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April 30, 2009

**BY E-MAIL AND HAND DELIVERY**

Judi Birkitt, Senior Planner  
Land Use Review  
County of Loudoun  
Department of Planning  
One Harrison Street, Third Floor  
Leesburg, Virginia 20175

**Kincora**  
**ZMAP 2008-0021**

Dear Judi:

This letter provides responses to all referral comments we have received to date for the referenced rezoning application, except for the comments we received earlier this week from the Office of Transportation Services ("OTS"). We have forwarded the OTS comments to our traffic consultant and will provide a response to those comments by separate letter as soon as possible.

We have not yet received referral memoranda from Community Planning or Zoning Administration. As soon as you forward those to us, we will review their comments and provide responses to you promptly. To avoid submitting two different versions of the Proffer Statement, the Concept Plan and the Statement of Justification in response to the first referrals, we intend to provide the revised Proffer Statement, Concept Plan and Statement of Justification with our response to the Community Planning and Zoning referrals. Those revised documents will reflect all changes referenced in this letter and the additional revisions made in response to those outstanding referrals.

We hope providing this initial response will enable you to work with us to begin addressing the comments we have received so far.

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Listed below are detailed responses to each Staff comment contained in the various referral memoranda received to date on ZMAP 2008-0021.

**HISTORIC PRESERVATION**

**Comment:** The Applicant's Statement of Justification (page 9) states that Phase 3 excavation of site 44LD729 is planned and that a Memorandum of Understanding (MOU) outlining the scope of work and testing methodology has been executed with the Virginia Department of Historic Resources (VDHR). Staff requests a copy of the MOU and a copy of the Phase 3 report (upon completion) for the County file.

**Response:** **A copy of the executed MOU is included with this letter. Once the Phase 3 report has been completed, the Applicant will submit that to the County for reference as well.**

**Comment:** In recognition of the local and national significance of the resource, the County designated the Broad Run Toll House and Bridge as a local historic site district (HS) in 1972. The purpose and intent of historic district designation is the protection and enhancement of areas of special historic interest or value which reflect the County's heritage (1972 Zoning Ordinance, Section 750.1.2 and Revised 1993 Zoning Ordinance Section 6-1800). The effect of such designation is the required review and approval by the County for all exterior alterations to structures within the district, including the proposed demolition or relocation of any structure. County approval is also required for proposed new construction within the HS district (1972 Zoning Ordinance, Section 750.8 and 750.9 and Revised 1993 Zoning Ordinance, Section 6-1902). Staff recommends that the Applicant contact Department of Planning Staff to discuss the HDRC application process at the earliest convenience.

**Response:** **The Broad Run Toll House and Bridge are located outside of the application area. As shown on the Countywide Transportation Plan, the alignment of Pacific Boulevard crossing Broad Run potentially impacts the Broad Run Toll House and Bridge. If the rezoning is approved and the Applicant become responsible for the extension of Pacific Boulevard across Broad Run, the Applicant will address the impacts, if any, to these historic resources. The Applicant has met on-site with a representative of the Loudoun Preservation Society to review the location and condition of the**

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**Toll House and Bridge. The Loudoun Preservation Society and the Applicant believe the best means of preserving the Toll House and making it available to the citizens of Loudoun would be to explore the relocation of the Toll House to an accessible location on the Kincora property. The Applicant will be meeting with representatives of the Department of Parks, Recreation and Community Services to explore that possibility. The Proffer Statement will be revised to reflect the requirement of the Applicant to comply with the provisions of Sect. 6-1902 of the Revised 1993 Zoning Ordinance.**

**Comment:** The 1990 widening of Route 7, though not destroying the structures themselves, compromised the historic setting of these structures and increased the difficulty of adaptively re-using the Toll House. Because construction of the remainder of Pacific Boulevard is proposed as part of the subject development application, depending on the ultimate alignment of the road, the Toll House will either be destroyed or further compromised. It is Staff's understanding from a conversation with the Applicant at a March 30 meeting with referral agencies that the Toll House property is under contract with the Applicant. It is critical that the structural condition, historic architectural integrity and historic context of the toll house be assessed and documented. To this end, Staff recommends that a Historic Standing Structures Report (HSR) as defined in the National Park Service's Preservation Brief #43, be conducted. The HSR will provide the base line data necessary to make decisions on how best to preserve the resource and to convey its history to the residents of the County.

**Response:** The Broad Run Toll House and Bridge are not located within the application area. If the Applicant acquires the Broad Run Toll House, it will conduct a Historic Standing Structures Reports (HSR). Further, the alignment for the Pacific Boulevard crossing of Broad Run has not been finalized. The Applicant desires to either preserve the Broad Run Toll House in its current location or relocate it to make it accessible to the public. The Proffer Statement will be revised to reflect such commitments by the Applicant regarding these resources, should they be impacted by construction of the Pacific Boulevard crossing of Broad Run.

**Comment:** The application materials state that permits from the Army Corps of Engineers are required for this project. Because federal permits are needed, the development proposal will be reviewed by the Virginia Department of Historic

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Resources (VDHR) per Section 106 of the National Historic Preservation Act of 1966 (as amended). Impacts to resources listed in, or eligible for, the National Register of Historic Places may require mitigation per VDHR. Staff recommends that the Applicant consult with VDHR as early as possible to ensure that impact mitigation that may be proffered to the County as part of an approval of this application are consistent with VDHR's requirements under Section 106. This recommendation pertains specifically to the Broad Run Toll House property, since the MOU for site 44LD729 has already been addressed.

**Response:** The Broad Run Toll House and Bridge are not located within the application and the Pacific Boulevard crossing of Broad Run has not been finalized. Not until the alignment has been finalized between VDOT, the County, the Applicant, and affected landowners can the Applicant begin work on any federal permits necessary to complete this crossing. In association with existing wetlands permits approved for disturbances on the Property, the Applicant has executed an MOU for one archaeological resource (44LD729) located within the application area. The Applicant will be required by federal law to assess the impact, if any, on all historic resources, including the Broad Run Toll House and Bridge, in association with any necessary federal permits required to permit construction of the Pacific Boulevard crossing of Broad Run.

**VIRGINIA DEPARTMENT OF CONSERVATION AND RECREATION**

**Comment:** To minimize adverse impacts to the aquatic ecosystem as a result of the proposed activities, DCR recommends the implementation of and strict adherence to applicable state and local erosion and sediment control/storm water management laws and regulations.

**Response:** The Applicant is committed to providing erosion and sedimentation controls in conformance with the FSM for the purpose of stabilizing disturbed portions of the Property during construction.

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**BUILDING & DEVELOPMENT (PLANNING DIVISION)**

**Comment:** 1. In accordance with Section 4-1355(I)(3) of the Revised 1993 Zoning Ordinance the Concept Development Plan (CDP) requires that a phasing plan be included to exhibit the proposed mix of uses to be provided throughout each phase of the development. Section III. "Transportation" of the submitted Proffers identifies proposed phases (1A, 1B, 2A, 2B and 3); however the CDP does not exhibit the location or the limits of the intended phases. Revise the CDP and all other supporting documentation for the application to illustrate how the Applicant intends to phase the development and what uses are contained in each phase.

**Response:** **The Concept Plan and Proffer Statement will be revised to provide a better depiction and explanation regarding the Applicant's commitment to phasing development of the Property, both with and without creation of a Community Development Authority ("CDA").**

**Comment:** 2. A portion of Tax Parcel # /80//27/////2/ (PIN # 042-49-0209) within this proposed development is encumbered with a Deed of Open Space Easement (DB 2314, Pg 1589) granted to the County, as established with the creation of this parcel per the preliminary record plat application SBPR 2006-0010, approved on 10/29/2002. The submitted CDP indicates that portions of proposed public roads Gloucester Parkway and Pacific Boulevard cross the deeded areas of the Open Space that may be considered a use contrary to permitted uses identified in the recorded deed under the Open Space Land Act. The Applicant may be required to submit a land development application to vacate portions of the open space and dedicate new areas of open space as a substitute. Such an application would be referred to the Office of the County Attorney for review and require the approval of the Board of Supervisors.

**Response:** **Proffer #II.G. addresses the existing Open Space Easement, along with a draft Amended Deed of Open Space Easement. This amendment will permit the construction of the public infrastructure, recreational fields and any on-site wetlands or stream mitigation, and potentially a small wetland mitigation bank proposed in the area within the Open Space Easement. Any impacts within the Open Space Easement are for the purpose of constructing roads recommended on the Countywide Transportation Plan.**

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**The Applicant would like to discuss this issue with the Planning Division and the Office of Transportation Services.**

**Comment:** 3. The areas of major floodplain (FOD) shown on the CDP do not match up with the known limits of the floodplain as illustrated in the County's geographic mapping system. Specifically the area west northwest of the proposed interchange at Route 28 & Nokes Boulevard as well as proposed Land Bays M & N. Staff understands that the Applicant has submitted construction plans and profiles, CPAP 2008-0118 and site plan STPL 2008-0042 that include the construction of a road segment for Pacific Boulevard, however these plans and or any associated Floodplain Alteration have not been approved to redefine the location of the major floodplain. Revise the CDP to show the limits of the current floodplain in accordance with Sections 6-1508; 6-1505; 6-403 and 6-1200 of the Revised 1993 Zoning Ordinance.

