



# 2

DEPARTMENT OF PLANNING  
STAFF REPORT**BOARD OF SUPERVISORS PUBLIC HEARING**

**DATE OF HEARING: May 10, 2010**  
**SPEX 2009-0011, SPEX 2009-0029 & CMPT 2009-0002 – Potomac Radio**  
**DECISION DEADLINE: June 21, 2010**  
**ELECTION DISTRICT: Broad Run**                      **PROJECT PLANNER: Pat Giglio**

**EXECUTIVE SUMMARY**

Potomac Radio, LLC, of Falls Church, Virginia has submitted an application for two Special Exceptions and Commission Permit approval to permit a “public utility, communications and transmission” (AM Radio Transmitter) within the FOD (Floodplain Overlay District) and PD-IP (Planned Development-Industrial Park) zoning district. This application is subject to the 1972 Zoning Ordinance and the proposed use is listed as a Special Exception use under Section 722.3.2 and requires a Commission Permit in accordance with Section 905. The towers and associated equipment are located within the FOD and are permitted by Special Exception approval pursuant to Section 740.7(4). The property is also located within the Route 28 Taxing District and partially within the AI (Airport Impact) Overlay District, outside of but within one (1) mile of the Ldn 60 aircraft noise contour. The 340.66 acre property, which is known as the Loudoun Water Campus and contains the Broad Run Water Reclamation Facility, is located in the northeast quadrant of the planned intersection of Loudoun County Parkway (Route 607) and Gloucester Parkway (Route 2150) at 44771 Loudoun Water Way, Ashburn, Virginia. The area of the proposed special exceptions is an approximately 7.5 acre lease area located in the northeast corner of the property within the floodplain of the Broad Run. The area is governed by the policies of the Revised General Plan (Suburban Policy Area (Ashburn Community)), the Dulles North Area Management Plan, and the Strategic Land Use Plan for Telecommunications Facilities (Telecommunications Plan) which designate this area for Keynote Employment uses and which recommend a Floor Area Ratio (FAR) of 0.4 to 1.0.

**RECOMMENDATIONS****Planning Commission Recommendations**

The Planning Commission at their April 21, 2010 Work Session voted 6-3 (Commissioner Klancher, Robinson and Maio opposed) to approve CMPT 2009-0002 and forward the application to the Board of Supervisors for ratification based on the attached findings. The Planning Commission also voted 6-3 (Commissioner Klancher, Robinson and Maio opposed) to recommend approval of SPEX 2009-0029, Potomac Radio subject to the Conditions of Approval dated March 23, 2009, which were revised to clarify Condition #7 pertaining to cessation of use, and based on the Findings contained in this Staff Report. The Planning Commission did not review or provide advisory comments on

SPEX 2009-00011 for the proposed use which, pursuant to the 1972 Zoning Ordinance, requires only Board of Supervisors action.

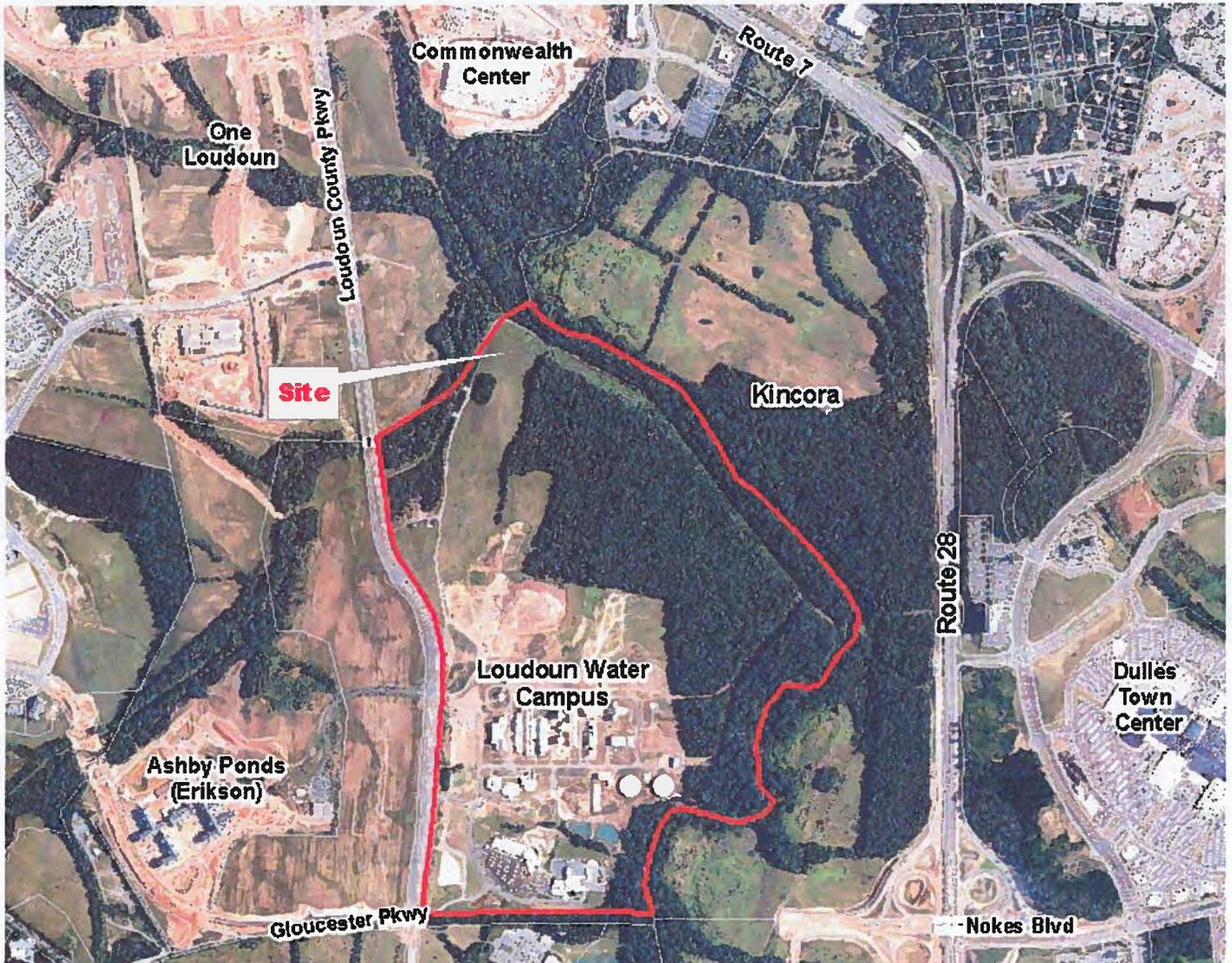
**Staff Recommendations**

Staff cannot support these applications due to inconsistencies with the Keynote Employment land use policies and environmental policies for uses within the floodplain as defined by the Revised General Plan. However, should the Board of Supervisors approve the applications, the applicant is in agreement with the Conditions of Approval which have been reviewed and approved by the County Attorney.

