Material
3. Land Use and Environmental Analysis
4. Soil and Water Conservation District Comment Analysis
5. Forest Management Plan
6. Transportation Analysis
7. Park Authority Analysis
8. Urban Forestry Analysis
9. Agricultural and Forestal Districts Advisory Committee Recommendation
10. Virginia Tax Code Provisions
11. Glossary

PROPOSED ORDINANCE PROVISIONS

May 15, 2013

AR 2004-SP-001

If it is the intent of the Board of Supervisors to renew the Kusters Local Agricultural and Forestal District as proposed in Application AR 2004-SP-001 pursuant to Chapter 44 of Title 15.2 of the Code of Virginia and Chapter 115 of the Fairfax County Code on Tax Map 75-1 ((8)) 6Z and 75-1 ((10)) 7Z, 8Z, 9Z, consisting of 20.3 acres, staff recommends that the approval be subject to the following Ordinance Provisions:

Standard Provisions (From Chapter 115)

- 1) No parcel included within the district shall be developed to a more intensive use than its existing use at the time of adoption of the ordinance establishing such district for eight years from the date of adoption of such ordinance. This provision shall not be construed to restrict expansion of or improvements to the agricultural or forestal use of the land, or to prevent the construction of one (1) additional house within the district, where otherwise permitted by applicable law, for either an owner, a member of an owner's family, or for a tenant who farms the land.
- 2) No parcel added to an already established district shall be developed to a more intensive use than its existing use at the time of addition to the district for eight years from the date of adoption of the original ordinance.
- 3) Land used in agricultural and forestal production within the agricultural and forestal district of local significance shall automatically qualify for an agricultural and forestal value assessment on such land pursuant to Chapter 4, Article 19 of the Fairfax County Code and to Section 58.1-3230 et seq. of the Code of Virginia, if the requirements for such assessment contained therein are satisfied.
- 4) The district shall be reviewed by the Board of Supervisors at the end of the eight-year period and that it may, by ordinance renew the district or a modification thereof for another eight-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.

Additional Provisions

- 5) The applicant shall implement and abide by the recommendations of the Forest Management Plan dated July 28, 2004, and recommended updated dated May 8, 2013 for the life of the Kosters Local 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.
- 6) The applicants shall implement and abide by the recommendations of the Soil and Water Conservation Plan dated April 15, 2013 or the life of the Kosters Local 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.
- 7) Those areas delineated as Resource Protection Areas (RPAs) or Environmental Quality Corridors (EQCs) shall be left undisturbed, with the exception of selective thinning operations and removal of noxious weeds and invasive species 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 Kosters Local Agricultural and Forestal District.
- 8) All waste water resulting from the cleaning and draining of the swimming pool located on the property shall contain a minimum dissolved oxygen concentration of 4.0 milligrams per liter prior to discharge. Pool water shall be neutralized to a Ph level between 6.0 and 9.0 prior to discharge. Sufficient amounts of lime or soda ash shall be added to achieve a Ph approximately equal to that of the receiving stream.
- 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. AR 2004-SP-001

APPLICATION FOR THE ESTABLISHMENT OF A
AGRICULTURAL AND FORESTAL DISTRICT

RECEIVED
Department of Planning & Zoning

DEC 18 2012

FAIRFAX COUNTY

Zoning Evaluation Division

- Type of application: Local () Statewide (
Initial () Amendment () Renewal ()
- Please list the Tax Map number, the name and address of each owner and other information for each parcel proposed for this district:

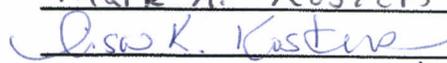
Owner's Name & Address	Tax Map Number	Year Acquired	Zoning District	Acres
<u>Mark A. and</u>	<u>0751-10-0007Z</u>	<u>2000</u>	<u>R-C</u>	<u>5.0</u>
<u>Lisa K. Kusters</u>	<u>0751-10-0008Z</u>	<u>2000</u>	<u>R-C</u>	<u>5.0</u>
<u>13121 Fox Shadow La.</u>	<u>0751-10-0009Z</u>	<u>2000</u>	<u>R-C</u>	<u>5.0</u>
<u>Clifton, VA 20124</u>				
<u>Marvin H. Kusters and</u>	<u>0751-08-0006Z</u>	<u>1997</u>	<u>R-C</u>	<u>5.3</u>
<u>Bonnie M. Kusters Trustees</u>				
<u>13120 Cedar Ridge Dr.</u>				
<u>Clifton, VA 20124</u>				

- Total acreage in the proposed district: 20.3 acres.
- Using the definitions on the instruction sheet, indicate the number of properties included in this application: farm 3 forest 1.