**Response:** **The Concept Plan will be revised to identify the major floodplain at the existing 218' elevation. This elevation was confirmed by the floodplain study prepared by VDOT for the Route 28/Nokes Boulevard interchange and has been confirmed by the Department of Building and Development.**

**Comment:** 4. Revisit and revise Plat Note # 7 of the CDP regarding the abandonment of existing wells and septic systems to be consistent with Proffer # VIII.A. and Health Department regulations.

**Response:** **Note 7 on the Concept Plan will be revised to be consistent with Proffer VIII.A. and Health Department regulations.**

**Comment:** 5. Revisit and revise all appropriate sheets of the CDP to correctly identify the adjoining property owner information and parcel information for Tax Parcels (PIN # 042-29-5923 and # 042-20-0913).

**Response:** **The Concept Plan will be revised to correctly reference the adjacent properties and their current owners.**

**Comment:** 6. There appears to be a discrepancy in the acreage between what is shown on sheets # 13 & 14 of the CDP with what is currently identified in County records (see attached LMIS parcel data). The CDP lists a total acreage of 396.91 acres contained within the three tax parcels that make up the site, but County records

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indicate a total of 394.13 acres. Please provide an explanation and or revise the CDP, Proffers, and Statement of Justification accordingly.

**Response:** The acreage listed on the Concept Plan is an accurate tabulation of the Property, excluding the portions of PIN 041-29-8238 that are included in SPEX 2008-0054 and the land that was condemned by VDOT for construction of the Route 28/Nokes Boulevard interchange.

**Comment:** 7. Revisit and revise the referenced Facilities Standards Manual (FSM) Section 4.320(B)(2) requested for modification as shown on sheet # 14 of the CDP; Page 2 of Exhibit B of the Proffers; and Page 12 of the Statement of Justification; to correctly identify the section as **4.330(B)(2)** for Private Roadway Standards. It appears that this was a typo shown throughout the documentation provided.

**Response:** The Concept Plan, Proffer Statement and Statement of Justification have been revised to correct the typographical error reference of the appropriate FSM section.

**Comment:** 8. Revisit and revise the header for "Incentives Program" as shown on sheet # 14 of the CDP to correct a typo. The header should correctly identify the referenced zoning section as "**4-1359(C) and (D)**" and not (4-1359 COND D) as shown. Additionally Staff would ask that you provide a Plus "+" symbol to the left of the "Additional Incentives 4-1359(D)(2)" to indicate your intention to achieve this incentive with this rezoning.

**Response:** The Concept Plan will be revised to correct the typographical error according to Staff's suggestion. Though the majority of buildings within the Kincora development will contain a mix of uses, at this stage in the design, the Applicant cannot commit that this will occur. Therefore, the Applicant has not assumed satisfaction of Sect. 4-1359(D)(2).

**Comment:** 9. Revisit and revise sheet # 15 of the CDP to provide appropriate symbols to indicate that a bicycle trail is included on the north side of the proposed Gloucester Parkway west of Pacific Boulevard in accordance with Proffers II.C.1. and II.D.6.b.

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**Response:** The Concept Plan will be revised to depict the construction of a bicycle trail along the north side of Gloucester Parkway in accordance with the Proffer Statement and the recommendations of the Countywide Transportation Plan.

**Comment:** 10. After reading the introduction of the Applicant's Statement of Justification and Proffer Statement, it is Staff's belief that the Applicant has not clearly stated that the proposed rezoning for Kincora Village Center is for only a portion of the total acreage of the site. It is recommended that the introduction paragraph of each document be revised to clearly state that the rezoning is only for a portion of the Property (336.64 acres) and that the remaining acreage (60.27 acres) retains the PD-IP zoning under the 1972 Zoning Ordinance.

**Response:** The Statement of Justification will be revised to clarify the limits of the application area and the potential uses of the residual portion of PIN 041-29-8238.

**Comment:** 11. A review of the Statement of Justification revealed some typographic errors in text taken from the Revised 1993 Zoning Ordinance. Please revisit and revise the following to correctly identify County ordinance requirements:

- Revise the PD-MUB Incentives Justification (2.) on sheet # 10 to delete the word "in" on the 4th line and to correctly insert the word "if" in its place (...floor area ratio may be granted if 100% of the off-street parking is provided...).
- Correct the Revised 1993 Loudoun County Zoning Ordinance Modification (1.), on sheet # 11, for Section 4-1356(C) Building Height, to identify the maximum building height of 75' instead of 175' as shown.

**Response:** The Statement of Justification will be revised accordingly to correct these typographical errors.

**Comment:** 12. In the review of the Proffer Statement for Kincora, it was noted that Proffer # I.(F)(1) and I.(F)(2) establish a linkage and sets thresholds between the construction of Non-Residential uses and the ability of the Applicant to obtain zoning permits for residential units. Staff has concerns that the language used as a trigger for this linkage, as shown in the first sentence of each Proffer

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("...shall be under construction...") is rather vague and does not establish a completed amount of square footage for Non-Residential uses prior to additional residential units being built. The Applicant should consider a different trigger with a defined minimum square footage of Non-Residential uses that could be clearly determined for proffer satisfaction that Zoning Administration Staff could verify.

**Response:** The trigger for the non-residential linkage is the same trigger used in other similar rezoning proffers. Zoning Administration Staff will be able to verify compliance by confirming site plan approval, and commencement of construction pursuant to such approved site plan, for the amount of non-residential uses required by this Proffer.

**Comment:** 13. Staff wishes to note that Proffer # VIII.B. regarding the submission of a Type I Soils Survey does not absolve the Applicant from meeting the requirements of providing a Preliminary Soils Review with the submission of the preliminary plat in accordance with Section 8.102.B.5 of the FSM.

**Response:** The Applicant acknowledges this requirement and will revise Proffer VIII.B. accordingly.

**Comment:** 14. The Applicant is requesting a waiver of Sections 4.310(C); 4.310(G); 4.330.(B).(2) and 4.330.(B)(3) of the Facilities Standards Manual (FSM) as shown in Exhibit B of the Proffer Statement. We note that typically FSM waivers are requested from the Director of the Department of Building and Development (through the standard FSM Waiver process) at time of site plan or subdivision. As to the specifics of the requested modifications, we would not be in favor of granting the waivers that alter design standards for private roads unless the proposed modifications were reviewed and approved by Building and Development – Engineering; as well as the Department of Fire and Rescue. It is Staff's opinion that several of the FSM modifications may have negative impact on road design, affecting the ability of large Fire and Rescue vehicles to safely access the site.

**Response:** The design of the private road network will not adversely affect the ability of emergency service vehicles from circulating throughout the Property and efficiently accessing each building and structure. The Department of Fire and Rescue Staff will be afforded the ability to review the design of

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**such private streets during site plan review. The Applicant requests these FSM modifications at this stage to provide sufficient notification of the intent of the comprehensive design of Kincora. Should the Board of Supervisors decide not to act upon these requested modifications, they will be requested as necessary during site plan review.**

**Comment:** 15. The Applicant is requesting a modification of Section 1245.01(2) of the Land Subdivision and Development Ordinance (LSDO) to permit the use of private roads in lieu of public roads, to access lots within Kincora Village Center (PD-MUB) in accordance with Section 4-1359(D)(2) of the Zoning Ordinance. The intention to predominately use private roads within the Village Center has not been clearly identified on the CDP or the Proffer Statement other than in requested modifications shown on page 3 of Exhibit B. Please revise the CDP to include a plat note to clearly state that lots within the Village Center will be accessed via private roads with the exception of lots that directly access Pacific Boulevard.

**Response:** **The Concept Plan will be revised to include a note referencing the fact that the internal streets within Kincora will be private and subject to certain FSM and LSDO modification requests. All private streets will be maintained by an Owner's Association.**

**Comment:** 16. Revisit and revise the referenced Zoning Ordinance in item B. "Section 4-1358(B)(2)—Parking Lot Landscaping" of the Zoning Ordinance Modifications, on page 1 of Exhibit B of the Proffer Statement to also include reference to Section 5-1413(C)(1)(a) of the Zoning Ordinance that defines the landscape requirements for parking lots that abut adjoining property lines.

**Response:** **The Applicant will add the referenced Zoning Ordinance section to Exhibit B of the Proffer Statement.**

**Comment:** 17. Revisit and revise the text of Zoning Ordinance Section 4-1359(C)(2) used in "PD-MUB District Incentives" of Exhibit E to correct a typo by deleting the word "in" on the 4th line and correctly inserting the word "if" in its place (...floor area ratio may be granted if 100% of the off-street parking is provided...).

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**Response:** The Proffer Statement will be revised accordingly to correct this typographical error.

**BUILDING & DEVELOPMENT – ENVIRONMENTAL REVIEW**

Issues related to the Zoning Ordinance (ZO) and Facilities Standards Manual (FSM):

Comment: 1. Staff recommends the following measures to accurately depict the floodplain (especially within proposed land bays Q and N, shown on sheet 29), to account for floodplain uses, and maintain sound floodplain management on site:

- Amend General Note 18 to include updated FEMA Flood Insurance Rate Maps (FIRM) 51107C0265D, 0266D, and 0268D, dated July 5, 2001. Note 15 on Sheet 1 also includes a VDOT plan reference without a verified FEMA approval of said alteration, where FEMA approval is needed to update county floodplain information.

