Date of Meeting: June 7, 2016

3

BOARD OF SUPERVISORS
BUSINESS MEETING
ACTION ITEM

SUBJECT: **Proposals to Administer New Proffer Legislation**

ELECTION DISTRICT: Countywide

CRITICAL ACTION DATE: July 1, 2016

STAFF CONTACTS: Leo Rogers, County Attorney
Ricky Barker, Director, Planning and Zoning

PURPOSE: To provide a recommendation to the Board of Supervisors (Board) on how to implement Senate Bill 549 passed by the General Assembly during the 2016 Session.

RECOMMENDATION: **Staff** recommends the Board implement Approach 2 described within this report and direct staff to return to the June 23, 2016 business meeting with the following items for the Board's consideration and action:

1. A resolution to initiate a comprehensive plan amendment process to establish small area plan boundaries that encompass the two metro stations and the Suburban Policy Area and other necessary comprehensive plan text amendments;
2. A resolution of intent to amend relevant sections of the zoning ordinance impacted by the new proffer law; and
3. A resolution proposing an interim approach to processing new residential rezonings that are subject to the new proffer law.

BACKGROUND: This item will provide an outline on how proffers are currently administered and an overview of the new proffer legislation and its implications.

Current Administration of Proffers
Conditional zoning, which allows jurisdictions a more flexible and adaptable method to permit differing land uses, was enabled by the Virginia General Assembly over 35 years ago. Loudoun's authority to accept proffered zoning conditions is found in Section 15.2-2303 of the Virginia Code. As designed, this authority allows reasonable conditions known as proffers to be offered by an applicant during a rezoning process as a way of mitigating the impacts of the proposed rezoning. Proffers may include land, infrastructure, cash or other conditions and constraints on the use of the property. Proffers must be made voluntarily and the governing body is not allowed to require a specific proffer as a condition to granting a rezoning. These proffers, if accepted by

the governing body as part of the rezoning approval, become part of the zoning ordinance as it applies to that property. This conditional zoning authority cannot be used unless there is an application for greater intensity submitted by the landowner; i.e., proffers cannot be assessed for permitted or "by-right" development. Further, there must be a connection or relationship between proffers accepted or secured by the County and the actual impacts generated by the development proposal. This is particularly important in light of Virginia Code Section 15.2-2208.1 which creates a cause of action in state court for landowners to challenge alleged unconstitutional conditions imposed on rezonings and to secure paid damages from the locality.

In addition to providing policies related to land use, the Revised General Plan (RGP) addresses the funding of facilities to serve new growth and encourages sound fiscal management of public and private resources. Since proffers from development are identified as a means of helping the County to offset capital facility costs associated with new development, the plan includes a series of proffer policies. The County's proffer policy guidelines are contained in Chapters 3 and 11 of the RGP (Attachment 1). As noted earlier, these proffers are voluntary commitments which a developer offers to the County to assist in improving the public infrastructure needed to serve new residents or users of the development. The County's land use and capital facilities policies are implemented on a case by case basis through rezoning applications. The Zoning Ordinance institutes a process for reviewing, enforcing and amending proffers.

To standardize the way rezoning proffers are evaluated, the RGP provides guidelines for capital facilities, transportation, open space and unmet housing needs proffers. These guidelines are based on three primary objectives: 1) to assist the County in offsetting the fiscal impact of new development; 2) to provide incentives to channel new development into areas where growth is appropriate in accordance with the long term County planning goals; and 3) to provide a means of defining and acting on County priorities.

The RGP establishes a methodology for calculating anticipated capital facility and service demands based on housing unit types. The Capital Intensity Factor (CIF) establishes an estimate of the average capital facilities costs associated with a new residential unit in Loudoun and is used in the evaluation and negotiation of proffers associated with residential rezonings. The CIF serves as a guide to the County to determine the value of capital facilities that will need to be developed as a result of increased population growth resulting from increasing the residential density allowed on a property. Attachment 2 provides details on how the CIF is determined.

Proffers for transportation infrastructure have historically not been included in the evaluation of capital facility needs but rather such proffers have been negotiated separately. County proffer policy, as outlined in Chapter 8 of the Countywide Transportation Plan (CTP), states a preference for construction of physical transportation improvements, as warranted, with new developments in accordance with the applicable policies of the RGP. To this end, rezoning negotiations over the past 10-15 years have resulted in the construction of significant portions of the County's CTP road network, along with related physical improvements such as bicycle and pedestrian facilities along CTP roads as well as transit-related infrastructure such as bus shelters and park and ride lots. Also as per CTP policy, when construction of physical improvements is not practical, per unit regional transportation and transit contributions are requested to mitigate the transportation related impacts of a rezoning application.

In September 2014, the Board directed staff to develop a work plan to investigate options for calculating and establishing formulaic proffer guidelines for transportation improvements, as recommended by the Fiscal Impact Committee (FIC) in early 2016. Staff is in the process of developing a methodology for establishing these contribution amounts, based upon anticipated residential development per the RGP, trip generation from these proposed residential dwelling units, and the planned ultimate buildout of the CTP network, to include missing links in the roadway network, intersection improvements, and bicycle/pedestrian facilities. An additional methodology is being developed for transit capital costs and infrastructure improvements that would be based on future transit system needs as outlined in the forthcoming Transit Development Plan (TDP). Staff is continuing to further develop this methodology and anticipates bringing this item to the FIC later this year.

Programming Cash Proffers in the Capital Improvement Program (CIP)

The CIF is used as a guide in proffer negotiations to determine the amount of cash proffers collected by the County for use in the CIP. The following table reports the amount of cash proffer contributions the County collected in recent fiscal years.

Table 1: Cash Proffers Collected FY14-FY16

Fiscal Year	Amount Collected
FY 2014	$35,800,000
FY 2015	$33,700,000
FY 2016	$38,057,610

During this timeframe, the County has increased the use of cash proffers as a funding source in the CIP. Historically, 2 percent of CIP expenditures have been funded using cash or in-kind proffers. Since FY 2014, about 4 percent of total CIP expenditures have been offset using cash or in-kind proffers. This is notable given overall spending in the CIP has increased 25 percent in the same timeframe due to increased spending on road and transportation projects.

The following table reports the amount of cash proffers appropriated in the County’s CIP budget in the past few fiscal years. The amounts reported include cash proffer appropriations for capital projects programmed at the beginning of each fiscal year in the CIP and mid-year amendments to the CIP using cash proffer funding for capital projects.

Table 2: Cash Proffers Appropriated in CIP FY14-FY16

Fiscal Year	CIP Appropriations	Mid-Year Appropriations	Total Appropriations
FY 2014	$37,801,000	$4,609,543	$42,410,543
FY 2015	$8,064,360	$7,882,985	$15,947,345
FY 2016	$37,562,000	$14,679,390	$52,241,390

The County actively programs the cash proffers it receives from rezoning applications to offset project costs in the CIP. As a result of the new proffer legislation, a lower amount of cash proffers will be collected by the County, thereby resulting in fewer dollars available for use on capital projects. Cash proffers are typically used to cover project costs that would otherwise require the use of debt financing. Having to issue anywhere from $30 million to $50 million in additional debt financing in the six-year CIP would result in projects having to be spread out more in the CIP so that the amount of debt issued in the CIP complies with the County's annual debt issuance limit and debt ratios. In other words, projects cannot be funded as quickly without the use of cash proffers in the CIP due to having to spread out additional debt costs across the six-year CIP.

As you can see in the table above, a significant amount of cash proffers is currently utilized as mid-year amendments to the CIP to help pay for road and facility projects that materialize during the course of a fiscal year due to safety concerns, or to provide additional funding to projects going to construction award in need of supplemental funding. The use of cash proffers is an important source of funding to keep capital projects moving. Without this source of funding, many projects would incur greater delays to wait for funding to come available from other funding sources, such as fund balance, local tax funding, or debt financing.

Application of New Proffer Legislation

Senate Bill 549, introduced by Senators Obenshain and Saslaw during the 2016 General Assembly Session, amends Title 15.2 of the Code of Virginia (Attachment 3). The Bill, approved on March 8th, adds section 15.2-2303.4 related to provisions applicable to certain conditional rezoning proffers. The new section only applies to rezonings or proffer condition amendments for new residential development filed after July 1, 2016. Rezonings or proffer condition amendments related to non-residential development are not affected under the new law. However, the new section would apply to the residential component of mixed use developments which have elements of both residential and non-residential.

The new section limits the acceptance of cash proffers and offsite proffered improvements and substantially reduces the ability of County staff and officials to engage in discussion of rezoning applications with applicants and their representatives. Accepting, requesting or suggesting any type of unreasonable proffer could be deemed as a violation of the law. Part C of the new section states that any onsite or offsite proffer or proffer amendment offered voluntarily shall be deemed unreasonable unless it addresses an impact "specifically attributable" to a proposed new residential development or residential use applied for. It further states that an offsite proffer is considered unreasonable unless it addresses an impact to an offsite public facility where the new development creates a need or portion of a need for public facility improvements in excess of existing public facility capacity at the time of the rezoning and the new residential development or use applied for received a direct and material benefit from the proffer. This limits a locality's ability to assess any impacts other than those defined as public facilities. This new law could cause negative fiscal impacts resulting from a substantial curtailment of funds collected through cash proffers to offset the cost of capital facilities and services necessary to serve new residential development. Part A of the new section defines public facilities as public transportation facilities, public safety facilities, public school facilities or public parks. Offsite proffers for items such as unmet housing needs, open space, and others, which are outlined in the County's RGP guidelines, are considered unreasonable under the new legislation. In addition, all cash proffers are deemed to be offsite proffers and must also meet the criteria established under the law.

The new section does provide exemptions on where the legislation would not apply. These exemptions include:

1. An approved small area comprehensive plan in which the delineated area is designated as a revitalization area, encompasses mass transit as defined in §33.2-100, include mixed use development, and allows a density of at least 3.0 floor area ratio in a portion thereof;
2. An approved small area comprehensive plan that encompasses an existing or planned Metrorail station, or is adjacent to a Metrorail station located in a neighboring locality, and allows additional density within the vicinity of such existing or planned station; or
3. An approved service district created pursuant to §15.2-2400 that encompasses an existing or planned Metrorail Station.

The Metrorail Service District that was created by the County on December 5, 2012 would be exempt under exemption 3 listed above (Attachment 4).

Legal liability for the County is greatly increased under the law. An aggrieved applicant has the ability to contest the action of the County in court. However compared to the current standards, preponderance of evidence, the County has to prove by clear and convincing evidence that the controlling basis of the denial was not based on the applicant's refusal or failure to submit an unreasonable proffer. If the aggrieved applicant wins the case, the County has 90 days from the date of the court's order to approve the rezoning or proffer condition amendment or the applicant can make use of the property as applied without local interference. Thus, if the applicant can prove that the County in some way suggested, requested or required any portion of a proffer that is deemed unreasonable under the new law, the whole rezoning is at risk of being approved without the inclusion of any proffers that are found by the Court to be unreasonable, and the County would be liable for attorney fees and costs.