**SUGGESTED MOTIONS**

1. I move that the Board of Supervisors forward CMPT 2009-0002, SPEX 2009-0011 and SPEX 2009-0029, Potomac Radio, to the Transportation /Land Use Committee for further review.
  
2. I move that the Board of Supervisors forward CMPT 2009-0002, SPEX 2009-0011 and SPEX 2009-0029, Potomac Radio, to the June 1, 2010 Business Meeting for final action.
  
3. I move an alternate motion.

## VICINITY MAP



### Directions:

From Leesburg, take Route 7 east to Loudoun County Parkway. Follow Loudoun County Parkway south. Turn left into the first entrance onto the Loudoun Water Campus. Turn left on the first gravel road, proceed through the gate and follow the road down the hill to the subject site located in the northeast corner of the property west of the existing sewer corridor.

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**I. APPLICATION INFORMATION**

**APPLICANT** Potomac Radio, LLC  
James M. Weitzmann  
2131 Crimmins Lane  
Falls Church, VA 22043

**PROPERTY OWNER** Loudoun Water  
Dale Hammes, General Manager  
44771 Loudoun Water Way  
Ashburn, VA 20147  
571-223-3855

**REPRESENTATIVE** Walsh, Colucci, Lubeley, Emrich & Walsh, PC  
J. Randall Minchew, Esq.  
Kimberlee Welsh Cummings, Planner  
One East Market Street  
Leesburg, VA 20176  
703-737-3633

**APPLICANT'S REQUEST** A Commission Permit and Special Exceptions to permit a public utility (AM Radio Transmitter) and associated equipment in the PD-IP zoning district and within the Floodplain Overlay District (FOD) under the 1972 Zoning Ordinance. This application was accepted on August 19, 2009.

**LOCATION** 44771 Loudoun Water Way, Ashburn, VA 20147

**TAX MAP/PARCEL #s** TAX MAP- /80///4/////A2/ MCPI - 041-37-4022

**ZONING** PD-IP (Planned Development – Industrial Park)

**ACREAGE OF SITE** 7.5 acre subject site (lease area) is portion of larger 340.66 acre property

**SURROUNDING ZONING / LAND USES**

	<b>ZONING</b>	<b>PRESENT LAND USES</b>
North	PD-IP	Vacant
South	PD-IP	Loudoun Water & Redskin Park
East	PD-IP	Vacant
West	PD-IP	Vacant

**ELECTION DISTRICT** Broad Run

## II. SUMMARY OF DISCUSSION

Topic	Issues Examined and Status
Comprehensive Plan	<ul style="list-style-type: none"> <li>• Demonstrate compliance with the policies of the <u>Revised General Plan</u> with respect to land use. The subject site is located in an area designated by the Plan for Keynote Employment uses. The proposed AM Radio Transmitter is not consistent with the land use mix or type of uses envisioned for Keynote Employment areas by the Plan. Status: <b>Unresolved.</b></li> <li>• Demonstrate compliance with the policies of the <u>Revised General Plan</u> with respect to green infrastructure. The proposed location of the AM Radio Transmitter within the major floodplain of Broad Run requires ground disturbing activities and the removal of tree cover for construction. The environmental policies of the Plan do not support the location of the proposed AM Radio Transmitter within the floodplain. Status: <b>Unresolved.</b></li> <li>• Demonstrate compliance with the policies of the <u>Strategic Land Use Plan for Telecommunications Facilities</u> with respect to mitigation of visual impacts. The proposed AM Radio Transmitter uses colors and materials that are consistent with the surrounding area to blend with the natural and built environment. Status: Resolved.</li> <li>• Commit to removal of the facility following cessation of use. Status: Resolved by Condition.</li> </ul>
Zoning	<ul style="list-style-type: none"> <li>• Demonstrate conformance with the Standards for a Special Exception use pursuant to Section 1211.5 of the <u>1972 Zoning Ordinance</u>. One of the standards for the evaluation, states that the proposed use shall be "in harmony with the policies of the adopted comprehensive plan". The proposed AM Radio Transmitter is not consistent with the land use mix or type of uses envisioned for Keynote Employment areas, as defined by the <u>Revised General Plan</u>. Status: <b>Unresolved</b></li> <li>• Demonstrate conformance with the Standards for a Special Exception for uses and structures in the floodplain pursuant to Section 740.7(4) of the <u>1972 Zoning Ordinance</u>. One of the standards for the evaluation, Section 740.8(6), is that the proposed use shall be "in harmony with the comprehensive plan". The location of the proposed AM Radio Transmitter within the major floodplain is not supported by the environmental policies of the <u>Revised General Plan</u>. Status: <b>Unresolved.</b></li> <li>• Minor administrative revisions to the Special Exception Plat. Status: Resolved.</li> </ul>