**Response:** The Concept Plan will be revised to depict the floodplain at the current elevation of 218 feet, which has been verified with Staff from the Department of Building and Development in association with the review of the pending site plan (STPL 2008-0042) for by-right uses on the Property. The 218-foot elevation was confirmed with the study conducted by VDOT for construction of the Route 28/Nokes Boulevard interchange. The Applicant acknowledges that unless the boundaries of the floodplain are changed by VDOT or with other permitted construction or as may be permitted under applicable provisions of the Zoning Ordinance, certain uses in Land Bays Q and N located within the current boundaries of the floodplain may not be constructed.

- General Note 27 should acknowledge the need for approved floodplain alterations to enable development within major floodplain areas.

**Response:** Please see response to Comment 1.

- Please fully depict the floodplain overlay district, where any updated delineation is resolved prior to Planning Commission review. To date, no floodplain alteration has been submitted for the extension of Pacific Boulevard. The Planning Commission needs to consider whether "changed

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or changing conditions in the area make the proposed rezoning appropriate," per ZO Section 6-1211(E)(2).

**Response:** Please see response to Comment 1.

- The proposed PD-MUB (Mixed Use Business) district allows density to be based on all property acreage (including floodplain acreage) where a 25-foot buffer is maintained around floodplain boundaries. Staff recommends pursuing more building density by avoiding any floodplain alteration not within VDOT right of way, consistent with ZO Section 4-1359(D)(1).

**Response:** As depicted on the Concept Plan, and in accordance with Sect. 4-1359(D)(1), an undisturbed buffer in excess of 25 feet will be preserved along the entirety of the floodplain, with the exception of the minimal intrusions necessary for construction of VDOT public roads identified on the Countywide Transportation Plan and installation of utilities. The Applicant is committed to the preservation of the floodplain and the buffer, which will promote water quality with the uses proposed on the Property. Density for the development is depicted on Sheet 13 of the Concept Plan as 0.37 with credit for the floodplain and 0.73 without credit for the floodplain.

**Comment:** 2. ERT has reviewed the zoning modification request for reducing parking lot and street tree landscaping requirements. The criteria for accepting modifications include achieving an innovative design, improving upon existing regulations, or otherwise exceeding the public purpose of existing regulation, per ZO Section 6-1504. The Mixed Use Business district's purpose is to "create an attractive environment in which to work, live and play," per ZO Section 4-1351. Reducing parking and street vegetation may work against MUB's purpose by worsening urban heat island effects, lessening pedestrian comfort during summer months. If this modification is pursued, Staff recommends application of the following measures to minimize urban heat island effects, while also improving stormwater management design and minimizing pond areas:

- Including vegetated green roofs for buildings adjacent to the modified parking and street areas;

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- Clustering vegetation into pocket park areas that also act as bioretention rain gardens, with appropriate under-drains connecting to storm pipe networks;
- Designing parking surfaces with open grid pavement, where the pavement is less than 50% impervious and contains vegetation in the open cells.

**Response:** The Applicant's proposed modifications of Sect. 4-1358(B)2 and Sect. 4-1358(C) are components of the overall streetscape concept that will provide sufficient planting area to support healthy vegetative growth and an adequate buffer between parking, travelways and pedestrian areas. Additional greenspaces and pocket parks will be depicted on the revised Concept Plan. Innovative Best Management Practices (BMP) will be studied and provided in site plans where deemed acceptable. Some of these BMP strategies will provide additional green space, thereby combating urban heat island impacts and mitigating any potential adverse impacts of these requested modifications.

**Issues related to the Zoning Ordinance and Revised General Plan (RGP):**

**Comment:** 3. Regarding stormwater management, highly permeable soils exist on site, including soil mapping unit 94B, Allegheny silt loam. Such highly permeable soils are rare in Loudoun County and offer unique low impact development potential. Staff recommends preservation of land within this mapping unit for use as bioretention basins, a recognized approach in the Virginia Stormwater Management Handbook. Making use of highly permeable soils also minimizes excessive runoff volumes into waterways by maintaining groundwater recharge, helping address issue of consideration 5 per Section 6-1211(E) of the Revised 1993 Zoning Ordinance, also meeting Green Infrastructure Policy 2 of the RGP.

**Response:** Preservation of soil mapping unit 94B in its entirety is not feasible, as this area consumes prime development portions of the Property. In lieu of preserving these areas for use as bioretention basins, water quantity and quality controls will be provided on-site in accordance with the requirements of the FSM and the Virginia Stormwater Management Handbook through the use of both traditional and innovative methods.

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**Issues related to the Revised General Plan:**

**Comment:** 4. To best implement wetland and stream mitigation commitments, Staff suggests the following:

- "Proposed possible areas of wetland mitigation" and "Anticipated area for wetland mitigation" are depicted on the concept development plan (CDP) and described in draft commitment language. Staff is aware of growth of sycamore trees in the "anticipated areas" that could complicate mitigation bank approval. Consequently, Staff recommends switching the "anticipated areas" and "possible areas" depictions on the CDP.

**Response:** **The Applicant will switch the areas as suggested.**

- Approved VWP Individual Permit Number 07-1941 includes maps of wetland compensation areas that do not include the "Anticipated area" location (though it does recognize stream buffer replantings.) Switching these labels as recommended would better align the rezoning proposal with approved state wetland permits.

**Response:** **The labels will be switched as suggested.**

- Army Corps of Engineers permit NAO-2007-3622 and Virginia Department of Environmental Quality permit 07-1941 are referenced as the requisite approvals for the stream and wetland impacts associated with the application. However, these permits relate to the proposed by-right development of the Property and will need to be revised based upon the proposed uses identified on the Concept Development Plan. Staff recommends that the revised development plan be submitted to the permitting agencies for review and comment.

**Response:** **The Applicant acknowledges the requirement to apply for modifications to these permits to allow the disturbances for the uses proposed with this rezoning, but the areas to be disturbed are the same as approved with the existing permits. Considering that the amount of disturbance proposed with this ZMAP application is no greater than that proposed with the by-right development, the Applicant does not anticipate any difficulty in gaining approval of the necessary modifications. The Concept Plan and**

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**Proffer Statement will be revised to reference the requirement to obtain the necessary modifications prior to commencement of any site work associated with this rezoning.**

- Any commitment to pursue off-site wetland or stream mitigation should specify mitigation within Loudoun County, if opportunities are not available within the Broad Run watershed, consistent with River and Stream corridor policy 23 of the RGP, also subject to approval by the Corps and the Virginia Department of Environmental Quality (DEQ).

**Response:** The Applicant proposes to construct wetlands and stream mitigation on-site, and potentially a small wetland mitigation bank area. Therefore, all mitigation will occur within the Broad Run watershed, consistent with the policies of the River and Stream Corridor policies of the RGP.

**Comment:** 5. The River and Stream Corridor Resources policies of the Revised General Plan (Policies 2.c and 2.d on Page 5-6) require adjacent steep slopes (25 percent or greater) that start within 50 feet of streams and floodplains and extend no farther than 100 feet beyond the originating stream or floodplain to be included within the stream buffer. A 50-foot management buffer is then required surrounding the floodplain and adjacent steep slopes. Adjacent steep slopes are not currently identified on the plan or included within the stream buffer, including proposed Landbay B on Sheet 30. Staff recommends that the "50-foot management buffer" depicted on Sheets 8-12 of the Concept Development Plan be revised to account for adjacent steep slopes consistent with plan policies. Staff further recommends that a commitment be provided establishing that the buffer will be preserved in its natural state.

**Response:** Very Steep Slopes are depicted on the Concept Plan in conformance with the policies of the Revised General Plan. Those Very Steep Slopes located adjacent to the Broad Run floodplain near Land Bay B will be preserved through the protection of the 50-foot management buffer. The Proffer Statement will be revised to include restoration of any disturbances of the 50-foot management buffer that may occur through permitted activities, such as utility improvements.

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Comment: 6. Green building opportunities and applications have significantly expanded since the Kincora rezoning application was considered in 2007, including the following:

- Endorsement of LEED as the preferred building standard for commercial and multi-story residential uses by the Council of Governments in December 2007, and subsequent endorsement of said report by the Board of Supervisors in April 2008.
- LEED registration for every building type proposed by this application in the Northern Virginia region, including multiple office applications in the Route 28 corridor and retail uses in the Route 50 corridor in Loudoun County.
- Adoption of CPAM-2007-0001 guiding principle 12 for housing – "The County encourages development that utilizes energy efficient design and construction principles, promotes high performance and sustainable buildings, and minimizes construction waste and other negative environmental impacts."
- Formal endorsement and successful application of various green building standards for multi-family homes and/or non-residential buildings nationwide, including the National Green Building Standard (ICC 700-2008), LEED, and Passive House.
- Availability of clean, non-potable water for non-potable water uses via the LCSA purple pipe program.

Staff supports a built design with this application that helps to sustain the natural environment, consistent with RGP language on page 5-2, including measures that conserve energy and water consumption, minimize waste generated during construction, and maintain interior and exterior air quality. RGP policies supporting these design measures include policy one, page 2-20; policy two, page 2-23; policy one, page 5-5; and policy one, page 5-41. Staff recommends incorporation of these design approaches into all proposed uses and building sizes. The built design should quantifiably and verifiably reduce

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energy use, potable water demand, single occupancy vehicle use, construction waste generation, and maintain a high indoor air quality.