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

Name: Mark A. Kosters
Address: 13121 Fox Shadow Lane
Clifton, VA 20124
Telephone: 703 815 5646

6. Signature of all property owners:

<u></u>	Dec. 14, 2012
<u>Mark A. Kosters</u>	
<u></u>	Dec 14, 2012
<u>Lisa K. Kosters</u>	
<u></u>	Dec. 14, 2012
<u>Marvin H. Kosters</u>	
<u></u>	Dec. 14, 2012
<u>Bonnie M. Kosters</u>	

TO BE COMPLETED BY THE COUNTY

Date application accepted:

2/13/13 Virginia Ruffner

Date of action by Board of Supervisors: _____

- Approved as submitted Denied
 Approved with modifications

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
13120 Cedar Ridge Dr.	1982	Residence
• Single family house	1985	Stable and Storage
• Stable		
13121 Fox Shadow Lane		
• Single family house	2001	Residence
• Stable	2001	Stable and 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:

- None -

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

- Repaired, replaced, and painted fencing around 13120 Cedar Ridge Dr.
- Completed wooden fence construction and painting at Fox Shadow Lane
- Re-seeded, limed and fertilized pasture land on both Property.
Fox Shadow Lane and Cedar Ridge Drive properties.
- Cleared away several dead and fallen trees.
- Installed riparian buffer and filter strip on Fox Shelter Lane property, planting 75 woody bushes (mountain pieris) on Fox Shadow Lane Property to prevent erosion and stabilize stream banks.

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: _____

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

If yes, date submitted: _____

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

Product	Past year's yield	Average yield for previous 4 years
- Tree harvesting for fire wood	3 cords	3 cords
- Horseback riding lessons	Summer months	



County of Fairfax, Virginia

MEMORANDUM

DATE: April 19, 2013

TO: Barbara Berlin, Director
Zoning Evaluation Division, DPZ

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

SUBJECT: LAND USE and ENVIRONMENTAL ASSESSMENT
AR 2004-SP-001 – Mark A., Lisa K., Marvin H., and Bonnie M. Kosters

This memorandum was prepared by Bernard Suchicital, includes citations from the Comprehensive Plan that list and explains land use recommendations and environmental policies for these properties. The extent to which the application conforms to the applicable guidance contained in the Comprehensive Plan is noted.

DESCRIPTION OF THE APPLICATION:

The 20.3 acre Kosters Family Agricultural and Forestal District is up for renewal. The district encompasses four parcels of land, with 0.3 acre reserved for residential uses. 15 acres are set aside for agricultural uses, and five acres remain forested or undeveloped.

LOCATION AND CHARACTER:

The subject properties are in the Johnny Moore 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, and private open space.

COMPREHENSIVE PLAN MAP:

Planned predominantly for private open space, with the remainder for residential use at .1-.2 du/ac.

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/

COMPREHENSIVE PLAN CITATIONS:

The Comprehensive Plan is the basis for the evaluation of this application. The assessment of the proposal for conformity with the land use and environmental recommendations of the Comprehensive Plan is guided by the following citations from the Plan.

Land Use

In the Fairfax County Comprehensive Plan, 2011 Edition, Area III Volume, Pohick Planning District, as amended through June 19, 2012, P3-Johnny Moore Community Planning Sector, Page 48:

“Land Use:

1. The entire P3 Planning Sector is located within the watershed of the Occoquan Reservoir. Protection of the Occoquan Reservoir water quality is the primary objective for this area. Land in this sector should be planned for residential use within a density range of .1-.2 dwelling unit per acre. This conforms with findings in the Occoquan Basin Study and is commensurate with predominant densities and the well-established character of existing development in this sector....
3. Agricultural and forestall uses are alternatives to residential uses in Low Density Residential Areas. Such uses, depending upon the techniques used, can have positive impacts on water quality. Careful attention should be paid to insure that agricultural and forestall techniques are supportive of water quality goals for the Occoquan Reservoir watershed.”

Environment

In the Fairfax County Comprehensive Plan, 2011 Edition, Policy Plan Volume, Environment, as amended through July 27, 2010, Pages 7-9:

“Objective 2: Prevent and reduce pollution of surface and groundwater resources. Protect and restore the ecological integrity of streams in Fairfax County...

Policy c. Minimize the application of fertilizers, pesticides, and herbicides to lawns and landscaped areas through, among other tools, the development, implementation and monitoring of integrated pest, vegetation and nutrient management plans.

Policy d. Preserve the integrity and the scenic and recreational value of EQCs ...

Policy l. In order to augment the EQC system, encourage protection of stream channels and associated vegetated riparian buffer areas along stream channels upstream of Resource Protection Areas (as designated pursuant to the Chesapeake Bay Preservation Ordinance) and Environmental Quality Corridors ...”

In the Fairfax County Comprehensive Plan, 2011 Edition, Policy Plan Volume, Environment, as amended through July 27, 2010, Page 10:

“Objective 3: Protect the Potomac Estuary and the Chesapeake Bay from the avoidable impacts on land use activities in Fairfax County.

Policy a. Ensure that new development and redevelopment complies with the County’s Chesapeake Bay Preservation Ordinance, as applied to Chesapeake Bay Preservation Areas adopted by the Board of Supervisors ...”

In the Fairfax County Comprehensive Plan, 2011 Edition, Policy Plan Volume, Environment, as amended through July 27, 2010, Pages 14-17:

“Objective 9: Identify, protect and enhance an integrated network of ecologically valuable land and surface waters for present and future residents of Fairfax County.