Environmental Review	<ul style="list-style-type: none"> <li>• The proposed construction will require ground disturbing activities within the major floodplain as well as the removal of approximately two-acres of existing forest cover. The preservation of the riparian forests and vegetated areas surrounding stream corridors provides the greatest single protection of water quality. The environmental policies of the Plan do not support the location of the proposed AM Radio Transmitter within the floodplain or the removal of riparian forests. Status: <b>Unresolved</b>.</li> <li>• The proposed AM Radio Transmitter is located within 500 feet of the Heron Rockery on an adjacent property. The applicant has agreed to limit the months of construction to avoid the heron nesting season and will provide sound attenuation for the proposed auxiliary generator to mitigate noise impacts. Status: Resolved by Condition.</li> <li>• The proposed auxiliary generator has been identified as a potential stormwater hotspot. The applicant has agreed to non-diesel fuel to power the on-site generator. Status: Resolved by Condition.</li> </ul>
Historic/ Archaeology	<ul style="list-style-type: none"> <li>• A prehistoric archaeological site (44LD210) was identified on the subject site. The layout of the buried grounding radials have been designed to avoid impacts to the archaeological site. Status: Resolved.</li> </ul>
Transportation (OTS & VDOT)	<ul style="list-style-type: none"> <li>• No issues noted.</li> </ul>
Emergency Services	<ul style="list-style-type: none"> <li>• No issues noted.</li> </ul>
Metro Washington Airport Authority	<ul style="list-style-type: none"> <li>• No issues noted.</li> </ul>
Disclosure of Real Parties in Interest	<ul style="list-style-type: none"> <li>• Re-affirmation received and Attached (Attachment #2), dated April 27, 2010.</li> </ul>

### III. PLANNING COMMISSION REVIEW AND RECOMMENDATIONS

The Planning Commission held a public hearing on this application on March 24, 2010; two people from the public spoke. One speaker had concerns with the overall visual impact of the three (3) proposed 195-foot self supporting lattice towers on the surrounding area and noted that the proposed construction could lower the value of nearby commercial properties and homes. Both speakers also had concerns with the location of the proposed AM Radio Transmitter within the floodplain of the Broad Run and the environmental impact of the proposed construction. Specific concerns were raised regarding the loss of existing plant and wildlife habitat, but more specifically the potential impact of the proposed construction on the Heron Rookery located on the adjacent property to the east.

The Commission in their discussions with staff and the applicant raised similar concerns regarding: 1) visual impact, 2) site selection and location 3) environmental impacts within the floodplain 4) impacts to the nearby Heron Rookery 5) appropriateness of the Planting Plan and species selection and 6) erosion and sediment controls.

The Commission asked that at a future work session the questions raised at the Public Hearing be addressed and that further consultation with the Virginia Department of Game and Inland Fisheries (VDGIF) be conducted to address issues pertaining to the nearby Heron Rookery. The Planning Commission voted 9-0 to forward the applications to work session for further discussion.

The Commission discussed the application at their April 21, 2010 Work Session. Staff provided a brief update pertaining to the questions raised at Public Hearing. Staff explained that based on consultation with VDGIF staff and the applicant's environmental consultant their appears to be no effect on the Great Blue Heron nesting area and/or rookery provided that the proposed design of the AM Radio Transmitter facilities and conditions of approval as currently presented are adhered to. Specifically, the commitment to time of year restrictions, to ensure that no construction activities and/or significant noise impacts occur during the heron nesting period, defined as March 15 through July 31, are critical to maintaining and ensuring the viability of the heron nesting area and/or rookery. The applicant's environmental consultant explained that the proposed loblolly pine seedlings being proposed as part of the Planting Plan were selected for their ability to tolerate the wetter conditions of the site, and for their ability to regenerate their limbs if eaten by deer. The applicant's representative also explained that construction methods to minimize ground disturbance and soil compaction within the floodplain would be performed including stump grinding and the construction of the towers outside the floodplain. Staff assured the Commissioners that all construction activities and plantings on the subject site would be coordinated with the County's Urban Forester and Department of Building and Development staff to ensure that appropriate erosion and sediment controls and planting techniques were implemented.

The Commission confirmed that all the adjacent property owners had been notified, but noted that only Kincora had provided a letter of support subsequent to the Public Hearing and upon meeting with the applicant. Some Commissioners had concerns with the visual impact of the proposed structures and noted that the proposed AM Radio Transmitters were not compatible with the Keynote Employment and Business uses envisioned for the corridor. Commissioners again questioned the appropriateness of the location of the proposed facility within the floodplain. The applicant's representative explained that they had conducted an exhaustive search and that the Loudoun Water site was the only site which provided the appropriate zoning as well as signal coverage for their use. The applicant's representative went on to say that they were bound to the site by specific Federal Communication Commission (FCC) approvals and that if the legislative application was not approved by the County, WAGE radio would be dissolved and would be permanently off-the-air.

The Planning Commission voted 6-3 (Commissioner Klancher, Robinson and Maio opposed) to approve CMPT 2009-0002 and forward the application to the Board of Supervisors for ratification based on the attached findings. The Planning Commission also voted 6-3 (Commissioner Klancher, Robinson and Maio opposed) to recommend approval of SPEX 2009-0029, Potomac Radio subject to the Conditions of Approval dated March 23, 2009, which were revised to clarify that all unused "above ground" structures and equipment would be removed following cessation of use (Condition #7) and based on the Planning Commission's Findings contained in this Staff Report. The applicant was in agreement with the approved Conditions of Approval. The Planning Commission did not review or provide advisory comments on SPEX 2009-00011 for the proposed use; which pursuant to the 1972 Zoning Ordinance requires only Board of Supervisors action.

It is noted that Board ratification of the CMPT application is required within 60 days of Commission action, or June 21, 2010. The latest Board meeting prior to this deadline is the Board's June 15, 2010 Business Meeting.

### III. PLANNING COMMISSION'S FINDINGS FOR APPROVAL

#### Commission Permit and Special Exception

1. The proposed AM Radio Transmitter provides a valuable and essential public service through the broadcast of emergency services which contributes to the general safety and welfare of the residents of Loudoun County.
2. The impact of the three proposed radio towers located within the floodplain is similar to the impacts associated with a utility corridor, which would be consistent with the Revised General Plan. The submitted Planting Plan enhances the floodplain with reforestation and mitigates the applications environmental impacts.
3. The Virginia Department of Game and Inland Fisheries has determined that the towers and noise from the generator will not have an adverse impact upon the heron rookery.