**Response:** The Applicant is committed to constructing buildings at Kincora that incorporate LEED characteristics of energy and water efficiency, indoor air quality, and a reduction in the generation of waste materials. The Applicant will revise the Proffers to ensure that each office and/or multi-family residential building greater than 4 stories will be designed and constructed to meet LEED certification standards.

**Comment:** 7. The Forest, Trees, and Vegetation Policies of the Revised General Plan encourage the preservation of existing vegetation (Page 5-32). For clarity and timely implementation, Staff recommends the following for tree preservation:

- Use consistent nomenclature between proffer language and concept development plan. Currently, draft proffer language refers to "tree preservation areas," while Sheets 22 and 23 depict "tree save areas." Staff suggests "tree conservation areas."

**Response:** The Concept Plan will be revised to reflect the language used in the Proffer Statement. The term "tree conservation area" is not used because it suggests recordation of a conservation easement, which may or may not be provided over all areas that will be preserved.

- Revise the timing of replacing healthy trees that were damaged. Current language requires this prior to bond release. Staff suggests prior to occupancy for buildings proximate to the tree loss.

**Response:** The Applicant will revise the timing of this commitment in the Proffer Statement.

**General issues:**

**Comment:** 8. Staff recommends correcting the following general note on Sheet 1: Note 7 indicates plans to remove extant wells, springs and drainfields. Staff recommends removing springs from this list, as they are natural features, and their removal may necessitate a federal and/or state permit.

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**Response:** No springs were identified on the Property during field studies by the Applicant's consultant, Wetlands Studies and Solutions, Inc., and as approved by the U.S. Army Corps of Engineers in association with the approved wetlands permit.

**Comment:** 9. Regarding the Statement of Justification document, dated October 31, 2008, Staff recommends further clarification of issue eight in this document, "Whether a reasonably viable economic use of the subject Property exists under the current zoning." The Applicant states on page seven in this sections that it "has not pursued by-right PD-IP uses on the site...." Staff recommends updating this statement to reference STPL-2008-0042, proposing 145,000 square feet of manufacturing space and its associated infrastructure, submitted to Building and Development on August 22, 2008.

**Response:** The pending site plan proposes by-right uses of a portion of the Property, which would be pursued if this rezoning application is not approved. Even if constructed, the use proposed in the by-right site plan would not provide a significant economic return for the Applicant and would not provide the type of Keynote Employment uses and design recommended by the Revised General Plan or the necessary road improvements recommended in the Countywide Transportation Plan. The development proposed by this rezoning is the Applicant's preferred development of the subject property. The Statement of Justification will be revised to address the presence of the pending site plan for by-right uses of the Property.

**OFFICE OF TRANSPORTATION SERVICES**

The Office of Transportation Services referral comments will be addressed in a subsequent memorandum from Gorove/Slade Associates.

**VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT)**

The VDOT referral comments will be addressed in a subsequent memorandum from Gorove/Slade Associates.

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**PROFFER COMMENTS**

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I.A. Please label Sheets 24-28 of the Plan Set as "Illustrative" as stated in Proffer I.A.

**Response: The Concept Plan will be revised accordingly.**

I.C. Please consult with the Department of Management & Financial Services regarding the required pre-payment of taxes related to the development of residential units within the Route 28 Tax District.

**Response: The Route 28 Tax District was established with a provision that permits the prepayment of taxes for property that becomes non-taxable for purposes of the Tax District after such prepayment of taxes has been submitted to the County. In accordance with the state enabling legislation for the Tax District, prepayment of these taxes must be submitted within sixty days of rezoning approval or else the rezoning approval becomes null and void. The Applicant will work with the Department of Management & Financial Services to establish the appropriate amount of the prepayment of Route 28 taxes to permit the removal of the relevant portion of the subject property from the Route 28 Tax District.**

I.D. County policy dictates that the Applicant provide 6.25% of all multi-family units, as Affordable Dwelling Units (ADU's) within the zoning map amendment, unless exempted under Article 7 of the Revised 1993 Zoning Ordinance. Article 7 exempts the provision of ADU's in buildings greater than four stories with elevators. Please revise the Proffer Statement to clarify whether the proposed multi-family residential units will be provided in buildings four stories or greater with elevators. The location of the required ADU units need to be dispersed throughout the market rate units on the Property, and their location needs to be displayed on the record plat.

**Response: The Applicant acknowledges that some of the multi-family residential buildings may be exempt from providing ADUs. Regardless, the**

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Applicant has voluntarily committed to provide a minimum of 6.25% of the market rate units as ADUs. In accordance with the requirements of Article 7 of the Revised 1993 Zoning Ordinance these units will be depicted on applicable record plats, though they may not necessarily be dispersed throughout the entire Property, which will be determined by the ultimate builder of these units. Since the provision of ADUs may not be required, this will not conflict with the requirements of Article 7. If deemed necessary, the Applicant could request a modification of Sect. 7-104(C) in order to permit the ADUs to not be dispersed throughout the site among the market rate units, which would give a future builder flexibility to construct a building dedicated to ADUs and workforce housing units.

I.E.

The Applicant will need to work with County Staff regarding the provision and administration of the proposed workforce housing units. Please revise the Proffer Statement to clarify the following issues:

1.) Section 7 of the Zoning Ordinance only applies to ADU's. How will workforce housing units be administered under the Zoning Ordinance?

Response:

**The Revised 1993 Zoning Ordinance does not address the provision of workforce housing units, which are recommended by the Revised General Plan. The Applicant proposes to provide and administer the workforce housing in a manner similar to Article 7 of the Revised 1993 Zoning Ordinance and Chapter 1450 of the Loudoun County Code. The only difference is that the workforce units will be available to those County residents whose median income is up to 100% of the Area Median Income ("AMI").**

2.) Can workforce housing be entirely located within one building? ADU's are required to be dispersed throughout the entire zoning map amendment area to integrate the units into the community. Would placing all of the workforce housing units into one building be allowed?

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**Response:** Although ADUs may not be required on the Property, the Applicant has committed to provide up to 16.25% of the total market rate units approved on the Property as a combination of ADUs and workforce housing units. Since workforce housing units are not governed by the Revised 1993 Zoning Ordinance, the Applicant desires the flexibility to group a majority of the ADUs and workforce units in a single structure or to disperse them throughout the site. Locating a majority of these units within one building may provide an attractive incentive for a future builder who could utilize grants, tax credits and other financing techniques that would enable the provision of this greatly needed housing type.

3.) How does the Applicant define the 100% income level for Loudoun County? The area median income used to determine eligibility for workforce housing units should be HUD specified, and specific to Loudoun County income levels, not the Washington Metropolitan Area Median Income.

**Response:** In accordance with Article 7 of the Revised 1993 Zoning Ordinance, all ADUs and workforce housing unit qualifying income limits will be based upon the Washington Primary Metropolitan Statistical Area. The Proffer Statement will be revised accordingly.

4.) The Applicant needs to clarify whether the proposed workforce housing units are for sale, rental, or a mix of both. County Staff believes there is a need for rental housing for residents at the lowest end of the income scale; for sale units are needed for residents with incomes closest to 100% of the regional median income level.

**Response:** The Proffer Statement does not specify whether the workforce housing units will be rental or for-sale units. This decision is market-driven and would be determined in the future once a builder is selected to construct such units.

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I.F. Please revise Proffer I.F.1. to provide that at least 750,000 square feet of non-residential uses shall be issued zoning permits prior to the issuance of the 751st residential zoning permit on the Property. Please clarify what is meant by the term "Residue Portion." If the Residue portion is offsite from the limits of the proposed zoning map amendment area, then it should be taken out of the Proffer Statement. The development of residential units should be phased according to corresponding levels of non-residential development within the zoning map amendment area.

**Response:** This Proffer will be revised to require that zoning permits be issued for the requisite amount of non-residential uses prior to the issuance of zoning permits for residential units in excess of that permitted in the first phase of development. The "Residue Portion" is the portion of PIN 041-29-8238 that is subject to SPEX 2008-0054, and is located outside of the ZMAP application area. Including development on the Residue Portion in this phasing proffer is beneficial not just to the Applicant, but to the County because it will permit an accelerated development schedule that will benefit the public through tax base expansion and the timely construction of the regional road crossings of Broad Run.

Please revise Proffer I.F.2. to provide that at least 1,550,000 square feet of non-residential uses shall be issued zoning permits prior to the issuance of the 926th residential zoning permit on the Property. If the Residue portion is offsite from the limits of the proposed zoning map amendment area, then it should be taken out of the Proffer Statement. The development of residential units should be phased according to corresponding levels of non-residential development within the zoning map amendment area.

**Response:** The Proffer Statement will be revised according to the above response.

I.G. Please revise the Proffer Statement to clarify the terms of the reservation and dedication of the Center for Performing Arts/Civic Use Site. Please be advised that the County has no capital facility standard for a Performing Arts Center; therefore, the reservation and dedication of the Performing

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Arts Center parcel is not eligible for a capital facility credit. Please be further advised that the County cannot grant capital facility credits for the dedication of a parcel to a non-profit group or agency.