Policy a. Identify, protect and restore an Environmental Quality Corridor system (EQC). Lands may be included within the EQC system if they can achieve any of the following purposes:

- **Habitat Quality:** The land has a desirable or scarce habitat type, or one could be readily restored, or the land hosts a species of special interest. This may include: habitat for species that have been identified by state or federal agencies as being rare, threatened or endangered; rare vegetative communities; unfragmented vegetated areas that are large enough to support interior forest dwelling species; and aquatic and wetland breeding habitats (i.e., seeps, vernal pools) that are connected to and in close proximity to other EQC areas.
- **Connectivity:** This segment of open space could become a part of a corridor to facilitate the movement of wildlife and/or conserve biodiversity. This may include natural corridors that are wide enough to facilitate wildlife movement and/or the transfer of genetic material between core habitat areas.
- **Hydrology/Stream Buffering/Stream Protection:** The land provides, or could provide, protection to one or more streams through: the provision of shade; vegetative stabilization of stream banks; moderation of sheet flow stormwater runoff velocities and volumes; trapping of pollutants from stormwater runoff and/or flood waters; flood control through temporary storage of flood waters and dissipation of stream energy; separation of potential pollution sources from streams; accommodation of stream channel evolution/migration; and protection of steeply sloping areas near streams from denudation.
- **Pollution Reduction Capabilities:** Preservation of this land would result in significant pollutant reductions. Water pollution, for example, may be reduced through: trapping of nutrients, sediment and/or other pollutants

from runoff from adjacent areas; trapping of nutrients, sediment and/or other pollutants from flood waters; protection of highly erodible soils and/or steeply sloping areas from denudation; and/or separation of potential pollution sources from streams.

The core of the EQC system will be the County's stream valleys. Additions to the stream valleys should be selected to augment the habitats and buffers provided by the stream valleys, and to add representative elements of the landscapes that are not represented within stream valleys. The stream valley component of the EQC system shall include the following elements:

- All 100 year flood plains as defined by the Zoning Ordinance;
- All areas of 15% or greater slopes adjacent to the flood plain, or if no flood plain is present, 15% or greater slopes that begin within 50 feet of the stream channel;
- All wetlands connected to the stream valleys; and
- All land within a corridor defined by a boundary line which is 50 feet plus 4 additional feet for each % slope measured perpendicular to the stream bank. The % slope used in the calculation will be the average slope measured within 110 feet of a stream channel or, if a flood plain is present, between the flood plain boundary and a point fifty feet up slope from the flood plain. This measurement should be taken at fifty foot intervals beginning at the downstream boundary of any stream valley on or adjacent to a property under evaluation.

Modifications to the boundaries so delineated may be appropriate if the area designated does not benefit any of the EQC purposes as described above. In addition, some disturbances that serve a public purpose such as unavoidable public infrastructure easements and rights of way may be appropriate. Disturbances for access roads should not be supported unless there are no viable alternatives to providing access to a buildable portion of a site or adjacent parcel. The above disturbances should be minimized and occur perpendicular to the corridor's alignment, if practical, and disturbed areas should be restored to the greatest extent possible ..."

In the Fairfax County Comprehensive Plan, 2011 Edition, Policy Plan Volume, Environment, as amended through July 27, 2010, Page 18:

"Objective 10: Conserve and restore tree cover on developed and developing sites. Provide tree cover on sites where it is absent prior to development.

Policy a. Protect or restore the maximum amount of tree cover on developed and developing sites consistent with planned land use and good silvicultural practices."

LAND USE ANALYSIS:

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

ENVIRONMENTAL ANALYSIS:

Water Quality Protection and Tree Preservation

This site falls entirely within the County's Occoquan Reservoir Watershed. Johnny Moore Creek is located on the western edge of the subject property and an unnamed tributary branch is also located within the boundary of the district. More than 50 percent of this district is located in an Environmental Quality Corridor (EQC) per Policy Plan guidance and Resource Protection Area (RPA) as defined by the County's Chesapeake Bay Preservation Ordinance (CBPO). The applicant proposes to maintain the EQC and RPA portion of the district in an undisturbed state. The extent of the EQC and RPA is identified on the attached map.