During the legislative session, an amendment was added to make the act prospective only to apply to applications for rezonings filed prior to July 1, 2016, or "to any application for a proffer condition amendment amending a rezoning for which the application was filed prior to that date." However, staff is concerned that applicants could "reach back" and challenge previously approved proffers through a proffer amendment. Proffers not yet triggered that do not meet the criteria under the law could be considered unreasonable.

The ability of developers to challenge the reasonability of approved proffers that have not been triggered for payment to the County yet would delay, or possibly nullify, the payment of such cash proffers to the County, greatly reducing cash proffer collections and the ability of staff to program the use of additional cash proffers in the CIP.

Given that the County has collected between $30 million and $40 million annually in cash proffer contributions the past few years, exclusive of cash proffer interest earned, it stands to reason that any "reach back provision" in the proffer legislation would reduce the amount of funding collected significantly for any proffers not yet triggered for payment, and would reduce available funding sources from cash proffers in the CIP.

The County currently only programs the use of cash proffers already collected by the County for use on projects in the CIP. So cash proffers planned for appropriation in the FY 2017 – FY 2022 Adopted CIP would not be impacted, as they have already been collected by the County. Future cash proffer collections could be impacted by the "reach back provision," if applicable, lowering the amount of cash proffers available to be programmed in future CIP budgets.

ISSUES: All rezoning applications filed <u>prior</u> to July 1, 2016 will follow the process the County currently uses for accepting proffers. The new proffer law would apply to all residential rezoning applications filed <u>after</u> July 1, 2016, except for those within the Metrorail Service District. As discussed, the law includes three exemptions under §15.2-2303.4 E in which the provisions do not apply. For all rezoning applications outside the exempted areas submitted after July 1, significant changes are required to effectively address the new proffer legislation.

Staff has evaluated two approaches for addressing the proffer legislation. The first approach applies the legislation under the County's current structure. Under this approach, significant wholesale changes are required to the County's rezoning process and other processes associated with capital facility planning and fiscal impact analysis. This approach is high risk, increasing the liability to the County and the probability of legal challenges related to "unreasonable" proffers or denied rezonings. The second approach, recommended by staff, would make revisions to the RGP and the Zoning Ordinance that would allow most future rezonings to be exempted under the new law. This approach takes advantage of the exemptions in the law as written.

Staff has attended two meetings initiated by the Transportation and Land Use Committee Chair, with local land use attorney's to discuss the new law and impact to the current rezoning process. Several approaches were initially discussed such as the utilization of impact fees and the limitations of current statutory authority, the use of community development authorities and why those types of proposals did not progress in the past, and the possibility of utilizing the small area comprehensive plan exceptions that are included in the new law.

Susbsequent to the Board's anticipated action on June 23rd, staff will move forward with a communications plan to advise the public, the development community and other interested parties, as to the County's approach and timeline to administer the new legislation.

<u>Approach 1</u>

Implementation of the legislation under our existing RGP and Zoning Ordinance will require significant changes to the County's processes. The following table briefly describes some of the differences between the way the County currently evaluates rezonings and how it may compare with the evaluation of rezonings under the new law. This table also highlights some of the changes needed to implement the new law.

Table 3: Impact of the New Proffer Legislation on Current Processes

Approach 1		
Prior to July 1, 2016	**After July 1, 2016**	**Changes Required**
Rezoning Applications		
Applications filed prior to July 1, 2016 will follow the County's current process and the way County handles cash proffers and interactions with applicants will remain the same.	Applications filed after July 1, 2016 will follow the new law and will, at a minimum, be subject to limits on to the amount and type of cash proffers that may be accepted and significant limits on the County's interactions with anyone associated with the application. The only exception will be those applications for properties within the Metrorail Service District.	The County will need to manage two separate and distinct rezoning processes depending on when applications were filed before or after July 1, 2016.
Cash Proffers		
Cash proffers can be applied to most County facilities and needs within location parameters and identified in the Capital Improvement Program. This includes both on and offsite of the subject property.	All Cash proffers are deemed as "offsite and are limited to transportation, public safety, schools, and parks facilities only; must address impacts specifically attributable to the proposed development; must address increased facility needs created by the new development; and must provide a direct and material benefit to the new residential development.	If the County is willing to risk the potential adverse consequences of accepting any cash proffers, the County would need to evaluate the specific impact of the rezoning on the service levels of these four types of facilities which will most likely require hiring a consultant or consultants to evaluate all rezonings proffering cash to ensure the cash proffers offered by the applicant satisfy the strict limitation. Cash proffers found to be unreasonable could result in the court directing the Board to approve the rezoning without the proffer. Cash proffer guidelines in the County's Revised General Plan must be removed or the Zoning Ordinance must be amended to direct that any such guidelines shall not be considered.

Communication with Applicant Representatives		
Staff, Planning Commissioners, and Board members currently communicate directly with applicant representatives to discuss the impacts of the proposed rezoning and appropriate means to mitigate or the lack of mitigation of those impacts.	Due to the risk of staff or officials inadvertently suggesting or requesting, or being deemed to have suggested or requested, an unreasonable proffer and potential resulting litigation, staff recommends that communication with applicant representatives be severely limited.	Recommendations include: (i) eliminating pre-application meetings, (ii) pre-screening questions that can be asked of the applicant, (iii) recording all conversations and avoiding all telephone communication, and (iv) funneling all interactions through only one or two staff members to ensure compliance with the law, and requiring that the County Attorney's office be present and that the meeting be recorded. County consideration will need to focus solely on the consistency with the Comprehensive Plan and review process.
Fiscal Impact		
Currently approximately 4% of Capital Facilities costs associated with new residential development are offset through cash proffers.	Due to the restrictions and risks stated above, the amount of funding received for public facilities will significantly be reduced.	Capital Intensity Factors must be recalculated to include only the four types of public facilities. The County will most likely need to contribute more funds for new capital facilities needed to offset the impact of new residential growth.
Training and Education		
In 2016, staff conducted some orientation and training sessions on the rezoning process with Board and Planning Commission members and Board aides. The current rezoning process is complicated and evaluating rezoning proposals while considering public feedback and recommendations from staff is challenging.	Due to the difficulty to control the specific wording communicated to the applicant's representatives by staff, Planning Commissioners, Board members and their aides, it is highly likely that legal action will follow most rezonings that are denied. In addition, there may be confusion by all those involved because of the need to run two separate and distinct reviews and processes (i.e., rezonings submitted prior to July 1, 2016 and those submitted after).	To attempt to communicate in a way that limits the County's liability, a robust and thorough education program must occur with staff, Planning Commission and Board members and their aides. A robust public education program must be provided so those involved outside of County government will know the new process and its limitations. Additional funding will also need to be set aside for litigation.

Public Involvement		
Currently, the public has an opportunity to share concerns during public hearings and sometimes at community meetings. The applicant has often responded to these concerns by working with staff and others to offer cash proffers and other offsite improvements to mitigate offsite impacts not related to transportation, safety schools, and park facilities.	Under the new law, staff, Planning Commissioners, and Board members must not communicate with the applicant's representatives to address concerns to avoid the risk of applicants claiming that the County denied the rezoning because the applicant did not submit a cash proffer that addressed a stated concern.	A robust information program should be provided to the public on what the County can and cannot do so that the public does not see the County's lack of action as being non-responsive to the expressed concerns.
Current Ordinances, Guidelines, and Policies related to Cash Proffers		
In order to be effective at implementing a fair and methodical approach to cash proffers, the County has developed ordinances, policies and guidelines. These documents will need to continue to be used for applications submitted prior to July 1, 2016	Because of the significant limitations on the use of cash proffers based upon the new law, these same ordinances, policies and guidelines will need to either be eliminated, significantly changed, or held in abeyance.	Changing these documents will require a significant amount of time and staff resources.

The new proffer legislation allows for "offsite" cash proffers to be collected for only specific types of capital facilities. Table 4 provides a comparison of the current capital facilities the County factors into its calculation of the CIF based upon the County's CFS, and the specific facilities the new legislation allows offsite cash proffers to be collected for.

When assessing the impact of the legislation on the calculation of the CIF, due to the reduced number of facilities that can be included in the calculation, the CIF will be lower than the current adopted CIF.

The new proffer legislation requires that offsite cash proffers be attributable to impacts caused by the increased residential density of a new proposed development. For the purposes of this analysis, staff concluded that maintaining the current five CIF areas would not provide an accurate measure of a proposed development's impact in relation to existing public facility capacity in an area. Therefore, staff has provided an analysis of the revised CIF calculation due to changes proposed by the proffer legislation at the planning subarea level. Each of the County's ten planning subareas will have their own separate CIF calculation.

Table 4: Comparison of CIF Facilities

County CIF Facilities	New Proffer Legislation Facilities
Animal Shelter	
Fire Station	Fire Station
Sheriff Station	Sheriff Station
General Government Support Facilities	
Recycling Drop-Off Center	
Special Waste Drop-Off Center	
Developmental Services Group Residence	
Mental Health Group Residence	
Park and Ride Lots	Park and Ride Lots
Bus Maintenance Facility	Bus Maintenance Facility
Library	
Recreation Center	Recreation Center
Community Center	Community Center
Teen Center	Teen Center
Senior Center	
Adult Day Center	Adult Day Center
Satellite Parks Maintenance Facilities	Satellite Parks Maintenance Facilities
Regional Park	Regional Park
District Park	District Park
Community Park	Community Park
Neighborhood Park	Neighborhood Park
Recreational Trails	Recreational Trails
Juvenile Detention Center	
Emergency Homeless Shelter	
Youth Shelter	
Adolescent Independent Living Residence	
Elementary School	Elementary School
Middle School	Middle School
High School	High School

If Approach 1 is pursued, then the County will need to re-calculate the CIF according to the allowable facilities that cash proffers can be applied to. An example of what the likely new CIF would look like in each of the County's ten planning subareas is shown in Attachment 5. These tables provide a comparison of the current CIF in each of the County's ten planning subareas, and the likely CIF in each of the planning subareas as a result of modifications to the CIF calculation caused by the requirements of the new proffer legislation.

Any re-calculation of the CIF would have to be considered first by the Fiscal Impact Committee. The Committee's recommendation would then be reviewed by the Finance/Government

Operations and Economic Development Committee, and then finally approved by the Board of Supervisors.

If Approach 2 is pursued, then no additional re-calculation of the CIF is required. The current, adopted CIF would be applied in the Suburban Policy Area of the County, and no CIF would be required in the Transition or Rural Policy Areas because cash proffers would be eliminated from these areas.