### IV. CONDITIONS OF APPROVAL – April 21, 2010

(These conditions are applicable to both SPEX 2009-0011 and SPEX 2009-0029)

1. **Substantial Conformance** - This Special Exception to permit development of AM radio towers as a public utility within the floodplain shall be developed in substantial conformance with Sheets 1 of 4 and 3 of 4 (the "Special Exception Plat") of the plan set entitled "Potomac Radio, Special Exception Plat/ Commission Permit Application" dated February 2009, revised through March 2, 2010, prepared by Patton Harris Rust & Associates, PC (the "Plans"), and incorporated herein by reference and the applicable provisions of the Loudoun County Zoning Ordinance. Approval of this application for Tax Map Number /80///4///A2/ (PIN# 041-37-4022) (the "Property") shall not relieve the Applicant or the owners of the Property or any Lessee from the obligation to comply with and conform to any other Zoning Ordinance, Codified Ordinance, or applicable regulatory requirement.
2. **Riparian Planting Plan** - The Applicant shall install all the plant materials and trees in the amounts and sizes specified, at the general locations depicted on, and of a character consistent with, the "Planting Plan", dated December 20, 2009 prepared by blueskies environmental associates, inc. of Richmond, Virginia, and shown on Sheet 4 of 4 of the Plans (the "Planting Plan"). Prior to approval of the first site plan for the Special Exception use, the Applicant shall post a bond with the County in an amount and with surety satisfactory to the County sufficient to cover the cost of implementing the Planting Plan. The Applicant shall ensure that a minimum of eighty (80%) percent of the initial planting is established after two growing seasons through the conduct of an inspection by the Applicant and the County Urban Forester. The bond shall be released following confirmation that a minimum of eighty (80%) percent of the initial planting is established after two growing seasons. Should it be determined that a minimum of eighty (80%) percent survival with uniform distribution is not

achieved, a onetime planting to bring the project to full stocking consistent with, the "Planting Plan" shall be conducted by the Applicant and the bond released after compliance herewith has been confirmed by the Zoning Administrator.

3. **Heron Rookery** – No land disturbing or construction activities shall be performed or permitted within the area of the Special Exception during the heron nesting season defined as from February 15 through July 31 of each year. The on-site auxiliary generator may be used only in emergency situations during the said heron nesting season when electrical power has been interrupted. Periodic testing of the on-site auxiliary generator shall not be conducted during the heron nesting season to avoid potential noise impacts to the rookery.
4. **Exterior Lighting** – No permanent exterior lighting shall be permitted within the area of the Special Exception unless directed by the County or unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, State or Federal authorities.
5. **Noise** - The applicant shall incorporate noise attenuation measures in the design and operation of the facility to ensure that noise levels emanating from equipment on the Property shall comply with a maximum of 75 dBA at the Property lines.
6. **Fuel Tank** - The Applicant shall use non-diesel fuel to power the on-site auxiliary generator. Prior to site plan approval, the Applicant shall coordinate with the County on the selection of the fuel tank to prevent leakage and measures to secure it in the event of flooding. The applicant shall provide fuel spill containment for all fuel storage on the property, and such containment measures shall be detailed on the site plan prior to site plan approval.
7. **Cessation of Use** - The Applicant or its successors shall remove all unused related above ground structures and equipment from the area of the Special Exception, within 90 days of cessation of use or the expiration of the ground lease, whichever occurs first, and restore the site as closely as possible to its natural condition consistent with the Planting Plan.
8. **Advertising**- No commercial advertising shall be permitted on any tower.
9. **Communication Uses**- No antenna, satellite or microwave dish shall be attached to any tower without first obtaining approval of a new Special Exception for such use.

Note: The Applicant has agreed to provide a one-time contribution to the County in the amount of \$1,000.00 for the radio towers, and an additional \$0.10 per square foot of gross floor area of the transmitter building, for volunteer fire and rescue services. The \$1,000.00 contribution will be paid to the County prior to issuance of a building permit for any radio tower. The \$0.10 per square foot of gross floor area of the transmitter building will be paid to the County prior to the issuance of the building permit for the transmitter building. The square footage contribution shall escalate annually from the base year of 1988 and change effectively each January 1<sup>st</sup> thereafter, based on the Consumer Price Index for all urban consumers (CPI-U), 1982-1984=100 (not seasonally adjusted) as reported by the United States Department of Labor, Bureau of Labor Statistics.

## V. PROJECT REVIEW

### A. CONTEXT

Potomac Radio, LLC, of Falls Church, Virginia has submitted an application for two Special Exceptions and Commission Permit approval to permit a "public utility, communications and transmission" (AM radio transmitter) within the FOD (Floodplain Overlay District) and PD-IP (Planned Development-Industrial Park) zoning district subject to the 1972 Zoning Ordinance. The subject site, a 7.5 acre lease area, is located on property owned by Loudoun Water and operated as the Broad Run Water Reclamation at 44771 Loudoun Water Way, Ashburn. The subject site is located in the northern portion of the property within the major floodplain of the Broad Run and is accessed by an existing private gravel road. The proposed AM Radio Transmitter on the subject site will consist of three (3) 195-foot self-supporting lattice towers with a buried grounding system consisting of 120 equally spaced copper wires extending in 200 foot radius around each tower. The radials, which are the size of pencil lead, will be buried approximately one foot to four feet below ground level. A 20'x25' transmitter building, satellite dishes and auxiliary generator with an above ground natural gas fuel tank will be located in proximity to the proposed antenna arrays near an existing gravel road. The proposed construction will require ground disturbing activities within the major floodplain as well as the removal of approximately two-acres of existing mixed bottomland and hardwood forest on the southern portion of the subject site. The applicant has submitted a Planting Plan which proposes the planting of pine seedlings (loblolly pine), shrubbery and native grasses between the radials of the buried grounding system to mitigate the impacts of the proposed construction within the floodplain (Sheet 4 of 4). The upper portions of the three (3) proposed 195-foot self-supporting lattice towers will be visible from the majority of surrounding properties; the Applicant has submitted photo-simulations (Attachment 5) depicting views of the proposed towers from various vantage points.