**Response:** **The Applicant acknowledges that capital facility credit cannot be granted for the Performing Arts Center, though it is anticipated that this facility will provide an opportunity for the performing arts in Loudoun County unlike any existing facility in Northern Virginia.**

County Staff would like the Applicant to clarify the following issues regarding this Proffer:

1.) Staff believes that 2-acres are not large enough to construct and adequately park a Performing Arts Center. Would there be a shared parking arrangement with adjacent uses? Would the Applicant consider reserving and dedicating a larger parcel?

**Response:** **Parking for the Performing Arts Center will be provided in a parking structure on the Property and subject to a shared parking agreement with other uses. The Proffer Statement will be revised to address this parking issue. The Applicant believes that two acres are sufficient to support the construction of such a Performing Arts Center and does not believe that a larger area is needed since parking will not be part of the identified two acres.**

2.) Is the donation of the site proposed to be to the County? If so, then the site should be labeled as a "Public Use Site" to allow the County adequate flexibility in determining alternate public uses for the site in the event a Performing Arts Center cannot be developed by the County or another non-profit group.

**Response:** **The Performing Arts Center will be dedicated to either the County or a non-profit organization for the sole purpose of constructing such a facility. The Concept Plan will not be revised to reflect this area as a "Public Use Site" because the two acre area is intended for use as a**

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**performing arts center only, and not for some other public use identified by the County.**

3.) Is the eventual dedication of the site to a non-profit or community group at the discretion of the Applicant or the County? It is unclear if the County is supposed to take possession of the parcel regardless of whether or not it is dedicated to another organization.

**Response:**

**The Proffer will be revised to provide greater clarification regarding the conveyance of the two acre area for use as a performing arts center. The County will be given preference regarding the dedication of this area, but if so refused, the area may be dedicated to a non-profit organization.**

4.) Is 10 years a feasible timeframe in which to put together a Site Plan? Is 15 years a feasible timeframe to fully fund and permit such a facility?

**Response:**

**The Applicant believes that the timeframes identified in the Proffer Statement are sufficient.**

5.) Construction on the site will be dependent upon the availability of adequate public road access to the Site and the provision of all required utilities to the site.

**Response:**

**All necessary utilities will be provided to the site of the Performing Arts Center.**

6.) Please depict the location on the CDP, and provide text within the Proffer Statement, that defines the approximate location of the alternate location for the Performing Arts Center/Civic Use Site in the event the Applicant chooses to move the site after the initial 10-year time frame is up.

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- Response:**        **The Concept Plan provides a conceptual layout of how the Property would develop in accordance with the Proffers. It is not necessary to specify the exact location of an alternate site for the Performing Arts Center other than to state that an area of equivalent size will be provided in the northeastern portion of the Property for such use.**
- II.B.                Please revise the Proffer Statement to change all references of the "Loudoun County Sanitation Authority" to "Loudoun Water."
- Response:**        **The Proffer Statement will be revised accordingly.**
- II.C.4.c.           Please be advised that while the County maintains all Stormwater Management facilities in the County, the County is only responsible for maintaining certain types of stormwater management facilities. Please consult with the County's Office of General Services regarding the types of Stormwater Management facilities to be developed on the Property, and to be managed by the County.
- Response:**        **The Applicant acknowledges that certain stormwater management facilities, such as underground detention facilities, will not be maintained by the County. This Proffer will be revised to require that the Applicant provide maintenance of any stormwater management facilities that do not meet the County's criteria for public maintenance.**
- II.G.                Please consult with the Office of the County Attorney regarding the altering or vacating of any open space easements on the Property held by the County. Staff requests that the Applicant clarify where the "replacement" open space, the land that will replace any open space eliminated on the Property as a result of the approval of ZMAP-2008-0021, will be provided. Please specify that the open space will be replaced by the Applicant, acre for acre, within the Ashburn Planning Subarea of Loudoun County. Please also specify a timeframe in which the replacement land will be acquired, dedicated or leased to the County.

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<b>Response:</b>	<b>This Proffer is similar to one the Applicant developed with the County Attorney's office in the previous rezoning application.</b>
III.B.	Please clarify the final sentence of this paragraph. If the Community Development Authority is only tasked with collecting funds required to construct Pacific Boulevard and Gloucester Parkway, what will the CDA be using unused balances from the construction of Pacific Boulevard for?
<b>Response:</b>	<b>There will be no unused balances. The CDA will only collect sufficient funds to pay the debt service on the costs to construct the improvements permitted under the CDA Petition and Ordinance.</b>
III.C.2.	Please add the words "The Owner shall construct . . ." at the beginning of the first sentence regarding the extension of Pacific Boulevard.
<b>Response:</b>	<b>This Proffer will be revised accordingly.</b>  Please revise the Proffer Statement to provide for the use of eminent domain by the County in the event off-site right-of-way cannot be acquired through good faith efforts by the Applicant, to complete the necessary off-site connections across the Broad Run for Pacific Boulevard to connect with Russell Branch Parkway, and for Gloucester Parkway to connect with Loudoun County Parkway. Please specify that all costs associated with the eminent domain proceedings will be borne by the Applicant, including all applicable land acquisition costs.
<b>Response:</b>	<b>This Proffer will be revised accordingly.</b>
III.D.2.a.	Please revise the Proffer Statement to provide specific details as to where the construction of Pacific Boulevard will end for Phase 1A. The Proffer Statement does not provide for an exact location where the construction of Pacific Boulevard will end for Phase IA.
<b>Response:</b>	<b>As defined in this Proffer, the northern termination point of Pacific Boulevard during this phase will be determined according to the uses</b>

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**constructed during this phase, which will define which entrance from Pacific Boulevard will be required.**

III.D.3.a. Please note, Pacific Boulevard and Road 3 do not intersect. Please revise the Proffer Statement to provide for the location where the construction of Pacific Boulevard will end for Phase 1.B.

**Response: This Proffer will be revised to clarify the northern termination of Pacific Boulevard according to the description above.**

III.D.3.c. Please revise the first sentence of this Proffer to state, "In the event signalization is not provided by others, the Owner shall install a traffic signal at the Gloucester/Pacific intersection, . . . "

**Response: This Proffer will be revised accordingly.**

III.D.4.a. Please note, Pacific Boulevard and Road 6 do not intersect. Please revise the Proffer Statement to provide for the location where the construction of Pacific Boulevard will end for Phase 2.A.

**Response: This Proffer will be revised to clarify the northern termination of Pacific Boulevard according to the description above.**

III.D.6.a. Staff requests the Applicant clarify why the connection of Gloucester Parkway to Loudoun County Parkway is not occurring until Phase 3 (full buildout) of this zoning map amendment application? The connection of Gloucester Parkway to Loudoun County Parkway is an essential link in moving traffic along Pacific Boulevard into and out of the development, across Route 28 to Nokes Boulevard, as well as providing improved traffic connections within Ashburn and the Route 28 corridor for Emergency Responders. Please consult with the Office of Transportation Services regarding the phasing and delivery of this connection.

**Response: As explained in the traffic impact study ("TIS"), the extension of Gloucester Parkway across Broad Run is not necessary to support the**

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**proposed development until Phase 3. The Applicant cannot afford to, and should not be required to, provide a regional road improvement at a stage where such improvement is not required for the amount of development on the Property at that stage. Only through creation of a CDA such as that requested by this Applicant, can the Gloucester Parkway connection across Broad Run be constructed prior to Phase 3.**

III.E.1.

The Applicant has neglected to request the County's assistance for the use of eminent domain to assist in acquiring off-site right-of-way, if it cannot be acquired first through the Applicant's good faith efforts, for Gloucester Parkway. The Proffer only provides for the use of eminent domain for Pacific Boulevard. Please revise the Proffer Statement to provide for the use of eminent domain by the County in the event off-site right-of-way cannot be acquired through good faith efforts by the Applicant, to complete the necessary off-site connection across the Broad Run for Gloucester Parkway to connect with Loudoun County Parkway. Please specify that all costs associated with the eminent domain proceedings will be borne by the Applicant, including all applicable land acquisition costs.

**Response:**

**This Proffer will be revised accordingly.**

III.F.

Staff requests that the Applicant show all of the proposed locations for traffic signals on the Concept Development Plan (CDP). In the Proffer Statement text, the Applicant never specifically states where the proposed locations of the traffic signals will be at intersections along both Gloucester and Pacific Boulevard. For the purposes of determining cash in lieu of traffic signal contributions, it is important to know the exact locations and the number of proffered traffic signals within the zoning map amendment area.

**Response:**

**The Proffers will be revised to provide clarity regarding the location of potential traffic signals.**

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Staff also requests that the Applicant consult with the County's Office of Transportation Services and the Department of Fire & Rescue Services regarding the proposed cash in lieu of traffic signal installation contributions. The Proffer Statement currently provides for cash in lieu of construction contributions of \$160,000 per signal. With traffic signal pre-emption devices required to serve the proffered Public Use Site, which is intended to be developed as a Fire & Rescue Station, Staff believes the average cost per signal is higher than \$160,000 and should be revised.