Transportation Impact
A per unit contribution methodology would be applied to ensure mitigation of regional transportation impacts of a development proposal. However, staff would also need to be able to request reasonable mitigation measures for transportation facilities directly impacted by the proposed development. Therefore, the Level of Service (LOS) guidelines currently in the CTP would need to be expanded to cover the entire County (currently, LOS policies do not apply to the Rural Policy Area), and may need to vary by policy area due to goals and objectives for each policy area, as well as the overall development patterns envisioned by the RGP.

Litigation Impacts
Although the County has been sued over rezoning decisions, the number of these suits has been very limited due to consideration of past rezonings being based upon extensive, thorough service plans and levels, capital needs assessments, capital facilities standards, capital improvement plans, and calculation and application of capital intensity factors. Due to the difficulty to control the specific wording communicated to the applicant's representatives by staff, Planning Commissioners and the Board, it is highly likely that legal action will follow most rezonings that are denied. Additional funding needs to be set aside for litigation.

Approach 2

Approach 1 has significant fiscal impacts and demands a significant overall change to our zoning process. Consequently, staff is setting forth, in Approach 2, a more reasonable alternative. Approach 2 will require the following actions:

1. Amending the Comprehensive Plan to establish New Small Area Plan boundaries around future metro stations and other necessary text amendments;
2. Amending the zoning ordinance to apply cash proffers and off-site proffers for residential rezonings only within exempted areas; and
3. Adopting a Board Resolution, as an interim measure until items 1 and 2 are completed, directing among other things that all rezonings outside of the exempt areas shall be processed and evaluated pursuant to Virginia Code Section 15.2-2297 which would eliminate cash proffers for new residential rezonings in those non-exempt areas as further explained below.

Establishing Small Area Plan Boundaries
Through this approach, the County would take advantage of the exemption related to the small area comprehensive plan. Since the County will have three future metro stations within its jurisdiction, the County would have the option to establish new small area plan boundaries that encompass the proposed metro stations. Staff believes that these metro stations have significant impacts on the land within the Suburban Policy Area of the RGP and it is logical to support developing a new small area plan boundary that includes this area. Staff is recommending that the County go through the required comprehensive plan amendment process only to establish small area plan boundaries (proposed land uses will remain the same) that encompass the entire Suburban Policy Area where most rezonings occur. The County is currently doing the Silver Line Small Area Plan for the area around the metro stations; however, staff believes that the County will need to rename the title of this Plan to not be confused with the new small area plan boundaries needed to cover the entire Suburban Policy Area to create the exception area under the new proffer law.

After initiating the Comprehensive Plan Amendment (CPAM), staff believes the process will take approximately three to four months. Staff is recommending several public outreach meetings to clearly explain what is being done and to be available to answer any questions the public may have on why the County is implementing these new small area plan boundaries. A proposed schedule for completing the CPAM can be found in Attachment 6. At the June 23, 2016 Board meeting, staff will provide a more detailed proposal for the small area plan boundaries and to request the initiation of comprehensive plan amendment.

Areas outside of the Suburban Policy Area (the Transition and Rural Policy Areas) would still be under the new law and be subject to the limitations on cash proffers. Staff is recommending cash proffers be eliminated from areas that are not exempt from the new law. This action eliminates all the issues described in Approach 1 and also encourages rezonings within the Suburban Policy Area. This change encourages by-right development within these two policy areas. With the development of the new comprehensive plan, any expansion to the exempt area (Suburban Policy Area) could be considered.

By eliminating cash proffers outside of the suburban policy area, the evaluation of rezonings in these areas would be based primarily on the consistency with the comprehensive plan. The applicant would also need to demonstrate how offsite impacts will be mitigated without the use of cash proffers. Amendments to the Comprehensive Plan may be needed to establish level of service standards to assist with the evaluation of rezonings outside of the exempted areas.

Until the adoption of the Small Area Plan(s), all new residential rezoning applications filed after July 1, 2016 on property not located within the Metrorail Service District shall be evaluated and processed pursuant to Virginia Code Section 15.2-2297 which also authorizes our <u>zoning ordinance</u> to provide for the voluntary proffering of reasonable conditions as part of a rezoning, but contains several prohibitions on such proffers. Under 15.2-2297 the proffers may *not* include:

- any cash contribution to the County;
- mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities unless such dedication may be required pursuant to the subdivision enabling statute (essentially, adjacent right-of-way dedication);
- payment for or construction of off-site improvements, unless such improvements may be required pursuant to the subdivision enabling statute (essentially, improvement of adjacent road); and
- any conditions not related to the physical development or physical operation of the property.

After the adoption of the Small Area Plan(s), all new residential rezoning applications filed on property not located either within the Metrorail Service District or within the boundaries of a Small Area Plan shall be evaluated and processed pursuant to Virginia Code Section 15.2-2297 as outlined above.

Board Resolution
Since the establishment of new small area plan boundaries and changes to the zoning ordinance will take three to four months, staff recommends the Board adopt a resolution at its June 23, 2016 meeting to set forth the following interim approach to implementing the new proffer law:

1. Establish the process and method for evaluating any rezonings received after July 1, 2016 and before the above amendments can be adopted; and
2. Direct staff to evaluate and process all new residential rezoning applications filed after July 1, 2016 on property not located within the Metrorail Service District pursuant to Virginia Code Section 15.2-2297 which also authorizes our Zoning Ordinance to provide for the voluntary proffering of reasonable conditions as part of a rezoning as mentioned above.

Staff Recommendation
Staff recommends Approach 2 because it allows the County to continue its implementation of cash proffers in the areas where most of all rezonings occur – the Suburban Policy Area.

FISCAL IMPACT: The fiscal impacts of Approach 1 would be significant. Additional costs to the County include hiring a third-party consultant to evaluate proffers to ensure that they are reasonable as it relates to the specific impacts of each rezoning. The County would also need to set aside a significant amount of funding to defend likely litigation from administering the new proffer legislation. Under Approach 2, fiscal impacts are limited to the staff resources and time required to implement the recommended changes. However, there would also be additional costs with training staff, Planning Commissioners, Board Members and their aides regarding rezonings outside of exempted area.

ALTERNATIVES: The Board may choose Approach 1 or Approach 2 to administer the new proffer legislation.

DRAFT MOTIONS:

1. I move that the Board of Supervisors approve Approach 2, contained the June 7, 2016 Action Item, for implementation of the new proffer law and to direct staff to return to the June 23, 2016 business meeting with the following items for the Board's consideration:

    1. A comprehensive plan amendment process to establish small area plan boundaries that encompass the two metro stations and the Suburban Policy Area and other necessary text amendments;
    2. A resolution of intent to amend relevant sections of the zoning ordinance impacted by the new proffer law; and
    3. A resolution proposing an interim approach to processing new residential rezonings that are subject to the new proffer law.

OR

2. I move an alternate motion.

ATTACHMENTS:

1. Proffer Policy Guidelines in Chapter 3 and 11 of the Revised General Plan
2. Calculating the Capital Intensity Factor
3. Chapter 322 of the Virginia Acts of the Assembly-2016 Session
4. Map of the Metrorail Service District
5. Comparison of Adopted CIF with CIF Based on New Proffer Legislation

Chapter 3
Fiscal Planning and Public Facilities

Approximately 83,000 new residents arrived during the past decade doubling the demand for local services. Almost overnight, the County has had to plan, fund and build virtually a new community. As illustration of the enormity of the public investment, the capital improvements program between fiscal years 2001 and 2006 is expected to be approximately $1.08 billion, not including the costs of long-term financing.

As this fiscal challenge began to unfold in the 1990s, a management strategy evolved to enable the County to anticipate and to accommodate the dramatic increase in service and facility demand. This strategy is innovative for local government, involving the full integration of land use planning, fiscal management and facilities planning. The County began moving toward this approach in the mid-1990s, after members of the Board of Supervisors became concerned about the potential fiscal impact of anticipated growth. At the Board's direction, key planning tools were developed over a period of years to help ensure that Loudoun County remains a well-serviced community with a high quality of life and an economic balance to allow an affordable tax rate.

Funding and Fiscal Management

Until the 1980s, the federal, state, and local levels of governments shared the cost of providing public facilities for education, transportation, and public water and sewer. However, over the past twenty years, the federal government has withdrawn as a major funding partner to states and localities, placing the financial burden for the provision of local public facilities and services almost exclusively on state and local governments. That downward trend is reflected in county budgets.

In 1979, the federal government provided 4.3 percent of the revenue for the local budget. In fiscal year 2001, the federal share is expected to recede to only 1.2 percent. At the same time, state revenue, when adjusted for inflation, has not kept pace with the fiscal demands of the growth that Loudoun has experienced over the past decade. The state's funding share of the County budget also has declined. In 1979, the Commonwealth provided about 21 percent of the County's annual operating revenue. In fiscal year 2001, this is expected to decline to 12 percent.

Meanwhile, the County's expenditures have climbed substantially in an effort to keep up with population growth; to catch up to the increased service expectations of the community; and to recover from the expenditure and service reductions from the recession of the early 1990s. Actual expenditures increased 107 percent between fiscal year 1990 and fiscal year 1999, when they exceeded $407 million. The largest increase during the period was County expenditures for schools. The County spent $103.3 million more for school operations in FY99 than it did in FY90. The second most significant increase was spending for capital facilities. Combined expenditures for capital facilities and for the annual payment on long-term capital debt increased by 169 percent, from $39.3 million in FY90 to $105.5 million in FY99.

Robust economic development has been a vitally important source of new revenue to bridge the funding gap. In fiscal year 1990, the commercial sector comprised less than 20 percent of the tax base. By fiscal year 2000, it was funding 22 percent of the real property tax base and 30 percent of the personal property

ATTACHMENT 1

tax base. However, even with that increased revenue, County expenditures per capita dropped significantly during the period, reflecting the strain that rapid growth is having on the County's ability to maintain acceptable service levels.

The primary source of County revenue is home-owners, who fund the largest share of public costs of growth with real property taxes, personal property taxes, service fees, utility taxes and sales taxes. The majority of capital facility expenditures have been funded through general obligation bonds; however, the County has/does receive assistance from the development sector through proffers.

A. Fiscal Planning and Budgeting

Recognizing the critical relationship of development and service demands, the County has sought to offset the negative fiscal impacts of residential development by encouraging a fiscally favorable balance between residential and non-residential development. Phasing growth based on the availability of adequate public facilities and distributing the costs of growth more equitably have also been at the forefront of the County's strategy. Over the years and to this end the County has implemented an integrated approach to fiscal and land use planning. The strategy begins with the comprehensive plan, which includes the *Revised General Plan, Revised Countywide Transportation Plan* and associated documents. The Plan establishes the development potential of the County by planning the residential and non-residential uses of the land.

