



COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

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COMMITTEE ASSIGNMENTS:
GENERAL LAWS
TRANSPORTATION
SCIENCE AND TECHNOLOGY

October 2012

The Hon. Sean T. Connaughton
Secretary of Transportation for the Commonwealth of Virginia
Office of the Secretary of Transportation
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, VA 23219
Virginia Department of Transportation

Dear Secretary Connaughton,

On September 29th, we joined members of the Fairfax County Board of Supervisors and other local colleagues in touring Old Courthouse Spring Branch Stream Valley Park in Tysons Corner and meeting with the members of the Neighborhood Coalition to Save Tysons Last Forest. Hundreds of our shared constituents have concerns about the Fairfax County Department of Transportation's proposal to build a highway ramp through the valuable stream valley (part of "Option 3" of the Dulles Toll Road Ramp Study). They have documented their concerns on a comprehensive website and petition. Please review www.SaveTysonsLastForest.org. We share their concerns, have signed their petition, and respectfully request that you consider moving to eliminate this proposal from further study.

County and State Costs If Study Continues

The Fairfax County Park Authority describes irreversible impacts on Chesapeake Bay Resource Protection Area (RPA) land and on the Ash Grove Historic Site. It details the anticipated impacts to the parkland and stream valley, affecting the tree stands, wetlands, habitat, floodplain, stormwater management facilities, and water quality. According to the memo, if the proposal were to move forward, Director John Dargle, Jr. anticipates the need for a 4(f) review as well as a Section 106 review and other federal and state reviews.

The cost to the County, state, and federal governments to move through the approval process will be staggering. Please take appropriate steps to eliminate the option from further study. Doing so would eliminate unnecessary costs incurred in order to study what we find to be an unreasonable option. Our conclusions are based on our examination and study of the following topics:

- **Chesapeake Bay Resource Protection Area** -- The Park Authority memo points out that the entire road section on parkland would lie within the Chesapeake Bay Resource Protection Area (RPA), which is legally protected by the Chesapeake Bay Preservation Act of 1988 (Va. Code §10.1-2100 thru 10.1-2116). As you know, the state law strengthens local land use and other ordinances establishing criteria for the use, development and re-development of land, and further establishes limitations on land uses permitted within RPAs. Because waters protected under this law ultimately lead to the Chesapeake Bay, this is a very high legal standard of state and local protections.
- **Environmental Quality Corridor** - As we understand it, Fairfax County also envisioned its protection through its own Environmental Quality Corridor (EQC) categorization. The County then created the EQC program in 1975, and began referring to it as the Old Courthouse Spring Branch EQC by 1977 (as we noticed in the 1977 Tysons Corner Area Study report). Most of the 33 acres of the parkland are still protected as an EQC because it has all three necessary elements: a stream valley, wildlife habitats (including a potentially rare species of animal), and nationally-recorded “wetlands.”
- **Wetlands** - Because the stream valley includes nationally registered “wetlands,” we should be working to protect and restore the area, not pave over it. The Commonwealth has committed to restoring thousands of acres of wetlands throughout Virginia, and we would like to work with Fairfax County to meet this goal for the local wetlands. However, if FCDOT were to plan to put a highway through the wetlands, Virginia’s Nontidal Wetlands Act of 2000 requires state advisory agencies to conduct wetland permit review. These state entities include: the Virginia Institute of Marine Science (VIMS), with a mandate for general advisory service and specific responsibilities under the Tidal Wetlands Act; the Virginia Department of Game and Inland Fisheries (DGIF); the Virginia Department of Conservation and Recreation (DCR), the Virginia Department of Historic Resources (DHR). The federal National Resource Conservation Service (USDA-NRCS), the U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NOAA-NMFS) would likely be involved in the review as well.
- **Habitat & Rare Species** - The Virginia Department of Conservation and Recreation Natural Heritage Program would even play a role as, according to Park Authority Director Dargle’s memo, there is a state record of a rare invertebrate species possibly being on the property. He writes, “If this species were present, the proposed project would wipe out the suitable habitat with no opportunity to conduct on-site mitigation.”
- **Floodplain** - The stream valley includes a “100-year floodplain,” which implicates other regulatory protections and state objectives. The stream valley provides natural storage for excess water when the stream overflows during a storm. This is critical to ensure that adjacent neighborhoods and roadways don’t flood. The Park Authority memo notes, “the grading and filling requirements of this road section would likely raise the floodplain elevation for Old Courthouse Spring Branch, which could violate state and federal “non-rise” regulations.” The Virginia Flood Damage Reduction Act of 1989 and other floodplain regulations are meant to protect life, health, and property by preventing floods from occurring in the area; minimize public expenditures for costly flood control projects;

minimize business interruptions; and minimize damage to public facilities. The Virginia Department of Conservation and Recreation manages this program with the Virginia Resources Authority. One of the ways in which the DCR Division of Dam Safety and Floodplain Management pursues these objectives is by managing development in identified flood hazard areas.