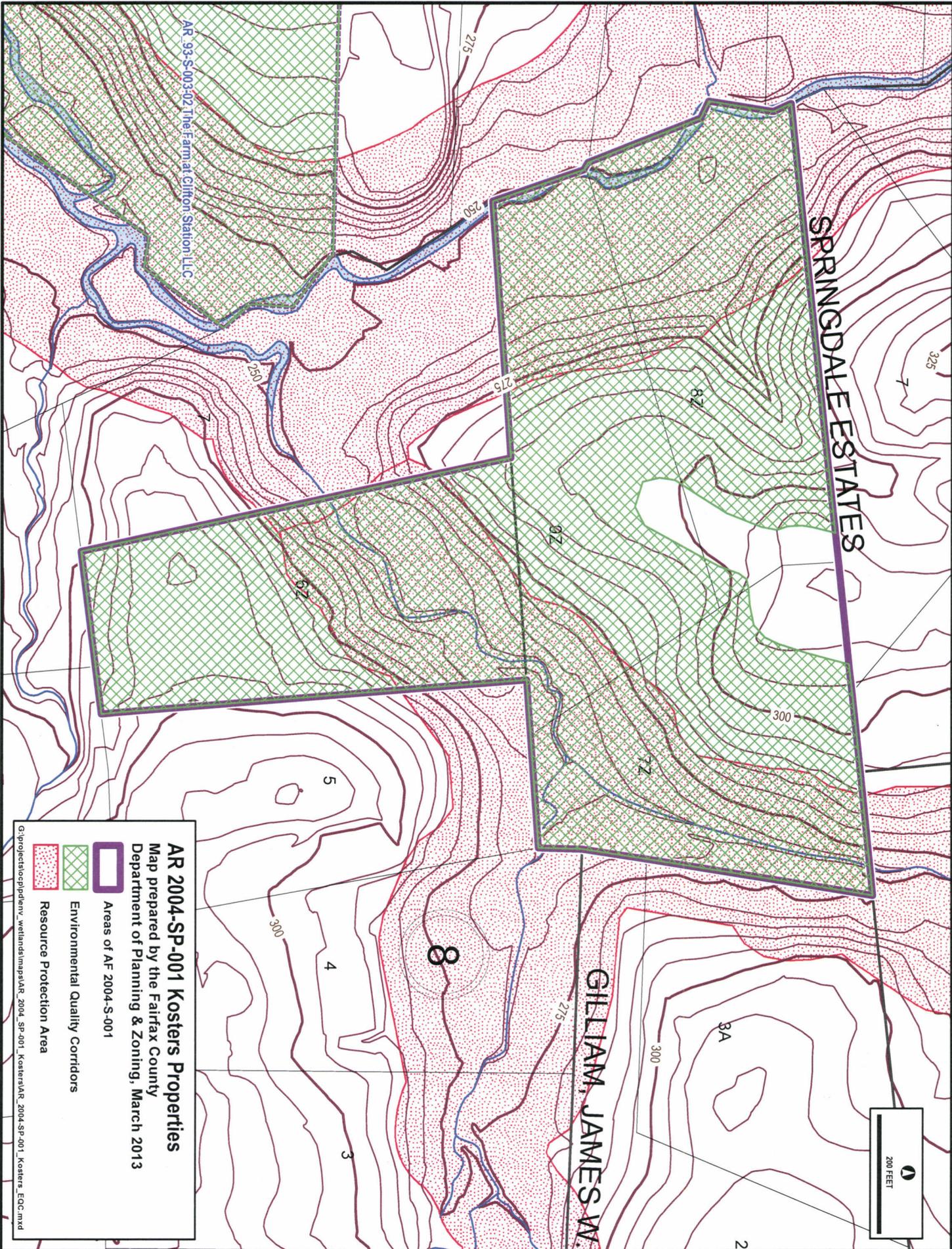
In July 2009, a Water Quality Management Plan was developed in conjunction with the Northern Virginia Soil and Water Conservation District which brings the district into conformance with the County's CBPO. In addition, a July 2009 Forestry Management Plan was prepared by the Virginia Department of Forestry for the renewal of this district. The Forestry Management Plan provides specific recommendations for this site, such as the management of invasive species and pest control. The applicant is encouraged to implement the recommendations cited in the Forestry Management Plan to improve the health of the forest within the district.

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.

Approval of this Agricultural and Forestal District renewal would be compatible with the goals of the Comprehensive Plan to preserve this environmentally sensitive area of Fairfax County.

PGN:BSS

Attachment



SPRINGDALE ESTATES

GILLIAM, JAMES W.

AR 93-S-003-02 The Farm at Clifton Station LLC



AR 2004-SP-001 Koters Properties
 Map prepared by the Fairfax County
 Department of Planning & Zoning, March 2013

-  Environmental Quality Corridors
-  Resource Protection Area
-  Areas of AF 2004-S-001

G:\project\stoc\pfd\m_wetlands\mgs\AR_2004_SP-001_Koters\AR_2004-SP-001_Koters_EQC.mxd



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: 703-324-1421

Soil and Water Quality Conservation Plan

Property Owner/Operator:

Mark & Lisa Kusters, Marvin Kusters, Bonnie Kusters
 13121 Fox Shadow Lane
 Clifton, VA 20124
 Tel: 703-815-5646 (H); Representative: Mark A. Kusters

Plan Prepared by: Willie Woode, Senior Conservation Specialist, NVSWCD

Date: April 15, 2013

Background and summary of operation:

This is a 20.3-ac. property in the Popes Head Creek Watershed (PL46), located at 13121 Fox Shadow Lane in Clifton. This property is pending renewal of its Fairfax County Agricultural and Forestal District status.

About half of the property is wooded. Two areas are devoted to residential uses, and the rest is dedicated to the keeping of 2-3 horses.