The Board of Supervisors' Fiscal Policy provides accounting, budgeting, and financial management directives that, among other things, place limits on how much long-term debt the County will incur to build public facilities. Within the parameters of those documents, the delivery of services and public facilities is planned.

The County's Fiscal Impact Analysis Technical Review Committee, comprised of citizen representatives supported by County and School staff, provides annual forecasts of development activity and service costs over twenty years. The Committee's Annual Update of the Demographic, Revenue, and Expenditure Modules and 20-Year Growth Scenarios is based on a fiscal impact model developed for the County in the early 1990s.

Service Plans and Levels for each department and agency that are adopted by the Board of Supervisors establish the number of facilities that the County will build. The Service Plans and Levels establish service delivery levels and capital facility standards based upon specific demographic factors (per capita, per square foot, etc.). The Board of Supervisors selects the service level. The table, History of Service Plans and Levels on pg. 3-3, depicts the history of service plans.

History of Service Plans and Levels

	Department or Agency	1986-1987	1989-1990	1994-1995	1996-1997	Est. 2001-2002
1.	Parks, Recreation & Community Services	X	X	X	X	X
2.	Area Agency on Aging**		X	X	X	X
3.	Social Services		X	X	X	X
4.	Sheriff's Office			*	X	X
5.	Housing Services			X	X	X
6.	Library Services			X	X	X
7.	Mental Health/Mental Retardation		X	X	X	X
8.	Fire and Rescue Services		X	*	*	X
9.	Cooperative Extension Office		X	*	*	*
10.	Health Services		X	X	X	X
11.	Animal Care and Control			*	X	X
12.	Comprehensive Services Act			X	X	X
13.	Juvenile Court Service Unit					X
14.	Solid Waste Management					X
15.	Schools			*	*	
16.	Other governmental functions***			*	*	

X Completed Service Plan
* Adopted Service Levels
** Agency merged with Department of Parks and Recreation in 1996.
*** Consolidated or co-located functions of general government and judicial administration agencies and departments.

Based on the County's projected population growth and the adopted service levels, a ten-year Capital Needs Assessment is prepared to project the type and number of capital facilities that will be needed to serve the public. With that longer view in mind, the Board then adopts a six-year Capital Improvement Program that schedules the financing and construction of public facilities. Actual and projected capital expenditures are approved annually, when the Board also passes the operating budget. The adopted Fiscal Plan reflects the estimated and projected costs of providing County services for two fiscal years, with appropriations made for only the first year of the biennium.

As indicated in the table, Strategic Management of Loudoun's Growth: The Planning Tools on pg. 3-3, these planning tools must be updated regularly to remain current in an atmosphere of rapid change.

Strategic Management of Loudoun's Growth: The Planning Tools

Document	Planning Horizon	Update Frequency
General Plan	20 years	Every 5 years
Area Plans	Indefinite	As needed
Service Plans and Levels	20 years	Every 4 years
Capital Needs Assessment	10 years	Every 2 years
Capital Improvements Program	6 years	Every year
Operating and Capital Budgets	2 years	Every year

This management strategy has enabled the County to anticipate and to plan for the fiscal impacts of growth, providing built-in protection for the taxpayers. The County intends to continue using cash to pay at least 20 percent of the cost of new facilities, thereby reducing the cost of long-term financing. That policy will take on even more significance in the second half of the current decade, when the County's annual payment on long-term debt is expected to exceed $97.5 million—an amount equal to half of the County's total expenditures in fiscal year 1990. Between fiscal years 2001 and 2010, the cumulative debt-service payments are projected to exceed $957 million.

Fiscal Planning and Budgeting Policies

1. The County is best served by seeking to meet the goals of an effective fiscal policy as stipulated in the Board of Supervisors' Fiscal Policy originally adopted December 17, 1984, and as subsequently amended.

2. The County seeks to maintain an affordable real-property tax rate by balancing, on a timely basis, residential and non-residential development in conformance with the overall policies of the *Revised General Plan*.

3. The County will seek further revenue diversification, which will increase fiscal stability and thereby, mitigate tax burdens on Loudoun County taxpayers.

4. The County will seek the provision of necessary public facilities, utilities, and infrastructure concurrent with development through a variety of mechanisms such as proffers, user fees, impact fees, and special taxing districts.

5. Local funding sources, either as "pay-as-you-go" funding or bonded indebtedness, will continue to be a major funding source for County public facilities and services.

6. The County will direct the majority of public investments into currently developed communities, towns and areas of the County where development is planned according to the Comprehensive Plan and in observance of standards and levels as approved in the Board of Supervisors' Adopted Service Plans and Levels and as subsequently amended.

7. The County will consider proposals of the timely dedication of land, cash, and in-kind assistance from the development community in the provision of needed and/or mandated (by federal or state government) public facilities identified in the adopted Comprehensive Plan, Agency Service Plans, area management plans, the Capital Improvement Program or the Capital Needs Assessment Document.

8. Consistent with the Va. Code Sec. 15.2-2283 and 15.2-2284, the County will consider the adequacy of public facilities and services when reviewing any zoning application for more intensive use or density. To fairly implement and apply this policy, the County will consider the following:

   a. existing facilities;

   b. facilities included in the capital improvements program;

   c. the ability of the County to finance facilities under debt standards established by its fiscal policies;

   d. service level standards established by approved service plans and the effect of existing and approved development, and the proposed development, on those standards;

   e. service levels on the existing transportation system; the effect of existing and approved development and the proposed development of those service levels and the effect of proposed roads which are funded for construction;

   f. commitments to phase the proposed development to the availability of adequate services and facilities; and

g. other mechanisms or analyses as the County may employ that measure the adequacy of such services and facilities for various areas or that measure the County's ability to establish adequate services and facilities.

9. The County expects that proposals of public facility and utility assistance by residential developers would be in conjunction with any rezoning request seeking approval of densities above existing zoning.

10. The County will seek to ensure that an equitable and a proportionate share of public capital facility and infrastructure development costs that are directly attributable to a particular development project will be financed by the users or beneficiaries.

11. The County will fund the balance of capital facilities expenditures and operational service expenditures which are not financed through other mechanisms, according to existing Countywide Fiscal Policies adopted by the Board of Supervisors on December 17, 1984, or as subsequently amended.

B. Proffers

Proffers are voluntary commitments that a developer makes to the County to offset the impacts of a proposed development and which assist, among other things, in improving the public infrastructure needed to serve new residents or users of his/her development. The proffer system is one of the tools used by the County to secure the public infrastructure needed to support new development.

Proffers include monetary contributions toward capital facilities such as schools, parks, libraries, roads and other public facilities. Proffers also may include dedication of property for the future siting of schools, parks, trails, roads, and other facilities, and/or agreements to construct public facilities and to have them in place to serve future development. The developer submits the proffers in writing when applying for the rezoning. Once the County approves the rezoning request, the proffer agreement becomes an enforceable zoning regulation and runs with the land until a subsequent rezoning. The County holds the signed agreement and reviews it for implementation during and after the site plan and subdivision processes preceding actual development.

The proffer system has advantages and disadvantages. The key advantages are that it is voluntary and flexible, which allows contributions to be tailored to specific capital needs at the time. Using the proffer system as a means of partially financing and planning for public improvements has serious drawbacks. The proffer system is a reactive system based on the market and on development decisions made by individual landowners. There is uncertainty about which or when land development proposals, particularly non-residential projects, actually will be built. Since some major capital improvements proffers are tied to a threshold level of development, there is a risk that capital facility improvements will not be made in a timely fashion. In addition, because of the zoning map amendment process, proffers are negotiated on an application-by-application basis, and the resulting proffers may be limited in their flexibility and applicability due to the specific context of the individual zoning map amendment. Major capital improvements proffers in addition to roads often are tied to a threshold level of development, and proffered public facilities such as school sites may be needed by the County before they are built.

The voluntary nature of the system makes it unreliable as a guaranteed source of significant levels of capital funding. Historically, Loudoun County proffers have offset only a minimal percentage of projected capital expenditures. In addition, multiple goals and the unique conditions of each project make it difficult for the County to negotiate proffers consistently from case to case and to strategically fund the Capital Improvements Program. The County will continue to use the proffer system, but must seek alternative methods of funding needed public improvements.

Proffer Policies

(Also see Chapter Eleven, Proffer Guidelines, pg. 11-1)

1. Until such time as the General Assembly grants authority for other options, the County will continue to use the proffer system to assist in funding capital facilities costs associated with new development. The County will structure residential proffer guidelines on a per-unit basis, based upon the respective levels of public cost of capital facilities generated by the various types of dwelling units (i.e., single-family detached, single-family attached, or multi-family land development pattern). Non-residential costs will be structured on a per-square-foot basis based upon the public cost of capital facilities appropriately attributable to such use (as defined in the Zoning Ordinance).

2. The County will use the Capital Intensity Factor (CIF) to determine capital costs in evaluating proffers. The County's CIF will be reviewed and updated on a biennial basis.

3. To assist the County in an equitable and uniform evaluation of proffers, the County anticipates that developers will assist in providing capital facilities and transportation improvements according to the capital facilities contribution guidelines established in the implementation section of this Plan, and the transportation proffer policies contained in the *Revised Countywide Transportation Plan* (Revised CTP). To achieve the maximum permitted densities in residential communities; the Board of Supervisors anticipates evidence of participation in an open-space preservation program. (Specific capital facilities and open-space proffer guidelines are contained in Chapter Eleven of this Plan.)

4. Specific proffer guidelines may be amended through the area plan process.

5. In addition to capital facilities improvements, the County anticipates that transportation proffers will be sufficient to mitigate the impact of traffic generated by the development throughout the road system.

6. Proffers involving cash contributions will provide for annual adjustments based on the Consumer Price Index (CPI).

7. Proffers may be phased.

8. For the purposes of evaluating proffers for public use sites, the per-acre value for land that does not require any improvements to be completed by the developer will be determined by appraisal of the market values of the site based upon comparison of properties with similar densities suggested by the Planned Land Use Designation in the *Revised General Plan*. The appraisal shall be paid for by the developer and provided to the County. For improved sites, the following shall be taken into consideration during proffer evaluation as applicable:

    a. Site-preparation improvements such as clearing and grubbing, grading, stormwater management, erosion control, and related engineering and permitting costs.

    b. A proportional share of improvements directly related to providing access to the site (pedestrian underpasses, construction of adjacent streets, trails, and sidewalks).

    c. A proportional share of project infrastructure such as stormwater management ponds, sanitary sewer lines and major off-site and on-site roadways serving the site.

9. Proffers may include additional specifically proffered improvements, as consistent with adopted service plans and levels, the Capital Needs Assessment and the Capital Improvements Plan.

