

October 22, 2018

Planning Commission  
Fairfax County  
12000 Government Center Parkway  
Suite 330  
Fairfax, VA 22035

**Re: Comments Regarding PA 2018-IV-MV2, Comprehensive Plan Amendment (8800 Richmond Highway)**

Dear Chairman Murphy and members of the Planning Commission:

The Coalition for Smarter Growth is a 21-year-old non-profit and the leading organization in the Washington, DC metropolitan region dedicated to making the case for smart growth. Our mission is to promote walkable, inclusive, and transit-oriented communities, and the land use and transportation policies and investments needed to make those communities flourish. We have strong partnerships with conservation groups, transit and affordable housing advocates, and smart growth development firms.

We've worked in Fairfax County since our inception and campaigned for transit-oriented development and revitalization plans at Vienna Metro, Merrifield/Dunn Loring, Tysons, Bailey's Crossroads, Springfield, Seven Corners, and Richmond Highway. For nearly a dozen years we have built relationships in the local community and promoted revitalization in the Richmond Highway corridor. Our work over these years along Richmond Highway has included:

- Presentations and meetings with the Mount Vernon Council of Citizens Associations and the Lee District Council
- Walking tours and forums on smart growth, stormwater, urban design, and affordable housing
- Outreach at polling stations
- Release of a smart growth vision
- Coordination of a coalition of housing, transit, smart growth, bike, and conservation groups
- Support for state funding for the Route 1 transit study
- Support for both the transit plan and the Embark Richmond Highway comprehensive plan amendment
- Support for specific development projects

We were pleased when the Planning Commission and Board of Supervisors approved the [Embark Richmond Highway Plan](#) in March, which combines mixed-use, transit-oriented development *with* expanded stream buffers and restoration of the historic creeks that connect corridor neighborhoods to the Potomac.

**We are convinced for reasons of law, regulation, precedent, public health and safety, conservation and economic competitiveness that residential development -- any development -- in the floodplain**

**of Dogue Creek and any creek, is a terrible idea and we strongly support the County Staff recommendation of denial of the proposed plan amendment and associated rezoning and special use permit.**

**Rationale:**

We are absolutely committed to the revitalization of the Richmond Highway Corridor and will strongly support well-designed, mixed-use, mixed-income walkable development that comes forward in the commercial nodes along the corridor. But we are equally committed to the environmental protection and restoration called for in the Embark Richmond Highway plan and the county's ordinances.

We participated in the site visit with the Planning Commissioners, county staff, landowners, and local residents. We've studied the documents. We've listened to all sides of this conversation.

We should never develop in our floodplains and should instead restore the function of degraded floodplains like this one. How Houston flooded following Hurricane Harvey is a sobering example of what can happen when floodplains are developed, but it's our future as "100-year" storms become more frequent, and we see more "500-year" and "1000-year" storms. We need our floodplains to absorb the floodwaters of the even larger storms we are seeing and protect homes upstream and downstream.

Fairfax County staff have strongly recommended denial of the proposed plan amendment for a project that would be located nearly 100% in the 100-year floodplain, as well as the Chesapeake Bay Resource Protection Area and county Environmental Quality Corridor. The addendum reiterates their recommendation of denial and also notes that the flood elevation according to VDOT's analysis is 1 to 2.5 feet higher and flood flows significantly higher (8,377 cfs vs 4,250 cfs). We do not support the alternative proposed language (requested of the staff) for a mitigation approach because of the vagueness and insufficiency of the proposed mitigation measures, and because the problem of a harmful precedent would remain.

We will not repeat the very clear and substantial case and legal provisions cited by the staff related to the floodplain, RPA, and EQC issues. To their case, we wish to add and note the commitments made by the Planning Commission and Board of Supervisors in the Embark Richmond Highway Plan, and to discuss the issue of precedent.

**Embark Richmond Highway plan calls for protection of these resource areas:**

The proposed development in the floodplain, RPA and EQC is directly contrary to the provisions of the Embark Richmond Highway Plan, which the County Board adopted so recently by a 9-0 vote (Supervisor Hudgins out of the room). The county has traditionally placed significant weight on the provisions of its comprehensive plan, treating it as far more than a guideline, and the Embark Richmond Highway plan very explicitly calls for the following (extracts from the plan arranged by increasing page number):

- Buildings proposed near restored stream corridors should not be constructed within areas that would be subject to flooding by 100-year storm events (Page 16)
- Due to the primarily commercial nature of the CBCs and early development patterns along the corridor, there is a lack of public parkland and recreational opportunities within these areas and the Mount Vernon Planning District as a whole. As a result, the Richmond Highway Corridor and

surrounding communities are underserved for parks and recreation facilities and connectivity to and between parks is poor. (Page 19-20)