### B. SUMMARY OF OUTSTANDING ISSUES

Land Use – The Revised General Plan (RGP) calls for Keynote Employment uses on the subject property. The proposed AM Radio Transmitter is not consistent with the land use mix or type of uses envisioned for Keynote Employment Area, as defined by the Plan. The land use mix for Keynote Employment areas permits only a small percentage of ancillary retail and personal services for employees to locate within Keynote Employment areas to support the predominant office use (Revised General Plan, Chapter 6, Keynote Employment Center Policies, Policies 1 & 4). The proposed AM Radio Transmitter is not an employee or office supportive use, nor does the proposed use facilitate the conduct of daily office and/or business activities within the area. The policies of the Revised General Plan do not support the location of the proposed AM Radio Transmitter within a Keynote Employment area.

Environmental- A critical environmental issue is the proposed placement of the AM Radio Transmitter within the major floodplain of the Broad Run. The Revised General Plan permits only a limited number of uses within the floodplain, including passive and active recreation, road crossings and bridges, utility corridors, pervious paths and trails, and agricultural activities (Revised General Plan, Chapter 5, River and Stream Corridor Resources Policies, Policy 18). The proposed construction of the AM Radio Transmitter requires ground disturbing activities within the major floodplain as well as the removal of approximately two acres of existing forest cover. The proposed AM Radio Transmitter is not one of the types of uses envisioned by the Plan to be located within the

floodplain. The environmental policies of the Revised General Plan do not support the location of the proposed AM Radio Transmitter within the floodplain.

## **C. OVERALL ANALYSIS**

### **COMPREHENSIVE PLAN**

The site is governed under the policies of the Revised General Plan (Plan) and is located in the Ashburn Community of the Suburban Policy Area. The Planned Land Use Map designates the area as suitable for Keynote Employment uses (Revised General Plan, p. 7-23). The property is also located within the Route 28 Tax District.

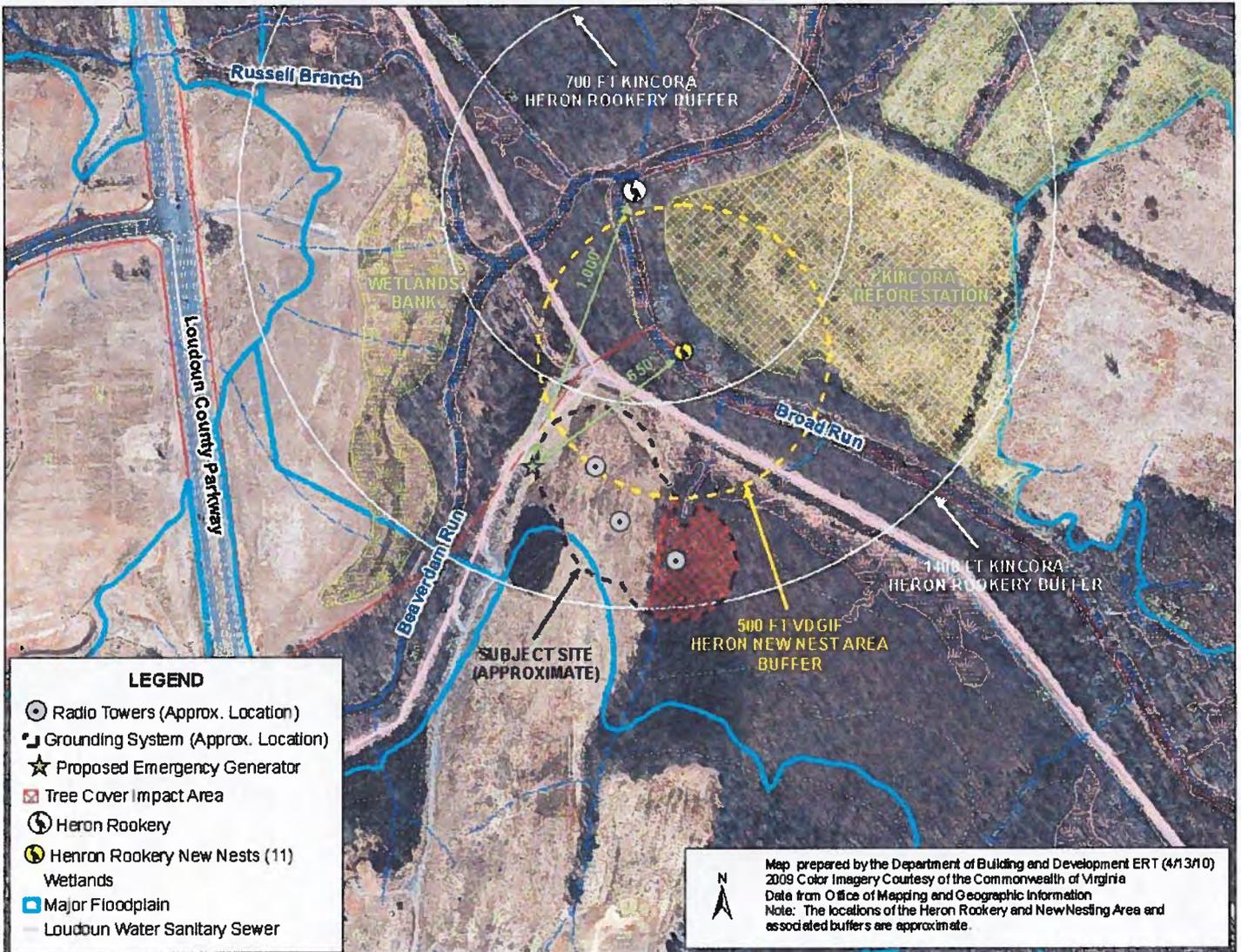
#### **Land Use**

The subject site and proposed AM Radio Transmitter are located in an area planned for Keynote Employment uses (Revised General Plan, Chapter 7, Planned Land Use Map). The Plan describes Keynote Employment areas as large-scale regional office developments that feature high visual quality and high trip-generating uses, including office parks, research and development parks, corporate headquarters, and similar large scale uses that are generally 40,000 gross square feet or greater with ancillary services necessary to support the predominant office use (Revised General Plan, Chapter 6, *Keynote Employment Centers Policies, Policy 1*). The land use mix for Keynote Employment areas calls for a high percentage of regional office supported by lesser amounts of commercial retail and services, public and civic uses, and public parks and open space.