10. Proffers related to adult/retirement communities will be evaluated based on *Revised General Plan* proffer guidelines. The Board of Supervisors may consider differences between such uses and

conventional residential development (e.g., reduced numbers of school children, increased human services demand) in estimating the capital facilities needs associated with the development.

11. The County will develop a comprehensive approach to the review, approval and management of proffers that will implement the policies of this Plan. Such approach will recognize and seek to minimize adverse impacts and to maximize positive benefits to ultimate end-users and to the County as a service-provider.

Public Facilities

The County's early public infrastructure, consisting primarily of schools, was built in Leesburg and in the towns of western Loudoun that were the population centers for the first 200 years of the County's history. Significant residential development began appearing in the eastern part of the County during the 1960s and 1970s as the planned communities of Sterling Park and Sugarland Run developed. It was only then that the County began shifting some of its public infrastructure investment eastward. Eastern Loudoun now is home to nearly two thirds of the County's population and has received most of the public investment in new schools and facilities in recent years. Residential growth in western Loudoun has also led to the need for and construction of additional public facilities. (See Public Facilities Map)

As discussed earlier, the County's land use strategy is inextricably tied to the timing, costs and means of pro-viding public facilities. Also, the location and design of public buildings, and schools in particular, are of primary importance. Such facilities play a special role in neighbor-hoods and communities. They are focal points and social and civic anchors. It is important that their location and design set the highest possible standards. The following general policies are intended to frame the County's approach.

General Public Facilities Policies

1. The Board of Supervisors' Adopted Service Plans and Levels identify the type and level of service to be provided to the community. All public facilities will be developed in observance of these Plans and Levels.

2. The County will determine the need for new public facilities and will identify suitable sites based on the *Revised General Plan*, appropriate area plans, land use and growth policies. The standards and levels of service for these public facilities are as prescribed in the Board of Supervisors' Adopted Service Plans and Levels.

3. The County recognizes the importance of civic buildings as gathering places and for establishing community identity. Because of their importance to the community, the County will set a positive example in terms of design and development of these facilities.

4. All public facilities will observe the location and design criteria as outlined in the comprehensive plan.

5. The County will consider the provision of suitable new public facilities, timely site dedications, upgrading existing facilities and operational assistance in order to mitigate the service impacts of a development proposal in making its decision to approve or deny the proposal.

6. The County will continue to seek private sector support for improvements or provision of current and future public facilities and sites.

7. The County will consider development community proposals of cash and in-kind assistance for public facilities in addition to the timely provision of dedicated sites.

8. The County encourages the co-location of County facilities where they are feasible and can function effectively as multi-purpose community facilities (e.g., community meeting space, shared parking, athletic fields, and integrated design).

A. Schools

The County's largest investment in public facilities is schools. Local school enrollment in some years has grown at a faster rate than the County's overall population. Ten years ago, 14,632 students attended Loudoun County Public Schools. During the 2000-01 school year, enrollment reached over 31,800, a 117-percent increase.

Since 1997, the enrollment increases have been dramatic, averaging almost 2,300 additional students per year. This trend reflects not only the County's rapid growth, but also its disproportionate share of young adults in their prime childbearing years who have been drawn to the region by the job market and more affordable housing than elsewhere in Northern Virginia. Almost a third of the County's residents in 1999 were ages 19 or younger, according to U.S. Census Bureau estimates. Of Loudoun's more than 46,000 children, the largest single age group in 2000 was for those under the age of five, at more than 14,700.

The heavy demand for services is placing significant pressure on the school system, which each year must hire hundreds of additional classroom teachers and staff, expand support systems, and open multiple new schools. Families endure the trauma of shifting school boundaries as new students are assimilated into the school system. The County, meanwhile, must generate resources to fund the building and operation of the schools and plan to meet future needs without placing an undue burden on the taxpayers. A new challenge is securing building sites for new schools that are cost effective but that also reflect their important social and civic functions in terms of location and design. In the past, the County has relied on the donation and timely delivery of proffered school sites from the development sector. However, the supply of sites has not kept up with demand or with the school system's construction timetable.

The school system's current inventory of facilities is grouped into six high school cluster service areas. Each cluster also includes a middle school and multiple elementary schools. With the planned opening of four additional high schools, the number of school clusters is expected to rise to 10 by 2005. (See Schools Map)

Currently, the school system's central offices are housed in multiple locations: a 75-year-old converted school building on North Street in Leesburg's historic district, the Douglass Support Center near Sycolin Road in Leesburg, the Staff Training Center (old Ashburn elementary school) and administrative offices at the old Round Hill elementary school. It is anticipated that nearly all administrative offices for the school system will be combined and located within newly constructed office space totaling nearly 112,000 square feet on approximately 8.5 acres.

The County also has two schools based in Leesburg that serve the special needs and interests of students through-out the system. Douglass School provides early-childhood special education, English as a second language, and an alternative secondary school. The Monroe Technology Center in Leesburg provides centralized vocational and technical programs for high school students typically in grades 11 and 12.

School Policies

1. The School Board will determine the need for new public school sites and facilities in Loudoun County. The County will coordinate with the School Board to identify suitable sites based on the *Revised General Plan* and its land use and growth policies in concert with the School Board's standards and levels of service as adopted by the Board of Supervisors.

2. The County will acquire school sites in advance of the School Board's recognized short and long-term future needs when these sites are not obtained by dedication from developers to minimize school transportation costs and to structure future planned growth.

3. The continued use of existing public school facilities will be supported through ongoing capital asset replacement and modernization of public school facilities to meet changing educational programs.

4. Public school sites should be located at the focus of the attendance area and will provide safe and convenient access for students. All public schools will be linked to adjacent neighborhoods by sidewalks or trails on both sides of roadways and crosswalks, and where possible, linked to greenways or trails.

5. School-related open space and athletic fields will be planned, designed and coordinated with the County's parks and recreation programs and facilities through a referral process.

6. When existing public schools must be replaced, the new facilities will be encouraged to locate in a manner that maintains or enhances the role of the school in the context and character of the adjacent community.

7. Proffered public school sites should be made available in the first phase or upon request of the County of every development proposal in order to assure the timely delivery of educational services to the community.

8. Whenever possible, new public schools in the Rural Policy Area will be located in or immediately adjacent to the Existing Villages, towns, and Joint Land Management Areas (JLMAs).

B. Library Services

An important measure of the overall health of a community is library usage, and Loudoun residents' usage is double the national average, according to the 1999 community survey. The County's library system includes six facilities: Rust Library in Leesburg, Eastern Loudoun Regional Library in the Cascades area, Sterling Park Library, Middleburg Library, Purcellville Library and Lovettsville Library. Only Rust, Purcellville, and Eastern Regional libraries are modern facilities. A seventh facility will open in Ashburn in 2003, and the Lovettsville Library is being expanded.

Additional projected needs include an addition and renovation of Rust Library for an expanded children's area, administrative offices and technical processing, and a new library in the Dulles community within the Suburban Policy Area. For residents with less access to branch locations due to distance or special needs, the Department of Library Services will provide mobile library services.

Library Services Policies

1. Library Services sites should be highly visible with direct access to a collector road, and connected to the pedestrian transportation network. Where appropriate, libraries should be located with or near other "high traffic" areas such as town centers and commercial areas.

2. The County will give priority to enhancement/ redevelopment to allow the continued use of existing libraries in western Loudoun through maintenance programs and modernization of facilities.

3. New libraries in western Loudoun will be located in the Existing Villages, towns, and JLMAs.

Chapter 11
Implementation

The *Revised General Plan* is part of an ongoing process. The Plan's policies and recommendations are, to varying degrees, refinements of policies from past plans. Likewise, the policies in the revised Plan will be building blocks toward future planning efforts. For this reason, the Plan does not end with a conclusion or summary, but with some specific guidelines-for the future and an outline of the next steps to be taken. The Implementation chapter is divided into two sections. The first section details Proffer and Community Design guidelines. The second section outlines the initial actions that should be undertaken to implement the Plan.

The guidelines included in this chapter are specific reflections of funding and land use and community-design policies set forth in the Plan. These guidelines reflect the final recommendations of the Board of Supervisors. The priority implementation strategy is an outline of steps that the County must take to implement Plan policies. The County will actively pursue this strategy on a set timetable with a specific work program in a priority order established by the Board of Supervisors.

Proffer Guidelines

(Refer to Proffer Policies, Chapter Three, pg. 3-5.)

A. Capital Facilities

1. To assist the County in an equitable and uniform evaluation of developer proffers and other proposals for densities above the specified base density for each planning policy area, which otherwise conform with the policies of this plan, the County anticipates developer assistance valued at 100 percent of capital facility costs per dwelling unit.

2. Estimated capital facilities costs per unit by unit type will be calculated by a Capital Facility Intensity Factor (CIF) based on the adopted service plans and levels for each type of development. The CIF will be calculated using the following formula:

   CIF = (Household Size x Facility Cost Per Capita) + (Students Per Household x School Cost per Student)

   The Board of Supervisors will review the CIF on a biennial basis. If revisions are proposed, the revisions will be subjected to Board Public Hearing.

3. The following definition of "Capital Facility Proffer" will be used for the purpose of evaluating proffers:

   A contribution consistent with county policies and service needs, in cash or in kind (land or improvement), that benefits county residents at large, which is agreed to as a condition of a rezoning.

   To be considered a proffer based on this definition, the following criteria need to be met:

a. The facility proffered is dedicated to the County or to a local, state, federal or regional authority or otherwise satisfies a need identified in the County's Service Plan(s) and Levels, Capital Needs Assessment (CNA), and/or Capital Improvement Program (CIP). Facilities that are not dedicated for the exclusive use of a subdivision or group of subdivisions may be partially credited toward capital facility proffers. The partial credit is dependent on the Board of Supervisor's adopted service levels and plans, CNA and CIP, at the date of the official acceptance or at the date or reactivation of an inactive application. The measure of credit will be determined on a case-by-case basis and may not exceed what the County would expect to supply given the BOS adopted service plans and level-of-service standards for the population served at the date of official acceptance of the application or at the date of reactivation of an inactive application.

b. The contribution has a quantifiable value.

c. The value of land contributed for public use or use as a public facility site is recognized as a capital facility proffer. Land for County facilities should be conveyed to the County or its designee. The value of land to be retained by an owners' association or land developer is not recognized as a capital facility proffer.

d. The contribution would not be required under existing statutes or ordinances.

e. The proffer is irrevocable.

f. Transportation and road improvement proffers will not be included.