**Response:** **The Applicant will consult with the County's Office of Transportation Services, the Department of Fire & Rescue Services and their transportation engineers to determine the estimated value of such traffic signals. This Proffer will be revised according to the results of this consultation.**

III.G. Please revise the last sentence of this section to provide that, "As determined by the County, such contribution shall either be used to reimburse the party who constructed such improvements, or for regional roadway or transit improvements in the vicinity of and for the benefit of the Property."

**Response:** **This Proffer will be revised accordingly.**

III.I. Please revise the Proffer Statement to clarify the details regarding the Temporary Park & Ride Lot. Please address the following information:

1.) Where is the proposed location of the temporary lot? Please depict the proposed location on the CDP, and provide text within the Proffer Statement that describes its location.

**Response:** **The Concept Plan will be revised to show potential locations for the Temporary Community Parking Lot and the Proffer Statement will be revised to reference such location.**

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2.) How many acres is the Applicant proffering for the County to use?  
How many parking spots is the Applicant proffering for the County to use?

**Response:** **The Concept Plan and Proffer Statement will be revised to provide specific information regarding the size and number of parking spaces that will compose the Temporary Community Parking Lot.**

3.) Why is the Temporary Park & Ride Lot offered to the County only for 5 years?

**Response:** **The 5 year period is envisioned to be the stabilization period for the commencement of bus service to this area. Once the stabilization period is complete, it is assumed that sufficient residential development elsewhere along the route will provide bus shelters, thereby rendering the Temporary Community Parking Lot obsolete.**

4.) What features will the Applicant be willing to provide (lighting, bus loop, etc.) within the Park & Ride Lot?

**Response:** **Standard parking lot lighting will be provided with this lot. The Proffer Statement has been revised to include this commitment.**

5.) Is the Applicant proffering to provide excess surface or structured parking associated with other development on the site as the temporary Park & Ride Lot? Or is the Applicant proposing to construct spaces for the County to use separate from other uses within the zoning map amendment area?

**Response:** **The Applicant is proposing to allow the County to use a portion of the parking provided for uses on the subject property and the adjacent "Residue Portion," which will be used during different time periods for the other uses.**

Please revise the Proffer Statement to provide the cash contribution for transit to be made earlier than the 1,000,001 square foot of office use.

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Commuter Bus Service can be provided to the Property as soon as development occurs on the Property. The transit cash contribution should be provided in Phase 1A of the development.

**Response:**

**It is our understanding that transit service will not be available to the Property until Pacific Boulevard is constructed across Broad Run and intersects with Russell Branch Parkway. This connection is proposed to occur during Phase 2 of the Kincora project. This Proffer will be revised to accelerate this contribution to be contingent upon the execution of a funding mechanism to provide service on Pacific Boulevard.**

III.J.

Please revise the Proffer Statement to eliminate the 20-year sunset on the Applicant's delivery of two bus shelters along Pacific Boulevard. Bus Service to the Property will be dependent on the level and type of development on the Property, not a specific timeframe that is not related to the level of development within the zoning map amendment area.

**Response:**

**This Proffer will be revised to provide a cash contribution (equivalent to the cost of construction for two bus shelters) to the County for installation of future bus shelters at these locations if service along Pacific Boulevard does not commence within the specified 20 time period.**

A large 16-foot long bus shelter shall be required to serve transfer points, commuter bus stops and other locations where high boarding concentrations are anticipated. A smaller 12-foot long bus shelter shall be provided in other locations. Solar lighting shall be provided inside bus shelters with both timer and motion detector options. Exceptions may be made when other sources of lighting are available, i.e., overhead street light. All frames, roof panels, hardware and accessories associated with the bus shelters on private property shall be the responsibility of the property owner to guarantee repair and/or replacement of worn-out/defective parts. The County will supply appropriate schedules and/or brochures for placement in shelter display racks.

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**Response:** This Proffer will be revised to require that the Applicant coordinate the design of such bus shelters with the Office of Transportation Services at the time of site plan to ensure that the correct type of shelter will be installed on the Property once bus service on Pacific Boulevard commences.

III.K. Please revise the Proffer Statement to provide for the implementation of a Transportation Demand Management (TDM) Program at the initial phase of development for the zoning map amendment application. The Proffer Statement should reflect the initiation of the TSM program upon issuance of the first zoning permit within the commercial zoning districts. The program needs to be in place when the first employees are hired and working from the area, and can be used by employers to help recruit potential employees.

**Response:** This Proffer will be revised to accelerate the formulation of a TDM program on the Property.

Please revise Proffer III.K. to provide the following TDM conditions:

**K. Transportation Demand Management Program.**

Prior to issuance of the first zoning permit for non-residential uses (exclusive of any hotel uses), the Owner shall implement a Transportation Demand Management (TDM) program whose objective is to reduce peak hour vehicle trips to and from the site. The means to achieve this objective over the build-out period for this site may vary from time to time as knowledge is gained about specific factors and as the area and region develop. Elements of this program shall include:

1. Identify Employer Transportation Coordinators (ETCs) for each employer/tenant. ETCs will promote and encourage commuting alternatives in cooperation with other private and public TDM efforts or Transportation Management Associations.

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2. Conduct initial and biennial employee commute surveys to benchmark and measure strides toward the reduction of vehicle trips and vehicle emissions.
3. Provide preferential carpool/vanpool parking at reduced parking rates. All other office parking: paid.
4. Implement flexible and/or compressed work schedules for on-site employers.
5. Support transit service by encouraging all employers to provide qualified transportation fringe benefits as allowed under Section 132(f) of the Internal Revenue Code.
6. Construct and maintain permanent public information displays in all building for distribution of alternate commute information, including transit schedules, park-and-ride lot maps, rideshare programs and telework. In addition, encourage a presence on each tenant/employer's intranet site detailing alternate modes of transportation and other travel reduction measures.
7. Provide secure, weather-protected bicycle parking and accessible shower facilities in buildings containing greater than 100,000 square feet of office uses.

**Response:** This Proffer will be revised to provide more detail regarding the Applicant's proposed TDM program.

III.L. Please revise the Proffer Statement to clarify the terms by which shuttle bus service will be provided between uses in Land Bays L, N, and Q. How will demand for such shuttle bus service be determined? What type of shuttle bus service will be provided? Who will operate the service? What type of bus will be used? What will the hours of operation be? Etc.

**Response:** This Proffer will be revised to require that the shuttle service become operational during regular business hours upon issuance of zoning permits in excess of 2,400,000 square feet of non-residential, non-hotel uses.

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IV.C. Please be advised that the County has three capital standards for Parks: a Regional Park of 200 acres, a District Park of 75 acres, and a Community Park of 30 acres. The proffered Floodplain Area to be dedicated to the County as a natural park area does not fit any of the County's capital facility standards for parks; therefore, the Applicant is not be eligible to receive an automatic capital facility credit for the dedication of this site as a public park. The Applicant may obtain a capital facility credit for the dedication of this parcel as a park upon approval of the Loudoun County Board of Supervisors. Please revise the Proffer Statement to provide the total number of acres to be dedicated to the County in the floodplain located west of Pacific Boulevard.

**Response:** **This Proffer will be revised to provide the approximate acreage of the proposed dedication.**

VI.A. Please revise the Proffer Statement to clarify the following issues regarding the dedication of the Public Use Site to the County: 1.) Will the Applicant be able to subdivide, dedicate and convey within 60 days a 5-acre parcel to the County to meet the terms of the Proffers? 2.) Are there 5 useable acres in Land Bay N? Would the Applicant be willing to proffer an alternate 5-acre site in the event the County determines there are not 5-buildable acres in Land Bay N to develop a Fire & Rescue Station? Please explain the process to convey an alternate 5-acre Public Use Site to the County in the event the County does not have 5 useable acres in Land Bay N.

**Response:** **There exists 5 buildable acres within Land Bay N, which would be an ideal site for a fire and rescue facility. An alternate site outside of Land Bay N is not proposed, as this is the location preferred by the Fire, Rescue and Emergency Services staff.**

Please refer to the proffered "Fire & Rescue Site" as a "Public Use Site". The County's first preference for use of the 5-acre site is as a Fire & Rescue Station. However, the County refers to all proffered capital facility

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sites as "Public Use Sites" to ensure there is flexibility in the use of the site for other public purposes in the event a Fire & Rescue Station cannot be located at the site. Staff requests that the Applicant revise the Proffer Statement to eliminate all restrictive covenants or proffered restrictions on the future use of the Public Use Site. The County requires flexibility in the future use of the Public Use Site. The County is not in favor of accepting a site where its ability to use the site, after capital facility credits have been granted, is limited or restricted.

**Response:**

**The Concept Plan and Proffer Statement will be revised to identify this site as a "Public Use Site." The proffered restrictions for the site are necessary to ensure that this site will not be used for a public use that would be incompatible with the other uses proposed on the Property. These restrictions were discussed with Staff during the previous application.**

The Proffer Statement allows the County the ability to construct a temporary access road across Land Bay N to the Public Use Site until such time as access can be provided to the Site from Pacific Boulevard. The County requests that the Applicant revise the Proffer Statement that upon request of the County, the Applicant will construct a temporary access road across Land Bay N to access the Public Use Site until such time as access to the site can be provided from Pacific Boulevard.