Johnny Moore Creek flows through the western limits of the property. An unnamed creek feeds Johnny Moore Creek also flows from the north-eastern corner through the central portion of the property. Both tributaries maintain perennial flows and have Chesapeake Bay Resource Protection Area (RPA) delineations.

The management style of the horse operation is to always keep the animals out in the fields and never in barns. Therefore, a relatively small amount of manure accumulation is expected. Waste is routinely dragged across the fields.

Plan Content:

This plan contains recommendations for:

- 1) Resource Protection Area (RPA) protection
- 2) A recommended waste management area
- 3) A nutrient management plan.
- 4) Erosion control recommendations.
- 5) Information on Integrated Pest Management control

Practices:

1) Nutrient Management:

Application of commercial fertilizer must be based on soil test results for expected yield goals. All sources of available nutrients (such as contribution from composted waste) will be credited. The rate, timing and method of application are shown on the attached Nutrient Management Plan. This plan was developed and signed by a Nutrient Management Planner, certified by the Commonwealth of Virginia's Nutrient Management Program.

The nutrient management plan shows recommended nutrient application based on soil test results. Soil test results show pH levels and nutrient needs without consideration of manure contributions. Since the horses are out roaming the fields all the time, only relatively small quantities of waste can be accounted for.

A soil pH of 6.0-6.2 is ideal for cool season grasses to thrive. This range makes plant macro- & micro-nutrients become readily available for uptake by the grasses. Lime application recommendations are also shown in the spreadsheet.

The entire portion of Field 3 is well within minimum RPA buffer limits. Therefore, no the chemical application (commercial fertilizer) is recommended. Very limited use of this field is proposed to prevent over-grazing. This is such a small stripe of pasture, that I recommend that it is not included in your rotation grazing pattern, but be planted with native deer resistant type vegetation to enhance pollution filtration.

Areas	Planned Amount	Month	Year	Applied Amount	Date
Field 1	2.0 ac.	4	2013		
Field 2	2.0 ac.	4	2013		
Fields 3	0.5 ac.	4	2013		
Total	2.5 ac.				

2) Chesapeake Bay Resource Protection Area (RPA) management:

The shaded area on the site map shows the Fairfax County delineated Chesapeake Bay Resource Protection Area (RPA). RPAs are required to be kept densely vegetated to enhance surface filtration and soil infiltration of pollutants contained in surface runoff before they enter state waters. Parts of field 1 & 2 and all of field 3 are within the RPA. Areas that are within the RPA and in use as pasture must not be over-grazed to prevent erosion.

Manure is NOT ALLOWED to be stacked or piled within the RPA.

Maintenance of existing vegetative buffer is required through improved forest management practices that meet the Chesapeake Bay Buffer management standards.

Horses must be restricted from further damaging trees within the RPA. A lot of trees are observed to have been damaged already. Tree protection devices such as tree boxes or wire mesh wrapped around the trunk of trees are highly recommended.

Pesticide and fertilizer applications within RPA are discouraged. If chemical application becomes absolutely necessary, it must be done with the advice of an experienced professional.

Areas	Planned Amount	Month	Year	Applied Amount	Date
Vegetated Buffer Areas	9.5 ac.	4	2013		
Total	9.5 ac.				

3) Pest Management:

Pest Management will be carried out to control agricultural pest infestation (weeds, insects, diseases) according to current recommendations from the Cooperative Extension Service. The Pest Management Guide is updated annually.

Areas	Planned Amount	Month	Year	Applied Amount	Date
Fld. 1	2.0 acs.	4	2013		
Fld. 2	2.0 acs.	4	2013		
Fld. 3	0.5 ac.	4	2013		
Riding Area	0.2 ac.	4	2013		
Barn & Sacrifice Areas (S1 & S2)	0.6 ac.	4	2013		
Resid. Area 1	2.5 acs.	4	2013		
Resid. Area 2	1.5 as.	4	2013		
Wooded and drainage areas	11.0 acs.	4	2013		
Total	20.3 acs.				

4) Prescribed Grazing:

Intensive rotational grazing – Graze appropriate number of pasture fields in an intensive rotational system by adjusting the pasture recovery period through the grazing season. Closely monitor the grazing time of the animals to avoid over-grazing, especially within RPAs. Pasture areas RPA should not be grazed lower than three inches. Consider the use of sacrifice areas as essential components of your rotational grazing system. See maintenance of a sacrifice area included in this document.

Areas	Planned Amount	Month	Year	Applied Amount	Date
Barn & Sacrifice Areas (S1 & S2)	0.6 ac.	4	2013		
Field 1	2.0 ac.	4	2013		
Field 2	2.0 ac.	4	2013		
Total	1.8 ac.				

5) Waste Storage Facility:

Inasmuch as only a small amount of waste is expected to be generated, because the horses are out most of the time, it is expected that proper maintenance of the sacrifice areas (i.e. routine cleaning) should generate some amount of waste. A composting facility (preferably a multi-cell facility) is recommended at an area outside of the RPA. A suggested area is marked “M” on the map provided. This facility should be protected from excessive snow melt, rain or runoff, that will leach pollutants from the pile.