4. Base density thresholds are to be specified by planning policy areas as follows:

a. Rural Policy Area: The Rural Policy Area policies contained in Chapter Seven and related policies elsewhere in the plan address the County's rural strategy. Both the planned density for the Rural Policy Area and the resulting zoning pattern do not portend future zoning map amendments. In the event that planned densities are to be equivalent to potential density in the rural zoning district(s), a specified base density figure is not necessary. However, the County anticipates that residential zoning map amendment applications within existing villages and other similar applications in the rural policy area will include capital facility contributions.

b. Transition Policy Area: The Transition Policy Area policies contained in Chapter Eight and related policies elsewhere in the Plan address the County's vision for a separate and distinct planning area between the Rural and Suburban Policy Areas. For subareas of the Transition Policy Area that are planned for higher densities than those permitted by zoning district regulations applicable to property in the subarea, zoning map amendments may be pursued and capital facilities proffers will be anticipated. Such contributions will be evaluated in accordance with a base density equivalent to that contained in the existing zoning district regulations applicable to the property, and in effect at the time of application for a change in zoning.

c. Suburban Policy Area: The Suburban Policy Area policies contained in Chapter Six and related policies elsewhere in the Plan address the County's vision for unique communities with stringent design guidelines and performance standards. For zoning applications within the Suburban Planning Area that propose increases in residential densities, capital facilities proffers will be anticipated. Such contributions will be evaluated in accordance with a specified base density of 1.0 dwelling unit per acre or a base density equivalent to the density requirements contained in the existing zoning district regulations applicable to the property and in effect at the time of application for a change in zoning, whichever represents the lower base density.

d. Joint Land Management Areas: The Joint Land Management Area policies contained in Chapter Nine and related policies elsewhere in the plan address the mutual vision of the County and the Towns with respect to the delineation of joint land management areas proximate to the Town's corporate limits. For zoning applications within designated management areas that propose increases in residential densities, capital facilities proffers will be anticipated. Such contributions will be evaluated in accordance with a specified base density of 1.0 dwelling unit per acre or a base density equivalent to the density requirements contained in the existing zoning district regulations applicable to the property and in effect at the time of application for a change in zoning, whichever represents the lower base density.

5. A developer proffering a land site as a part of an active re-zoning application shall contact Loudoun County for a list of appraisal firms approved by the County to determine the market value of land at its planned land use designation in the *Revised General Plan*. The developer shall contact one of the approved appraisal firms and request an appraisal. The cost of the appraisal will be paid for by the developer.

B. Open Space

In this Plan, the County has outlined a number of methods for acquiring open space. In the past, the Open Space Preservation Program was linked to increases in density. In the *Revised General Plan,* sufficient open space is recognized as a key component to all development regardless of density. However, the Open Space Preservation Program remains in place for the highest suburban density levels – from 3.5 dwelling units per acre to 4.0 dwelling units per acre. The County's program for obtaining open space comprises a "toolbox" approach with a number of mechanisms to ensure the adequate provision of active, passive, and natural open space in the County.

1. Open space within a development will be obtained through conservation design and clustering as detailed in this Plan and subsequent regulations. Conservation design provides for the on-site transfer of density away from environmentally sensitive or culturally significant areas (i.e., components of the green infrastructure including RSCOD).

2. Participation in the Open Space Banking Program permits up to 50 percent of required open space on an individual site to be provided off-site.

3. To achieve higher densities in residential communities, the Board of Supervisors anticipates evidence of participation in the Open Space Preservation Program according to the following guidelines:

   a. Residential Neighborhoods: Densities ranging from 1.0 dwelling units per acre for the Suburban Policy Area up to 4.0 dwelling units per acre may be considered by the County in accordance with the capital facilities guidelines of this Plan and may be considered by the County for voluntary participation in the Open Space Preservation Program. Residential densities above 3.5 and up to and including 4.0 dwellings per acre may be considered by the County in return for voluntary participation in the open space preservation program according to the guidelines presented below and the Density Transfer Guidelines.

   b. To achieve higher densities in High-Density Residential areas, the Board of Supervisors anticipates evidence of participation in the Open Space Preservation Program. Five percent of all residential units associated with densities above 4.0 dwellings per acre should result from the acquisition of an equivalent number of open space easements according to the guidelines presented below and the Density Transfer Guidelines. Offsite open space can include priority open space areas, greenbelts, and components of the green infrastructure. A land contribution on an acre-by-acre basis is desired. If the land offered does not suit the County in terms of quality or location, the County may consider cash in lieu of the land for the purchase of open space. The County will pursue the purchase of open space to provide additional active recreation, to create key trail connections, and to protect environmentally sensitive areas. The County will create a database of infill or other sites targeted for possible purchase. A per unit cash donation may be made to the County for the purchase of open space, according to policies of this Plan. Cash donations for open space will be spent in the density transfer area from which the proffer contribution is obtained.

4. Although the County does not have the authority from the state to conduct a formal Transfer of Development Rights program, the County will seek enabling legislation to do so. Until a formal program is in place, the County will guide development to desired areas through conservation design and the purchase of open space easements. The purchase of easements for additional density has been referred to as voluntary transfer of density, and not to be mistaken with a formal TDR program.

5. The County's Purchase of Development Rights (PDR) program compensates property owners who voluntarily agree to sell the right to develop their land. The PDR program protects agricultural, natural, historic, and scenic resources and seeks to retain open space in the Suburban Policy Area.

6. Cash contributions may be provided for the enhancement and/or improvement of historic features within the policy area to fulfill the open space guidelines if the County agrees to or requests the exchange.

Density Transfer Guidelines

1. Density may be transferred from areas that are designated priority open space areas or greenbelts. Density may be transferred to appropriate suburban areas or Joint Land Management Areas provided that the new development potential does not exceed the receiving area's designated density cap. Development potential transferred from sending areas in the Rural or Transition Policy Area must be received by a property in one of those policy areas. Likewise, development potential transferred from sending areas within the Suburban Policy Area must be received by a property within the same suburban community. Density from properties included on the State or National Registers of Historic Places and/or from properties within local historic districts may be transferred, without regard to policy area boundaries, to any property qualified to receive additional density.

2. Development potential (density credits) will be calculated based on the density rate of the zoning district that applies to the sending parcel at the time the application is received. No density credit will be given for existing dwellings.

3. Transfers of development credits out of critical environmental areas that are identified in this Plan may be accomplished on site through conservation design.

4. Density credits from property in the Rural Policy Area may be transferred into Town Joint Land Management Areas.

County/Town Annexation Agreement/Corporate Boundary Adjustment Guidelines

The County and the incorporated Towns will explore alternatives for entering into annexation agreements to facilitate the annexations of properties that are receiving Town sewer and water services. Agreements might include language based on the following recommendations:

1. It should be the intent of the County and of the Town that any property located within the Joint Land Management Area (as defined in the policies of this Plan) which is presently or would be served by Town sewer and/or water in accordance with the utility policies included in this Plan, should, in the

Calculating the Capital Intensity Factor

The CIF is determined by five variables: unit type, persons per household, number of school age children by type of unit, the costs of different types of facilities and the costs of schools. The CIF is calculated using a mathematical formula as established in Chapter 11, Page 1 of the Revised General Plan. The formula is as follows:

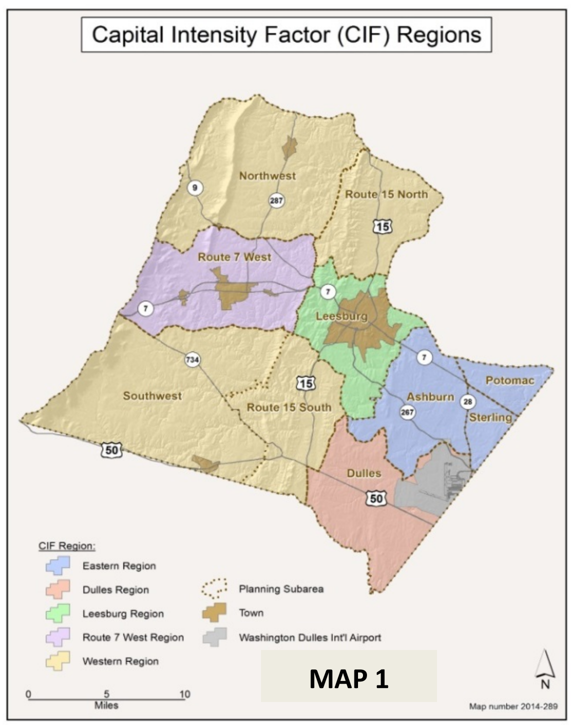
CIF = (Household Size x Facility Cost per Capita)
+
(Students per Household x School Cost per Student)

The process to calculate the CIF follows five basic steps:

1. Cost estimates are developed for each type of County capital facility. Staff develops cost estimates to design, construct and outfit each type of capital facility that has a Capital Facility Standard (CFS). The CFS determine the types of facilities for which cost estimates are developed, and the CFS acreage and square footage assumptions are used to determine the cost estimates for each type of facility.
2. Second, cost estimates are developed for each type of School capital facility.
3. Third, the cost per capita for developing each type of capital facility is determined according to the adopted CFS population factors, and similarly for schools using student generation factors.
4. Fourth, the cost of facilities already in operation, or included in the Adopted Capital Improvement Program (CIP), are subtracted out of the CIF cost calculations since they count towards meeting the County's CFS requirements.
5. Finally, the CIF is calculated on a per housing unit basis using the Fiscal Impact Committee's Residential Category Guidelines.

The service levels for different facilities and the figures used for persons per unit type and children per unit type are established by the County's Fiscal Impact Committee (FIC) and approved by the Board. The figures used to estimate the costs of capital facilities and school facilities are derived from the Board's adopted service plans, which are also reviewed by the FIC. These service plans establish the population thresholds and estimated costs for County and School Facilities.

The current adopted CIF calculation is broken down into five different geographic areas, as provided in Map 1. These five areas were determined based on differences in per acre land acquisition costs and SFD household sizes in different regions of the County. A depiction of the boundaries of the five CIF regions is provided in Map 1.



ATTACHMENT 2

The five CIF regions consist of the following Planning Subareas:

1. Eastern – Ashburn, Potomac and Sterling Planning Subareas
2. Western – Northwest, Route 15 North, Route 15 South and Southwest Planning Subareas
3. Dulles Planning Subarea
4. Leesburg Planning Subarea
5. Route 7 West Planning Subarea

There are differing costs to develop capital facilities in the County based on per acre land values in different regions of the County. For example, facilities developed in the eastern portion of the County will have higher development costs than facilities in the western portion of the County due to higher per acre land values in the east. In addition, the SFD household size is lower in the four western planning subareas than in the other five planning subareas of the County.

The eastern and western CIF areas consist of multiple planning subareas grouped together due to similar land valuations and land acquisition costs in those planning subareas, and the western CIF areas share a lower SFD household size than the rest of the County. The Dulles, Leesburg and Route 7 West planning subareas have their own CIF calculations due to distinct land values and land acquisition costs existing in those three planning subareas.

The current adopted CIF, presented in Tables 1-5 below, includes the cost of developing park and ride lot facilities, and would factor in the cost of the transit bus maintenance facility. Under the adopted CIF methodology, the cost of the transit bus maintenance facility is not factored into the CIF calculation because the facility is constructed and in operation, thus meeting the County's Capital Facility Standard requirement.