**Response:**

**The Applicant will work with the County to ensure adequate access to the Fire and Rescue site to allow construction of the facility to commence timely. The Applicant anticipates that at least two lanes of Pacific Boulevard will be constructed to the proposed entrance to the Fire and Rescue facility by the time construction of the facility is completed.**

Please revise the Proffer Statement to eliminate any restrictions on potential uses on the Public Use Site. The language in the Proffer Statement regarding uses on the Public Use Site that the Applicant wishes to restrict is confusing. The Applicant may state their preference on which

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uses they would like the County to consider for the Public Use Site in the event a Fire & Rescue Station cannot be developed on the Property, but the Applicant should not limit the County's potential uses of the site.

**Response:**

**The Proffer restricts certain uses for the Public Use Site so that incompatible public uses, such as a detention facility, are not constructed on the Property.**

The Proffer Statement needs to stipulate that all permanent water and sewer, and underground telephone, electric, gas, cable, broadband and telecommunication lines will be provided to the proffered Public Use Site, at no cost to the County, prior to dedication of the site to the County. To ensure all public water and sewer are being provided to the site at no cost to the County, Staff requests that the Applicant pay for all tap fees and hookup charge backs to access the public water and sewer systems at the Public Use Site. The Proffer Statement needs to stipulate that the proffered Public Use Site will be excluded from the Owner's Association.

**Response:**

**The Applicant will extend necessary utilities to the Public Use Site with construction of Pacific Boulevard.**

Please note, the County requests that the Applicant not use the proffered public use site for staging, dumping, or other activities prior to conveyance of the site to the County. The County would request that the Applicant not disturb the Property until conveyance is finalized. The County needs to ensure that no dumping, stockpiling of construction debris or other harmful materials is occurring on the site prior to conveyance.

**Response:**

**This Proffer will be revised to restrict any such disturbance uses on the Public Use Site prior to dedication to the County.**

The Applicant's proffered site will be evaluated for suitability by the County against Loudoun County's Usable Land Criteria for Public Use Sites, and must meet these Criteria. The Criteria are available upon request from the County's Office of Capital Construction. The usable

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acreage must be exclusive of the encumbrances and conditions listed in the Criteria. The Applicant shall prepare and issue a report that demonstrates that the proposed site meets each of the Criteria.

**Response: The Applicant will prepare and submit the requested documentation for the proposed Public Use Site.**

**[Capital Facilities Contribution]** Please revise the Proffer Statement to provide a Capital Facilities Contribution for the proposed market rate, multi-family units being developed as part of the zoning map amendment application. The per unit capital facility contribution amount will not be known for certain until all appraisals of the proffered Public Use Site have been conducted, and other capital facility credits are determined and approved by the Board of Supervisors. It is sufficient to state that the Applicant will provide a capital facilities contribution of \$18,904 per market rate multi-family detached unit. The estimated value of the Capital Facilities Contribution for the market rate units, without any Capital Facilities Credits, is \$22,155,488.

**Response: The Proffer Statement will be revised to provide the appropriate Capital Facilities Contribution for the market rate dwelling units, minus any capital facility and/or regional transportation credits to which the Applicant is entitled.**

VII. Please revise the Proffer Statement to stipulate that all sidewalks and trails, other than those located on the Public Use Site, will be maintained by the Owner's Association (OA). The OA will also be responsible for the maintenance and landscaping of all common areas and open space, trash removal, recycling services, snow removal, and the maintenance of private roads.

**Response: This Proffer will be revised to expand upon the duties of the OA.**

VIII.C. Please revise the Proffer Statement to provide that all cash contributions to the County shall be calculated utilizing the most current Capital Intensity

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Factor (CIF). The CIF shall be adjusted annually in accordance with the Consumer Price Index (CPI-U) All Urban Consumers, Washington-DC-MD-VA-WV.

**Response:**        **This Proffer will be revised accordingly.**

**[Recycling Dropoff Center]** The County would like to co-locate a Public Recycling Dropoff Center (DOC), preferably in a location that abuts commercial uses in close proximity to the intersection of Gloucester Parkway and Pacific Boulevard. The recycling DOC would include a 3,000sf concrete or pavement area to house six recycling collection bins (8ft wide x 24ft long enclosed roll-off containers), and an access area of approximately 6,000sf for service vehicles and customer parking. The recycling DOC would need to be screened from residential uses by an opaque fence 8ft in height and must be at least 150 feet from any residential dwelling. Please refer to Section 5-607 of the County Zoning Ordinance and the Office of Zoning Administration for all applicable zoning requirements. The County Solid Waste Management Plan identifies the need for recycling DOCs to be established commensurate with population growth and states that co-location of recycling DOCs with other County public facilities should be considered as those facilities are developed. Please contact the Office of Solid Waste Management for suggested design specifications.

**Response:**        **The PD-MUB District does not permit this type of use. Therefore, it will not be provided on the Property.**

**[Recycling]** Recycling is mandatory in Loudoun County per Chapters 1084 and 1086 of the Loudoun County Codified Ordinance. Building design should include consideration for inside and outside storage of solid waste and recyclable materials to ensure future residents/commercial tenants are able to comply with the County recycling requirements. For non-residential establishments, Chapter 1084.08 (d) sets the minimum required storage capacity for recyclables at 25% of, and in addition to, the total planned solid waste storage capacity. Additionally, developers and

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contractors are encouraged to establish a recycling plan for recyclable materials that will be generated during land clearing, construction and demolition.

**Response: The Proffer Statement will be revised to provide commitments regarding recycling and construction waste management.**

[Litter Control and Prevention] Construction sites are required to have separate receptacles for construction waste and workers' litter per Chapter 1088.08(b) of the Loudoun County Codified Ordinance.

**Response: The Proffer Statement will be revised to provide commitments regarding construction waste management during construction of uses on the Property in conformance with the County Code.**

**GENERAL SERVICES**

**Comment:** The Department of General Services (DGS) has reviewed the above referenced proposal. This plan shows conceptual stormwater management facilities as dry detention facilities which are maintained by DGS when placed in proper easements. However it appears that underground facilities are proposed and these may not be eligible for maintenance by DGS depending on their type.

**Response: The Applicant proposes the potential installation of underground stormwater management facilities. These will be privately maintained.**

**HEALTH DEPARTMENT**

**Comment:** The Health Department recommends approval of this application. The proposed development will utilize public sewer and water. There seems to be remains of an old house and barn on PIN 041-29-8238 which may have a septic tank or well to be abandoned if they are found.

**Response: The Proffer Statement recognizes the likelihood of the presence of an existing well and septic system that will require removal in accordance with applicable state and local provisions.**

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**LOUDOUN COUNTY PUBLIC SCHOOLS**

**Comment:** As current capital facility proffer calculations indicate that public schools account for approximately 80 percent of Loudoun's estimated capital costs, a proportionate share of the Kincora Village Center capital facilities contribution should be set aside for public school capital projects in the region. This designation should be noted within the capital facilities Proffer Statement (or other appropriate documentation) for Kincora Village Center.

**Response:** **If deemed appropriate by the Applicant, the Applicant can identify a portion of any capital facilities contributions to be used for public school capital projects.**

**Comment:** In order to ensure that students residing within Kincora Village Center can safely walk to and from school bus stop locations, pedestrian walkways should be provided and allow for public access easements.

**Response:** **The pedestrian circulation details confirm that sidewalks will be located on both sides of the private streets in the Village area and crosswalks will be provided at intersections.**

**FIRE & RESCUE**

**Comment:** The Fire-Rescue Staff concurs with the referral submitted by the Office of Capital Construction/Proffer Matrix Group regarding the timing of conveyance, any additional site work that would be performed prior to conveyance, timing of utilities, signal pre-emption, access road etc. Staff respectfully requests that the Applicant revise the Proffer Statement to reflect the recommendations of the Proffer Matrix Group regarding the before mentioned issues. Regarding the timing of conveyance, Fire and Rescue is concerned that even though the Proffer Statement indicates that the Property would be dedicated and conveyed within 60 days of approval without the road network in place construction cannot proceed. The construction of a temporary road is not part of the budget. The Fire and Rescue Planning Staff respectfully requests that the developer would consider constructing the temporary access as part of the conveyance of the parcel.

**Response:** **See responses to Proffer Matrix Group comments.**

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**Comment:** Effective access to the existing and future road network is an important consideration in the strategic siting of a fire-rescue facility and our service plan goals. Staff defers to the Office of Transportation Services to determine if the proposed road network would adequately serve the proposed uses. However, Fire-Rescue Staff strongly recommends the Applicant consider the completion of Gloucester Parkway (crossing Broad Run) to provide an eventual connection to Loudoun County Parkway as part of the first phase of development.

**Response:** Gloucester Parkway will be constructed at the beginning of the project if a CDA is approved. In the absence of an approved CDA, Gloucester Parkway will be constructed when it is required to support the uses constructed on the Property.

**Comment:** The first submission of the application did not provide sufficient detail regarding adequate access and circulation of emergency vehicles throughout the Property. Due to the proposed height and lay out of the buildings, Staff requests information to demonstrate that access to the proposed structures (all sides) would not be compromised in order to achieve the Village Center concept.

**Response:** The private streets will be constructed on the Property to meet the standards for private streets provided in the FSM.

**Comment:** The Fire and Rescue Planning Staff is available to meet and/or provide the Applicant with additional information regarding our request. In addition, Staff respectfully requests that the Applicant would consider a contribution to the first due fire/rescue volunteer company.