The applicant states that the broadcast services provided by the proposed radio station (WAGE) directly serves the office and business uses located within the surrounding Keynote Employment area and the County as a whole by providing emergency and local information. WAGE, prior to going off the air in August 2009, broadcasted as a news/sports/talk radio station with an emphasis on the coverage of local high school, college and professional sports. While staff acknowledges the proposed AM Radio Transmitter and associated radio station located in Leesburg provides a public service in addition to entertainment, it does not address the fundamental issue, which is that Keynote Employment areas are intended to be "100-percent premier office or research-and-development centers supported by ancillary retail and personal services for employees" (Revised General Plan, Chapter 6, *Keynote Employment Center, text*). The proposed AM Radio Transmitter is not an employee or office supportive use, nor does the proposed use facilitate the conduct of daily office and/or business activities within the area. The proposed AM Radio Transmitter is not the type of use envisioned by the Plan to be located in a Keynote Employment area, though staff notes that existing Loudoun Water Campus and Broad Run Water Reclamation Facility on the subject site is not a Keynote Employment use either. However, the wastewater treatment facility does provide essential infrastructure which directly serves the surrounding Keynote Employment and Business community and the buildings on the campus have been constructed with materials and architectural features that are in keeping with the Plan's vision for Keynote Employment areas. The proposed AM Radio Transmitter is not consistent with the land use mix or type of uses envisioned for Keynote Employment Areas, as described in the Revised General Plan. The policies of the Revised General Plan do not support the location of the proposed AM Radio Transmitter within a Keynote Employment area.

**Environmental**

Construction of the proposed AM Radio Transmitter on the 7.5 acre subject site within the major floodplain of the Broad Run will impact elements of the Countywide Green Infrastructure. The proposed construction will require ground disturbing activities for the installation of the radials of the underground grounding system, foundations for the lattice towers and construction of the transmitter building as well as the removal of approximately two-acres of existing forest cover.



The Revised General Plan recognizes stream corridors and the associated floodplains as important natural systems and seeks to protect these corridors by preserving, conserving, and restoring their water quality, flood protection, aquatic and wildlife habitat and scenic value through the establishment of River and Stream Corridor Policies. (Revised General Plan, Chapter 5, River and Stream Corridor Resource text). The policies of the Plan permit only a limited number of uses within stream corridors and the floodplain, including passive and active recreation, road crossings and bridges, utility corridors, pervious paths and trails, and agricultural activities (Revised General Plan, Chapter 5, River and Stream Corridor Resources Policies, Policy 18). The proposed AM Radio

Transmitter is not one of the types of uses envisioned by the Plan to be located within the stream corridor and more specifically the major floodplain of Broad Run.

The Broad Run's overall health and quality is dependent upon the protection and buffering of the wetlands and intermittent streams, along with the riparian forests and vegetated areas that surround the corridor. The subject site is in a unique geographic area at the confluence of the Broad Run with Beaverdam Run and Russell Branch. The 7.5 acre subject site, which is designated by the County as major floodplain, slopes gently from west to east and drains to the Broad Run which is subject to seasonal flooding. The majority of the subject site is open field with the southern portion being occupied by forest cover comprised of mature evergreens and deciduous trees which extend to the south. Located immediately adjacent to the subject site to the southeast is a large existing wetland area which is bordered to the east by a Loudoun Water sewer corridor which parallels the Broad Run. Located in proximity to the subject site are two County approved wetland and floodplain enhancement projects. They include: an existing 8-acre wetland mitigation bank (Grading Permit X20070010001) located on the north side of Beaverdam Run; and, in the future, approximately 55 acres of open floodplain, including approximately 30 acres adjoining the Broad Run, which will be reforested on the adjoining property located on the east side of the Broad Run (SPEX-2008-0054 Kincora Village).

Staff recognizes that the subject property is administered under the 1972 Zoning Ordinance and that the proposed AM Radio Transmitter, which is defined as a "public utility" use, may be located within the floodplain overlay district (FOD) by Special Exception approval pursuant to Section 740.7(4) and the standards in Section 740.7(8). One of the standards for the evaluation of the Special Exception, Section 740.8(6), is that the proposed use shall be "in harmony with the comprehensive plan." The location of the proposed AM Radio Transmitter within the major floodplain is not supported by the policies of the Revised General Plan. Staff throughout the process has encouraged the applicant to relocate the proposed AM Radio Transmitter outside of the floodplain and the environmentally sensitive areas of the property. While the applicant has considered other locations on the subject property, the proposed 7.5 acre subject site within the floodplain was the only location made available to them by the property owner, Loudoun Water.

In order to mitigate the impacts of the proposed construction within the floodplain and the loss of existing forest cover, the applicant has submitted a Planting Plan prepared by blueskies environmental of Richmond, Virginia (Sheet 4 of 4). The Planting Plan includes a proposal to plant loblolly pine seedlings and shrubs on the periphery site between the radials of the buried grounding system and to plant grasses and native plants near the center of the site where the spacing of the radial are much closer together. The layout of the buried grounding radials have also been designed to avoid impacts to an archaeological site (44LD210) on the property.

The applicant has also provided commitments for the protection of a Great Blue Heron Nesting area located approximately 500' to the northeast of the subject site on an adjacent property. The nesting area is comprised of 11 nests and a larger Heron Rookery comprised of 40+ nests is located approximately 650' to the northeast. The Heron Rookery is recognized by the Virginia Department of Game and Inland Fisheries as a rare to uncommon occurrence with 20 to 100 occurrences recorded statewide. While the Great Blue Heron is not identified as a species of concern by the state or federal government, the Rookery is a unique feature and the only one of its type identified in the County. The applicant has committed to time of year restrictions, to ensure that no construction

activities and/or significant noise impacts occur during the Blue Heron nesting period, defined as March 15 through July 31. The decision of the applicant to propose self-supporting lattice towers versus more traditional guy-wired towers were also designed to minimize hazards to birds in flight. The applicant is proposing the use of a natural gas powered auxiliary generator as opposed to a traditional diesel generator to avoid the potential for fuel spills/leaks within the floodplain. While staff appreciates the applicant's commitment to the environmental enhancement of the stream corridor and their plan to mitigate the potential environmental impacts associated with the proposed construction within the major floodplain, the policies of the Revised General Plan do not support the construction of this type of use within the floodplain.