Table 1. Eastern CIF Table (Ashburn, Potomac, Sterling Planning Subareas)

Housing Unit Type	Population per Housing Unit	County Cost Per Capita	County CIF	Child/Unit	School Cost per Child	School CIF	Total CIF
SFD	3.78	$ 8,148	$ 30,797.82	0.86	$ 25,129	$ 21,610.74	$ 52,408.56
SFA	2.88	$ 8,148	$ 23,465.00	0.54	$ 25,129	$ 13,569.54	$ 37,034.54
MF	1.97	$ 8,148	$ 16,050.71	0.23	$ 25,129	$ 5,779.62	$ 21,830.33
MF Stacked	2.20	$ 8,148	$ 17,924.65	0.30	$ 25,129	$ 7,538.63	$ 25,463.29

Table 2. Western CIF Table (Northwest, Route 15 North, Route 15 South, Southwest)

Housing Unit Type	Population per Housing Unit	County Cost Per Capita	County CIF	Child/Unit	School Cost Per Child	School CIF	Total CIF
SFD	3.39	$ 2,794	$ 9,470.99	0.86	$ 19,221	$ 16,530.13	$ 26,001.11
SFA	2.88	$ 2,794	$ 8,046.15	0.54	$ 19,221	$ 10,379.38	$ 18,425.53
MF	1.97	$ 2,794	$ 5,503.79	0.23	$ 19,221	$ 4,420.85	$ 9,924.64
MF Stacked	2.20	$ 2,794	$ 6,146.36	0.30	$ 19,221	$ 5,766.32	$ 11,912.69

Table 3. Dulles Planning Subarea CIF Table

Housing Unit Type	Population per Housing Unit	Cost Per Capita	County CIF	Child/Unit	School Cost Per Child	School CIF	Total CIF
SFD	3.78	$ 4,694	$ 17,744.53	0.86	$ 22,636	$ 19,467.36	$ 37,211.89
SFA	2.88	$ 4,694	$ 13,519.64	0.54	$ 22,636	$ 12,223.69	$ 25,743.33
MF	1.97	$ 4,694	$ 9,247.81	0.23	$ 22,636	$ 5,206.39	$ 14,454.20
MF Stacked	2.20	$ 4,694	$ 10,327.51	0.30	$ 22,636	$ 6,790.94	$ 17,118.44

Table 4. Leesburg Planning Subarea CIF Table

Housing Unit Type	Population per Housing Unit	County Cost Per Capita	County CIF	Child/Unit	School Cost Per Child	School CIF	Total CIF
SFD	3.78	$ 4,049	$ 15,307.06	0.86	$ 22,175	$ 19,070.43	$ 34,377.49
SFA	2.88	$ 4,049	$ 11,662.52	0.54	$ 22,175	$ 11,974.46	$ 23,636.98
MF	1.97	$ 4,049	$ 7,977.49	0.23	$ 22,175	$ 5,100.23	$ 13,077.72
MF Stacked	2.20	$ 4,049	$ 8,908.87	0.30	$ 22,175	$ 6,652.48	$ 15,561.35

Table 5. Route 7 West Planning Subarea CIF Table

Housing Unit Type	Population per Housing Unit	County Cost Per Capita	County CIF	Child/Unit	School Cost Per Child	School CIF	Total CIF
SFD	3.78	$ 2,055	$ 7,769.02	0.86	$ 19,590	$ 16,847.67	$ 24,616.69
SFA	2.88	$ 2,055	$ 5,919.26	0.54	$ 19,590	$ 10,578.77	$ 16,498.02
MF	1.97	$ 2,055	$ 4,048.94	0.23	$ 19,590	$ 4,505.77	$ 8,554.71
MF Stacked	2.20	$ 2,055	$ 4,521.65	0.30	$ 19,590	$ 5,877.09	$ 10,398.75

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 322

An Act to amend the Code of Virginia by adding a section numbered 15.2-2303.4, relating to conditional zoning.

[S 549]

Approved March 8, 2016

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.2-2303.4 as follows:

§ 15.2-2303.4. Provisions applicable to certain conditional rezoning proffers.

A. For purposes of this section, unless the context requires a different meaning:

"New residential development" means any construction or building expansion on residentially zoned property, including a residential component of a mixed-use development, that results in either one or more additional residential dwelling units or, otherwise, fewer residential dwelling units, beyond what may be permitted by right under the then-existing zoning of the property, when such new residential development requires a rezoning or proffer condition amendment.

"New residential use" means any use of residentially zoned property that requires a rezoning or that requires a proffer condition amendment to allow for new residential development.

"Offsite proffer" means a proffer addressing an impact outside the boundaries of the property to be developed and shall include all cash proffers.

"Onsite proffer" means a proffer addressing an impact within the boundaries of the property to be developed and shall not include any cash proffers.

"Proffer condition amendment" means an amendment to an existing proffer statement applicable to a property or properties.

"Public facilities" means public transportation facilities, public safety facilities, public school facilities, or public parks.

"Public facility improvement" means an offsite public transportation facility improvement, a public safety facility improvement, a public school facility improvement, or an improvement to or construction of a public park. No public facility improvement shall include any operating expense of an existing public facility, such as ordinary maintenance or repair, or any capital improvement to an existing public facility, such as a renovation or technology upgrade, that does not expand the capacity of such facility. For purposes of this section, the term "public park" shall include playgrounds and other recreational facilities.

"Public safety facility improvement" means construction of new law-enforcement, fire, emergency medical, and rescue facilities or expansion of existing public safety facilities, to include all buildings, structures, parking, and other costs directly related thereto.

"Public school facility improvement" means construction of new primary and secondary public schools or expansion of existing primary and secondary public schools, to include all buildings, structures, parking, and other costs directly related thereto.

"Public transportation facility improvement" means (i) construction of new roads; (ii) improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality; and (iii) construction, improvement, or expansion of buildings, structures, parking, and other facilities directly related to transit.

"Residentially zoned property" means property zoned or proposed to be zoned for either single-family or multifamily housing.

"Small area comprehensive plan" means that portion of a comprehensive plan adopted pursuant to § 15.2-2223 that is specifically applicable to a delineated area within a locality rather than the locality as a whole.

B. Notwithstanding any other provision of law, general or special, no locality shall (i) request or accept any unreasonable proffer, as described in subsection C, in connection with a rezoning or a proffer condition amendment as a condition of approval of a new residential development or new residential use or (ii) deny any rezoning application or proffer condition amendment for a new residential development or new residential use where such denial is based in whole or in part on an applicant's failure or refusal to submit an unreasonable proffer or proffer condition amendment.

C. Notwithstanding any other provision of law, general or special, (i) as used in this chapter, a proffer, or proffer condition amendment, whether onsite or offsite, offered voluntarily pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1, shall be deemed unreasonable unless it addresses an impact that is specifically attributable to a proposed new residential development or other new residential use applied for and (ii) an offsite proffer shall be deemed unreasonable pursuant to

ATTACHMENT 3

subdivision (i) unless it addresses an impact to an offsite public facility, such that (a) the new residential development or new residential use creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the rezoning or proffer condition amendment and (b) each such new residential development or new residential use applied for receives a direct and material benefit from a proffer made with respect to any such public facility improvements. For the purposes of this section, a locality may base its assessment of public facility capacity on the projected impacts specifically attributable to the new residential development or new residential use.

D. Notwithstanding any other provision of law, general or special:

1. Actions brought to contest the action of a locality in violation of this section shall be brought only by the aggrieved applicant or the owner of the property subject to a rezoning or proffer condition amendment pursuant to subsection F of § 15.2-2285.

2. In any action in which a locality has denied a rezoning or an amendment to an existing proffer and the aggrieved applicant proves by a preponderance of the evidence that it refused or failed to submit an unreasonable proffer or proffer condition amendment that it has proven was suggested, requested, or required by the locality, the court shall presume, absent clear and convincing evidence to the contrary, that such refusal or failure was the controlling basis for the denial.

3. In any successful action brought pursuant to this section contesting an action of a locality in violation of this section, the applicant may be entitled to an award of reasonable attorney fees and costs and to an order remanding the matter to the governing body with a direction to approve the rezoning or proffer condition amendment without the inclusion of any unreasonable proffer. If the locality fails or refuses to approve the rezoning or proffer condition amendment within a reasonable time not to exceed 90 days from the date of the court's order to do so, the court shall enjoin the locality from interfering with the use of the property as applied for without the unreasonable proffer. Upon remand to the local governing body pursuant to this subsection, the requirements of § 15.2-2204 shall not apply.