**Response:** The Applicant has provided a proffered cash contribution for fire and rescue (see Proffer #VI.B.). The Applicant would like to meet with Fire and Rescue Planning Staff to discuss this contribution and to confirm all of its comments are addressed.

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**PARKS, RECREATION AND COMMUNITY SERVICES**

**Comment:** 1. The Applicant should demonstrate to Staff, the Planning Commission, and the Board of Supervisors how the active recreational and leisure needs of these new residents will be met without further taxing the existing public recreational facilities in eastern Loudoun County.

**Response:** **The Proffer Statement will be revised to provide additional information regarding the installation of private recreational amenities to serve the future residents, employees and visitors of the Property.**

**Comment:** 2. The Applicant is proposing to dedicate a 175-acre "natural park" within the Broad Run floodplain to the County for purposes of environmental protection and public passive recreation. Staff requests that all proffer and/or plan labels be revised to identify the proposed park as a "passive park." In order to fully evaluate this potential addition to the County park system, PRCS requests that the proposed park be clearly delineated throughout the Concept Plan, or that the Applicant provide a separate exhibit.

**Response:** **The Concept Plan and Proffer Statement will be revised accordingly. The Applicant would like to confirm that it has flexibility locate recreational fields in the vicinity of the corner of Gloucester Parkway and Pacific Boulevard.**

**Comment:** Staff notes that in the Statement of Justification, the park is described as containing 175, 168, and 167 acres. The previous rezoning application offered a dedication of 187.45 acres. The current Proffer Statement does not commit to a specific acreage in Proffer IV.C. Please revise and/or explain this discrepancy.

**Response:** **The Proffer Statement will be revised to provide the approximate size of the dedication of this passive recreational park facility.**

**Comment:** Public parking for the passive park and the heron rookery overlook is not shown on the Concept Plan. Please provide more information on how the public is to access the park and trail system. A trailhead with parking needs to be identified for point of entry.

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**Response:** The Proffer Statement will be revised to provide a requirement to reserve parking spaces within one-half mile of the public parking areas within close proximity to a trailhead to the passive recreational park facility.

**Comment:** 3. Please revise Sheet 1 to include the following note: *"Written notice shall be provided to the Director of the Department of Parks, Recreation and Community Services prior to any clearing, grading, mining of topsoil or earth fill, soil stockpiling, staging of equipment or materials, disposal of soil or waste material, or dumping on land that is to be dedicated to the County for purposes of public parks, active recreation, or passive open space."*

**Response:** The Concept Plan will be revised accordingly to include such a note.

**Comment:** 4. Please revise Sheet 1 to include the following note: *"All design and construction of facilities for dedication to Loudoun County Parks, Recreation and Community Services must be in accordance with the Loudoun County Parks, Recreation and Community Services Design and Construction Standards."*

**Response:** The Concept Plan will be revised accordingly.

**Comment:** PRCS requests that the Applicant revise Proffer IV.C., Sentence 1, on Page 26, to specify that the land dedication shall occur when requested by the County, but no later than at the time of the final record plat for the first residential phase associated with this application. It is the desire that PRCS receive the Property at the earliest date possible. In addition, Staff requests that the Applicant revise the Proffer IV.C., Sentence 2, on Page 26, to state that all future trail locations within the passive park are to be coordinated with PRCS prior to trail construction, and will be constructed within 6 (six) months of the completion of the wetland banks and trailhead construction.

**Response:** The Proffer Statement will be revised accordingly to provide clarification regarding the timing of the dedication and coordination with PRCS regarding trail construction.

**Comment:** 5. The Proffers state that the proposed trails to be developed in the natural park will be of a natural, pervious surface. Sheets 15 and 16 of the Concept Plan delineate an "8' Bike/Ped Trail" through the floodplain. All proffered facilities

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to be conveyed to the County for Parks are to be designed and constructed to PRCS standards. The proposed trails depicted within the proposed passive County park do not meet PRCS standards. The PRCS Design and Construction Standards Manual Detail TR-2.0 depicts a pervious trail to be a maximum of 5' wide and constructed of crushed 21-A stone or bluestone. Furthermore, trails within the floodplain are intended to be for non-intrusive passive recreational use, typically hiking and walking. Other uses are to be determined and permitted through PRCS approval. Please revise plan labels on Sheets 15 and 16 to read "Natural Surface Trail." Staff notes that bicycle accommodations are already proposed with the multi-use trail shown along Pacific Boulevard.

**Response:** The Concept Plan and Proffer Statement will be revised accordingly.

**Comment:** 6. Staff notes that Sheet 15 of the Concept Plan does not depict a trail along Gloucester Parkway and its crossing of Broad Run. Currently, there are very few existing stream crossings of Broad Run. The Loudoun County Bicycle and Pedestrian Mobility Master Plan (BPMMP), Chapter 4(A), Roadway Planning and Design Policy 1, states that "*Transportation facilities... will be planned, designed, constructed and maintained to accommodate shared use by motor vehicles, bicycles and pedestrians.*" In addition, the Loudoun County Bicycle and Pedestrian Mobility Master Plan (BPMMP), Chapter 5(C), Table 5-1, #22, identifies Gloucester Parkway to "*[integrate] bike/ped improvements into various road improvement projects.*" Please revise the crossing to depict multi-use trail accommodations on the bridge like the one shown along Pacific Boulevard and discussed in the Proffers.

**Response:** The Concept Plan and Proffer Statement will be revised accordingly.

**Comment:** 7. The Applicant should proffer connectivity to existing offsite pedestrian and/or multi-use trail facilities. Staff notes that the Applicant mentioned in their presentation to County Staff on March 30, 2009 that they intend to provide a connection from the trail in the passive park along the east side of Broad Run, under the Route 7 bridges, to the Potomac Heritage National Scenic Trail (PHNST) downstream in Bles Park, along the west side of the Broad Run. Please provide Staff with more detailed information on the proposed connections to the PHNST.

**Response:** The Applicant requests a meeting with PRCS Staff to discuss these details.

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Comment: 8. The Loudoun County Bicycle and Pedestrian Mobility Master Plan (BPMMP), Chapter 4(A), Roadway Planning and Design Policy, Bicycle Amenity Policy 1 states that, "*The County shall... ensure that adequate and appropriate bicycle parking is located at places of employment, within shopping centers and districts, at transit centers and park and ride lots, parks, at public buildings and at other appropriate public facilities.*" The Applicant should demonstrate to Staff, the Planning Commission, and the Board of Supervisors how bicycle parking accommodations are being met.

**Response: The Proffer Statement will be revised to provide information regarding the provision of secure bicycle storage and changing/shower facilities for office employees.**

Comment: 9. PRCS notes that the tollhouse was listed on the National Register of Historic Places in 1970, and was established as a County Historic District in 1972. PRCS is willing to work with the Applicant and other County Historic Preservation Staff to discuss viable options for the preservation and interpretation of this historic structure, including the re-routing of Pacific Boulevard and/or a relocation of the tollhouse to an appropriate public site.

**Response: The Broad Run Tollhouse and Bridge are not located on the Property. As shown on the Countywide Transportation Plan, the alignment of Pacific Boulevard may impact these resources. Should the alignment of this necessary regional road improvement remain as currently designed, the Applicant will coordinate with PRCS and the Department of Planning to address impacts to these resources, if any, in accordance with the requirements of the Revised 1993 Zoning Ordinance and the Heritage Preservation Plan. The Proffer Statement will be revised to outline such coordination regarding these historic resources.**

Comment: 10. Staff notes that Proffer I.G. discusses a 2-acre land reservation for a Center for Performing Arts/Civic Use Site to be donated to the County and/or a non-profit entity. Please be advised that the County has no capital facility standard for a Performing Arts Center or Civic Use Site; therefore, the reservation and dedication of the Performing Arts Center parcel is not eligible for a capital facility credit as a public use site without Board of Supervisors approval.

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Staff questions whether or not a 2-acre site would be large enough to adequately construct the proposed 550-seat performing arts center. Staff notes that the Applicant mentioned in their presentation to County Staff on March 30, 2009 that they have letters of intent from several non-profit arts organizations. Therefore, Staff recommends that the Applicant revise Proffer I.G. to remove all references of dedication to, or coordination with, the County.

**Response: The Applicant acknowledges that the Performing Arts Center will not be granted capital facilities credit. As designed, parking would be contained within a surface or structured parking area that would be shared with adjacent uses. Since parking will not be part of the 2-acre site, the Applicant believes that 2 acres is of sufficient size to permit construction of the proposed performing arts center. The County will be afforded the initial offer for dedication. Should the County desire not to accept the site for dedication, it will then be offered to a non-profit organization.**

\*\*\*\*\*

If you have any questions or require additional information, please call me at (703) 714-7464. We would like to meet with you and representatives of the key referral departments and agencies to review these revisions to the application. We suggest we schedule that meeting after you have had some opportunity to review this submission, but before the various departments and agencies have prepared their next referral memos – perhaps two weeks or so from today. Please let me know what works best for you.

With best regards,



John C. McGranahan, Jr.

cc: The Honorable Lori Waters  
The Honorable Robert J. Klancher  
Mr. Michael W. Scott  
Mr. Daniel P. Coughlan