### **Design and Visual Impact**

The Telecommunications Plan calls for design standards to mitigate the visual impacts of commercial public telecommunication facilities so as to "blend with the natural and built environment of the surrounding area" (*Telecommunications Plan, Countywide Visual Impacts, Policy 1*). The proposed AM Radio Transmitter on the subject site will consist of three (3) 195-foot self-supporting lattice towers that will be constructed of galvanized steel and will be unpainted to blend with the gray sky. The applicant has also committed to a color scheme for the proposed transmitter building which is compatible with the existing buildings on the Loudoun Water Campus.

The Applicant has submitted a series of photo-simulations (Attachment 5) depicting the proposed lattice towers from various vantage points where views of the upper portions of the lattice towers will be silhouetted on the horizon from the majority of surrounding properties located to the west. While staff acknowledges the thinner profile of the AM broadcast antenna are advantageous for the mitigation of visual impact, it still does not diminish the fact that the three (3) proposed 195-foot self-supporting lattice towers will have a visual impact on all the surrounding properties. Other tall structures in the area include the Lerner Building (105') located to the east, a telecommunication monopole (185') is located to the southeast and the high voltage transmission corridor (125') adjoining the W&OD trail is located to the south.

### **ZONING**

The property is zoned PD-IP (Planned Development – Industrial Park) and is governed by the 1972 Zoning Ordinance. The proposed AM Radio Transmitter is categorized as a public utility in accordance with the 1972 Zoning Ordinance. As such, a Commission Permit (CMPT 2009-0002) is required for any public facility not already shown as a feature on the Comprehensive Plan to ensure the general location, character, and extent of the proposed use is in substantial accord with the Comprehensive Plan pursuant to Section 905.

The proposed AM Radio Transmitter use, which is defined as a "public utility-communication and transmission use" is permitted by Special Exception (SPEX 2009-0011) within the PD-IP (Planned Development – Industrial Park) zoning district under the 1972 Zoning Ordinance pursuant to Section 722.3.2 and the Standards within Section 1211.5. The Standards state that the proposed use "shall be in harmony with the policies embodied in the adopted comprehensive plan." The subject site is located in an area designated by the Revised General Plan for Keynote Employment uses. The proposed AM Radio Transmitter is not consistent with the land use mix or type of uses envisioned for Keynote Employment areas by the Plan. Staff notes that subsequent version of the Zoning Ordinance have omitted the "public utility-communication and transmission use" category within the

PD-IP zoning district. The 1993 Zoning Ordinance and Revised 1993 Zoning Ordinance define the proposed AM Radio Transmitter as a "radio, radar and/or television tower" and the use is permissible by Special Exception approval in the majority of zoning districts including GB (General Business), PD-OP (Planned Development – Office Park), PD-RDP (Planned Development – Research and Development Park), and the recently created PD-MUB (Planned Development – Mixed Use Business District) zoning districts; however, the use has been omitted from the PD-IP (Planned Development – Industrial Park) zoning district.

A Special Exception (SPEX 2009-0029) is also being requested to locate the proposed public utility within the floodplain overlay district (FOD) pursuant to Section 740.7(4). One of the standards for the evaluation of the proposed Special Exception, Section 740.8(6), is that the proposed use shall be "in harmony with the comprehensive plan." The location of the proposed AM Radio Transmitter within the major floodplain is not supported by the environmental policies of the Revised General Plan.

### **EMERGENCY SERVICES**

The Ashburn Volunteer Fire and Rescue Company will provide fire and rescue services to this site. Though this is an unmanned facility, Board policy does, nonetheless, anticipate a fire and rescue contribution to the servicing fire and rescue company. Board policy states the contribution should be \$0.10 per square foot of development, and in this instance, staff would equate the area of development to be the area encompassed by the AM Radio Transmitter building (approximately 650 square feet). As such, a fire and rescue contribution of \$65.00 would be anticipated. The Applicant is in agreement with this contribution and will also provide an additional one time contribution of \$1,000.

### **TRANSPORTATION**

The property currently under consideration is located adjacent to Loudoun County Parkway and is accessed by an existing entrance located north of Loudoun Water Way. A private gravel road provides access to the site located within the floodplain in the northeastern corner of the property. As the facility is unmanned, traffic generation will be limited to one vehicle trip per month. Comments from both the Office of Transportation Services (OTS) and the Virginia Department of Transportation (VDOT) did not identify any access, safety or traffic issues.

**D. ZONING ORDINANCE CRITERIA FOR APPROVAL**

**Section 1211.15 Standards for a Special Exceptions of the 1972 Loudoun County Zoning Ordinance states *"In fulfilling the purposes and intent of this ordinance as set forth in Article 1, the Board of Supervisors, in exercising the powers and duties granted and imposed by the ordinance, shall act in accordance with and shall be guided by the following standards which shall be in addition to any other standards imposed by this ordinance:"***

**Standard** *To preserve the agricultural character of the County, and to discourage the inappropriate location of non-farm uses in agricultural areas.*

**Analysis** The subject property is not zoned or planned for agricultural uses.

**Standard** *To conserve the ground water supply in the areas of the County where it is limited.*

**Analysis** The proposed use will not impact the ground water supply.

**Standard** *To prevent high population density on soils that are incapable of providing adequate water supply, or of meeting proper sanitary requirements for sewage disposal.*

**Analysis** No residential population is proposed for the property.

**Standard** *To protect against the overcrowding of land and undue density of population in relation to the community facilities existing or available.*

**Analysis** No residential population is proposed for the property.

**Standard** *To facilitate orderly highway development and transportation, and lessen traffic hazards and congestion.*

**Analysis** No traffic impacts are anticipated with the proposed use.

**Standard** *To protect residential sections from unnecessary traffic, fire hazards, noise, noxious fumes, or offensive odors and other unwholesome conditions and influences.*

**Analysis** The proposed use will not have a direct physical impact on residential areas, however the proposed antennas may be visible from residential areas..