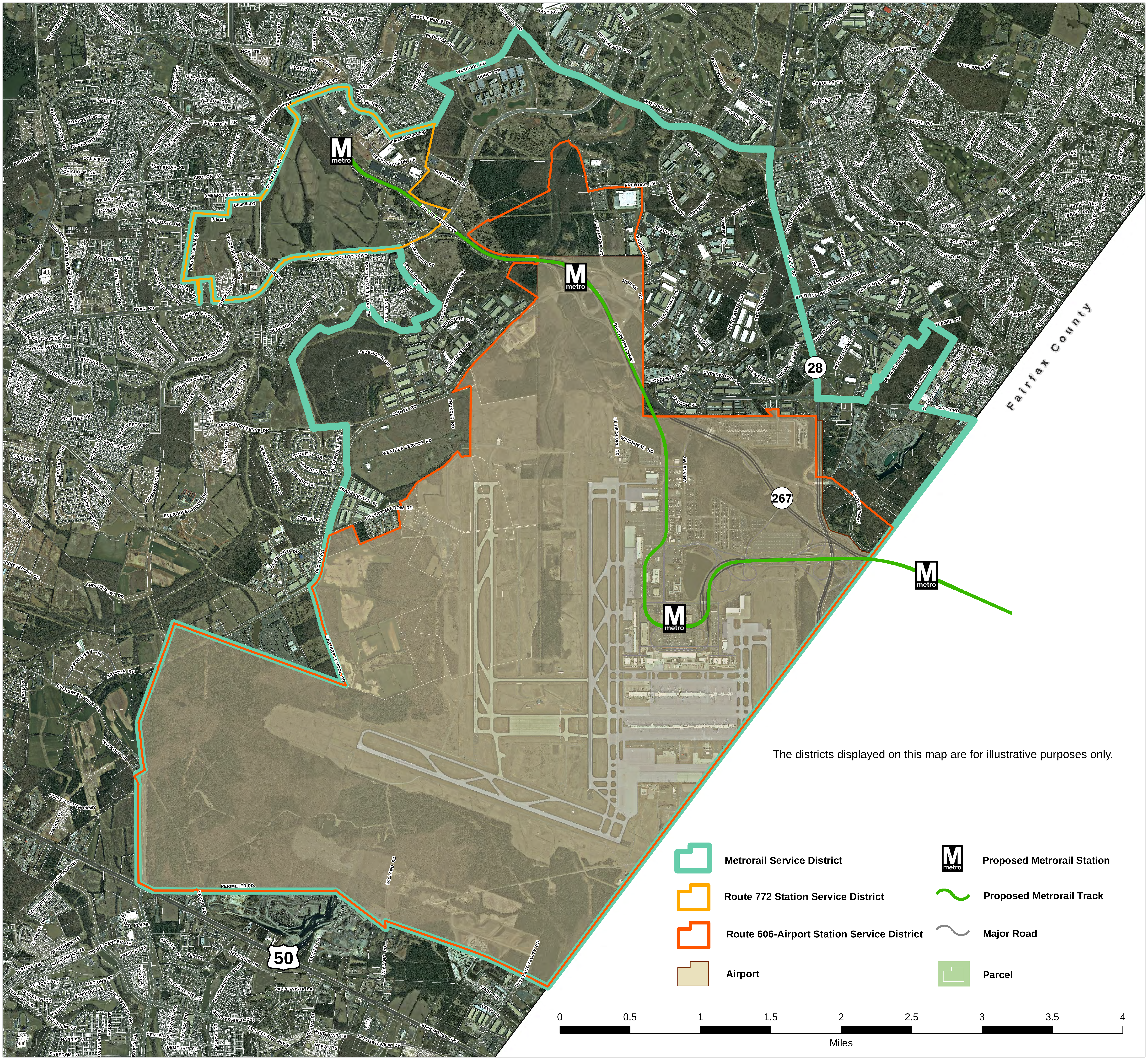
E. The provisions of this section shall not apply to any new residential development or new residential use occurring within any of the following areas: (i) an approved small area comprehensive plan in which the delineated area is designated as a revitalization area, encompasses mass transit as defined in § 33.2-100, includes mixed use development, and allows a density of at least 3.0 floor area ratio in a portion thereof; (ii) an approved small area comprehensive plan that encompasses an existing or planned Metrorail station, or is adjacent to a Metrorail station located in a neighboring locality, and allows additional density within the vicinity of such existing or planned station; or (iii) an approved service district created pursuant to § 15.2-2400 that encompasses an existing or planned Metrorail station.

2. That this act shall be construed as supplementary to any existing provisions limiting or curtailing proffers or proffer condition amendments for new residential development or new residential use that are consistent with its terms and shall be construed to supersede any existing statutory provision with respect to proffers or proffer condition amendments for new residential development or new residential use that are inconsistent with its terms.

3. That this act is prospective only and shall not be construed to apply to any application for rezoning filed prior to July 1, 2016, or to any application for a proffer condition amendment amending a rezoning for which the application was filed prior to that date.

Metrorail Service District

Route 772 and Route 606-Airport Station Service Districts



Loudoun County Office of Mapping and Geographic Information

Date Mapped 04.30.2013
Map Number 2013-045

ATTACHMENT 4

Comparison of Adopted Capital Intensity Factor
With CIF Based on New Proffer Legislation

The following tables provide a comparison of the current, adopted CIF values and the revised CIF calculation as required by the new legislation at the planning subarea level.

Table 7. Ashburn Comparison of the Adopted CIF and the New Proffer Legislation CIF

Ashburn Planning Subarea	Adopted CIF	New Proffer Legislation CIF
SFD	$52,408.56	$40,514.77
SFA	$37,034.54	$27,972.61
MF	$21,830.33	$15,631.72
MFST	$25,463.29	$18,540.98

Table 8. Dulles Comparison of the Adopted CIF and the New Proffer Legislation CIF

Dulles Planning Subarea	Adopted CIF	New Proffer Legislation CIF
SFD	$37,211.89	$36,608.43
SFA	$25,743.33	$25,282.04
MF	$14,454.20	$14,136.82
MFST	$17,118.44	$16,764.58

Table 9. Leesburg Comparison of the Adopted CIF and the New Proffer Legislation CIF

Leesburg Planning Subarea	Adopted CIF	New Proffer Legislation CIF
SFD	$34,377.49	$34,042.19
SFA	$23,636.98	$23,381.51
MF	$13,077.72	$12,902.97
MFST	$15,561.35	$15,366.20

Table 10. Northwest Comparison of the Adopted CIF and the New Proffer Legislation CIF

Northwest Planning Subarea	Adopted CIF	New Proffer Legislation CIF
SFD	$26,001.11	$19,230.80
SFA	$18,425.53	$12,673.76
MF	$9,924.64	$5,990.27
MFST	$11,912.69	$7,518.98

ATTACHMENT 5

Table 11. Potomac Comparison of the Adopted CIF and the New Proffer Legislation CIF

Potomac Planning Subarea	Adopted CIF	New Proffer Legislation CIF
SFD	$52,408.56	$40,598.06
SFA	$37,034.54	$28,036.07
MF	$21,830.33	$15,675.13
MFST	$25,463.29	$18,589.45

Table 12. Route 7 West Comparison of the Adopted CIF and the New Proffer Legislation CIF

Route 7 West Planning Subarea	Adopted CIF	New Proffer Legislation CIF
SFD	$24,616.69	$24,230.14
SFA	$16,498.02	$16,203.51
MF	$8,554.71	$8,353.25
MFST	$10,398.75	$10,173.77

Table 13. Route 15 North Comparison of the Adopted CIF and the New Proffer Legislation CIF

Route 15 North Planning Subarea	Adopted CIF	New Proffer Legislation CIF
SFD	$26,001.11	$16,860.04
SFA	$18,425.53	$10,659.66
MF	$9,924.64	$4,612.57
MFST	$11,912.69	$5,980.43

Table 14. Route 15 South Comparison of the Adopted CIF and the New Proffer Legislation CIF

Route 15 South Planning Subarea	Adopted CIF	New Proffer Legislation CIF
SFD	$26,001.11	$16,860.04
SFA	$18,425.53	$10,659.66
MF	$9,924.64	$4,612.57
MFST	$11,912.69	$5,980.43

Table 15. Southwest Comparison of the Adopted CIF and the New Proffer Legislation CIF

Southwest Planning Subarea	Adopted CIF	New Proffer Legislation CIF
SFD	$26,001.11	$19,230.80
SFA	$18,425.53	$12,673.76

MF	$9,924.64	$5,990.27
MFST	$11,912.69	$7,518.98

Table 16. Sterling Comparison of the Adopted CIF and the New Proffer Legislation CIF

Sterling Planning Subarea	Adopted CIF	New Proffer Legislation CIF
SFD	$52,408.56	$38,819.71
SFA	$37,034.54	$26,681.13
MF	$21,830.33	$14,748.31
MFST	$25,463.29	$17,554.43

As a result of the recalculation of the CIF according to the terms of the new proffer legislation, there were significant decreases in the per housing unit CIF in the Eastern CIF region planning subareas – Ashburn, Potomac and Sterling- and the Western CIF region planning subareas – Route 15 North, Route 15 South, Northwest and Southwest. The CIF calculations for the other three planning subarea CIF regions – Dulles, Leesburg, Route 7 West – dropped slightly. This is due to the marginal cost model used by the County to calculate the CIF.

As stated previously, the cost of facilities already in operation, or included in the Adopted Capital Improvement Program (CIP), are subtracted out of the CIF cost calculations since these facilities are counted towards meeting the County's CFS requirements. When planning subareas are lumped together, the capital facility development needs in the region are also lumped together. For example, while the Sterling planning subarea already has a regional park, Claude Moore Regional Park, due to the fact that the Ashburn planning subarea does not, and one is called for in the Ashburn area due to the County's CFS in relation to population forecasts, the cost of a regional park is applied to both planning subareas in the current, adopted CIF methodology because both areas are treated as the same region when calculating CIF costs.

Under the new proffer legislation revised methodology, each planning subarea is treated separately to better gauge public facility needs in relation to a rezoning application. Therefore, the cost of a regional park is no longer applied in the Sterling area since Sterling already has Claude Moore Regional Park; while the cost of a regional park is applied in the Ashburn planning subarea. The further refinement of capital facility needs in the eastern and western planning subareas caused the overall value of the recalculated CIF to decrease significantly. Facilities that were included in the cost of calculating the current, adopted CIF as a result of "bundling" together planning subareas are now no longer included in the CIF cost calculation where capital facility standard requirements are being met.

The CIF calculation decreased only slightly for the three planning subareas that were already calculated independently, and not bundled together, as part of the current, adopted CIF calculation. This is due to the fact that the marginal cost model was already refined in these areas; bundling costs were not previously required. Any cost decreases in these three planning subareas – Dulles, Leesburg, and Route 7 West – is the result of the subtraction of the cost of facilities that are not eligible for cash proffers under the terms of SB 549 (ex. Group Residences, General Government Support Facilities, etc.).

Per capita costs also slightly decreased for most facilities. The current, adopted CIF calculation is based on population projections through 2030. The New Proffer Legislation recalculation was based on population projections through 2040 to better capture the buildout of the County. This results in relatively stable facility costs being divided by a larger population base to derive per capita costs for the facilities, which lowered overall per capita facility costs slightly.

Furthermore, the cost of park and ride lots was removed from the New Proffer Legislation CIF calculation. Staff is going to be bringing forward a methodology to calculate a road and transportation CIF for the Board of Supervisors' consideration. The cost of transit related facilities will be part of this Transportation CIF calculation. Previously, the cost of needed park and ride facilities was included in the CIF calculation. Due to the inclusion of park and ride and transit costs in the transportation CIF being developed, the park and ride lot costs have been subtracted from the New Proffer Legislation CIF calculation.

Due to the nature of the County's CIF calculation of subtracting the value of facilities already accounted for in operation or in the pipeline for development in the CIP, the CIF only calculates the cost of elementary schools as the school portion of the CIF. Given current population growth projections, only additional elementary schools are contemplated for development beyond the current adopted Capital Needs Assessment (CNA) timeframe through FY 2030. These projections are based on development expectations under current planning and zoning. If additional rezonings are submitted to the County that propose a significant amount of new housing units (e.g., through redevelopment, conversion from land planned and zoned as non-residential to residential, or large increases in the number of residential units that can be developed), the CIF will not reflect the costs associated with any further schools or County facilities that may be needed to accommodate the additional students and residents generated by these developments. An analysis would be necessary to assess the impact that these developments would have on growth in the population and student population in the area, which may cause per housing unit costs to increase. To help address this issue, the review and adoption of the Capital Intensity Factor must occur every two years, per the terms of the Revised General Plan. That way, if any major rezonings are under review or approved that could alter the delivery of needed public facilities and schools, these changes could be reviewed and considered, and the CIF revised as needed.