- As the corridor redevelops and attracts more residents and employees, the need for parks and recreation facilities to serve the growing communities will continue to increase. (Page 19-20)
- Emphasize, protect, and restore existing ecological resources and natural spaces to strengthen the relationship between people and nature (header on Page 67)
- Some streams, wetlands and waterways within the CBCs have been altered or otherwise disturbed over time. Channelizing and piping these waterways adversely affects environmental health, reduces wildlife habitat and limits opportunities for residents to engage with and benefit from the ecosystems provided by these natural elements. These practices also impact the ability of waterways to manage weather events and natural disasters. Preserving and enhancing the area's ecological systems and connecting people to them by adding amenities will provide opportunities for improved environmental and public health benefits while fostering a sense of place. (Page 67)
- Resource-based Parks may be considered in select portions of Resource Protection Areas (RPAs) within the Woodlawn CBC, including along Dogue Creek if designed to ensure environmentally sensitive resources are protected...A Recreation-focused park should be located near the Resource Protection Area (RPA) that borders the southern edge of the [WOODLAWN] CBC and connects to Pole Road Park. (Page 149)
- The Woodlawn CBC is bisected by the North Fork of Dogue Creek, a significant tributary of the Potomac River. Development patterns that occurred prior to the enactment of the Chesapeake Bay Preservation Ordinance retained only minimal buffers along this watercourse. Opportunities should be explored to restore the RPA and increase buffer widths, emphasizing native plantings. (Page 154)
- Redevelopment options are encouraged that include consolidation of land area along Dogue Creek, permitting the Chesapeake Bay Resource Protection Areas to be developed as an Ecological Spine Type 4 as conceptualized in Figure 62... The width of the Resource Protection Area in the Woodlawn CBC allows for a naturalized development of this space. All programmed spaces should be designed to respect the hydrology of the Ecological Spine, the requirements of the Chesapeake Bay Preservation Ordinance, and draw upon the theme of valuing ecology. (Page 154)

In addition, the County's Comprehensive Plan has long listed this parcel as "private open space," but it is the very recent adoption of a comprehensive plan update – Embark – by unanimous approval and after substantial public engagement and task force meetings that should give extra weight to the plan's very clear call for protection and restoration of the RPA, not building in the 100-year floodplain, expansion of parks, and restoration of the ecological functions of stream corridors.

### **Precedent:**

Our reading of Virginia land use case law and our experience is that where counties have not been consistent in their application of their laws and regulations, they have been more likely to be subject to lawsuits by affected parties. Perhaps more subtly, they begin to lose their authority and ability to shape their futures and lose the confidence of their communities.

We believe that Fairfax's careful development of plans and regulations and consistent application of those plans and regulations has reduced the likelihood of county decisions and authority being successfully challenged in the courts. However, approval of this development in spite of the clear guidance in the county's ordinances and plans, will be contrary to the careful and consistent application of those plans and ordinances, and open the door to new proposals to develop in floodplains.

If the county approves residential development in the floodplain, RPA and EQC where the development is nearly 100% in these environmentally sensitive zones, then almost any future denial of proposed residential development in a floodplain (including where the owner/developer proposed to add fill) could be deemed "arbitrary and capricious" and contrary to equal protection under the law, risking overturn of the county's future denials and undermining the county's ability to protect these sensitive resource areas.

Clearly the developer in this case considers precedent to be a critical argument and that's why they have sought out examples where the county has approved development in a floodplain. In each of the cases, county staff has reviewed the examples and shown how different they are from the current situation -- for example they touch on a very small portion of floodplain and only the corner of one lot out of many touches on the floodplain. If the current development just touched on a small portion of the floodplain that would be one thing, but here nearly 100% of the project is in the floodplain, RPA and EQC. Once you've allowed nearly 100% of a development to be in the floodplain and RPA, it opens the door to anything at that level or less.

On the other hand, were the county to cite and adhere to the very clear provisions in its ordinances regarding floodplains, RPAs, EQCs and the comp plan (including Embark plan), show that there are no existing precedents, and deny the project, it would certainly withstand court challenge from the developer. The developer would not be able to show that the county acted arbitrarily and capriciously.

Consistency in application of the county's laws and ordinances is critically important. We believe that once Fairfax starts being inconsistent with its application of these important and long-standing ordinances the county will be subject to an increased number of legal challenges and weaken its authority to deny developments that don't comply with its ordinances.

The county has been recognized as a leader in the region and state for its environmental stewardship. If this environmentally oriented county fails to protect the floodplain, RPA and EQC in this case, creating a precedent that severely reduces its ability to protect these resource areas across the county, it not only undermines its own authority in environmental protection but could contribute to a precedent undermining similar authority and protection efforts in other jurisdictions. This is why this proposed plan amendment for development in a floodplain is of such great concern to the conservation community.

For of the reasons cited above and in the staff report, the testimony of leading conservation organizations, and the provisions of the county's own ordinances and plans, we urge you to deny the proposed plan amendment PA 2018-IV-MV2 (8800 Richmond Highway).

Thank you,



Stewart Schwartz  
Executive Director