- **Stormwater Management & Water Quality of Difficult Run Watershed** - The County planned to preserve the stream, part of “Difficult Run Watershed” (which drains directly into the Potomac), because the critical improvements there will restore water quality for the Tysons area. Through the Virginia Stormwater Management Program, DCR implements the Virginia Stormwater Management Act. As you know, properly managed stormwater protects our lands from erosion, properties from flooding, and waters from pollutants. However, the absence of stormwater management leads to sediment, nutrient and pollutant transport, further polluting the Potomac River and Chesapeake Bay. We look forward to a productive state and local partnership to restore Old Courthouse Spring Branch stream valley, which will also contribute to better stormwater management in Tysons Corner and the down-stream waters.
- **Ash Grove Historic Site** - The proposed site of the highway ramp would also potentially destroy or compromise the Ash Grove Historic Site. Because of potential destruction of the Ash Grove Historic Site, Park Authority Director John Dargle indicated that the project would be subject to Section 106 of the National Historic Preservation Act, thus VDOT would be required to coordinate with the Virginia Department of Historic Resources and the U.S. Army Corps of Engineers. The Park Authority would request that VDOT archaeologists coordinate with the Cultural Resource Management and Protection Section (CRMP) to ensure sufficient archaeological testing is conducted in the proposed impact areas. Originally owned by the family of Lord Fairfax, then the Sherman family (who donated 18 acres of Old Courthouse Spring Branch in 1978 and the house itself in 1997), the Ash Grove Historic Site is currently owned by the Fairfax County Park Authority, intended to be preserved and exhibited as a historic site.

Additional Legal Costs

From our understanding, the park’s very creation was based upon the County’s agreement to protect its natural resources. From 1976 to 1999, six deeds that transferred the land from private to County ownership include legal covenants requiring the County protect the land as “open space ...” “parkland” ... “substantially in its natural condition”. The County would also have to overcome these protective environmental covenants, potentially making such an option a costly legal battle.

Our Shared Vision for Tysons Corner

Together, we represent homeowners in the fifteen neighborhoods of the Neighborhood Coalition to Save Tysons Last Forest. It is our understanding that a ramp through the stream valley would be inconsistent with Fairfax County’s Comprehensive Plan and would also negatively impact our constituents.

First, the Tysons Corner Amendments to the Plan specifically ban “hardscapes” near the stream valley; clearly a highway ramp would violate that prohibition. As noted on pages 74-75, the Plan notes, “*Protection, enhancement and management of natural resources in the existing stream valley parks in Tysons is critical ... Stream valley expansions should not include large hardscape areas (other than trails) and resources management should drive park design.*” On page 78, it continues, “*Stream valley parks such as ... Old Courthouse Spring Branch provide natural buffers and potential connectivity to and throughout Tysons. ... These stream valley parks should not only be protected from development and infrastructure impacts, but be restored and enhanced.*”

Second, keeping this option on the table increases homeowners’ feelings of uncertainty which poses a threat to home values and individual economic and emotional well-being. Going forward with Option 3 means a significant drop in home values throughout the Old Courthouse area and will therefore decrease the amount of revenue that would otherwise go to Fairfax County in property taxes. In these uncertain economic times and in an area of Virginia that is experiencing substantial economic stress, it would be unwise to make such an irrational fiscal decision that could devastate the real estate market.

We trust that the Fairfax County Board of Supervisors has no intention of approving this proposal because it is inconsistent with their vision, plan, and policies. We ask for your support in taking all necessary action to discontinue studying Option 3 as soon as possible – before we have incurred a substantial amount of unnecessary costs.

We understand that the County is currently working with VDOT, who is expending resources to evaluate the transportation feasibility of this option, and that next steps would include conducting and preparing a multi-million dollar Environmental Impact Statement (EIS). With limited state and county resources, it seems wasteful to spend money studying an option that will only continue to have environmental and legal hurdles throughout the County, state, and federal review process – especially one that is inconsistent with the County’s plans, policies, and vision.

Thank you for your consideration of this request. Regarding Table 7’s proposed items, we ask that you eliminate the FCDOT proposal to build a highway ramp through a protected stream valley. Removing this option would be a reasonable solution, especially when there is such clear and strong opposition. My colleagues and I would be happy to discuss this matter further and appreciate your continued cooperation. We would also be willing to take the necessary steps in providing necessary documentation to remove this option as soon as possible. Please don’t hesitate to contact our offices with any questions, or if we may be of further assistance in this matter.

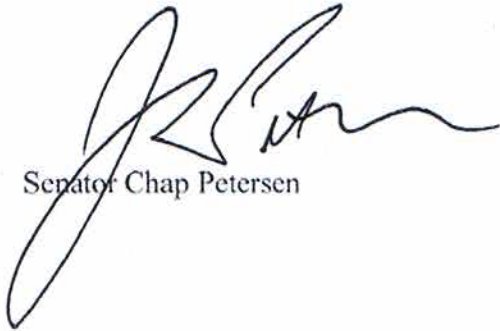
Sincerely,

A handwritten signature in blue ink that reads "Barbara Comstock". The signature is written in a cursive, flowing style.

Delegate Barbara Comstock

Mark

Delegate Mark Keam

A handwritten signature in black ink, appearing to read "Chap Petersen". The signature is fluid and cursive, with a large initial "C" and "P".

Senator Chap Petersen

A handwritten signature in black ink, appearing to read "Janet Howell". The signature is cursive and clearly legible.

Senator Janet Howell

Cc: Fairfax County Board of Supervisors