**Standard** *The proposed use at the specified location shall be in harmony with the policies embodied in the adopted comprehensive plan.*

**Analysis** The proposed AM Radio Transmission use is not in harmony with the land use and environmental policies of the Revised General Plan. The subject site is located in an area designated by the Plan for Keynote Employment uses. The proposed AM Radio Transmitter is not consistent with the land use mix or type of uses envisioned for Keynote Employment areas by the Plan. In addition the proposed construction of the proposed facilities within the major floodplain is not supported by the environmental policies of the Plan.

**Standard** *The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.*

Analysis The uses are not in harmony with the purpose of the PD-IP zoning district under the 1972 Zoning Ordinance, which is primarily for attractive, landscaped, light and medium industrial uses. For properties that have not opted in or rezoned to the Revised 1993 Zoning Ordinance, there is often a disconnect between the uses envisioned for the property in the Revised General Plan and the uses permitted within the 1972 Zoning Ordinance.

Standard *The proposed use shall be such that it will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the applicable provisions of the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.*

Analysis The Revised General Plan describes Keynote Employment areas as large-scale regional office developments that feature high visual quality and high trip-generating uses, including office parks, research and development parks, corporate headquarters, and similar large scale uses that are generally 40,000 gross square feet or greater with ancillary services necessary to support the predominant office use. The proposed AM Radio Transmitter is not consistent with the type of uses envisioned for Keynote Employment areas by the Plan.

**Section 740.8 Standards for a Special Exception of the 1972 Loudoun County Zoning Ordinance states "In considering application for special exception, the Board of Supervisors must be satisfied the following standards have been met:"**

Standard *The proposed use will not increase the danger to life and property due to increased flood heights or velocities caused by encroachments.*

Analysis The construction of the proposed facilities within the floodplain will not adversely impact flood heights or velocities.

Standard *The proposed use will not increase the danger that materials may be swept on to other lands or downstreams to the injury of other.*

Analysis Appropriate measures will be undertaken in the construction of the proposed facilities to ensure they are securely anchored so that in the event of a flood the structures and associated equipment are not swept away.

Standard *The proposed water supply and sanitation systems are designed to prevent disease, contamination, and unsanitary conditions.*

Analysis The proposed facilities are unmanned and do not require water or a sewage disposal.

Standard *The proposed use or structure must be located and designed to limit its susceptibility to flood damage and available alternative locations, not subject to flooding, for the proposed use must be considered.*

Analysis The applicant has considered other locations on the subject property located outside the floodplain, the proposed 7.5 acre subject site located within the major flood plan was the only site made available to them by the property owner, Loudoun Water.

Standard *The proposed use is compatible with existing and planned development.*

Analysis The proposed AM Radio Transmitter use, which is defined as a “public utility-communication and transmission use” is only permitted by Special Exception within the PD-IP (Planned Development – Industrial Park) zoning district under the 1972 Zoning Ordinance, and has been omitted as a use category from all other subsequent zoning districts (1993 Zoning Ordinance and Revised 1993 Zoning Ordinance). For properties that have not opted in or rezoned to the Revised 1993 Zoning Ordinance, there is often a disconnect between the uses envisioned for the property in the Revised General Plan and the uses permitted within the 1972 Zoning Ordinance. The Revised General Plan designates the area for Keynote Employment uses which feature large-scale regional office developments, including office parks, research and development parks, corporate headquarters, and similar large scale uses that are generally 40,000 gross square feet or greater with ancillary services necessary to support the predominant office use. The proposed AM Radio Transmitter use is not consistent with the land use mix or type of uses envisioned for Keynote Employment areas, as defined by the Revised General Plan.

Standard *The proposed use is in harmony with the Comprehensive Plan.*

Analysis The proposed AM Radio Transmitter use is not consistent with the land use mix or type of uses envisioned for Keynote Employment areas, as defined by the Revised General Plan. Additionally the proposed AM Radio Transmitter is located within the floodplain of Broad Run and requires ground disturbing activities and the removal of tree cover for construction. The environmental policies of the Revised General Plan do not support the location of the proposed AM Radio Transmitter within the floodplain.

Standard *The expected heights, velocity, duration, rate or rise and sediment transport of the flood water expected at the site should not cause significant damage to the structure.*

Analysis Appropriate measures will be undertaken in the construction of the proposed facilities to ensure they are securely anchored so that in the event of a flood the structures and associated equipment are not swept away.

Standard *Such other standards which are relevant including Section 1211.5 Criteria for a Special Exception, and Section 103, Purpose of Zoning.*

Analysis A separate Special Exception (SPEX) is required for approval of the public utility use within the district pursuant to Section 722.3.2, and is evaluated based on the standards within of Section 1211.5. The proposed use is permitted in the PD-IP zoning district by Special Exception approval by the Board of Supervisors, The standards of Section 722.3.2 will be reviewed by the Board of Supervisors.

<b>VI. ATTACHMENTS</b>	<b>PAGE NUMBER</b>
<b>1. Review Agency Comments</b>	
a. Planning Department, Community Planning	<b>A-1</b>
b. Building and Development, Zoning Administration	<b>A-15</b>
c. Building and Development, ERT	<b>A-19</b>
d. Office of Transportation Services (OTS)	<b>A-29</b>
e. Virginia Department of Transportation (VDOT)	<b>A-33</b>
f. Fire, Rescue, & Emergency Management	<b>A-35</b>
g. Metro Washington Airport Authority(MWAA)	<b>A-37</b>
h. Virginia Department of Game and Inland Fisheries (VDGIF)	<b>A-39</b>
<b>2. Disclosure of Real Parties in Interest</b>	<b>A-57</b>
<b>3. Applicant's Statement of Justification</b>	<b>A-69</b>
<b>4. Applicant's Response to Referral Agency Comments</b>	<b>A-79</b>
<b>5. Photo-simulations</b>	<b>Attached</b>
<b>6. Special Exception Plat; February 2009; revised to March 2, 2010</b>	<b>Attached</b>

NOTE: Attachments are available electronically, and may be viewed at the Planning Department Front Counter or in the Building & Development File Room.