Proper composting of waste requires frequent turning of the pile for aeration, and addition of water to maintain the ideal amount of moisture for optimal biological activities to progress. See attached multi-cell composting facility provided, showing impervious base, cover, and recommended sizing of the facility depending on the number of horses.

Composted material to be used onsite must not be spread on snow-covered or frozen ground. Spreading should be on fields with established pasture.

Areas	Planned Amount	Month	Year	Applied Amount	Date
Manure	1 unit	4	2013		

6) Record Keeping

A system of records indicating on-farm activities such as dates and applications of nutrients or pesticides should be developed and maintained. A specimen record sheet is included.

Areas	Planned Amount	Month	Year	Applied Amount	Date
Fld. 1	2.0 acs.	4	2013		
Fld. 2	2.0 acs.	4	2013		
Fld. 3	0.5 ac.	4	2013		
Riding Area	0.2 ac.	4	2013		
Barn & Sacrifice Areas (S1 & S2)	0.6 ac.	4	2013		
Resid. Area 1	2.5 acs.	4	2013		
Resid. Area 2	1.5 as.	4	2013		
Wooded and drainage areas	11.0 acs.	4	2013		
Total	20.3 acs.				

**SIGNATURE OF THE REPRESENTATIVE OF
THE KOSTERS' A&F DISTRICT**

Kosters Family Representative:

Mark A. Kosters

Date

Planner:

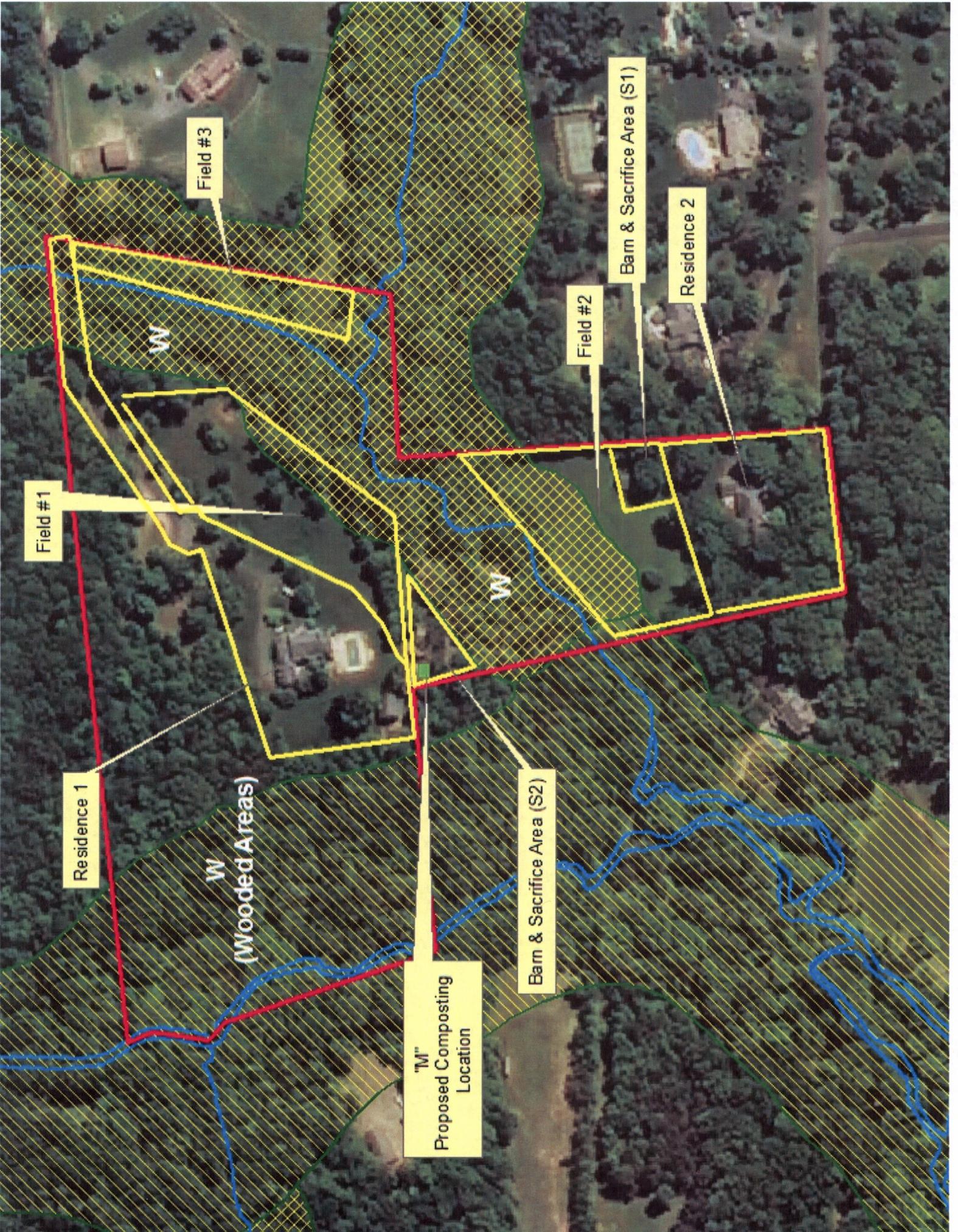
Wilfred Woode

Date

District Authority:

Chairman

Date



Field #3

Barn & Sacrifice Area (S1)

Residence 2

Field #2

Field #1

Residence 1

W
(Wooded Areas)

Barn & Sacrifice Area (S2)

"M"
Proposed Composting
Location

Carl E. Garrison III
State Forester



COMMONWEALTH of VIRGINIA

DEPARTMENT OF FORESTRY
12055 Government Center Parkway
Suite 904
Fairfax VA 22035
703-324-1489

May 8, 2013
Mr. Mark Kosters
13121 Fox Shadow Lane
Clifton VA 20124

Dear Mr. Kosters,

It was a pleasure meeting your father, Marvin yesterday and walking your property. Your trees are in good condition and the forest supports a number of native wildflowers in addition to the trees. I have no new recommendations to add to the existing forest management plan. I did point out a few trees in decline near your house and your father's house that you should monitor. It would be a good idea to engage the services of a certified arborist to take care of the trees around the houses and barns, just as I am sure you use a veterinarian to provide preventive care to the horses.

One change that has occurred since the plan was written is that the stream running through the pasture was designated as a perennial stream by the county in 2003. This means that 100 feet on either side of the stream is now a resource protection area, with similar restrictions as the flood plain along Johnny Moore Creek. I have enclosed a map of the property showing the RPAs that I clipped from the county file and a brochure that describes the restriction associated with the RPA.

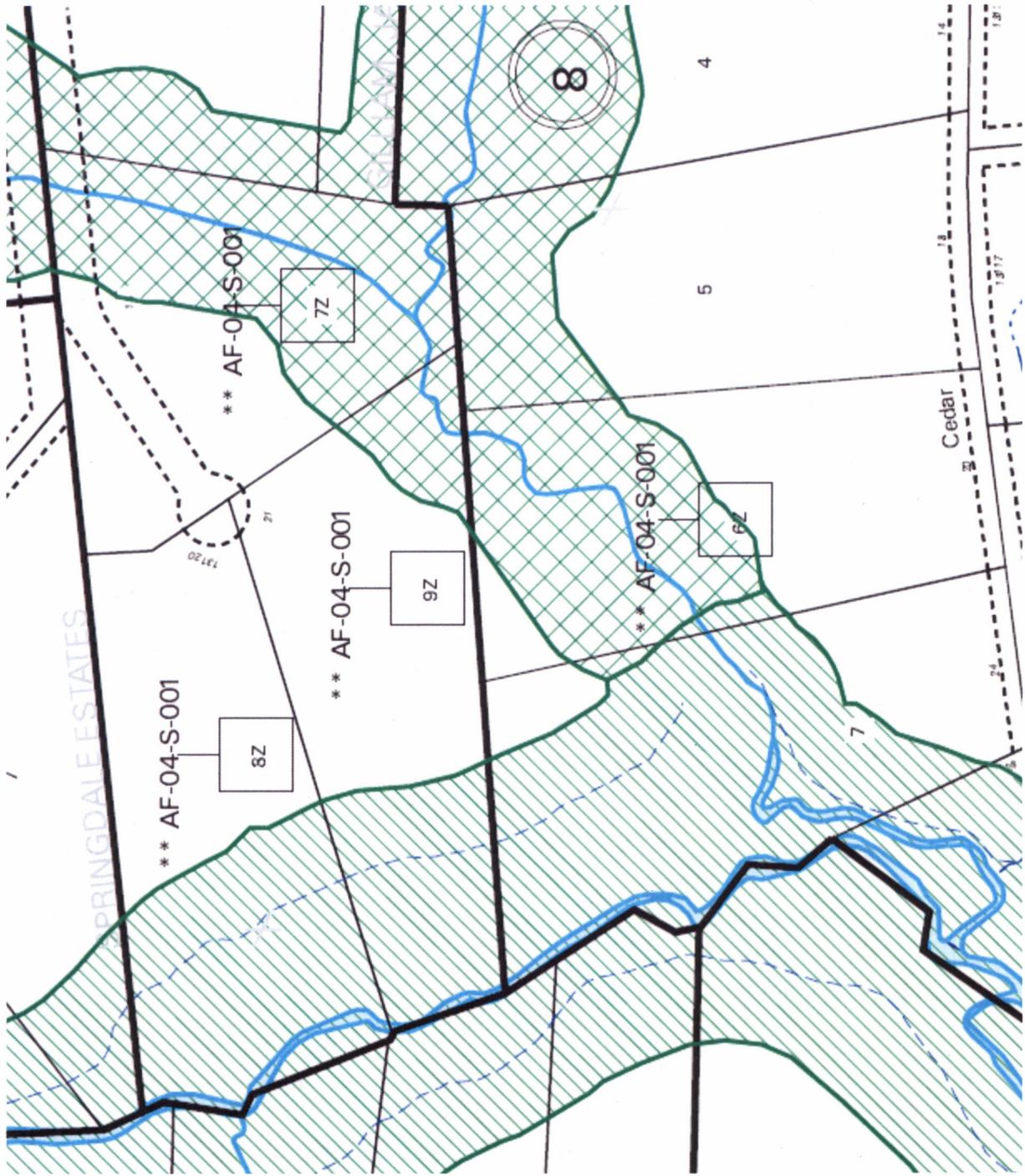
Your father mentioned Japanese stilt grass was a problem in the pasture. It is a troublesome non-native invasive plant. Because it is an annual, the primary management strategy is to prevent it from producing more seed. The seed is dispersed by sticking to passing equipment, animals and people, so it would be a good idea to rinse equipment and change shoes and pants before entering the pastures to prevent tracking seed from the woods into the pasture. I have enclosed a fact sheet on stilt grass to assist you in managing it on your property.

If I can be of any further assistance please feel free to contact me.

Respectfully,

James McGlone
Urban Forest Conservationist

Mission: We Protect and Develop Healthy, Sustainable Forest Resources for Virginians.



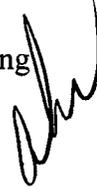


County of Fairfax, Virginia

MEMORANDUM

DATE: March 13, 2013

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 2004-SP-001)

SUBJECT: Transportation Impact

REFERENCE: AR 2004-SP-001; Mark & Lisa Kosters / Marvin & Bonnie Kosters
Land Identification Map: 75-1((8))6Z, 7Z, 8Z & 9Z

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 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 

DATE: April 1, 2013

SUBJECT: AR 2004-SP-001, Mary & Lisa Kusters, Marvin Kusters, Bonnie Kusters
Tax Map Number(s): 75-1((8)) 6Z; 75-1((10)) 7Z, 8Z, 9Z

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.”

The Park Authority staff has reviewed the above referenced plan. Based on that review, staff has determined that this application bears no adverse impact on the land, resources or service levels of the Park Authority.

FCPA Reviewer: Andy Galusha
DPZ Coordinator: Brent Krasner

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

\\s51b204\Planning\Park Planning\Development Plan Review\DPZ Applications\AR-AF\AR 2004-SP-001\AR 2004-SP-001-FCPA.doc



County of Fairfax, Virginia

MEMORANDUM

DATE: March 19, 2013

TO: Brent Krasner, Staff Coordinator
Zoning Evaluation Division, DPZ

FROM: Hugh Whitehead, Urban Forester II *HW*
Forest Conservation Branch, DPWES

SUBJECT: Mark & Lisa Kusters, Marvin Kusters, Bonnie Kusters
AR 2004-SP-001

I have reviewed the above referenced Agricultural and Forestal District renewal application. Forest Conservation Branch staff has no comments regarding this application.

Forest Conservation Branch staff will defer to VA Department of Forestry staff regarding review comments on this application.

If further assistance is desired, please contact me at (703)324-1770.

HCW/

UFMDID #: 179080

cc: DPZ File



FAIRFAX COUNTY, VIRGINIA

MEMORANDUM

DATE: May 8, 2013

TO: Members, Planning Commission
Members, Board of Supervisors

FROM: Agricultural and Forestal Districts Advisory Committee

SUBJECT: Recommendations on the Kosters Local Agricultural and Forestal District;
Application AR 2004-SP-001

The Agricultural and Forestal Districts Advisory Committee met on May 7, 2013, to review the application to renew the Kosters Local Agricultural and Forestal District (Application AR 2004-SP-001). The Committee found the following:

- The Kosters Local Agricultural and Forestal District meets the minimum district size contained in Section 115-3-2;
- The Kosters Local Agricultural and Forestal District conforms with the Policy and Purpose of Chapter 115 of the Fairfax County Code;
- The Kosters Local Agricultural and Forestal District fulfills the majority of the applicable criteria found in Chapter 115 of the Fairfax County Code.

The Agricultural and Forestal Districts Advisory Committee unanimously* recommends that Appendix F of the Fairfax County Code be revised to renew the Kosters Local 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.

*Five members present

BY EMAIL

TO: Brent M. Krasner
Senior Staff Coordinator (Planner III)

FROM: Stanley M. Franklin 

CC: Board Members

DATE: May 14, 2013

RE: Kincheloe Statewide Agricultural and Forestal Districts Application
AF 2013-SP-001
Koster's Agricultural and Forestal Districts Application AR 2004-SP-001

While I was unable to attend the May 7, 2013 meeting, I actively participated in the staff review and coordination for the meeting. I am familiar with both of the Applications, having served as Chair of the Agricultural & Forestal Districts Advisory Committee when several properties were established as local districts and later merged to create a statewide district. Likewise, I participated as Chairman in the creation of the Koster's Local District now being renewed.

The purpose of this memorandum is to state formally and in writing my vote in favor of renewal and creation of these two districts and to endorse staff recommendation for approval of these two districts.

§ 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.

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.